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Washington, D.C.  
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Domestic Policy Council  
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March 29, 2021

Dear Secretary Mayorkas, Acting Director Johnson, and Deputy Director Olavarria:

The undersigned organizations write today to draw your attention to urgent, unaddressed concerns regarding the Immigration and Customs Enforcement (ICE) detention system. On February 11th, many of our organizations delivered [a letter](#) urging you to prioritize the implementation of a file review process, initiated by ICE, to reconsider the custody determination for every person in ICE custody. More than a month later, the process made available by ICE for case review has been shown to be plainly inadequate, [another person has died](#) in ICE custody, and thousands remain unnecessarily behind bars at grave risk to their wellbeing.

**We write to reiterate our request that ICE meaningfully consider all people in custody for release as the first step toward a longer term dismantling of the harmful ICE detention system.**

More than [14,000](#) people remain behind bars in ICE's system of more than 200 jails and prisons plagued by abuse and negligence and governed by a [corrupted system](#) of contracts and inspections that breed impunity (the Government Accountability Office [confirmed these persistent problems](#) this January). On January 20th, the Department of Homeland Security (DHS) [formally called](#) for a top-to-bottom review of the agency's enforcement practices. On February 18th, ICE issued a [follow-up memo](#) outlining enforcement priorities in greater detail. For those detained by ICE, these memos have not resulted in meaningful change. Conditions in detention remain harsh and punishing and people in detention live at [greatly heightened risk](#) of COVID-19.

We implore you to take quick action to ensure that the Biden administration does not leave these individuals behind.

On March 5th, ICE announced a [Case Review Process](#) for those facing detention or imminent removal to seek review of their case. Weeks into its roll-out, attorneys, advocates, and people in detention have found the process to be inadequate, resulting in little meaningful relief. Denials are sent in summary fashion, with scant if any discussion of the basis for the denial and no opportunity to seek reconsideration. Systemic problems include:

*First*, the Case Review Process appears to generate an automatic kick-back response delaying review of the case until the field office with jurisdiction has made a decision, even when the field office has already issued a decision on a previous release request or when the field office has not been responsive for extended periods of time. This bureaucratic shuffling leaves people stuck in detention with no recourse as delays at the field office level drag on for weeks, even in cases with emergent medical or mental health issues. It also renders the process almost entirely inaccessible to individuals without an attorney or advocate on the outside.

*Second*, it is our understanding that the escalation email address is being staffed by rotating Field Office Directors, which renders the process vulnerable to the very problem it was intended to address – a bias toward negative exercises of discretion at the field office level.

*Third*, decision-making through the Case Review Process appears heavily weighted against individuals with a criminal conviction, regardless of other equities. Rather than holistic consideration, the process also appears to automatically disqualify *anyone* who falls within one of the presumptive public safety categories.

We are frightened for our clients and community members whose lives, health, and safety are at risk in ICE custody, and frustrated at the lack of access to meaningful consideration of release pursuant to the administration's own priorities and commitment to equity. We share the following examples of individuals who remain detained at odds with the February 18th memo, despite their efforts to utilize the Case Review Process:

*Mariposa Legal requested the release of their client Moris, who has lived in the U.S. for 29 years since he was 9 years old. Mariposa submitted a lengthy evidentiary submission with their request on behalf of Moris, including records showing that ICE has not permitted him to get married to his U.S. citizen fiancée due to COVID-19 in the jail where he is detained. Because of these rules, he has unjustly been unable to pursue a family petition despite his long-term relationship and the fact that his entire nuclear family are U.S. citizens or lawful permanent residents. Yet, despite these equities, neither the Chicago nor national ICE office provided any rationale as a part of the ICE Case*

*Review for denying his request for release even though he does not fall under the Administration's enforcement priorities.*

*Ubaldo Ochoa-López came to the United States from Guatemala with his then six-year-old son, seeking asylum from Guatemala. Ubaldo and his son were victims of the Trump administration's zero tolerance policy, torn apart at the border. They were subsequently reunited only to be separated again when ICE detained Ubaldo five months ago. ICE has denied repeated requests for Ubaldo's release submitted by his attorneys at RAICES, including through the Case Review Process. Ubaldo is unambiguously outside the February 18th enforcement priorities, with one misdemeanor conviction for driving under the influence and tremendous community support. Ubaldo's son cries when they speak on the phone, now enduring a second separation from his father at the government's hands.*

*Christopher (pseudonym) has lived in the United States for more than 15 years and supports his wife, who has serious and chronic physical and mental health issues, and their three step-children. ICE has detained Christopher for nearly 13 months, and his deportation is now imminent, threatening to leave his family facing severe financial insecurity. Christopher was transferred to immigration custody after facing criminal charges, but those charges were terminated after the prosecution declined to proceed. He has a pending petition for review of his application for relief from removal before a federal court. In late January, Christopher was transferred to Louisiana for his deportation, but his removal was temporarily stayed by ICE after intervention from DHS officials and Congressmembers. His request for release, supported by members of the Free Them All VA Coalition, was summarily denied through the ICE Case Review Process.*

