

# THE EXPANSION AND TROUBLING USE OF ICE DETENTION

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## HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION AND CITIZENSHIP OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

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SEPTEMBER 26, 2019

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# CONTENTS

SEPTEMBER 26, 2019

## OPENING STATEMENTS

	Page
The Honorable Pramila Jayapal, Washington, Subcommittee on Immigration and Citizenship, House Committee on the Judiciary .....	2
The Honorable Ken Buck, Colorado, Ranking Member, Subcommittee on Immigration and Citizenship, House Committee on the Judiciary .....	8
The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary .....	9

## WITNESSES

Ms. Selene Saavedra-Roman, College Station, Texas	
Oral Testimony .....	42
Prepared Statement .....	44
Mr. Denis Davydov, San Jose, California	
Oral Testimony .....	50
Prepared Statement .....	52
Ms. Blanche Ornella Engochan, Silver Spring, Maryland	
Oral Testimony .....	56
Prepared Statement .....	58
Ms. Heidi Altman, Director of Policy, National Immigrant Justice Center	
Oral Testimony .....	60
Prepared Statement .....	62
Mr. Jorge Barón, Executive Director, Northwest Immigrant Rights Project	
Oral Testimony .....	77
Prepared Statement .....	80
Ms. Melanie Schikore, Executive Director, Interfaith Community for Detained Immigrants	
Oral Testimony .....	89
Prepared Statement .....	91
Mr. Thomas D. Homan, Former Acting Director, U.S. Immigration and Customs Enforcement	
Oral Testimony .....	100
Prepared Statement .....	102
Mr. Charles A. Jenkins, Sheriff, Frederick County Sheriff's Office	
Oral Testimony .....	107
Prepared Statement .....	109

## LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Prepared Statement of the Honorable Adam Smith; Submitted by the Honorable Pramila Jayapal .....	4
Complaint Filed by Civil Rights Organizations regarding "Failure to provide adequate medical and mental health care to LGBTQ people and people living with HIV in Immigration detention facilities"; Letters of Support from over 70 LGBTQ and allied organizations, the National Council of Asian Pacific Americans, and Seattle Mayor Jenny Durkin, and; a Resolution of Support from the U.S. Conference of Mayors; Submitted by the Honorable Pramila Jayapal .....	12

#### IV

	Page
Prepared Statements of the American Civil Liberties Union; Asian Americans Advancing Justice; the American Immigration Council; Al Otro Lado; the Center for Victims of Torture; Detention Watch Network; the Friends Committee on National Legislation; Government Accountability Project; the Interfaith Immigration Coalition; the National Immigration Forum; the Southeast Asia Resource Action Center; United We Dream, with their article with Center for American Progress entitled, "DACA Recipients' Livelihoods, Families, and Sense of Security Are at Stake This November," and report entitled, "The Truth About ICE & CBP," and; Prepared Statement of Abdikadir Abdulahi Mohamed; Submitted by the Honorable Pramila Jayapal .....	124
Newsweek article entitled, "Ex-ICE Director Says He Considered 'Beating' Latino Congressman During Hearing"; Submitted by the Honorable Joe Neguse .....	217
American Immigration Council and American Immigration Lawyers Association letter regarding "Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility," and American Civil Liberties Union Colorado report entitled, "Cashing in on Cruelty"; Submitted by the Honorable Joe Neguse .....	222
Medium article entitled, "Between White Nationalism and Sheriff Chuck Jenkins"; Submitted by the Honorable Sheila Jackson Lee .....	239

#### APPENDIX

Statement of the Honorable Sheila Jackson Lee .....	250
Washington Post article entitled, "The other problem with ICE detention: Solitary confinement"; Submitted by the Honorable Zoe Lofgren .....	260



## THE EXPANSION AND TROUBLING USE OF ICE DETENTION

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THURSDAY, SEPTEMBER 26, 2019

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON IMMIGRATION AND CITIZENSHIP  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:31 a.m., in Room 2141, Rayburn Office Building, Hon. Zoe Lofgren [chairman of the subcommittee] presiding.

Present: Representatives Lofgren, Nadler, Jayapal, Correa, Garcia, Neguse, Mucarsel-Powell, Jackson Lee, Scanlon, Buck, Collins, Biggs, McClintock, Lesko, Armstrong, and Steube.

Staff present: Joshua Breisblatt, Counsel; Rachel Calanni, Legislative Aide/Professional Staff Member; Andrea Loving, Minority Chief Counsel, Subcommittee on Immigration and Citizenship; and Andrea Woodard, Minority Professional Staff Member.

Ms. LOFGREN [presiding]. All of our witnesses are seated now. We welcome you, and the Subcommittee on Immigration and Citizenship will come to order.

Without objection, the chair is authorized to declare recesses of the subcommittee at any time.

We welcome everyone to this morning's hearing on the Expansion and Troubling Use of ICE Detention. The Trump Administration is detaining over 50,000 people daily, a 50 percent higher rate than the previous Administration. With the lack of enforcement priorities in this Administration, we have seen a significant uptick in the detention of pregnant women, asylum seekers, and those without criminal convictions. At the same time, there have been several new inspector general reports, which we have had hearings on, that shed light on unsanitary and unsafe conditions in ICE facilities, and it is with this backdrop that we hold today's hearing.

Now, I have chaired the Immigration Subcommittee this year and in prior years. One of the things I am committed to doing is to making sure that less senior members of the committee also have an opportunity to sit in the chair, have the opportunity to shape the hearing and learn how to preside. And with that in mind and without objection, my colleague and champion of this important issue, Representative Pramila Jayapal, will preside over this hearing. And I now recognize Ms. Jayapal for her opening statement, and ask her to take the chair.

Ms. JAYAPAL [presiding]. Thank you so much, and good morning. I would like to thank my colleague, Representative Lofgren, chairwoman of the Immigration Subcommittee, for her tremendous work and for allowing me to chair this hearing today. I also recognize our chairman, Jerry Nadler.

We have witnessed an unprecedented increase in the use of immigration detention over the last few decades. In the mid-1990s, the average number of people detained each day was under 10,000, rising to about 20,000 in the early 2000s, and then hitting about 30,000 in 2010. Just 3 years ago, the average daily population was about 34,000. In stark contrast, as of September 7th, 2019, the average daily population of people detained in an ICE facility was over 52,000 people every day, well above the 45,000 that Congress provided funding for in the Fiscal Year 2019 appropriations bill, and 54 percent higher than in 2016.

It is a universally-accepted fact that immigration detention is supposed to be a civil, non-punitive function. According to ICE, “Detention is solely for the purpose of either awaiting the resolution of an individual’s immigration case or to carry out a removal order. ICE does not detain for punitive reasons.” However, the immigration detention system is a virtual replica of the criminal incarceration system, which is intended to be punitive. In many cases, individuals are detained in county jails alongside those who have been charged or convicted of violent crimes. It is for all intents and purposes immigration incarceration often with little or no due process.

Whistleblower reports describe dangerous conditions and subpar medical care in various detention facilities. An ICE supervisor warned that ICE’s own medical service provider was “severely dysfunctional and that preventable harm and death to detained people has occurred.” The supervisor stated that the facility staff ignored repeated warnings about the care of a man with schizophrenia who later died by suicide while in solitary confinement. In addition, the DHS inspector general has released multiple reports concluding that ICE detention conditions routinely “undermine the protection of detained people’s rights, their human treatment, and the provision of a safe and healthy environment.

In one damning report about the Adelanto Detention Facility in California, the IG said that they found nooses dangling from air vents, talked to individuals unable to access basic dental care for months and years resulting in avoidable tooth loss, and wrote about a man in a wheelchair being placed in solitary and not once being moved to a bed to sleep or being permitted to brush his teeth for 9 days. Despite these serious findings, however, in October 2018, ICE gave Adelanto a passing rating during its last inspection.

This blatant disregard for accountability and failure to conduct meaningful oversight is not confined to Adelanto. It is pervasive across the detention system. The inspector general has also written several reports concluding that, “ICE does not adequately hold detention facility contractors accountable for not meeting performance standards.” In addition, the IG found that rather than imposing financial penalties, ICE haphazardly issues waivers to facilities, even though the Agency does not have formal procedures and

policies to provide waivers. Unsurprisingly, the inspector general has concluded that ICE's inspection and monitoring of its facilities does not produce compliance or lead to systemic improvements in the detention system.

Further, we have seen growing numbers of pregnant people, asylum seekers, LGBTQ people, and other vulnerable populations in detention, as well as a disturbing surge in the detention of regular people, people who are trying to do the best that they can for themselves and their families, people living and working in our communities. Most Americans, I think, would be shocked to learn that the vast majority of people in detention have never been charged of a crime, much less convicted of one.

In fact, the number of people who had never been convicted of a crime or convicted of a minor crime has increased by 58 percent since September 26th and December 2018, resulting in the detention of about 39,000 people. And among those who do not have convictions, we would do well to look closely at those cases. ICE is detaining many people for minor crimes and, in some cases, older crimes where people have faced the justice system and moved on to lead healthy lives. All of this detention is unnecessary, inhumane, and wasteful.

And who is the beneficiary of this system? Private for-profit prisons detain nearly three-quarters of all people in ICE custody. The average cost for detention of an adult is around \$130 a day, and even more in family detention, about \$298 per day of American taxpayer money. Since 2017, the top two private for-profit corporations, GEO Group and CoreCivic, have received over \$730 million of taxpayer money in the form of ICE detention contracts.

But we have sensible solutions. I have a bill that I introduced with the chairman of the Armed Services Committee, my colleague, Adam Smith. It is the Dignity for Detained Immigrants Act, and it would create justice and due process in the detention system by eliminating mandatory detention, terminating the use of for-profit prisons, increasing oversight, accountability, and transparency, and establishing real alternatives to detention. Without objection, I would like to make Congressman Smith's statement a part of the record.

[The information follows:]

**REP. JAYAPAL FOR THE RECORD**

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**Statement from Congressman Adam Smith (WA-09)**

“The Expansion and Troubling Use of ICE Detention”

House Committee on the Judiciary

Subcommittee on Immigration and Citizenship

September 26, 2019

Amidst the vibrant communities and people I am proud to represent in the Ninth District of Washington, the Northwest Detention Center (NWDC) stands in direct opposition to the shared values of our community and country. Located in the district and run by the private corporation GEO Group, this immigration detention facility exemplifies the lack of humanity that plagues our immigration system and detention centers.

For years, I have worked with constituents and advocates to bring about needed positive change at the NWDC. Together we have fought to improve health care services, living conditions inside the facility, and access to legal counsel. We are working tirelessly with the families and loved ones of those detained to get information about their immigration proceedings and hold Immigration and Customs Enforcement (ICE) accountable for their actions. The dedication from countless people and organizations that support immigrants detained at the NWDC, such as the Northwest Immigrant Rights Project, is nothing short of inspiring. However, to end the injustices at the NWDC and throughout our immigration system, we need Congress to pass the Dignity for Detained Immigrants Act to substantially reform this broken system.

The changes we need will require us to rethink the entire purpose and structure of the immigration detention system. The system currently incentivizes and facilitates arbitrarily detaining people, while providing little to no protection, due process, or basic humanity to the thousands of individuals it impacts. At incredible cost to the federal government, the use of detention centers continues to skyrocket; over 51,000 immigrants are imprisoned by ICE right now. There is no justifiable reason to imprison the vast majority of people that are currently held in detention.

The people that fill our detention centers came to the U.S. to live a better life, including many who are here seeking asylum. Nearly all detained immigrants pose no threat or danger to society, and in many cases, these immigrants were already meaningfully contributing and living in our communities. Yet our immigration system operates on the misguided presumption that immigrants pose an inherent threat to communities. Rethinking our system means repealing mandatory detention, incorporating strong protections for vulnerable populations and, if an individual needs to be placed in detention, placing the burden of proof on the government to clearly show that person poses a threat to the community.

The United States also allows private corporations to profit off the imprisonment of human beings. There is absolutely no reason that for-profit corporations, such as the GEO Group, which owns and operates the NWDC, should be running immigration detention centers. These companies are concerned with their bottom line; not the well-being of the people held in their facilities. We need to phase out private detention facilities and dramatically improve accountability and oversight to ensure compliance with enhanced detention standards.

The system doesn't have to be the way that it is today. Alternatives to detention, such as community-based programs, have proven to be effective at ensuring individuals appear at immigration proceedings while providing critical legal services and other support. Not only are these programs far more humane than detention, they are significantly less costly to the government. Individuals can live with their families and loved ones while immigration proceedings move forward, allowing government resources to instead be put towards other priorities.

I am proud to have worked with Congresswoman Pramila Jayapal to once again introduce the Dignity for Detained Immigrants Act and to bring humanity, due process, and accountability to the failed immigration detention system. The Congresswoman's leadership and commitment to this issue is unparalleled. We cannot talk about immigration reform without a conversation about the current detention system, and I greatly appreciate Chair Lofgren for holding a hearing to push that conversation forward.

There is no better place to see the value that immigrants and diversity bring to our country than in and around the Ninth District of the state of Washington. We are proud to be the home to many refugees, DACA recipients, asylum seekers, and other immigrants who are contributing to the fabric of our communities and making our district a better place. I am hopeful that we can make progress towards a fair and just immigration system that treats people with the dignity they deserve.

Ms. JAYAPAL. I am proud to hold this hearing today so we can talk about real solutions, and I look forward to hearing the testimony of our witnesses. And with that, it is now my pleasure to recognize the ranking member of the subcommittee, the gentleman from Colorado, Mr. Buck, for his opening statement.

Mr. BUCK. Thank you. I want to begin my statement by recognizing the parents who are here of individuals who have been brutally murdered by illegal immigrants. I want to thank you very much for having the courage to appear today and let you know that we grieve with you, as all Americans do, for the unnecessary death of your children. Thank you very much.

ICE detention serves a necessary role in the enforcement of our Nation's immigration laws. Detention ensures that an individual in removal proceedings will appear at any immigration hearing, and ensures ICE can effectuate a final order of removal. ICE detention is also an essential component of effective border security. The impact of ICE detention extends into the interior of the country to every community. By detaining individuals who face criminal charges or who have been convicted of serious crimes, ICE ensures that they are not free to re-offend. This reduces crime and enhances public safety in our communities for citizens and lawful immigrants alike.

Approximately 95 percent of individuals in ICE custody are recent border crossers, convicted criminals, or face pending criminal charges. Of the detainee population arrested by ICE in the interior of the country, almost 90 percent of those individuals are convicted criminals or face pending criminal charges. Many of these individuals are involved in serious criminal activity, including assaults, homicide, drug dealing, DUIs, and gang activity. While sanctuary jurisdictions force law enforcement to disregard ICE detainers and release removable criminals back into the community, many jurisdictions have partnered with ICE. These partnerships are based on the recognition that ICE detention helps keep dangerous criminals off of the street for good. I commend the work being done by State and local law enforcement officers who recognize the important role that ICE detention plays.

It is also important to recognize that ICE detention facilities are held to a high standard of custodial care to keep detainees safe and secure. Through the Performance-Based National Detention Standards, ICE ensures that the quality of care received by detainees is good, even higher in many cases than what U.S. citizens receive in State and local jails.

In August I toured an ICE contracted detention facility in my home State of Colorado. Here is what I saw. I saw dedicated and professional staff and extensive health services, including access to medical treatment, dental care, and mental health care. Every detainee was offered preventive care, including an MMR vaccination, a telephone with toll free access to a detainee's consulate, a law library and immigration court, dormitories with a day room equipped with tables and chairs, televisions, games, and Xboxes, a commissary, microwaves and very clean food preparation facilities, indoor and outdoor recreational facilities, workout equipment, a basketball court, and opportunities to engage in a voluntary work



program. Contrary to false claims from members of Congress, those are not the kinds of facilities reminiscent of a concentration camp.

Others question the use of so-called for-profit prisons, arguing that the government should not contract with private detention facilities and denouncing such facilities as unaccountable and prone to provide poor care, but that that criticism is simply inaccurate. Contract detention facilities are accredited by third parties. They must comply with ICE's performance-based National Detention Standards, which impose a very high standard of care. If a facility wants to deviate from those strict standards, it must obtain a waiver from ICE. Facilities are held accountable for complying with the standards. A toll free hotline is available in multiple languages for detainees, staff, and members of the public to report any problems in detention.

Information about the detention reporting and information line is provided to every detainee during orientation in the detainee handbook and advertised on flyers in English and Spanish throughout the facilities. The detention reporting and information line has resolved more than 2,000 case assistance calls monthly on average since it launched in September 2012.

The inspector general also recently audited some facilities, and where deficiencies are discovered, ICE takes corrective action. Such facilities also tend to be newer and nicer than other facilities available in State and local jails, and many were actually designed with ICE standards in mind. The private sector has also been able to realize cost reductions without sacrificing quality of care, leading to a cost savings for American taxpayers. ICE detention serves an essential function and offers an appropriate custodial setting.

I am pleased today to hear from the witnesses about the importance of ICE detention, the high-quality care detainees receive in custody, and urge my colleagues to ensure that ICE is funded at an adequate level to procure sufficient detention space and maintain high standards of care for those in custody. And I yield back.

Ms. JAYAPAL. Thank you, Mr. Buck. I now recognize the chairman of the Judiciary Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

Chairman NADLER. Thank you, Madam Chair. Over the last 7 months, this committee has devoted considerable attention to the Trump Administration's cruel policies at the border and its attempts to deter individuals from seeking asylum and other humanitarian protections from our Nation. Today we shift our focus to examining the impact of the Administration's approach to immigration detention in the interior of the United States.

Unfortunately much of what has been observed in the interior is the same as what we have seen at the border. Under the Trump Administration, the number of people detained by Immigration and Customs Enforcement—ICE—has skyrocketed while detention conditions and Agency transparency and accountability have deteriorated. Detention levels have increased largely due to the Administration's manipulation of the budget process to expand the number of detention beds. As of September 14th, 2019, ICE was holding 51,814 people in detention, roughly 11,000 more people per day than what was authorized by the Fiscal Year 2019 appropriations bill.

Of those detained, we are seeing an increasing number of women, including pregnant women, and asylum seekers who have committed no crime and who pose no threat to our country. Not surprisingly, with the increased number of detainees, we are also seeing an increase in reports of unsafe and sanitary conditions in detention facilities as well as allegations of mistreatment.

In September 2018, the Department of Homeland Security inspector general documented significant violations of ICE's own detention standards, not to mention basic human dignity, at the Adelanto Detention Center in California. The IG observed nooses dangling from air vents—nooses—individuals denied access to basic dental care, and a disabled man being placed in segregation and left in his wheelchair unattended for 9 days. Such treatment should shock the conscience. Despite this, Adelanto passed its last ICE inspection in October 2018. A June 2019 IG report also found unsanitary conditions in the Essex, New Jersey detention facility, including mold, spoiled food, and malfunctioning toilets. The IG also found that detainees at Essex suffered from a shortage of personal hygiene products, including soap and toiletries. Collectively, the violations at Essex were so severe that the IG's investigation led to immediate personnel changes at the facility.

For most of American history, immigration matters have been, and are still today, adjudicated as a civil matter. In that spirit, the detention of immigrants in a system based on the criminal justice model should be the exception, not the rule. We have the capability to safely and compassionately process migrants, women, and children and to ensure that they appear for their scheduled hearings. Instead of relying on the physical detention of immigrants, ICE could employ a broad array of alternatives to detention with equal success, and at far less cost, and with much less brutality.

Research has shown that automated telephone systems to remind people of their scheduled court dates and ankle monitors help ensure compliance for people released on their own with cognizance or on bond. According to Fiscal Year 2018 data, the average cost of detaining an immigrant per day is \$208. In contrast, community-based alternatives to detention have been proven to operate effectively for as little as \$17 per person per day.

Further, the Family Case Management Program that ICE operated from January 2016 through June 2017 reduced compliance rates of 99 percent at a cost of just \$38 per family per day. Despite the program's success, the Trump Administration terminated it. Fortunately, Congress has passed legislation that mandates that ICE restart the program this year.

The Trump Administration's immigration policies have been a failure at a policy level and, more important, as a matter of basic human decency. I want to thank Chair Lofgren and Vice Chair Jayapal for holding this important hearing, and I thank all of today's witnesses for testifying, especially for those who have come forward to share their experience in ICE detention. I look forward to their testimony, and I yield back. I look forward to their testimony.

I want to add one note before I yield back the balance of my time. We welcome, of course, the people here today as guests of—I am not sure of whom, but as guests—who are relatives of people

who were murdered. But there is a terrible slander abetted by the President and by other people, a lie that says, in effect, that says directly, in fact, that illegal aliens, as they put it, immigrants are a danger to the United States, that they are criminals, that their rate of criminality is greater than that of native-born Americans, whereas, in fact, the statistics all show that every population, people born in the United States, people who come here legally, people who come here not with our laws. Some people are criminals. Some people are dangerous. But the statistics all show that immigrants, legal or otherwise, are less dangerous on average than native-born people. It is a slander bordering on racism to highlight the opposite. And I think it is time the Administration and whoever else practices this were called out on it. I yield back the balance of my time.

Ms. JAYAPAL. Thank you, Mr. Chairman. Before I introduce our witnesses, without objection I would like to make the following documents part of the record: a complaint filed yesterday regarding the failure to provide adequate medical and mental health care to LGBT people and people living with HIV in immigration detention facilities, letters of support for the Dignity for Detained Immigrants Act from over 70 LGBTQ and allied organizations, from the National Council of Asian Pacific Americans, from the Seattle mayor, my mayor, Jenny Durkin, and a resolution of support from the U.S. Conference of Mayors.

**REP. JAYAPAL FOR THE RECORD**

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September 25<sup>th</sup>, 2019

Dr. Stewart D. Smith  
Assistant Director for ICE Health Services Corps.  
Enforcement and Removal Operations  
Immigration and Customs Enforcement  
Department of Homeland Security  
Washington, DC 20528

Mr. Matthew Albence  
Acting Director  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security  
Washington, DC 20528

Mr. Mark A. Morgan  
Acting Commissioner  
U.S. Customs and Border Protection  
Department of Homeland Security  
Washington, DC 20528

Ms. Cameron Quinn  
Officer for Civil Rights and Civil Liberties  
Office for Civil Rights and Civil Liberties  
Department of Homeland Security  
Washington, DC 20528

Mr. Joseph V. Cuffari  
Inspector General  
Office of Inspector General  
Department of Homeland Security  
Washington, DC 20528

**RE: Failure to provide adequate medical and mental health care to LGBTQ people and people living with HIV in Immigration detention facilities**

Dear Dr. Smith, Mr. Albence, Mr. Morgan, Ms. Quinn, and Mr. Cuffari:

We, the undersigned organizations, file this complaint on behalf of current and formerly detained lesbian, gay, bisexual, transgender, and queer individuals and people living with HIV (LGBTQ, PLWHIV) in immigration detention facilities. This complaint details recent accounts of Immigration and Customs Enforcement's (ICE) and Customs and Border Protection's (CBP) provision of egregiously inadequate medical and mental health care, jeopardizing the health, safety, and lives of individuals in federal custody while they exercise their legal right to pursue their immigration claims and seek protection in the United States. ICE and CBP's continued failure to provide such basic care is in clear

violation of the US Constitution, statutory law, and applicable detention standards.<sup>1</sup> This failure has led to the deaths of multiple LGBTQ, PLWHIV migrants, and continues to cause irreparable harm.

In light of the substantial evidence of ICE's inability to safely house and adequately care for LGBTQ, PLWHIV individuals in its custody, we call for ICE to exercise its parole authority and release all LGBTQ, PLWHIV individuals on their own recognizance. We also urge the Office of Inspector General (OIG) to work with the Office for Civil Rights and Civil Liberties (CRCL) to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE and CBP custody. We call on ICE to comply with the OIG's January 29, 2019 recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet the applicable standards of care by ending their contracts and imposing financial penalties. Finally, we call on DHS to strengthen its oversight of all facilities to identify and promptly remedy abuses and medical neglect within these centers.

#### **The Abuse of LGBTQ, PLWHIV Individuals in DHS Custody is Well-Documented**

The widespread abuse and mistreatment of LGBTQ, PLWHIV individuals in ICE custody is well-documented. The Department of Homeland Security (DHS) has already received countless reports of LGBTQ, PLWHIV individuals' experiences with verbal, sexual and physical violence, medical negligence, inhumane housing conditions, and overuse of solitary confinement in both public and private detention centers.<sup>2</sup> Rather than being confined to a few detention centers, these reports are widespread and consistent, demonstrating the systemic inability for DHS to meet even basic standards of care for LGBTQ, PLWHIV migrants.

For example, just two months prior to Johana Medina's death, a complaint was sent to DHS detailing the rampant discrimination and violence inflicted on LGBTQ individuals at Otero County Processing Center, the detention center where Johana Medina died as a result of the substandard care she received in DHS custody.<sup>3</sup> Even after this complaint was received and after Johana Medina's death, ICE continues to deny transgender women and gay and bisexual men at Otero basic health care and provides misinformation on how to access hormone therapy. In fact, an investigative report published in 2018 demonstrated that DHS has received more than 200 complaints of abuse and mistreatment from

<sup>1</sup> The United States is additionally obligated under international law to provide adequate health care for detained immigrants. Namely, the United States is a signatory to the International Covenant on Economic, Social, and Cultural Rights, which guarantees everyone a right to physical and mental health. United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Art. 12, December 16, 1966, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

<sup>2</sup> See National Immigrant Justice Center, Submission of Civil Rights Complaints Regarding Mistreatment and Abuse of Sexual Minorities in DHS Custody, available at <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf>; Sharita Gruberg, "Dignity Denied: LGBT Immigrants in U.S. Immigration Detention," (Center for American Progress 2013) available at <https://www.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>; Human Rights Watch, "Do You See How Much I'm Suffering Here? Abuse Against Transgender Women in US Immigration Detention," (Human Rights Watch 2016) available at [https://www.hrw.org/sites/default/files/report\\_pdf/us0316\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf); Letter from Rep. Kathleen Rice to DHS Secretary Kirstjen Nielsen (May 30, 2018)(available at [https://kathleenrice.house.gov/uploadedfiles/2018\\_05\\_30\\_lgbt\\_immigrants\\_in\\_ice\\_detention\\_letter\\_to\\_sec\\_nielsen.pdf](https://kathleenrice.house.gov/uploadedfiles/2018_05_30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf)).

<sup>3</sup> ACLU New Mexico, Santa Fe Dreamers Project, and Las Americas: Immigrant Advocacy Center, Detention Conditions Impacting the Safety and Well-Being of LGBTQ Immigrants in the Otero County Processing Center, [https://www.aclu-nm.org/sites/default/files/field\\_documents/advance\\_copy\\_of\\_3.25.2019\\_las\\_americas\\_santa\\_fe\\_dreamers\\_project\\_aclu-nm\\_letter\\_to\\_dhs\\_re\\_otero.pdf](https://www.aclu-nm.org/sites/default/files/field_documents/advance_copy_of_3.25.2019_las_americas_santa_fe_dreamers_project_aclu-nm_letter_to_dhs_re_otero.pdf)

individuals housed at Otero County Processing Center, and yet, Otero continues to operate today and DHS has failed to take adequate actions to improve conditions at the facility.<sup>4</sup>

Another complaint filed by the American Immigration Council (Council) and the American Immigration Lawyers Association (AILA) in 2018 detailed the lack of access to basic medical care and mental health care at the Denver Contract Detention Facility in Aurora, Colorado.<sup>5</sup> DHS failed to meaningfully address the concerns raised in the complaint, and one year later, in June 2019, the Council and AILA supplemented the complaint with additional evidence of inadequate medical and mental health care.<sup>6</sup> Specifically, the complaint includes the case of a transgender woman who reported she was denied access to hormone treatment, and was subjected to serious sexual and verbal harassment by facility guards and other detained individuals.

On July 9th, 2019, twenty-nine transgender women and non-binary individuals held at Cibola County Correctional Center in New Mexico called for an investigation into poor medical services — including HIV care—and mistreatment at the facility.<sup>7</sup> In April, 2019, seven organizations, including the American Civil Liberties Union, investigated Cibola and reported that the center had inadequate medical and mental health care, abuses related to solitary confinement, discrimination and verbal abuse, and inappropriate meals, among other issues.<sup>8</sup>

The OIG’s own investigation of five ICE facilities, including Santa Ana City Jail where the previous transgender housing pod was located and Otero County Processing Center, “identified problems that undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment” and “potentially unsafe and unhealthy detention conditions.”<sup>9</sup> In an earlier inspection of the Essex County Correctional Facility, the OIG noted the “serious issues” it identified “not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety.”<sup>10</sup>

Rather than take effective action to address the numerous complaints of abuse and mistreatment of LGBTQ, PLWHIV individuals in detention, DHS has focused on subjecting an increasing number of people to these horrific conditions. The number of individuals in immigration detention is at a historical high and keeps rising, despite the fact that many of these individuals are eligible for release. By the

<sup>4</sup> Craig, Nathan, and Margaret Brown Vega. “‘Why Doesn’t Anyone Investigate This Place?’: Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security Inspections and Reports.” El Paso, TX: Detained Migrant Solidarity Committee (DMSC) and Freedom for Immigrants (FFI), 2018.

<sup>5</sup> Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_demands\\_investigation\\_into\\_inadequate\\_medical\\_and\\_mental\\_health\\_care\\_condition\\_in\\_immigration\\_detention\\_center.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf)

<sup>6</sup> SUPPLEMENT—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_supplement\\_failure\\_to\\_provide\\_adequate\\_medical\\_and\\_mental\\_health\\_care.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf)

<sup>7</sup> Laura Gomez, “Migrants held in ICE’s only transgender unit plead for help, investigation in letter,” *AZ Mirror*, July 9, 2019 <https://www.azmirror.com/2019/07/09/migrants-held-in-ices-only-transgender-unit-plea-for-help-investigation-in-letter/>.

