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United States Senate
WASHINGTON, DC 20510-3805

July 16, 2020

The Honorable Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement (ICE)
500 12th Street SW, Mail Stop 5003
Washington, DC 20536-5003

Dear Acting Director Albence:

On June 26, 2020, the honorable Dolly Gee in California's Central District Court ruled in the case of Jenny L. Flores, et al. v. William Barr, et al. that Family Residential Centers, including Berks Family Residential Center (BFRC), must release children in their custody due to health and safety concerns related to the Covid-19 pandemic. The order directs ICE to (1) release minors to available sponsors or other available Covid-free non-congregate settings with the consent of their adult guardians or parents; or (2) release the minors with their adult guardians or parents. It is my understanding that, to date, BFRC has not released any families pursuant to the order and that ICE intends to exercise the option to separate families by releasing children while continuing to detain parents.

Pursuant to the Immigration and Nationality Act, ICE has significant discretion in determining whether to detain or release individuals pending immigration proceedings. The factors used to make detention decisions can include criminal history, gang affiliation, previous compliance history, community or family ties, status as a primary caregiver, medical conditions or other humanitarian conditions. This broad discretion allows decisions to be made on a case-by-case basis pursuant to the unique circumstances of each individual. Here, the imperative to keep families together and protect them from this deadly pandemic should weigh heavily in favor of release.

When an individual is released, ICE can utilize several alternatives to detention that are effective and far less costly than detention. Under the Intensive Supervision Appearance Program III (ISAP III), individuals are released under varying levels of case management and supervision, including face-to-face and telephonic meetings, unannounced home visits, scheduled office visits and court and meeting alerts. In addition, ICE may utilize technology to monitor participants or release individuals on bond. Alternatives to detention are extremely effective, as illustrated by a 2014 GAO report that found 95 percent of those in "full service" ATDs appear for their final hearings.

In addition, a case management approach that utilizes social and legal supports in lieu of strict monitoring such as ankle bracelets, is not only preferred from a humanitarian standpoint, but is extremely effective. For example, the Family Case Management Program (FCMP), provided

case managers, support services like food, clothing and medical care, as well as legal information. After reviewing the program, ICE found that the rates of compliance for FCMP were consistent with other monitoring options but the costs were higher: FCMP cost approximately \$35.73 per day per enrollee in FY 2017, compared to approximately \$4.20 per day for ISAP III. Overall, this is still far lower than the average daily cost of detention, which are \$137 for single adults and \$319 for mothers and children in family residential centers. Indeed, a 2014 GAO report found that the daily cost of ATD was less than 7 percent of that of detention. These costs are likely even higher due to enhanced sanitization protocols required by the pandemic.

Just as monetary costs have likely risen due to the pandemic, so have the risks to health and safety of detainees. We know that congregate settings such as nursing homes, prisons and detention centers contribute to the rapid spread of COVID-19 because social distancing is often not possible. Some detained individuals may be medically vulnerable and, without adequate space to implement social distancing, may be most at-risk of becoming critically ill from the virus. Additionally, a coronavirus outbreak at a detention facility will affect far more than just those inside the facility. Without adequate testing or proper personal protective equipment (PPE), immigration enforcement officers will be more likely to take the virus home with them and spread it unknowingly in the community, potentially placing strain on local healthcare facilities.

It is well documented that even short term detention poses significant health risks to children. According to the American Academy of Pediatrics, even short-term detention can cause psychological trauma and induce long-term mental health risks for children. However, research similarly shows that separating a child from their parents leads to long-term negative psychological, social and health impacts. Complying with the Judge Gee's order by separating children from their families would merely be substituting one harm to the child for another. Moreover, forcing parents to choose between keeping their child detained or separating from them is unconscionable and inherently coercive. I therefore strongly urge you to comply with the order by releasing intact families into ATD. ICE has the authority to do this, and doing so is in the best interest of the child, the family and public health.

By July 17th, I respectfully request that you provide responses to the following questions.

1. How do you intend to comply with the order to release children by July 17, 2020?
2. Has ICE considered using its discretion to release children and parents held at the BFRC?
 - a. In making a determination about release, what factors were considered?
 - b. If you have chosen not to release adults please list the specific reasons that determination was made for each detainee.
3. Has ICE sought consent from parents to release children to sponsors?
 - a. What information is provided to parents when presented with that option and are they provided access to counsel?
 - b. Have any parents consented to release?

Sincerely,



Robert P. Casey, Jr.
United States Senator