

August 31, 2020

Los Angeles County Board of Supervisors
500 W. Temple St.
Los Angeles, CA 90012

Sent via email

Dear Supervisors,

As leaders of organizations working at the intersection of immigrants' rights, workers' rights, and criminal legal system reform, we write to urge you to prohibit the expenditure of County resources to facilitate federal immigration authorities' arrest and detention of community members in the custody of the Los Angeles County Sheriff's Department, absent a judicial warrant or judicial probable cause determination. This move would align County policy with the Sheriff's Department's moratorium on transfers to immigration authorities absent a judicial probable cause determination, as well as with policies of other jurisdictions throughout California and the country. It is time for Los Angeles County, as the county with one of the richest and most diverse immigrant communities, to create this necessary layer of protection to safeguard our community members' constitutional rights as well as the County's finances.

Los Angeles County is home to about 3.6 million immigrants, accounting for 36 percent of the county's population.¹ The county's immigrant residents—whether naturalized U.S. citizens, permanent residents, or undocumented—are valued and integral members of our social and economic fabric. Nearly 60 percent of all children born in the county have at least one immigrant parent, and most of the county's noncitizen population—nearly 70 percent—has lived in the United States for more than a decade.²

Accordingly, immigration has been one of the County's top priorities.³ With Supervisor Solis's and your leadership, the County has been committed to serving the needs of immigrant community members and protecting their rights in the face of numerous vulnerabilities and threats. Just in the last few years, the County has established a robust Office of Immigrant Affairs designed to be a "one-stop shop" for immigration services to county residents;⁴ has created the Los Angeles Justice Fund ("LAJF") to defend immigrants against immigration detention and deportation;⁵ and has strengthened the public defender system's immigration expertise and its capacity to effectively represent noncitizen indigent clients.⁶

In light of the COVID-19 pandemic, instead of working to flatten the curve, U.S. Immigration and Customs Enforcement ("ICE") has directly contributed to the spreading of the virus in California and throughout the country.⁷ As of July 14, 2020, ICE's own records showed that there were 3,183 positive cases among 13,562 people tested in its custody nationwide.⁸ ICE did not clarify whether the remaining tests were confirmed negative or still pending—meaning that a minimum of 23.5 percent tested positive through July 14, 2020. Worse, new research indicates that ICE has been severely underreporting the prevalence of COVID-19 in its detention facilities; the true infection rate among detained individuals may be 15 times greater than reported by ICE.⁹ According to ICE, five individuals in its custody have died of COVID-19 thus

far, but this figure only tracks deaths in custody and not those who contract the virus in detention but then die after release or deportation.¹⁰

At the Adelanto ICE detention facility, where ICE usually detains immigrant Angelenos, medical care has been wholly inadequate even under normal circumstances.¹¹ During the pandemic, despite Center for Disease Control guidelines and expert recommendations to limit or suspend new bookings and sharply restrict transfers, ICE has continued to conduct transfers between facilities; indeed, since the pandemic began, transfers from jails and prisons have become the primary source of ICE's new bookings in California.¹² According to LAJF providers, the GEO Group, Inc.—the private corporation contracted to run Adelanto—has not provided hand soap, requiring detained individuals to purchase shampoo to use as hand soap. It has also been impossible for people to practice social distancing as GEO forces them into crowded cells with up to eight people in them, and requires them to eat in the cafeteria in groups of at least 40 people, often only inches away from each other. More recently, GEO has used a chemical agent known as “HDQ Neutral,” despite countless reports of the adverse health effects people exposed to it have experienced, including bloody noses, rashes, eye inflammation and irritation, coughing fits, and vomiting.¹³ And although ICE has received about 1,900 COVID-19 test kits for Adelanto, it has refused to allow the vast majority of them to be used.¹⁴

ICE's callous disregard for human lives has been decried even by medical doctors from the U.S. Department of Homeland Security and by federal courts across the country.¹⁵ Federal courts have consistently found ICE's conduct during the pandemic to violate the substantive due process rights of its detainees in all five of its California facilities.¹⁶ At Adelanto, the federal district court in Los Angeles has noted that the conditions of confinement are “inconsistent with contemporary standards of human decency.”¹⁷ Recently, the court removed ICE from the custody determination process at Adelanto entirely—an unprecedented move.¹⁸

