

## **Instructions for Completing the Pro Se COVID-19 Parole Request**

This Pro Se COVID-19 Parole Request is a document that you can use to help request that you be released from immigration detention for urgent humanitarian reasons. These accompanying instructions are designed to help you complete the request and are not to be used as legal advice. It is always recommended that one attempt to seek the assistance and advice of an experienced immigration attorney. However, it is not required to have an attorney in order to request humanitarian parole.

Refer to these instructions for guidance on what information is helpful to provide in your parole request.

### **Basic Information**

Write the date you are sending out or completing the request on the line following “Date,” at the top of the first page.

Write down the name of your Deportation Officer on the line following “Deportation Officer.” You will need to send the request and any supporting documents to your Immigration and Customs Enforcement (ICE) deportation officer, who works in the Enforcement and Removal Operations (ERO) Field Office.

Write your full name on the line that ends with “(Full Name).”

Write your A number on the line that ends with “(A Number).” Your A number is a nine-digit number assigned to you by immigration authorities. It will be on your immigration paperwork and any identifying documents given to you at the detention center, such as a wristband or identification card.

Write your full name again on the line in the first paragraph.

### **I. Pages 1-3: I Have an Elevated Risk of Contracting COVID-19 and Suffering Serious Health Complications.**

This section describes the ways that being detained can put a person at a higher risk of catching Coronavirus.

Use the lines provided in this section on page three to write any medical conditions you have and how these conditions impact your health. If the conditions are severe or put you at greater risk of COVID-19, be sure to write this down as well. Use an extra sheet of paper to elaborate if you need to.

Be sure to note any of the following, in addition to any other medical conditions you may have:

- Autoimmune disease(s)
- Heart disease
- Lung disease
- Diabetes
- Asthma
- History of lung or chest infections
- Human immunodeficiency virus (HIV)

## **II. Page 3: My Continued Detention is Not in the Public Interest.**

You do not need to write anything here. This section explains that continuing to hold you in a detention center is not good for anyone.

## **III. Page 3: I am Not a Danger to the Community.**

On the lines provided on the third page, describe how you are not a danger to the community. If you do not have any criminal history, be sure to say so. If you do have a criminal history, explain why that does not make you a danger to the community. For example, if you have not had any criminal issues in a long time or if you have done things to support your community (volunteer, go to church, etc.), say so.

*Note: it is a good idea for any detained person who has criminal history to speak to an immigration attorney before submitting anything to immigration authorities or the immigration court.*

## **IV. Page 4: I am Not a Flight Risk**

On the lines provided on the fourth page, write your sponsor's name and immigration status. Explain how your sponsor knows you and the address where you will be living upon release. If you have family in the U.S., list your family members and relationship to each. Then, state that it is important to you to attend all of your future immigration hearings and explain why that is and why you want to fight for your case.

*Note: It is critical that you include a sponsor in the request.*

## **V. Page 4: I am Likely to Succeed on my Applications for Relief.**

On the lines provided on page four, describe the immigration relief you are applying for and why it is important to you to keep fighting your case.

If you would like to request that ICE inform someone other than you of the outcome of your parole request, you can include that person's name and contact information on page 5.

Write your sponsor's name on the line ending with "(sponsor or family member name)."

Write your sponsor's contact information on the line ending with "(phone number or email address)."

## **Exhibits**

Exhibits A-C are included already. For Exhibit D, include your sponsor's ID documents (a copy of their government-issued identification card, a copy of their Legal Permanent Resident Card if applicable, a copy of their IRS 1040, and a copy of a bill showing the Sponsor's address). For Exhibit E, include any relevant medical documents.

## **Finalizing the Parole Request and Submitting It**

Write your full name and A number on the lines beneath "Sincerely."

**\*\*Freedom For Immigrants** has a free telephone line you can use that is staffed by volunteers. You can **dial 9233** to speak with a volunteer who may be able to find ways to support you.

## **Instrucciones Para Completar Solicitud de Libertad Condicional (Parole) COVID-19 Sin Representación Legal**

Esta “Solicitud de Libertad Condicional” (“parole” en inglés) COVID-19 sin representación legal ( “pro se” por sus términos legales en inglés) es un documento que puede usar para solicitar libertad bajo palabra (un tipo de libertad condicional) por razones humanitarias urgentes. Estas instrucciones incluidas en la solicitud son diseñadas para ayudarlo completar la solicitud y deben ser utilizadas como un consejo legal. Se recomienda que consiga la asistencia de un abogado de inmigración. Sin embargo, no es requerido tener un abogado para solicitar libertad condicional por razones humanitarias. Es necesario completar la solicitud y documentos de soporte en inglés.

### **Información Básica**

En la parte superior de la primera página, indique la fecha en que usted está mandando o completando la solicitud en la línea que dice “*Date*.” En los EEUU, se indica el mes primero. Por ejemplo, el quince de marzo del 2020 se escribirá como 03/15/2020.

Indique el nombre del oficial de ICE a cargo de su caso en la línea que dice “*Deportation Officer*.” Usted tendrá que mandar la solicitud y cualquier otro documento de soporte a este oficial, titulado: “*Deportation Officer*” en inglés.

Escriba su nombre en la primera línea, que termina con “(*Full Name*).”

Escriba su “número A” en la línea que termina con “(*A Number*)”. Su Número A es un número de nueve dígitos que le asignaron las autoridades migratorias. Lo puede encontrar en sus papeles de inmigración y en cualquier documento que se le haya otorgado en el centro de detención, como un brazalete o tarjeta de identificación.

