

Congress of the United States
Washington, DC 20515

January 28, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

Dear Secretary Mayorkas and Acting Director Johnson:

We write to encourage your agencies to administer the prompt release of people currently detained by U.S. Immigration and Customs Enforcement in Illinois. All counties in Illinois are required to initiate the termination of their contracts with ICE in January 2022.¹ Rather than transferring individuals to other detention facilities, exacerbating the risk of COVID spread during a time when cases are dramatically escalating throughout ICE custody, it is imperative that your agencies begin the case reviews and process of releasing people in ICE detention in the Kankakee Jerome Combs Detention Center and McHenry County Jail. It is also critical that you fulfill your promise of engaging with legal service providers and community groups and ensure legal access and allow for attorney-client calls for people in both jails as this process is underway.

This administration recognizes the importance of exercising prosecutorial discretion as an indispensable feature of our legal system.² The use of such discretion is particularly appropriate as DHS decides who should be detained and for how long. DHS may release an individual who is placed in formal removal proceedings on bond, on their own recognizance, or under an order of supervision pending the outcome of those proceedings.³ ICE has the authority to determine whether a person can be released, and can utilize a number of options when deciding to release

¹ The Illinois Governor signed into law the Illinois Way Forward Act (SB 667) in August 2021, which requires an end to local detention contracts and other cooperation with ICE. McHenry and Kankakee County Jails were required to submit notice of termination of their ICE contracts on January 13, 2021. See <https://immigrantjustice.org/press-releases/new-state-law-takes-effect-end-ice-detention-illinois>.

² See, e.g., U.S. Immigration and Customs Enforcement, Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities, (May 27, 2021), p. 2, https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_interim-guidance.pdf.

³ See 8 U.S.C. § 1226(a) (general detention authority over “aliens” subject to removal)

an individual from detention, including: releasing on Orders of Supervision (OSUP), or releasing an individual on parole.⁴

The practice of transferring people to locations where they are deprived of access to their families and counsel is unnecessary and harmful.⁵ Independent analysis of federal data has shown that over 80% of non-detained immigrants with completed or pending removal cases attend their court hearings, and 96% attend when they have representation.⁶ Everyone in ICE detention in the Kankakee and McHenry jails should be allowed to live in the safety of their homes and communities while navigating their court proceedings. A robust network of legal and social service providers throughout Illinois stand ready to support them in doing so.⁷ For people released who do need social services or case support, the aforementioned community-supported case management programs are available.⁸

Moreover, transfers are a frightening and dehumanizing experience with deadly consequences, especially during the ongoing COVID-19 pandemic.⁹ COVID-19 poses an immediate threat to those detained in immigration detention facilities, a risk that only increases when transfers occur.¹⁰ As COVID-19 was spreading, for example, people detained in Kankakee and McHenry jails shared testimony describing how the jail failed to provide basic hygienic supplies in the facility.¹¹ Throughout the pandemic, ICE unnecessarily transferred people between facilities,¹² creating new outbreaks inside jails and in surrounding communities.¹³ More than 33,000

⁴ See “Seeking Release from Immigration Detention,” American Immigration Council, September 13, 2019, <https://www.americanimmigrationcouncil.org/research/release-immigration-detention>.

⁵ See e.g., Letter to ICE RE: Undisclosed Transfer of Detainees, Brooklyn Defender Services, The Legal Aid Society, The Bronx Defenders, New York Legal Assistance Group, UnLocal, & Make the Road New York, June 4, 2021, <https://legalaidnyc.org/wp-content/uploads/2021/06/Undisclosed-Transfer-of-Detainees-Letter.pdf>.

⁶ See “Measuring *In Absentia* Removal in Immigration Court,” American Immigration Council, Jan 28, 2021, <https://www.americanimmigrationcouncil.org/research/measuring-absentia-removal-immigration-court>.

⁷ See e.g., “Illinois Says No To ICE Detention: Community Groups Call On Biden Administration To Release Immigrants Detained Under State’s Expiring ICE Contracts,” National Immigrant Justice Center, December 9, 2021, <https://immigrantjustice.org/staff/blog/illinois-says-no-ice-detention-community-groups-call-biden-administration-release>.

⁸ See, e.g., David Secor, Heidi Altman and Tara Tidwell Cullen, “Community-Based Programming as an Alternative to Immigrant Incarceration,” National Immigrant Justice Center, (April 2019) <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-reportApril2019-FINAL-full.pdf>.

⁹ See, e.g., “New Documents Illuminate A Dark Pattern Of Abuse In ICA-Farmville,” La ColectiVA, Detention Watch Network, Advancement Project, Sanctuary DMV & National Immigrant Justice Center, August 17, 2020, <https://immigrantjustice.org/staff/blog/new-documents-illuminate-dark-pattern-abuse-ica-farmville>.

¹⁰ Maura Turcotte, Virus Cases Are Surging at Crowded Immigration Detention Centers in the U.S., N.Y. TIMES (July. 6, 2021). <https://www.nytimes.com/2021/07/06/us/covid-immigration-detention.html>.