ICE's violations of the constitutional rights of people it arrests and detains has been well-established even prior to COVID-19. In September 2019, in *Gonzalez v. ICE*, the federal district court in Los Angeles held that ICE detainer requests to local law enforcement agencies largely violated the Fourth Amendment because they were based on databases too error-ridden and incomplete to be reliable sources of information for probable cause determinations.¹⁹ The court emphasized that ICE's sole dependence on databases resulted in “many U.S. citizens becom[ing] exposed to possible false arrest,” and wrongfully detained for ICE.²⁰ For example, at the request of ICE, the Sheriff's Department detained plaintiff Gerardo Gonzalez, a U.S. citizen born in Pacoima, California.²¹ In short, ICE detainer requests need to be supported by a judicial probable cause determination to avoid risking violating the constitutional rights of Angelenos targeted by ICE. This layer of protection is especially important because the County does not collect information about immigration status and is left in the position of having to rely on ICE's information about an individual's immigration status.

In May 2019, the Sheriff's Civilian Oversight Commission (“COC”) recommended that the Sheriff's Department should not permit ICE or its private contractors to access any departmental property, including jails, and should not honor ICE requests to cooperate in the transfer of any individual to ICE custody, unless required by law—that is, unless ICE presents a judicial probable cause determination.²² The COC report also noted that the Sheriff's

Department spends at least \$1,378,000 a year in employing custody assistants to carry out duties associated with facilitating ICE transfers.²³ The use of these County resources undermines not only the County’s investment of \$1.5 million a year in the LAJF, a program designed to provide immigration lawyers to defend families against immigration detention and deportation, but also the County’s commitment to protecting immigrants, their families, and co-workers from immigration enforcement overreach. In fact, LAJF providers have had to defend county residents who only ended up in ICE detention and deportation proceedings because they were transferred from Sheriff’s Department custody.

We have long asked the Sheriff’s Department to stop its entanglement with immigration agents. This practice has destroyed community trust and undermined public safety.²⁴ It has wasted County taxpayer resources that are all too precious now during this unprecedented public health and economic crisis. It has contributed to thousands of family separations.²⁵ Importantly, these ICE transfers have led to county residents being detained for prolonged, often indefinite periods in immigration detention while they fight their cases.²⁶ As a significant number of detained immigrants are workers and often the primary breadwinners in their families, many have lost employment and the ability to provide for their families while detained.²⁷ In turn, families’ financial devastation has increasingly burdened the County’s social safety net.²⁸

In this context, the sheriff’s August 3, 2020 letter making the Sheriff’s Department moratorium on ICE transfers “permanent” is a step in the right direction. Nevertheless, despite the letter’s description of the moratorium as “permanent,” it is not so. Rather, the policy is still temporary, as it is subject to be terminated or reversed at the discretion of the sheriff, whether the current sheriff or his successors.

Therefore, we respectfully urge the Board of Supervisors to take the final step and enshrine the sheriff’s policy into County policy. We must ensure, once and for all, that our community members do not end up in the clutches of a rogue agency with no regard for their civil and human rights. As an important statement of the County’s values, and to create a necessary and truly permanent layer of protection to safeguard our people’s constitutional rights as well as the County’s finances, the County should require ICE and federal immigration authorities to obtain a judicial probable cause determination if they seek to arrest and detain immigrant Angelenos in Sheriff’s Department custody.

Sincerely,

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Endnotes

¹ *State of Immigrants in LA County*, USC DORNSIFE, at 12 (Jan. 2020), https://dornsife.usc.edu/assets/sites/731/docs/SOILA_full_report_v19.pdf.

² *Id.* at 12, 21.

³ Motion by Supervisors Hilda L. Solis and Sheila Kuehl (Sep. 12, 2017) (“We, therefore, move that the Chief Executive Officer recognize immigration as the sixth priority, along with Sheriff’s Department reform, Child Welfare System, Health Services Integration, Homelessness, and Environmental Health Oversight and Monitoring, in the County governance.”).

⁴ See *Press Release from Cnty. of Los Angeles, Chief Exec. Office*, L.A. CNTY. OFFICE OF IMMIGRANT AFFAIRS (Sept. 12, 2017), <http://oia.lacounty.gov/los-angeles-county-takes-bold-steps-support-immigrants/>.