### **I. Página 1-3: Sufro de serias complicaciones médicas y me encuentro en alto riesgo de contraer COVID-19**

Esta sección describe las maneras en que siendo detenido podría poner a una persona en alto riesgo de contraer Coronavirus.

Utilice las líneas proporcionadas en esta sección, en la página tres, para mencionar cualquier condición médica de la cual sufra y explique cómo estas condiciones afectan su salud. Si es una condición grave o que le pone en más riesgo de COVID-19, incluya esa información. Puede utilizar una página extra si requiere más espacio.

Asegúrese de notar cualquiera de las siguientes condiciones:

- Enfermedades autoinmunes
- Enfermedades del corazón
- Enfermedades de los pulmones
- Diabetes
- Asma
- Historial de infecciones de los pulmones o del pecho
- Virus de Inmunodeficiencia Humana (VIH)

### **II. Página 3: La continuación de mi detención no es de interés público**

Usted no necesita escribir nada en esta parte. Esta sección explica que continuar con su detención no favorece a nadie.

### **III. Página 3: No soy un peligro para la comunidad.**

En las líneas proporcionadas en la cuarta página después de “*The Applicant is not a danger to the community for the following reasons:*” describa como usted no es un peligro hacia la comunidad. Si no tiene ni antecedentes penales ni arrestos, asegúrese de notarlo. Si usted tiene algún antecedente penal o arresto, explique porque no es un peligro hacia la comunidad. Por ejemplo, si no ha tenido incidentes penales en mucho tiempo o si ha hecho algo para apoyar a su comunidad (por ejemplo, ser voluntario, ir a la iglesia, etc.), nótelos.

*Nótelos: siempre es buena idea que cualquier persona detenida con antecedentes penales o arrestos hable con un abogado de inmigración antes de presentar cualquier cosa a las autoridades inmigratorias o a la corte de inmigración.*

### **IV. Página 4: No represento un riesgo para un vuelo.**

En las líneas proporcionadas en la cuarta página, escriba el nombre de la persona que lo hospedará y su estado migratorio. Explique cómo es que esa persona lo conoce y la dirección en la que usted vivirá en caso de ser liberado. Si usted tiene familia en Estados Unidos de América, enliste sus nombres y la relación familiar que mantiene con cada uno. Luego, explique porqué es importante para usted atender a cada uno de sus juicios inmigratorios y explique el porqué y porqué quiere pelear por su caso.

### **V. Página 5: Hay alta probabilidad que mi solicitud sea exitosa**

En la línea proporcionada en la página cuatro describe el tipo de asilo que está usted solicitando y porque es tan importante para usted continuar luchando por su caso.

Si usted gusta, puede solicitar que ICE informe a alguien que no sea usted acerca del resultado de su libertad condicional, puede incluir el nombre de esa persona y la información para contactarlo en la página 5.

Escribe el nombre de la persona que le proporcionará hospedaje en la línea que dice: “(*sponsor or family member name*).”

Escribe el numero de telefono o email de la persona que le proporcionará hospedaje en la línea que dice: “(*phone number or email address*).”

### **Pruebas**

Las pruebas A-C ya están incluidas. En la prueba D, incluye los documentos de identificación de la persona que le proporcionará hospedaje (una copia de una credencial proporcionada por el gobierno, una copia de su tarjeta de su residencia legal si es aplicable, una copia de sus impuestos IRS 1040, y una copia de un recibo que demuestre el domicilio de la persona que lo hospedará). En la prueba E, incluye cualquier documento que tenga con respecto a su salud.

### **Finalizando la solicitud de libertad bajo palabra y enviarla**

Escribe su nombre y su número A en las líneas en la parte inferior donde dice “*Sincerely,*”

**\*\* Freedom For Immigrants tiene un numero de telefono gratis en el cual puedes contactar a voluntarios. Puede marcar 9233 para hablar con un voluntario quien podrá trabajar con ud. a ver como le puede apoyar.**

Date: \_\_\_\_\_

Deportation Officer: \_\_\_\_\_

Assistant Field Office Director

Department of Homeland Security Immigration & Customs Enforcement

**Re: REQUEST FOR PAROLE FOR *URGENT HUMANITARIAN REASONS***

For \_\_\_\_\_ (Full Name)

A# \_\_\_\_\_ (A Number)

To Whom it May Concern:

I, \_\_\_\_\_ (Full Name), submit this letter and supporting documents as my request for parole. According to section 212(d)(5)(A) of the Immigration and Nationality Act, the Department of Homeland Security has the power to parole an immigrant for urgent humanitarian reasons or significant public benefit. **My parole is merited for urgent humanitarian reasons and significant public benefit.** Additionally, 212(d)(5)(B)(1) of the Immigration and Nationality Act specifically notes that one scenario where humanitarian parole is justified is when the “alien has a serious medical condition in which continued detention would not be appropriate.”

**The COVID-19 pandemic constitutes new circumstances that must be considered in evaluating my parole.** I urgently request Humanitarian Parole due to the elevated risk I face as the COVID-19 pandemic spreads within ICE detention centers. The effect of my exposure to this virus could be deadly and given what little information we have about how to test, treat, and control this outbreak, I ask that ICE consider my parole case a priority in the highest order.