<sup>8</sup> Detention Conditions Impacting the Safety and Well-Being of Immigrants in the Cibola County Correctional Center in Milan, New Mexico. April, 2019 [https://www.aclu-nm.org/sites/default/files/field\\_documents/2019\\_04\\_15\\_nm\\_stakeholders\\_letter\\_to\\_crcl\\_re\\_cibola\\_county\\_correctional\\_center.pdf](https://www.aclu-nm.org/sites/default/files/field_documents/2019_04_15_nm_stakeholders_letter_to_crcl_re_cibola_county_correctional_center.pdf)

<sup>9</sup> OIG-18-32

<sup>10</sup> OIG-19-20

department's own count, 300 individuals who identify as transgender have been in the custody and supposed care of ICE since October of 2018 alone. This is the highest number of transgender migrants in the care of the U. S. government ever recorded. At the same time, DHS has failed to take measures to ensure the basic health and safety of this population. It is unjustifiable for the U.S. Government to subject an increasing number of individuals, including those qualified as vulnerable populations such as LGBTQ, PLWHIV individuals, to these dangerous conditions.

**DHS Has Consistently Demonstrated It Is Incapable of Providing Adequate HIV Care**

The stories included in this complaint shed light on the effects of growing roadblocks in access to basic healthcare as well as lifesaving HIV care in detention due to chronic systemic medical neglect and lack of oversight in detention. While ICE has adopted three sets of detention standards, including PBNDS 2011, it does not require contractors to adopt any recent standards when it enters into new contracts or contract extensions. The result is a “patchwork system in which facilities are subject to differing standards and some are subject to no standards at all”<sup>11</sup>, and people are outright denied access to care, delayed in receiving medical attention, and are left in conditions that exacerbate their physical and mental health ailments.

The risks that accompany substandard HIV care are serious, and they arise from the inconsistent or delayed access to treatment. This is why 2011 PBNDS standards have aimed — without success — to secure uninterrupted access to HIV/AIDS medication for people in detention.

The U. S. government recognizes that poor adherence to HIV treatment is associated with less effective viral suppression. The U. S. Department of Health and Human Services underscores that strict adherence to antiretroviral therapy is key to sustained HIV suppression, reduced risk of drug resistance, and survival, as well as decreased risk of HIV transmission.<sup>12</sup> An unsuppressed viral load may risk the immediate health of HIV positive individuals and it will also risk creating treatment resistance. If patients fail to respond to their given drug regimen, they are moved to second line drugs, which may be more expensive or difficult to manage.<sup>13,14</sup>

Evidence has shown that individuals with HIV who keep adherence to HIV medicine as prescribed can stay virally suppressed and thus have effectively no risk of transmission. In fact, the Centers for Disease Control and Prevention's (CDC) HIV Treatment as Prevention Technical Fact Sheet reports a 96% reduction in HIV transmission risk among heterosexual mixed-status couples where the HIV-positive partner started antiretroviral therapy (ART) immediately versus those delaying ART initiation.<sup>15</sup> Far too many people in detention are outright denied access to HIV-related care or experience significant delays.

<sup>11</sup> <https://immigrantjustice.org/research-items/toolkit-immigration-detention-oversight-and-accountability>

<sup>12</sup> US Department of Health and Human Services, “Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents”. Revised July 2019. <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/>

<sup>13</sup> Kenneth L. Schaeffer, Addressing Adherence Challenges Associated With Antiretroviral Therapy: Focus on Noninfectious Diarr, The Importance of Treatment Adherence in HIV, September 29, 2013. [https://www.ajmc.com/journals/supplement/2013/a472\\_sep13\\_hiv/a472\\_sep13\\_schaeffer\\_s231](https://www.ajmc.com/journals/supplement/2013/a472_sep13_hiv/a472_sep13_schaeffer_s231)

<sup>14</sup> Jane Mwangi, CDC Kenya (Centers for Disease Control and Prevention), Our Research in Kenya: Finding Ways to Improve HIV Treatment Access and Outcomes, <https://blogs.cdc.gov/global/2012/07/26/our-research-in-kenya-finding-ways-to-improve-hiv-treatment-access-and-outcomes/>

<sup>15</sup> Centers for Disease Control and Prevention CDC, Evidence of HIV Treatment and Viral Suppression in Preventing the Sexual Transmission of HIV. HIV Treatment as Prevention Technical Fact Sheet. <https://www.cdc.gov/hiv/pdf/risk/art/cdc-hiv-art-viral-suppression.pdf>



This delay of treatment is cruel, counterintuitive to ending HIV transmission, and causes irreparable harm.

#### **Reports of Deficient Medical and Mental Health Care for LGBTQ, PLWHIV Individuals**

Below are multiple accounts of medical negligence and mistreatment of LGBTQ, PLWHIV individuals in detention centers across the country. This by no means represents all of the stories of abuse and mistreatment, but rather provides a glance at the systemic harms and inadequate care provided to LGBTQ, PLWHIV individuals under the care of DHS and CBP. There are many stories not included here for fear of reprisal.

#### **Detention Centers Managed by CoreCivic**

##### **Cibola County Correctional Center -Milan, New Mexico**

A. is a transgender woman from El Salvador who has been detained in Cibola County Detention Center for almost 20 months. A.'s medical records indicate she suffered from advanced syphilis and, according to a pro bono medical evaluation, her medical records indicate that her condition has progressed to neurosyphilis, increasingly affecting her cognitive abilities. Despite this evidence and her counsel's advocacy, ICE has continuously failed to provide her penicillin, a well-known and easily accessible medication. ICE has also repeatedly refused to release A. from detention so she can get the medical treatment she requires.

##### **Otay Mesa Detention Center- San Diego, California**

G., is a 34-year-old HIV positive Salvadoran trans woman and activist who worked to advance trans rights in Latin America and the Caribbean prior to applying for asylum and was detained in male housing for more than 6 months in Otay Mesa in 2017. During this time her HIV medication was withheld. Additionally, she was misdiagnosed with tuberculosis. Rather than treating her HIV, she was over-medicated in attempts to treat tuberculosis she did not have.

##### **Otay Mesa Detention Center- San Diego, California**

Y.E. is a transgender woman from Mexico. She was brutally raped, tortured, beaten and kept hostage by the cartels for months because she dressed as a woman. Again and again she was gang raped. The rapes caused tears in her anus and rectum. The rapes also resulted in her contracting HIV. After she presented herself at the border, lawfully asking for asylum, she was placed in a detention center and was taken off medication for HIV for a significant amount of time. In addition to requesting treatment for HIV, she repeatedly asked for help with the tears in her anus/rectum. The medical staff at the detention center refused to address it because the tearing did not happen at the facility and because they believed it to be too invasive. Because no treatment was given, she caught an infection that resulted in anal bleeding. She was held in custody for months before finally being released on parole.

##### **Otay Mesa Detention Center- San Diego, California**

S.A.G.C. is an HIV positive transgender woman who has been repeatedly abused and raped because of anti-transgender bias in her home country of El Salvador. The severity of the abuse in her country was such that during the credible fear interview both the asylum officer and the translator needed a moment because of the horrors she described. Although her health was deteriorating in detention and she felt harassed for being a transgender woman in an all-male pod, she was kept in custody until she was granted a \$2500 bond— even though she had letters of support from her sponsor and the community that

would be accepting her. That bond amount was prohibitive to S.A.G.C. and it was only after a bond fund paid for her release that she was able to get out of detention.

**Otay Mesa Detention Center- San Diego, California**

B.C.H. is an asylee from El Salvador. He fled El Salvador after his life was threatened by gangs on account of his sexual orientation and political opinion. B.C.H. entered Otay Mesa Detention Center in May of 2018 weighing 220 pounds. When he was released in September of 2018, he weighed only 190 pounds. B.C.H. required serious psychological support due to his traumatic history of sexual abuse and assault. While at Otay Mesa, he mentioned to Al Otro Lado that he was seeing a psychologist, but at one point, despite the threat of imminent death should he return to El Salvador, he was certain he wanted to stop fighting his case and return to El Salvador due to the conditions at Otay Mesa. We are unsure what, if any, psychological treatment he was receiving, and his unaddressed trauma combined with his extreme weight loss raised serious red flags regarding the adequacy of medical care at the facility. Despite his severe weight loss and mental trauma, his parole bond was set at \$10,000, an amount impossible for him to pay.

**Otay Mesa Detention Center- San Diego, California**

S.Y.M.M. is a 47-year-old gay man from Honduras. He is blind in one eye and suffers from a myriad of health conditions, including hypertension and the growth of a cyst on his head. S.Y.M.M.'s ICE Medical Records indicate that the pain in his head resulting from the cyst on his scalp worsened significantly while detained. Additionally, at one point, one of his teeth became severely infected, and he was never treated for that ailment. S.Y.M.M.'s parole request was denied, and he was only able to leave the facility when Al Otro Lado submitted a new request. Even so, his bond was set at a prohibitively high \$5,000. He was only released when a community organized to pay his bond.

**Otay Mesa Detention Center- San Diego, California**

R.E.P.L. is a transgender woman from Guatemala who was sexually abused by her father and her uncles. When she tried to escape the constant sexual abuse of the men in her family, local police tracked her down, assaulted her, and returned her to them. When she finally escaped her family, R.E.P.L. was taken in by a woman who was affiliated with the 18th Street Gang. This woman forced her under duress to be a sex worker, and R.E.P.L. was held captive for two years. Police gang-raped R.E.P.L. when she tried to escape that woman's house and she had no choice but to flee Guatemala to seek protection in the United States. En route to the United States, R.E.P.L. was again violently gang-raped while in Mexico and believes she contracted HIV. R.E.P.L. requested asylum in January of 2019 and was subsequently detained at Otay Mesa Detention Center. She expressed her concern to staff at the facility that she was HIV positive, making countless requests in writing for an HIV test. Al Otro Lado staff reached out on numerous occasions to R.E.P.L.'s deportation officer to ensure she received the necessary testing but never received a response. While R.E.P.L. was detained at Otay, there was an outbreak of several infectious diseases, including mumps and chicken pox. Therefore, it was critical for her to know whether she had HIV or not, as her immune system may have been severely compromised. The lack of any initiative by the facility to ensure she was tested for HIV put her health at serious, life-threatening risk. Despite her traumatic past and serious health concerns, the immigration judge refused to grant her release on her own recognizance and set a bond in the amount of \$1,500. She was only released after a community organized to pay her bond.

**Cibola County Correctional Center- Milan, New Mexico**

C.L. is a transgender woman from Peru who was in detained for nearly five years. She was transferred from Santa Ana Jail in California to Cibola County Correctional Center when Cibola first opened its transgender unit. While in Cibola, she repeatedly requested medical care for Hepatitis C, which she'd

been denied at Santa Ana, and continued to be denied treatment after the transfer. She was in need of urgent medical care several times while in detention, and recalls once being in the hospital for two weeks. She was shackled by her ankles and her wrists and two guards were posted outside her door. She wondered why they'd do this when she was in no condition to escape.

**Otay Mesa Detention Center- San Diego, California**

Y is a transgender HIV-positive woman from Mexico. Upon her arrival at the border, Y was detained in San Ysidro, where immigration officials confiscated her HIV medicine and kept her in a freezing room for nine days. Y asked three times for her HIV medication back and was denied each time. Y was later transferred to Otay Mesa Detention Center, where she was once again denied her life-saving medication for an entire month. Furthermore, the Otay Mesa medical staff refused to provide adequate treatment for the injuries Y suffered during a brutal sexual assault in Mexico. In Otay Mesa, Y was housed with the male population and was harassed by two detained men and an ICE official. When she tried to make complaints about the harassment to the facility manager, the manager dismissed her by referring to her complaint as "gossip."

**Otay Mesa Detention Center, San Diego, California and Hudson County Correctional Facility, Kearny, New Jersey**

E is a gay man from Honduras. Upon arrival to the United States, E has been detained at the Otero County Processing Center and, later, at the Hudson County Correctional Facility. E faced continuous harassment in both detention facilities from guards and other detained individuals because of his sexual orientation. In Hudson, the officers and other individuals in detention constantly referred to E as "gay" instead of his name or other appropriate forms of address. E also had serious dental problems while he was in Hudson. However the medical staff refused to provide E with the necessary medical treatment, in contradiction to the applicable Performance-Based National Detention Standards.

**Otay Mesa Detention Center- San Diego, California**

P is a 38-year old Honduran citizen and transgender woman living with HIV. She entered without inspection at the southern border in California on February 2, 2019 and was detained at Otay Mesa for about 6 months. In Honduras, local police stopped P because she was dressed in women's clothes and then they raped her. P's employer in Honduras continuously harassed and threatened her until one day they hired people to beat her up in front of several witnesses who came forward. While she was detained at Otay Mesa, her HIV medication was delayed and she never received hormone therapy. As a result, her mental and physical health deteriorated.

**Detention Centers Managed by GEO Group, Inc.**

**Adelanto Detention Center- Adelanto, California**

J. is a transgender man from El Salvador who has been detained in Adelanto Detention Center for about nine months. Before being detained, J. had been receiving gender-affirming hormone therapy for many years. Since he has been detained, however, J. has not received gender-affirming hormone treatment despite numerous requests. J.'s mental and physical health have significantly deteriorated as a result.

**Adelanto Detention Center- Adelanto, California**

J., is a gay man, a national of Mexico, and a Franco-Gonzalez class member, who was deemed -- by an immigration judge-- as non-competent to represent himself during his removal proceedings due to his mental health. J. was diagnosed with the following mental health disorders: major neurocognitive disorder due to multiple etiologies with behavioral disturbance; amphetamine-type substance use disorder, severe, in a controlled environment; major depressive disorder, recurrent, severe with

psychotic symptoms; unspecified neurodevelopmental disorder (history of a learning disability). Due to signs of his deteriorating health, in January 2018 his legal representative requested HIV testing for J. Despite being court ordered, the HIV test was not performed for more than seven months. J.'s medical records indicate that in August of 2018 he received a positive HIV diagnosis, and that GEO medical staff began antiretroviral treatment, over eight months after his legal representative first requested it.

**Adelanto Detention Center- Adelanto, California**

I.S.I identifies as LGBTQ and has a diagnosis of bipolar disorder. She has been in ICE custody since September of 2018. Despite complications with her mental health, she was found competent by an immigration judge and denied a free appointed immigration attorney. Since then, she has attempted to die by suicide at least four times. Her attorney at the Los Angeles LGBT Center was unable to locate her client for over two weeks during one of these periods. She is not safe in ICE Custody and does not feel safe. She reports that the medical care she is receiving is not helping her.

**South Texas Detention Facility- Pearsall, Texas**

A. A. is an HIV+ transgender woman asylum seeker who has been detained at the South Texas Detention Center ("STDC") since December 2014. Ms. A. has suffered from severe medical problems and improper treatment since her arrival at STDC. She has lost more than 25 pounds (and is now severely underweight at 89 pounds) since the start of detention, and has been suffering from insomnia, nausea, and loss of appetite, because of the side effects of her medication, and possible incompatibility of her hormone therapy and antiretroviral drugs administered by the detention center. She only gets 3 hours of sleep each night, or sometimes none at all. Because of the symptoms from her medication, she struggles to consume and retain food, and relies on vitamins purchased with her own funds from the commissary to obtain nutrition and sustenance.

Although Ms. A receives nutritional shakes to supplement her meals, she continues to experience nausea, and the underlying problems of her medication possibly interfering with each other, or mis-prescribed medication has yet to be sufficiently addressed.

In June and July, 2019, she experienced two incidents where she fainted and lost consciousness for hours. In the first incident, other individuals in detention asked the guards for medical help, but either because of a delay in dispatch or response, medical services providers did not reach Ms. A until hours later. In the second incident, which occurred in the late morning, she was taken to an outside facility, where she was told that her lungs were swollen and that she had a sinus infection, and merely given acetaminophen and returned to the facility in the afternoon. Unfortunately, even though Ms. A has raised these issues with the facility and with ICE, her medical issues have not been comprehensively addressed, and she continues to rapidly lose weight as a result of her nausea and lack of sleep, and her health continues to deteriorate. She expresses a fear of dying at STDC.

**Aurora Detention Facility-Aurora, Colorado**

L.M. is a transgender woman who was detained for six months in Aurora, where she was detained with men and was harassed on a regular basis. Soon after her arrival, she reported to detention center staff that she needed to continue the hormone treatment she had been receiving. Staff responded that she would be put on a list to see a doctor. However, L.M. did not receive a doctor's appointment for over two months. At the appointment, the medical provider told her they would need to consult her medical records to find her hormone prescription, and if they could not find it, would need to refer her to a specialist. She did not receive any updates for another two months, at which point she received an appointment with a specialist, which was then canceled. L.M. finally received the appointment and her prescription the day before her release but never received the hormones.

Due to the abrupt end to her treatment, L.M. experienced nausea, difficulty sleeping, lack of appetite, mood changes, and depression during the six months she was detained. Due to the harassment she faced for being a transwoman detained with men, she reported these incidents to the detention center guards but their only response was to put her in solitary confinement, claiming it was for her own safety. She was put in solitary confinement several times for up to a month at a time, a practice that can rise to the level of inhuman and degrading treatment and even torture.

#### **Detention Facilities Managed by LaSalle Corrections**

##### **Irwin County Detention Center- Ocilla, Georgia**

S. is a bisexual woman from Jamaica who is HIV positive and has been residing in the US since she was four years old. She was abandoned and became homeless when she was around ten years old and was sexually exploited throughout her teenage years. Given her prostitution-related charges, she has been forced to remain in ICE custody throughout the pendency of her proceedings. Since being detained, she has frequently gone days without her HIV medication. She has to write a letter to the warden every month to receive her HIV medicine and if she does not write the letter, she does not receive her refill. Occasionally, she receives the wrong brand of HIV medication. The head of medical at the facility has also made it difficult for S. to receive blood work, leaving S. unable to monitor her levels. In addition, a nurse disclosed S.'s HIV status to the guards.

##### **Irwin County Detention Center- Ocilla, Georgia**

C, an east Asian trans man, has been held in immigration detention for almost two years. For the first 19 months, he was held in solitary confinement solely because he is a transgender man. While in solitary, his health suffered due to inadequate medical care, including not receiving his blood pressure medicine, being given the wrong treatment for a severe illness which led to weeks of extreme stomach pain, and being fed food that made his diabetes worse. At one point while he was getting a hormone shot, the person giving it to him was so incompetent that the syringe broke while inside his leg. Further, C has also been identified and confirmed to be a victim of trafficking by federal law enforcement. In fact, federal law enforcement confirmed that his convictions were tied to human trafficking but still, ICE refuses to release him because of his convictions. C was recently transferred out of Irwin Detention Center, but is still being held in immigration detention, despite ICE's awareness of his victim status.

#### **Detention Centers Managed by ICE**

##### **Krome Service Processing Center- Miami, Florida**

D. is a gay, HIV positive man from Russia. He had already applied for asylum, when he was unjustly detained in a Florida detention facility in 2017, while returning from a trip to the U.S. Virgin Islands. He went multiple days without access to antiretroviral medication and developed an opportunistic infection. Because he has a compromised immune system, this was life threatening. When he asked to see a doctor, D. was forced to spend multiple days in a freezing waiting room. ICE refused to release him until the Associated Press ran a story about his mistreatment.

#### **DHS is Violating Legal Standards by Refusing Medical Treatment and Delaying Care**

The inhumane and punitive conditions described above are in direct contravention of established law and norms. It is the responsibility of DHS to hold the detention facilities under its purview to the legal requirements and to appropriately penalize them when they continuously harm migrants in their care.

### Constitutional Protections

The Fifth Amendment Due Process Clause of the U.S. Constitution protects substantive rights of “all persons” present in the United States, including detained immigrants.<sup>16</sup> As such, people in detention are entitled to, at a bare minimum, adequate medical care, as well as adequate food, shelter, clothing, reasonable safety, and adequate medical care.<sup>17</sup>

Immigration detention is civil, not criminal in nature.<sup>18</sup> Unlike criminal detention, civil detention cannot be punitive and any restriction on a person’s liberty must be rationally related to a legitimate governmental goal.<sup>19</sup> In the context of criminal detention, the Eighth Amendment clearly prohibits “deliberate indifference” on the part of the detention staff to a detained individual’s “serious medical need[s].”<sup>20</sup> Courts have held that people in civil detention are entitled to a standard of care greater than – or at the very least, equal to – the standard of care afforded to people in criminal detention.<sup>21</sup> Indeed, the Ninth Circuit has held that, unlike people in criminal detention, civilly confined individuals need not prove “deliberate indifference” to demonstrate a violation of their Constitutional rights.<sup>22</sup>

The accounts of abuse and neglect detailed above describe profoundly deficient physical and mental health care, including the denial of life-saving HIV medication. As such, ICE and CBP have violated the higher Eighth Amendment standard, showing deliberate indifference to serious medical needs and failing to provide critical care. These failures on the government’s part, which have caused detained immigrants to endure debilitating pain, suffer serious injury and placed them in mortal danger, amount to Constitutionally prohibited punishment. It is clear that LGBTQ, PLWHIV immigrants cannot be housed safely in detention and therefore should be released.

### Statutory Law

Various federal and state statutes also protect detained immigrants. For instance, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 provide protections from discrimination and mandate access to adequate and reasonable accommodations for LGBTQ, PLWHIV

<sup>16</sup> *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

<sup>17</sup> *See Youngberg v. Romeo*, 457 U.S. 307, 315-16, 324 (1982) (finding civil detainee entitled to adequate food, shelter, clothing, medical care and reasonable safety under the Fourteenth Amendment).

<sup>18</sup> *Zadvydas*, 533 U.S. at 690 (acknowledging that immigration detention is civil).

<sup>19</sup> *Bell v. Wolfish*, 441 U.S. 520, 535-539 (1979).

<sup>20</sup> *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (“prison official’s deliberate indifference to an inmate’s serious medical needs is a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment”).

<sup>21</sup> *Jones v. Blanas*, 393 F.3d 918, 931-34 (9th Cir. 2004), *cert denied*, 546 U.S. 820 (2005) (a civilly detained person is entitled to “‘more considerate treatment’ than his criminally detained counterparts. . . . Therefore, when a [civil] detainee is confined in conditions identical to, similar to, or more restrictive than those in which criminal counterparts are held, we presume that the detainee is being subjected to ‘punishment.’” (internal citations omitted)); *see also Youngberg v. Romero*, 457 U.S. 307, 321-32 (1982) (“Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”).

<sup>22</sup> *Jones* 393 F.3d at 934; *see also Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir. 2007) (“[T]he Eighth Amendment provides too little protection for those whom the state cannot punish.” (emphasis in original, citations omitted)).

immigrants with physical and mental disabilities who are detained by ICE and CBP.<sup>23</sup> Likewise, the Prison Rape Elimination Act imposes national standards for the prevention, reduction, and punishment of prison rape, including standards for the provision of physical and mental health services to individuals who have been the victim of sexual abuse.<sup>24</sup> The stories above illustrate that not only are detention centers failing to provide even the most basic care to LGBTQ, PLWHIV in the aftermath of experience sexual violence, they are placing people in inhumane segregation leading to a further deterioration of physical and mental health. This has forced many LGBTQ, PLWHIV individuals to abandon viable claims for asylum and return to the violent conditions in which they fled in the first place. This is in clear contradiction to why asylum protections were created in the first place.

### **Detention Standards**

In addition to these legal obligations, ICE and CBP must comply with their own set of standards, which are designed to protect detained immigrants. Notably, as currently applied, these standards have failed to translate into adequate physical and mental health care for LGBTQ, PLWHIV individuals due to inconsistent application, insufficient oversight and lack of accountability. In other words, ICE and CBP are failing to comply with their own standards.

The most comprehensive of these standards, the 2011 Performance-Based National Detention Standards (2011 PBNDS), updated in 2016, set forth extensive medical care requirements for ICE. For instance, the 2011 PBNDS require appropriate physical, dental, and mental health care as well as pharmaceutical services, 24-hour access to emergency care, and timely responses to medical complaints for all detained people.<sup>25</sup> They also require language services for individuals with limited English proficiency during any physical or mental health appointment, treatment, or consultation.<sup>26</sup> The stories above illustrate that far too many LGBTQ, PLWHIV individuals are flat out denied access to care or left waiting for months on end for treatment.

For PLWHIV, the facility has more specific requirements. For example, it must provide medical care consistent with national recommendations and guidelines disseminated through the U.S. Department of Health and Human Services, the CDC, and the Infectious Diseases Society of America, and must provide access to all medications for the treatment of HIV currently approved by the FDA.<sup>27</sup> Moreover, adequate supplies of such medications must be kept on hand to ensure newly detained individuals are able to continue with their treatments without interruption.<sup>28</sup> Detained immigrants are entitled to request an HIV test at any time.<sup>29</sup> Clearly, this is not happening.

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<sup>23</sup> Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990), [http://library.clerk.house.gov/reference-files/PPL\\_101\\_336\\_AmericansWithDisabilities.pdf](http://library.clerk.house.gov/reference-files/PPL_101_336_AmericansWithDisabilities.pdf); Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (1973), <https://www.gpo.gov/fdsys/pkg/STATUTE-87/pdf/STATUTE-87-Pg355.pdf>.

<sup>24</sup> 6 C.F.R. §§ 115.81 - 115.83 (2014).

<sup>25</sup> U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011, 257-81 (2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

<sup>26</sup> *Id.* at 264.

<sup>27</sup> *Id.* at 263.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 263.

The 2011 PBNDS also mandates that special consideration be given to people at risk of sexual assault, including individuals who have self-identified as members of the LGBTQ community.<sup>30</sup> With specific regard to transgender individuals, the 2011 PBNDS require that those individuals who have been receiving hormone therapy when taken into ICE custody, maintain continued access to such therapy.<sup>31</sup> The guidelines further demand that detained transgender people have access to “mental health care, and other transgender-related health care and medication based on medical need.”<sup>32</sup> Once again, this complaint and others demonstrate that DHS is failing to meet these standards and transgender people are experiencing immense suffering as a result.

The other two national ICE standards — the National Detention Standards (NDS), issued in 2000 and the 2008 PBNDS — while less comprehensive than the 2011 PBNDS, also provide guidelines to ensure health and safety of detained immigrants. These guidelines include provisions that establish access to health services,<sup>33</sup> mental health screenings and treatment plans,<sup>34</sup> and suicide prevention protocols.<sup>35</sup> These standards also require detention facilities to provide medical treatment to PLWHIV.<sup>36</sup>

In addition to these generalized detention standards, ICE also issued a memorandum concerning the care of detained transgender immigrants in 2015. The memorandum sets forth guidance to ensure the safety of transgender immigrants in ICE’s custody. More specifically, the memorandum includes contract modifications for facilities to ensure access to adequate healthcare, including access to hormone therapy. The memorandum also states that during initial processing or risk classification assessment of an individual, the detention facility staff should inquire about a person’s gender identity<sup>37</sup> and make individualized placement determination to ensure person’s safety, including whether detention is warranted. Where feasible and appropriate, ICE should house transgender immigrants in facilities that

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<sup>30</sup> *Id.* at 135.

<sup>31</sup> *Id.* at 273.

<sup>32</sup> *Id.* at 274.

<sup>33</sup> U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 1 (2008), [https://www.ice.gov/doclib/dro/detention-standards/pdf/medical\\_care.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf).

<sup>34</sup> U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 3 (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 13-14 (2008), [https://www.ice.gov/doclib/dro/detention-standards/pdf/medical\\_care.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf).

<sup>35</sup> U.S. Immigration and Customs Enforcement, Detention Operations Manual: Suicide Prevention and Intervention (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/suciprev.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Suicide Prevention and Intervention, 1-2 (2008), [https://www.ice.gov/doclib/dro/detention-standards/pdf/suicide\\_prevention\\_and\\_intervention.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/suicide_prevention_and_intervention.pdf).

<sup>36</sup> U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 7 (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 7-8 (2008), [https://www.ice.gov/doclib/dro/detention-standards/pdf/medical\\_care.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf).

<sup>37</sup> U.S. Dep’t. of Homeland Security, *Further Guidance Regarding the Care of Transgender Detainees*, 2 (June 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.



are equipped to care for transgender people.<sup>38</sup> ICE also has a Directive on Gender Dysphoria and Transgender Detainees which applies to all IHSC personnel and requires an IHSC medical provider completes a physical examination for transgender individuals within two business days of intake and that a behavioral health provider must also perform a mental health evaluation for transgender patients within the same timeframe.<sup>39</sup> Furthermore, IHSC “must initiate and/or continue hormone therapy for [gender dysphoria] detainees as clinically indicated and in accordance with the IHSC Clinical Guidelines for the Treatment of GD.”

Similarly, CBP has a set of standards to provide for the health and safety of individuals in its custody. These standards require CBP officials to inspect detained people for “any signs of injury, illness, or physical or mental health concerns . . . ,”<sup>40</sup> and in cases of emergency, CBP officials must immediately call medical services.<sup>41</sup> The standards also note that individuals known to be on life-sustaining or life-saving medical treatment, LGBTQ people, and individuals with mental or physical disabilities may require additional care and oversight.<sup>42</sup> Additionally the standards require that during transportation of a detained person, CBP officials must be on alert for signs of medical symptoms, and provide or seek medical care in a timely manner.<sup>43</sup>

While the strength of protections accorded by different detention standards varies, even the weakest standards set minimum requirements for the health and safety of detained people. Unfortunately, however, as the experiences of LGBTQ, PLWHIV individuals detailed in this letter demonstrate, ICE and CBP routinely fail to comply with the most basic requirements.

