

## DECLARATION OF ANDREW LORENZEN-STRAIT

I, Andrew Lorenzen-Strait, hereby declare:

1. I am currently the Executive Director for Health and Wellness and Lutheran Social Services of the National Capital Area where I oversee migrant support services, including programming in behavior health. Prior to that, from May 2019 to January 2020, I served as the Director of Children and Family Services at Lutheran Immigration and Refugee Services.
2. From 2008 to May 2019, I served in various roles at U.S. Immigration and Customs Enforcement (“ICE”). Most recently, I was the Deputy Assistant Director for Custody Programs in ICE, Office of Enforcement and Removal Operations (“ERO”). I served in this capacity for over six years, from April 2013 to May 2019, under both Democratic and Republican White House administrations. As Deputy Assistant Director, I oversaw health and welfare programs and services in immigration detention, including innovative programs to serve vulnerable populations. Among my relevant responsibilities included overseeing the use of segregation in ICE detention facilities, overseeing field level enforcement decisions in cases involving parents and primary caretakers, and monitoring compliance with ERO processes and standards. I also served in other capacities within ICE for over five years prior to that leadership position. Attached as Exhibit A is a copy of my curriculum vitae.
3. I submit this declaration to explain how ICE has exercised and still exercises discretion for purposes of releasing individuals with serious medical conditions from detention. Exercising prosecutorial discretion over detention was not only common, it was and continues to be an integral aspect of ICE’s enforcement practices.
4. During my time at ICE, the agency’s policy and practice was to limit the detention of noncitizens with special vulnerabilities.<sup>1</sup> This group includes individuals who are known to be suffering from serious physical or mental illness, who have disabilities, who are elderly, pregnant, or nursing, who demonstrate that they are primary caretakers, who are

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<sup>1</sup> See, e.g., U.S. Immigration and Customs Enforcement, “Detention Reform,” (last updated July 24, 2018), <https://www.ice.gov/detention-reform#tab1> (referencing use of risk classification assessment tools that “require[] ICE officers to determine whether there is any special vulnerability that may impact custody and classification determinations”); ICE Enforcement and Removal Operations, “Directive 11071.1: Assessment and Accommodations for Detainees with Disabilities” (Dec. 15, 2016), at 9 (providing for release as an option for detainees with disabilities); Doris Meissner, “Exercising Prosecutorial Discretion,” Immigration and Naturalization Services (Nov. 17, 2000), at 11 (citing “aliens with a serious health concern” as a trigger for the favorable exercise of discretion); see also *Franco-Gonzalez v. Holder*, 767 F. Supp. 2d 1034, 1061 (C.D. Cal. 2010) (providing for release of individuals with severe mental illnesses unless government could show that ongoing detention is justified).

LGBTI, or whose detention was otherwise not in the public interest.<sup>2</sup> ICE exercises humanitarian parole authority all the time for serious medical reasons. For instance, pregnant women never give birth in ICE custody.

5. Some of the medical conditions that constitute serious physical illness included any terminal illness, any condition that required imminent care to prevent deterioration, and any condition that precluded the individual from being housed.
6. Our custody determinations for individuals with disabilities also considered whether the physical or mental impairment would make them more susceptible to harm while in ICE custody.
7. ICE considered individuals whose detention is otherwise not in the public interest to include detainees who may be at a heightened risk to medical harm in detention.
8. Under this rubric, ICE would have considered individuals at high risk of suffering complications and/or death from a highly infectious and incurable disease such as COVID-19 to be detainees with special vulnerabilities, eligible for release from detention.
9. Upon learning that a detainee had a special vulnerability, ICE was required to monitor the detainee's case and consider options as soon as practicable, including transfer to another detention with appropriate medical capabilities or off-site treatment facility, or release where appropriate medical care was not available in custody.
10. This policy applied regardless of the detainee's status or the statutory basis for that individual's detention. This meant that individuals held under mandatory detention, pursuant to the Immigration and Nationality Act ("INA") § 236(c), were also eligible for release, particularly where the nature of their illness could impose substantial health care costs or the humanitarian equities mitigating against detention are particularly compelling.
11. This policy and practice of releasing individuals with special vulnerabilities from immigration detention was authorized under the INA §§ 212(d)(5), 235(b), 236, 241, and 8 C.F.R. §§ 1.1(q), 212.5, 235.3, 236.2(b). There is no statutory limit on ICE's exercise of prosecutorial discretion over custody determinations.
12. ICE's policy and practice regarding individuals with special vulnerabilities was reflected in a memorandum from Jeh C. Johnson, Secretary of the Department of Homeland

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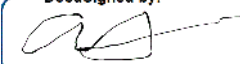
<sup>2</sup> Jeh Charles Johnson, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," U.S. Department of Homeland Security (Nov. 20, 2014), *available at* [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf), at 5.

Security, in 2014 (“Johnson memo”).<sup>3</sup> ICE has also issued other guidance for prosecutorial discretion for detention, including a memorandum issued by John P. Torres, Director of ICE, in 2006 regarding ICE’s exercise of discretion in cases of extreme or severe medical concern (“Torres memo”),<sup>4</sup> and a memorandum from John Morton, Director of ICE, in 2011 (“Morton memo”) regarding the exercise of prosecutorial discretion in ICE’s enforcement priorities, including detention.<sup>5</sup> The Johnson memo is attached as Exhibit B, the Torres memo is attached as Exhibit C, and the Morton memo is attached as Exhibit D.

13. Although the Johnson, Torres and Morton memoranda have been rescinded by the current administration, there have been no changes to the statutory or regulatory basis for the use of prosecutorial discretion in custodial determinations in immigration detention.
14. In other words, there are no statutory or regulatory limits on ICE’s exercise of prosecutorial discretion over custody determinations. In fact, ICE’s enforcement priorities have always been shaped by the necessary use of prosecutorial discretion with respect to immigration detention.
15. ICE not only has authority to exercise prosecutorial discretion to release individuals for medical concerns, it has routinely exercised such discretion in the past.
16. The COVID-19 virus represents an unprecedented risk to detainee health and safety that should prompt officials to examine the custodial status of all those most at risk and such an examination would result in their immediate release.

I, Andrew Lorenzen-Strait, swear under the penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing declaration is true and correct to the best of my knowledge and belief.

Executed on this 14th day in March, 2020 at Davidsonville, Maryland.

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Andrew Lorenzen-Strait

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<sup>3</sup> *See id.*

<sup>4</sup> John P. Torres, “Discretion in Cases of Extreme or Severe Medical Concern,” U.S. Immigration & Customs Enforcement (Dec. 11, 2006), *available at* [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/discretionincasesofextremeorseveremedicalconcerndec112006.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/discretionincasesofextremeorseveremedicalconcerndec112006.pdf).

<sup>5</sup> John Morton, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens,” U.S. Immigration and Customs Enforcement (June 17, 2011), *available at* <https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.