



By Email

February 9, 2021

John Tsoukaris
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Newark Field Office
Immigration and Custom Enforcement (ICE)
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Dear Director Tsoukaris,

We represent the certified class in the lawsuit *Aganan et al., v. Rodriguez et al.*, No. 20-cv-05922-ES (D.N.J. May 15, 2020), which includes all individuals currently detained at Elizabeth Detention Center (“EDC”). We write to urge you to release and return to our communities all class members in your custody. It is incumbent on ICE to release all individuals detained at EDC in light of the priorities identified in the January 20, 2021, U.S. Department of Homeland Security (“DHS”) memorandum entitled “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities,” issued by Acting Secretary David Pekoske (“Pekoske memo”)¹, public health objectives and the ongoing risks associated with COVID-19, and the Biden Administration’s position on private detention facilities. Additionally, we request that you implement the New Jersey COVID-19 Vaccination Plan at EDC.

Release of Class Members is Supported by the Pekoske Memo

The Pekoske memo provides that “DHS must implement civil immigration enforcement based on sensible priorities” and directs that these enumerated priorities “shall apply . . . to a broad range of [] discretionary enforcement decisions,” including “whom to detain or release.” *Id.* at 2. Specifically, the Pekoske memo instructs enforcement resources be focused on three narrow categories. *Id.* The vast majority of—if not all—people currently detained at EDC fall outside these priorities, warranting their immediate release.

We understand that ICE has stated publicly that it is now implementing the Pekoske memo.² To our knowledge, ICE officers have not yet conducted an individualized review of EDC class

¹ See U.S. Department of Homeland Security, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities, Memorandum of Jan. 20, 2021*, https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf. Although a federal judge has issued a Temporary Restraining Order applicable to Section C of the Pekoske Memo, that does not impact our request, which is grounded in Section B. See Ord. Granting Plaintiff’s Motion for Temp. Ord., *Texas v. United States*, No. 6-21-cv-00003 (S.D. Tex. Jan. 26, 2021), ECF No. 16.

² See Beth Fertig, *Detained Immigrants Seek Release Under Biden’s New Enforcement Priorities, Hoping ICE Will Comply*, WNYC (Feb. 2, 2021), <https://gothamist.com/news/detained-immigrants-seek-release-under-bidens-new-enforcement-priorities-hoping-ice-will-follow-them>.

members pursuant to the Pecoske memo, nor have they begun significant releases of class members from the facility.

Release of Class Members is Necessary for Their Safety and Public Health

Implementing the Pecoske memo requires even greater urgency given the ongoing COVID-19 pandemic. The memo recognizes that we are facing “the most serious global public health crisis in a century” and directs DHS to focus its resources on implementing “public health guidelines and protocols.” *Pecoske Memo* at 1. The memo further provides that “all enforcement and detention decisions” must be guided by DHS’s ability to follow applicable COVID-19 protocols. *Id.* at 3. Since the pandemic’s inception, ICE has failed to follow public health guidance or its own procedures and protocols to protect the health and lives of people in its custody, including at EDC.³ At EDC, this most recently manifested in a COVID-19 outbreak in November and December 2020, in which one medical staffer died and at least 14 class members held at EDC—more than ten percent of the facility’s population at the time—were confirmed positive for COVID-19.⁴ Over the course of the pandemic, at least 39 people held at EDC have tested positive for the deadly disease.⁵ We believe this number is an undercount given the lack of regular, universal testing at EDC, or dormitory-wide testing after symptomatic individuals tested positive for the virus.

The release of class members from EDC would clearly further public health objectives. A recent report found that ICE detention facilities were responsible for more than 245,000 COVID-19 cases throughout the United States between May 1 and August 1, 2020.⁶ In New Jersey, detention facilities contributed over 5,300 additional COVID-19 cases to the statewide caseload during this three-month period.⁷ The court-ordered release of people from ICE custody during the past year has increased community health and safety during the pandemic, aptly demonstrating that the continued detention of our community members is unnecessary and unjustifiable.⁸

³ See, e.g., Catherine E. Shoichet, *The death toll in ICE custody is the highest it’s been in 15 years*, CNN (Sept. 30, 2020), <https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html>; Hailey Konnath, *Judge Slams ICE for ‘Spotty Compliance’ With Virus Safety*, LAW360 (Oct. 8, 2020),

<https://www.law360.com/articles/1318310/judge-slams-ice-for-spotty-compliance-with-virus-safety>; Anagha Srikanth, *Judge slams for-profit ICE detention facility for treatment of immigrants*, THE HILL (Dec. 4, 2020), <https://thehill.com/changing-america/resilience/refugees/528801-judge-slams-for-profit-ice-detention-facility-for>.

⁴ See, e.g., The Brian Lehrer Show, *ICE Detention Issues in Three NJ Counties*, WNYC (Dec. 2, 2020), <https://www.wnycstudios.org/podcasts/bl/segments/ice-detainees-hunger-strike-nj>.

⁵ See U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, <https://www.ice.gov/coronavirus#detStat> (last updated Feb. 4, 2021).

⁶ See Detention Watch Network, *Hotbeds of Infection* (Dec. 2020), https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN_Hotbeds%20of%20Infection_2020_FOR%20WEB.pdf.

