

Congress of the United States
Washington, DC 20510

April 2, 2020

The Honorable Matthew T. Albence
Deputy Director and Senior Official
Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, D.C. 20536

The Honorable Thomas M. Hodgson
Sheriff of Bristol County
Bristol County Sheriff's Office
400 Faunce Corner Road
North Dartmouth, MA 02747

The Honorable Christopher J. Donelan
Sheriff of Franklin County
Franklin County Sheriff's Office
160 Elm Street
Greenfield, MA 01301

The Honorable Joseph D. McDonald, Jr.
Sheriff of Plymouth County
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, MA 02360

Dear Deputy Director Albence, Sheriff Hodgson, Sheriff Donelan, and Sheriff McDonald:

As the number of coronavirus disease 2019 (COVID-19) cases in the United States increases hourly, we write with grave concern about how those detained by and on behalf of U.S. Immigration and Customs Enforcement (ICE) in the Commonwealth of Massachusetts, as well as personnel in detention facilities and surrounding communities, are being protected from COVID-19. For the health and safety of detained persons, detention facility personnel, and the general public, we strongly urge you to adopt and quickly implement alternatives to detention for as many detained persons as possible and to take steps to limit facility-to-facility transfers.

ICE has ongoing agreements with three facilities in Massachusetts for the detention and care of administrative detainees: Bristol County House of Correction in North Dartmouth,¹ Plymouth County Correctional Facility in Plymouth,² and Franklin County House of Correction in Greenfield.³ Those detained persons have not been convicted of—and in many cases have not even been charged with—a criminal offense, and are awaiting administrative hearings.

It is more important than ever to take decisive steps to stem the spread of COVID-19. One such step is to reduce the heavy reliance on detention for those awaiting immigration proceedings. Thousands of medical professionals have written a letter to Deputy Director Albence about “the serious harms facing individuals in immigration detention facilities under the

¹ Inter-Governmental Service Agreement between ICE and Bristol County Sheriff Office, September 27, 2007; ICE, “Detention Facilities: Bristol County House of Corrections,” <https://www.ice.gov/detention-facility/bristol-county-house-corrections>.

² ICE, “Detention Facilities: Plymouth County Correctional Facility,” <https://www.ice.gov/detention-facility/plymouth-county-correctional-facility>.

³ ICE, “Detention Facilities: Franklin County House of Correction,” <https://www.ice.gov/detention-facility/franklin-county-house-correction>.

custody of ICE.”⁴ These experts observed that “transmission of infectious diseases in jails and prisons is incredibly common, especially those transmitted by respiratory droplets,” with the result that “COVID-19 threatens the well-being of detained individuals, as well as the corrections staff who shuttle between the community and detention facilities.”⁵ Continuing to detain people in these facilities undermines President Donald Trump’s expressed goal “to combat and ultimately defeat the coronavirus.”⁶

In its guidance to correctional and detention facilities, the U.S. Centers for Disease Control and Prevention (CDC) points to other risks common in detention environments, stating, “Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19.”⁷ But in a letter to Congress, two doctors with expertise in medical care in detention settings, who are subject matter experts for the Department of Homeland Security’s (DHS) Office of Civil Rights and Civil Liberties (CRCL), wrote that “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.”⁸ The doctors note that the inability to practice social distancing in these settings “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.”⁹

These concerns are well-founded. ICE first publicly confirmed a positive case of COVID-19 in one of its employees on March 19, 2020.¹⁰ Since that time, the number of cases in the United States has increased more than fivefold.¹¹ Six ICE detainees in four facilities have tested positive for COVID-19, and so have five ICE employees and personnel working in four facilities,¹² according to ICE’s own publicly released data. In Massachusetts, there have been 154

⁴ “Open Letter to ICE From Medical Professionals Urging the Release of Individuals in Immigration Detention Given the Risk of COVID-19,” https://docs.google.com/document/d/1eNyNmy-622OjVILFSwgypITPK0eAt5yLgSkS_7_0vv8/.

⁵ *Id.*

⁶ White House, “Remarks By President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Conference,” press release, March 13, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-conference-3/>.

⁷ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” March 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

⁸ Letter from Dr. Scott A. Allen and Dr. Josiah D. Rich to Chairman Bennie Thompson, Chairman Ron Johnson, et al., March 19, 2020, <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

⁹ *Id.*

¹⁰ Marshall Project, “First ICE Employee Tests Positive for Coronavirus,” Emily Kassie, March 19, 2020, <https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus>.