**DHS Cannot Safely House LGBTQ, PLWHIV Individuals and Must Fix the Broken Oversight System that Allows These Offenses to Continue with No Accountability**

ICE and CBP blatantly disregard the health of LGBTQ, PLWHIV individuals and repeatedly fail to not only meet legally required standards of care but even their own detention standards. The countless reports of outright denial of medical treatment and the continuous maltreatment clearly demonstrates that DHS cannot house LGBTQ, PLWHIV individuals safely. Furthermore, there is no reason to keep LGBTQ, PLWHIV people in detention in the first place.

Further DHS is failing to meet their responsibility of oversight. DHS’s own reports demonstrate that contracted agencies who are responsible for investigations do not take their responsibilities seriously. What’s more, even when medical neglect and mistreatment is substantiated, DHS rarely uses its authority to implement penalties and address the conditions that led to the harm in the first place. For example, in a report looking at 2018 and 2019 inspection reviews of ICE detention facilities, the OIG concluded that ICE’s monitoring systems do not ensure adequate oversight or systematic improvements in detention conditions, with some deficiencies remaining unaddressed for years.<sup>44</sup> Further, the OIG

<sup>38</sup> *Id.*

<sup>39</sup> IHSC Directive: 03-25 effective March 15, 2017.

<sup>40</sup> U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, 14 (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

<sup>41</sup> *Id.* at 17.

<sup>42</sup> *Id.* at 19.

<sup>43</sup> *Id.* at 6.

<sup>44</sup> Office of Inspector General (OIG), *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

found that ICE did not adequately hold detention facility contractors accountable for their lack of compliance with performance standards because they failed to use contracting tools to hold them accountable.<sup>45</sup>

With this in mind, we demand that:

- First and foremost, ICE release all LGBTQ, PLWHIV people that are currently detained on their own recognizance.
- ICE comply with the OIG's January 29, 2019 recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet these standards for care by imposing financial penalties and cancelling contracts for facilities that consistently fail to meet the standards.
- The DHS OIG work with the CRCL to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE custody
- DHS must strengthen its oversight of facilities and improve its audits of facilities, ensure timely cooperation of components with OIG and CRCL investigations, increase its use of unannounced inspections, and improve grievance procedures and take meaningful measures to end retaliation against individuals in custody who exercise their right to file a grievance.
- DHS must ensure that all people in detention are aware of their legal rights through developing and disseminating information that details the medical care that they are entitled to.
- Ensure that people are not held in CBP longer than the minimal amount of time it takes for processing, no longer than 24 hours.
- Ensure that CBP provide all persons in custody with timely medical screenings by a licensed health professional and require an EMT or other certified health professional to be on-duty and available to give medical attention at all times in CBP processing and holding stations. Ensure that the health professionals are competent on transgender and HIV related health care.
- Create a thorough, independent, and regular investigation process and standards to ensure that CBP is meeting designated standards and to document incidents of neglect and abuse. Develop specific policies that detail penalties for CBP facilities with documented cases of abuse and medical neglect.

### **Conclusion**

We were deeply saddened and angered to learn of the death of Johana Medina Leon, who died on June 1st, 2019 after spending seven weeks in ICE custody. Her death came almost a year to the day of the death of Roxsana Hernandez, another transgender woman who should not have been detained and who died while in ICE custody. Both of these women experienced medical neglect and the stories in this complaint demonstrate that, tragically, the circumstances around their deaths are not outliers but in fact the norm for the treatment of transgender, as well as lesbian, gay, bisexual, and people living with HIV in ICE and CBP custody. The well-documented mistreatment of LGBTQ, PLWHIV individuals demonstrates that ICE and CBP are unable to adequately care for LGBTQ, PLWHIV people, or really any individuals, in their care.

Despite the frequent and ongoing complaints made to DHS, poor oversight and lack of accountability allows these conditions to continue. Neither DHS nor the detention centers that the department is

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<sup>45</sup> OIG, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

responsible for overseeing are above the law and should receive appropriate consequences for these egregious offenses.

If you have any questions about the above information, please contact Ash Stephens at [Ash@transgenderlawcenter.org](mailto:Ash@transgenderlawcenter.org) or Sharita Gruberg at [sgruberg@americanprogress.org](mailto:sgruberg@americanprogress.org).

Sincerely,

Transgender Law Center  
Black LGBT Migrant Project  
Familia Trans Queer Liberation Movement  
Al Otro Lado  
Las Americas Immigrant Advocacy Center  
Center for American Progress  
Los Angeles LGBT Center  
Freedom for Immigrants  
Santa Fe Dreamers Project  
Southern Poverty Law Center  
Immigration Equality  
Center for Victims of Torture  
National Immigrant Justice Center  
National Center for Transgender Equality

8/15/2019

Dear Member of Congress,

We, the undersigned organizations, write to express our strong support for the Dignity for Detained Immigrants Act (H.R. 2415/S. 1243). As lesbian, gay, bisexual, transgender, queer (LGBTQ) and allied organizations, we recognize the severe danger detention poses to LGBTQ immigrants and the imperative need for increased oversight of detention facilities and the rights of asylum seekers. The Act would protect LGBTQ people from arbitrary detention and violence within facilities and ensure their right to seek protection within the United States. We urge you to protect these basic rights and co-sponsor this critical bill.

#### **Current Danger for LGBTQ Immigrants**

In 2018, Roxsana Hernandez fled to the U.S. from Honduras. As a transgender woman with HIV, Roxsana faced severe threats of violence and persecution in her home country. However, Roxsana did not escape such abuse upon arriving to the U.S. While detained at the border, Roxsana suffered abuse and mistreatment and died from dehydration and complications related to HIV only weeks after arriving.<sup>1</sup> Roxsana is not alone. Johana Medina Leon, a 25-year-old trans woman from El Salvador entered US custody on April 1. Despite seeking safety, she was denied medical care and died seven weeks after being detained.<sup>2</sup>

LGBTQ people are more likely to be and remain detained, regardless of their flight risk or public safety risk. A 2016 Freedom of Information Act request from the Center for American Progress found that DHS detained 88 percent of LGBTQ immigrants who were eligible for release and not subject to mandatory detention, despite expressing fear of being targeted by other detainees and staff members because of their sexual orientation or gender identity.<sup>3</sup> This fear is well-founded. LGBTQ people in detention are 97 times more likely to report being sexually victimized than non-LGBTQ people.<sup>4</sup> Also, despite rules to the contrary, ICE routinely places transgender women with men or in solitary confinement. In

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<sup>1</sup> Nicole Chavez, "Transgender Woman in Migrant Caravan Dies in ICE Custody," CNN May 31 2018, available at <https://www.cnn.com/2018/05/31/health/transgender-migrant-dies-ice-custody/index.html>

<sup>2</sup> Tina Vasquez, "The Details of Johana Medina Leon's Detainment and Death Matter," Rewire News June 6, 2019, available at <https://rewire.news/article/2019/06/06/the-details-of-johana-medinas-detainment-and-death-matter/>

<sup>3</sup> Sharita Gruberg, "ICE Officers Overwhelmingly Use Their Discretion to Detain LGBT Immigrants," Center for American Progress 2016, available at <https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>.

<sup>4</sup> Sharita Gruberg, "ICE's Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse," Center for American Progress 2018, available at <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>. Letter from Rep. Kathleen Rice to Secretary Kirstjen Nielsen, May 30, 2018, available at [https://kathleenrice.house.gov/uploadedfiles/2018.05.30\\_lgbt\\_immigrants\\_in\\_ice\\_detention\\_letter\\_to\\_sec\\_nielsen.pdf](https://kathleenrice.house.gov/uploadedfiles/2018.05.30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf).

2017, 1 in 8 transgender women detained by ICE was placed in solitary confinement.<sup>5</sup> Solitary confinement often leads mental and emotional distress, with side effects including hallucinations, panic attacks, and suicidal impulses.<sup>6</sup> Numerous studies have also found that LGBTQ immigrants in detention are subjected to verbal and physical abuse as well as withholding of critical medication such as HIV medication and hormone therapy.<sup>7</sup> And because of the current bond system, many LGBTQ individuals are held in these unsafe conditions merely because they do not have the ability to pay their way out. Cesar Matias, a gay Honduran seeking protection in the US, was held for 4 years because he was unable to make bail.<sup>8</sup>

### **Act Summary**

The Act would address these abuses. The Act would require DHS to obtain a warrant from an immigration judge to arrest individuals; in the case of warrantless arrests, detained people would have to be provided with a probable cause hearing within 48 hours. The Act would also put an end to mandatory detention, ensuring that only those who are a threat to the community are detained and creating a presumption of release. The Act also establishes a presumption that vulnerable individuals, including LGBTQ individuals, young people, and victims of crimes, should be placed in community-based supervision programs rather than detention facilities. The Act also removes the minimum bond amount of \$1,500 for release and requires immigration judges to consider an individual's ability to pay when setting bond.

### **How the Act Helps LGBTQ Immigrants**

This Act would protect LGBTQ people from the abuses they face in detention and detention proceedings in four ways. First, the Act frames detention as a last resort and imposes a higher burden of proof for the detention of vulnerable people like LGBTQ individuals. Second, the Act requires DHS to establish detention standards which meet or exceed the ABA Civil Immigration Detention Standards, including providing proper training for staff. The Act subjects non-compliant DHS/ICE facilities to penalties, ending the impunity of private prisons that profit from the detention of immigrants with no accountability or meaningful oversight.<sup>9</sup> Third, the Act requires data collection and reporting on the conditions of vulnerable detained populations, including LGBTQ people. Finally, by eliminating the minimum bail requirement and requiring immigration judges to consider the immigrant's ability to pay when setting the bond, the Act ensures that LGBTQ

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<sup>5</sup> *Id.*

<sup>6</sup> Stuart Grassian, "Psychiatric Effects of Solitary Confinement," Wash. U. J. L. & Pol'y 325 (2006), available at [https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol22/iss1/24](https://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/24)

<sup>7</sup> Human Rights Watch, "Do You See How Much I'm Suffering Here? Abuse against Transgender Women in US Immigration Detention," available at <https://www.hrw.org/report/2016/03/23/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us>

<sup>8</sup> Sharita Gruberg, "What Happens When Asylum Seekers Are Too Poor to Make Bail," April 22, 2016, available at: <https://talkpoverty.org/2016/04/22/asylum-seekers-too-poor-to-make-bail/>

<sup>9</sup> Department of Homeland Security, "ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systematic Improvements," June 26 2018, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

immigrants do not remain in unsafe detention conditions merely because they cannot afford to pay.

By keeping more LGBTQ asylum seekers out of detention, the Act would eliminate an arbitrary and unfair barrier to obtaining asylum for the many LGBTQ immigrants who are fleeing life-threatening persecution and violence. Around the world, LGBTQ people experience high levels of persecution and nearly 80 countries categorically criminalize same-sex relationships.<sup>10</sup> The Act supports LGBTQ asylum seekers by significantly reducing the likelihood of them being detained, which has a positive effect on asylum case outcomes. A study found that non-detained immigrants with legal representation had successful case outcomes 74 percent of the time, compared to detained immigrants with legal representation with only an 18 percent success rate.<sup>11</sup> By removing the barrier of detention, this Act will help to ensure that the success of an LGBTQ asylum seeker's claim is based on its merits rather than on arbitrary factors. For many LGBTQ asylum seekers this could mean the difference between life and death.

For all of these reasons, we hope that you will support this important legislation.

For any questions, please contact Tyrone Hanley at [THanley@nclrights.org](mailto:THanley@nclrights.org) or Sharita Gruberg at [SGruberg@americanprogress.org](mailto:SGruberg@americanprogress.org).

Sincerely,

Advocates for Youth

African American Ministers In Action

AIDS Action Baltimore

AIDS Alabama

AIDS Alabama South

AIDS Foundation of Chicago

AIDS Project Rhode Island

AIDS United

American Academy for HIV Medicine

American Civil Liberties Union

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<sup>10</sup> Angus Carroll, "State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalization, protection and recognition," (Geneva: ILGA, May 2016), available at [http://ilga.org/downloads/02\\_ILGA\\_State\\_Sponsored\\_Homophobia\\_2016\\_ENG\\_WEB\\_150516.pdf](http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf).

<sup>11</sup> Steering Committee of the New York Immigrant Representation Study Report, "Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings," *Cardozo Law Review* 33(2)(2011) available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf).

American Sexual Health Association  
API Equality-LA  
APLA Health  
Athlete Ally  
Bienestar Human Services  
BiNet USA  
California LGBTQ Health and Human Services Network  
Campaign for Youth Justice  
Cascade AIDS Project  
Center for American Progress  
Center for Constitutional Rights  
CenterLink: The Community of LGBT Centers  
Council for Global Equality  
Equality California  
Equality Federation  
Equality North Carolina  
EqualityMaine  
Equitas Health  
Familia: Trans Queer Liberation Movement  
Fenway Health  
Forward Together  
Gay Men's Health Crisis (GMHC)  
Generation Progress  
Global Justice Institute  
Hispanic Health Network  
Howard Brown Health  
Immigration Equality Action Fund  
Just Detention International  
Justice Strategies

Lambda Legal  
Latino Commission on AIDS  
Latino Equality Alliance  
Latinos Salud  
Los Angeles LGBT Center  
Mazzoni Center  
Modern Military Association of America  
Movement Advancement Project  
National Black Gay Men's Advocacy Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Council on Independent Living (NCIL)  
National Equality Action Team (NEAT)  
National Immigrant Justice Center  
National LGBTQ Task Force Action Fund  
National Working Positive Coalition  
New York City Anti-Violence Project (AVP)  
People For the American Way  
PFLAG National  
Positive Women's Network USA  
Prevention Access Campaign  
Pride Action Tank  
Pride at Work  
San Francisco AIDS Foundation  
Sexuality Information and Education Council of the United States (SIECUS)  
Silver State Equality  
ST. JAMES INFIRMARY  
The Global Justice Institute  
The LGBT Center OC



The NYC Lesbian, Gay, Bisexual & Transgender Community Center

The Taifa Group

The Wall Las Memorias

TRANScending Barriers Atlanta

Transgender Law Center

Treatment Action Group (TAG)

Triangle Community Center

United We Dream

URGE: Unite for Reproductive & Gender Equity

Virginia Organizing

Whitman-Walker Health



## OFFICERS

*John Yang, Co-chair*  
Asian Americans Advancing Justice | AAIJ

*Alvina Yeh, Co-chair*  
Asian Pacific American Labor Alliance, AFL-CIO

*Sung Yeon Chaimorrow, Treasurer*  
National Asian Pacific American Women's Forum

*Becky Belcore, At-Large*  
National Korean American Service & Education Consortium

*Jeffrey Caballero, At-Large*  
Association of Asian Pacific Community Health Organizations

*Anjula Singh, At-Large*  
South Asian Bar Association of North America

## MEMBER ORGANIZATIONS

Asian American Psychological Association  
Asian & Pacific Islander American Health Forum  
Asian & Pacific Islander American Scholars  
Asian & Pacific Islander American Vote  
Asian Americans Advancing Justice | AAIJ  
Asian Pacific American Institute for Congressional Studies  
Asian Pacific American Labor Alliance, AFL-CIO  
Asian Pacific Partners for Empowerment, Advocacy & Leadership  
Asian Real Estate Association of America  
Association of Asian Pacific Community Health Organizations  
BPSOS  
Center for Asian American Media  
Center for Asian Pacific American Women  
Council for Native Hawaiian Advancement  
Empowering Pacific Islander Communities  
Hmong National Development, Inc.  
Japanese American Citizens League  
Latino American National Alliance  
Leadership Education for Asian Pacifics  
National Asian American Pacific Islander Mental Health Association  
National Asian Pacific American Bar Association  
National Asian Pacific American Families Against Substance Abuse  
National Asian Pacific American Women's Forum  
National Asian Pacific Center on Aging  
National Association of Asian American Professionals\*  
National Coalition for Asian Pacific American Community Development  
National Council of Asian Pacific Islander Physicians  
National Federation of Filipino American Associations  
National Korean American Service & Education Consortium  
National Queer Asian Pacific Islander Alliance  
OCA – Asian Pacific American Advocates  
Payvita, Inc.  
Sikh American Legal Defense and Education Fund  
South Asian Americans Leading Together  
South Asian Bar Association of North America  
Southeast Asia Resource Action Center

September 12, 2019

The Honorable Judy Chu  
Chairwoman  
Congressional Asian Pacific American Caucus

Dear Members of the Congressional Asian Pacific American Caucus:

On behalf of the National Council of Asian Pacific Americans' Immigration Committee, we write to urge you to cosponsor the Dignity for Detained Immigrants Act (H.R.2415), introduced by Representatives Pramila Jayapal and Adam Smith.

Immigrant detention should be a last resort, not the norm; however, the Department of Homeland Security continues to increase the number of detained immigrants despite there being adequate, cheaper, and more humane alternatives. Additionally, immigrant detention conditions have been shown to be deplorable with inadequate support for vulnerable populations. Immigration and Customs Enforcement currently holds over 55,000 individuals in detention<sup>1</sup>, 10,000 over the appropriated 45,274 average daily population (ADP) allocated in the 2019 omnibus and 15,000 above the Congressional ADP target goal of 40,500<sup>2</sup>. In June and July of this year, the Office of the Inspector General (OIG) released two reports detailing egregious violations of detention standards in four Immigration and Customs Enforcement (ICE) detention facilities<sup>3</sup> and massive overcrowding and prolonged detention in the Customs and Border Protection (CBP) Rio Grande Valley facility<sup>4</sup>.

Given DHS's brazen disregard for the limitations set by Congress through the appropriations process, it is imperative that Congress legislate and move forward H.R.2415 in order to improve detention standards, increase oversight of the detention facilities, and protect vulnerable Asian American and Pacific Islander (AAPI) detainees.

<sup>1</sup> Rayasam, R. (2019, August 20). *Trump administration sued over poor medical care in immigration centers*. Retrieved from <https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605>

<sup>2</sup> Lind, D. (2019, February 12). *Congress's deal on immigration detention, explained*. Retrieved from <https://www.vox.com/2019/2/12/18220323/immigration-detention-beds-congress-cap>

<sup>3</sup> Department of Homeland Security/Office of Inspector General. (2019, June 3). *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities, Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, p. 1. Retrieved from <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>

<sup>4</sup> Department of Homeland Security/Office of Inspector General. (2019, July 2). *Management Alert - DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley*, p. 2-8. Retrieved from [https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19\\_.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf)

### AAPI Detained Immigrants and Asylum Seekers Are Harmed in DHS Custody

Between 2010 and 2017, the Asian American immigrant population grew four times as fast as the total U.S. population.<sup>5</sup> AAPIs immigrate and resettle in the United States through all available migration avenues. They relocate to the United States through the family reunification system, from the Diversity Visa lottery, and as refugees, asylees, and asylum seekers. As such, there are many individuals in AAPI communities who have and are still subject to unfair mandatory detention and automatic deportation laws, including 1.7 million undocumented immigrants<sup>6</sup>; 17,000 Southeast Asian lawful permanent residents living with a final order of removal<sup>7</sup>; and 34,000 South Asian migrants apprehended at the border since 2008<sup>8</sup>.

Our communities continue to be harmed by the Administration's increased detention and deportation policies. As of June 2018, 4,881 Asian immigrants were detained by Immigration and Customs Enforcement.<sup>9</sup> Of those detained, individuals from India comprised over half of all detainees. The other countries with a high number of individuals detained include China, Bangladesh, Nepal, Iraq, Vietnam, and Pakistan.<sup>10</sup>

A significant number of these individuals are subject to cruel and inhumane conditions. Three times this year, Indian asylum seekers have staged hunger strikes at the Otero County Processing Center before being moved to the El Paso detention facility. During the first hunger strike, nine Indian men were force fed three times a day for two weeks<sup>11</sup>, a process that two of the individuals have described as both painful and dehumanizing.<sup>12</sup> Another Indian asylum seeker was force fed in mid-August despite his hunger strike.<sup>13</sup>

AAPI detainees are subject to much of the same mistreatment as other immigrants and asylum seekers in ICE and CBP facilities. 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

<sup>5</sup> Asian Americans Advancing Justice | AAJC and Asian Americans Advancing Justice | LA. (June 2019). *Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities*. Retrieved from [https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153\\_AAJC\\_Immigration\\_Final\\_Pages\\_LR-compressed.pdf](https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf)

<sup>6</sup> Id at 5

<sup>7</sup> Southeast Asia Resource Action Center. (2019, July 1). *SEARAC Denounces Scheduled Deportation of over 50 Cambodian Americans*. Retrieved from <https://www.searac.org/immigration/searac-denounces-scheduled-deportation-of-over-50-cambodian-americans/>

<sup>8</sup> South Asian Americans Leading Together. (2019, August). *South Asian Migrants in Detention*. Retrieved from <http://saalt.org/wp-content/uploads/2019/08/South-Asian-Migrants-in-Detention-Factsheet.pdf>

<sup>9</sup> Id at 5

<sup>10</sup> Id at 5

<sup>11</sup> Moore, R. (2019, July 18) More Asylum Seekers Stage Hunger Strike at El Paso Detention Center. *Texas Monthly*. Retrieved from <https://www.texasmonthly.com/news/more-asylum-seekers-stage-hunger-strikes-at-el-paso-detention-center/>

<sup>12</sup> 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/>

<sup>13</sup> Attanasio, C., Mendoza, M., & Burke, G. (2019, August 15). Attorney: Officials force-feeding immigrant on hunger strike. *AP News*. Retrieved from <https://www.apnews.com/ca98703afc364cbf89b6acea11b9cb98>

Essex bathroom area covered in mold along the walls, vents, ceilings, mirrors, and shower stalls.<sup>14</sup> Similarly, OIG observed serious overcrowding problems in the El Paso Del Norte Processing Center in their May report<sup>15</sup>, and again at five separate Border Patrol facilities and two ports of entry in the Rio Grande Valley<sup>16</sup>. DHS's standards and internal oversight of these facilities are inadequate to protect the rights of detainees.

A June OIG report found inspections by the Nakamoto Group insufficient and the process compromised by notification of inspections given to detention facility staff. Though the Office of Detention Oversight's (ODO) 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."<sup>17</sup>

The Dignity for Detained Immigrants Act fixes many of these deficiencies by mandating the American Bar Association's civil detention standards as the baseline for detention facilities and creating comprehensive oversight requirements for inspection and resolution. Increased oversight also includes mandating unannounced detention facility inspection; terminating the contracts of privately owned facilities with multiple instances of noncompliance; and robust reporting requirements. The combination of uniform standards and increased oversight of DHS detention facilities helps protect noncitizens in detention and ensures proper compliance.

#### **The Dignity for Detained Immigrants Act Would Reduce Detention Usage**

As mentioned earlier, ICE currently detains 15,000 individuals over the target ADP Congressional goal. H.R.2415 would reduce the number of individuals detained by Immigration and Customs Enforcement by eliminating mandatory detention, standardizing the usage of alternatives to detention (ATDs), and presuming the usage of ATDs for vulnerable populations and primary caregivers.

The bill eliminates mandatory detentions. 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 are often subject to years and decades of uncertainty and bureaucratic delay, they are often prone to longer periods of detention. To address some of these concerns, this bill establishes a process for determining whether or not an individual should stay detained within 48 hours of their apprehension, along with the condition of their custody. This process also allows individuals to challenge the results of their custody determination and requires the government prove an individual is a threat to

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<sup>14</sup> Id at 3

<sup>15</sup> 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>

<sup>16</sup> Id at 4

<sup>17</sup> 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>

the community to remain in detention. The bill also creates new bond determinations that do not impose a financial hardship on the detained immigrants.

Additionally, the bill protects vulnerable populations and primary caregivers by presuming the individual's release into community-based supervision programs unless the Secretary of Homeland Security can demonstrate otherwise. In the 2018 report, *Dreams Detained, In Her Words*, by the National Asian Pacific American Women's Forum and the Southeast Asia Resource Action Center, 12 women were interviewed about the impact of detention and deportations on their families. One individual, Jenny Srey, stated that the total cost of her husband's detention amounted to \$20,000<sup>18</sup>. This cost is particularly painful for children in already impoverished families, especially when one or both the primary caregivers are detained.

A similar standard is also applied to vulnerable populations, including LGBTQ individuals, asylum seekers with a credible fear of prosecution, and limited English proficient individuals who are not provided access to appropriate and meaningful language services. These are particularly important as ICE continues to segregate and isolate transgender individuals and replace courtroom interpreters with pre-translated videos. The mistreatment and abuse of LGBTQ individuals can be seen clearly in the segregation of transgender individuals. Earlier this year, the National Queer Asian Pacific Islander Alliance campaigned to release a transgender man from solitary confinement and into the general detention population. Chin, a transgender male from Hong Kong, was placed in solitary confinement for 19 months at the Irwin County Immigration Detention Center. He was placed in these conditions solely because of his gender expression, while simultaneously being provided inadequate medical treatment. The bill's presumption of release into ATD for vulnerable populations would reduce the number of individuals detained and also prevent abuse by ICE of the most vulnerable immigrants.

#### Conclusion

For the above reasons, we reiterate our request that you cosponsor the Dignity for Detained Immigrants Act. H.R. 2415 would drastically help AAPI immigrants, refugees, and asylum seekers currently in detention by overhauling our inhumane detention system; improving standards; creating a robust oversight processes; and reducing detention overall. For any questions or to speak further on this bill, please contact NCAPA Immigration Committee Co-Chairs, Kham S. Moua at [kham@searac.org](mailto:kham@searac.org) or Meghan Essaheb at [mesaheb@advancingjustice-aajc.org](mailto:mesaheb@advancingjustice-aajc.org).

Sincerely,

Gregg Orton  
National Director  
National Council of Asian Pacific Americans

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<sup>18</sup> National Asian Pacific American Women's Forum & Southeast Asia Resource Action Center. (2018, September). *Dreams Detained, In Her Words*, p. 7. Retrieved from [https://www.searac.org/wp-content/uploads/2018/09/dreams\\_detained\\_in\\_her\\_words\\_report-2.pdf](https://www.searac.org/wp-content/uploads/2018/09/dreams_detained_in_her_words_report-2.pdf)



**City of Seattle**  
Mayor Jenny A. Durkan

September 24, 2019

The Honorable Pramila Jayapal  
1510 Longworth House Office Building  
Washington, DC 20515

Dear Representative Jayapal:

On behalf of the City of Seattle, I write to express my strong support of H.R. 2415, the *Dignity for Detained Immigrants Act*, to provide standards for immigrants in the custody of the Department of Homeland Security (DHS). I applaud your leadership on this issue and your commitment to upholding the values on which the promise of America was built.

The undemocratic and inhumane decision by Attorney General William Barr and the Trump administration to withhold bail from asylum seekers is an effort to indefinitely detain immigrants without the most basic fairness. The *Dignity for Detained Immigrants Act* would combat these efforts by mandating that all detained immigrants have access to a bond hearing before an immigration judge. The legislation would also require proof that asylum seekers and other immigrants should be detained because they pose a risk to the community or a flight risk. Fairness and due process should be immutable features of our justice system. It is wrong that immigrants would be denied the basic fairness of a hearing by a neutral judge, and it is vital that Congress act to require that DHS follow a set of mandatory standards. Our system relies both on the fact, and public confidence, that no one is above the law.

The City of Seattle is a better, more vibrant and innovative city because of our immigrant and refugee neighbors. We stand with you in your effort to bring justice to asylum seekers and immigrants who are seeking to build a better life for themselves and their loved ones. I look forward to continuing our work together on issues important to our city and our nation.

Sincerely,

Jenny A. Durkan  
Mayor of Seattle



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## Resolutions

### 87th Annual Meeting

#### In Support of the Dignity for Detained Immigrants Act of 2019 (H.R. 2415)

**WHEREAS**, the Administration has aggressively expanded immigration enforcement efforts and detention; and

**WHEREAS**, the immigration incarceration system endangers approximately 38,153 men, women, and children every single day, including the 1,575 individuals housed in the Northwest Detention Center located in Tacoma, Washington; and

**WHEREAS**, recent national events exposed breaches of health, safety, civil rights, and human dignity in federal detention facilities operated by the U.S. Department of Homeland Security and its private contractors at sites across the country; and

**WHEREAS**, the Administration faces accusations of failure to adequately protect detainees from public health threats, violence, and sexual harassment and assault; and

**WHEREAS**, there is significant public concern regarding the treatment of immigrants in detention centers and those seeking asylum or other sanctuary in our country; and

**WHEREAS**, Members of Congress have introduced the *Dignity for Detained Immigrants Act*, which would direct the U.S. Department of Homeland Security to improve conditions for detained immigrants by enacting necessary reforms and implementing national detention standards that would ensure the rights, dignity, health, and safety of detainees are protected; and

**WHEREAS**, those necessary reforms must restore due process to custody decisions, promote safety and well-being for those detained, eliminate the motive of profit by private contractors, and increase oversight, accountability, and transparency,

**NOW, THEREFORE, BE IT RESOLVED**, that the U.S. Conference of Mayors supports the *Dignity for Detained Immigrants Act* and calls on Congress to pass this legislation to hold the Administration accountable; and

**BE IT FURTHER RESOLVED**, that we urge the U.S. Department of Homeland Security to enact humane detention standards at its facilities nationwide to improve conditions and ensure immigrants are afforded the dignity they deserve; and

**BE IT FURTHER RESOLVED**, that we urge Congress and the Administration to restore due process for all those in detention by providing the federal resources necessary to facilitate swift judicial review of these cases; and

**BE IT FURTHER RESOLVED**, that the U.S. Conference of Mayors urges Congress and the Administration to pursue comprehensive legislative reform of the nation's broken immigration system.