*Immigration Equality represented Laura (pseudonym), a transgender woman who was detained by ICE and had previously been ordered removed despite fear of return to her country of origin. On February 23rd, Immigration Equality submitted an emergency stay of removal request on her behalf, arguing that Laura should not be subject to removal per the February 18th memo. The centralized Case Review email (then under the moniker of the ERO Ombudsman) replied that they could not review the case because the local Field Office had not yet reviewed the request. The Field Office denied Laura's request for a stay of removal on February 25th and ICE deported her within hours, before any meaningful review could be obtained through the Case Review Process.*

*The legal team representing Jonathan (pseudonym) included a lengthy evidentiary submission with their request for his release. Jonathan has been in prolonged detention for over a year because of two convictions from approximately 16 years ago. Jonathan*

*suffers from asthma, elevated blood pressure, adjustment disorder, and depression. He has made significant efforts to prepare to re-enter society having served his sentence, including converting to a religion where he has found meaning, learning English, and participating in various life-skills programs. The ICE Case Review process resulted in a denial of Jonathan's requested release, with no analysis or discussion of the evidence presented. Worse, ICE's denial included multiple factual errors, including the wrong detention facility, suggesting that the review was cursory at best.*

*In August 2020, a federal district court judge ordered that Robert Panton be released from prison because his numerous underlying conditions put him at heightened risk of COVID-19 and because his record during his time in custody left "no doubt" that he had "fully rehabilitated himself." Robert had served 30 years on a non-violent drug conviction from the early 1990s and was eager to reunite with his children and grandchildren. Yet upon his release he was immediately transferred to ICE custody, where he has languished for more than seven months despite the explicit finding of a federal judge that he does not pose a public safety risk. Robert is represented by the National Immigrant Justice Center, whose requests for his release through the ICE Case Review Process have been met with summary denials.*

Turning your attention to the abusive ICE detention system cannot wait. Our organizations reaffirm our request that DHS immediately implement a file review process ensuring that the government assumes the obligation of considering every person for release under a standard that presumes liberty. This system must not repeat the failings of the ICE Case Review Process. The following imperatives, as outlined in our February 11th letter, must be met:

1. The review must be conducted under the authority of the DHS Secretary, with an independent review mechanism outside of ICE, and *without* required reliance on field office level decision-making.
2. The review should expedite the release of individuals who face a heightened risk of serious illness or death from COVID-19 due to age or a preexisting condition as defined by the Centers for Disease Control, transgender people, HIV+ people, and all families and children. Although ICE is already subject to a nationwide court order in *Frailhat v. ICE* requiring that it identify persons vulnerable to COVID-19 and consider them for release, compliance has been inconsistent at best. The Immigrant Action Alliance, for example, reports that of 42 requests its team has submitted to ICE to release individuals pursuant to *Frailhat* since December 2020, one has been denied and ICE has not even responded to the other 41.

3. DHS must ensure that all persons are eligible for release pursuant to this process, including those subject to statutory mandatory custody provisions. Even where the immigration statutes otherwise appear to require confinement, it has [long been acknowledged](#) that ICE maintains discretion to release such individuals for urgent humanitarian reasons. ICE officials in fact already exercise their discretion to release people detained under the mandatory custody provision at 8 U.S.C. § 1226(c) in cases where humanitarian equities are present, including the COVID-19 pandemic.

This file review must be the first step toward a long overdue process to dismantle the immigration detention system as it exists today. Many of our organizations and the We are Home campaign outlined these steps, including the full phase out of contracts with private prisons companies and state and local jails and prisons, in [this February 18th letter](#).

For Moris, Ubaldo, Christopher, Laura, Jonathan, Robert, and the thousands of people detained alongside them, each day that passes is another day separated from their loved ones and another day where their health is at risk and liberty denied.

We appreciate your attention to this urgent matter and look forward to your response.

*With questions, contact:* Heidi Altman, National Immigrant Justice Center, [haltman@heartlandalliance.org](mailto:haltman@heartlandalliance.org)  
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Ruthie Epstein, We Are Home Campaign, [repstein@communitychange.org](mailto:repstein@communitychange.org)

Sincerely,

ACCESS (Arab Community Center for Economic and Social Services)

ACCESS of WNY

Advocating Opportunity

Aldea - The People's Justice Center

Alianza Nacional de Campesinas

America's Voice

American Friends Service Committee

American Immigration Council

American Immigration Lawyers Association

American Muslim Empowerment Network (AMEN)

