



**Written Statement of
Asian Americans Advancing Justice | AAJC**

U.S. Senate
Committee on the Judiciary

June 2, 2020

Examining Best Practices for Incarceration and Detention During COVID-19

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Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) respectfully submits this testimony for the record for the public hearing entitled, “Examining Best Practices for Incarceration and Detention During COVID-19” held on June 2, 2020 by the U.S. Senate, Committee on the Judiciary in Washington, D.C. We write to express our concerns with the problematic practices in immigrant detention during this pandemic.

Advancing Justice | AAJC is a national non-profit, non-partisan organization that works through policy advocacy, education, and litigation to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all. Founded in 1991, Advancing Justice | AAJC is one of the nation's leading experts on civil rights issues of importance to the Asian American and Pacific Islander (AAPI) community including immigration and immigrants’ rights, census, hate incidents, language access, technology and telecommunications, and voting rights.

We appreciate this opportunity to submit a statement for this hearing on the harms resulting from the problematic practices in detention during this pandemic. Advancing Justice | AAJC seeks to draw the committee’s attention to our concerns about the treatment and care of detainees as our country battles with COVID-19. Moreover, we write to express our serious concerns about the United States detention system as a whole. Immigrant detention should be a last resort, not the norm; however, the Department of Homeland Security continues to increase the number of

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detained immigrants despite there being adequate, cost-effective, and more humane alternatives. The U.S. government should do everything in its power to keep families together and only take away people's liberty when there is a compelling need to do so. The current immigration detention system only serves to separate families and violate the rights of vulnerable populations including children. Detention centers have never been safe and continue to provide inadequate medical care leading to human rights abuses. These concerns have only increased during this pandemic as detainees, particularly those with health conditions, are vulnerable to COVID-19. We urge Congress to not let these human rights abuses continue, to release immigrant detainees, particularly those with preexisting conditions, and stop the expansion and use of detention centers to criminalize immigrant communities.

I. Government's Inhumane Use of Detention Centers Against Asian Immigrants

The government has a long history of criminalizing and detaining Asian immigrants. One of the worst examples of detention was the incarceration of 120,000 Americans of Japanese ancestry during World War II.¹ Japanese Americans were incarcerated based solely on their ancestry. Children were not spared this association of guilt based on ancestry. Fathers, mothers, and children were rounded up and forced to leave their homes and move into detention centers.² George Takei likened the Japanese American internment and the modern day detention centers to concentration camps.³ He compared the family separation experienced by Japanese Americans with what many immigrant families face today in detention centers.⁴ This legacy of criminalizing and holding in custody immigrant communities continues to this day, and repeats the horrors of the internment of Japanese Americans in detention centers.

¹ See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment of Americans of Japanese ancestry); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review).

² *Id.*

³ *Concentration Camp Survivor George Takei Talks Family Separation At U.S. Border*, HUFFPOST (July 10, 2019), https://www.huffpost.com/entry/concentration-camps-border-george-takei-family-separation_n_5d2533a1e4b0cfb595fd8e65?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAACBreMqk0eT4UKSrEyj1LdhMw3gE_pMwlQ8sZZ3X30XH8q46mcjWUu3_5tU1XAcFlj6i_zFv_ZwNFXVEADBZz4JBH63uLu7vW0KJEdxesCIbxLRnbTK2tFLbs34TDFJgQBuslspXR8DH0pvYJqfHG0TqUfG-ExuyO06eMus8x7v (last visited September 25, 2019).

⁴ *Id.*

Detaining and separating families has a real human price that people continue to pay today. As of March 2019, the U.S. reached a historic high of 50,059 detained immigrants.⁵ Asian immigrants make up a significant portion of this population of detained immigrants. Despite only making up a small percentage of the total population, there were as many as 4,881 Asian immigrants who were detained as of June 2018.⁶ Many of them were asylum seekers and refugees who were seeking protection in the United States under our refugee and asylum laws. The majority of Asian immigrants detained were from India, China, Bangladesh, Nepal, Iraq, Vietnam, and Pakistan.⁷

Thousands of South Asian immigrants are harmed by immigrant detentions, with Indian nationals in particular, having the highest number of detainees of all Asian immigrants.⁸ Just from October 2014 to April 2018, over 17,000 South Asians were arrested by Border Patrol.⁹ In June 2018, over 3,000 South Asian migrants were detained.¹⁰ Many South Asian immigrants are simply seeking asylum in the United States and fleeing persecution in their home countries.