[View all Resolutions](#)

It is now my pleasure to introduce today's witnesses, and I want to thank all of you for being with us today and for taking the time to be here before the committee.

First, we have Selene Saavedra Roman. Ms. Roman is a DACA recipient who currently works as a flight attendant for Mesa Airlines. She is a graduate of Texas A&M University and also has experience working in office administration, physical therapy, and early childhood education. We thank her for her courage and strength to share her experience in ICE detention and the treatment she received with us today. For the next witness, I would like to recognize my colleague from California to introduce our next witness.

Ms. LOFGREN. Thank you. I would like to introduce Denis Davydov. He is an asylee from Russia who fled to the United States because of Russia's anti-gay propaganda and the brutal violence that accompanies it. He is also here to share his experience in ICE detention. Mr. Davydov was granted asylum earlier this year. He now works as a sommelier in California. He is a spokesperson for immigrant equality and an advocate for LGBTQ and HIV-positive asylum seekers, and he also lives in San Jose, California which I represent. And we are happy to have you here, and I yield back.

Ms. JAYAPAL. Thank you, Ms. Lofgren. Our next witness is Blanche Engochan. Ms. Engochan is an asylee from Cameroon, who has been a victim of the Administration's metering policy, CBP detention, and ICE detention. She was granted asylum this summer and released from immigration detention after more than 6 months in custody. She now resides in Maryland and lives with her aunt. We commend her courage for testifying before us today, and we look forward to her testimony.

Our next witnesses Heidi Altman. Heidi Altman is the director of policy at the National Immigrant Justice Center, an organization that provides legal services to more than 10,000 vulnerable immigrants, refugees, and asylum seekers each year. Previously, Ms. Altman served as the legal director for the Capitol Area Immigrant Rights Coalition. She created the in-house Immigration Services Program at the Neighborhood Defender Service of Harlem, and has served as a teaching fellow for Georgetown Law School's immigration clinic. Ms. Altman received her B.A. from Yale University and her J.D. from NYU Law School.

Our next witness is Jorge Barón. Mr. Barón has served as the director of the Northwest Immigrant Rights Project since 2008 and has worked with the organization since 2006. The Northwest Immigrant Rights Project is a legal services organization that also engages in community education on and advocacy for the rights of low-income immigrants and refugees. Previously Mr. Barón served as a law clerk at the U.S. Court of Appeals for the 9th Circuit in Seattle and held a fellowship with the New Haven Legal Assistance Association in Connecticut. Mr. Barón is a graduate of Duke University and Yale Law School, and I am very proud to say is a constituent of mine. Thank you, Mr. Barón, for being here.

Melanie Schikore is executive director of the Interfaith Community for Detained Immigrants where she leads their efforts on comprehensive community and policy responses to detention. Ms.



Schikore is an academic who specializes in immigration policy and has previously taught and completed research at institutions, including Concordia University, DePaul University, and Northwestern University. She received her B.A. from St. Louis University and her M.A. and Ph.D. from the University of Illinois. Thank you for being with us.

Our next witness is Thomas Homan. Mr. Homan served as acting director of the U.S. Immigration and Customs Enforcement from January of 2017 to June of 2018. Prior to this, he served as executive associate director of ICE Enforcement and Removal Operations and has held a variety of other positions within the Agency since its creation. He served as a Federal law enforcement officer for more than 34 years, as a police officer, Border Patrol agent, and as an agent of the former Immigration and Naturalization Service. He received his B.A. in criminal justice from State University of New York Polytechnic Institute. Thank you for being with us, Mr. Homan.

Sheriff Charles Jenkins is currently serving his 4th term as sheriff of Frederick County, Maryland, and is an active member of the Maryland Sheriffs Association and the National Sheriffs Association. In his involvement with the National Sheriffs Association, he is partnered with DHS and ICE to participate in the 287(g) Delegation of Authority Program and the Intergovernmental Services Agreement, ICE Detainee Housing Program. Sheriff Jenkins has testified multiple times before the Maryland legislature and the U.S. Congress on immigration and law enforcement issues.

We welcome all of our distinguished witnesses, and we thank you for participating in today's hearing. Now, if you would please rise, I will begin by swearing you in. Raise your right hand.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[A chorus of ayes.]

Ms. JAYAPAL. Let the record show that the witnesses answered in the affirmative. Thank you, and please be seated.

We will move onto the witness testimony part of this hearing. Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals that your 5 minutes have expired. Ms. Roman, you may begin.

**TESTIMONIES OF SELENE SAAVEDRA ROMAN, COLLEGE STATION; DENIS DAVYDOV, SAN JOSE, CALIFORNIA; BLANCHE ORNELIA ENGOCHAN, SILVER SPRING, MARYLAND; HEIDI ALTMAN, DIRECTOR OF POLICY, NATIONAL IMMIGRANT JUSTICE CENTER; JORGE BARON, EXECUTIVE DIRECTOR, NORTHWEST IMMIGRANT RIGHTS PROJECT; MELANIE SCHIKORE, EXECUTIVE DIRECTOR, INTERFAITH COMMUNITY FOR DETAINED IMMIGRANTS; THOMAS D. HOMAN, FORMER ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; AND CHARLES A. JENKINS, SHERIFF, FREDERICK COUNTY SHERIFF'S OFFICE**

**TESTIMONY OF SELENE SAAVEDRA ROMAN**

Ms. ROMAN. Good morning. Thank you for inviting me to testify at this important hearing today. My name is Selene Saavedra Roman, and I was detained for 38 days in an ICE detention center.

I was brought to the United States of America undocumented at the age of 4. I attended public school in my home State of Texas and graduated from Texas A&M with a bachelor's degree in allied health and a minor in communications. I am a former Deferred Action for Childhood Arrivals recipient, which provided me a sense of relief from the looming fear of deportation. In 2017, I married my husband, David, who is a U.S. citizen and my petitioner for residency through an I-130, which was approved. The petition is the only first step of a lengthy journey to obtain residency, which we hoped would lead to my citizenship.

In November 2018, I was hired by Mesa Airlines, Inc. as a flight attendant. On February 12th, 2019, I was assigned my first international flight to Monterrey, Mexico. I received reassurance from Mesa Airlines the day prior that I would be able to take the international flight. Everything went fine on the flight to Mexico, but when I arrived to George W. Bush Intercontinental Airport, I was detained at U.S. Customs. After 24 hours in a waiting room at the airport and never having been explained clearly what was going on, it was determined that I was to be sent to an ICE detention center. This is how I arrived at the Montgomery Processing Center in Conroe, Texas.

Let me tell you what I experienced while at the MPC. My first morning in the dorm hall, I was awakened by another woman who hurriedly explained that she and I were in charge of cleaning the bathroom that morning. I thought it was a joke at first. We only had brooms and a soapy mixture of water and shower gel to do the job. It was barely 4:30 a.m., and yet as soon as we finished cleaning, the guards finally yelled at us that it was time for breakfast.

At mealtimes, we would only get 15 minutes to eat, the food was always cold and tasteless, and there was never any fresh fruit. The tables were dirty, they were not cleaned between dorm rotations, and after the last dorm would eat, the guard would ask for volunteers to clean the cafeteria when it was their responsibility. Can you imagine the mess? It was disgusting.

We were given used underwear, we slept in freezing temperatures with no pillows, and we were forced to do labor with threat of isolation if not compliant. I watched one woman refuse to clean. She had already cleaned the dorm next door, and, as a result, she

was put in isolation for several weeks. When she came out of isolation, she looked so distraught. She had plucked her eyebrows from all the stress she endured.

Why are we being forced to clean? This is supposed to be a civil detention center, but instead we were treated as though we were serving a criminal sentence. We were just people who were awaiting our immigration trials. After that, I knew not to argue or talk back. We were made to believe by the guards that refusing any orders would lead to write-ups to directly affect our immigration cases. Many women worried that it would hurt their asylum cases.

These feelings of fear and powerlessness consumed us and loomed over us. They permeated the entire dorm. Still, I cannot help wondering why we were all being treated like this. How could we be treated like we didn't mean anything? The guards would bully me around with their words and degrading comments, but were surprised and would back off when I would respond to them in English. There is so much more I could say about the poor conditions at MPC, like the freezing temperatures, the mattresses made of hard plastic, and the pillows, long time spent indoors with little outside recreation or fresh air, and no contact or visitation.

But what I would like to leave you with is the impact that this detention center had on me. I lived in a constant state of uncertainty and fear each and every one of the 38 days that I was detained. I felt hopeless, powerless, and lost. I couldn't even look at myself in the mirror. My hair started to fall out. I am now experiencing constant levels of clinical depression and anxiety.

This detention center broke my spirit. I lost faith in our institutions. I still have nightmares about what I endured at MPC. I am not the person I was before this whole situation happened. It is not easy for me to talk about this experience, but I am doing it because I can no longer be quiet. If this was my experience after 38 days, what must it be like for those who are held for months or even years? The people of the United States need to know the truth of what is going on in these detention centers. Thank you.

[The statement of Ms. Roman follows:]

**House Judiciary Committee:  
Subcommittee on Immigration and Citizenship**

**Hearing entitled: “The Expansion and Troubling Use of ICE Detention”**

Written Testimony of Selene Saavedra-Roman

Washington, DC  
September 26, 2019

Thank you for this opportunity to provide testimony about this extremely important matter which profoundly affects the lives of detained individuals every day:

I felt a tug on my arm. Someone was pulling my sweater. I had later found out her name was Flor, she was my left bunk neighbor. She said to me, “Levántate. Te toca limpiar.” Or in English, “Wake up, it’s your turn to clean.” My eyelids were heavy as they scanned the room for a clock. I shoved my thick framed pink glasses on. They were my favorite pair from Warby Parker. My eyes found a clock near the one door of the hall. It was 4:25 a.m. I had less than 5 hours of sleep since my intake process. I honestly thought the girl was joking with me. I thought ‘there’s no way I have to clean.’ I moved the worn-down gray knit blanket across from me and looked around again taking in my environment. I remember being hesitant about removing my blanket as it was freezing throughout the night. I was wearing 2 sweaters and 2 pairs of socks with my pants tucked into them. I had to assume the fetal position just to conserve what little warmth I had.

As I stretched, I wondered why my neck had a crook. Then I looked at my “pillow”. My pillow was an embedded shallow-like bump featured on the inside end of the bed. My back was sore. The mattress was made of hard plastic. As I looked around, I saw about 60 blue metal bunk beds lined up next to each other against the pale blue painted walls, identical to the ones from Orange is the New Black’s latest season. Each one contained a woman, waking up from their deep slumber with messy tangled dried up hair, eyes full of sadness, and hungry faces with starving stomachs. The ladies were either dressed in orange or blue prison attire. I looked down and remembered what I had on: a blue top with a pocket where I kept my I.D. with a white undershirt.

I was also given 2 pairs of used underwear. I made sure I placed some toilet paper or a pad on the underwear to serve as a liner for sanitization purposes. And blue pants and shoes that resembled vans but made by Bob Barker. I swore to speak to Bob Barker after I got out to improve the quality of the clothes and shoes, which was appalling. I grew up poor but never had to wear rags like the ones I had in the detention center. This was so demeaning; it was something I had to get used to.

In addition to our assigned attire, we wore bracelets which identified us with our alien registration number and a picture. These bracelets were essential. It was the lifeline to go outside for recreation time or to get lunch. If one of us forgot to bring our bracelet, we couldn’t scan the bracelet in the cafeteria because the guard would send us back to our dorm and by the time our

head guard dorm could send us back, lunch time will be over and the detainees would give up and wouldn't eat. As to our hair we weren't allowed to bring in hair ties so we made do with using the stretchy end of latex gloves and made those into hair accessories.

"Apurate, limpia el baño," Flor said in an urgent voice that interrupted my sleepy observations. I was on the top bunk and proceeded cautiously down the metal ladders. I was given a large broom and directed to clean the showers. That's when I met Rosa. She had a high ponytail which resembled bird feathers coming out of her head. She was of a shorter stature due to poor nutrition as a child. Her skin was tan (brown) like mine and she had dark brown eyes like mine. Her hair was black like mine. As I stared at her I noticed we were similar. We were both human, born in different countries on the same path starting at different times in our lives. I began my journey at four years old, she recently started hers at the age of seventeen. She traveled from the Guatemalan mountains for a better opportunity and I had traveled from *los cerros de* [the mountains of] Peru. She smiled and handed me the bucket full of a soapy mixture of water and shower gel. We were to clean off the hair and germs with brooms. Go figure. My job was done, and the loud voice of the guard resonated throughout the hall "Chow time! Line up! Ladies, time to get up." We lined up and proceeded to breakfast right before 5 a.m. in the morning.

When you're thrown into the pit, you learn as you go. You don't have any other option, or this place will consume you.

You might wonder how I got here - how can an educated woman of 28 years of age on her way to citizenship would end up in a detention center. I am Selene Saavedra-Roman. I was brought to the United States of America, undocumented, at the age of 4. I traveled more than 3,000 miles from Peru to get to the land of the American Dream. Until recently, I was the recipient of Barack Obama's Deferred Action for Childhood Arrivals (DACA).

In early November of 2018, I received my conditional offer of employment for a flight attendant position at Mesa Airlines Inc. I screamed with joy when I received my acceptance e-mail. I was delighted to start a new career. I had to get everything ready as training started in two weeks. I was overwhelmed with all the possibilities to expand on this career. As I looked back, I realized I did not want to live the rest of my years in one place and would rather explore while I had the energy to do so. My mentality was to live my life to the fullest. And that's what this little bird did, she spread her wings to fly.

After two rough months of absorbing course materials and exams we earned our wings. I started my journey in Phoenix, Arizona and ended in Houston, Texas in January 2019 where I was based at the George W. Bush Intercontinental Airport (IAH). IAH became my second home. I spent more hours at the airport during my probation period than my actual home. Little did I know that, as I was getting comfortable in my second home, I would have my life turned upside down. My new home would be made of cold concrete walls and an unstoppable deportation machine.

I woke up the early Tuesday morning of February 12, 2019. Today was just like any other day where I start getting ready at 5 a.m. for a day in the air. I was a bit nervous about my first international flight, but I received reassurance from Mesa Airlines the day prior to flying out to Monterrey, Mexico. I served first class on United Express. I served coffee and had a friendly chat with the passengers on the first row. They were a lovely couple heading to their home in Mexico. We spoke about my Apple watch and how technology is advancing so fast these days. I absolutely love my job. I love serving others and interacting with them. I love putting a smile on

their face. When passengers step into the airplane, they step into my house and I'm the hostess for the duration of the flight. I meet their needs and make sure they have happy travels to their destination. We landed in Monterrey, cleared customs, and grabbed lunch with the crew. I was assigned this four-day trip with the crew and I was looking forward to getting to know the other flight attendant since we were about the same age.

We took a plane back to IAH where we went through U.S. customs and that was the last time I saw the crew. I was escorted to a waiting room by a U.S. Customs and Border Protection (CBP) officer. This is where my nightmare began.

I was interviewed by two different CBP officers. Then it was determined after 24 hours that I was to be sent to a detention center. I was able to notify my mother and my husband via text who were able to immediately contact my lawyer. At this point in time, my world shattered around me.

This is how I would be spending Valentine's Day, at the Montgomery Processing Center, a detention center in Conroe, Texas with a capacity of 1,000 people.<sup>1</sup> I never knew what it was like to be lonely and yet be surrounded by so many people until that day. I felt hopeless, powerless, and lost. All I wanted to do was cry and I did. I cried tears of sadness and shook in fear.

I thought I had done everything right. My husband and my first step in the application for residency was approved. I'm a graduate of Texas A&M. I have a Bachelor's in Allied Health with a minor in Communication. I was President of the Peruvian Student Association (PSA). I am a daughter of immigrants, I am a sister to U.S. citizens, and wife to my dearest husband whose family had dedicated themselves to serving this country for a combined 50 years. My husband has a Bachelors in International Business and Masters in Health Administration. He works diligently and runs his own company. We were working towards residency, and yet I was detained with no idea whatsoever on the length of my stay. Each additional day that I was there, I felt even more hopeless, even more lost. I had lost hope in America, my country.

The detention center was in Conroe, Texas. It was newer, you could tell the paint was fresh. Every time The GEO Group, Inc executive staff or other visitors would pay a visit they would repaint it. While I was there, the executive staff came multiple times. They would even bring in all the reserve staff on these days to make sure that they were attentive of the center. This place was a privately- owned facility. You could tell that on a superficial level they wanted to make the best impressions to the public (or their investors), but in reality, the level of care was abysmal at best.

The food was always cold and tasteless, and even though we were starving we were gaining weight. Were they putting growth hormones in the food? It was a thought we all wondered. We were never provided with fruit. Our diet consisted of beans, rice and other spicy food items which caused us gastrointestinal distress. Even the vending machines were filled with junk food and the idea of gluten-free options for someone who might need them was impossible.

Ironically, we were grateful for executive staff coming to visit because that meant we had more time to eat instead of the usual rushed 15 minute period. The guards wouldn't rush us, and would

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<sup>1</sup> <https://www.geogroup.com/FacilityDetail/FacilityID/249>

clean up between each lunch period. If there wasn't this oversight, then they would make us sit at dirty tables filled with wasted food. Then the guards would wait until the last dorm hall came and finished lunch to ask for volunteers to clean the cafeteria. Can you imagine the mess? I didn't think it was sanitary.

I knew not to argue or talk back, refusing to obey the guards' commands would end up hurting us greatly. I watched one woman refuse to clean (she had already cleaned the dorm next door) and as a result she was put in isolation for several weeks. When she came out of isolation, she looked so distraught. She had plucked away her eyebrows from all the stress she endured. Why are we being forced to clean? This made no sense to me, this is a detention center, a holding cell while we await our immigration trials. Why were we all being treated like this? The guards would wake us up at all odd hours of the night, it was a mandatory task. If you volunteered for the work program you would be compensated \$1 an hour. If you refused to clean, it would be written on your record. We were made to believe that refusing any orders would lead to write ups which would then directly affect our immigration cases. Many women worried that it would hurt their asylum case or they would be put in the segregation housing unit (SHU). It was the perennial, over-looming thought that consumed us. That feeling permeated the entire dorm.

The difficulty of navigating the judicial system was an impossible task. I speak English fluently, graduated from college, had an attorney and my husband to support me in my case, and yet the system is so complicated, it feels like you are set up to fail. And if this is my situation, what is it like for women who don't speak any English, have a very limited educational background, no attorney, and no other support?

We did everything correctly. All of the back and forth between my husband, my lawyers, and my immigration officer felt hopeless and pointless. We had applied for parole, but the paperwork seemed to get lost in the red tape. As time went on it felt more hopeless, my immigration officer was providing less support and hiding more truths. I felt I was being intentionally misled. The week before my release he had informed me and not my attorney, that my DACA had been revoked, essentially enabling my deportation process. Was he keeping me here on purpose and delaying the process long enough to deport me without resistance?

At this time my husband became fully aware of his intentions and the type of people we were dealing with. He contacted every news outlet he could. The Points Guy (the same news source that reported the United plane dragging off a doctor) reported my story. The story got the attention of Sara Nelson (President of the AFA), and within 24 hours the story had national attention and I was released shortly after. I thought I did everything right. I have DACA, I was halfway through my residency paperwork, I went to a place of higher education, married a US citizen, and I paid all my taxes. This did not matter to CBP, this did not matter to ICE, and this did not matter to GEO.

I am not alone in this situation. I'm not the only victim of the broken immigration system and its faulty regulations. I met other women in there who were picked up for a broken taillight. One woman had accidentally placed an item underneath her Wal-Mart shopping cart. She was taken in for theft even though she admitted to making a mistake and offered to pay for the item at that exact moment. She had now been in there for three months waiting on a bond. I also met two legal residents who were also, like me, detained at the airport because of misdemeanors from seven to ten years ago. I also met women that had been seeking asylum for more than 10 years and had been randomly picked up by ICE. I met Venezuelans seeking asylum as well.

Most of the women in the detention center were young. I asked them if they were scared to come here by themselves and they said yes but that they had to go on this journey because there is nothing for them at home. I could see the excitement in their eyes when they were talking about America. I could also see how their souls were so distraught at not being able to accomplish their goal of being free in America. This trek leaves you financially depleted, emotionally drained, and sometimes physically tormented or sexually abused. One would not take this trip for fun. It is taken out of true dire need. Wouldn't you make the trek to a country where you could flourish? I spoke to all the women there. Many were from Africa, Mexico, and Central America, as well as Czechoslovakia, India, and Canada. And all they wanted was a life like mine, one that my parents worked so hard to provide for me. And one that my husband was able to provide for me also. And one that I was also to provide for myself, the true American dream. I believed myself to be an all-American girl. But America, seemed, to not want me.

My husband, faithfully, continued to fight for my freedom. He contacted Mesa Airlines immediately when this incident happened. He worked feverously with my immigration lawyer who in turn was at the mercy of my ICE agent. He told me every day that he cried, and that his depression had returned. His father had to live with him to help with legal paperwork and to keep him alive and mentally stable. We were never allowed contact. I was being held in a civil detention facility, so, why was I not allowed physical contact with my husband? Seeing him through thick glass during our visitation hour was the most arduous as I could not hug him.

About a month into my detention time, my husband had enough of the system. He decided to do what needed to be done. He went public. And I am forever grateful for his perseverance and determination to free his wife from this unjust system we had put our faith in.

My trauma has surpassed psychological bounds. I am forever scared. I did not realize how depressed I had become. My suicidal thoughts reared its head while I was in the detention center. The detention center dehumanized me. Never in my whole life have I considered picking up a razor blade and cutting my wrists...until I was at Montgomery Processing Center. I neglected myself and my self-care was non-existent. I couldn't even look at myself in the mirror. I wasn't the person who I was before this whole situation happened. I had changed. I became depressed. Because of the conditions I was forced to endure, I found myself seeking psychological help after my release. I had to open and relive my trauma to heal. I had to feel vulnerable again. I am still not completely who I was before.

It has taken a lot of energy to write this testimony, but I am doing it because we cannot stay quiet. The people of the United States need to know the real truth of what is going on in these detention centers.

In addition to what I describe above, here are some examples of conditions I experienced and observed which show how detention centers are a dehumanizing experience for everyone detained in them. No one should be subjected to these conditions.

- Racism and prejudice from the Geo guards
- Sexist remarks from a female warden
- No adequate access to medical care (difficult to access medical care unless you sign up for sick call at 5 am)
- Lack of basic sanitation
- Overworked staff due to shortage and lack of hiring



- Inappropriate relationships between detainees and guards
- Fluorescent lighting on all day
- No personal space: all I had was the top mattress that was part of a bunk bed in a room filled with about 60 bunk beds.
- No items to decorate/personalize your bunk bed area
- Complicated legal software called LexisNexis – not user friendly
- Prolonged periods indoor without recreation time

Ms. JAYAPAL. Ms. Saavedra Roman, thank you so much for your courageous testimony. I am sorry you endured what you did. Mr. Davydov, you are recognized for 5 minutes.

#### TESTIMONY OF DENIS DAVYDOV

Mr. DAVYDOV. Chairwoman Lofgren, Vice Chairman Jayapal, Ranking Member Buck, and distinguished members of the subcommittee. Thank you for the opportunity to testify before you today about the 46 days I should have never spent in ICE detention. My name is Denis Davydov, and I'm a gay man from Russia living with HIV. I am sharing my story in partnership with Immigration Equality, the nonprofit that represented me during my 5-year asylum process, and in support of all LGBTQ and HIV-positive people in detention.

In 2013, I had no choice but to escape Russia and come to the United States. Just 1 year prior, the Russian government passed an anti-gay propaganda law which painted gay people as perverts who were killing the country. Vigilante groups attacked and raped gay men and posted the videos online. The police did nothing about it, and I lived with the constant fear that I would be harmed. As an HIV-positive gay man, my life was even more at risk. HIV is seen as a gay disease in Russia, and seeking treatment could make me a target for violence.

I went into hiding and stopped getting my medication, and with the spike in homophobia and lack of HIV treatment medication in Russia, I feared my situation would get much worse. I couldn't live like that anymore. I got a 6-month's U.S. tourist visa and flew to San Francisco. I remember it was the best place on the planet for gay people.

For the first time ever, it didn't matter that I was gay. I could be open about all aspects of my life. It was magical. I joined a support group for HIV-positive people and I finally felt safe. I couldn't go back to Russia where the situation was becoming more hopeless for gay and HIV-positive people.

I applied for asylum after my tourist visa expired, which allowed me to get a job and travel within the U.S. I wanted to explore this beautiful country, so I went on a week-long vacation to the U.S. Virgin Islands, but I was stopped by immigration officers at the airport on my way back to San Francisco and interrogated about my legal status. I told them I had an asylum case pending, that I am a resident of California with a Social Security number, paying my taxes, but they accused me of entering the U.S. for the first time and violating my visa. Then they arrested me.

I was flown to a large detention facility in Miami, Krome. They put me in handcuffs, ankle bracelets, and wrapped a chain around my waist. And for the next 46 days, I was Mr. 876-Russia.

And for 10 years I had been managing my HIV in a way that allowed me to live safely and comfortably. When I was detained, my control over my health was completely taken away from me. To protect my compromised immune system from any infection, I need to follow a certain diet, have access to appropriate hygiene, and sleep well. Immigration detention didn't provide me with any of those things. I was held in a space with 100 other people where my compromised immune system was exposed to any virus or infec-

tion they had. Within week of being detained, I developed a fungal infection. This caused a rash, and I had itchy red spots on my genitals, and also I developed a cold and fever. And despite my coughing and sneezing and fatigue, the officers wouldn't let me rest. I couldn't sleep at night because I got so cold and it was loud with 100 people in the room, and I developed insomnia from stress.

Once I spent 5 hours waiting in a freezing concrete room to see a specialist, and after 4 hours they told me he wouldn't be able to see me, and the doctor wouldn't be back for 2 days. My lawyer explained to the immigration judge that each day I spent in detention put my life in danger, but he didn't seem to care. As an HIV-positive gay man, I had a strong asylum case, but he didn't seem to care. Even though I did everything right in my asylum application, he didn't seem to care.

I got an asylum interview notice while I was in detention, but the judge wouldn't let me attend. He wouldn't halt my deportation proceedings. I spent another month in detention. I spent my 30th birthday in detention as a criminal in the eyes of the U.S. government, and I never thought this country would treat an HIV-positive gay man this way. It felt like it was happening to someone else. It wasn't my story.

So in July of this year, 5 years after arriving in the United States, I won my asylum. It was a huge relief for me. I felt a security I have never felt before. I can now start building a future knowing I'll never have to go into hiding again. I'm asking all of you sitting before me today to protect the rights of asylum seekers so they can find the same relief and security I did, to dismantle obstacles to those seeking safe haven in this beautiful country, to clear the path to LGBTQ and HIV-positive asylum seekers to find what they can't in our home countries, and support safety and freedom to be who we are. Thank you very much.

[The statement of Mr. Davydov follows:]

Written Testimony before the  
U.S. House of Representatives Judiciary Committee  
Subcommittee on Immigration and Citizenship

Hearing Entitled “The Expansion and Troubling Use of ICE Detention”

Denis Davydov on behalf of Immigration Equality

Gay Asylee from Russia Living with HIV, Detained by ICE for 46 Days

September 26, 2019

Chairwoman Lofgren, Vice Chairwoman Jayapal, Ranking Member Buck, and distinguished members of the Subcommittee. Thank you for the opportunity to testify before you today about the 46 days I should have never spent in ICE detention.

My name is Denis Davydov, and I am a gay man from Russia living with HIV. I'm sharing my story in partnership with Immigration Equality, the non-profit that represented me during my five year asylum process, and in support of all LGBTQ and HIV-positive people in detention.

In 2014, I had no choice but to escape Russia and come to the United States. Just one year prior, the Russian government passed an anti-gay propaganda law, which painted gay people as perverts who were killing the country. Vigilante groups attacked and raped gay men, and posted the videos online. The police did nothing about it. I lived with a constant fear that I would be harmed.

As an HIV-positive gay man, my life was even more at risk. HIV is seen as a "gay disease" in Russia, and seeking treatment could make me a target for violence. I went into hiding and stopped getting my medication. With the spike in homophobia, and a lack of HIV medication in Russia, I feared my situation would get much worse. I couldn't live like that anymore.

I got a six-month U.S. tourist visa and flew to San Francisco—the best place on this planet for gay people. For the first time ever, it didn't matter that I was gay. I could be open about all aspects of my life. It was magical. I joined a support group for HIV-positive people, and I finally felt safe. I couldn't go back to Russia, where the situation was becoming more hopeless for gay and HIV-positive people.

I applied for asylum after my tourist visa expired, which allowed me to get a job and travel within the U.S. I wanted to explore this beautiful country, so I went on a week-long vacation to the U.S. Virgin Islands. I was stopped by immigration officers at the airport on the way back to San Francisco and interrogated about my status. I told them I had an asylum case pending. That I'm a resident of California with a social security number. They accused me of entering the U.S. for the first time and violating my visa. Then they arrested me.

I was flown to a large detention facility in Miami. They put me in handcuffs, ankle bracelets, and wrapped a chain around my waste. For the next 46 days I was "Mr. 876 Russia."

For 10 years, I had been managing my HIV in a way that allowed me to live safely and comfortably. When I was detained, my control over my health was completely taken away from me. To protect my compromised immune system from infections, I need to follow a certain diet, have access to appropriate hygiene, and sleep well. Immigration detention didn't provide me with any of those things.

I was held in a space with 100 other people. My compromised immune system was exposed to any virus or infection they had. Within a week of being detained, I developed a fungal infection. This caused a rash; I had itchy red spots on my genitals. I also developed a cold and fever. Despite my coughing, sneezing, and fatigue, the officers wouldn't let me rest. I couldn't sleep at night because it got so cold, and it was loud. I developed insomnia from stress.