I am neither a flight risk nor a danger to the community, and my detention is not in the public interest. DHS should exercise its discretion to release me under humanitarian parole for the following reasons:

**I. I Have an Elevated Risk of Contracting COVID-19 and Suffering Serious Health Complications.**

I am at heightened risk of contracting COVID-19 and suffering serious health complications due to my current detention. Detained individuals face an elevated risk of contracting COVID-19. People in detention are highly vulnerable to outbreaks of contagious illnesses. They are housed in close quarters and are often in poor health. According to Dr. Homer Venters, “[w]hen COVID-19 arrives in a community, it will show up in jails and prisons. This has already happened in China, which has a lower rate of incarceration than the U.S.”<sup>1</sup> For example, even as COVID-19 infection rates have declined in

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<sup>1</sup> Dr. Homer Venters, Four Ways to Protect Our Jails and Prisons from Coronavirus, The Hill, Feb. 29, 2020, <https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus?rnd=15829327>

China, the virus continues to spread aggressively across its prisons.<sup>2</sup>

As Dr. Anne Spaulding put it in a presentation to Correctional facility employees, “a prison or jail is a self-contained environment, both those incarcerated and those who watch over them are at risk for airborne infections. Some make an analogy with a cruise ship. Cautionary tale #1: think of the spread of COVID-19 on the Diamond Princess Cruise Ship, January 2020. Cautionary tale #2: Hundreds of cases diagnosed in Chinese prisons.”<sup>3</sup>

Older populations, pregnant women and those with preexisting health conditions have a high likelihood of hospital admission to intensive care and might die. According to Dr. Chauolin Huang, “2019-nCoV caused clusters of fatal pneumonia with clinical presentation greatly resembling SARS-CoV. Patients infected with 2019-nCoV might develop acute respiratory distress syndrome, have a high likelihood of admission to intensive care, and might die.”<sup>4</sup> The CDC recently reported that, “Older people and people of all ages with severe underlying health conditions — like heart disease, lung disease and diabetes, for example — seem to be at higher risk of developing serious COVID-19 illness.”<sup>5</sup> According to another source, Jialieng Chen, “[M]ost of those who have died had underlying health conditions such as hypertension, diabetes or cardiovascular disease that compromised their immune systems.”<sup>6</sup>

Medical experts on incarcerated populations have strongly recommended that corrections facilities consider compassionate releases for individuals who are older or have pre-existing conditions. As corrections medical expert Dr. Anne Spaulding recently recommended:

“Consider alternatives to incarceration, in order to keep stock population down (diversionary courts, community corrections). Consider measures other than detention...Ask who you can release on their own recognizance?”<sup>7</sup>

Knowing that correctional facilities could be a very dangerous setting for outbreak and that immunodeficient people present a higher risk of serious illness, I should be considered a priority for release from detention for my personal safety and to have access to the best possible medical care if exposed to COVID-19.

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<sup>2</sup> Linda Lew, *China sends in top investigators after coronavirus erupts in jails*, South China Morning Post, Feb. 21, 2020, <https://www.scmp.com/news/china/society/article/3051858/china-sends-top-investigators-after-coronavirus-erupts-jails>.

<sup>3</sup> Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, [https://www.ncchc.org/filebin/news/COVID\\_for\\_CF\\_Administrators\\_3.9.2020.pdf](https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf).

<sup>4</sup> Chaolin Huang, et al., *Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China*, 395 The Lancet 497 (2020), [https://doi.org/10.1016/S0140-6736\(20\)30183-5](https://doi.org/10.1016/S0140-6736(20)30183-5) (also available at <https://www.sciencedirect.com/science/article/pii/S0140673620301835>).

<sup>5</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), People at Higher Risk and Special Populations*, Mar. 7, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html>.

<sup>6</sup> Jieliang Chen, *Pathogenicity and transmissibility of 2019-nCoV—A Quick Overview and Comparison with Other Emerging Viruses*, Microbes and Infection, Feb. 4, 2020, <https://doi.org/10.1016/j.micinf.2020.01.004> (also available at: <https://www.sciencedirect.com/science/article/pii/S1286457920300265>).

<sup>7</sup> Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, [https://www.ncchc.org/filebin/news/COVID\\_for\\_CF\\_Administrators\\_3.9.2020.pdf](https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf).

Additionally, I am at a heightened risk of suffering life threatening complications if I am exposed to COVID-19 because I suffer from medical conditions.

I have the following medical conditions, which impact my health in the following ways:

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**II. My Continued Detention is Not in the Public Interest.**

Detention is funded by public tax dollars. Even under the best of circumstances it is a costly option when alternatives to detention exist, especially when the detained individual is neither a flight risk nor a danger to the community. It is not in the public interest to manage an outbreak in the detention center and the liability of exposing medically vulnerable people to a contagious outbreak.

**III. I am Not a Danger to the Community.**

I do not wish to do anyone harm. I am not a danger to the community for the following reasons and I contribute to my community in the following ways:

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**IV. I am Not a Flight Risk.**

I am not a flight risk. The following people and organizations will support me with housing, meals, and transportation to my hearings:

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**V. I am Likely to Succeed on my Applications for Relief.**

I am committed to pursuing my application(s) for relief in the United States. I am eligible for relief from removal and therefore have a strong incentive to appear for future hearings. My objective is to remain in the United States in a lawful manner. I have every incentive to, and will comply with, all obligations required to enable me to remain in the United States. I have already demonstrated my commitment to seeing my case through to the end by remaining in detention to fight my case in spite of the extreme mental and physical health difficulties discussed above.

I want to keep fighting my case for the following reasons:

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For the above reasons, I respectfully request that I be granted humanitarian parole and released from ICE custody.

If you would like further information, please do not hesitate to contact me. I look forward to hearing from you, and thank you in advance for your assistance in this urgent matter. I give ICE permission to, and request that ICE share any decision regarding this request with

\_\_\_\_\_ (sponsor or family member name) at

\_\_\_\_\_ (phone number or email address).

