

March 20, 2020

Via Email

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Re: ICE's Boston Enforcement and Removal Operations (ERO) response to COVID-19

Director Lyons and Public Safety Officials:

In view of the COVID-19 (Coronavirus) pandemic and the danger it poses to the community, we, the undersigned organizations, urge ICE's Boston Enforcement and Removal Operations (ERO) and the county sheriffs/wardens of the jails that contract with ICE to detain immigrants to take every measure possible to protect the health of the immigrants in ICE custody in New England by releasing immigrants in ICE custody.

As organizations that work in support of immigrant communities and/or provide legal representation to detained immigrants throughout Massachusetts and New England, we believe

that the most effective manner to respond to the growing COVID-19 crisis is to release immigrants in ICE custody in New England detention facilities, halt the unnecessary civil arrests and detention of immigrants in New England, and postpone appointments for people placed under ICE supervised release. Immediately restoring the physical liberty of those currently in civil custody and guaranteeing the freedom of those who are at risk of detention merely due to their immigration status would support the prevention and management of COVID-19 and promote the health of the community at large.

As medical professionals¹ and public officials across the country and in the Commonwealth² have made abundantly clear, COVID-19 can have serious consequences for the community at large. This is especially true for particularly vulnerable community members, like immigrants in detention, but also holds true for their family members, the staff working in the facilities and other visitors. This virus is highly contagious, and those who are detained in close quarters are particularly susceptible to infection and to rapidly spreading the illness. This is evidenced by a recent 2018 outbreak of mumps in immigrant detention centers which ballooned from 5 cases in 2018 to nearly 900 cases less than a year later.³ Further, widespread efforts to slow the transmission of the virus – including social distancing and quarantines – are unrealistic and ineffective in detention environments. This environment precludes a suitable, evidence-based plan that can prevent an outbreak or even minimize its impact if one does occur. Keeping immigrants detained and continuing to put immigrants in detention is irresponsible and puts the lives of people in detention and those who work there at risk.

We are aware of ICE’s efforts to address the COVID-19,⁴ but we urge you to take more future thinking steps to meet the demands of what is now a pandemic. Ending immigration detention is critical to public health and safety, not only for this moment but also for the months that lie ahead, as we are all called upon to engage in social distancing and other important preventative measures necessary to stop the further spread of the virus.

The current “ICE guidance on COVID-19”⁵ fails to adequately address the complexities and urgency of this public health crisis, in several key areas:

1. In regards to enforcement practices, the guidance states that ICE will “continue daily enforcement operations to make criminal and civil arrests” and still allows for the arrest of immigrants in sensitive locations, such as health care facilities, under certain circumstances. These continued enforcement actions will add to the fear that already exists in immigrant communities, will deter immigrants from seeking the care and treatment that they need if they are sick, and increases points of contact and exposure to the virus.

¹ <https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-%282005%29-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-%282019-ncov%29>

² <https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19>

³ <https://www.theguardian.com/world/2020/mar/11/coronavirus-outbreak-us-immigration-centers>

⁴ <https://www.ice.gov/covid19>

⁵ Id.

2. The national guidance to address the risk of spreading the virus through ICE check-ins only advises individuals to contact the local ICE field office if they are experiencing symptoms⁶—despite evidence that infected people without symptoms could be largely responsible for driving the spread of coronavirus.⁷ Although the Boston ERO office is in the process of notifying immigrants and their attorneys that they will hold scheduled ICE check-ins over the phone,⁸ we believe that the altogether postponement of these appointments would help immigrants subject to supervised release avoid confusion and the risk of non-compliance.

3. To prevent the spread of the virus within detention jails, ICE simply recommends cohorting — the grouping together of detained immigrants with symptoms — as an alternative to self-monitoring. This again ignores the reality that infected individuals may not always show symptoms. Further, experts agree that areas used for cohorting should not be considered the only source of infection and that correctional staff must do their due diligence in surveying their establishments for suitability for cohorting and conducting risk assessments on the co-location of detainees who would normally be kept separated.⁹ In some detention jails, like the one in Bristol County, most immigrant detainees are already grouped and confined to large halls lined with bunkbeds where several dozen immigrants spend 24 hours a day, increasing the risk for community transmission of the virus and the unmitigated spread of COVID-19.¹⁰ These immigration detention practices fly in the face of current guidance prohibiting large gathering and urging social distancing.

4. In response to the possibility that newly detained individuals may carry the virus, ICE claims to have “screening guidance for new detainees who arrive at facilities to identify those who meet CDC’s criteria for epidemiologic risk of exposure to COVID-19,” yet fails to clarify what the screening entails or to guarantee universal medical testing for all detainees.

5. The guidance also ignores altogether other equally worrisome issues. For example, the lack of interpreters to help immigrants access the support they need while in detention. In our experience, many are either forced to rely on the goodwill of other detainees to interpret for them or left to fend for themselves. This issue is particularly troublesome in the context of medical examinations which often involve the sharing of private and time sensitive information. In terms of hygiene and sanitation, we often hear from immigrants that they are not provided with enough toiletries, such as soap, to properly wash themselves. Furthermore, immigrant detainees are often the ones put in charge of cleaning the facilities.