I saw a doctor who reviewed my blood test results. He told me I was positive for Hepatitis A, and that I had abnormal liver function. The doctor was not concerned about the results, and did not know how to treat my fungal infection. I had to wait to see a specialist to treat the infection.

My lawyer explained to an immigration judge that each day I spent in detention put my life in danger, but he didn't seem to care. As an HIV-positive gay man I had a strong asylum case, but he didn't seem to care. Even though I did everything right in my asylum application, he didn't seem to care. I got an asylum interview notice while I was in detention, but the judge wouldn't let me attend. He wouldn't halt my deportation proceedings.

I spent another month in detention. I spent my 30th birthday there, a criminal in the eyes of the U.S. government. I never thought this country would treat an HIV-positive gay man this way. It felt like this was all happening to someone else.

When I fled Russia, I found safety and acceptance in the United States like I had never known before. The promise of asylum gave me hope for a better future. But when I was detained, that hope was taken from me. I was experiencing the very conditions I was trying to escape. Once again, I was fighting for my life.

Luckily, I had the support of non-profits and members of Congress who called for my release and alerted the media about my situation. After a month and a half in detention, I was allowed to go back home.

The year after I was released was just as hard as my time in detention. I no longer knew what to expect, and I didn't feel safe in the U.S. Due to extreme anxiety I could barely leave my apartment for an entire year. I lost hope. It took me years to feel secure again.

My situation was horrible, but I actually consider myself fortunate. I received HIV medication throughout my time in detention. I had legal representation. I had people reaching out to the media and members of Congress calling for my release. If I had been deported back to Russia, I could have been attacked, imprisoned or killed.

Most HIV-positive and LGBTQ asylum seekers in detention don't have people fighting for them in that way. Some face harassment, sexual violence, and torture in solitary confinement. Some never get their HIV medication. And some die.

That's why I'm here today. To ask you to fight so that no one ever has to go through what I did. To fight for those who don't have anyone fighting for them. Our community and all asylum seekers deserve better. We deserve to be treated with respect and dignity.

In July of this year, five years after arriving in the U.S., I won asylum. It was a huge relief for me. I felt a security I had never felt before. I can now start building a future knowing that I'll never have to go into hiding again.

I'm asking all of you sitting before me today to protect the rights of all asylum seekers, so they can find the same relief and security I did. To dismantle obstacles to those seeking safe haven in this beautiful country. To clear the path for LGBTQ and HIV-positive asylum seekers to find what we can't in our home countries: support, safety, and the freedom to be who we are.

Ms. JAYAPAL. Thank you very much for your testimony, Mr. Davydov. Ms. Engochan, you have 5 minutes.

**TESTIMONY OF BLANCHE ORNELIA ENGOCHAN**

Ms. ENGOCHAN. Chairwoman Lofgren, Vice Chairman Jayapal, Ranking Member Buck, and distinguished members of the Subcommittee on Immigration and Citizenship, thank you for the opportunity to speak today about my experience as an asylum seeker in the United States.

I didn't want to leave Cameroon. It was my home, and it was home to the people I loved. Like all refugees, I was forced to leave. I decided to come to the United States. It was the obvious choice. The United States is a powerful country that would protect me. Since I was a child, I knew America welcome people from all over the world. It would be a hard journey, but at the end of it, I would, I assumed, find some safety and peace. I never imagined that I would be put in chains or locked up in a crowded detention center with other traumatized humans. Sorry. Oh, my god.

Ms. JAYAPAL. It is okay. Take your time.

Ms. ENGOCHAN. On February 2019, I crossed the United States at the San Ysidro port of entry in San Diego. I was taken into custody. Two things stood out in my memory. One is the bitter cold in my cell. The other is my bitter fear. I had no idea what would happen. For all I knew, I would never be free again. Two weeks later when they transported me, they put me in chains. I now know this is called 5-point shackles. I didn't understand why they were treating me like a dangerous criminal. I still carry that humiliation with me.

After a brief stop in Arizona, I was taken to the Adelanto Detention Facility in California. The good news was that maybe an asylum officer would give me an idea what was happening. The bad news I was trapped in a cruel place. At Adelanto, we weren't given enough food. I was hungry all the time, and I was tired all the time. I had trouble sleeping because of the fear that I would be sent back to my country. The light didn't go off until 1:00 in the night, and we were woken up only a few hours later, between 4:00 and 5:00 a.m. The medical staff run tests on me twice, but after the second test, they never told me the result, even though I was detained for several months.

Maybe the worst thing in Adelanto was all the crying, women crying because they were reliving trauma or because they had suffered new abuse, or because they had gotten bad news in their case. The detention center is a house of tears. I applied for parole, but it was denied even though I had a sponsor. Other women had more than one sponsor and were also denied parole. There seemed to be no hope for me. Then I applied for a lawyer. That certain process was a mystery to me. The thought of facing a judge alone with my life and freedom on the line, that terrified me. I was lucky. I got a lawyer from Human Rights First. If not for her, I would probably still be locked up or deported back to danger in my country.

At my hearing, the judge told me I had received asylum, and that same day I was released from Adelanto after over 6 months in detention. I am grateful for the asylum. I am living with my



aunt, and I am looking forward to my new life. But my painful past is still with me, and it includes the months I spent locked up in the United States. It does not have to be this way. There are alternatives to detention that help asylum seekers understand how to apply for asylum and where and when to show up for our hearings.

Locking up refugees who seek asylum is senseless and expensive. The cruelty costs a lot of money. I urge you please use alternative detention programs. Expand them. The United States, of all countries, should not treat refugees like criminals. Thank you very much.

[The statement of Ms. Engochan follows:]

**Testimony of Blanche Engochan**  
**U.S. House Committee on the Judiciary, Subcommittee on Immigration and**  
**Citizenship**  
**Hearing on “the Expansion and Troubling Use of ICE Detention”**  
**Thursday, September 26, 2019**

Chairwoman Lofgren, Vice Chairwoman Jayapal, Ranking Member Buck, and distinguished members of the Subcommittee on Immigration and Citizenship, thank you for the opportunity to speak today about my experience as an asylum seeker in the United States.

I didn’t want to leave Cameroon. It was my home. And it was home to the people I loved. Like all refugees, I was forced to leave.

I decided to come to the United States. It was the obvious choice. The United States was a powerful country that would protect me. Since I was a child, I knew America welcomed people from all over the world. It would be a hard journey, but at the end of it I would, I assumed, find some safety and peace.

I never imagined that I would be placed in chains, or locked up in a crowded detention center with other traumatized women.

In February 2019, I crossed into the United States at the San Ysidro Port of Entry in San Diego, and was taken into custody. Two things stand out in my memory from this time. One is the bitter cold in my cell. The other is my bitter fear. I had no idea what would happen. For all I knew, I would never be free again.

Two weeks later, when they transported me, they put me in chains. I now know this is called five-point shackles. I didn’t understand why they were treating me like a dangerous criminal. I still carry the humiliation with me.

After a brief stop in Arizona, I was taken to the Adelanto Detention Facility in California. The good news was I met with an asylum officer who gave me an idea of what was happening. The bad news was I was trapped in a cruel place.

At Adelanto, we weren’t given enough food. I was hungry all the time.

And I was tired all the time. I had trouble sleeping because of the fear that I would be sent back, and because the lights didn’t go out till one in the morning and we were woken up only a few hours later, between four and five a.m.

The medical staff ran tests on me two times but after the second test they never told me the results, even though I was detained for several months.

Maybe the worst thing in Adelanto was all the crying. Women crying because they were reliving trauma. Or because they had suffered new abuse. Or because they had gotten bad news in their case. The detention center is a house of tears.

I applied for parole—and was denied even though I had a sponsor. Other women had more than one sponsor and were also denied parole. There seemed to be no hope for me.

Then I applied for a lawyer. The asylum process was a mystery to me. The thought of facing a judge alone, with my life and freedom on the line—that terrified me.

I was lucky. I got a lawyer, from Human Rights First, and if not for her, I would probably still be locked up, or deported back into danger. At my hearing, the judge told me I had received asylum, and that same day, I was released from Adelanto, after six months in captivity.

I am grateful for asylum. I am living with my aunt and I am looking forward to my new life. But my painful past is still with me, and it includes the months I spent locked up in the United States.

It does not have to be this way. There are alternatives to detention that help asylum-seekers understand how to apply for asylum and where and when to show up for our hearings. Locking up refugees who seek asylum is senseless. And expensive. The cruelty costs a lot of money.

I urge you, please, use alternative-to-detention programs. Expand them. The United States, of all countries, should not treat refugees like criminals.

Ms. JAYAPAL. Thank you so much for your powerful testimony.  
Ms. Altman.

#### TESTIMONY OF HEIDI ALTMAN

Ms. ALTMAN. Chairman Nadler, Chairwoman Lofgren, Acting Chairman Jayapal, Ranking Member Buck, and distinguished members of the committee. My name is Heidi Altman. I serve as the director of policy at the National Immigrant Justice Center, NIJC. We are a legal services and advocacy organization working to advance the human rights of all immigrants. I am so grateful for the light being shown on this issue today. I am grateful for the opportunity to be here today and to be following the brave and moving testimony of these three individuals to my right who survived the destructive system that is the topic of this hearing.

NIJC has for decades endeavored to advocate for the legal and human rights of immigrants in immigration jails throughout the Midwest and nationally. And those experiences have brought us to one inexorable conclusion: the United States immigration detention system must end.

I am mindful as we sit here today of a young man named Chris, an NIJC client. He is a legal permanent resident of the United States who has been here since he was 13. And while his deportation case proceeds, ICE is holding him right now without the opportunity to seek bond in a county jail in Illinois where he has been for 10 months. Chris had already served his court-ordered sentence for the drug-related offenses that formed the basis of the immigration case against him, and these offenses stemmed from struggles with addiction that date back to his childhood when he bore responsibility for the care of his mother, who is paralyzed from the neck down. Chris' time in immigration detention, which, unlike his criminal sentence has no set end date, served to destabilize his family and disrupt his own recovery. And so today we have to ask, toward what end.

Chris is one of nearly 500,000 people held by ICE this Fiscal Year in a detention system made up for more than 200 county jails and private prisons that contract with ICE for profit. The Trump Administration would have us believe that the only way to manage the migration processing system is by locking up those going through the process, but it hasn't always been this way, and it doesn't need to be this way now. There are alternatives, smarter, and cheaper, and kinder, and effective alternatives as you will hear in great detail from my colleague, Ms. Schikore.

But the immigration detention system as we know it today constitutes a relatively new experiment in American history. In the mid-1950s, in fact, the United States government intentionally rejected the institutional use of detention for migration processing, and this move was widely heralded as a forward progress marker. This forward progress halted in the 1980s, however, when the government adopted a policy of the mass detention of arriving Haitian refugees and explicitly named as its goal the deterrence of future refugees. Yet the system took root, and through the 1980s and 1990s, the same political winds contributing to the mass incarceration of communities of color across the United States fueled the

expansion of the immigration detention system into for-profit prisons and into county jails.

This Administration's commitment to expanding this already-bloated system was signaled from day one. The White House's proposed budget for Fiscal Year 2018 sought \$2.7 billion to ramp up detention capacity to 51,379 people daily, a number they have already surpassed. This astonishing growth has been achieved in direct violation of congressional intent through the transfer and re-programming of funds across agencies, and largely driven by the for-profit prison agency.

This system that is so rapidly expanding is designed for impunity. There are no formal or enforceable regulations providing the minimal standards of care. DHS' own inspector general has sounded the alarm repeatedly regarding deficiencies and corruption in contracting and inspection, and, as a result, abuses persist with little recourse for those harmed.

Medical negligence by ICE and its contractors is responsible for about half of all deaths in custody, and yet men and women continue to die with no remedial measures in place. Thousands of immigrants suffer for months, even years, in solitary confinement, tantamount to torture, while others, as you have heard, are served moldy food. Hunger strikes and attempts at suicide are common. This cycle of abuse and impunity reflects our government's failure to respect the dignity of the lives of those detained, and it is shameful.

Today I urge all members of Congress to begin doing the hard work of laying a foundation to end the use of immigration detention, and while charting that course, to finally and urgently bringing meaningful accountability to the system. Some quick steps toward that end. Visit an immigration detention center in your district. See what's happening. Engage with it. Cut funding for ICE's detention and enforcement accounts. Support restrictions in DHS' transfer authority. Support investments in nonprofit-operated community-based alternatives, and support the Dignity for Detained Immigrants Act, which remedies many of the most harmful aspects of the detention system, including ending mandatory detention, ensuring a presumption of liberty rather than a presumption of detention for all immigrants, and ending the use of private prisons and county jails for immigration detention.

I look forward to working with each of you towards a humane future. Thank you for being here today.

[The statement of Ms. Altman follows:]



**U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on Immigration and Citizenship**

**“The Expansion and Troubling Use of ICE Detention”**

September 26, 2019

**Testimony of Heidi Altman  
Director of Policy  
National Immigrant Justice Center**

Today this Committee bears witness to the testimony of three individuals who have survived the United States’ immigration detention system. They represent three out of nearly 500,000 people who have experienced incarceration in Immigration and Customs Enforcement (ICE)’s jails and prisons just this fiscal year.<sup>i</sup> Taxpayers are footing a \$3.2 billion annual bill for immigration detention,<sup>ii</sup> but the greater cost is paid by the generations of immigrants and their loved ones who bear the scars of an intentionally opaque and abusive system. A system that is, maybe most tragically, unnecessary.

I will begin this testimony by placing the recent dramatic expansion of the immigration detention system in historical context. A slightly wider frame helps us remember that the United States did not always rely on incarceration for the management of migration processes, and its commitment to doing so now is driven by politics and nativism, not rational decision-making. I will also provide an overview of the layers of corruption, abuse and impunity that are the hallmarks of ICE’s detention operations. I will end with a call to the Members of this Committee to pursue visionary and transformative change to the United States’ approach to immigration policy—including an end to immigration detention and the development of truly community-based alternative programming—while ensuring that immediate changes are made to remedy these ongoing rights violations.

I serve as the Director of Policy for the National Immigrant Justice Center, an organization headquartered in Chicago and dedicated to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. NIJC’s team works day in and day out to provide meaningful legal services to hundreds of immigrants jailed by ICE throughout the

Midwest and nationally, but the task is daunting. As the immigration detention system grows, the abuses and due process violations that are endemic persist and become even more deeply rooted.

### **The history of America's failed experiment with the mass incarceration of immigrants**

The immigration detention system as we know it today—a sprawling network consisting largely of contracted prisons and county jails operating under the guise of “administrative detention”—constitutes a relatively new experiment in American history.<sup>iii</sup> It can be easy to forget this perspective because of the Trump administration’s insistence that there is an ever-expanding “need” for immigration detention capacity.<sup>iv</sup> Yet only decades ago, the use of detention for the purpose of migration management was an anomaly in United States law and policy, not the norm.

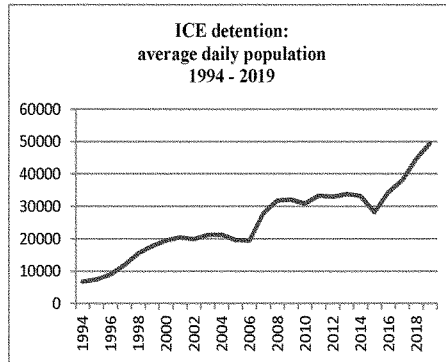
The first institutional detention of immigrants in the United States began in the late 1800s on Ellis Island in New York and Angel Island in the San Francisco Bay, where most who were detained were held briefly for medical checks before being deported or allowed to continue into the community.<sup>v</sup> When Ellis Island closed in 1954, the Immigration and Naturalization Service (INS) formally announced it would be abandoning the policy of immigration detention and instead releasing the vast majority of arriving immigrants into the United States on conditional parole, bonds, or supervision.<sup>vi</sup> Then-Attorney General Herbert Brownell, Jr. described this announcement as a “step forward toward humane administration of the immigration laws.”<sup>vii</sup> The Supreme Court opined on the progressive nature of the change as well, stating: “Physical detention of aliens is now the exception, not the rule ... Certainly this policy reflects humane qualities of an enlightened civilization.”<sup>viii</sup>

This presumption of liberty for immigrants remained in place until the 1980s, when the concept of immigration detention as we know it today began to emerge and politics got in the way of the progress Brownell had trumpeted. The flight of thousands of Haitian refugees from the violence and repression of the Duvalier regime prompted a reversal, one adopted by President Ronald Reagan’s INS explicitly for the purpose of deterring Haitians from attempting flight.<sup>ix</sup> The formalization of a policy of detention for immigration processing was met with litigation and alarm; those opposing the change included the United Nations High Commissioner for Refugees, who noted that the policy violated the United Nations Protocol relating to the Status of Refugees, to which the United States is party.<sup>x</sup>

Over the course of the 1990s, this retrogressive policy change became entrenched. The same policies and political rhetoric that resulted in the mass incarceration of communities of color in American jails and prisons fueled the expansion of the immigration detention system into for-profit prisons and county jails.<sup>xi</sup> Scholar César Cuauhtémoc García Hernández describes that, “[f]ollowing the model of the policy reforms shaping criminal law and procedure in the late

1970s and 1980s—best illustrated by the ‘broken windows theory’ of criminal policing—the regulation of migrants and migration took a punitive bent. Security became the prism through which migration was examined, and policing became the key response of choice.<sup>xxi</sup> From 1994 to 2000, the system nearly tripled—jumping from a detained population of 6,785 to 19,458.<sup>xxii</sup> In 2004, journalist Mark Dow published a book exposing the depths of the secrets and abuses occurring within what he referred to as the “American gulag”—“a particular prison system operated by the INS or, since early 2003, by the BICE [Bureau of Immigration and Customs Enforcement, as it was known]—with an astonishing lack of accountability, not only to outside criticism, but to the rest of the government as well.”<sup>xxiv</sup>

Dow warned that the shifting of immigration enforcement functions from INS to ICE, an enforcement-only agency within the newborn Department of Homeland Security (DHS), would likely pull the “secretive immigration prison world ... even further from public scrutiny.”<sup>xxv</sup> A former INS District Chief of Detention and Removals reinforced these concerns in interviews with Dow, noting that the federal immigration detention system was quickly becoming a “mini-BOP” but lacking entirely in the infrastructure or expertise to safely detain individuals in such numbers.<sup>xvi</sup> Under the aegis of ICE and over the course of administrations of both political parties, the system ballooned. By 2016, ICE was jailing an average of 34,376 people daily.<sup>xvii</sup>



### Massive expansion under the Trump administration

Over the course of only two and a half years, this administration has grown the already massive immigration detention infrastructure it inherited by 50%.<sup>xxviii</sup> This growth has been achieved in direct violation of congressional intent. For two years running, congressional appropriators have explicitly instructed ICE to *reduce* its detained population,<sup>xxix</sup> and both years ICE has responded with tremendous growth, even during the 2018-2019 government shut-down.<sup>xxx</sup> As Fiscal Year 2019 concludes, ICE is jailing 11,000 more immigrants on a daily basis than their appropriated budget allows.<sup>xxxi</sup> This executive end-run around congressional intent has been achieved largely through the persistent transfer of funds away from disaster relief and other domestic priorities to compensate for ICE’s over-spending on detention.<sup>xxxii</sup>



Much of this growth is driven by the for-profit prison industry, which has spent more than \$25 million lobbying lawmakers and federal agencies over the past ten years, including \$3.8 million just in 2018.<sup>xxiii</sup> A recent analysis of government contract data by Bloomberg News found CoreCivic Inc. and GEO Group—the two largest private prison companies operating immigration jails—to have received boosts of \$85 million and \$121 million respectively over the past four fiscal years as government contract spending for immigration enforcement and detention has skyrocketed.<sup>xxiv</sup> As of 2017, approximately 70% of people in immigration detention were held in privately operated jails.<sup>xxv</sup>

The administration's commitment to expanding the incarceration of immigrants was signaled from nearly day one. The White House's proposed budget for Fiscal Year 2018 sought \$2.7 billion to ramp up detention capacity to 51,379, a number it has now surpassed with 51,814 behind bars.<sup>xxvi</sup> It is important to ask: why were these efforts so important to the nascent administration? With two and a half years behind us, we now know that the administration has carefully designed its immigration policies to inflict maximum cruelty on immigrants in an effort to deter asylum seekers and cause fear among immigrant communities.<sup>xxvii</sup> We also know that the administration saw the decades-old experiment with the incarceration of immigrants as one of its most powerful tools toward those goals.

#### **A system designed for cruelty: corruption, abuses, and impunity**

It should stand as a sharp warning to Members of Congress that the administration sees the immigration detention system as a critical component of its efforts to make the American immigration system so unbearable for immigrants as to deter them from coming in the first place. But it is also not surprising. As noted above, today's immigration detention system is a larger and more sprawling outgrowth of the system the Reagan administration put in place with the stated purpose of deterring Haitian migrants from fleeing to the United States.<sup>xxviii</sup> From the start, the system was built to isolate immigrants during their case proceedings, far from legal counsel, out of the public eye and without sufficient mechanisms for redress or accountability for abuses. Immigrants in custody are facing civil proceedings and therefore many of the constitutional protections afforded in the criminal legal system to do not apply, creating a dangerous legal space for immigrants in civil custody that is punitive by every measure of the word.

As early as 1986, the late famed refugee advocate Arthur Helton noted:

*The new detention policy is an initiative designed to mistreat all equally.... [Immigrants] are incarcerated in facilities owned and operated or contracted for by the INS.... The detainees, most of whom do not speak English, are isolated from family and friends.... The physical conditions of confinement vary depending on the facility, but are generally similar to prison conditions. There is little or no social or educational programming*

*available... Overcrowding is a recurrent problem.... The policy of long-term detention devastates many of those who seek asylum in the United States. Prolonged imprisonment affects detainees' psychological condition and ability to present their cases. As it has in the past, frustration and despair suffered during protracted asylum proceedings triggers suicide attempts and mass hunger strikes.*<sup>xxx</sup>

Helton's description of the immigration detention system as it existed in 1986 could literally be pulled from the pages of any of the many reports on the state of immigration detention today. The system is set up for impunity. This section explores a few key component parts of the detention system, demonstrating how layers of corruption breed abuses which are, by design, without accountability.

#### *Corruption in contracting*

ICE currently utilizes 222 facilities for the short-term and long-term detention of immigrants during their immigration proceedings, including dozens of private prisons, county jails, and five ICE-owned processing centers.<sup>xxx</sup> This vast network is held together by a patchwork of contracts that ICE does not make public, leaving organizations like NIJC to resort to protracted litigation and advocacy efforts to expose underlying corruption and profiteering.<sup>xxxi</sup>

There are no formal or enforceable regulations providing the minimal standards of care for those detained by ICE. Instead, ICE generally incorporates into its contracts with private prison companies and county jails one of three sets of standards the agency itself has developed, primarily based on correctional standards despite the civil nature of immigration proceedings.<sup>xxxii</sup> Only about 60% of detained immigrants are held in ICE jails that were last inspected under the most recently updated set of guidelines, known as the Performance Based National Detention Standards of 2011 (PBNDs 2011), and some immigration jails are not contractually governed by any standards at all.<sup>xxxiii</sup> Congressionally imposed reporting obligations require ICE to notify appropriators if it enters into new contracts or extends contracts without requiring PBNDs 2011 compliance, but ICE appears to see this process as a rubber stamp, providing Congress with cursory notifications that merely note that compliance with higher standards would be more costly.<sup>xxxiv</sup>

In early 2019, DHS's Inspector General issued a report finding that ICE's contracting tools are inadequate to hold detention contractors accountable for failing to meet standards.<sup>xxxv</sup> The report revealed a particularly alarming practice in which ICE lets contractors get away with violating contracted standards by granting waivers. The Inspector General found the process to be essentially a sham designed to promote loopholes: "we found," the report states, "that ICE has no formal policies and procedures to govern the waiver process and has allowed ERO officials without clear authority to grant waivers."<sup>xxxvi</sup> In response to new reporting requirements included

in the Fiscal Year 2019 DHS spending bill, ICE subsequently posted on its website a master spreadsheet documenting the 181 waivers currently operational in 2019, many of which implicate issues central to the health and safety of immigrants in detention.<sup>xxxvii</sup>

A waiver provided to the Worcester County Jail in Maryland, for example, permits the jail to utilize a far more lenient standard regarding the use of strip searches than otherwise provided by contracted standards, with no justification other than the jail's

Waiver for Strip Searches  
Page 2 of 2

Discussion

It is the policy of WORCEMD to be kept free of contraband by staff through regular and irregular search of all inmates, their living areas and areas to which inmates have access. Searches shall be conducted in a manner which will avoid unnecessary force, or indignity to the inmate. Staff should consider every inmate as a potential carrier of contraband.

Any individual sentenced to WORCEMD, Commissioner of Correction, or other jail, without an unusual bond and who the facility has agreed to hold for a defined period, will be processed

"right" to engage in strip searches when it deems reasonable.<sup>xxxviii</sup> The waiver was granted in June 2016 and remains operational today. The excerpt of the waiver pasted here notes ICE's acceptance of the proposition that, "Staff should consider every inmate as a potential carrier of contraband." In the context of a civil detention setting where those in custody have not been charged with nor are they suspected of committing any criminal offense, such a presumption of criminality is jarring.

*Sham inspections*

ICE's corrupt contract practices are protected in large part by a layered system of inspections designed to allow deficiencies to go uncorrected and abuses unresolved. Since 2009, a provision in the DHS spending bill has precluded ICE from continuing to contract with a facility that fails two consecutive inspections.<sup>xxxix</sup> This provision has done little more than incentivize ICE to ensure that its inspections are meaningless. In 2015, NIJC and Detention Watch Network released a report analyzing five years of ICE inspections for more than 100 facilities, finding the inspections woefully inadequate in uncovering deficiencies and designed to give facilities cover to get passing ratings at all costs.<sup>xl</sup>

Last year, in June 2018, DHS's Inspector General issued a report affirming most of our organizations' findings.<sup>xli</sup> Specifically, the Inspector General found significant concerns regarding the procedures used by Nakamoto—a private company that contracts with ICE to perform regular inspections of many jails—and found ICE's own inspections insufficiently frequent to meaningfully address concerns. ICE staff told the Inspector General's investigators that Nakamoto inspectors "breeze by the standards," and do not "have enough time to see if the [facility] is actually implementing the policies."<sup>xlii</sup> One ICE employee went so far as to refer to Nakamoto inspections as being "very, very, very difficult to fail."<sup>xliii</sup>

*Abuses committed with impunity: deaths, inadequate medical care, and the systemic use of solitary confinement*

The corruption in contracting and inspections throughout the ICE detention system allows abuses to persist with little recourse for those harmed, and near complete impunity for those responsible.

There are frequent deaths in ICE custody, deaths that ICE's own reviews reveal to be attributable to medical negligence in approximately half of all cases.<sup>xdiv</sup> Independent medical experts' analyses of ICE's death reviews have identified consistent elements of substandard care that contribute to deaths in ICE custody, including unreasonable delays in obtaining care, poor practitioner and nursing care, and botched emergency response.<sup>xdiv</sup> Despite these findings, ICE has failed to investigate or remedy the unsafe conditions putting human lives in jeopardy. In the very same facilities where multiple deaths have occurred, individuals in detention and their advocates continue to report egregious lapses in medical care and unconscionable delays in treatment.<sup>xdivi</sup>

ICE's use of solitary confinement is another area in which consistent reporting and even government whistleblowing has raised awareness of abuses to DHS brass, to little effect. A 2012 investigation into the uses and harms of solitary confinement in ICE custody released by NIJC and Physicians for Human Rights<sup>xlvii</sup> was followed by a 2013 New York Times exposé on ICE's routine use of solitary confinement.<sup>xlviii</sup> Dr. Terry Kupers, a psychiatrist and expert in the use of solitary confinement who was interviewed for the article, stated, "ICE is clearly using excessive force, since these are civil detentions... And that makes this a human rights abuse." In a nod to the exposure of these abuses, ICE issued a directive on the use of solitary confinement in 2013, nominally limiting the use of solitary and requiring regular reporting on its use.<sup>xlix</sup>

The directive has proven worth little more than the paper on which it is written. In 2014, a DHS employee began a five-year long effort to "raise the alarm" about ICE's abusive use of solitary confinement, making appeals from her position at the Office for Civil Rights and Civil Liberties through several government watchdogs including the Office of Special Counsel, the DHS OIG, and ultimately the Senate Judiciary and House Oversight and Government Reform committees, as a whistleblower.<sup>l</sup> Her efforts bore little fruit. Records recently released by the Project on Government Oversight reveal 6,559 placements of immigrants in solitary confinement from January 2016 to May 2018.<sup>li</sup> About 40% of these placements involved individuals with mental illness, and more than 4,000 of those records show individuals suffering in solitary for more than 15 days. One person was held for more than two years.<sup>lii</sup>

The United Nations Special Rapporteur on torture, Juan Méndez, has called on states to ban the use of solitary confinement as a form of punishment, noting scientific evidence showing that solitary confinement can lead to lasting mental damage after only a few days.<sup>liii</sup>

Tragically, this persistent exposure of the abusive conditions in the detention system has yet to make a difference for the individuals who continue to suffer in ICE detention centers each day. NIJC client Kelly, a transgender asylum seeker who has been detained by ICE since late 2017, spoke with NBC News about her experiences in solitary confinement months earlier: “The only thing they told me was that it was because of the way I looked... They claimed it was for security reasons.... I told them from day one that I didn’t want to be locked up almost 24 hours a day, alone in a cell, without medical attention. Every time I closed my eyes, when I was trying to sleep, I began to have nightmares, horrible memories, things that I didn’t want to remember... It’s still happening to me.”<sup>liv</sup>

*Right to counsel rendered meaningless*

The systemic lack of accountability for abuses committed in ICE custody is compounded by the isolated and remote location of ICE jails and prisons. An NPR analysis recently found that more than half of immigrants detained by ICE are in remote rural prisons.<sup>lv</sup> This is not an accident: the administration is well aware that immigrants jailed remotely, far from their loved ones and less likely to find representation, are more likely to lose their cases regardless of the strength of their claim to relief.<sup>lvi</sup>

Section 1362 of chapter 8 of the U.S. Code provides that immigrants facing removal proceedings have the right to an attorney; however, because there is no system of appointed counsel in immigration court, this right is only meaningful for those who can afford an attorney or are able to access free representation. It is a common saying among immigration attorneys that the two biggest factors determining whether a person will win or lose in immigration court are 1) if the person is detained, and 2) if the person has a lawyer. In 2016, a study came out showing that only 14 percent of immigrants in detention were able to find a lawyer, and that among immigrants in detention, those with counsel were twice as likely as unrepresented immigrants to successfully defend against their deportation.<sup>lvii</sup>

The Trump administration’s rapid expansion of the detention system appears intentionally designed to worsen the access to counsel crisis. ICE has clustered much of its expansion in the southeast United States, including a recent push to open three new detention centers that can hold about 4,000 individuals in Mississippi and Louisiana.<sup>lviii</sup> In addition to significant concerns about the conditions immigrants will face in these privately run prisons (including one prison with a history of deaths following poor medical treatment), advocates and immigration attorneys have called ICE on its transparent gambit to jail immigrants in locations where the right to counsel is meaningless. The executive director of one Louisiana legal aid organization told Mother Jones that even immigrants who could afford lawyers would be unlikely to find one if detained in Louisiana: “ICE is saying they want to get to 15,000 [detainees] by the end of the summer in

Louisiana.... There's an intentional, purposeful approach behind this of putting people where they can't access counsel."<sup>lix</sup>

*Vulnerable populations in heightened danger*

Under the Trump administration, little if any discretion is utilized by ICE officers in determining who to detain. The administration's application of the full force of a punitive and harmful detention system on all immigrants regardless of vulnerabilities has left many exposed to inordinate harm.