¹¹ <https://immigrantjustice.org/staff/blog/ice-detention-time-covid-19-accounts-nijcs-detained-clients>.

¹² See, e.g., Mica Rosenberg, Kristina Cooke, Reade Levinson, “U.S. immigration officials spread coronavirus with detainee transfers, Reuters,” July 17, 2020, <https://www.reuters.com/article/us-health-coronavirus-immigration-detent/u-s-immigration-officials-spread-coronavirus-with-detainee-transfers-idUSKCN24IIG0>

¹³ Hamed Aleaziz, “ICE Moved Dozens Of Detainees Across The Country During The Coronavirus Pandemic. Now Many Have COVID-19,” BuzzFeed News, April 29, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-transfer-jail-coronavirus>

people have tested positive for COVID-19 in ICE detention overall, and there are currently more than 2,067 active positive cases throughout ICE facilities.¹⁴

A new outbreak in McHenry County Jail has led to at least 17 current positive cases as of January 19th. In response, the jail has restricted phone access and essentially cut off legal access to people in ICE custody in the facility. In Kankakee, people have been placed in quarantine in their cells and ICE has failed to inform people in their custody about the pending termination of the ICE contract. ICE must provide these individuals information regarding the phase-out and ensure they are able to communicate with their attorneys and family members. Transferring people from the Kankakee and McHenry jails to other ICE facilities would further hinder legal access and put countless other detained individuals and surrounding communities at risk as highly transmissible new COVID variants continue to spread across the country.¹⁵

Transfers not only expose people in ICE custody to COVID-19, but they also threaten the physical, mental, and emotional health of detained individuals. Any form of detention is a traumatic experience, especially among immigrant detainees who are more likely to experience anxiety, depression, and post-traumatic stress disorder both during and after detention than the general population.¹⁶ Legal service providers and immigrant rights organizations also warn against transfers to nearby facilities outside of Illinois that are also known for neglect and abuse; including in Boone County Jail, Kentucky,¹⁷ and Clay County Jail, Indiana.¹⁸ Notably, Clay County jail failed its May 2021 ICE inspection due to substandard conditions and dangerous deficiencies.¹⁹

We urge you to respect the spirit and letter of the decision by Illinois elected officials to end ICE detention. We request that your agency quickly uphold your promise of engagement with Illinois legal service providers and community groups. We also ask that you provide a briefing to our offices regarding the process and standard operating procedures in place for the Illinois facility closures. To protect the health, safety, and human rights of people detained in Illinois, we ask that your agencies use your authority to safely release people in detention into the care of their communities. Thank you for prompt attention to this important matter.

¹⁴ COVID-19 ICE Detainee Statistics by Facility, U.S. Immigration and Customs Enforcement (ICE), <https://www.ice.gov/coronavirus#detStat> (last visited Jan. 14, 2022).

¹⁵ See e.g. Shalina Chatlani, “COVID Cases Are Rising In ICE Facilities, Putting Detainees And The Public At Risk,” NPR, August 13, 2021, <https://www.npr.org/2021/08/13/1027095025/detainees-say-ice-exposes-them-to-covid-19>.

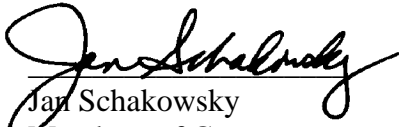
¹⁶ M. von Werthern et al., The Impact of Immigration Detention on Mental Health: A Systematic Review, 18 BMC PSYCHIATRY 382 (Dec. 2018), <https://bmcpsy psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>.

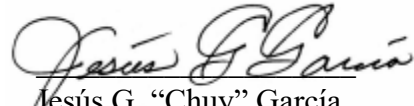
¹⁷ See, e.g., “Two Men File Civil Rights Complaint Regarding Treatment in ICE custody Inside Kentucky Detention Center,” National Immigrant Justice Center, July 29, 2021, <https://immigrantjustice.org/press-releases/two-men-file-civil-rights-complaint-regarding-treatment-ice-custody-inside-kentucky>.

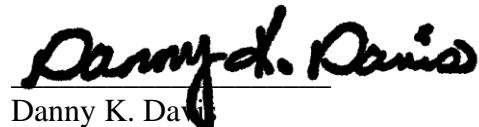
¹⁸ See e.g., “Immigrant Women In ICE Custody File Civil Rights Complaint Requesting Investigation Into COVID-19 Conditions At Indiana Jail,” National Immigrant Justice Center, May 28, 2021, <https://immigrantjustice.org/press-releases/immigrant-women-ice-custody-file-civil-rights-complaint-requesting-investigation>.

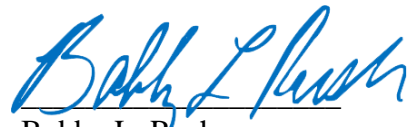
¹⁹ See Letter to Russell Hott, Assistant Director Custody Management, “Annual Inspection of Clay County Justice Center,” Nakamoto Group, May 20, 2021, https://www.ice.gov/doclib/facilityInspections/ClayCoJail_CL_05-20-2021.pdf.


Sincerely,



Jan Schakowsky
Members of Congress



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Member of Congress


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