

SAN FRANCISCO PUBLIC DEFENDER

MANOHAR RAJU – PUBLIC DEFENDER
MATT GONZALEZ – CHIEF ATTORNEY



VIA FACSIMILE AND ELECTRONIC MAIL

March 19, 2020

Field Office Director David Jennings
Immigration & Customs Enforcement
630 Sansome Street
San Francisco, CA, 94111
Fax: 415-844-5591
Email: David.Jennings@ice.dhs.gov

Re: Emergency Request for Humanitarian Parole of Yuba and Mesa Verde Detainees

Dear Field Office Director Jennings:

We write to you in the midst of a national emergency, declared by the President.¹ The crisis occasioned by COVID-19 demands that government take extreme remedial measures to reduce the spread of a deadly and incurable virus. Detainees held in a crowded environment, unable to follow any of the basic safety measures required to reduce deaths,² face incredibly high risk of contracting the virus, and spreading it to other detainees, to jail staff, to the families of jail staff, and to the broader public. Immigration & Customs Enforcement must use its humanitarian parole authority to immediately release all civil detainees at held at the Yuba County Jail and Mesa Verde Detention Facility.

COVID-19 is a National Emergency Which Requires Extreme Measures

The novel coronavirus that causes COVID-19 has led to a global pandemic. In a matter of months, hundreds of thousands of people have been diagnosed with COVID-19, and many more have contracted the virus but have no access to testing. Thousands have died. There is no vaccine against COVID-19, and there is no cure. Without strict measures to limit contact, even amongst low-risk individuals, and to keep gatherings to ten people or fewer, the medical system will soon be overwhelmed with critical cases and will not have the capacity to manage symptoms and keep patients alive.

COVID-19 is most likely to cause serious illness and elevated risk of death for older adults and those with certain medical conditions or underlying disease. The COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and

¹ On March 13, 2020, President Donald Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, available at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² These safety measures now carry the force of law in San Francisco, Santa Clara, San Mateo, Alameda, Marin and Contra Costa. Violation of or failure to comply is a misdemeanor punishable by fine, imprisonment, or both. California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1).

Adult Division - HOJ
555 Seventh Street
San Francisco, CA 94103
P: 415.553.1671
F: 415.553.9810
www.sfpublicdefender.org

Juvenile Division - YGC
375 Woodside Avenue, Rm. 118
San Francisco, CA 94127
P: 415.753.7601
F: 415.566.3030

Juvenile Division - JJC
258A Laguna Honda Blvd.
San Francisco, CA 94116
P: 415.753.8174
F: 415.753.8175

Clean Slate
P: 415.553.9337
www.sfpublicdefender.org/services

Community Justice Center
P: 415.202.2832
F: 415.563.8506

Bayview Magic
P: 415.558.2428
www.bayviewmagic.org

MoMagic
P: 415.567.0400
www.momagic.org

can damage tissues in other vital organs including the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage and loss of respiratory capacity.

The only known effective measures to reduce the risk for vulnerable people of serious illness or death caused by COVID-19 are social distancing and improved hygiene, which have led to unprecedented public health measures around the world. According to a recent Imperial College study, the only way to prevent catastrophic death toll is through “a combination of social distancing of the entire population [and] home isolation of cases and household quarantine of their family members.”³ Prosecutors and law enforcement officials throughout the country have called for the release of prisoners as a necessary measure to protect public health and safety.⁴

Detained People Face a Heightened Risk of Contracting and Dying from COVID-19

Detained individuals face an elevated risk of contracting COVID-19.⁵ Immigration detention facilities are “congregate environments,” or places where people live and sleep in close proximity. Infectious diseases that are communicated by air or touch are more likely to spread in these environments. This presents an increased danger for the spread of COVID-19 if and when it is introduced into a facility.