⁵ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 63 (2019) (citing Emily Kassie, “How Trump Inherited His Expanding Detention System,” *The Marshall Project* (February 12, 2019); Spencer Ackerman, “ICE Is Detaining 50,000 People, an All-Time High,” *Daily Beast* (March 9, 2019)), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

⁶ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 63 (2019) (citing TRAC, “Immigration and Customs Enforcement Detainees.”), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

⁷ *Id.*

⁸ Advancing Justice—AAJC & Advancing Justice—Los Angeles, Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities 63 (2019) (citing Parvini, “Growing Number of California Detainees”; PTI, “2,382 Indians Languishing in U.S. Jails for Illegally Crossing Border,” *Economic Times of India* (November 12, 2018)), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

⁹ South Asian Migrants in Detention 1 (2019) (citing TRAC, “CBP Arrests”), available at <http://saalt.org/wp-content/uploads/2019/08/South-Asian-Migrants-in-Detention-Factsheet.pdf>.

¹⁰ Advancing Justice—AAJC & Advancing Justice—Los Angeles, Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities 63 (2019) (citing Transactional Records Access Clearinghouse, “Immigration and Customs Enforcement Detainees,” Syracuse University), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

Instead of finding safety and protection, many South Asian asylum seekers are instead arrested and imprisoned in detention centers.

Our current detention system impacts not only asylum seekers, but all immigrants including long-time members of our communities, lawful permanent residents (LPRs), and even family members of U.S. citizens. As such, there are many Asian immigrants who are subject to unfair and unnecessarily harsh mandatory detention and automatic deportation laws that were passed in 1996. Within the Asian American community, Southeast Asian immigrants have been notably targeted. There are 17,000 Southeast Asian lawful permanent residents living with a final order of removal.¹¹ Thousands of Southeast Asian immigrants are harmed by the detention system. Despite coming here as refugees, many long-term members of communities now must leave the only country that is home to them. In June 2018, about 43% of Vietnamese Americans detained lived in the United States for over two decades.¹² The percentage of Lao and Cambodian Americans detained who lived here for over twenty years is even higher at 86% and 75%, respectively.¹³ Southeast Asian households who have a family member that is detained face family separation and the continued hardship of not knowing whether their families will be able to reunite or be separated indefinitely.¹⁴ Detention and family separation traumatizes and harms families and communities.

The human impact of current immigration policies and the detention system on the Southeast Asian immigrant community and on families is tremendous. Thear Sam was detained in the fall of 2018 leaving behind his family, all of whom are U.S. citizens.¹⁵ As a result of his detention, his family experienced both emotional and financial hardship.¹⁶ Since Thear was the main provider for his family, his detention meant that his high school daughter could no longer go to

¹¹ *SEARAC Denounces Scheduled Deportation over 50 Cambodian Americans*, SEARAC (July 1, 2019), <https://www.searac.org/immigration/searac-denounces-scheduled-deportation-of-over-50-cambodian-americans/> (last visited September 25, 2019).

¹² ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, *INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES* 64 (2019) (citing TRAC, “ICE Detainees”), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

¹³ *Id.*

¹⁴ National Asian Pacific American Women’s Forum & Southeast Asia Resource Action Center, “Dreams Detained in Her Words: The Effects of Detention and Deportation on Southeast Asian American Women and Families,” https://www.searac.org/wp-content/uploads/2018/09/dreams_detained_in_her_words_report-2.pdf.

¹⁵ Hannah Woerner, Katrina Dizon-Mariateague, and Nancy Nguyen, “Families Torn Apart: Trump’s Quiet Attacks on the Southeast Asian Immigrant Community,” Medium (Apr. 5, 2018).

¹⁶ *Id.*

her after-school activities.¹⁷ His mother, who is a breast cancer survivor, developed depression and had difficulty eating and sleeping following her son’s arrest.¹⁸ The impact of his arrest ripples out to whole communities.¹⁹ Diane Ford from Long Beach, California described the effect of his detention: “Thear is a well-known and well-loved member of the Long Beach community. Those closest to him have been traumatized by the abrupt nature of his arrest, and ICE’s refusal to be transparent has only made things worse.”²⁰ Thear is not alone. There are hundreds of Southeast Asian refugees and families torn apart as loved members of communities are taken away to be deported.²¹

