

July 24, 2020

The Honorable Tim Scott
United States Senate
Washington, D.C. 20510

Re: ACLU Immigration Priorities for COVID-19 Relief Package

Dear Senator Scott:

On behalf of the American Civil Liberties Union of South Carolina, we write to urge you to expand much needed COVID-19 relief in order to protect the health and future of the country. As cases rapidly spike around the country, the need to slow the spread of this devastating virus and ensure the future of the country could not be more critical.

While the COVID-relief bills passed by Congress included many necessary provisions, tens of millions of immigrants have been left out of relief. This is both cruel, particularly given how many immigrants are "essential" workers putting their lives at risk for us, and detrimental to the public health and economic future of the country, particularly as testing and treatment is critical to slowing the spread of COVID-19.

Nationwide, there are approximately 19.8 million "essential" immigrant workers, risking their lives under the constant threat of exposure.¹ There are 1.7 million immigrant medical and health care workers caring for COVID-19 patients and 27,000 Deferred Action for Childhood Arrivals (DACA) recipients working as doctors, nurses, and paramedics.² In South Carolina, there are 1,623 people with Temporary Protected Status³ and 5,850 DACA recipients,⁴ and over 107,790 people who are members of mixed-status families, including 49,134 children⁵--many of whom have been left out of COVID-related relief. Everyone in our country is showing up shoulder-to-shoulder, including immigrants, to help fight this pandemic in their roles as health care professionals, manufacturers, farmworkers, grocery store employees, restaurant and delivery workers, and more. Further, they will also be essential in our nation's post-coronavirus recovery.⁶

We urge you to close these gaps by providing:

- (1) Testing and treatment for everyone who needs it via emergency Medicaid;

¹ Donald Kerwin, Mike Nicholson, Daniela Alulema, & Robert Warren, *US Foreign-Born Essential Workers by Status and State, and the Global Pandemic*, CENTER FOR MIGRATION STUDIES (May 1, 2020).

² David J. Bier, *Immigrants Aid America During COVID-19 Crisis*, CATO INST. (Mar. 23, 2020), <https://www.cato.org/blog/immigrants-aid-america-during-covid-19-crisis>; JEROME N. FRANK LEGAL SERVICES ORGANIZATION to The Honorable Scott S. Harris, *Letter to Court for 18-589*, (March 27, 2020), https://www.supremecourt.gov/DocketPDF/18/18-589/139241/20200327101941772_2020%2003%2027%20Letter%20to%20Court%20for%2018-589.pdf.

³ Jill H. Wilson, *Temporary Protected Status: Overview and Current Issues*, Congressional Research Service, (Apr. 1, 2020), <https://fas.org/sgp/crs/homsec/RS20844.pdf>.

⁴ Nicole Prchal Svajlenka, *What We Know About DACA Recipients, by State*, CENTER FOR AMERICAN PROGRESS (Sept. 12, 2019), <https://www.americanprogress.org/issues/immigration/news/2019/09/12/474422/know-daca-recipients-state/>.

⁵ Silva Methema, *State-by-State Estimates of the Family Members of Unauthorized Immigrants*, CENTER FOR AMERICAN PROGRESS (Mar. 16, 2017), <https://www.americanprogress.org/issues/immigration/news/2017/03/16/427868/state-state-estimates-family-members-unauthorized-immigrants/>.

⁶ Kerwin et al. *supra* note 1.

- (2) Cash assistance for anyone who files taxes, including those using Individual Taxpayer Identification Numbers (ITINs);
- (3) Automatic EAD extensions for those with DACA, Temporary Protected Status (TPS), and nonimmigrant visas; and
- (4) Release of people in immigration detention and suspension of immigration enforcement actions.

Access to Testing and Treatment is Critical for Everyone's Health

Congress must provide testing and treatment to everyone who needs it. The COVID-19 bills that have been passed by Congress and signed into law leave tens of millions of immigrants out of testing and treatment. The second COVID-19 relief package, the Families First Coronavirus Response Act (Families First Act), addressed testing and treatment, including money to support testing for those who are uninsured and not covered by Medicaid, the Children's Health Insurance Program, the Affordable Care Act Marketplace, or any other individual or group health plan. However, it kept in place immigrant eligibility restrictions, leaving out millions of people, including DACA recipients, TPS holders, certain survivors of crimes (U-visa holders), undocumented people, and many green card holders. The failure to include millions of people puts the health of everyone at risk and prevents the nation from containing the pandemic.

People left out of testing and treatment are left to seek care at local community health centers—which do not all have COVID-19 testing and might be already facing shortages—or to hope that their state will provide testing and treatment to those not covered by Congress' relief packages. But these options are limited and create confusion with people not knowing if they are eligible for care or where to go to receive it. The ACLU, alongside 68% of Americans, believes that the federal government has an obligation to provide medical care to undocumented immigrants with COVID-19.⁷

We strongly urge the Senate to act in the interest of the collective health of the country by ensuring testing and treatment for everyone who needs it, including immigrants, under emergency Medicaid. **The Coronavirus Immigrant Families Protection Act (S. 3609) would remedy this issue and provide much-needed clarity in access to testing and treatment for everyone.** It is critical that the change proposed in this bill is instituted in order to protect the health and well-being of the nation.