⁶ Id.

⁷ <https://www.cnn.com/2020/03/14/health/coronavirus-asymptomatic-spread/index.html>

⁸ <https://www.masslive.com/coronavirus/2020/03/coronavirus-response-ice-boston-to-start-conducting-scheduled-immigration-check-ins-by-phone.html?fbclid=IwAR051hnR8urz1Vox-dAnmrgSGDmRDct3WpYDh3yCCdNI4GbxnqGmLdbAfmk>

⁹ <https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

¹⁰ Notably, the Governor of MA recently released an order prohibiting the gathering of more than 25 people throughout the Commonwealth due to the risk of infection in group settings. <https://www.mass.gov/doc/march-15-2020-large-gatherings-25-and-restaurants-order/download>

For these reasons and others, we find that the guidance falls short of ensuring that individuals in detention will be safe from potential harm. Ending immigration detention and releasing individuals from these facilities is thus crucial.

Below we have identified some measures that should be taken immediately to address the critical health risks posed by COVID-19.

Tier 1 Recommendations:

- **Release of all individuals detained in ICE custody.** This includes using discretionary power to release all immigration detainees on parole or using alternatives to detention methods. This is especially important for vulnerable populations, including those persons who are at high risk of serious illness if they are infected, such as pregnant people, people 60 and over, and people with chronic illnesses, compromised immune systems, or disabilities.
- **Cease all local immigration enforcement operations and arrests.**¹¹ Increased interior enforcement by ICE, including raids and arrests, has presented unique risks of COVID-19 for immigrant communities. Immigrant families may avoid going to the hospital or seeking necessary medical attention out of fear of detection by ICE. Immigrants may also decline to self-quarantine out of fear that ICE will find them and arrest them in their own home. For these reasons, ICE should publicly announce that it will not conduct enforcement activities, especially in or around medical facilities. ICE has already indicated that it does not conduct enforcement operations at medical facilities, except under extraordinary circumstances. But the “extraordinary circumstances” exception leaves people considering whether to seek medical attention uncertain about whether ICE has determined their case an extraordinary circumstance. Any hesitation to seek medical attention puts both the individual and the community at risk. In the midst of this crisis, ICE should unequivocally state that no enforcement will be conducted at or near medical facilities and ICE should end enforcement operations generally during this time.
- **Postpone ICE check-ins and mandatory court appearances**¹²

¹¹ On March 18, 2020, ICE officials announced the agency would temporarily delay arresting immigrants, except for efforts to deport foreign nationals who have committed crimes or who pose a threat to public safety. https://www.washingtonpost.com/national/ice-halting-most-immigration-enforcement/2020/03/18/d0516228-696c-11ea-abef-020f086a3fab_story.html. We feel quite strongly that allowing ICE to qualify who should be released based on perceived dangerousness is a very slippery slope. As former President Obama’s “felons, not families” enforcement policy proved, such policies purport to prioritize the deportation of undocumented immigrants with serious criminal histories and avoid separating families. But as data has shown, even under such policies, the majority of immigrants ICE arrested and deported did not have serious criminal convictions, and many had no criminal convictions whatsoever. <https://www.themarshallproject.org/2016/09/26/who-is-ice-deporting>. Further, the criminal vs non-criminal dichotomy ignores the multitude of issues that exist in the criminal justice system and suggests that one subsection of the undocumented population is worthy of protection during the COVID-19 crisis while another one is not.

¹² The Executive Office of Immigration Review, announced that all immigration hearings for non-detained individuals are postponed as of March 18, but the Boston immigration court still remains open for hearings of those people still in ICE custody. <https://www.wbur.org/news/2020/03/14/boston-immigration-master-calendar-hearings-suspended>

Tier 2 Recommendations – Alternatively, and in addition to these top priorities above, we urge you to take the following measures:

- **Immediately test the current ICE population and all new incoming detainees** exhibiting symptoms and/or presenting risk factors, as delayed confirmation of cases will be too late to prevent transmission within the population
- **Halt all ICE transfers from facility-to-facility and to out-of-state locations** in order to prevent the spread of the coronavirus throughout the U.S.
- **Education and delivery of information to individuals in ICE custody:** People housed in detention centers need to be informed about the virus and the measures they can take to minimize their risk of contracting or spreading the virus. They should be educated on the importance of proper handwashing, coughing into their elbows, and social distancing to the extent they can. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures should be based on the best available science. The information should be provided in writing *and* by other means since many detainees are not fully literate or do not primarily communicate in English, and it is imperative that each and every incarcerated individual fully understand and apply the necessary preventative measures. Furthermore, it will be necessary to translate and interpret information for ICE detainees.
- **Education of the staff and volunteers:** Correctional, administrative, and medical staff, in addition to volunteer staff must be educated about the virus to protect themselves and their families, as well as the people in their custody.
- **Staffing plans:** Regardless of how many staff stay home because they are sick, the detention center will have to continue functioning. A plan is needed to continue with necessary functions and services if large numbers of staff are out with the virus.
- **Provision of sufficient hygiene supplies:** The most basic aspect of infection control is hygiene. There must be ready access to warm water and adequate hygiene supplies (soap, sanitizer, etc.) for all detainees, both for frequent handwashing and for cleaning. Jails should temporarily allow alcohol-based hand sanitizer to be used by detainees, and hand sanitizer should be readily available in the lobby and in common areas of each jail.
- **Housing of persons exposed to the virus:** The plan should describe how and where people in the detention center will be housed if they are exposed to the virus, are at high risk of serious illness if they become infected, or become sick with it. *This should not result in prolonged, widespread lock-downs.* We strongly recommend a provision for quarantining anyone who tests positive for the virus at a hospital, not at the jail. Any lock-downs or interruptions in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the best science available and should be as limited as possible in scope and duration. Information about lock-downs, including how long units will be locked down and what restrictions are imposed on them, should be posted publicly for visitors' and attorneys' awareness.
- **Potential lockdown conditions:** If, in fact, some form of a lockdown is instituted in any of the jails that prevent visitors from coming in, other methods of communication with loved ones and attorneys such as phone and email should be facilitated by eliminating the cost of those communications so that they can be made equally available to all detainees. As experts are currently discouraging unnecessary contact between individuals, particularly in close quarters, we urge the instituting of such a policy as immediately as

possible. In addition, any extended lockdown will present austere and taxing conditions for those incarcerated as well as for those who work in the jails. Should some form of lockdown become medically necessary to isolate detainees, it should not be seen as punitive, and detainees should be ensured ample access to comfort and entertainment.

- **Treatment:** Courses of treatment must be evidence-based, available immediately, and in compliance with scientifically-based public health protocols. In addition, jails should provide free COVID-19 testing, treatment, and services for all, regardless of immigration status.
- **Engage in ongoing and open communication with stakeholders and the public** regarding ICE's procedures and decisions as related to managing COVID-19 in all facilities, as well as release of relevant data regarding the population under ICE detention and supervision.

This matter is of paramount importance to immigrants, their family members and the well-being of the residents of the Commonwealth and beyond. As of the date of this letter we have not received clear and detailed information from your offices regarding the special measures being taken to combat this pandemic – especially, in light of the numerous existing problems within these jails. Accordingly, we ask that you please respond in writing to this letter with detailed plans on how you are responding to this crisis. We ask that you forward your responses, or direct any questions, to mparedes@plsma.org.

Respectfully,

Prisoners' Legal Services of Massachusetts
Massachusetts Law Reform Institute

In collaboration with:
Harvard Immigration and Refugee Clinical Program

And the undersigned organizations:
Project Citizenship
Graves & Doyle
Essex County Community Organization
Community Economic Development Center
Greater Boston Legal Services
Boston University School of Law, Immigrants' Rights and Human Trafficking Program
Suffolk Law School Immigration Clinic
Chelsea Collaborative
Justice Center of Southeast MA
Catholic Social Services
University of Massachusetts Immigration Law Clinic
Real Cost of Prisons Project
Central West Justice Center
Berkshire Immigrant Center

Out Now

Lawyers for Civil Rights
 De Novo Center for Justice and Healing
 East Boston Neighborhood Health Center
 Dominican Development Center
 Cambridge Health Alliance Asylum Clinic
 NAACP New Bedford Branch
 The Boston Immigration Justice Accompaniment Network
 Neighbor to Neighbor Massachusetts
 Children's Law Center of MA
 Unitarian Universalist Mass Action
 Criminal Justice Reform Task Force of Congregation Dorshei Tzedek
 American Friends Service Committee
 Immigrant Service Providers Group/Health
 Prison Policy Initiative
 Immigrant Legal Advocacy Project
 Asian American Resource Workshop (AARW)
 Charles Hamilton Houston Institute for Race and Justice
 National Lawyers Guild, Massachusetts Chapter
 Mass Jobs with Justice
 Criminal Justice Policy Coalition
 Mental Health Legal Advisors Committee
 Massachusetts Immigrant & Refugee Advocacy Coalition
 Progressive Massachusetts
 Harvard Legal Aid Bureau
 Material Aid and Advocacy Program
 Citizens for Juvenile Justice
 Centro Presente
 Cape Cod Coalition for Safe Communities
 Northeast Justice Center
 Northeastern University School of Law Immigrant Justice Clinic
 Health Law Advocates
 Community Reentry Program Inc.
 The Rian Immigrant Center
 MLPB (f/k/a Medical-Legal Partnership | Boston)
 League of Women Voters of Massachusetts
 HarborCOV
 Massachusetts Association of Hispanic Attorneys
 Committee for Public Counsel Services, Immigration Impact Unit
 Alliance to Mobilize Our Resistance (AMOR)
 Massachusetts Association of Criminal Defense Lawyers
 The FANG Collective
 Jane Doe Inc. (MA Coalition Against Sexual and Domestic Violence)
 Rosie's Place
 Tikkun Olam Committee of the Jewish Community of Amherst
 Bristol County for Correctional Justice