The conditions of immigration detention facilities pose a heightened public health risk for the spread of COVID-19 that is even greater than in non-carceral institutions, many of which have already closed. Immigration detention facilities have even greater risk of infectious spread because of crowding, the proportion of vulnerable people detained, the lack of proper sanitation supplies, and medical care resources that are inadequate even under normal circumstances. *See infra*. People live in close quarters and as a result, cannot achieve the “social distancing” needed to effectively prevent the spread of COVID-19. They are constantly exposed to staff and new inmates, who may carry the virus without realizing that they are infected.⁶ They are unable to maintain the recommended distance of 6 feet from others and share and touch objects used by others. Sanitation supplies provided are insufficient to permit frequent, 20-second hand-

³ <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf>

⁴ *See, e.g.*, (Massachusetts) <https://www.bostonherald.com/2020/03/18/prosecutors-urge-reducing-detention-populations-during-coronavirus-pandemic/>; (Colorado) <https://www.dailycamera.com/2020/03/17/boulder-da-sheriffs-office-working-to-release-certain-inmates-due-to-coronavirus-concerns/>; (Ohio) <https://kfor.com/health/coronavirus/ohio-jail-releases-hundreds-of-inmates-due-to-coronavirus-concerns/>; (California) Cassidy, Megan, “Coronavirus: San Francisco, Contra Costa Prosecutors join national call for jail releases,” *San Francisco Chronicle*, May 17, 2020, available at <https://www.sfchronicle.com/crime/article/Coronavirus-San-Francisco-Contra-Costa-15137291.php>

⁵ *See Coronavirus makes jails and prisons potential death traps that puts us all in danger* <https://www.latimes.com/opinion/story/2020-03-18/coronavirus-prisons-releases>.

⁶ Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2), *Science* (March 16, 2020)(finding that 79% of COVID-19 transmissions in Wuhan were caused by people whose infection was not detected because symptoms were mild or absent).

washing. Toilets, sinks, and showers are shared, without disinfection between each use. Food preparation and service is communal with little opportunity for surface disinfection. Staff arrive and leave on a shift basis, and there no way to screen staff for a new, asymptomatic infection.

Yuba County Jail is Not Equipped to Keep ICE Detainees Safe in a Pandemic

Yuba County Jail is not equipped to keep detainees (or staff) safe during this public health crisis. For over forty years, Yuba has been under court-ordered Consent Decree due to its failure to provide detainees with adequate medical care.⁷ Law enforcement agencies, including ICE itself, have also found the conditions at Yuba County Jail to be substandard for all detainees.⁸ Upon review, ICE concluded that Yuba failed to comply with 18 of the National Detention Standards categories, including standards relating to medical care, admission and release, detainee classification, and sexual abuse and assault prevention.⁹

Similarly, the California Department of Justice (“Cal. DOJ”) observed that while conditions for immigrant detainees “may be standard practices in a criminal correctional setting, applying these practices to most immigration detainees is inappropriate in relation to the purpose of their confinement.”¹⁰ Cal. DOJ found consistent themes impacting detainees’ experiences, including “restrictions on liberty, adversarial interactions with facility staff, lack of language accommodation, limited access to medical and mental health care, minimal contact with family and friends, and obstacles to communicating with support systems outside the facility.” Immigrant detainees have repeatedly drawn attention to the poor conditions at Yuba County Jail through hunger strikes and other protests.¹¹ In the last year and a half alone, detainees have staged at least three hunger strikes.

Despite decades of court orders, agency investigative reports, media attention and complaints from detainees, the provision of medical care at Yuba continues to be deficient by anyone’s measure. Simply put, Yuba’s historical record demonstrates that it is not prepared to respond to COVID-19, leading to heightened risks for detainees above and beyond those inherent to a custodial setting.

⁷ Motion to Enforce Consent Decree, *Hendrick v. Grant*, No. 2:27-cv-00162-EFB, ECF No. 163 (E.D. Cal. Oct. 24, 2016) (describing history of litigation); see also *Hendrick v. Grant*, 648 Fed. Appx. 715 (9th Cir. 2016) (denying request to terminate decree, stating that Defendants “presented almost no evidence about ongoing violations...[T]he Decree is necessary and narrowly tailored.”).

⁸ ICE Office of Detention Oversight (“ODO”) Compliance Inspection, Enforcement and Removal Operations (“ERO”), Yuba County Jail (Mar. 2017).