The Exhibits you will find attached to this letter are:

**Exhibit A:** Ninth Circuit Order in *Xochihua-James v. Barr* (March 23, 2020) (ordering respondent released from ICE custody due to COVID-19 public health crisis)

**Exhibit B:** Letter From Dr. Scott Allen and Dr. Josiah Rich to Congress re: Coronavirus and Immigrant Detention

**Exhibit C:** Open Letter to ICE From Medical Professionals Regarding COVID-19

**Exhibit D:** Sponsor Documents

**Exhibit E:** Medical Documents

Sincerely,

\_\_\_\_\_ (Full Name)

A# \_\_\_\_\_ (A Number)



# EXHIBIT A

**FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

MAR 23 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LUCERO XOCHIHUA-JAIMES,

No. 18-71460

Petitioner,

Agency No. A206-105-249

v.

ORDER

WILLIAM P. BARR, Attorney General,

Respondent.

Before: SILER,\* WARDLAW, and M. SMITH, Circuit Judges.

In light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court sua sponte orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court. *See* 8 U.S.C. § 1252(b)(3)(B); 28 U.S.C. § 1651(a).

The matter is remanded to the BIA for the limited purpose of securing Petitioner's immediate release.

**IT IS SO ORDERED.**

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\* The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

# EXHIBIT B

Scott A. Allen, MD, FACP  
Professor Emeritus, Clinical Medicine  
University of California Riverside School of Medicine  
Medical Education Building  
900 University Avenue  
Riverside, CA 92521

Josiah “Jody” Rich, MD, MPH  
Professor of Medicine and Epidemiology, Brown University  
Director of the Center for Prisoner Health and Human Rights  
Attending Physician, The Miriam Hospital,  
164 Summit Ave.  
Providence, RI 02906

March 19, 2020

The Honorable Bennie Thompson  
Chairman  
House Committee on Homeland Security  
310 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Ron Johnson  
Chairman  
Senate Committee on Homeland Security  
and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Mike Rogers  
Ranking Member  
House Committee on Homeland Security  
310 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Gary Peters  
Ranking Member  
Senate Committee on Homeland Security  
and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Carolyn Maloney  
Chairwoman  
House Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jim Jordan  
Ranking Member  
House Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Committee Chairpersons and Ranking Members:

We are physicians—an internist and an infectious disease specialist—with unique expertise in medical care in detention settings.<sup>1</sup> We currently serve as medical subject matter experts for the

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<sup>1</sup> I, Dr. Scott Allen, MD, FACP, am a Professor Emeritus of Medicine, a former Associate Dean of Academic Affairs and former Chair of the Department of Internal Medicine at the University of California Riverside School of Medicine. From 1997 to 2004, I was a full-time correctional physician for the Rhode Island Department of Corrections; for the final three years, I served as the State Medical Program. I have published over 25 peer-reviewed papers in academic journals related to prison health care and am a former Associate Editor of the International Journal of Prisoner Health Care. I am the court appointed monitor for the consent decree in litigation involving

Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL). One of us (Dr. Allen) has conducted numerous investigations of immigration detention facilities on CRCL's behalf over the past five years. We both are clinicians and continue to see patients, with one of us (Dr. Rich) currently providing care to coronavirus infected patients in an ICU setting.

As experts in the field of detention health, infectious disease, and public health, we are gravely concerned about the need to implement immediate and effective mitigation strategies to slow the spread of the coronavirus and resulting infections of COVID-19. In recent weeks, attention has rightly turned to the public health response in congregate settings such as nursing homes, college campuses, jails, prisons and immigration detention facilities (clusters have already been identified in Chinese and Iranian prisons according to news reports<sup>2</sup> and an inmate and an officer have reportedly just tested positive at New York's Rikers Island).<sup>3</sup> Reporting in recent days reveals that immigrant detainees at ICE's Aurora facility are in isolation for possible exposure to coronavirus.<sup>4</sup> And a member of ICE's medical staff at a private detention center in New Jersey has now been reported to have tested positive for coronavirus.<sup>5</sup>

We have shared our concerns about the serious medical risks from specific public health and safety threats associated with immigration detention with CRCL's Officer Cameron Quinn in an initial letter dated February 25, 2020, and a subsequent letter of March 13, 2020. We offered to

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medical care at Riverside County Jails. I have consulted on detention health issues both domestically and internationally for the Open Society Institute and the International Committee of the Red Cross, among others. I have worked with the Institute of Medicine on several workshops related to detainee healthcare and serve as a medical advisor to Physicians for Human Rights. I am the co-founder and co-director of the Center for Prisoner Health and Human Rights at Brown University ([www.prisonerhealth.org](http://www.prisonerhealth.org)), and a former Co-Investigator of the University of California Criminal Justice and Health Consortium. I am also the founder and medical director of the Access Clinic, a primary care medical home to adults with developmental disabilities.

I, Dr. Josiah (Jody) Rich, MD, MPH, am a Professor of Medicine and Epidemiology at The Warren Alpert Medical School of Brown University, and a practicing Infectious Disease Specialist since 1994 at The Miriam Hospital Immunology Center providing clinical care for over 22 years, and at the Rhode Island Department of Corrections caring for prisoners with HIV infection and working in the correctional setting doing research. I have published close to 190 peer-reviewed publications, predominantly in the overlap between infectious diseases, addictions and incarceration. I am the Director and Co-founder of The Center for Prisoner Health and Human Rights at The Miriam Hospital ([www.prisonerhealth.org](http://www.prisonerhealth.org)), and a Co-Founder of the nationwide Centers for AIDS Research (CFAR) collaboration in HIV in corrections (CFAR/CHIC) initiative. I am Principal Investigator of three R01 grants and a K24 grant all focused on incarcerated populations. My primary field and area of specialization and expertise is in the overlap between infectious diseases and illicit substance use, the treatment and prevention of HIV infection, and the care and prevention of disease in addicted and incarcerated individuals. I have served as an expert for the National Academy of Sciences, the Institute of Medicine and others.

