



March 17, 2020

Honorable Michelle Lujan Grisham
Office of the Governor
411 State Capitol
Santa Fe, NM, 87501

CC:

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Re: COVID-19 and Immigration Detention

Dear Governor Grisham:

As you address the public health challenges presented by the COVID-19 pandemic,¹ we write to urge that you direct steps to immediately and drastically reduce occupancy in facilities detaining immigrants and asylum seekers for Immigration and Customs Enforcement (ICE) in New Mexico, including federal immigration detention facilities and county and local jails and prisons. The release of these individuals from detention is both necessary and legally authorized. Detaining large numbers of men, women and children in immigration facilities or county and local jails and prisons during the COVID-19 pandemic not only places detained immigrants and staff at severe risk but also threatens the health and safety of the broader public.

One of the most critical steps you can take to immediately reduce the spread of COVID-19 is to use your public health and licensing authority to instruct federal immigration detention facilities and county and local jails and prisons to substantially reduce their detainee occupancy capacity. Indeed, the Trump Administration has now recommended that gatherings of ten or more be avoided.²

As the COVID-19 pandemic spreads, the federal government and states are directing measures to reduce the spread of the disease to prevent countless deaths and the collapse of healthcare systems. These jails run the risk of becoming “incubators” for COVID-19, according to a physician specializing in healthcare issues in prisons and jails.³ Already it has been reported that a staff person at the Elizabeth Detention Center in New Jersey may have exposed detainees and other staff to COVID-19.⁴ In addition, given the documented inadequacies of medical care and

basic hygiene in immigration detention facilities,⁵ it is of vital importance for state public health authorities to address the state-wide risk posed by crowded immigration detention facilities.

The release of detained immigrants by ICE is already legally authorized under existing federal laws and regulations as detailed in our attached letter to the Department of Homeland Security (DHS).

Working with ICE to immediately parole and release detained immigrants would be manageable and safe. Many immigrants currently detained are longtime residents of the United States who were taken from established lives in this country, and many others, including asylum seekers, have close family, faith and other community ties who would help house them. Many detained asylum seekers are survivors of horrific persecution, torture and trauma in their home countries with sponsors able to help meet their psycho-social needs. Among those held in immigration detention are many who would be particularly vulnerable to COVID-19 due to their age or serious medical conditions.⁶ For instance, in fiscal year 2018, ICE held more than 700 individuals over the age of 65 in its immigration detention facilities.⁷

Detained individuals—as well as facility, immigration court and agency staff and outside lawyers and others—will face grave risks in immigration detention facilities if they are exposed to infection, such as through a staff member who is unaware that he or she has COVID-19. Rapid spread within crowded detention centers is of major concern. For example, the Otero Country Processing Center holds on average over 900 immigration detainees.⁸ Given that Customs and Border Protection (CBP) holds asylum seekers and immigrants in its facilities along the border in your state, you should immediately call upon DHS and CBP to use their parole authority to release these individuals, including those currently stranded in Mexico under the so-called Migrant Protection Protocols, rather than detaining them in close quarters in CBP custody or leaving them without adequate medical care in dangerous Mexican border cities. The release of immigrants is warranted in the public interest to reduce the number of individuals in detention to limit the spread of COVID-19 to both detainees and staff and ensure that medical staff—and area hospitals—have the capacity to manage any cases that may arise.

Public health experts have already recommended reducing prison and detention populations in response to the COVID-19 pandemic. For example, Dr. Marc Stern,⁹ a correctional health expert and former health services director for Washington State's Department of Corrections told Human Rights Watch that “[w]ith a smaller population, prisons, jails, and detention centers can help diseases spread less quickly by allowing people to better maintain social distance,” and “[i]f staff cannot come to work because they are infected, a smaller population poses less of a security risk for remaining staff.”¹⁰ Dr. Homer Venters, former chief medical officer of the New York City jail system, said: “Coronavirus in these settings will dramatically increase the epidemic curve, not flatten it.”¹¹ Dr. Anne Spaulding¹² at the Emory Center for the Health of Incarcerated Persons has recommended that correctional facilities “consider measures other than detention”

and ask themselves who “can [be] release[d] on their own recognizance.”¹³ Already some states and localities are seeking to release individuals from jails.¹⁴

We urge you to work proactively with ICE to swiftly and safely reduce the populations of immigration detention facilities and mitigate the otherwise inevitable spread of COVID-19 to the men, women and children held in these facilities. Communication and coordination are needed to ensure that those with underlying health needs receive continuous medical care upon release. For all releases, ICE should also be expected to communicate with the detainee, their attorney and family, as well as with community and local health resources to ensure any necessary care and to coordinate safe travel arrangements for detainees who are released far from their homes or sponsors.