ICE reports that approximately 65% of its currently detained population was transferred to ICE custody from the border or airport, largely an asylum-seeking population.<sup>lx</sup> Additionally, nearly 9,000 of those in custody have already been determined by DHS to have a credible fear of persecution or torture if returned to their countries of origin.<sup>lxi</sup> For survivors of torture and trauma, the experience of ICE detention can lead to quickly deteriorating mental health and a re-living of the harms recently fled. The Center for Victims of Torture and the Torture Abolition Survivor Support Coalition have found that, "Detention is a daunting experience for anyone but particularly egregious for survivors of torture. For survivors, given the long-term impacts of torture and trauma, the fact of being detained at all is often retraumatizing. Further, particular elements inherent in the detention experience—including a profound sense of powerlessness and loss of control—may recapitulate the torture experience. Beyond this, the indefinite nature of immigration detention is a blanket over it all, contributing to severe, chronic emotional distress."<sup>lxii</sup>

LGBTQ individuals in detention similarly face heightened risk of violence and harm. Data shared by ICE with Rep. Kathleen Rice in 2017 demonstrated LGBTQ people in ICE custody to be *97 times more likely to be sexually victimized* than non-LGBTQ people.<sup>lxiii</sup> LGBTQ people in detention regularly report a wide array of abusive and dangerous conditions, including routine sexual harassment and abuse from guards and other detainees, the delay or denial of hormone therapy, and the constant use of solitary confinement for so-called "protection."<sup>lxiv</sup>

Despite public outrage, the administration has also doubled down on its commitment to the use of family detention, moving to abrogate the *Flores* Settlement Agreement in favor of regulations providing for the expansion and indefinite use of detention for families.<sup>lxv</sup> Medical professionals, child welfare professionals, and government whistleblowers have all decried the use of detention for asylum-seeking families, which causes inevitable and potentially irreversible trauma to children.<sup>lxvi</sup>

### **Toward a better way**

The United States' now-40-year-old experiment with the primary reliance on jails and prisons for migration control has failed by any measure. Arthur Helton's 1986 warning that the emerging immigration detention system was an "initiative designed to mistreat all equally" echoes in the testimony of today's witnesses, more than 30 years later.

Today I urge all Members of Congress to begin doing the hard work of laying a foundation to end the use of immigration detention, to stop this system that unnecessarily deprives immigrants of their liberty and disrupts their rights to access to counsel, family unity and wellness. There is a better way, through the adoption of community-based and community-supported programming centered around case management that supports immigrants through their case proceedings and provides them the resources that allow them to flourish, rather than setting them up to fail. Working toward this alternative vision will bring the United States in line with our international legal and moral obligations, be far less costly, and make great headway toward establishing a migration processing system that actually works.<sup>lvii</sup>

While working toward this long-term goal, NIJC also urges Members of Congress to take immediate steps to mitigate the harmful impact of the ICE detention system, including:

- Engage in one or more unannounced visits to an ICE detention center.<sup>lviii</sup>
- For Members with an ICE facility in their state or district, actively engage with that facility: visit regularly, engage in oversight steps, intervene when conditions are deficient, and support local legal service providers and visitation groups in maintaining access.
- Invest in non-profit community-based alternative-to-detention programs. Cut funding for ICE's detention and enforcement account, and support restrictions in DHS's authority to transfer and reprogram funds into that account.
- Support changes necessary to move the immigration detention facilities inspections regime out of ICE and into an independent body such as the DHS Office of Inspector General.
- Support H.R. 2415, the Dignity for Detained Immigrants Act, which remedies many of the most harmful aspects of the detention system, including:
  - Ending mandatory, or no-bond, detention;
  - Ensuring a presumption of liberty rather than a presumption of detention for all immigrants; and
  - Ending the use of private prisons and county jails for immigration detention.

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Last week I received a distraught email from a member of our legal services team in Chicago who had just spoken with her client in ICE custody at a county jail in Illinois. “Very sad and concerning news,” she wrote, going on to describe how her client had found his friend, detained in the same jail, hanging by a bed sheet and unconscious. Another man physically took their friend down and, for now, he has survived. Our client explained that the man’s suicide attempt came on the heels of a letter he had received from his family informing him that his mother had passed away. Our client is very concerned about his friend, my colleague shared, and also, “he’s having trouble getting the image of him hanging out of his mind.”

The United States immigration detention takes so much from so many. On our watch, our government is incarcerating hundreds of thousands of immigrants each year, depriving individuals of access to counsel, tearing families apart and destabilizing communities, and it is not necessary and it is not sound policy. Urgent action is needed, today.



## ENDNOTES

<sup>i</sup> As of September 14, 2019, ICE had detained 497, 415 people in Fiscal Year 2019, with 51,814 people in custody on that date. ICE maintains detention data on its website at <https://www.ice.gov/detention-management#tab2>, as required by section 226 of H.J. Res. 31, Consolidated Appropriations Act of 2019, Feb. 15, 2019, <https://www.congress.gov/bills/116th-congress/house-joint-resolution/31/text>.

<sup>ii</sup> See Conference Report to accompany H.J. Res. 31, Making Further Continuing Appropriations for the Department of Homeland Security for Fiscal Year 2019, and for Other Purposes, Feb. 13, 2019, <https://www.congress.gov/congressional-report/116th-congress/house-report/9/1?overview=closed>.

<sup>iii</sup> Ana Raquel Minian, *The New York Times*, “America didn’t always lock up immigrants,” Dec. 1, 2018, <https://www.nytimes.com/2018/12/01/opinion/sunday/border-detention-tear-gas-migrants.html>.

<sup>iv</sup> For discussion, see Caitlin Dickerson, *The New York Times*, “ICE Faces Migrant Detention Crunch as Border Chaos Spills Into Interior of the Country,” Apr. 22, 2019, <https://www.nytimes.com/2019/04/22/us/immigration-detention.html>.

<sup>v</sup> Arthur C. Helton, Center for Migration Studies of New York, Inc., “The Imprisonment of Refugees in the United States,” *In Defense of the Alien*, Vol. 9 (1986), pp. 130-137, [https://www.jstor.org/stable/23140908?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/23140908?seq=1#metadata_info_tab_contents).

<sup>vi</sup> *Id.* at p. 131.

<sup>vii</sup> *Id.*

<sup>viii</sup> *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958).

<sup>ix</sup> Forced by Court order to comply with rulemaking requirements, the Immigration and Naturalization Service promulgated a regulation in the Federal Register in 1982, stating: “This interim rule, published pursuant to an order of the District Court for the Southern District of Florida, sets forth the Service’s policy regarding the detention and parole of aliens who seek to enter the United States illegally. The Administration has determined that a large number of Haitian nationals and others are likely to attempt to enter the United States illegally unless there is in place a detention and parole regulation meeting the approval of the District Court.” 47 Fed. Reg. 30,044 (1982).

<sup>x</sup> Helton, *supra* n. v., at p. 134.

<sup>xi</sup> For a chart mapping the growth of immigration detention on the growth of the federal prison system, see National Immigrant Justice Center, *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration* (April 2019), at p. 2, <https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>.

<sup>xii</sup> César Cuauhtémoc García Hernández, Boston University Law Review Vol. 97:245, *Abolishing Immigration Prisons*, 2017, <http://www.bu.edu/bulawreview/files/2017/03/GARCIA-HERNANDEZ.pdf>.

<sup>xiii</sup> See Congressional Research Service, *Immigration-Related Detention: Current Legislative Issues*, Apr. 28, 2004, <https://trac.syr.edu/immigration/library/P2.pdf>.

<sup>xiv</sup> Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (University of California Press, 2004), at p. 11.

<sup>xv</sup> *Id.*

<sup>xvi</sup> *Id.* at p. 9.

<sup>xvii</sup> Source data for the chart can be found at: Congressional Research Service, *Immigration-Related Detention: Current Legislative Issues*, Apr. 28, 2004, <https://trac.syr.edu/immigration/library/P2.pdf> (for the years 1994-2000); Congressional Research Service, *Immigration-Related Detention: Current Legislative Issues*, Jan. 12, 2012, <https://fas.org/irp/crs/RL32369.pdf> (for the years 2001-2012); Immigration and Customs Enforcement, Draft, Fiscal Year 2014 ICE Enforcement and Removal Operations Report, [https://www.prisonlegalnews.org/media/publications/Fiscal%20Year%202014%20ICE%20Enforcement%20and%20Removal%20Operations%20Report%20\(Draft\)%2C%20ICE.pdf](https://www.prisonlegalnews.org/media/publications/Fiscal%20Year%202014%20ICE%20Enforcement%20and%20Removal%20Operations%20Report%20(Draft)%2C%20ICE.pdf) (for the years 2013-2014); U.S. Department of Justice, Report and Recommendations Concerning the Use of Restrictive Housing, Jan. 2016, <https://www.justice.gov/archives/dag/file/815551/download> (for 2015); Geneva Sands, ABC News, “Immigration-related arrests by ICE increase under President Trump,” Apr. 17, 2017, <https://abcnews.go.com/US/immigration-related-arrests-ice-increase-president-trump/story?id=46847044> (for 2016); FY 19 ICE Congressional Budget Justification, <https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf>

(for 2017); Spencer Ackerman, Daily Beast, “ICE is imprisoning a record 44,000 people,” Nov. 12, 2018, <https://www.thedailybeast.com/ice-is-imprisoning-a-record-44000-people> (for 2018); and current data posted regularly on ICE’s website at <https://www.ice.gov/detention-management#tab2>.

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

<sup>xix</sup> See, e.g., U.S. House of Representatives, Committee on Appropriations—Democrats, *FY2018 Omnibus Appropriations Act: Summary of Appropriations Provisions* at p. 12, [https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/wysiwyg\\_uploaded/Summary%20of%20FY2018%20Omnibus\\_0.pdf](https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/wysiwyg_uploaded/Summary%20of%20FY2018%20Omnibus_0.pdf) (outlining the FY 18 bill’s provisions funding “an average daily population in detention of 40,354, which will require ICE to reduce the number of detention beds in use between now and the end of FY 2018”); U.S. House of Representatives, Committee on Appropriations, *Consolidated Appropriations Act; Division-by-Division Summary*, <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Summary%20of%20Conference%20Report.pdf> (outlining the FY19 spending bill’s provisions establishing “Congress’s intent to reduce the daily population in ICE detention to approximately 40,520 by the end of the fiscal year, down from a current count of approximately 49,060.”).

<sup>xx</sup> Hamed Aleaziz, BuzzFeed, “ICE Might Be Violating Federal Law by Keeping Immigrants Detained During the Shutdown,” Jan. 9, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/shutdown-ice-detention-may-violate-federal-law>.

<sup>xxi</sup> See *FY19 Appropriations Act Summary*, *supra* n. xix, requiring a draw-down to a population of 40,520, contrasted with the current daily population of 51,814 posted on ICE’s website at <https://www.ice.gov/detention-management#tab2>.

<sup>xxii</sup> Julia Ainsley and Frank Thorp V, NBC News, “Trump admin pulling millions from FEMA disaster relief to send to southern border,” August 27, 2019, <https://www.nbcnews.com/politics/immigration/trump-admin-pulling-millions-fema-disaster-relief-send-southern-border-n1046691>; See DHS *FY18 Transfer and Reprogramming Notification to Congress*, available at <https://www.documentcloud.org/documents/4878224-CHC-REQ-DHS-FY-2018-Transfer-and-Reprogramming.html#document/p30>.

<sup>xxiii</sup> Alan Zibel, Public Citizen, *Detained for Profit: Spending Surges Under U.S. Immigration Crackdown* (Sept. 18, 2019), <https://www.citizen.org/article/detained-for-profit-spending-surges-under-u-s-immigration-crackdown/>, at p. 10.

<sup>xxiv</sup> Michaela Ross, Madi Alexander and Paul Murphy, Bloomberg News, “Immigration Spending Surges as White House Calls for More Funds,” Jan. 25, 2019, <https://about.bgov.com/news/immigration-spending-surges/>.

<sup>xxv</sup> Tara Tidwell Cullen, National Immigrant Justice Center, “ICE Released Its Most Comprehensive Immigration Detention Data Yet. It’s Alarming,” Mar. 2018, <https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>.

<sup>xxvi</sup> Department of Homeland Security, *FY18 Budget in Brief*, p. 4, <https://www.dhs.gov/sites/default/files/publications/DHS%20FY18%20BIB%20Final.pdf>.

<sup>xxvii</sup> Priscilla Alvarez, CNN, “What the 2017 draft memo reveals about the administration’s family separations policy,” Jan. 18, 2019, <https://www.cnn.com/2019/01/18/politics/draft-memo-significance/index.html>.

<sup>xxviii</sup> See n. ix, *supra*.

<sup>xxix</sup> *Id.*

<sup>xxx</sup> For a detailed discussion of the types of facilities and demographic break down jailed at each, see DHS Office of Inspector General, *OIG-19-18: ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>, at p. 3.

<sup>xxxi</sup> NIJC’s transparency work is documented on our website at <https://immigrantjustice.org/issues/transparencvandhumanrights>.

<sup>xxxii</sup> Dora Schriro, DHS, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* (Oct. 2009), <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

<sup>xxxiii</sup> See Tidwell Cullen, *supra* n. xxv.

<sup>xxxiv</sup> See, e.g., DHS, *ICE Notification of Non-Performance-Based National Detention Standards 2011 Detention Contract (Webb County)*, Fiscal Year 2018 Report to Congress, April 2, 2018, <https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Notification%20of%20NON-PBND%202011%20Detention%20Contract%20-%20Webb%20County.pdf>.

<sup>xxxv</sup> Department of Homeland Security, Office of Inspector General, *OIG-19-18: ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 29, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

<sup>xxxvi</sup> *Id.* at p. 9.

<sup>xxxvii</sup> The spreadsheet is entitled “Inspection Waivers Master File (XLSX)” and is downloadable from the ICE website at <https://www.ice.gov/facility-inspections>.

<sup>xxxviii</sup> Memorandum for Tac D. Johnson, Assistant Director, Custody Management, U.S. Immigration and Customs Enforcement, Re: Waiver for Strip Searches – Worcester County Jail, undated, available via download at <https://www.ice.gov/facility-inspections>.

<sup>xxxix</sup> See, e.g., H.J. Res. 31, *supra* n. 1, at sec. 210 (“None of the funds provided under the heading ‘U.S. Immigration and Customs Enforcement—Operations and Support’ may be used to continue any contract for the provision of detention services if the two most recent overall performance evaluations received by the contracted facility are less than ‘adequate’ or the equivalent median score in any subsequent performance evaluation system.”).

<sup>xl</sup> Detention Watch Network and National Immigrant Justice Center, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse* (2015), <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-03/THR-Inspections-FOIA-Report-October-2015-FINAL.pdf>.

<sup>xli</sup> DHS Office of Inspector General, *OIG-18-67: ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (June 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

<sup>xlii</sup> *Id.* at p. 4.

<sup>xliii</sup> *Id.* at p. 7 n.12.

<sup>xliv</sup> See Human Rights Watch *et al.*, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention* (June 2018), <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration> (examining ICE’s own reviews of 15 deaths that occurred in custody from December 2015 and April 2017, and finding substandard medical care to have contributed or led to 8 of the 15; see similar findings in Human Rights Watch *et al.*, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention* (May 2017), <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>).

<sup>xlvi</sup> *Id.*

<sup>xlvii</sup> See, e.g., ACLU of Colorado, *Cashing in on Cruelty: Stories of death, abuse and neglect at the GEO immigration detention facility in Aurora* (Sept. 2019), [https://aclu-co.org/wp-content/uploads/2019/09/ACLU\\_CO\\_Cashing\\_In\\_On\\_Cruelty\\_09-17-19.pdf](https://aclu-co.org/wp-content/uploads/2019/09/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf), at pp. 13-14; Southern Poverty Law Center, “SPLC, allies sue ICE for ignoring medical, mental health and disability needs of detained immigrants,” Aug. 19, 2019, <https://www.splcenter.org/news/2019/08/19/splc-allies-sue-ice-ignoring-medical-mental-health-and-disability-needs-detained-immigrants>.

<sup>xlviii</sup> National Immigrant Justice Center and Physicians for Human Rights, *Invisible in Isolation: the Use of Segregation and Solitary Confinement in Immigration Detention* (Sept. 2012), [https://immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012\\_7.pdf](https://immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf).

<sup>xlviii</sup> Ian Urbina and Catherine Rentz, *The New York Times*, “Immigrants held in solitary cells, often for weeks,” Mar. 23, 2013, <https://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>.

<sup>xlxxix</sup> U.S. Immigration and Customs Enforcement Policy Memo 11065.1: Review of the Use of Segregation for ICE Detainees, Sept. 4, 2013, <https://immigrantjustice.org/sites/default/files/Segregation%2520Directive%2520%2528Sept%25202013%2529.pdf>.

<sup>i</sup> Maryam Saleh and Spencer Woodman, The Intercept, “A Homeland Security whistleblower goes public about ICE abuse of solitary confinement,” May 21, 2019, <https://theintercept.com/2019/05/21/ice-solitary-confinement-whistleblower/>.

<sup>ii</sup> Project On Government Oversight, *Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months* (Aug. 2019), <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>.

<sup>iii</sup> *Id.*

<sup>iiii</sup> United Nations News, “Solitary confinement should be banned in most cases, UN expert says,” Nov. 18, 2011, <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

<sup>lv</sup> Tara Tidwell Cullen, National Immigrant Justice Center, “ICE’s use of solitary confinement has gotten worse,” May 21, 2019, <https://immigrantjustice.org/staff/blog/ices-use-solitary-confinement-has-gotten-worse>.

<sup>lv</sup> Yuki Noguchi, NPR, “Unequal outcomes: Most ICE detainees held in rural areas where deportations risks soar,” Aug. 15, 2019, <https://www.npr.org/2019/08/15/748764322/unequal-outcomes-most-ice-detainees-held-in-rural-areas-where-deportation-risks>.

<sup>lvi</sup> *Id.*

<sup>lvii</sup> Ingrid Eagly and Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court* (Sept. 2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

<sup>lviii</sup> Noah Lanard, Mother Jones, “ICE just quietly opened three new detention centers, flouting congressional limits,” July 9, 2019, <https://www.motherjones.com/politics/2019/07/ice-just-quietly-opened-three-new-detention-centers-flouting-congress-limits/>.

<sup>lix</sup> *Id.*

<sup>lx</sup> This data is maintained by ICE at <https://www.ice.gov/detention-management#tab2>.

<sup>lxi</sup> *Id.*

<sup>lxii</sup> Center for Victims of Torture *et al.*, *Tortured and Detained: Survivor Stories of U.S. Immigration Detention* (Nov. 2013), [https://www.cvt.org/sites/default/files/Report\\_TorturedAndDetained\\_Nov2013.pdf](https://www.cvt.org/sites/default/files/Report_TorturedAndDetained_Nov2013.pdf).

<sup>lxiii</sup> Sharita Gruberg, Center for American Progress, “ICE’s rejection of its own rules is placing LGBT immigrants at severe risk of sexual abuse,” May 30, 2018, <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>.

<sup>lxiv</sup> Robert Moore, *Washington Post*, “Gay and transgender detainees allege abuse at ICE facility in New Mexico,” Mar. 25, 2019, [https://www.washingtonpost.com/immigration/gay-transgender-detainees-allege-abuse-at-ice-facility-in-new-mexico/2019/03/25/e33ad6b6-4f10-11e9-a3f7-78b7525a8d5f\\_story.html](https://www.washingtonpost.com/immigration/gay-transgender-detainees-allege-abuse-at-ice-facility-in-new-mexico/2019/03/25/e33ad6b6-4f10-11e9-a3f7-78b7525a8d5f_story.html).

<sup>lxv</sup> See Michael D. Shear and Zolan Kanno-Young, *The New York Times*, “Migrant Families Would Face Indefinite Detention Under New Trump Rule,” Aug. 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/flores-migrant-family-detention.html>.

<sup>lxvi</sup> See, e.g., Miriam Jordan, *The New York Times*, “Whistle-Blowers Say Detaining Migrant Families ‘Poses High Risk of Harm,’” July 18, 2018, <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html?>; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children* (May 2017), [https://pediatrics.aappublications.org/content/139/5/e20170483?utm\\_source=MagMail&utm\\_medium=email&utm\\_term=.dmiller%40aap.org&utm\\_content=All-Member-072618&utm\\_campaign=A%20Message%20from%20the%20AAP%20President%20on%20Family%20Separation%20and%20Detention](https://pediatrics.aappublications.org/content/139/5/e20170483?utm_source=MagMail&utm_medium=email&utm_term=.dmiller%40aap.org&utm_content=All-Member-072618&utm_campaign=A%20Message%20from%20the%20AAP%20President%20on%20Family%20Separation%20and%20Detention).

<sup>lxvii</sup> See *A Better Way*, *supra* n. xi.

<sup>lxviii</sup> NIJC and Detention Watch Network have prepared a step-by-step Toolkit for Members of Congress interested in visiting an ICE facility, available at <https://www.immigrantjustice.org/research-items/toolkit-immigration-detention-oversight-and-accountability>.

Ms. JAYAPAL. Thank you, Ms. Altman. Mr. Barón, you are recognized.

### TESTIMONY OF JORGE BARON

Ms. BARON. Chairman Nadler, Chairwoman Lofgren, Vice Chair Jayapal, Ranking Member Buck, and distinguished members of the subcommittee, thank you for the opportunity to address you today. My name is Jorge Barón, and I serve as the executive director of the Northwest Immigrant Rights Project, a nationally-recognized legal services organization that provides immigration assistance to over 20,000 low-income people each year in Washington State.

I will focus my remarks on the Trump Administration is moving on two different fronts to make it nearly impossible for asylum seekers to be released from immigration detention. As a way of background, when asylum seekers arrive at our borders, they are generally placed in the expedited removal process, and they are not even considered for release until they have passed a credible fear interview. At that point, depending on their manner of entry, they may be eligible for a bond hearing before an immigration judge or to ask ICE for release on parole. Unfortunately, the Administration is moving to eliminate one option and severely undermine the other. In other words, if the Administration has its way, asylum seekers will be detained indefinitely.

With regard to bond hearings, it has been settled law for decades that asylum seekers who arrive in ports of entry and pass a credible fear interview are eligible to seek release on bond from an immigration judge while their full asylum case is considered. It was settled law, at least until April of this year when Attorney General Barr issued a ruling in a case known as *Matter of M-S-*. In that case, Attorney General Barr purports to reinterpret the immigration statutes to find that asylum seekers are no longer entitled to bond hearings.

Thankfully, the Attorney General's ruling is currently on hold because of the courage of one of our clients, Yolany Padilla. Ms. Padilla arrived in the United States in May 2018 with her 6-year-old son with the intention of seeking asylum, and turned herself into Border Patrol agents at the southern border. A few hours after Ms. Padilla and her son were taken into custody, Ms. Padilla's son was forcibly separated from her without explanation. Ms. Padilla was then taken to a detention center in Texas and later transferred by ICE to Washington State.

Weeks went by, and Ms. Padilla remained detained without a hearing, without a credible fear interview that would initiate the asylum process, and, most importantly to Ms. Padilla, without any contact with her son. And Ms. Padilla was not alone as there were over 200 asylum seekers in a similar situation at the same Federal prison where the women were being held.

Working with our partners, we eventually had to file a Federal class action case on behalf of Ms. Padilla and several other parents who had been detained for weeks without any action on their cases. While the case, known as *Padilla v. ICE*, was originally focused on the delays in providing credible fear interviews and bond hearings to asylum seekers, after the Attorney General's decision *Matter of M-S-*, the case sought to challenge this ruling as well. And in July,

U.S. District Judge Marsha Pechman decided that Attorney General Barr could not take away bond hearings from asylum seekers and put his ruling on hold. However, the government has appealed the decision to the 9th Circuit, and the risk, therefore, remains that Attorney General Barr's decision may still take effect.

I should note that thanks to the litigation, Ms. Padilla was granted a bond hearing, was released from detention, and was reunited with her son. But if the Administration has its way, future asylum seekers in Ms. Padilla's situation will remain detained subject ICE's unreviewable discretion, which brings me to the topic of parole. Some detained asylum seekers are not eligible for bond hearings, and for them, being granted parole by ICE is the only mechanism to obtain release from immigration detention. Yet since 2017, the rate at which ICE has granted parole to arriving asylum seekers has dropped to zero or close to zero in some parts of the country.

An analysis of five ICE field offices in 2017 found that less than 4 percent of parole requests by asylum seekers were approved, even though 92 percent of such requests at those same offices had been approved just a few years earlier. The New Orleans field office of ICE granted parole in only 2 out of 130 cases in 2018 and none in 2019 as of a few weeks ago, all of this despite the fact that ICE contends that it continues to abide by the same 2009 policy directive. These practices are being challenged in litigation, and a Federal judge has issued an injunction to prevent a number of ICE field offices from denying parole in violation of its own policy. However, reports from the field indicate that even these judicial orders have not put a stop to ICE's unlawful practices.

We have faced similar challenges in Washington State. Frequently, requests for parole are simply ignored despite multiple attempts at communication with local ICE officials. And our staff reported parole denials in cases that present compelling circumstances for release and that would've been approved in prior years. As just one example, NIRP is currently representing a young man who arrived to the United States as an unaccompanied child and was initially placed with the Office of Refugee Resettlement. He remained in ORR custody until the day he turned 18, when he was transferred to the Northwest Detention Center where he has spent 18 months in detention all while awaiting a decision on his asylum application from USCIS. ICE has twice denied a request for parole on his behalf, and he remains locked up as of this moment despite his significant ties to the community, is not representing any danger, and his having no control over when USCIS will resolve his case.

In closing, given the Administration's attempt to eliminate or undermine the ability of asylum seekers to obtain release from detention, we call on Congress to move forcefully away from the widespread incarceration of immigrants. As immediate steps, we urge Congress to pass into law H.R. 2415, the Dignity for Detained Immigrants Act, which addresses some of the most urgent problems in the immigrant detention system through reduced funding for ICE detention and invests in community-based alternatives to detention programs, and to create a robust and effective account-

ability system that addresses the human rights abuses in the immigration detention system. Thank you for your attention.  
[The statement of Mr. Barón follows:]



WRITTEN STATEMENT OF

JORGE L. BARÓN  
EXECUTIVE DIRECTOR  
NORTHWEST IMMIGRANT RIGHTS PROJECT

For a Hearing on

**The Expansion and Troubling Use of ICE Detention**

**House Judiciary Committee**

**Subcommittee on Immigration and Citizenship**

Hearing on September 26, 2019



Members of the Committee,

Thank you for the opportunity to address you today. My name is Jorge L. Barón and I serve as the executive director of the Northwest Immigrant Rights Project (NWIRP). NWIRP is a nationally-recognized legal services organization founded in 1984. Each year, NWIRP provides direct legal assistance in immigration matters to over 20,000 low-income people from over 160 countries, speaking over 70 different languages and dialects. NWIRP also strives to protect the rights of immigrants through impact litigation, public policy work, and community education. NWIRP serves the community from four offices in Washington State in Seattle, Granger, Tacoma, and Wenatchee.

I commend the committee for focusing its attention on the troubling and massive expansion of the immigration detention system. The Northwest Immigrant Rights Project has been providing legal assistance to individuals enduring immigration detention for over three decades and we have seen first-hand how this system has grown and how it has harmed the people detained, their families, and their communities.

