



March 13, 2020

*Sent via E-mail and FedEx*

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**Re: Requesting Parole for COVID-19 Vulnerable Adelanto Detainees**

Dear Field Officers David Marin, Gabriel Valdez, Art Cortez, and Warden James Janecka:

We write on behalf of immigrant legal service providers in Southern California to voice our concern about the urgent humanitarian crisis that COVID-19 presents for our clients and the overall detainee population Adelanto Detention Facility (“ADF”). For the foregoing reasons, we request, among other things, that Immigration and Customs Enforcement (“ICE”) immediately grant humanitarian parole to all vulnerable persons in detention, eventually evaluate all ADF detainees for humanitarian parole, and inform detainees of their right to seek humanitarian release. To that end, **we request a meeting with you no later than Thursday, March 19, 2020, to discuss our concerns.**

The World Health Organization officially declared COVID-19 a pandemic, yet ICE has neither announced nor published concrete plans or protocols for screening, mitigating, and treating the virus at ADF. This silence is especially troublesome considering the heightened risk of uncontrolled transmission among persons living in close quarters, DHS’ own Inspector General

and the State of California repeatedly condemning the substandard medical conditions at ADF, and DHS' March 10, 2020, confirmation to the LA Times that four detainees were under observation for infection.<sup>1</sup>

As you know, ADF has struggled to control infectious disease outbreaks and routinely resorts to en masse quarantines. COVID-19, however, is unlike any infectious disease that ADF has experienced. Its transmission rate will be significantly higher than that of mumps, measles, or chickenpox, because no so-called "herd immunity" exists against the virus, i.e., there is no population with immunity. For this reason, we have seen COVID-19 rapidly spread within our communities and throughout the world.<sup>2</sup> At ADF, detainees face heightened risk of infection due to their overly-crowded and poorly-ventilated living spaces.<sup>3</sup>

With capacity for 1,940 beds, ADF is the second largest immigrant detention center in the country. Mass-human contact is inevitable here because an individual must share their cell with up to seven other people while being confined to a barrack that holds nearly 100 others.<sup>4</sup> Medical professionals unanimously agree: "People residing in close living quarters [like those in ADF] are especially vulnerable to COVID-19 and will need special attention both to minimize transmission risk and address their healthcare needs in the context of an outbreak."<sup>5</sup> Simply put, the quarantine methods used for common disease outbreaks at ADF cannot control transmission of COVID-19.

Additionally, ADF's reoccurring failure to provide adequate medical care significantly increases the likelihood that a COVID-19 outbreak will be fatal. DHS' own Inspector General confirmed

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<sup>1</sup> See Brittany Mejia, *ICE says no confirmed coronavirus among detainees, but four meet criteria for testing*, LA TIMES (Mar. 10, 2020), <https://www.latimes.com/california/story/2020-03-10/ice-says-no-detainees-have-coronavirus-four-being-tested>; *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States* (Mar. 2, 2020), available at [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final\\_covid-19\\_letter\\_from\\_public\\_health\\_and\\_legal\\_experts.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf); OFFICE OF THE INSPECTOR GEN., MANAGEMENT ALERT – ISSUES REQUIRING ATTENTION AT THE ADELANTO ICE PROCESSING CENTER IN ADELANTO, CALIFORNIA 7 (Sept. 27, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>; OFFICE OF THE INSPECTOR GEN., CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT FOUR DETENTION FACILITIES 8 (June 3, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

<sup>2</sup> Letter from Rep. Mark Takano, Member of Congress, to Matthew Albence, ICE Acting Director (Sept. 12, 2019), available at <https://takano.house.gov/newsroom/press-releases/rep-takano-raises-concerns-and-requests-information-from-ice-acting-director-following-visit-to-adelanto-ice-detention-center>.