II. Troubling Use of the Detention Centers

A. Detention Centers are Inadequate and Unsafe Particularly During COVID-19

Detention centers have always provided inadequate medical care, and have never been safe for detainees. In many instances, they are even life-threatening for immigrants especially during COVID-19. On May 6, 2020, Carlos Ernesto Escobar Mejia was the first immigrant detainee to die in ICE custody after contracting COVID-19.²² He was detained at Otay Mesa Detention Center which is run by CoreCivic, a private prison corporation.²³ Carlos had lived in the United States for over four decades.²⁴ Before his passing, he was feeling sick, fearful for his health, and asked for medical attention.²⁵ Carlos had a history of medical conditions that made him extremely vulnerable to COVID-19 including diabetes, high blood pressure, heart problems, and

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² “Tragic Death in ICE Detention Could Have Been Prevented; Medical Legal Experts Warned of Dangerous Condition,” *Human Rights First* (May 7, 2020), available at <https://www.humanrightsfirst.org/press-release/tragic-death-ice-detention-could-have-been-prevented-medical-legal-experts-warned>.

²³ Sam Levin, “He lived in the US for 40 years. Then he became the first to die from Covid-19 in immigration jail,” *The Guardian* (May 12, 2020), available at <https://www.theguardian.com/us-news/2020/may/12/first-ice-detainee-dies-coronavirus-immigration-carlos-ernesto-escobar-mejia#maincontent>.

²⁴ *Id.*

²⁵ *Id.*

an amputated foot.²⁶ Even before COVID-19, Otay Mesa did not provide adequate medical care, and the problem has only been exacerbated during this pandemic.

Our broken detention system threatens the health and safety of the nearly 40,000 immigrants and asylum seekers who are detained in 200 detention centers across the country by DHS and ICE.²⁷ Amnesty International reports that detention centers provide inadequate precautions for COVID-19 by failing to provide soap and sanitizer or facilitate social distancing practices.²⁸ This report is supported by the personal accounts of detained individuals. Ostian Johannes Favi, who was formerly in ICE custody, shared at the Democratic Roundtable on ICE’s Response to COVID-19 by the House Committee on the Judiciary that no one at his facility had told them to wash their hands or provided any instructions.²⁹ Considering the ongoing issues of inadequate medical care and precautions for COVID-19, there is a danger for mass COVID-19 infections across all the immigration detention facilities. A new study by experts from Brown University, Brandeis University, University of British Columbia, British Columbia Children’s Research Institute, and George Mason University found that “72% of individuals are expected to be infected by day 90 under the optimistic scenario, while nearly 100% of individuals are expected to be infected by day 90 under a more pessimistic scenario.”³⁰ Housing migrants and asylum seekers in these dangerous conditions during COVID-19 presents serious public health concerns.

Although the pandemic has increased the urgency for change, detainees have long had problematic issues with medical care and treatment of detainees even before COVID-19. From 2003 until January 2018, about 188 detainees died in ICE detention facilities.³¹ The death rates

²⁶ *Id.*

²⁷ AMNESTY INTERNATIONAL, USA: ‘WE ARE ADRIFT, ABOUT TO SINK’ – THE LOOMING COVID-19 DISASTER IN UNITED STATES IMMIGRATION DETENTION FACILITIES 1 (2020).

²⁸ *Id.*

²⁹ *Democratic Roundtable on ICE’s Response to COVID-19: Before the H. Comm. on the Judiciary*, 116th Cong. (2020) (statement of Ostian Johannes Favi).

³⁰ “Study Projects Significant Impact on Immigrants and Local Health Care if ICE Detention Populations are Not Decreased,” Government Accountability Project (April 2020), available at <https://whistleblower.org/press/study-projects-significant-impact-on-immigrants-and-local-health-care-if-ice-detention-populations-are-not-decreased/>.

³¹ Hannah Woerner, Katrina Dizon-Mariateague, and Nancy Nguyen, “Families Torn Apart: Trump’s Quiet Attacks on the Southeast Asian Immigrant Community,” *Medium* (Apr. 5, 2018) (citing Human Rights et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (June 2018); Lisa Riordan Seville, Hannah Rappleye, and Andrew W. Lehren, “22 Immigrants Died in ICE Detention Centers during the Past Two Years,” *NBC News* (January 6, 2019); Erin Durkin, “The Immigrants Who Have Died in U.S. Custody in 2018,” *The Guardian* (December 29, 2018); Scott Bixby, “Immigrant Miscarriages in ICE Detention Have Nearly Doubled under Trump,” *Daily Beast* (March 1, 2019); Spencer Woodman, “Private Prison Continues to Send ICE Detainees to Solitary Confinement for Refusing Voluntary Labor,” *The Intercept* (January 11, 2018); Ryan Devereaux and Spencer Woodman, “Immigrant Detainee Accuses ICE Contractor CoreCivic of Locking Him in Solitary