⁵ See, e.g., L.A. CNTY. OFFICE OF IMMIGRANT AFFAIRS, L.A. JUSTICE FUND FAQs (last updated Jan. 17, 2019), <https://oia.lacounty.gov/aboutlajf/>; Nina Agrawal & Dakota Smith, *L.A. County supervisors OK \$3 million to aid legal efforts for immigrants facing deportation*, L.A. TIMES (June 20, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-justice-fund-immigrants-20170620-story.html>.

⁶ *ACLU Statement on Fivefold Expansion of Public Defenders’ Immigration Unit*, ACLU SO. CAL. (Oct. 2, 2018), <https://www.aclusocal.org/en/press-releases/aclu-statement-fivefold-expansion-la-public-defenders-immigration-unit>.

⁷ See, e.g., Emily Kassie & Barbara Marcolini, “*It Was Like a Time Bomb*”: *How ICE Helped Spread the Coronavirus*, N.Y. TIMES (July 10, 2020), <https://www.nytimes.com/2020/07/10/us/ice-coronavirus-deportation.html>.

⁸ See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE GUIDANCE ON COVID-19, <https://www.ice.gov/covid19> [hereinafter ICE GUIDANCE].

⁹ Nina Sulc, *Vera’s New Prevalence Model Suggests COVID-19 is Spreading through ICE Detention at Much Higher Rates than Publicized*, VERA INST. OF JUSTICE (June 4, 2020), <https://www.vera.org/blog/covid-19-1/veras-new-prevalence-model-suggests-covid-19-is-spreading-through-ice-detention-at-much-higher-rates-than-publicized>.

¹⁰ See ICE GUIDANCE, *supra* note 8; Dan Glaun, *How ICE Data Undercounts COVID-19 Victims*, PBS (Aug. 11, 2020), <https://www.pbs.org/wgbh/frontline/article/how-ice-data-undercounts-covid-19-victims/>.

¹¹ In 2018, the Office of Inspector General for the U.S. Department of Homeland Security concluded that Adelanto fails to provide timely and adequate medical care to immigrant detainees, identifying “significant health and safety risks at the facility.” *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California*, OFFICE OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SECURITY (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; see also Paloma Esquivel & Brittany Mejia, *Nooses in cells, rotting teeth — report details harsh conditions at Adelanto immigration facility*, L.A. TIMES (Oct. 2, 2018), available at <https://www.latimes.com/local/lanow/la-me-ln-adelanto-oig-20181002-story.html>; NGO Letter Concerning Inadequate Medical Care at Adelanto (May 15, 2015), available at <https://www.aclusocal.org/sites/default/files/wp-content/uploads/2015/05/NGO-letter-re-Adelanto-medical-care.pdf>; Human Rights Watch, American Civil Liberties Union, et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (June 2018), available at <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

¹² See Petition for Writ of Mandate in *Cal. Attorneys for Criminal Justice v. Newsom*, S261829, at 22–24, 28–30, 36 (Apr. 24, 2020), available at https://www.aclusocal.org/sites/default/files/aclu_socal_cacj_20200424_petition_writ_mandate.pdf; see also Rebecca Plevin, *At Adelanto detention center, 6 of 10 people with COVID-19 transferred there from prisons*, PALM SPRINGS DESERT SUN (July 3, 2020), available at <https://www.desertsun.com/story/news/politics/immigration/2020/07/03/adelanto-detention-center-6-10-covid-19-transferred-there-prisons/5367404002/>.

¹³ See Rebecca Plevin, *Immigrants, advocates, members of Congress decry chemical use at ICE facility in Adelanto*, PALM SPRINGS DESERT SUN (June 28, 2020), available at <https://www.desertsun.com/story/news/politics/immigration/2020/06/27/immigrants-members-congress-decry-chemical-use-ice-facility-adelanto/3273095001/>.

¹⁴ See, e.g., City News Service, *ACLU says ICE secretly bans COVID-19 testing of Adelanto detainees*, PALM SPRINGS DESERT SUN (Aug. 11, 2020), <https://www.desertsun.com/story/news/health/2020/08/11/aclu-says-ice-secretly-bans-covid-19-testing-adelanto-detainees/3348431001/>.