<sup>3</sup> *Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease (COVID-19)*, CDC (Mar. 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html> (defining "close contact" as being within approximately six feet of a person with COVID-19 for a "prolonged period," e.g., sitting in a healthcare waiting room); *People at Risk for Serious Illness from COVID-19*, CDC (last updated Mar. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>; Marc F. Stern, Washington Ass'n of Sheriffs & Pol. Chiefs, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets"* (Mar. 5, 2020); *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, *supra* note 1.

<sup>4</sup> CAL. DEP'T OF JUSTICE, OFFICE OF ATTORNEY GEN., IMMIGRATION DETENTION IN CALIFORNIA 22 (Feb. 2019), available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

<sup>5</sup> *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, *supra* note 1, at 2.

as much, finding “detainees do not have timely access to proper medical care,” and that ADF’s medical practices fall even below ICE’s own minimum standards.<sup>6</sup> ICE has yet to cure these deficiencies and is most certainly in no position to handle the imminent and overwhelming medical crisis that COVID-19 brings.<sup>7</sup>

The risks of continued detention at ADF are potentially fatal for persons who are elderly, immuno-compromised, or who have long-term health conditions. This risk, however, is not limited to persons with diagnosed health conditions; it impacts all detainees by virtue of their exposure to untreated mold that pervades the facility and ADF’s indifferent healthcare culture.<sup>8</sup> Simply put, persons detained at ADF are sitting ducks for a fatal COVID-19 infection.

The Agency’s March 10, 2020, statement given to Congressional Quarterly Roll Call in response to growing community concerns does nothing to quell our well-founded fears and is further proof that ICE cannot handle an outbreak at ADF.<sup>9</sup> The new “screening guidance” for incoming detainees ignores the risk of infection from current detainees and officers. Even more troubling, the plan to house all infected detainees collectively in an airborne infection isolation room outright ignores that treatment for COVID-19 requires individuals be housed separately under the care of licensed medical professionals equipped to treat COVID-19.

At this point in the COVID-19 pandemic, there are no swift and effective remedial measures that could prevent or mitigate a potentially-fatal COVID-19 outbreak at ADF.<sup>10</sup> Fortunately, ICE has wide discretion to release detainees and ought to exercise its authority given these urgent humanitarian circumstances. ICE may release persons under its parole authority. *See* INA § 236(a)(2)(B); 8 C.F.R. § 212.5(b)(1)–(2) (providing release of persons with “serious medical conditions in which continued detention would not be appropriate,” and pregnant women). Additionally, there is limited risk to ICE when paroling individuals from its custody through its alternatives to detention program, which provides for GPS ankle-monitors or regular home site visits and check-ins with deportation officers. This response would remove detainees from a dangerous environment through a program with “empirically demonstrated effectiveness ... at meeting the government’s interest in ensuring future appearances.” *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

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<sup>6</sup> MANAGEMENT ALERT – ISSUES REQUIRING ATTENTION AT THE ADELANTO ICE PROCESSING CENTER IN ADELANTO, CALIFORNIA, *supra* note 1, at 7.

<sup>7</sup> We acknowledge that ICE undertook the “remedial measure” of power washing and repainting a detainee shower, but that and similar actions fall woefully short of the remedial measures required to bring ADF’s facilities into compliance with minimum health and safety conditions. CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT FOUR DETENTION FACILITIES, *supra* note 1, at 13; Letter from Rep. Mark Takano, Member of Congress, to Matthew Albence, *supra* note 2 (noting that ADF employees simply repainted over moldy areas without taking any steps to mitigate future growth).

<sup>8</sup> CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT FOUR DETENTION FACILITIES, *supra* note 1, at 8.

<sup>9</sup> Featured Issue: 2019 Novel Coronavirus (COVID-19), ALIA (Mar. 12, 2020) (for DHS’ response relevant questioning from a CQ Roll Call reporter, see fifth link beneath the heading “Government Announcements and Alerts”).