<sup>2</sup> Erin Mendel, "Coronavirus Outbreaks at China Prisons Spark Worries About Unknown Clusters," *Wall Street Journal*, February 21, 2020, available at: <https://www.wsj.com/articles/coronavirus-outbreaks-at-china-prisons-spark-worries-about-unknown-clusters-11582286150>; Center for Human Rights in Iran, "Grave Concerns for Prisoners in Iran Amid Coronavirus Outbreak," February 28, 2020, available at <https://iranhumanrights.org/2020/02/grave-concerns-for-prisoners-in-iran-amid-coronavirus-outbreak/>.

<sup>3</sup> Joseph Konig and Ben Feuerherd, "First Rikers Inmate Tests Positive for Coronavirus" *New York Post*, March 18, 2020, available at: <https://nypost.com/2020/03/18/first-rikers-island-inmate-tests-positive-for-coronavirus/>

<sup>4</sup> Sam Tabachnik, "Ten detainees at Aurora's ICE detention facility isolated for possible exposure to coronavirus," *The Denver Post*, March 17, 2020, available at <https://www.denverpost.com/2020/03/17/coronavirus-ice-detention-geo-group-aurora-colorado/>.

<sup>5</sup> Emily Kassie, "First ICE Employees Test Positive for Coronavirus," *The Marshall Project*, March 19, 2020, available at <https://www.themarshallproject.org/2020/03/19/first-ice-employees-test-positive-for-coronavirus>

work with DHS in light of our shared obligation to protect the health, safety, and civil rights of detainees under DHS's care. Additionally, on March 17, 2020 we published an opinion piece in the *Washington Post* warning of the need to act immediately to stem the spread of the coronavirus in jails and prisons in order to protect not only the health of prisoners and corrections workers, but the public at large.<sup>6</sup>

In the piece we noted the parallel risks in immigration detention. We are writing now to formally share our concerns about the imminent risk to the health and safety of immigrant detainees, as well as to the public at large, that is a direct consequence of detaining populations in congregate settings. We also offer to Congress, as we have to CRCL, our support and assistance in addressing the public health challenges that must be confronted as proactively as possible to mitigate the spread of the coronavirus both in, and through, immigration detention and congregate settings.

### **Nature of the Risk in Immigration Detention and Congregate Settings**

One of the risks of detention of immigrants in congregant settings is the rapid spread of infectious diseases. Although much is still unknown, the case-fatality rate (number of infected patients who will die from the disease) and rate of spread for COVID-19 appears to be as high or higher than that for influenza or varicella (chicken pox).

In addition to spread within detention facilities, the **extensive transfer of individuals** (who are often without symptoms) throughout the detention system, which occurs with great frequency in the immigration context, could rapidly disseminate the virus throughout the entire system with devastating consequences to public health.<sup>7</sup>

Anyone can get a coronavirus infection. While healthy children appear to suffer mildly if they contract COVID-19, they still pose risk as carriers of infection, particularly so because they may not display symptoms of illness.<sup>8</sup> Family detention continues to struggle with managing outbreaks of influenza and varicella.<sup>9</sup> Notably, seven children who have died in and around

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<sup>6</sup> Josiah Rich, Scott Allen, and Mavis Nimoh, "We must release prisoners to lessen the spread of coronavirus," *Washington Post*, March 17, 2020, available at <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/>.

<sup>7</sup> See Hamed Aleaziz, "A Local Sheriff Said No To More Immigrant Detainees Because of Coronavirus Fears. So ICE Transferred Them All To New Facilities," *BuzzFeed News*, March 18, 2020 (ICE recently transferred 170 immigrant detainees from Wisconsin to facilities in Texas and Illinois. "In order to accommodate various operational demands, ICE routinely transfers detainees within its detention network based on available resources and the needs of the agency..." an ICE official said in a statement."), available at <https://www.buzzfeednews.com/article/hamedaleaziz/wisconsin-sheriff-ice-detainees-coronavirus>

<sup>8</sup> Interview with Jay C. Butler, MD, Deputy Director for Infectious Diseases, Centers for Disease Control and Prevention, "Coronavirus (COVID-19) Testing," *JAMA Network*, March 16, 2020, available at <https://youtu.be/oGiOi7eV05g> (min 19:00).

<sup>9</sup> Indeed, I (Dr. Allen) raised concerns to CRCL, the DHS Office of Inspector General, and to Congress in July 2018, along with my colleague Dr. Pamela McPherson, about the risks if harm to immigrant children in family detention centers because of specific systemic weaknesses at those facilities in their ability to provide for the medical and mental health needs of children in detention. See, e.g., July 17, 2018 [Letter to Senate Whistleblower Caucus Chairs](#) from Drs. Scott Allen and Pamela McPherson, available at <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>. Those concerns, including but not limited to inadequate medical staffing, a lack of translation services, and the risk of

immigration detention, according to press reports, six died of infectious disease, including three deaths from influenza.<sup>10</sup> Containing the spread of an infection in a congregate facility housing families creates the conditions where many of those infected children who do not manifest symptoms will unavoidably spread the virus to older family members who may be a higher risk of serious illness.

