

Office of the Director

U.S. Department of Homeland Security  
500 12th Street, SW  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

November 22, 2021

Jorge Loweree  
Director of Policy  
American Immigration Council  
1331 G Street NW, Suite 200  
Washington, DC 20005

Dear Mr. Loweree:

Thank you for your October 5, 2021 letter to the Department of Homeland Security (DHS) offering suggestions on ways to further reform our systems and procedures. Secretary Mayorkas asked that I respond on his behalf.

U.S. Immigration and Customs Enforcement (ICE) detains noncitizens in accordance with U.S. immigration laws. This includes instances when ICE needs to secure their presence for immigration proceedings or to remove noncitizens with final orders of removal from the United States. However, in cases where a noncitizen is eligible for release, ICE makes individualized custody determinations after considering the totality of circumstances. These decisions take into consideration the risk of flight and the risk to public safety. ICE also looks at other factors, including whether a noncitizen has a serious medical condition, is the primary caregiver of minor children, or presents other humanitarian considerations.

To ensure efficiency and to better manage the volume of release requests the agency receives, ICE officers may use template letters with approved language to respond to attorney inquiries and requests for release. Similarities in these responses do not mean that ICE is not ~~conducting an individualized case review~~ ICE officers nationwide review cases individually and conduct custody determinations by taking into account the specific factors as noted above. While the facts of each case may vary, ICE officers follow specific, uniform guidelines when reviewing individual cases for continued detention or potential release.

As another layer of review, ICE instituted the ICE Case Review (ICR) process in March 2021. This process offers stakeholders another channel through which noncitizens and their representatives may request that ICE exercise its prosecutorial discretion authority on a particular noncitizen's behalf. If a noncitizen or their representative believes they do not meet ICE's priorities for arrest, detention, or removal, they are encouraged to first contact their local ICE Enforcement and Removal Operations (ERO) field office to request a case review. ICE established the ICR process to review ICE field office denials of prosecutorial discretion or continued detention in individual cases. After contacting the local ICE ERO field office, individuals may also initiate the ICR process by emailing the ICE ERO Senior Reviewing

Official to request a case review and ensure that the detained noncitizen's detention is in accordance with applicable enforcement and removal priority guidance.<sup>1</sup> Additionally, all cases are unique, and ICE takes great care to consult with all appropriate parties, including ICE attorneys, to determine if prosecutorial discretion is warranted.

ICE has made efforts to ensure that access to legal representation has continued unabated while concurrently working to safeguard the health and safety of those in its custody and to detect and mitigate the spread of COVID-19. ICE does not prohibit legal representation and considers access to legal counsel to be of paramount importance to detained noncitizens. Moreover, those arrested by ICE and placed into removal proceedings are provided with a list of free legal services aid resources, including pro bono providers. Legal Orientation Programs and Know Your Rights presentations are provided to people in detention by local nonprofit organizations, some of which are under contract with the Department of Justice Executive Office for Immigration Review. Additionally, detained noncitizens are able to make free calls to pro bono legal service providers or to contact consular officials.

Pursuant to ICE's Pandemic Response Requirements (PRR), in-person visitation with legal representatives will continue unless determined to pose a risk to the safety and security of the facility. Non-contact legal visitation (e.g., Skype or teleconference) is made available wherever possible to limit potential COVID-19 exposure, but in-person contact visits remain available at the request of the legal representative. ICE ERO does not track the number of legal visits that were denied or not facilitated. However, in Fiscal Year 2020, ICE's inspections did not identify any legal representatives being denied access to their clients.

The safety, security, and wellbeing of all those in ICE custody are among the agency's top priorities. ICE is committed to ensuring that everyone in our custody receives timely access to medical services and treatment, including mental health treatment. Comprehensive medical care is provided for detained noncitizens upon arrival and throughout the entirety of their stay. All individuals in ICE custody receive a medical intake screening, which includes a mental health assessment, within 12 hours of arriving at each detention facility, a full health assessment within 14 days of entering ICE custody or arrival at a facility, and access to daily sick call and 24-hour emergency care. Detained noncitizens at all detention facilities in ICE's detention network are provided appropriate medical and mental healthcare to promote physical and mental health as well as general wellbeing.

The ICE PRR, first released in April 2020 and most recently updated on October 19, 2021, sets forth specific mandatory requirements to be adopted by all detention facilities housing ICE detained noncitizens. ICE evaluates all new admissions within five days of entering ICE custody to determine whether the detained noncitizen is at higher risk for serious illness from COVID-19 and is part of the subclasses certified in *Fraihat v. ICE*, ---F. Supp. 3d ---, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020), *rev'd and remanded*, ---F. Supp. 4th---, 2021 WL 4890884 (9th Cir. Oct. 21, 2021). These high-risk populations<sup>2</sup> are identified by the Centers for Disease Control and Prevention and have been incorporated into ICE's PRR. Once a detained noncitizen

<sup>1</sup> Information about the ICR process can be found at: [www.ice.gov/ICEcasereview](http://www.ice.gov/ICEcasereview)

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>

has been evaluated and determined to be high risk, notification is made to the ICE ERO Field Office Director (or designee) and the Field Medical Coordinator, as well as the detained noncitizen and his or her counsel, as soon as practicable, but in no case more than 12 hours of determining whether the detained noncitizen meets the criteria. This review is documented via a modified Form I-831 where ICE provides written justification for continued detention. This form is served on the detained noncitizen and the attorney of record.

Thank you again for your letter and recommendations. Should you wish to discuss this matter further, please do not hesitate to contact the ICE Office of Partnership and Engagement at [iceope@ice.dhs.gov](mailto:iceope@ice.dhs.gov).

Sincerely,



Tae D. Johnson  
Acting Director

cc: American Immigration Lawyers Association