As you will hear today from directly-impacted community members and policy experts, the United States should be working toward dismantling the immigration detention system, for a long list of reasons. The system today results in: the widespread separation of families, which traumatizes children and communities;<sup>1</sup> the mistreatment of individuals held at detention centers, including inadequate medical care;<sup>2</sup> a lack of accountability by private prison corporations that now detain most of the people in the immigration detention system;<sup>3</sup> repeated violations of labor rights;<sup>4</sup> sexual assault of LGBTQ individuals and others;<sup>5</sup> additional barriers to individuals obtaining legal representation in immigration proceedings;<sup>6</sup> and other troubling violations of basic human and constitutional rights.<sup>7</sup> Yet, despite the well-documented problems with the immigration detention system, it continues to grow at an alarming rate.

In the United States, liberty is the default. Our legal system protects people against the deprivation of their liberty except in certain circumstances and then only with due process protections. But in the enforcement of our immigration laws, these principles are being turned on their head, with detention becoming the rule and liberty the exception. This trend has been building for the past three decades, but the Trump Administration's actions are dramatically

expanding both the immigration detention system and its negative impact on people and communities.

I will focus my remarks today on the Administration's actions to undermine the already-limited mechanisms that have allowed individuals to seek release from the immigration detention system. Specifically I will focus on the Administration's moves to curtail the ability of immigrants in detention to seek release on bond and the Administration's attempts to dramatically reduce the number of asylum seekers released through parole.

### **The Trump Administration's Attack on the Right to Bond Hearings**

Despite problematic restrictions on this right, thousands of immigrants each year have been able to seek release from detention by asking an immigration judge to release them on bond. However, the Trump Administration is currently attempting to end the ability of any recently-arrived asylum seeker to have access to bond hearings.

In order to illustrate the troubling changes the Administration is pursuing, I would like to share with the committee the story of one of our clients, Yolany Padilla. Ms. Padilla arrived in the United States in May 2018 with her six-year-old son. Ms. Padilla intended to seek asylum and turned herself in to Border Patrol agents at the southern border. A few hours after Ms. Padilla and her son were taken into custody by Border Patrol, Ms. Padilla's son was forcibly separated from her without explanation.

Ms. Padilla was then taken to a detention center in Texas and later transferred to the Federal Detention Center in SeaTac, Washington, a Bureau of Prisons institution that Immigration and Customs Enforcement (ICE) used for several months in 2018 to detain asylum seekers. Weeks went by and Ms. Padilla remained detained, without a hearing, without a credible fear interview that would initiate the asylum process, and—most importantly to Ms. Padilla—without any contact with her son. Ms. Padilla was not alone. NWIRP learned that there were more than 200 asylum seekers at the federal prison in SeaTac who were detained for several weeks without any action on their cases. Our staff contacted local ICE officials but received no substantive response to our queries on when the asylum process would begin in these cases. It appeared that these people, who merely sought to exercise the right to seek

asylum provided for by U.S. law and our international humanitarian obligations, could be detained indefinitely.

We therefore sought the assistance of the courts. We filed a federal habeas corpus petition on behalf of Ms. Padilla and several other women who had been detained without any action on their cases. We argued that under U.S. law the government was required to give Ms. Padilla and the other asylum seekers credible fear interviews and then bond hearings in a timely manner and with adequate procedural protections. Shortly after the filing of the federal case, Ms. Padilla was given a credible fear interview and a bond hearing, at which an immigration judge granted Ms. Padilla a bond. That was critical, because she was able to post the bond and she was reunited with her son after weeks of separation.

However, we recognized that thousands of other asylum seekers nationwide were in the same situation as Ms. Padilla was. Therefore, U.S. District Judge Marsha Pechman approved our request to continue the case as a class action and Ms. Padilla and a few others now represent a nationwide class of asylum seekers. Earlier this year, Judge Pechman ordered the federal government to ensure that asylum seekers in Ms. Padilla's position get a prompt bond hearing, within seven days of requesting one, and also required that the government bear the burden of showing why an individual should be detained.<sup>8</sup>

For a country founded on the principle of limited government power, these requirements are pretty basic. Remarkably, the Trump Administration's response was to declare flatly that detained asylum seekers who had already passed a credible fear interview simply were not entitled to be released on bond—ever. Just two weeks after Judge Pechman's ruling, Attorney General Barr issued a ruling so stating in *Matter of M-S-*, in which he purported to re-interpret a provision of immigration law that had long been found to allow for bond hearings for most asylum seekers.<sup>9</sup> According to Attorney General Barr, the only recourse for asylum seekers pursuing release from detention is to seek parole from ICE. But as I will explain next the Trump Administration has drastically restricted parole for detained immigrants. So the Trump Administration's proposed approach is clear: asylum seekers will be detained, indefinitely.

We believe that Attorney General Barr's ruling in *Matter of M-S-* is contrary to both the immigration statute and constitutional due process requirements. And in July, Judge Pechman agreed that Attorney General Barr's decision in *Matter of M-S-* could not stand and that asylum seekers found to have a credible fear of persecution are "constitutionally entitled to a bond hearing before a neutral decision maker."<sup>10</sup> However, the Administration has appealed Judge Pechman's ruling to the Ninth Circuit Court of Appeals and while we're confident of our legal position, we are deeply concerned about the impact that a ruling to uphold *Matter of M-S-* would have on thousands of asylum-seekers across the country. Because even under the current system of bond hearings, which Judge Pechman found to lack critical due process protections, approximately half of the asylum seekers who seek release from detention are ultimately granted release on bond. In other words, despite the fact that the current system unlawfully places the burden on the asylum seeker to prove they should be released and lacks other procedural safeguards, immigration judges still find that half of asylum seekers eligible for a bond hearing do not pose a risk of flight or a danger to the community and should be released on bond. And yet, the Administration demands that those thousands of individuals who currently can avail themselves of a restrictive system should also remain in detention for the entirety of their cases, subject only to its own unreviewable discretion.

The Administration's policy to restrict access to bond hearings even further is particularly concerning given that approximately two-thirds of the individuals in ICE detention today were transferred by Customs and Border Protection (CBP) and most of these individuals are seeking asylum protection. If *Matter of M-S-* is upheld, such an outcome could serve as a springboard for an even further expansion of the immigration detention system, unless Congress takes firm and clear action to the contrary.

#### **The Trump Administration's Attempts to All But Eliminate Release on Parole**

For some detained asylum seekers (namely those who presented themselves at a port of entry), parole is currently the only mechanism to obtain release from immigration detention. Yet the Trump Administration has dramatically reduced the ability of these asylum seekers to gain release through parole.

Under the Trump Administration, the rate at which ICE has granted parole to arriving asylum seekers has dropped to zero or close to zero in some parts of the country. An analysis conducted by the ACLU and its partners of five ICE field offices in 2017 found that less than 4 percent of parole requests by asylum seekers were approved, even though 92 percent of such requests at those same offices had been approved in the 2011-2013 period.<sup>11</sup> The New Orleans field office of ICE granted parole in only two out of 130 cases in 2018 and none so far in 2019.<sup>12</sup> All of this despite the fact that ICE contends that it continues to abide by a 2009 policy directive that provided guidance on the exercise of discretion that had led to a much larger percentage of asylum seekers to be released from immigration custody.

ICE's virtual elimination of parole as a mechanism to release asylum seekers is being challenged through litigation by the ACLU, the Center for Gender and Refugee Studies, Human Rights First, the Southern Poverty Law Center, and their partners. Federal District Judge James Boasberg here in Washington, D.C. found that "the dramatic departure in parole-grant rates [had] not been explained in any way" by the government.<sup>13</sup> Judge Boasberg has therefore granted preliminary injunctions, including one earlier this month, to prevent a number of ICE field offices from denying parole without conducting an individualized determination of flight risk and danger to the community.<sup>14</sup> However, reports from the field indicate that even these judicial orders have not put a stop to ICE's unlawful practices.

In our own region of Washington State, our staff have also found dramatic changes that have made release on parole significantly more difficult under this Administration. Frequently, requests for parole are simply ignored, despite multiple attempts at communication with local ICE officials. And our staff report parole denials in cases that present compelling circumstances for release and that would have been approved in prior years. As just one example of the restrictive nature of ICE's new practice, NWIRP is currently representing a young man who arrived to the United States as an unaccompanied child and was initially placed with the Office of Refugee Resettlement (ORR). He remained in ORR custody until the day he turned 18, when he was transferred to the Northwest Detention Center, where he has spent 18 months in detention all while awaiting a decision on his asylum application from U.S. Citizenship and Immigration Services (USCIS). ICE has twice denied our requests on his behalf for parole and he

remains locked up as of this moment, despite his significant ties to the community, his not being a danger to the community, and his having no control over when USCIS will resolve his case.

### **Congress Must Act**

When I describe to people not familiar with the immigration detention system the actions the Administration is taking to dramatically alter the legal landscape and to increase the number of people being detained, I am asked how it is possible for the Administration to make such changes unilaterally. The answer of course is that it can only do so if Congress fails in its obligation to conduct appropriate oversight and assert control over the budget of these agencies. We believe that the Administration could not pursue the policy changes embodied in the Matter of M-S- decision and the virtual elimination of release on parole were it not for the perceived acquiescence of Congress in these actions. Specifically, the fact that ICE continues to exceed year after year the budget limitations imposed by Congress sends a message to the Administration that Congress has effectively abdicated its responsibilities under Article I, Section 9, clause 7 of the Constitution.<sup>15</sup>

As the executive director of NWIRP, I therefore join communities and organizations around the country in calling on Congress to move forcefully away from the widespread incarceration of immigrants. As immediate steps, we urge Congress to:

- Pass into law H.R. 2415, the Dignity for Detained Immigrants Act, which addresses some of the most urgent problems in the immigration detention system. In particular, this bill would:
  - Restore a presumption of release from detention and ensure every immigrant in detention has access to a bond hearing;
  - End the use of private contractors in the immigration detention system; and
  - Create an enforceable set of standards for immigration detention centers.
- Reduce funding for ICE detention and invest in community-based alternatives to detention programs;

- Create a robust and effective accountability system that addresses the violations in the immigration detention system as we transition away from the incarceration of immigrants.

As I close my testimony, I ask you to consider the over 50,000 community members who are unnecessarily incarcerated at this moment, including over 1,500 in my home state of Washington, and the tens of thousands of children, spouses, extended families and others who are suffering because of the separation that immigration detention causes. I ask you to address this humanitarian crisis of our own making and ensure that our country closes this tragic chapter of our history.

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<sup>1</sup> See, e.g., Alan Gomez, USA Today, "Government watchdog: Separated migrant children suffered PTSD, other mental trauma," September 4, 2019, available at: <https://www.usatoday.com/story/news/nation/2019/09/04/separated-migrant-children-suffered-ptsd-trauma-report-says/2209669001/>; American Immigration Council, *U.S. Citizen Children Impacted by Immigration Enforcement*, May 23, 2018, available at: <https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>.

<sup>2</sup> See, e.g., *Fraihat et al v. U.S. ICE et al*, Complaint for Declaratory and Injunctive Relief for Violations of Due Process Clause of the Fifth Amendment and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, et. seq. Case No. 19-cv-01546 (U.S. District Court Central District of California Eastern Division - Riverside), available at: [https://www.splcenter.org/sites/default/files/e-filed\\_-\\_fraihat\\_v\\_ice\\_complaint\\_to\\_file\\_8\\_19.pdf](https://www.splcenter.org/sites/default/files/e-filed_-_fraihat_v_ice_complaint_to_file_8_19.pdf); Human Rights Watch et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention*, June 2018, available at: <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>; Freedom For Immigrants, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, (May 2017), available at: <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

<sup>33</sup> See, e.g. DHS Office of Inspector General, *OIG-18-67: ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 2018, available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>; American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Inspections Ignore Deaths in Detention*, (February 2016), available at: <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>.

<sup>444</sup> See, e.g., Washington State Office of the Attorney General, *AG Ferguson Sues Operator of the Northwest Detention Center for Wage Violations*, September 20, 2017, available at: <https://www.atg.wa.gov/news/news-releases/ag-ferguson-sues-operator-northwest-detention-center-wage-violations>; Catherine E. Scholchet, CNN, "Lawsuit Alleges 'Forced Labor' in Immigration Detention," April 17, 2018, available at: <https://www.cnn.com/2018/04/17/us/immigrant-detention-forced-labor-lawsuit/index.html>.

<sup>5</sup> See, e.g. Center for American Progress, *ICE's Rejection of Its Own Rules is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, May 2018, available at: <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>; Safia Samee Ali, NBC News, "Sexual Assaults in Immigration Detention Rarely Get Investigated, Group Says," April 12, 2017, available at: <https://www.nbcnews.com/news/us->

[news/sexual-assaults-immigration-detention-centers-don-t-get-investigated-says-n745616](#); Alice Speri, The Intercept, “Detained, Then Violated: 1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention,” April 11, 2018, available at: <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>.

<sup>6</sup> Ingrid Eagly & Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court*, September 28, 2016, p. 5, available at: <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court> (noting that “Detained immigrants—held in prisons, jails, and detention centers across the country—were the least likely of all immigrants to be represented.”).

<sup>7</sup> See, e.g., Department of Homeland Security Office of the Inspector General, *Concerns About ICE Detainee Treatment and Care at Four Detention Facilities* OIG 19-47, June 3, 2019, available at: <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

<sup>8</sup> *Padilla v. ICE*, Order Granting Preliminary Injunction, Case No. C-18-928 MJP, Western District of Washington at Seattle, available at: <https://www.nwirp.org/wp-content/uploads/2019/04/110-order-granting-PI.pdf>.

<sup>9</sup> *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)

<sup>10</sup> *Padilla v. ICE*, Order on Motions re Preliminary Injunction, Case No. C18-928 MJP, Western District of Washington at Seattle, p. 20, available at: <https://www.nwirp.org/wp-content/uploads/2019/07/149-order-on-mx-re-PI.pdf>. The *Padilla* class is currently represented by NWIRP, the American Immigration Council, and the ACLU.

<sup>11</sup> *Damus v. Nielsen*, Complaint, Case No. 18-578 (JEB), U.S. District Court for the District of Columbia, available at: <https://www.aclu.org/legal-document/damus-v-nielsen-complaint>

<sup>12</sup> Southern Poverty Law Center, *Judge Blocks ICE from Denying Parole to Asylum-Seekers*, available at: <https://www.splcenter.org/news/2019/09/05/judge-blocks-ice-denying-parole-asylum-seekers>

<sup>13</sup> *Damus v. Nielsen*, Memorandum Opinion, Case No. 18-578 (JEB), U.S. District Court for the District of Columbia, p. 32, available at: <https://www.aclu.org/legal-document/memorandum-opinion-granting-preliminary-injunction>

<sup>14</sup> *Id.*; *Mons v. McAleenan*, Order Granting Preliminary Injunction, Case No. 19-1593 (JEB), U.S. District Court for the District of Columbia, available at: [https://www.splcenter.org/sites/default/files/0033\\_09-05-2019\\_order\\_granting\\_22\\_motion\\_for\\_preliminary\\_injunction\\_granting\\_15\\_motion\\_for\\_class\\_certification.pdf](https://www.splcenter.org/sites/default/files/0033_09-05-2019_order_granting_22_motion_for_preliminary_injunction_granting_15_motion_for_class_certification.pdf).

<sup>15</sup> U.S. Constitution, Art. I, Sec. 9, cl. 7 (“No money shall be drawn from the treasury, but in consequence of appropriations made by law”).



Ms. JAPAYAL. Thank you, Mr. Barón. Ms. Schikore.

### TESTIMONY OF MELANIE SCHIKORE

Ms. SCHIKORE. Chairman Nadler, Madam Chairwoman Lofgren, Vice Chairwoman Jayapal, Ranking Member Buck, distinguished members of the subcommittee, thank you for this opportunity to share my experiences and recommendations. It is an honor.

My name is Melanie Schikore, and I'm the executive director of the Interfaith Community for Detained Immigrants, known as ICDI, a 501(c)(3) in Chicago. It is in the spirit of compassionate advocacy that I represent 10 staff and over 300 volunteers from 16 different faiths and testify about immigrant detention and alternatives to detention to inform decision-making regarding H.R. 2415, the Dignity for Detained Immigrants Act of 2019.

We uphold the dignity and worth of all human beings, including ICE officers and county jail staff. All of the world's faiths have a way of referencing our interconnectedness and our responsibility to care for one another. I've worked in a multitude of settings in the realm of immigration since 1990. Immigration is the human-made system we create around the human need to migrate. When a person's safety, livelihood, beliefs, or family are threatened, they leave and seek a place where they can do what we all hope to do: live, love, laugh, learn, and be part of a safe community. This is not a crime. It is a right.

Five of our six programs align with the current immigration system and mitigate the harms of a system modeled after a criminal system. On an annual basis, we make over 8,000 detention visits, monitor over 2,000 court hearings, pray with over 3,000 people being deported, assist over 500 people who call our hotline upon release, and provide spiritual care for 1,500 detained children. Our care is vital, but it is a spiritual band-aid in a system that needs a complete overhaul and redesign. We should not be detaining people at the rate that we do, nor in the conditions of the current detention system.

Our sixth program, the Marie Joseph House of Hospitality, is an alternative to detention and a model for a different future. Here we are free to design care based on the needs of human beings. Participants enter this program through ICE or lawyer referral by inquiries we make about people we visit or from the children centers when a young person ages out, which disrupts the standard operating procedure of shackling them and taking them to jail on their 18th birthdays.

Everyone in our care receives individualized case management. We create a short- and long-term plan and refer them to medical, dental, mental health, legal, educational, and vocational services. Participants learn English, how to take public transportation, how to budget and open a bank account, use a gas stove, bundle themselves for Chicago winter, enroll in school, and much more. They live in a supportive community, make friends, get work authorization, and find jobs, adjusting to life in this country and becoming independent. ATDs cost a fraction of what detention does, and they have good compliance rates. But what you get for your dollar is even more important. No one leaves a detention center better than

when they got there, but everyone leaves Marie Joseph House better than when they got there.

Forty years ago, we did not have the detention system that we do now. In that time, private companies have carved out their profit niche on the backs of immigrants. It is not the global norm. In the words of one of our participants from Ghana, "I traveled through 14 countries to get here, and the only place they shackled me and put me in jail was the United States. 'Welcome to America,' they said." We're part of a global network of over 400 organizations and individuals in 90 countries that advocate for research and provide direct services to refugees, asylum seekers, and migrants affected by immigration detention.

How do we justify putting someone fleeing Nigeria because his life is in danger for being gay into jail? This ICDI participant got asylum, just passed the MCAT, and is being solicited by medical schools around the country. How do we justify detaining and separating for over 4 months Ms. L. and her 7-year-old who were fleeing persecution in the Congo? These ICDI participants were reunited in our house. The daughter, who speaks five languages, by the way, is in school, and mom is learning English and job seeking. Each of our participants has a story like this. ATDs are a crucial part of solving the brokenness of our immigration system. The vast majority of people seeking refuge in the United States do not pose a threat. It is a stain on our Nation's history to imprison people who are vulnerable, have significant trauma histories, and are doing what anyone, what any of us would do if we could not live safely or take care of our family where we were.

Based on the direct experience of ICDI and the immense body of literature supporting a humane approach to migration, I urge you all to do your part in reforming and reconfiguring the current system such that human needs are centered, and detention is used minimally and only as a last resort. Lastly, I urge you to work to surface the root causes of migration and intervene when always possible, especially when U.S. trade policies, political interventions, and consumerism make us complicit in the conditions that cause the need to migrate. Thank you.

[The statement of Ms. Schikore follows:]



**U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on Immigration and Citizenship**

**“The Expansion and Troubling Use of ICE Detention”**

**September 26, 2019**

**Testimony of Melanie Schikore, Executive Director  
of the Interfaith Community for Detained Immigrants**

My name is Melanie Schikore and I have been part of the Interfaith Community for Detained Immigrants (ICDI)<sup>1</sup> since 2010. I started as a volunteer, served on the board when the organization sought official 501(c) status, and have been the Executive Director of ICDI since 2015.

ICDI is a community of many faiths coming together around the issues of immigration and detention, holding the belief that each individual has dignity and worth and that we are charged with each other’s well-being. We are called to respond through direct service to the suffering of adults and children negatively impacted by the broken and inhumane immigration system; and we are called to advocate for systemic change including compassionate immigration reform. It is in this spirit of compassionate advocacy that I submit this testimony to contribute to the body of information being examined with regard to immigrant detention and alternatives to detention that will inform decision making around HR 3923, the Dignity for Detained Immigrants Act of 2017.

*BACKGROUND*

I have worked in the realm of immigration and the margins of cultural adjustment since 1990 when my career path was impacted by what I witnessed and experienced at the International Institute, an immigrant and refugee resettlement agency in Saint Louis, Missouri.<sup>2</sup> I feel

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<sup>1</sup> Website: [www.icdi.chicago.org](http://www.icdi.chicago.org)

<sup>2</sup> International Institute: [www.iistl.org](http://www.iistl.org)

fortunate to have worked so closely with immigrants and to have gained a deep understanding early in my life of how difficult it is to come to a new country, raise children who want to be American even as you want them to understand where they come from, how little assistance is given to immigrants and how short a time frame one has to learn English, get a job, and be independent.

Later I worked as a public school teacher in Los Angeles where the majority of children and families were undocumented, in a Chicago-based family literacy program in Latino neighborhoods, and in a literacy program for Roma families living in makeshift shanty towns in Madrid, Spain.

While conducting doctoral research in community-based learning and organization, I spent six years providing educational and other support to migrant workers in the thoroughbred racing industry including a period in which I lived in the migrant housing and worked as a hotwalker in the barns. I became acutely aware of the challenges of migrant workers and their families in negotiating a transitory and contingent life in the United States, including shortcomings of the flawed H2B visa program.

At Concordia University, I trained teachers how to properly instruct and assess immigrant bilingual students and how to cross cultural divides and work inclusively with their families.

In the nearly thirty years since my initial experience with refugee resettlement I have witnessed how it has gotten even more difficult for people who come to this country.

My experience with people from all over the world in various settings as well as human history itself leaves no doubt that migration is a human need, just as it is an animal need. When a bird doesn't have the food it needs because of the season, it migrates to another place where it can eat. When the habitat of the sloth is destroyed because of logging, it moves elsewhere. People are no different and when their safety, livelihood, beliefs, or family is threatened, they will leave and seek a place where they can do what we all hope to do: live, love, laugh, learn, and be part of a safe community. As long as there are people on the planet there will be people who need to relocate to meet their needs. As the title of a new book about family and migration in the 21st century by Jason DeParle says, "A Good Provider is One Who Leaves".<sup>3</sup>

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<sup>3</sup> <https://www.penguinrandomhouse.com/books/313176/a-good-provider-is-one-who-leaves-by-jason-deparle/>

*INTERFAITH COMMUNITY FOR DETAINED IMMIGRANTS*

The Interfaith Community for Detained Immigrants (ICDI) is a 501(c)3 faith-based organization in the Chicago area, founded by Sisters of Mercy JoAnn Persch and Pat Murphy in 2007. When the sisters were denied entry to provide pastoral care to people detained and being deported, they formed an interfaith coalition which resulted ultimately in the Access to Religious Ministry Act of 2008<sup>4</sup> which passed unanimously in the Illinois House and the Senate. The law affords religious workers access to immigrant detention centers. This provision is unique in the United States and many immigrants elsewhere in the country do not receive spiritual support.<sup>5</sup>

ICDI has a staff of 10 and over 300 volunteers from a multitude of faith backgrounds: Catholic, Theist, Presbyterian, Lutheran, Humanist, Unitarian Universalist, Sikh, Buddhist, Methodist, United Church of Christ, Jewish, Evangelical, Hindu, Baptist, Muslim, Episcopalian, Polish Orthodox and more. We come together through a shared belief in the dignity and worth of *all* human beings, including ICE officers and jail staff. All of the world's faiths have a way of referencing our interconnectedness and our responsibility to care for one another.

The heart of our work is the pastoral care visits we make weekly in four immigrant detention centers. We meet with people in detention and accompany and support them in this difficult time of their lives. We make over 8000 visits yearly with over 5000 different men and women.<sup>6</sup>

We also attend and monitor immigration court hearings Monday through Friday, putting our bodies in the courtroom since the immigrants themselves appear only by video camera, providing a human presence of witness in often dehumanizing proceedings.<sup>7</sup> We monitor over 2000 hearings a year.

We assist families who are losing a loved one to deportation by accompanying them and supporting them spiritually at this difficult time.<sup>8</sup> We pray on the buses full of people being deported before they leave. Over 200 families and over 3000 deportees are assisted yearly.

<sup>4</sup> <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-1022>

<sup>5</sup> <https://religionnews.com/2018/10/25/for-ice-detainees-access-to-clergy-is-infrequent-or-absent-altogether-rights-groups-say/>

<sup>6</sup> <https://www.chicagotribune.com/news/ct-immigrants-mchenry-detention-center-met-20170323-story.html>

<sup>7</sup> <https://chronicleillinois.com/government/immigrant-deportation-video-saves-time-can-dehumanizing-2/>

<sup>8</sup> <https://chronicleillinois.com/news/cook-county-news/families-say-goodbye-broadview-deportation-center/>

We provide spiritual care for children who are detained without a parent in centers contracted by the Office of Refugee Resettlement (ORR) by making visits and also providing faith-specific services and celebrations. These children either migrated without an adult or were separated at the border. Annually we visit over 1500 children.

We have also been successful in diverting young people who are “aging out” of unaccompanied minor detention from going to jail on their 18th birthdays. By accepting them into our Alternative To Detention program, the Marie Joseph House, or referring them to two other Chicago area alternatives for aging out youth, Viator House and Bethany House, they live in community and develop skills to be healthy and independent young adults rather than experiencing imprisonment.

We have a hotline to provide people upon release from detention with food, bus tickets, and clothing, and assist them to get home to loved ones. On an annual basis we help over 600 people get home.

We have multiple housing and support services that provide alternatives to detention and care after release from detention.

All of these programs mitigate the harms of an immigration and detention system styled after criminal systems. They are minimal forms of harm reduction, spiritual band-aids in a system that needs a complete overhaul and redesign. We should not be detaining people at the rates that we do nor in the conditions of the current detention system.

#### *MARIE JOSEPH HOUSE PARTICIPANTS*

I cannot stress enough the need for support for newly arriving people. The namesake of the Marie Joseph House was a woman from Haiti who we met in McHenry County Jail. She was released without housing or support and after being taken to a temporary shelter she disappeared. Three days later her body was found in an abandoned building. This tragedy and the sentiment of never again wanting something like this to occur led to the efforts to create housing for immigrants released from detention.

People who migrate are vulnerable. The traumatic histories of the people we serve are complex.<sup>9</sup> There are traumas experienced in home country which led to the need to depart;

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<sup>9</sup> Aragona, M., Pucci, D., Mazzetti, M., Maisano, B., & Geraci, S. (2013). Traumatic events, post-migration living difficulties and post-traumatic symptoms in first generation immigrants: a primary care study. *Annali dell'Istituto superiore di sanita*, 49, 169-175.

traumas incurred on the dangerous migration route; and trauma from being detained in a jail setting and treated like a criminal when one has asked for help.

People come into our care in various ways. Through an MOU with ICE we are able to inquire about anyone that we meet in jail who says they don't have family or friends in the US. One example of this is a woman that we met in detention who was pregnant and very sick. ICE released her to our care and she had her baby while in our program. We also get referrals from around the country from lawyers with clients who could be released if they have stable housing. Additionally, ICE contacts us about detainees they want to release to care such as a Russian man who was hunger striking and depressed or a family from Swaziland that arrived at O'Hare airport asking for asylum. The only other option was to send them to family detention at the border. Instead they came into our care. Lastly, we work with ORR, ICE, and children's detention centers in Chicago to accept aging out minors who would otherwise be shackled and put in adult detention on their 18th birthday.

Everyone in our care received individualized case management. We identify acute and immediate needs and also create a short- and long-term plan. We refer to medical, dental, mental health, legal, educational, and vocational partners. We refer victims of torture to the Kovler Center where they receive specialized counseling. All participants have legal representation. Participants also get cultural and language competency. They learn English and learn how to take public transportation, open a bank account, use a gas stove, bundle themselves for Chicago winter, enroll in school, and much more. They live in a supportive community, make friends, get work authorization and find jobs, and are well on their way to adjusting to life in this country.<sup>10</sup> The average stay with us is 1.5 years for those released with a pending case and 6 months to a year for those released with asylum.

In our care are two children who were ripped from their mother's arms at the border and sent to child detention in Chicago. Their mothers were detained elsewhere and their reunification was made possible because we offer long-term stable housing and support.

Our participants are from Nigeria, Pakistan, Ghana, Sudan, Kashmir, Gambia, Honduras, Somalia, China, El Salvador, Haiti, Burkina Faso, Eritrea, Guatemala, Congo, Cameroon, Senegal, Uganda, Jamaica, Russia, Rwanda, Saudi Arabia, Brazil, Cuba, Tunisia, Ethiopia, and more.

They have become CDL truck drivers, hotel hospitality workers, restaurant workers, part of demolition crews, factory workers, auto repair workers, and more. Several have gotten CNA

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<sup>10</sup> <https://news.wttw.com/2017/06/05/hyde-park-home-alternative-detention-refugees-asylum-seekers>; <https://www.chicagotribune.com/news/breaking/ct-met-marie-joseph-house-20180727-story.html>

certification. One participant passed the MCAT and is being recruited by medical schools around the country because of his high score. We also have a robotics entrepreneur and a computer programmer. Given the right supports when new to the country has allowed them to thrive and become contributing members of society.

#### *WHAT SHOULD BE DONE INSTEAD?*

Hospitality: In 2014 with support from Lutheran Immigration and Refugee Services (LIRS) and other funding we opened the Marie Joseph House.<sup>11</sup> This alternative to detention is highlighted along with two other ATD programs in the report *A Better Way*, compiled by the National Immigrant Justice Center <sup>12</sup>.