All Taxpayers Must Receive the Cash Rebate

Congress must include *all* tax filers in the tax rebate so that people are able to receive vital cash assistance as the economic impact of the pandemic affects every household. In order to receive the stimulus cash payment provided for in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, an individual must have a social security number (SSN). However, many people file their tax returns using an Individual Taxpayer Identification Number (ITIN). Under the CARES Act, people who file their taxes using an ITIN are left out of relief and those filing jointly with a spouse or child with a SSN will be denied cash assistance as well.⁸ Under this law, many immigrant workers are cut out of cash assistance while simultaneously risking their lives for essential work without even having access to testing and treatment.

⁷ Jens Manuel Krogstad, & Mark Hugo Lopez, *Americans Favor Medical Care but Not Economic Aid for Undocumented Immigrants Affected by COVID-19*, PEW RESEARCH CENTER (May 20, 2020), <https://www.pewresearch.org/fact-tank/2020/05/20/americans-favor-medical-care-but-not-economic-aid-for-undocumented-immigrants-affected-by-covid-19/>.

⁸ CARES Act, S. 6428, 116th Cong. (2020) (including a limited exception for military families if one spouse has an SSN), <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

We urge the Senate to provide stimulus payments to all people who file taxes. **The Coronavirus Immigrant Families Protection Act (S. 3609) would remedy this issue by amending this section of the CARES Act to include taxpayers filing with ITINs.**

Automatic Extension of Work Authorization is Crucial for Survival

We urge the Senate to automatically extend work authorizations for Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS) recipients, and nonimmigrant visas for the same duration of time as a regular renewal of that work permit. Currently, many immigrants awaiting adjudication of immigration benefits or at risk of the losing lawful status may have a lapse in their work authorization. This lapse may occur because of U.S. Citizenship and Immigration Services' (USCIS) inability to process applications during this pandemic or in light of the looming furloughs at USCIS.⁹ If an individual's status and corresponding EAD lapses, they will be unable to work if they need to and will not qualify to receive unemployment benefits if they are laid off.

Ensuring automatic extension eases burdens for thousands of families and prevents unnecessary economic disruptions, in addition, to mitigate the inevitable processing delays due to COVID-19. **The Coronavirus Immigrant Families Protection Act (S. 3609) would provide automatic extensions of work authorizations essential to the survival of individuals and the nation's economic well-being.**

People in Immigrant Detention Must be Released and Enforcement Actions Must be Suspended

Congress must instruct Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to release detained immigrants and suspend civil immigration enforcement for the well-being of the nation. ICE has failed to release a significant number of people identified as medically vulnerable. It also continues to withhold basic information regarding availability of testing, hygiene supplies and treatment for detained immigrants, and confirmed cases of COVID-19 among private contractor staff working at ICE detention facilities. As of late May 2020, more than half of detained individuals receiving tests have tested positive, a shockingly high number reflecting the heightened risk of infectious spread and complications because of overcrowding in detention, the number of people with underlying medical conditions, and a history of neglectful and grossly inadequate medical care.¹⁰ Infectious diseases are more likely to spread in these environments, putting people in detention at risk as well as the facilities' employees and the communities in which they live. These detention centers are effectively a revolving door of people bringing illness in and out of the facilities, while failing to treat those in need. Detention should not be a death sentence, but if Congress doesn't act soon, it will continue to be.

Congress must also prevent ICE and CBP from adding to the population of those in detention by suspending immigration enforcement. These enforcement actions spread fear across communities, limiting travel of essential workers, those in need of basic necessities and those in need of medical care, while simultaneously increasing the number of people in detention and putting all communities at risk. Our collective health and well-being depend on the ability of people to take preventative measures and seek medical attention without delay.

We urge the Senate to slow the spread of this virus by releasing people in immigration detention and suspending enforcement. **The Dignity for Immigrants in a National Crisis Act (S. 1243) would take the vital steps**

⁹ Eric Katz, *DHS to Begin Sending Furlough Notices to 15,000 Employees Next Week*, GOVERNMENT EXECUTIVE (June 11, 2020) <https://www.govexec.com/workforce/2020/06/dhs-begin-sending-furlough-notices-15000-employees-next-week/166096/>.

¹⁰ *ICE Issues Guidance on COVID-19*, AMERICAN IMMIGRATION LAWYERS ASSOCIATION (June 2, 2020), <https://www.aila.org/infonet/ice-issues-guidance-on-covid-19>.

necessary to reduce the spread of COVID-19, protecting immigrants and their families, DHS staff and officers, their communities, and the general public.

For the above reasons and the collective health of our country, we urge Senators to include provisions in the next COVID-19 federal relief package that provide (1) testing and treatment for everyone who needs it; (2) cash assistance for anyone who files taxes; (3) automatic EAD extensions for those with DACA, TPS, and nonimmigrant visas; (4) the release of people in immigration detention and the suspension of enforcement actions. Patchwork solutions will not address this pandemic. We have a national health crisis, and we need a national policy response. This pandemic affects all of us, so must our national response — our lives depend on it.

Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,



Frank Knaack, Executive Director
American Civil Liberties Union of South Carolina