⁹ DHS Office of Civil Rights & Civil Liberties Memorandum regarding complaint of systematic failure to provide adequate medical and mental health care to immigration detainees.

¹⁰ Immigration Detention in California, Office of the Attorney General, California Department of Justice (Feb. 2019), available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>. See also Report: *Immigration Detainees Get Inadequate Medical Care in California Facilities*, KQED news.

¹¹ *ICE Detainees Hold Hunger Strike to Protest Conditions at Northern California Jail*, KQED News (“Detainees...are protesting delayed medical care, overly restrictive conditions, and insufficient exercise and education opportunities...Last month, a federal judge in Sacramento ordered the Yuba County Jail, which is located in Marysville, to fix the same issues the immigration detainees are currently protesting.”).

Mesa Verde Does Not Have the Capacity to Protect Detainees from Widespread Infection

Similar to Yuba County, the Mesa Verde Detention Center is not equipped to handle an outbreak of COVID-19. The Mesa Verde Detention Facility is a privately run, for-profit facility that houses up to 400 non-citizen detainees who in civil detention.¹² Detainees are housed in one of four barrack-style housing units, each of which has 50 double bunk beds to accommodate 100 detainees.¹³ Social distancing in this facility is impossible, as detainees are housed close together in an open area. In a recent 2016 inspection, ICE's Office of Detention Oversight (ODO) found that Mesa Verde was compliant in but four of sixteen Performance Based National Detention Standards (PBNDS), finding deficiencies in medical care, among others.¹⁴

The physical space of the detention facility, in and of itself, creates an exceptional hazard and risk of death to all detainees housed there. Like the Yuba County Jail, Mesa Verde cannot handle an outbreak of COVID-19, and the lives of those that are detained inside are at risk absent taking unprecedented action.

ICE Has the Authority and Obligation to Release Yuba and Mesa Verde Detainees Immediately

Congress has explicitly granted ICE the authority to release detainees for "urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); INA § 212(d)(5)(A). Similarly, the regulations governing ICE's release authority state that serious medical conditions are a reason to parole an individual, as "continued detention would not be appropriate" in such cases. 8 C.F.R. § 212.5(b)(1). This discretionary authority applies regardless of the statutory basis for a noncitizen's detention.

ICE not only has the authority to exercise discretion and release individuals from custody, but has routinely exercised this discretion to release vulnerable detainees. In this crisis, every single detainee held at Yuba and Mesa Verde is vulnerable to contracting and spreading the virus, and should be released.

Due process also requires ICE to release detainees where, as here, keeping them confined will place them in unsafe and life-threatening conditions. The government violates due process where it "affirmatively places the [petitioner] in a position of danger, that is, where state action creates or exposes an individual to a danger which he or she would not otherwise have faced." *See Kennedy v. City of Ridgefield*, 439 F.3d 1055 (9th Cir. 2006). As discussed *supra*, congregate environments pose the greatest known risk to public health. Social distancing and hygiene measures are the only defense against COVID-19, measures which are impossible in the environment of a detention center. Detainees face unreasonable harm from continued civil detention and should be released.

¹² <https://www.geogroup.com/FacilityDetail/FacilityID/64>

¹³ *See* CA Attorney General, *Immigration Detention in 2019*, at pp. 28-30, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>

¹⁴ *Id.*; see also https://www.bakersfield.com/news/deficiencies-and-poor-oversight-at-bakersfield-ice-detention-center-cited/article_6785d008-3af1-11e9-910e-7bff56e1592c.html

Ltr. to ICE (Jennings) demanding release of civil detainees [COVID 19]

March 18, 2020

Page 5

Conclusion

Detention should not lead to a death sentence. Given the urgent circumstances, we respectfully ask that you provide a response to this request immediately, and no later than March 20, 2020. If we do not receive a response by March 20, we will construe our request as denied and take appropriate legal action.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Manohar Raju". The signature is fluid and cursive, with the first name "Manohar" and the last name "Raju" clearly distinguishable.

Manohar Raju
San Francisco Public Defender

CC: Kamala Harris, Senator
Nancy Pelosi, Congresswoman