Finally, as you well know, social distancing is essential to slow the spread of the coronavirus to minimize the risk of infection and to try to reduce the number of those needing medical treatment from the already-overwhelmed and inadequately prepared health care providers and facilities. However, social distancing is an oxymoron in congregate settings, which because of the concentration of people in a close area with limited options for creating distance between detainees, are at very high risk for an outbreak of infectious disease. This then creates an enormous public health risk, not only because disease can spread so quickly, but because those who contract COVID-19 with symptoms that require medical intervention will need to be treated at local hospitals, thus increasing the risk of infection to the public at large and overwhelming treatment facilities.

As local hospital systems become overwhelmed by the patient flow from detention center outbreaks, precious health resources will be less available for people in the community. To be more explicit, a detention center with a rapid outbreak could result in multiple detainees—five, ten or more—being sent to the local community hospital where there may only be six or eight ventilators over a very short period. As they fill up and overwhelm the ventilator resources, those ventilators are unavailable when the infection inevitably is carried by staff to the community and are also unavailable for all the usual critical illnesses (heart attacks, trauma, etc). In the alternate scenario where detainees are released from high risk congregate settings, the tinderbox scenario of a large cohort of people getting sick all at once is less likely to occur, and the peak volume of patients hitting the community hospital would level out. In the first scenario, many people from the detention center *and the community* die unnecessarily for want of a ventilator. In the latter, survival is maximized as the local mass outbreak scenario is averted.

It is additionally concerning that dozens of immigration detention centers are in remote areas with limited access to health care facilities. Many facilities, because of the rural locations, have only one on-site medical provider. If that provider gets sick and requires being quarantined for at least fourteen days, the entire facility could be without any medical providers at all during a foreseeable outbreak of a rapidly infectious disease. We simply can't afford a drain on resources/medical personnel from any preventable cases.

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communication breakdowns and confusion that results from different lines of authority needing to coordinate between various agencies and partners from different government programs and departments responsible for detention programs with rapid turnover, all continue to contribute to heightened risks to meeting the medical challenges posed by the spread of the coronavirus.

<sup>10</sup> Nicole Acevedo, "Why are children dying in U.S. custody?," *NBC News*, May 29, 2019, available at <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316>

## Proactive Approaches Required

Before coronavirus spreads through immigration detention, proactivity is required in three primary areas: 1) Processes for screening, testing, isolation and quarantine; 2) Limiting transport and transfer of immigrant detainees; and 3) Implementing alternatives to detention to facilitate as much social distancing as possible.

Protocols for early screening, testing, isolation and quarantine exist in detention settings to address infectious diseases such as influenza, chicken pox and measles. However, the track record of ICE facilities implementing these protocols historically has been inconsistent. In the current scenario, with widespread reporting about the lack of available tests for COVID-19 and challenges for screening given the late-onset display of symptoms for what is now a community-spread illness, detention facilities, like the rest of country, are already behind the curve for this stage of mitigation.

Detention facilities will need to rapidly identify cases and develop plans to isolate exposed cohorts to limit the spread, as well as transfer ill patients to appropriate facilities. Screening should occur as early as possible after apprehension (including at border holding facilities) to prevent introduction of the virus into detention centers. We strongly recommend ongoing consultation with CDC and public health officials to forge optimal infection prevention and control strategies to mitigate the health risks to detained patient populations and correctional workers. Any outbreak in a facility could rapidly overwhelm the capacity of healthcare programs. Partnerships with local public health agencies, hospitals and clinics, including joint planning exercises and preparedness drills, will be necessary.

Transferring detainees between facilities should be kept to an absolute minimum. The transfer process puts the immigrants being transferred, populations in the new facilities, and personnel all at increased risk of exposure. The nationwide network of detention centers, where frequent and routine inter-facility transfers occur, represents a frighteningly efficient mechanism for rapid spread of the virus to otherwise remote areas of the country where many detention centers are housed.

Finally, regarding the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public, ***it is essential to consider releasing all detainees who do not pose an immediate risk to public safety.***

Congregant settings have a high risk of rapid spread of infectious diseases, and wherever possible, public health mitigation efforts involve moving people out of congregate settings (as we are seeing with colleges and universities and K-12 schools).<sup>11</sup> Minimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with

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<sup>11</sup> Madeline Holcombe, “Some schools closed for coronavirus in US are not going back for the rest of the academic year,” *CNN*, March 18, 2020, available at <https://www.cnn.com/2020/03/18/us/coronavirus-schools-not-going-back-year/index.html>; Eric Levenson, Chris Boyette and Janine Mack, “Colleges and universities across the US are canceling in-person classes due to coronavirus,” *CNN*, March 12, 2020, available at <https://www.cnn.com/2020/03/09/us/coronavirus-university-college-classes/index.html>.



chronic diseases. COVID-19 infection among these groups will require many to be transferred to local hospitals for intensive medical and ventilator care—highly expensive interventions that may soon be in short supply.

Given the already established risks of adverse health consequences associated with the detention of children and their families,<sup>12</sup> the policy of detention of children and their families in should be reconsidered in light of these new infectious disease threats so that children would only be placed in congregate detention settings when lower risk community settings are not available and then for as brief a time as possible.

In addition, given the low risk of releasing detainees who do not pose a threat to public safety—i.e., those only charged with immigration violations—releasing *all* immigration detainees who do not pose a security risk should be seriously considered in the national effort to stop the spread of the coronavirus.