¹¹ There were 15,219 reported cases as of March 19, 2020. As of March 26, 2020, there were 85,356. CDC, “Cases in U.S.,” <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

¹² CNN, “First ICE detainee tests positive for coronavirus,” Priscilla Alvarez and Catherine E. Shoichet, March 24, 2020, <https://www.cnn.com/2020/03/24/us/ice-detainee-coronavirus/index.html>; ICE, “ICE Guidance on COVID-19: Confirmed Cases,” April 2, 2020, <https://www.ice.gov/coronavirus>.

deaths from COVID-19 and 8,966 confirmed infections.¹³ Already, at least 29 people held or employed in Massachusetts prisons and jails have been diagnosed with COVID-19.¹⁴ In Plymouth County—where there have been 621 confirmed cases of COVID-19¹⁵—an employee of the Plymouth County Sheriff’s Department has been diagnosed with COVID-19, and a dozen workers have been isolated.¹⁶ Sheriff McDonald “said it was only a matter of time—not if, but when—that the jail would see its first case of the virus.”¹⁷ ICE released two persons detained at this facility who have preexisting medical conditions after the ACLU of Massachusetts and immigration attorneys sued for their release.¹⁸ This is a positive development, but detainees should not have to file lawsuits in order to be removed from harm’s way.

In Franklin County—where there have been 85 confirmed cases of COVID-19¹⁹—the Franklin County House of Correction has suspended visitations in an attempt to reduce the risk of infection in its correctional facilities. As Sheriff Donelan noted, “This jail is like an incubator. If the coronavirus were to show up here, the spread would be fast and furious. We need to do everything we can to protect our employees and the men and women sentenced to our care.”²⁰ These acknowledgments of the risks posed by COVID-19 are important, and they require action from ICE and those managing detention facilities.

In Bristol County—where there have been 424 confirmed cases of COVID-19²¹—detained persons at the Bristol County House of Correction have written multiple letters to members of the Massachusetts congressional delegation and to other government officials, making alarming claims about the conditions in which they are held. In one letter, the detainees highlighted crowded conditions, including bunks within three feet of each other and a lack of disinfection and decontamination in the facility.²² Many of the detained persons report having preexisting medical conditions that could increase the risks of severe complications if they contract COVID-19.²³ The Boston-based Lawyers for Civil Rights has filed a class action lawsuit

¹³ Massachusetts Department of Public Health, “Coronavirus Disease 2019 (COVID-19) Cases in MA,” April 2, 2020, <https://www.mass.gov/doc/covid-19-cases-in-massachusetts-as-of-april-2-2020/download>.

¹⁴ WBUR, “29 People In Mass. Prisons And Jails Diagnosed With COVID-19,” Deborah Becker, April 1, 2020, <https://www.wbur.org/commonhealth/2020/03/23/coronavirus-massachusetts-prisoner>.

¹⁵ Massachusetts Department of Public Health, “Coronavirus Disease 2019 (COVID-19) Cases in MA,” April 2, 2020, <https://www.mass.gov/doc/covid-19-cases-in-massachusetts-as-of-april-2-2020/download>.

¹⁶ Enterprise, “Plymouth County Sheriff’s Department employee tests positive for coronavirus,” Rich Harbert, March 24, 2020, <https://www.enterpriseneews.com/news/20200324/plymouth-county-sheriffs-department-employee-tests-positive-for-coronavirus>.

¹⁷ *Id.*

¹⁸ ACLU of Massachusetts, “ICE Releases Massachusetts Detainees at Risk of COVID-19, After ACLU Lawsuit,” press release, March 27, 2020, <https://www.aclum.org/en/news/ice-releases-massachusetts-detainees-risk-covid-19-after-aclu-lawsuit>.

¹⁹ Massachusetts Department of Public Health, “Coronavirus Disease 2019 (COVID-19) Cases in MA,” April 2, 2020, <https://www.mass.gov/doc/covid-19-cases-in-massachusetts-as-of-april-2-2020/download>.

²⁰ Greenfield Recorder, “Sheriff announces temporary limitations on jail, TRIAD office,” Domenic Poli, March 12, 2020, <https://www.recorder.com/Franklin-County-jail-on-lockdown-33292786>.