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have only worsened under the Trump administration. In FY 2017, more immigrants had died in detention than in any year since 2009.³² A leading cause of death for detainees is inadequate medical care.³³

Children are even more vulnerable to the deplorable conditions that exist in detention centers. In 2018, three children, all under nine years old, died in a detention center due to inadequate medical care.³⁴ Pregnant women who need special care, have suffered miscarriages during their detainment.³⁵ In 2018, at least 18 women suffered miscarriages.³⁶ The number of miscarriages have doubled under the first two years of the Trump administration.³⁷

There have been reports of children being subjected to inhumane conditions at detention centers.³⁸ They have been forced to sleep on cement floors and lack adequate health care or hygiene.³⁹ The Associate Press reported that 250 infants, children, and teenagers were housed in a Texas migrant detention facility in Clint, Texas.⁴⁰ There, the children lacked food, water, and adult supervision.⁴¹ Warren Binford, a law professor at Willamette University in Oregon, described the conditions as: “Basically, what we saw are dirty children who are malnourished, who are being severely neglected. They are being kept in inhumane conditions. They are essentially being

over \$8,” *Intercept* (April 19, 2018)), available at https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

³² *Id.* at 62-63.

³³ *Id.* at 63.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *What Will Indefinite Detention Do to Migrant Kids?*, THE NEW YORK TIMES (August 27, 2019), <https://www.nytimes.com/2019/08/27/opinion/migrant-children-detention.html> (last visited September 23, 2019).

³⁹ *Id.*

⁴⁰ *A firsthand report of ‘inhumane conditions’ at a migrant children’s detention facility*, PBS NEWS HOUR (June 21, 2019), <https://www.pbs.org/newshour/show/a-firsthand-report-of-inhumane-conditions-at-a-migrant-childrens-detention-facility> (last visited September 23, 2019).

⁴¹ *Id.*

warehoused, as many as 300 children in a cell, with almost no adult supervision.”⁴² We must stop using detention centers which harm children and other vulnerable populations.

AAPI detainees are subject to much of the same mistreatment as other immigrants and asylum seekers in ICE and CBP facilities. Immigrant detainees have faced retaliation and backlash at detention centers for exercising their constitutional rights. Solitary confinement has been used a cruel method of retaliation. Detained immigrants, including those who are Bangladeshi, were punished with solitary confinement because they refused to work for one dollar a day.⁴³ South Asian asylum seekers who protested their detention by going on a hunger strike were not only placed in solitary confinement but force-fed for two weeks,⁴⁴ a process that two of the individuals have described as both painful and dehumanizing.⁴⁵ Additionally, South Asian and Sikh detainees in Victorville, California were not provided any religious accommodations.⁴⁶ They were banned from wearing their religiously-mandated turbans and no accommodations were made for their religious dietary restrictions.⁴⁷ Detention centers are ripe with violations of ethics, international law, and constitutional rights.

Moreover, there must be more oversight over ICE facilities and detention activities. In OIG’s inspection of four ICE detention centers, all four were noncompliant with ICE food safety standards, including refrigerators full of spoiled, moldy, and expired food. Three of the facilities violated the rights of the detained individuals, including prematurely placing individuals in disciplinary segregation. Two of the facilities presented health risks to detained individuals, with the Essex bathroom area covered in mold along the walls, vents, ceilings, mirrors, and shower

⁴² *Id.*

⁴³ Spencer Woodman, Private Prison Continues to Send ICE Detainees to Solitary Confinement for Refusing Voluntary Labor, *The Intercept* (January 11, 2018).

⁴⁴ Garance Burke & Martha Mendoza, ICE Force-feeding Detainees on Hunger Strike, *AP News* (January 31, 2019), <https://www.apnews.com/c4b201dac8bf48eba17485a5c357b810> (last visited September 25, 2019).

⁴⁵ Moore, R. (2019, August 11). Two of the Asylum-Seekers Who Were Force-Fed at an El Paso Detention Center Are Now Free. *Texas Monthly*. Retrieved from <https://www.texasmonthly.com/news/asylum-seekers-hunger-strikes-force-fed-el-paso-detention-center-free/>

⁴⁶ *Hundreds of Sikh Asylum Seekers Housed in Victorville Federal Prison Illegally Banned from Wearing Turbans*, *India West* (July 30, 2018), https://www.indiawest.com/news/global_indian/hundreds-of-sikh-asylum-seekers-housed-in-victorville-federal-prison/article_cfb6f080-9425-11e8-811b-5b3bfd2ed928.html (last visited September 25, 2019).