Similarly, the practice of forcing asylum seekers to remain in Mexico has created a *de facto* congregate setting for immigrants, since large groups of people are concentrated on the US southern border as a result of the MPP program in the worst of hygienic conditions without any basic public health infrastructure or access to medical facilities or the ability to engage in social distancing as they await asylum hearings, which are currently on hold as a consequence of the government's response to stop the spread of the coronavirus.<sup>13</sup> This is a tinderbox that cannot be ignored in the national strategy to slow the spread of infection.

ICE recently announced that in response to the coronavirus pandemic, it will delay arresting immigrants who do not pose public safety threats, and will also stop detaining immigrants who fall outside of mandatory detention guidelines.<sup>14</sup> But with reporting that immigrant detainees at ICE facilities are already being isolated for possible exposure to coronavirus, it is not enough to simply stop adding to the existing population of immigrant detainees. Social distancing through release is necessary to slow transmission of infection.<sup>15</sup>

Reassessing the security and public health risks, and acting immediately, will save lives of not only those detained, but also detention staff and their families, and the community-at-large.

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<sup>12</sup> Report of the DHS Advisory Committee on Family Residential Centers, September 30, 2016, available at <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc16093.pdf>

<sup>13</sup> See Rick Jervis, "Migrants waiting at US-Mexico border at risk of coronavirus, health experts warn," *USA Today*, March 17, 2020, available at <https://www.usatoday.com/story/news/nation/2020/03/17/us-border-could-hit-hard-coronavirus-migrants-wait-mexico/5062446002/>.

<sup>14</sup> ICE website, Guidance on COVID-19, Immigration and Enforcement Check-Ins, Updated March 18, 2020, 7:45 pm, available at <https://www.ice.gov/covid19>.

<sup>15</sup> Release of immigrants from detention to control the coronavirus outbreak has been recommended by John Sandweg, former acting head of ICE during the Obama administration, who further noted, "'The overwhelming majority of people in ICE detention don't pose a threat to public safety and are not an unmanageable flight risk.'... 'Unlike the Federal Bureau of Prisons, ICE has complete control over the release of individuals. ICE is not carrying out the sentence imposed by a federal judge.... It has 100% discretion.'" See Camilo Montoya-Galvez, "'Powder kegs': Calls grow for ICE to release immigrants to avoid coronavirus outbreak," *CBS News*, March 19, 2020, available at <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>.

Our legal counsel, Dana Gold of the Government Accountability Project, is supporting and coordinating our efforts to share our concerns with Congress and other oversight entities about the substantial and specific threats to public health and safety the coronavirus poses by congregate settings for immigrants. As we similarly offered to DHS, we stand ready to aid you in any way to mitigate this crisis and prevent its escalation in light of our unique expertise in detention health and experience with ICE detention specifically. Please contact our attorney, Dana Gold, at [danag@whistleblower.org](mailto:danag@whistleblower.org), or her colleague, Irvin McCullough, at [irvinm@whistleblower.org](mailto:irvinm@whistleblower.org), with any questions.

Sincerely,

/s/

Scott A. Allen, MD, FACP  
Professor Emeritus, University of California, School of Medicine  
Medical Subject Matter Expert, CRCL, DHS

/s/

Josiah D. Rich, MD, MPH  
Professor of Medicine and Epidemiology  
The Warren Alpert Medical School of Brown University  
Medical Subject Matter Expert, CRCL, DHS

Cc: Dana Gold, Esq. and Irvin McCullough, Government Accountability Project  
Senate Committee on the Judiciary  
House Committee on the Judiciary  
White House Coronavirus Task Force

# EXHIBIT C

Acting Director Matthew T. Albence  
U.S. Immigration and Customs Enforcement  
500 12 St. SW  
Washington, D.C. 20536

March 18, 2020

Re: Letter from Medical Professionals Regarding COVID-19

Dear Acting Director Albence,

As concerned clinicians, we are writing this letter to urge U.S. Immigration and Customs Enforcement (ICE) officials to release individuals and families from immigration detention while their legal cases are being processed to prevent the spread of COVID-19 and mitigate the harm of an outbreak.

In light of the rapid global outbreak of the coronavirus disease 2019 (COVID-19), we want to bring attention to the serious harms facing individuals in immigration detention facilities under the custody of ICE. Health and Human Services Secretary Azar declared a public health emergency on January 31, 2020. As of March 13, 2020, there have been over 132,000 confirmed cases worldwide with nearly 5,000 deaths.

### ***Conditions of Detention Facilities***

Detention facilities, like the jails and prisons in which they are housed, are designed to maximize control of the incarcerated population, not to minimize disease transmission or to efficiently deliver health care. This fact is compounded by often crowded and unsanitary conditions, poor ventilation, lack of adequate access to hygienic materials such as soap and water or hand sanitizers, poor nutrition, and failure to adhere to recognized standards for prevention, screening, and containment. The frequent transfer of individuals from one detention facility to another, and intake of newly detained individuals from the community further complicates the prevention and detection of infectious disease outbreaks. A timely response to reported and observed symptoms is needed to interrupt viral transmission yet delays in testing, diagnosis and access to care are systemic in ICE custody. Further, given the patchwork regulatory system, it is unclear whether ICE or the county and state health departments are responsible for ensuring public health oversight of facilities.