²¹ Massachusetts Department of Public Health, “Coronavirus Disease 2019 (COVID-19) Cases in MA,” April 2, 2020, <https://www.mass.gov/doc/covid-19-cases-in-massachusetts-as-of-april-2-2020/download>.

²² Letter from detainees of Unit B of the Bristol County Correctional Center, March 23, 2020, https://d279m997dpfwgl.cloudfront.net/wp/2020/03/DHOC-Letter-2_3_23_20.pdf.

²³ *Id.*

on behalf of two ICE detainees at the Bristol County House of Correction,²⁴ and a federal judge urged ICE not to transfer new detainees to the facility.²⁵ Seemingly in response to a letter from the detainees, the Bristol County Sheriff's Office (BCSO) tweeted that "[t]here are no inmates or detainees in the custody of the BCSO who have Coronavirus or show symptoms of Coronavirus. There're a lot of rumors and misinformation going around."²⁶ But not a single inmate or detained person in that office's custody had been tested for COVID-19 at the time of that statement.²⁷ As medical experts have made extremely clear, it is impossible to know without testing who is carrying coronavirus, and, as Massachusetts Law Reform Institute and Prisoners' Legal Services of Massachusetts have emphasized,²⁸ it is possible to have COVID-19 without showing symptoms.²⁹ An attorney for ICE and the BCSO suggested that keeping detained persons in the facility is actually good for their health: "The fact there aren't any confirmed cases in the Bristol County Sheriff[']s Office], and you look at the outside world, suggests the Bristol County sheriff is doing something right."³⁰ This runs contrary to health professionals' opinions, and could indicate that ICE and the BCSO have an incentive to avoid testing detainees to avoid turning up positive results. This week, more than 50 detainees at the facility went on work strike, reportedly due to concerns about the conditions there and the risks of contracting COVID-19.³¹

Given the exponentially increasing prevalence of COVID-19, it is necessary for ICE and for those responsible for the care and custody of detained individuals to do everything they can to minimize threats to detainees' health, which will in turn minimize threats to the general public. The best way to do this is for ICE to expand the use of alternatives to detention, and for the sheriffs to encourage ICE to take this step. As the doctors who advise DHS CRCL wrote, "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."³² Their recommendation is crystal

²⁴ WBUR, "Class Action Suit Calls For Release Of ICE Detainees In Bristol County Amid Coronavirus Fears," Shannon Dooling, March 27, 2020, <https://www.wbur.org/news/2020/03/27/class-action-suit-calls-for-release-of-ice-detainees-in-bristol-county-amid-coronavirus-fears>.

²⁵ WBUR, "Judge Urges ICE To Stop Sending Detainees To Bristol County While Coronavirus Lawsuit Plays Out," Shannon Dooling, March 30, 2020, <https://www.wbur.org/news/2020/03/30/ice-detainees-bristol-county-hearing-covid>.

²⁶ Bristol County Sheriff's Office, tweet, March 21, 2020, <https://twitter.com/BristolSheriff/status/1241467473590919168>.

²⁷ Shannon Dooling, tweet, March 24, 2020, <https://twitter.com/sdooling/status/1242468429908434951>.

²⁸ Letter from Massachusetts Law Reform Institute and Prisoners' Legal Services of Massachusetts to Todd M. Lyons, ICE, et al., <https://d279m997dpfwgl.cloudfront.net/wp/2020/03/3-20-20-Group-COVID-19-Letter-to-ICE-Sheriffs.pdf>.

²⁹ CDC, "Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)," <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

³⁰ WBUR, "Judge Urges ICE To Stop Sending Detainees To Bristol County While Coronavirus Lawsuit Plays Out," Shannon Dooling, March 30, 2020, <https://www.wbur.org/news/2020/03/30/ice-detainees-bristol-county-hearing-covid>.

³¹ WBUR, "ICE Detainees In Bristol County Go On Work Strike Over Conditions Amid Coronavirus Fears," Shannon Dooling, March 31, 2020, <https://www.wbur.org/news/2020/03/31/ice-detainees-in-bristol-county-go-on-work-strike-protesting-conditions-amid-coronavirus-outbreak>.