As the government official responsible for the health and safety of your state’s residents, we urge you to take all possible actions to ensure that immigrants and asylum seekers detained in ICE facilities in New Mexico are released without delay and that all appropriate steps are taken to protect these individuals, facility staff and the broader public from the threat posed by the COVID-19 pandemic in densely populated ICE detention facilities.

Sincerely,

Physicians for Human Rights

Human Rights First

Amnesty International USA

Enclosure: Letter to DHS regarding COVID-19 and Immigration Detention

¹ World Health Organization, “WHO characterizes COVID-19 as a pandemic” (Mar. 11, 2020), *available at* <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

² Nolan D. McCaskill, Joanne Kenen & Adam Cancryn, “‘This is a very bad one’: Trump issues new guidelines to stem coronavirus spread,” *Politico* (Mar. 16, 2020), *available at* <https://www.politico.com/news/2020/03/16/trump-recommends-avoiding-gatherings-of-more-than-10-people-132323>; U.S. Centers for Disease Control and Prevention, “Get Your Mass Gatherings or Large Community Events Ready” *available at* <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html> (recommending the cancelation of gatherings of 10 or more people in higher risk populations even at minimal-to-moderate level of community transmission) (last accessed Mar. 17, 2020).

³ Martin Kaste, “Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’,” *National Public Radio* (Mar. 13, 2020), *available at* <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>.

⁴ Max Sieglbaum & Lila Hassan, “A NJ Detention Center Staffer Has Self-Quarantined Due to Potential COVID-19 Exposure” *Documented* (Mar. 15, 2020), available at <https://documentedny.com/2020/03/15/a-nj-detention-center-staffer-has-self-quarantined-due-to-potential-covid-19-exposure/>.

⁵ See, e.g., U.S. Dep’t of Homeland Sec., Off. of Insp. Gen., “Concerns about ICE Detainee Treatment and Care at Four Detention Facilities” (June 3, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf> (finding threats to detainee health and welfare due to food service issues, poor general conditions and improper provision of toiletries hindering the maintenance of personal hygiene); U.S. Dep’t of Homeland Sec., Off. of Insp. Gen., “Concerns about ICE Detainee Treatment and Care at Detention Facilities” (Dec. 11, 2017), available at <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> (finding delayed medical care, lack of cleanliness and limited hygienic supplies).

⁶ U.S. Centers for Disease Control and Prevention, “People at Risk for Serious Illness from COVID-19” available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (high risk individuals include older adults and people who have serious chronic medical conditions like heart disease, diabetes, and lung disease).

⁷ U.S. Gov’t Accountability Off., “Immigration Enforcement: Arrests, Detentions, and Removals, and Issues Related to Selected Populations” (Dec. 2019), available at <https://www.gao.gov/assets/710/703032.pdf>.

⁸ U.S. Imm. and Customs Enforc., “Dedicated and Non-Dedicated Facility List,” available at <https://www.ice.gov/facility-inspections> (as of Mar. 2, 2020).

⁹ University of Washington, Dep’t of Health Services, “Marc Stern,” available at https://depts.washington.edu/hserv/faculty/Stern_Marc.

¹⁰ Human Rights Watch, “US: COVID-19 Threatens People Behind Bars: Consider Supervised Release for Those at High Risk of Serious Effects” (Mar. 12, 2020), available at <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars#>.

¹¹ New York Times, “An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues” (Mar. 16, 2020), available at <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

¹² Emory University, Rollins School of Public Health, “Anne C. Spaulding,” available at <https://www.sph.emory.edu/faculty/profile/index.php?FID=52>.

¹³ Anne C. Spaulding, “Coronavirus and the Correctional Facility,” Emory Center for the Health of Incarcerated Persons (Mar. 9, 2020), available at https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

¹⁴ See, e.g., Alene Tchekmedyian, Paige St. John & Matt Hamilton, “L.A. County releasing some inmates from jail to combat coronavirus,” *LA Times* (Mar. 16, 2020) available at <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>; KCCI 8, “Northeast Ohio jail seeking to release hundreds of inmates due to COVID-19 concerns” (Mar. 16, 2020), available at <https://www.kcci.com/article/northeast-ohio-jail-seeking-to-release-hundreds-of-inmates-due-to-covid-19-concerns/31668540#>.