For these reasons, transmission of infectious diseases in jails and prisons is incredibly common, especially those transmitted by respiratory droplets. It is estimated that up to a quarter of the US prison population has been infected with tuberculosis<sup>1</sup>, with a rate of active TB infection that is 6-10 times higher than the general population.<sup>2</sup> Flu outbreaks are regular occurrences in jails and prisons across the United States.<sup>3, 4</sup> Recent outbreaks of vaccine-preventable illnesses including

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<sup>1</sup> Hammett TM, Harmon MP, Rhodes W. The burden of infectious disease among inmates of and releases from US correctional facilities, 1997, *Am J Public Health*, 2002, vol. 92 (pg. 1789-94)

<sup>2</sup> Centers for Disease Control Prevention (CDC). Prevention and control of tuberculosis in correctional and detention facilities: recommendations from CDC, *MMWR Morb Mortal Wkly Rep*, 2006, vol. 55 (pg. 1-48).

<sup>3</sup> Dober, G. Influenza Season Hits Nation's Prisons and Jails. *Prison Legal News*, June, 2018 (pg. 36) <https://www.prisonlegalnews.org/news/2018/jun/5/influenza-season-hits-nations-prisons-and-jails/>

<sup>4</sup> Pandemic influenza and jail facilities and populations, Laura Maruschak, et. al., *American Journal of Public Health*, September 2009.

mumps, influenza, and varicella have similarly spread throughout immigration detention facilities. From September of 2018 to August 2019, 5 cases of mumps ballooned to nearly 900 cases among staff and individuals detained in 57 facilities across 19 states, a number that represents about one third of the total cases in the entire US in that time frame.<sup>5</sup> With a mortality rate 10 times greater than the seasonal flu and a higher R0 (the average number of individuals who can contract the disease from a single infected person)<sup>6</sup> than Ebola, an outbreak of COVID-19 in immigration detention facilities would be devastating.

### ***Risks of a COVID-19 Outbreak in Detention***

Emerging evidence about COVID-19 indicates that spread is mostly via respiratory droplets among close contacts<sup>7</sup> and through contact with contaminated surfaces or objects. Reports that the virus may be viable for hours in the air are particularly concerning.<sup>8</sup> Though people are most contagious when they are symptomatic, transmission has been documented in absence of symptoms. We have reached the point where community spread is occurring in the United States. The number of cases is growing exponentially, and health systems are already starting to be strained. Social distancing measures recommended by the Centers for Disease Control (CDC)<sup>9</sup> are nearly impossible in immigration detention and testing remains largely unavailable. In facilities that are already at maximum capacity large-scale quarantines may not be feasible. Isolation may be misused and place individuals at higher risk of neglect and death. COVID-19 threatens the well-being of detained individuals, as well as the corrections staff who shuttle between the community and detention facilities.

Given these facts, it is only a matter of time before we become aware of COVID-19 cases in an immigration detention system in which detainees live in close quarters, with subpar infection control measures in place, and whose population represents some of the most vulnerable. In this setting, we can expect spread of COVID-19 in a manner similar to that at the Life Care Center of Kirkland, Washington, at which over 50% of residents have tested positive for the virus and over 20% have died in the past month. Such an outbreak would further strain the community's health care system. Considering the extreme risk presented by these conditions in light of the global COVID-19 epidemic, it is impossible to ensure that detainees will be in a "safe, secure and humane environment," as ICE's own National Detention Standards state.

In about 16% of cases of COVID-19 illness is severe including pneumonia with respiratory failure, septic shock, multi organ failure, and even death. Some people are at higher risk of getting severely sick from this illness. This includes older adults over 60 and people who have serious chronic medical conditions like heart disease, liver disease, diabetes, lung disease, and who are immunocompromised. There are currently no antiviral drugs licensed by the U.S. Food

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<sup>5</sup> Leung J, Elson D, Sanders K, et al. *Notes from the Field: Mumps in Detention Facilities that House Detained Migrants — United States, September 2018–August 2019*. MMWR Morb Mortal Wkly Rep 2019;68:749–750. [https://www.cdc.gov/mmwr/volumes/68/wr/mm6834a4.htm?s\\_cid=mm6834a4\\_x](https://www.cdc.gov/mmwr/volumes/68/wr/mm6834a4.htm?s_cid=mm6834a4_x).

<sup>6</sup> The R0 is the reproduction number, defined as the expected number of cases directly generated by one case in a population where all individuals are susceptible to infection.

<sup>7</sup> Close contact is defined as—

- a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time; close contact can occur while caring for, living with, visiting, or sharing a health care waiting area or room with a COVID-19 case,
- b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on).

<sup>8</sup> van Doremalen et al, *Aerosol and surface stability of HCoV-19 (SARS-CoV-2) compared to SARS-CoV-1*, Mar. 9, 2020, <https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>.

<sup>9</sup> Centers for Disease Control and Prevention, "Interim Guidance for Homeless Shelters," <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

and Drug Administration (FDA) to treat COVID-19, or post-exposure prophylaxis to prevent infection once exposed.

As such, we strongly recommend that ICE implement community-based alternatives to detention to alleviate the mass overcrowding in detention facilities. Individuals and families, particularly the most vulnerable—the elderly, pregnant women, people with serious mental illness, and those at higher risk of complications— should be released while their legal cases are being processed to avoid preventable deaths and mitigate the harm from a COVID-19 outbreak.

Sincerely,

Nathaniel Kratz, MD; Internal Medicine, New York, NY

Chanelle Diaz, MD, MPH; Internal Medicine, Bronx, NY

Jonathan Ross, MD, MSc; Internal Medicine, Bronx, NY

Jessica Merlin, MD, PhD, MBA; Internal Medicine & Infectious Disease, Pittsburgh, PA

Leela Davies, MD, PhD; Internal Medicine & Infectious Disease, Boston, MA

# EXHIBIT D

Sponsor's Identifying Documents

# EXHIBIT E

Parole Applicant's Medical Documents



# EXHIBIT F

# EXHIBIT G