¹⁵ See, e.g., Catherine Schoichet, *Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE detention*, CNN (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/%20doctors-ice-detention-coronavirus/index.html>; *Hernandez Roman v. Wolf*, No. 5:20-cv-768-TJH, ECF No. 53, at *14–15 (C.D. Cal. April 23, 2020) (finding that ICE is “deliberately indifferent to the potential exposure of [detainees] to COVID-19” and has “acted with callous disregard for [their] safety”).

¹⁶ See, e.g., *Xochihua-Jaimes v. Barr*, 962 F.3d 1065, 1066 (9th Cir. Mar. 23, 2020) (ordering, *sua sponte*, the release of a petitioner at Adelanto “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers.”); *Bravo Castillo v. Barr*, 20-cv-00605-TJH, 2020 WL 1502864, at *5, *6 (C.D. Cal. Mar. 27, 2020) (finding that “[u]nder the Due Process Clause, a civil detainee cannot be subject to the current conditions of confinement at Adelanto,” and ordering the release of two individuals in Adelanto); *Fraihat v. Wolf*, 5:20-cv-590-TJH, ECF No. 18, at *12 (C.D. Cal. Mar. 30, 2020) (ordering the release of detainee because the COVID-19 pandemic rendered his continued detention in Adelanto unconstitutional); *Hernandez Roman*, 5:20-cv-617-TJH, ECF No. 17, at *14–15 (C.D. Cal. Apr. 1, 2020) (same); *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 2020 WL 2059848 (N.D. Cal. Apr. 29, 2020) (ordering a review process to identify people for release in order to enable social distancing at the Mesa Verda ICE detention center and Yuba County jail); *Ortuño v. Jennings*, No. 20-CV-02064-MMC, 2020 WL 1701724, at *5 (N.D. Cal. Apr. 8, 2020) (ordering the release of four ICE detainees in Mesa Verde and Yuba); *Ixchop Perez v. Wolf*, No. 5:19-cv-5191-EJD, ECF No. 29, at 24 (N.D. Cal. Apr. 14, 2020) (ordering release due to ICE’s failure to protect petitioner from harm from COVID-19); *John Doe v. Barr*, No. 3:20-cv-2141-LB, Order Granting Petitioner’s Motion For Temporary Restraining Order, ECF No. 27, at 20–21 (N.D. Cal. Apr. 20, 2020) (same); *Bent v. Barr*, No. 5:19-cv-6123-DMR, 2020 WL 1812850, at *8 (N.D. Cal. Apr. 9, 2020) (same); *Alcantara v. Archambeault*, No. 20CV0756 DMS (AHG), 2020 WL 2315777 (S.D. Cal. May 1, 2020) (ordering the release of more than 50 medically vulnerable individuals detained at the Otay Mesa ICE Detention Center).

¹⁷ *Hernandez Roman v. Wolf*, No. EDCV2000768TJHPVCX, 2020 WL 1952656, at *8 (C.D. Cal. Apr. 23, 2020).

¹⁸ U.S. District Court Judge Terry J. Hatter, Jr. took this extraordinary step in the ACLU of Southern California’s ongoing litigation in *Hernandez Roman v. Wolf*. See *Hernandez Roman v. Wolf*, No. EDCV2000768TJHPVCX, 2020 WL 3481564, at *2 (C.D. Cal. June 17, 2020).

¹⁹ *Gonzalez v. Immigration & Customs Enf't*, 2019 WL 4734579, at *20 (C.D. Cal. Sept. 27, 2019).

²⁰ *Id.* For example, from 2006 to 2017, ICE wrongfully detained more than 3,500 U.S. citizens in Texas alone. DAVID BIER, U.S. CITIZENS TARGETED BY ICE: U.S. CITIZENS TARGETED BY IMMIGRATION AND CUSTOMS ENFORCEMENT IN TEXAS, CATO INST. (Aug. 28, 2019), <https://www.cato.org/publications/immigration-research-policy-brief/us-citizens-targeted-ice-us-citizens-targeted>. From 2017 to 2019, law enforcement agencies detained 420 citizens in Florida. ACLU OF FL, CITIZENS ON HOLD: A LOOK AT ICE'S FLAWED DETAINER SYSTEM IN MIAMI-DADE COUNTY (Mar. 20, 2019), <https://www.aclufl.org/en/publications/citizens-hold-look-ices-flawed-detainer-system-miami-dade-county>.

