



State of California  
Office of the Attorney General

XAVIER BECERRA  
ATTORNEY GENERAL

April 13, 2020

The Honorable Chad F. Wolf  
Acting Secretary of Homeland Security  
Washington, D.C. 20528

Dear Acting Secretary Wolf:

I write to urge you to take critical steps to minimize the transmission of COVID-19 in immigration detention facilities. To a significant extent, immigration detention is discretionary, and the Department of Homeland Security (DHS) currently has discretion to release thousands of individuals with little or no risk to public safety, particularly compared to the public health benefits that will flow from reducing the population of detained immigrants.

Based on the California Department of Justice's comprehensive reviews of six facilities and tours of all other detention facilities in California where immigrants are held pending their immigration proceedings, we know that many immigration detainees have no criminal histories and many are new arrivals seeking asylum. During these reviews, my Department has encountered many individuals whose medical conditions place them at a higher risk for developing serious illness from COVID-19. I am aware that the physical plants, custody and staffing patterns, and health care systems in immigration detention do not allow for social distancing practices and that additional practices such as improved sanitation, screening, and halting the admission of new detainees are needed to prevent transmission of the virus. Further, the facilities in question in California do not appear to have the healthcare resources required to treat infected detainees who become seriously ill. Failure to use your discretion to decrease the detainee population as much as possible and improve sanitation and COVID-19 screening practices for those detainees that remain will not only harm civil immigration detainees, but will overwhelm community hospitals to which those detainees will necessarily be transferred for treatment. COVID-19 infections have already been reported in one of the immigration detention facilities in California. Urgent action is required to prevent our country's immigration detention system from causing countless unnecessary deaths.

***Alternatives to Detention Are Appropriate for Individuals Who Pose No Risk to Public Safety***

Individuals in immigration detention are civilly detained pending their immigration proceedings. Their detention is unrelated to a criminal conviction, or—if criminal history is a factor in their proceedings—they have already served their sentences. The Immigration and Nationality Act provides you with discretion to release immigration detainees on bond or on their

own recognizance, unless “mandatory detention” conditions apply. (8 U.S.C. § 1226.)<sup>1</sup> The thousands of immigration detainees that are in custody pending the resolution of their asylum claims or based on unauthorized status alone should be released so that they can shelter in place in their communities.

Based on my Department’s review of detention facilities in California, I am aware that large numbers of detainees are considered low security due to their lack of criminal history. For example, 619 detainees—91 percent of the population—at the Imperial Regional Detention Facility were classified as low security at the time of my Department’s review last year. At the Adelanto ICE Processing Center, 682 detainees were classified as low security and 49.79 percent of the detainee population was classified as low or medium-low security in early August 2019. Otay Mesa Detention Center, which reported COVID-19 infections among staff and at least ten detainees as of last week, had 693 low security detainees in December 2019—80 percent of the population. Releasing the thousands of individuals currently held in immigration detention despite being low security risks would allow detention facilities much greater flexibility for quarantining detainees that remain in custody, to the benefit of both detainee and community health. This is particularly critical for detainees who already receive treatment for chronic illnesses, as medical care within the detention facilities will soon become even less available due to potential significant diversion of healthcare staff and resources to treat COVID-19 patients throughout detention facilities, and such individuals are at greater risk of death from COVID-19.

I am aware that Immigration and Customs Enforcement has long used alternatives to detention, such as the Intensive Supervision Appearance Program and the Family Case Management Program, that effectively ensure participation in immigration proceedings without the need for costly detention. As the current health emergency turns the economic costs of immigration detention into a serious threat to our healthcare systems and our very lives, there could be no better time to make maximum use of supervised release options.

***Immigration Detention Occurs in a Congregate Setting Where Transmission Is Possible***

Immigration detainees live in crowded dorms with up to 99 other people (such as in the Mesa Verde ICE Processing Center), with no physical partitions. Reports from advocates

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<sup>1</sup> Courts have recognized that even mandatory detention must be applied in accordance with constitutional due process limitations. In an unprecedented health crisis, where human life is at stake, release of individuals who pose little or no risk of danger to the community is warranted to protect both the detainees’ and the surrounding community’s interest in “life, liberty and the pursuit of happiness.” (U.S. Constitution, Amend. 5; *see Jennings v. Rodriguez* (2018) \_\_ U.S. \_\_, 138 S.Ct. 830, 853 [acknowledging availability of due process grounds for seeking bond hearing despite application of mandatory detention statute]; *Kabba v. Barr* (W.D.N.Y. 2019) 403 F.Supp.3d 180 [due process prohibited unreasonably prolonged detention under mandatory detention statute], *appeal filed* (2d. Cir 2020) No. 19-3418.)

indicate that detainees have not been issued protective gear such as face masks for those who are coughing, that hand sanitizer is not available, and that even soap is in short supply. Detainees at most detention centers in California eat in dining halls built for 50 or more people, at communal tables, where transmission of the COVID-19 virus—if present—is likely. Even without a staggered schedule to lessen the number of people in dining halls at one time, my office has observed that detention facilities struggle to seat all detainees for all their meals in a manner that allows the full 20-minute meal time required by federal standards. With a decreased population, facilities could employ staggered dining schedules to reduce the number of detainees dining together. Detention facilities should also undertake increased cleaning and provision of cleaning supplies such as sanitizer and soap in detainee housing units for those who remain in custody.