<sup>10</sup> Amanda Holpuch, *Coronavirus inevitable in prison-like US immigration centers, doctors say*, THE GUARDIAN (Mar. 11, 2020) <https://www.theguardian.com/world/2020/mar/11/coronavirus-outbreak-us-immigration-centers>. In fact, ADF’s woefully deficient medical facilities and healthcare treatment options are the subject of a pending federal class action lawsuit. *See Fraihat v. U.S. Immigration and Custom Enforcement*, 5:19-cv-01546 (C.D. Cal.).

It is beyond dispute that ADF's medical facilities, treatment resources, and employees are ill-equipped to respond to this rapidly evolving pandemic. ICE is wholly responsible for protecting the health and wellbeing of the nearly 2,000 people detained at ADF. It is critical that you take immediate measures to protect those in your care from COVID-19. We therefore strongly urge you to exercise your discretionary authority and take the following proactive and protective measures:

- **Immediately grant humanitarian parole and release the most vulnerable detainee population, including individuals who are fifty years or older, who have medical conditions, or who are immuno-compromised.**<sup>11</sup> Continued confinement of this particularly vulnerable group is a gross violation of their civil rights and liberties and exposes them to a government-created danger. ICE can easily identify such individuals through its detainee intake form and medical records, and by having detainees self-identify. The *de minimus* administrative burden of identifying impacted people surely does not outweigh the importance of protecting high-risk detainees from this fatal infection.
- **Evaluate the remaining detainee population for humanitarian release soon thereafter.** In the event of an outbreak, ADF is institutionally and physically incapable of safely housing hundreds of detainees for the reasons described above. After releasing the most vulnerable detainees from ADF, ICE should then evaluate remaining persons for immediate release. Their continued detention will guarantee a widespread and uncontrollable outbreak and therefore demands swift, preventative action.
- **Inform detainees of their right to seek humanitarian release.** Provide detainees with up-to-date information about COVID-19 so persons can self-identify and understand the health risks of continued detention. This is crucial, as many detainees have relevant medical histories or conditions not known to ICE, such as chronic smokers, persons with prior respiratory conditions, and individuals with other undiagnosed conditions.
- **Ensure any detainee who remains in the facility, whether under medical quarantine or not, has ongoing access to confidential communication with prospective and current counsel.** Any person who remains at ADF during the pandemic—whether in medical quarantine or not—must have ongoing access to confidential communication with their attorneys, prospective attorneys, and the Legal Orientation Program. This communication should remain in-person to the fullest extent possible and, where not possible, should be facilitated through confidential phone and televideo calls at no cost to the person in detention.
- **Ensure detainees have access to their hearings in immigration court and promptly notify the court in the event a detainee's medical status prevents their appearance.** If EOIR continues to remain open, detainees must have full access to the courts with the option of making in-person appearances. ICE must provide adequate medical safeguards and accommodations to ensure that no one is forced to choose between their health or an in-person court appearance.

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<sup>11</sup> Marc F. Stern, *supra* note 3, at 3 (recommending that jails “downsize” their inmate population by first considering whether there are “people you can release on their own recognizance? Do you have a list (who do you release if you need to downsize by 5% or 10% etc.)?” and then “Are there alternatives to arrest for certain crimes, or, in dire situations, are there crimes for which your patrol division does will not arrest?”)

Given the dangers unique to ADF, the signatories to this letter request a meeting with ADF and ICE personnel to discuss our concerns and recommendations. The rapidly expanding health crisis requires that this meeting be scheduled no later than Thursday, March 19, 2020. Please contact Munmeeth Soni and Hannah Comstock at (213) 634-0999 or [meeth@immdef.org](mailto:meeth@immdef.org).

Sincerely,

Al Otro Lado

Asian Americans Advancing Justice Los Angeles

Carecen Los Angeles

Civil Rights Education and Enforcement Center

Disability Rights California

Esperanza Immigrant Rights Project

Human Rights First

Immigrant Defenders Law Center

Legal Aid Foundation of Los Angeles

National Lawyers Guild

Public Counsel

Public Law Center

UCI Law Immigrant Rights Clinic

UCLA School of Law Criminal Defense Clinic