³² Letter from Dr. Scott A. Allen and Dr. Josiah D. Rich to Chairman Bennie Thompson, Chairman Ron Johnson, et al., March 19, 2020, <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

clear: “Implementing alternatives to detention to facilitate as much social distancing as possible.”³³

For the most part, DHS can release noncitizens from detention while they await immigration court proceedings. There is a range of alternatives to detention, including release from detention on recognizance, parole, and community-based alternatives to incarceration. It is time for the Trump Administration to end its incarceration-first approach and immediately use alternatives to detention to minimize the risk that detained persons and others in detention facilities will contract COVID-19. In addition, the sheriffs who oversee the facilities in Massachusetts should strongly encourage ICE to take this step.

In addition, the sheriffs should, consistent with CDC guidance, decline to accept new immigration detainees into their facilities. The CDC guidance advises correctional and detention facilities to “[r]estrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary...”³⁴ As long as a facility continues to participate in transfers, in direct contravention of CDC guidance, they are increasing health risks to detainees and to their personnel.

Sheriff Hodgson, Sheriff Donelan, and Sheriff McDonald, we respectfully request that you each answer the following questions by April 10, 2020:

1. What guidance have you received from ICE regarding adjustments to your operating procedures in response to the COVID-19 pandemic?
2. Please describe the extent to which your facility complies with the CDC’s Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities,³⁵ and specific steps you have taken to adhere to this guidance.
 - a. How are you facilitating social distancing among detainees?
 - b. If you have chosen not to follow any individual aspects of this guidance (including, if applicable, in the examples included above), please explain why.
 - c. Please provide copies of any documentation your offices produced in order to ensure compliance with this guidance.
3. How many people detained in your facility—immigration or otherwise—have been tested for COVID-19? How many have tested positive?
 - a. What are your standards for determining whether someone detained in your facility should be tested?
4. How many personnel working in your facility have been tested for COVID-19? How many have tested positive?
5. What medical professionals are you consulting regarding your public statements about COVID-19?
6. Do you provide soap to detainees free of charge, to allow frequent hand washing, consistent with CDC guidance?

³³ *Id.*

³⁴ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” March 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

³⁵ *Id.*

7. What is your plan of action if and when there are COVID-19 cases in your facility, either among personnel or among detained persons?
8. How much personal protective equipment (PPE) do you currently have on hand?
 - a. Do you anticipate that your on-hand supply of PPE will be sufficient if there is an outbreak of COVID-19 in your facility? If not, what is your plan to procure sufficient PPE?
9. Do you have a sufficient stock of hygiene supplies, cleaning supplies, and medical supplies on hand, consistent with CDC guidance?
10. Do you have a respiratory protection program in place, consistent with CDC guidance?
11. Are telephone calls by detainees free of charge? Have you increased their telephone privileges, commensurate with any reductions in visitation opportunities?
12. Have you encouraged ICE to increase its use of alternatives to detention for detainees in your facility? If so, please provide details regarding this request, including when it was made. If not, why not?
13. How many immigration detainees have been transferred into your facility, or out of your facility to another facility, since President Trump declared the COVID-19 outbreak a national emergency on March 13, 2020?³⁶
14. Have you asked ICE not to transfer any more detainees to your facility, or from your facility to another facility? If not, why not?

Deputy Director Albence, we respectfully request that you answer the following questions by April 10, 2020:

1. What guidance have you provided to the facilities housing ICE detainees in Massachusetts regarding adjustments to their operating procedures in response to the COVID-19 pandemic?
2. How are you ensuring that the facilities housing ICE detainees in Massachusetts are complying with the CDC's Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities?
3. In the face of this public health crisis, why is ICE not significantly increasing its use of release from detention on recognizance, parole, and community-based alternatives to incarceration?
4. What are you doing to reduce the facility-to-facility transfer of ICE detainees to and from Massachusetts facilities?
5. How many ICE detainees have been tested for COVID-19 nationwide?

Sincerely,

³⁶ White House, "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," March 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

Elizabeth Warren
United States Senator

Edward J. Markey
United States Senator

James P. McGovern
Member of Congress

Ayanna Pressley
Member of Congress

Katherine Clark
Member of Congress

Joseph P. Kennedy, III
Member of Congress

Richard E. Neal
Member of Congress

Lori Trahan
Member of Congress

William Keating
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Seth Moulton
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Stephen F. Lynch
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