⁴⁷ *Id.*

stalls.⁴⁸ Similarly, OIG observed serious overcrowding problems in the El Paso Del Norte Processing Center in their May report⁴⁹, and again at five separate Border Patrol facilities and two ports of entry in the Rio Grande Valley⁵⁰. DHS' s standards and internal oversight of these facilities are inadequate to protect the rights of detainees.

A June 2018 OIG report found inspections by the Nakamoto Group insufficient and the process compromised by notification of inspections given to detention facility staff. Though ODO's inspections are more comprehensive, OIG found that they are insufficient in their infrequency. Regardless, current inspection procedures are still insufficient given that 96% of waiver requests by ICE contractors with deficient conditions are granted and that "ICE does not adequately follow up on identified deficiencies or systematically hold facilities accountable for correcting deficiencies, which further diminishes the usefulness of both Nakamoto and ODO inspections."⁵¹

B. Lack of Due Process

Immigrants in deportation proceedings lack resources, due process, and access to legal counsel. Immigrants who are detained and in removal proceedings do not have the right to counsel at the government's expense.⁵² This leaves indigent immigrant populations vulnerable⁵³, and they are forced to handle the intricacies and complications of the U.S. immigration system alone before a judge and an opposing DHS attorney. Moreover, detained immigrants face severe logistical challenges in accessing legal resources. For example, about 30% of immigrants detained in ICE facilities are more than one hundred miles from the nearest government-listed legal aid provider.⁵⁴ The representation rate for detained immigrants was only 14% between 2007 and

⁴⁸ *Id.* at 3.

⁴⁹ Department of Homeland Security/Office of Inspector General. (2019, May 30). *Management Alert - DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center*, p. 2-3. Retrieved from <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>

⁵⁰ *Id.* at 4.

⁵¹ Department of Homeland Security/Office of Inspector General. (2018, June 26). *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, p. 1. Retrieved from <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

⁵² Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, (September 28, 2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court> (last visited September 25, 2019).

⁵³ *Id.*

⁵⁴ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, *INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES* 62 (2019) 1620 L Street, N.W., Suite 1050, Washington, DC 20036 T 202-296-2300 F 202-296-2318 www.advancingjustice-aajc.org

2012.⁵⁵ This representation rate is even lower at 10% for detained immigrants in a small city or rural area.⁵⁶ This lack of representation makes all the difference in court. A detained person who has a lawyer is more than two times likely to win their case.⁵⁷ These are life-changing cases that decide whether families stay together or are torn apart.

III. Despite Existing Inadequate Facilities & COVID-19, The Use of Detention Centers Continue

Despite these human rights abuses and dismal conditions in ICE detention centers, the number of immigrants detained has continued to increase under every single presidential administration over the last quarter century. We have seen a seven-fold increase of detained immigrants since 1994.⁵⁸ As of February 2019, we have 45,890 detained immigrants compared to 6,785 in 1994.⁵⁹ We reached a historic high of 50,059 detained immigrants as of March 6, 2019.⁶⁰ Our over bloated detention system had endangered lives and continue to do so under COVID-19. As of May 31, 2020, ICE tested 2,781 detainees resulting in 1,461 confirmed cases and 754 positive cases in custody.⁶¹ With COVID-19 running rampant in detention, detainees need to be released

(citing Ingrid Eagly and Steven Shafer, “Access to Counsel in Immigration Court,” *American Immigration Council* (September 28, 2016); Kyle Kim, “Immigrants Held in Remote ICE Facilities Struggle to Find Legal Aid before They’re Deported,” *Los Angeles Times* (September 28, 2017)), available at https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 63 (2019) (citing Emily Kassie, “How Trump Inherited His Expanding Detention System,” *The Marshall Project* (February 12, 2019); Spencer Ackerman, “ICE Is Detaining 50,000 People, an All-Time High,” *Daily Beast* (March 9, 2019)), available at https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ “ICE Issues Guidance on COVID-19,” AILA (June 2020) (citing U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE GUIDANCE ON COVID-19 (2020)), available at <https://www.aila.org/infonet/ice-issues-guidance-on-covid-19>.

to preserve public health. However, as of May 30, 2020, thousands still remain in detention vulnerable to infection.⁶²