### ***Healthcare Systems in Detention Facilities Are Ill-Equipped to Handle an Epidemic***

The California Department of Justice reported on overburdened healthcare systems at immigration detention facilities in our February 2019 report, *Immigration Detention in California*.<sup>2</sup> My Department has encountered detainees with serious medical conditions who regularly struggle to obtain adequate care at these detention facilities without the strain an infectious disease outbreak would place on the healthcare staff. None of the facilities we visited are equipped with sufficient options for meaningful testing and quarantine.<sup>3</sup> One facility we reviewed had no written protocol for addressing infectious diseases, despite having had mumps and chicken pox outbreaks in the months before our visit. With only six separate medical isolation rooms for a population of 700, the facility dealt with disease outbreaks by cohorting an entire 64-person housing unit. A similar approach was undertaken by other facilities that my Department visited and that had similarly faced infectious disease outbreaks.

### ***Outbreaks in Detention Facilities Will Increase the Burden on Local Community Hospitals and Cause Unnecessary Deaths***

Immigration detention facilities regularly transfer detainees off-site for specialty care and when they require hospitalization. Because none of the facilities are equipped to provide intensive care, detainees that require medical intervention for COVID-19 will need to be treated at local hospitals, increasing the risk of infection to the public at large and overwhelming local health care providers.<sup>4</sup> This in turn will result in community health resources being less

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<sup>2</sup> This report is available at

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

<sup>3</sup> For example, the Adelanto ICE Processing Center has six negative-pressure isolation rooms for a population of up to 1,940 detainees; Imperial Regional Detention Facility has six for a population of about 700; Mesa Verde Detention Facility has two for a population of about 400; and Otay Mesa has six for a population of about 1,500.

<sup>4</sup> Although early reports suggested that COVID-19 presented danger only for particularly vulnerable individuals, such as the elderly and people with health conditions, CDC data shows that 76% of individuals who have tested positive for COVID-19 are aged 18-64, and CDC

available for community members. On March 19, 2020, the Governor of California issued a state-wide Stay-at-Home Order precisely to prevent the rapid transmission of COVID-19 from overwhelming local hospitals. Continuing to house immigration detainees who do not have a significant criminal history and are not pending criminal charges in their current settings seriously undermines this effort, one that Californians have undertaken at great economic and personal cost. In addition to reducing the detainee populations in its facilities, DHS should adopt strategies to limit transmission within the facilities such as screening of visitors and staff; increased sanitization and provision of cleaning supplies; and staggered dining hours to allow greater distancing between detainees during meals. Unless DHS takes immediate steps to reduce the population of detainees lacking a significant criminal history or pending criminal charges and implement policies to reduce the risk of transmission among the remaining detainees and staff, detainees, detention facility staff, and members of neighboring communities will face increased risk of death due to a shortage of medical equipment.

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Significant steps are needed to avoid COVID-19-related catastrophe in our immigration detention facilities and their surrounding communities. I urge you immediately to:

- Limit the transfer or transport of detainees and halt the introduction of new detainees to immigration detention facilities, requiring a 14-day quarantine for any detainee for whom transfer or admission is unavoidable;
- Obtain COVID-19 test kits and conduct comprehensive testing of staff and the detained population in order to avoid transmission, using temperature and other vital statistics screens while waiting for such tests to become available;
- Obtain protective equipment such as masks, gloves, soap, and cleaning products for detainees and staff, and educate detainees and staff about how to minimize transmission, taking care to ensure that language minorities also receive this vital information;
- Identify and release detainees that pose no risk to public safety, such as those without significant criminal histories or pending criminal charges, prioritizing those that are in fragile health, so as to reduce the risk in detention facilities in a manner that balances any public safety concerns associated with such releases; and

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estimates that between 10-33% of those individuals have been hospitalized. Based on detainee rosters immigration detention facilities provided to my Department in 2019 and 2020, 99.45% of immigration detainees in California are aged 18-64. Thus, immigrant detainees are also highly likely to need hospitalization if exposed to the virus. (See Center for Disease Control, Coronavirus Disease 2019 in Children — United States, February 12–April 2, 2020 (April 6, 2020) [https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e4.htm?s\\_cid=mm6914e4\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e4.htm?s_cid=mm6914e4_w) [as of April 7, 2020]).

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- Increase sanitation, availability of cleaning supplies and sanitizer, alter schedules, meal delivery, and physical space in detention facilities for remaining detainees while taking care not to further curtail detainees' liberty within the facilities.

Our communities are facing an unprecedented threat, and all of us must take affirmative steps to minimize it. I urge you to use your authority to address the countless unnecessary deaths that will follow if immigration detention proceeds without change during this public health crisis.

Sincerely,



XAVIER BECERRA  
California Attorney General

cc: The Honorable Ron Johnson, Chairman, Committee on Homeland Security and Government Affairs

The Honorable Gary Peters, Ranking Member, Committee on Homeland Security and Government Affairs

The Honorable Bennie G. Thompson, Chairman, Committee on Homeland Security

The Honorable Mike D. Rogers, Ranking Member, Committee on Homeland Security