Arkansas United

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice | AAJC

Asian Americans Advancing Justice-Atlanta  
Asylum Seeker Advocacy Project (ASAP)  
Bend the Arc: Jewish Action  
Black Alliance for Just Immigration (BAJI)  
Bridges Faith Initiative  
California Collaborative for Immigrant Justice (CCIJ)  
CAPAS (Congregational Accompaniment Project for Asylum Seekers)  
Capital Area Immigrants' Rights (CAIR) Coalition  
Carolina Migrant Network  
CASA  
Casa Latina  
Casa Ruby  
Casa San Jose  
Catholic Legal Immigration Network, Inc.  
Catholic Migration Services  
Center for Constitutional Rights  
Center for Disability Rights  
Center for Gender & Refugee Studies  
Center for Law and Social Policy (CLASP)  
Center for Victims of Torture  
Central American Resource Center- CARECEN- of California  
Central Washington Justice For Our Neighbors  
Church Council of Greater Seattle  
Church of Elohism Thelema  
Church World Service  
Clerics of St. Viator (Viatorians)  
Cleveland Jobs with Justice  
Coalition for Humane Immigrant Rights (CHIRLA)  
Columbia Law School Immigrants' Rights Clinic  
Community Change Action  
Comunidad Colectiva  
Comunidades Unidas en una Voz (CUUV)  
Congregation Action Network  
Connecticut Shoreline Indivisible

Corazón Arizona  
Cville Immigrant Freedom Fund  
Detention Watch Network  
Disability Rights Advocates  
Entre Hermanos  
Esperanza Immigrant Rights Project  
Fair Immigration Reform Movement (FIRM)  
Faith Commons  
Faith Forward Dallas @ Thanks-Giving Square  
Faith in Indiana  
Familia: Trans Queer Liberation Movement  
Farmworker Association of Florida  
Farmworker Justice  
Florence Immigrant & Refugee Rights Project  
Freedom for Immigrants  
Freedom Network USA  
Global Rights Advocacy  
Government Accountability Project  
Grassroots Leadership  
Grupo de Apoyo e Integracion Hispanoamericano  
Haitian Bridge Alliance  
HIAS PA  
Human Rights First  
Human Rights Initiative of North Texas  
Human Rights Watch  
Illinois Coalition for Immigrant and Refugee Rights  
Immigrant Action Alliance  
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law  
Immigrant ARC  
Immigrant Defenders Law Center  
Immigrant Defense Project  
Immigrant Law Center of Minnesota  
Immigrant Legal Advocacy Project  
Immigrant Legal Resource Center

Immigration Equality  
Immigration Hub  
Immigration Working Group CLE  
Indivisible  
Innovation Law Lab  
Interfaith Community for Detained Immigrants  
International Rescue Committee  
ISLA: Immigration Services and Legal Advocacy  
James H. Binger Center for New Americans University of Minnesota Law School  
Juntos  
La Puerta Abierta, Inc  
La Resistencia  
Legal Aid Justice Center  
Lincoln Park Presbyterian Church Chicago  
Long Beach Immigrant Rights Coalition  
Louisiana Advocates for Immigrants in Detention  
Make the Road New York  
Mariposa Legal, Program of COMMON Foundation  
Massachusetts Communities Action Network  
Mijente  
Minnesota Interfaith Coalition on Immigration  
Missouri Faith Voices  
Missouri Immigrant & Refugee Advocates  
Monserrat Padilla  
National Employment Law Project  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Litigation Alliance  
National Immigration Project (NIPNLG)  
National Network for Immigrant & Refugee Rights  
Neighbors Link  
NETWORK Lobby for Catholic Social Justice  
New York Immigration Coalition  
NorCal Resist



Northern Illinois Justice for Our Neighbors  
Northern Virginia DSA  
Northwest Immigrant Rights Project  
NYU Immigrant Rights Clinic  
Orange County Congregation Community Organization  
Orange County Equality Coalition  
Oregon Justice Resource Center  
Oxfam America  
Pennsylvania Immigration and Citizenship Coalition  
Physicians for Human Rights  
Pittsburgh LCLAA  
POWER Live Free Immigration Group  
Prairielands Freedom Fund  
Prophetic Resistance Boston  
Public Counsel  
Public Defenders Coalition for Immigrant Justice  
RAICES  
Rapid Defense Network (RDN)  
Reformed Church of HP-Affordable Housing Corp  
Refugee Women's Alliance  
Revolutionary Love Project  
Rocky Mountain Immigrant Advocacy Network  
San Bernardino Community Service Center  
Sanctuary and Resistance to Injustice  
Service Employees International Union (SEIU)  
SIREN  
Southeast Action Resource Action Center  
SPLC Action Fund  
TASSC (Torture Abolition & Survivors' Support Coalition) International  
The Advocates for Human Rights  
The Welcoming Center  
Tikkun Olam Chavurah  
Transformations CDC  
UndocuBlack Network

Unitarian Universalist Association  
Unitarian Universalist Service Committee  
Unitarian Universalists for Social Justice  
United Sikhs  
United We Dream  
UnLocal  
USC Gould School of Law Immigration Clinic  
VECINA  
Wind of the Spirit Immigrant Resource Center  
Women's Refugee Commission  
Young Center for Immigrant Children's Rights