The current predicament with the spread of COVID-19 in detention centers is a result of the expansion of and increases in funding for detention by Congress. The ICE detention and deportation budget has actually increased 40% since Trump became president.⁶³ That 40% increase equates to an almost one billion dollar increase from \$4.3 to \$4.1 billion.⁶⁴ Even with these increases, ICE overspends its congressionally appropriated budget.⁶⁵ Despite overspending, DHS still transferred \$271 million from the Federal Emergency Management Agency (FEMA), the Coast Guards, and other accounts for detention spending.⁶⁶ Although, Congress has reprimanded ICE for what it considers to be a “lack of fiscal discipline”, Congress still continues to increase funding. In FY 2019, ICE was allocated a record-breaking amount of \$4.2 billion for detention and deportation activities.⁶⁷ The expansion of detention has led to the current crisis with 40,000 migrants and asylum seekers housed in facilities where they face high risks for a mass-scale COVID-19 outbreak.

IV. Recommendations

The Government must release immigrant detainees to protect their individual health and for the public health at large. ICE must release detainees who are especially vulnerable to severe complications such as serious illness or even death if infected with COVID-19. There must be

⁶² U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DETENTION STATISTICS: ICE CURRENTLY DETAINED POPULATION (May 2020) (According to ICE, 25,421 individuals still remain in detention.), available at <https://www.ice.gov/detention-management>.

⁶³ ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 63 (2019) (citing Detention Watch Network, “ICE’s Fiscal Mismanagement: Deceit and Abuse”; Department of Homeland Security Appropriation Act, 2017 (draft memorandum); Robin Urevich, “How the Spending Bill Can Hurt Immigrant Detainees,” *The American Prospect* (February 15, 2019)), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *As Puerto Rico Braces for Storm, DHS, FEMA To Move \$271 Million to Border Operations*, NPR (August 27, 2019), https://www.npr.org/2019/08/27/754838143/as-puerto-rico-braces-for-storm-dhs-fema-to-move-271-million-to-border-operation?fbclid=IwAR11GzYYw3Ge_Xmr7x9EiT6RHFGKGNjwOI8mPuUXw4x1Q0UrJQP8AcAjoBc (last visited September 25, 2019).

⁶⁷ *Id.*



greater oversight over detention facilities to ensure that adequate care and precautions are being taken to protect detainees from COVID-19.

The Government must stop this escalation of immigration enforcement and keep families together. This escalation has only served to create an environment of fear for immigrant communities. Detention centers are cruel and not necessary. We should seek alternative avenues to enforce our civil immigration laws.

Congress should end mandatory detention. Currently, the Immigration and Nationality Act mandates that DHS detain all noncitizens who fall under select inadmissible and deportable grounds. This is particularly troubling given that roughly 80% of all deportable Southeast Asian refugees are subject to these mandatory detention requirements regardless of circumstance. Because the repatriation of these individuals is often subject to years and decades of uncertainty and bureaucratic delay, they are often prone to longer periods of detention. All immigrants should receive an individualized determination as to whether they are a threat to public safety or a flight risk that can't be addressed by less restrictive means.

Additionally, the use of private detention centers should be terminated. Depriving people of their liberty should not be an industry for profiteering. Congress must also require that there be stronger protections in facilities, increased oversight and transparency, and stronger protections for vulnerable populations. Many of these recommendations are contained in the Dignity for Detained Immigrants Act, which Congress should take up and pass.

We recommend budget cuts to ICE and CBP for enforcement, detention, and deportation. We recommend that there be stronger oversight and accountability mechanisms to ensure that ICE does not overspend past their budget constraints. This administration has criminalized immigrants, including asylum seekers who have the right to seek asylum. This administration must not undermine our refugee and asylum laws. Rather than criminalizing immigrants and punishing families, we recommend that the government should focus on programs that make our communities strong and vibrant. We must disentangle local law enforcement and government agencies with immigration enforcement. We should invest in education, infrastructure, health care, and housing. We should not be destabilizing communities and separating families. We should support naturalization and a pathway to citizenship for undocumented immigrants. We must promote the well-being of communities and stand with our core American values.

V. Conclusion

The lives of nearly 40,000 immigrants and asylum seekers are at stake. Every day that our current immigration enforcement system continues is another day that the federal government is a part of a system of abuse that criminalizes and harms immigrant communities. We urge Congress to stop these human rights abuses and prevent a large-scale COVID-19 outbreak that could lead to the loss of thousands of lives under our current immigration enforcement and detention system. We should turn to community-based solutions that help keep our immigrant communities strong and vibrant.