⁷ *Id.* New Jersey’s net additional COVID-19 caseload caused by ICE detention, 59.7 additional cases per 100,000 residents, was the seventh highest in the nation. *Id.*

⁸ See, e.g., Matt Katz, *ICE Quietly Releases Hundreds Of Local Immigrants As COVID-19 Tears Through Jails*, Gothamist (April 14, 2020), <https://gothamist.com/news/ice-quietly-releases-hundreds-local-immigrants-covid-19>; Chantal Da Silva, *Judge Orders ICE to Immediately Release At-Risk Detainees at Facilities with COVID-19 Cases*, Newsweek (Mar. 27, 2020), <https://www.newsweek.com/judge-orders-ice-immediately-release-risk-detainees-facilities-covid-19-cases-1494625>; Simpson P. and Tony Butler, *COVID-19, Prison Crowding, and Release Policies*, BMJ 2020;369:m1551 (Apr. 20, 2020),

We therefore call on the Newark ICE Field Office to promptly release all class members, consistent with the Pekoske memo, pre-existing pandemic requirements and court orders, and public health objectives. We also call on you to immediately cease increasing the population at EDC through the transfer of our community members from other prisons and jails into the facility⁹, as well as to stop transferring any individual detained at EDC to any other detention facility. Transfers endanger class member and public safety and are inconsistent with the Pekoske memo and COVID-19 protocols.

Release of Class Members is Consistent with the Biden Administration’s Views on Privatized Detention Facilities

Finally, we observe that releasing all class members from EDC is critical in light of the Biden Administration’s commitment to ending privatized immigration detention. The Biden Administration has already laid the groundwork for ending reliance on private prisons in the federal criminal legal system and has promised to make similar changes in the immigration system.¹⁰ Even the property owners of EDC have expressed their intention to end their relationship with CoreCivic.¹¹ Community advocates and organizations are committed to pushing for an end to all immigration detention. In light of the public outcry against immigration detention, now is the time to ensure the prompt and safe release of people held at EDC.

Class Members Should Be Provided with Prompt Access to COVID-19 Vaccines

Further, we call on you to provide everyone detained at EDC with the ability to promptly obtain COVID-19 vaccinations as specified by New Jersey’s COVID-19 Vaccination Plan. Per New Jersey’s COVID-19 Vaccination Plan, “[a]ll residents and staff of long-term and congregate care facilities” are among individuals eligible for COVID-19 vaccination under Phase 1A, which include correctional and detention facilities, as well as other vulnerable, congregate, long-term settings.¹² Implementing New Jersey’s Vaccination Plan comports with CDC guidance, which provide, “Jurisdictions are encouraged to vaccinate staff and incarcerated/detained persons of correctional or detention facilities **at the same time** because of their shared increased risk of disease.”¹³ The CDC guidance correctly emphasizes that outbreaks of COVID-19 in correctional

<https://www.bmj.com/content/369/bmj.m1551> (safe release of imprisoned people can reduce community transmission).

⁹ See, e.g., *Fraihat et al. v. U.S. Immigration and Customs Enforcement et al.*, Civ. No. 19-cv-01546-JGB-SHK (C.D. Cal. Jan. 21, 2021), Dkt. No. 254-2 ¶¶ 32-36 (documenting ICE’s transfer of individuals into EDC, including during a COVID-19 outbreak at the facility).

¹⁰ See *The Biden Plan for Strengthening America’s Commitment to Justice*, <https://joebiden.com/justice/> (last accessed Feb. 8, 2021).

¹¹ See *Elizabeth Detention Center Property Owner Announces Plans to Cut Ties with For-Profit Detention Company CoreCivic*, InsiderNJ.com (July 15, 2020), <https://www.insidernj.com/press-release/elizabeth-detention-center-property-owner-announces-plans-cut-ties-profit-detention-company-corecivic/>.

¹² See State of New Jersey Covid-19 Information Hub, *Who is eligible for vaccination in New Jersey? Who is included in the vaccination phases?*, <https://covid19.nj.gov/faqs/nj-information/slowing-the-spread/who-is-eligible-for-vaccination-in-new-jersey-who-is-included-in-the-vaccination-phases#direct-link> (last updated Feb. 4, 2021).

¹³ See *COVID-19 Vaccine FAQs in Correctional and Detention Centers*, U.S. Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html> (last updated Jan. 11, 2021).



and detention facilities are difficult to control “given the inability to physically distance, limited space for isolation or quarantine, and limited testing and personal protective equipment resources,” and that incarcerated individuals are often at higher risk of experiencing severe COVID-19.¹⁴ It is thus imperative that individuals at EDC be afforded the opportunity to obtain COVID-19 vaccinations. Providing COVID-19 vaccinations would additionally be consistent with other New Jersey-based detention facilities.¹⁵

We eagerly await your office’s actions to release class members from EDC and provide access to vaccination.

Sincerely,

Lauren Major, on behalf of
American Friends Service Committee
NYU School of Law Immigrant Rights Clinic
Immigrant Defense Project

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¹⁴ *Id.*

¹⁵ Teri West, *Vaccinations underway at Hudson County Jail*, NJ.com, (Jan. 22, 2021), <https://www.nj.com/hudson/2021/01/vaccinations-underway-at-hudson-county-jail.html> (Jan. 22, 2021).