²¹ *Gonzalez*, 2019 WL 4734579, at *1.

²² The Sheriff's Civilian Oversight Commission's May 2019 report includes the following key recommendations:

Recommendation 9. LASD should not provide ICE, or persons or entities contracted through ICE with access to the Inmate Reception Center (IRC) or other areas within the jail, or other LASD properties such as courthouse lockups and station jails, unless required by federal or state law.

Recommendation 10. LASD should not honor ICE detainers, including requests by ICE to hold, detain, house, or transfer any inmate, unless specifically required by federal or state law.

CNTY. OF L.A. SHERIFF CIVILIAN OVERSIGHT COMM'N, L.A. COUNTY SHERIFF CIVILIAN SHERIFF'S DEPARTMENT COOPERATION WITH IMMIGRATION AND CUSTOMS ENFORCEMENT 5 (May 21, 2019), *available at* http://file.lacounty.gov/SDSInter/bos/commissionpublications/report/1055898_ImmigrationFinalReport-5-21-2019.pdf.

²³ *Id.* at 20, Addendum A.

²⁴ Notably, in a recent national study, the University of California, Davis, found no correlation between deportations and public safety; in particular, deportations had no effect on violent or property crime, regardless of how aggressive deportations were in a given area. *See, e.g.,* Anna Flagg, *Deportations Reduce Crime? That's Not What the Evidence Shows*, N.Y. TIMES (Sept. 23, 2019), *available at*

<https://www.nytimes.com/2019/09/23/upshot/deportations-crime-study.html>. What is clear, however, is that law enforcement entanglement with ICE has made immigrant community members far more distrusting of law enforcement; in particular, unauthorized immigrants are dramatically less likely to trust that law enforcement will keep their communities safe. *See, e.g.,* Tom K. Wong et al., *How Interior Immigration Enforcement Affects Trust in Law Enforcement*, U.S. IMMIGRATION POL'Y CTR., UC SAN DIEGO (Apr. 3, 2019), *available at*

<http://usipc.ucsd.edu/publications/usipc-working-paper-2.pdf>. For example, in Los Angeles in 2017, reports of domestic violence among the Latinx community dropped by 10 percent and reports of sexual assault by 25 percent, declines that former LAPD Chief Charlie Beck said were due to fear of the federal government. Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation.*, N.Y. TIMES (Apr. 30, 2017), *available at* <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?module=inline>; *see also* Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation.*, N.Y. TIMES (June 3, 2018), *available at* <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>. In addition, 80 percent of county residents said that contact with a government agency or program increased the risk of deportation. Mike McPhate, *California Today: Worries Over Deportation*, N.Y. TIMES (Apr. 5, 2017), <https://www.nytimes.com/2017/04/05/us/california-today-worries-over-deportation.html>.

²⁵ In 2018 alone, the Sheriff's Department transferred 945 individuals to ICE. *See, e.g.,* Rebecca Plevin, *L.A. County Sheriff to further restrict transfers of immigrant inmates to ICE custody*, PALM SPRINGS DESERT SUN (Aug. 11, 2020), *available at* <https://www.desertsun.com/story/news/politics/immigration/2020/08/11/l-a-county-sheriff-limits-transfers-inmates-ice-custody/3303048001/>.

²⁶ *See, e.g.,* Cecilia D. Wang, *For Immigrants, the Threat of Indefinite Detention*, N.Y. TIMES (Dec. 19, 2016), <https://www.nytimes.com/2016/12/19/opinion/indefinite-immigrant-detention-opdocs-vr.html> (“[T]housands of people [have] been incarcerated for no good reason—leaving their families without financial support, hampering their own ability to defend against the government's deportation case, and suffering from often abominable prison conditions and crushing despair.”).

²⁷ *See generally* César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346, 1382–92 (2014).

²⁸ *See, e.g.,* DANIEL KANSTROOM, *AFTERMATH: DEPORTATION LAW AND THE NEW AMERICAN DIASPORA* 135–57 (2012); KOBALL ET AL., *supra* note 46; Bryan Lonagan, *American Diaspora: The Deportation of Lawful Residents From the United States and the Destruction of Their Families*, 32 N.Y.U. REV. L. & SOC. CHANGE 55, 70–76 (2007).