Community Based Case Management: In 2015, ICDI implemented a pilot called Family Placement Alternatives in collaboration with LIRS. <sup>13</sup> We provided community-based case management services to 10 families leaving immigration detention. This pilot program was designed in part to provide a basis for expansion of the Family Case Management Program (FCMP). However, ICDI decided not to participate in the implementation of the FCMP under the contract developed by ICE when GEO Care, a division of the private for profit GEO Group, was awarded the contract.<sup>14</sup>

Second Stage Housing and Services: In addition to the Marie Joseph House, we oversee a 2nd stage housing cooperative as an option for people who leave the Marie Joseph House to live in a supportive community. The cooperative is self-governing and everyone there works and makes a financial contribution which covers the cost of the lease and other community goods. They are gently supported as needed by our organization as a safety net after we learned that if pushed into full independence (and often isolation through the act of moving out), participants remained at risk of homelessness if they lost their job or had pressing financial needs in their home country.

We also have several community-based partnerships with faith communities who do the bulk of work supporting a family or several individuals living together and ICDI acts as a support and consultant to their efforts. Partnering with faith communities that express a willingness

<sup>11</sup> [https://healtorture.org/sites/healtorture.org/files/ATJ%20one%20pager\\_2015.pdf](https://healtorture.org/sites/healtorture.org/files/ATJ%20one%20pager_2015.pdf)

<sup>12</sup> Secor, D, Altman, H and Tidwell Cullen, T (2018), National Immigrant Justice Center. Retrieved from: <https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>

<sup>13</sup> <https://www.lirs.org/wp-content/uploads/2018/11/Family-Placement-Alternatives-Final-Report.pdf> and

<sup>14</sup> "Immigration: Alternatives to Detention (ATD) Programs," Congressional Research Service., July 2019 <https://trac.syr.edu/immigration/library/P16371.pdf>



and interest in hosting people new to this country is an area of expansion in our programming.

Family Reunification: Additionally, we have supported the newly arriving families of two participants when they received authorization to come to the United States. We have several more awaiting approvals of their spouses and children.

#### *WHAT DOES IT COST?*

Whereas immigration detention costs an average of \$134/day (with a range of \$70 to \$200), alternatives to detention was found to be less than 7% of that of detention in the Government Accountability Office's 2014 report. For more discussion about the cost see The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply.<sup>15</sup>

ATDs cost less but we should not just concern ourselves with the cost but with what one gets for the money spent. The outcomes must be considered. No one leaves immigrant detention better than when they got there but everyone leaves the Marie Joseph House better than when they got there. They are healthier, they have improved their English language skills, have completed work training of some kind, have cultural adjustment know-how (they know how to ride public transportation, how to use American appliances, how to open a bank account, etc.) and have begun their healing journey and adjustment to life in the US. When we consider what is known about prolonged stress and lack of support systems impacting long term health outcomes, it behooves us to intervene and prevent what will become significant societal costs when people are not healthy and functioning well. The ATD model helps individuals, but it is also better for all of us.

#### *GLOBAL NORMS*

Detaining people at the current rates and in jail settings is not the global norm. In the words of one of our participants from Ghana who was fleeing persecution because he is gay, "I traveled through fourteen countries to get here and the only place they shackled me and put me in jail was the United States. 'Welcome to America' they said."

ICDI is part of a number of local, regional and national networks and coalitions of visitation and housing programs and belongs to the International Detention Coalition, a global network of over 400 civil society organizations and individuals in almost 90 countries that advocate

<sup>15</sup> <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>

for research and provide direct services to refugees, asylum-seekers and migrants affected by immigration detention. The International Detention Coalition has documented over 260 different ATDs around the world. ATDs are a crucial part of solving the brokenness of our immigration system.

ATDs are effective at ensuring compliance and they cost less than detention. But the success of an ATD isn't only these two important measures. ATDs enhance the preservation and protection of human dignity. Through a holistic approach they reduce trauma and assist with healing and health adjustment which is important for individuals and communities.

Fostering a sense of welcome and belonging is part of how you weave the fabric of a healthy society and this makes the whole world safer when people feel they are part of a community, learn from and with each other to build towards the skills and sensibility of citizenship. In contrast, when you make people feel unwelcome, unwanted, and that they don't belong here it puts everyone at risk. The literature on radicalization describes belonging as an important component of prevention.<sup>16</sup>

In our current system, not only is there a presumption of detention but there is a chain of dehumanization that cannot be explained only by bureaucracy and safety concerns. These include the increased use of technology for hearings and visitation, with families in the same building visiting loved ones by video screen, not in person, and hearings and court by video and en masse. We witness weekly as families say goodbye to a loved one being deported via iPad. The for-profit motives of detention are also part of the dehumanization, as are the problematic assumptions and implementation of ICE Risk Categorization Assessments.<sup>17</sup> More immigrants remain in detention using the RCA than criminals assessed similarly.<sup>18</sup>

Immigrants are vulnerable at all junctures of the system. The design of all aspects of the immigration system needs to recognize their vulnerability. We must include directly impacted people in the design and anticipate unintended consequences, creating mechanisms for monitoring and evaluating systems so that opportunities to improve are built in. In the transition towards community based Alternatives To Detention that can be scaled to meet the challenges of helping newly released and newly arriving asylum seekers and other previously detained people move successfully from detention, the participation of non-profit organizations, community members and the formerly detained in transparent partnership with

<sup>16</sup> Lyons-Padilla, S., Gelfand, M. J., Mirahmadi, H., Farooq, M., & Van Egmond, M. (2015). Belonging nowhere: Marginalization & radicalization risk among Muslim immigrants. *Behavioral Science & Policy*, 1(2), 1-12. Retrieved from: [https://behavioralpolicy.org/wp-content/uploads/2017/05/BSP\\_vol1is2\\_-Lyons-Padilla.pdf](https://behavioralpolicy.org/wp-content/uploads/2017/05/BSP_vol1is2_-Lyons-Padilla.pdf)

<sup>17</sup> [http://www.abajournal.com/news/article/ice\\_risk\\_assessment\\_tool\\_now\\_only\\_recommends\\_detain](http://www.abajournal.com/news/article/ice_risk_assessment_tool_now_only_recommends_detain)

<sup>18</sup> Noffer, M., & Koulis, R. (2014). The immigration detention risk assessment. *Geo. Immigr. LJ*, 29, 45.

accountable government organizations should look more like the successful track record of the United States' best refugee resettlement efforts<sup>19</sup> rather than the punitive model that has prevailed in recent years. Non-profit organizations that can employ participatory community and service design principles that have at their center the concerns of asylum seekers, immigrants and the communities they enter are best poised to address the needs of people who pose no threat and do not warrant detention.

### *CONCLUSION*

In conclusion, based on the direct experience of ICDI and the immense body of literature supporting a humane approach to the human right to migrate, I urge you all to do your part in reforming and reconfiguring the current immigration system such that human needs are centered and detention is used minimally and only as a last resort. The vast majority of people seeking refuge in the United States do not pose a threat. It is a stain on our nation's history to imprison people who are vulnerable, have significant trauma histories, and are simply doing what anyone would do if they could not live safely or take care of their family where they are.

Additionally, I urge you to work to surface the root causes of migration and intervene in all ways possible when US trade policies, political interventions, and consumerism make us complicit in the conditions that cause the need to migrate.

Thank you for this opportunity to testify.

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<sup>19</sup> The US Refugee Resettlement Program — A Return to First Principles: How Refugees Help to Define, Strengthen, and Revitalize the United States, Donald Kerwin First Published August 2, 2018 Research Article, <https://doi.org/10.1177/2331502418787787>

Ms. JAPAYAL. Thank you, Ms. Schikore. Mr. Homan, you are recognized for 5 minutes.

#### TESTIMONY OF THOMAS D. HOMAN

Mr. HOMAN. Chairwoman Lofgren, Ranking Member Buck, Chairman Nadler, Ranking Member Collins, in recent weeks there has been a slew of stories and baseless claims that have compared U.S. Immigration and Customs Enforcement detention facilities to that of notorious Nazi death camps. That comparison is 100 percent inaccurate, and it is disgusting to compare us to the atrocities of the Holocaust, for God's sakes.

There has been several attacks on our facilities and attacks against our agents and officers. There's also been attacks against our contractors that run these facilities for us. After more than 3 decades of enforcing immigration law, I can assure you that if we do not have the ability to detain those that illegally enter our country until they see a judge and plead their case, we will never solve the immigration crisis on the border.

Here are a few facts you need to know that I think America would be shocked at. Seventy-two percent of everybody in ICE are in custody because Congress mandates it. So before you shut down immigration detention, you need to look at the law. Nearly 9 out of 10 people ICE arrests have a criminal history or pending criminal charges. They are public safety threats. Our contract facilities have the highest detention standards in the industry, fact. There's not another State or Federal facility that has the detention standards we have. Go to ICE.gov. Look up PBNDS-11. I think a lot of taxpayers would be insulted on the amount of money we spend and such high standards, highest standards in the industry, best facilities in the world.

Now, forgive me, I didn't think Nazi death camps had detention standards. I didn't think they had healthcare. I didn't think they had recreation, law libraries, visitation, three squares a day. It's just an insulting comparison.

Well, I really don't think this hearing is about ICE detention. This is my third hearing since retirement. I've been asked why do I put myself through this to come up here and, you know, be insulted like I have the last two hearings. Because I love the men and women of ICE and Border Patrol. I know what it's like to wear that uniform and stand in that line, and I will defend the men and women of the Border Patrol and ICE until the day I die. This hearing is just another grandstanding political theater to attack our President and this Administration and the men and women who serve in this Administration.

I talked about the attacks on the ICE facility. We had shots fired at our facility in San Antonio, barely missing an agent, almost killing him. We had a detention facility that was attempted to be burned down with 1,400 people in it, 1,300 which are immigrants waiting for their detention. I didn't hear one thing from the Democrat leadership about those issues. I've heard the Speaker of the House, Nancy Pelosi, make the comment that ICE agents terrorize innocent immigrant communities. ICE doesn't arrest immigrant people, innocent immigrants. ICE arrests people who are here in

violation of Federal law, the law that you enacted. They enforce the law.

But there's people in Congress that call for the abolishment of ICE because they don't like what ICE does. ICE is merely enforcing the laws you enact. If you don't like it, change the law. You're the legislators. But don't vilify the men and women of ICE and the Border Patrol. Nancy Pelosi said yesterday the President is not above the law, but she thinks illegal aliens who have a final order issued by a Federal judge is above the law because when the President announced a national operation to seek those out who had due process and been ordered removed, she thought that was a terrible thing to do. She went on national TV and talked about how to evade ICE officers, how to not open the doors. So apparently they're above the law because when a Federal judge issues a final order after a due process, it means nothing.

You got Ocasio-Cortez who calls our places concentration camps. You got Congressman Yvette Clarke who stood in front of an ICE building and called us the Gestapo. You got Congressman Escobar, whose name tag is over there, but she's not here. She had a press the other day, 2 weeks ago. She compared ICE agents to monsters under children's beds. And we wonder why ICE agents are being attacked and our facilities being shot at and being burned down. We wonder why spouses and children of Border Patrol are bullied in schools and churches.

Last hearing I was called a racist and a bigot because I enforced the laws that you enacted. If I'm a racist and bigot for enforcing the laws that you enacted, what's that make you? You wrote the law, but rather than changing the law and making sense of the law, it's easier to call for the abolishment of a Federal law enforcement agency. The men and women of ICE and Border Patrol are national heroes. They're American patriots by the very fact they put a gun on their hip every day and wear a Kevlar vest. That is your tools of the trade. They put their lives on the line for this country every day. They deserve better than these attacks from our congressional representatives.

I've buried many Border Patrol agents, I've buried ICE agents, and those kind of attacks dishonor their memory. It dishonors their family. This world is upside down when the people who knowingly violate the laws are the victims and those who enforce the laws are the bad guys. I'm here to answer your questions. I hope this is a meaningful discussion. I doubt any legislation will come out of this because it's yet another hearing on political theater against our President.

[The statement of Mr. Homan follows:]

**SUBCOMMITTEE ON IMMIGRATION AND CITIZENSHIP**

Chairwoman Lofgren, Ranking Member Buck, Chairman Nadler, and ranking Member Collins. In recent weeks there has been a slew of stories and baseless claims that have compared U.S. Immigration and Customs Enforcement detention facilities to that of the notorious Nazi death camps. That comparison is 100% inaccurate and is just another attempt by those on the left to push a false narrative that they hope will convince the American people that no illegal alien should be detained.

There have been several attacks at our facilities and attacks against our Agents and Officers. Also, there have been attacks against our contract detention facilities and contractors who work with us.

After more than three decades of enforcing immigration laws, I can assure you that if we do not have the ability to detain those that illegally enter our country until they see a judge and plead their case, we will never solve the immigration crisis on the border. Until then, illegal crossings will skyrocket beyond the already unprecedented levels. We have several Democratic Senators and Congressmen running for President that have said they would end immigration detention and what they call the "for profit prisons". These candidates who have been or are current lawmakers are ignoring facts.

Here are a few facts that that you should know. Seventy-two percent of all aliens detained in an ICE facility are Congressionally Mandated to be detained. That's right. 7 out of every 10 detained aliens are being detained because Congress demands it through statute. ICE couldn't release them, even if they wanted to, which they don't.

Another fact, nearly 9 out of every 10 aliens arrested by ICE in the interior of the United States are either a convicted criminal, or are pending criminal charges. If you simply look at the current recidivism rates, about half of all criminals will reoffend within a year, and up to 75% will reoffend within five years. Again, many of those in ICE custody are in fact criminals, and pose a danger to our communities, if released. So, these so-called prisons for profit are helping to keep our communities safe. There is no question about that.

ICE contracts most of its detention capacity to private contractors that finance, construct, and operate detention facilities, not only for the federal government but also for state and local governments. The left likes to call them for-profit prisons as a way to raise controversy over what they do. However, these companies are widely used because they do it better and cheaper than the government.

When I was the ICE Director, I can tell you that some of our most expensive detained beds were in facilities that ICE owned. Using outside contractors that run facilities like these as their core business function, not only saves millions in taxpayer funds, but it increases the quality of care for those being detained.

The quality of care provided in ICE contract detention facilities is in fact better than you would find in most federal or state institutions. The ICE contract facilities typically have not only more overall staff, but importantly more than double the number of healthcare staff, compared to state prisons for U.S. citizens. This is because the ICE detention contractors, must provide services in accordance with the PBNDS standards, developed under the Obama Administration, for civil detention care.

ICE also contracts some short-term beds with local sheriffs. When I was the ICE Director, I had numerous sheriffs across the country that would end their contract with ICE, or refuse to contract with ICE, because our detention standards were too high. Numerous sheriffs would tell me that they would not provide such high levels of standards for illegal aliens in their jail, when they don't give those programs to US citizens that are in their facilities.

ICE is fully committed to the highest level of quality, providing safe, secure, and humane environments for those in ICE custody and care. Our contract facilities operate in accordance with strict government standards, ICE Detention Standards, national accreditation and certification standards, medical accreditation agencies, and educational agencies. These facilities are also accredited by third-party accreditation agencies such as the American Correctional Association (ACA) and the National Commission on Correctional Healthcare (NCCHC).

When ICE was created after the 9/11 attacks, the agency operated its detention system under a set of National Detention Standards (NDS), which were based upon the policies and procedures that existed at the time.

ICE subsequently undertook a revision of these standards to more clearly describe the desired outcomes to be accomplished, by adherence to the new requirements. The 2008 Performance-Based National Detention Standards (PBNDs), developed in coordination with agency stakeholders, prescribed both the expected outcomes of each detention standard, and the expected practices required to achieve them. PBNDs 2008 was also designed to improve safety, security and conditions of confinement for detainees.

In keeping with its commitment to improve the conditions of care for ICE detainees, ICE further revised its detention standards in 2011. The Performance-Based National Detention Standards 2011 (PBNDs 2011) reflect ICE's ongoing effort to improve the conditions of care for what was then to be called civil detention, while maintaining a safe and secure environment for staff and detainees. The new standards were drafted with the input of many ICE personnel across the nation, as well as, recommendations from nongovernmental organizations and immigration advocacy groups.

PBNDs 2011 is crafted to improve medical and mental health services, increase access to legal services and religious opportunities, improve communication with detainees with limited English proficiency, improve the process for reporting and responding to complaints, reinforce protections against sexual abuse and assault, and increase recreation and visitation.<sup>1</sup>

ICE began implementing PBNDs 2011 across its detention facilities several years ago, with priority initially given to facilities housing the largest populations of ICE detainees.

Now, forgive me, but I don't believe concentration camps had any detention standards. I also believe they didn't have medical services, dental services, law libraries, visitation, recreation, three nutritious meals a day, etc.

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<sup>1</sup> ICE Detention Standards – ICE.GOV



I don't believe they were inspected numerous times a year by various investigative agencies like ICE's Office of Professional Responsibility (OPR), Office of Detention Oversight, or the DHS Inspector General, to ensure that detention facility services were in compliance with the standards.<sup>2</sup> I don't believe there were on-site monitors to daily review contract compliance and provide transparent accountability.

I encourage you to click on all three links, especially the last link about PBNDS 2011, and tell me that ICE is not providing professional and responsible care for ICE detainees.

Further, ICE has one of the lowest rates of deaths in custody of any program within the state and federal detention system. Unfortunately, people die in government custody all the time. The Department of Justice tracks the mortality rate of incarcerated individuals across the nation. A quick review of those reports will show that the average mortality rate in state prisons was 256 deaths per 100,000 persons. The mortality rate in federal prisons during the same period was 225 deaths per 100,000 persons.

In contrast, ICE averages 2.25 deaths per 100,000 persons with respect to the 400,000 people that go through the ICE system every year. This represents an average of only nine total deaths per year. State and local facilities have death rates over 2000% more than ICE.

That's an extraordinary achievement for ICE, given that most of the ICE detainees are from countries that don't have quality medical systems. In fact, many of the ICE detainees have never previously seen a doctor in their lives. Also, as can be seen by recent news reports, many of the individuals sent to ICE detention already had serious healthcare and mental health issues. The low death rate in ICE detention can only be attributed to an outstanding medical program and dedicated personnel.

Those are the facts. You can be the judge. ICE detention cannot be compared to death camps operated by Nazis. That hateful rhetoric being pushed by the left is just plain wrong.

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<sup>2</sup> ICE Detention Standards – ICE.GOV

And if any states think they can pass a law, to eliminate Federal contractor operated detention facilities, like the State of California, they better wake up and read the Supremacy Clause in the United States Constitution. States do not have the lawful ability to interfere with Federal facilities.

Ms. JAPAYAL. Thank you, Mr. Homan. Sheriff Jenkins, you are recognized for 5 minutes.

**TESTIMONY OF CHARLES A. JENKINS**

Sheriff JENKINS. Good morning. Mr. Chairman, Madam Chairwoman, ranking members and members, I want to offer my perspective from local law enforcement on the importance of ICE detention, honoring ICE detainers, local cooperation with ICE, and how that cooperation really enhances and improves local public safety. We're at a crisis point in this country. Congress needs to take serious measures right now in the enforcement of our immigration laws both at the border and on the interior. These two missions have overlapping serious impacts to public safety. One of the critical pieces is detention facilities.

We have chaos on the southern border, criminal and gang infiltration of every city, county, and community in the United States, and sanctuary jurisdictions that have placed their citizens at risk by failing to cooperate with ICE or even recognize ICE. The hostility against ICE has to stop and demonizing has to end. Detention and expeditious removal of criminal aliens are key components of overall public safety. It is an imperative that ICE has access to suitable detention facilities throughout the United States.

From my perspective, the infiltration of criminal alien crime and criminal gangs, such as MS-13, across our open borders and in our communities has severely endangered the public safety of every city and every county in America. There's been a level of violence never before experienced in this country. This situation would be much worse without ICE doing their job. We have allowed the heroin and opioid trafficking networks to establish themselves across the entire country through open borders and sanctuary policies with cartels continually infusing heroin, fentanyl, and other dangerous drugs into America.

Nowhere is it more evident than my home county of Frederick in Maryland just an hour away from here where we've seen in the past 7 years record numbers of both fatal and nonfatal overdoses. For 11 years, my office has partnered with ICE, the 287(g) Program, and the Intergovernmental Services Agreement, IGSA Housing, Housing Program. These programs are both examples of the importance and effectiveness of adequate detention beds for ICE.

The IGSA Agreement provides detention space in the local jail or prison and provides ICE with detention beds to keep those criminals off the street and not be released back into our communities. The 287(g) Partnership Program assists ICE. It facilitates a process within the confines of the jail. No actions are taken on the street whatsoever. No questions are asked regarding immigration status. We have trained correctional officers who work the program under the direct supervision of ICE, close supervision and oversight.

And I reemphasize that everything occurs within that jail facility, nothing on the street. These local agreements are critical and have had the most direct on local public safety. They ensure that after criminals are adjudicated and sentences are served, that those criminals with detainers are not released back onto the streets of Frederick County to commit what are often more serious

and often violent crimes. Gang membership, by the way, should be an automatic removable offense and nullify any DACA protection.

The 287(g) Program has been very effective over the past 11 years in removing criminal aliens from Frederick County. Over 11 years, there have been 1,692 detainees lodged with 1,536 of those detainees served, and those individuals placed into removal. Included in that number are 110 transnational criminal gang members, the majority being MS-13. In Frederick County, for 5 consecutive years, we have experienced significant reductions in Part I or serious crime. We're now in our 6th year. Sanctuary policies across this country have to be stopped. You're going to have to eliminate and deny all grants to sanctuary grants, eliminate the catch-and-release loopholes, and enforce asylum policies to the letter.

I want to mention my neighboring county, Montgomery County, which has recently declared being a sanctuary county. In the past, I'd say, year, they've had nine rapes of young children. They've had a 67 percent increase in MS-13 crime over the past year. Crimes that have shocked the conscience of this Nation are continuing to happen, and they're totally unnecessary and avoidable.

I want to talk about that jails and prisons must simply cooperate with ICE to hold a criminal alien, and I do encourage that you fund and promote more 287(g) programs. I want to briefly touch on the detention standards some of you mentioned. The Federal detention standards are the highest standards out there. We actually meet all those standards and beyond. We just recently underwent an ODO inspection a week ago before I came down here. Nothing in our jail is subpar. Those higher standards are met, and the standards are higher than under President Obama. So you have an obligation to Americans, first and foremost, before any obligation you might feel you have to the people in this country illegally.

Americans are frustrated and tired of the open border issue and not enforcing the law. This is all about the rule of law, and I encourage you to support President Trump in his efforts to move this issue forward, both the interior enforcement and the border crisis. Thank you.

[The statement of Sheriff Jenkins follows:]

**FREDERICK COUNTY SHERIFF'S OFFICE**

**HEADQUARTERS  
FREDERICK COUNTY LAW  
ENFORCEMENT CENTER**  
110 Airport Drive East  
Frederick, Md. 21701  
301-600-1046  
301-600-1527 (Fax)  
301-600-7655 (TTY)

**JUDICIAL OPERATIONS**  
100 W. Patrick Street  
Frederick, Md. 21701  
301-600-2162  
301-600-3690 (Fax)



**CHARLES A. JENKINS**  
SHERIFF

**DETENTION CENTER/  
CENTRAL BOOKING**  
7300 Marcie's Choice Lane  
Frederick, Md. 21704  
301-600-2550 (D.C.)  
301-600-2566 (D.C. Fax)  
301-600-1790 (C.B.)  
301-600-1791 (C.B. Fax)

**WORK RELEASE CENTER**  
7281 Marcie's Choice Lane  
Frederick, Md. 21704  
301-600-1727  
301-600-3404 (Fax)

**Testimony of Sheriff Charles A. Jenkins**

**Frederick County Sheriff's Office**

**Frederick County, Maryland**

**TO: The U.S. House of Representatives, Judiciary Committee**

**Subcommittee on Immigration and Citizenship**

**Chairman Jerry Nadler**

**Ranking Member Doug Collins**

**Subcommittee Chairman Zoe Lofgren**

**Subcommittee Ranking Member Ken Buck**

**For a Hearing Titled:**

**The Expansion and Troubling Use of ICE Detention**

**September 26, 2019, 10:30 a.m.**

**Rayburn House Office Building, Room 2141**

I am offering this testimony as Sheriff of Frederick County, Maryland from the perspective of local law enforcement on the importance of ICE Detention, honoring ICE detainees, local cooperation with ICE, and how local cooperation very effectively enhances and improves local public safety.

We are at a critical point in the United States where U.S. Congress needs to take serious measures in the enforcement of our immigration laws, both at the border and on the interior, and allow the Department of Homeland Security and Immigrations and Customs Enforcement

to carry out their mission. These two missions have overlapping impacts to public safety; the border wall has to be completed and interior enforcement must be strengthened right now. One of the measures necessary is ICE detention.

The primary mission of ICE is to promote strong Homeland Security and Public Safety through the criminal and civil enforcement of federal laws governing border control and immigration. ICE is a very effective law enforcement agency with men and women who are committed to enforcement. However, they have not been allowed to be as effective as they could be because of stalled politics. This has created crisis and chaos at the southern border, criminal and gang infiltration of every city, county, and community in the United States, and sanctuary jurisdictions that have placed their citizens at risk by failing to cooperate with or even recognize ICE. The hostility against ICE has to stop and the demonizing has to end.

Detention and expeditious removal of criminal illegal aliens are key components of the ICE mission and overall public safety. It is imperative that ICE has access to suitable detention facilities throughout the United States and enough funding to provide the beds needed so criminals that are held for removal are not released back on the streets of our communities to commit more crimes against Americans and immigrant communities.

From a local perspective, the infiltration of criminal illegal aliens and criminal gangs such as MS13 across our open borders and in our communities has severely impacted and endangered the public safety of cities and counties. There is a vital need to allow ICE to simply do their job. Americans are killed by illegal alien criminal homicide events or car crashes every single day across the country. Children are raped and sexually assaulted, human victims including children are trafficked across the borders into sex slavery and other trades, aggravated domestic assaults occur, as well as brutal gang violence, drug trafficking, assaults on law enforcement and every other imaginable crime is being committed by this illegal criminal element. This is a level of violence never experienced before. The situation would be much worse without ICE doing their job.

The heroin/opioid crisis is not the result of over prescribing and pharmaceutical companies. We have allowed the heroin/opioid trafficking networks to establish themselves across the entire country through open borders and sanctuary policies, with cartels continually infusing heroin, fentanyl, and other dangerous drugs into Americans.

Nowhere is that more evident than my home county of Frederick and the state of Maryland where heroin/opioid overdoses, both fatal and non-fatal are occurring and still rising in record numbers for the past 7 years.

In Frederick County, just one hour away from here I can point to a successful detention and removal partnership with ICE that has proved very effective in removing criminal aliens from our streets and reducing serious crime. For eleven years, the Frederick County Sheriff's Office has partnered with ICE in the 287g Delegation of Authority, and Inter-Governmental Services Agreement (IGSA) Housing Program. These programs are both examples of the

importance and effectiveness of adequate detention beds for ICE. Strategic location of detention facilities is also important.

The IGSA housing agreement provides detention space in the local jail (or a prison) and provides ICE with detention beds to keep criminal aliens in custody until ordered removed or deported. The detention facility receives reimbursement to cover the costs of detention. By identifying priorities in levels of criminal removals, it keeps more of the criminal element off the streets and local citizens safer.

The 287g Delegation of Authority Partnership assists ICE and facilitates a process solely within the confines of the detention center after an individual is arrested and brought into the facility in custody. No actions whatsoever are taken and no questions regarding immigration are asked by law enforcement on the street in the course of their duties. Trained correctional officers ask questions to investigate immigration status and prepare the proper detainer for the arrestee. I re-emphasize, everything occurs within the jail with close oversight and supervision by ICE agents or supervisors.

These local agreements are critical to provide ICE with detention beds and have the most direct impact on local public safety. They insure after criminals are adjudicated and sentences are served, that those criminal aliens with detainers are not released back onto the streets of Frederick County to re-offend and commit what are often more serious and more violent crimes. This is particularly true with criminal gang members as we have seen nationwide.

The 287g Program has been very effective over the past eleven years in removing criminal illegal aliens from Frederick County. There have been 1,692 detainers lodged, with 1,536 detainers served and those individuals placed in deportation/removal. Included in that number are 110 transnational criminal gang members, the majority being MS13.

The crimes committed by these criminal aliens include 1<sup>st</sup> Degree Murder, 2<sup>nd</sup> Degree Murder, Aggravated Assault, Rape, Rape of Minor Children, varying degrees of sexual assault, armed robbery, burglary, domestic assaults, drug trafficking and other serious crimes. In Frederick County, for five consecutive years we have experienced significant reductions in Part I or serious crimes.

Sanctuary policies across the country have to be stopped by you, the Congress. These policies are dangerous as we have seen and continue to see, and place citizens of those jurisdictions at risk of being violent crime victims. Not one single American should ever be a victim of a crime committed by an illegal alien, certainly not by an identified criminal released from local jail or prison when ICE already has a detainer or order of removal for that person.

Crimes that have shocked the conscience of this entire nation have been committed by criminal aliens, and have been allowed to continue, in particular those brutally violent crimes committed by gangs such as MS13. If we continue to tolerate this level of crime and violence in

our society, crime that can be avoided, our culture will soon erode and we will head towards a lawless society with no turning back. Without law and civil order, no one is safe and nothing else in this nation will thrive.

Jails, prisons, and law enforcement nationwide must simply cooperate with ICE to hold a criminal alien with a standing detainer or removal order for the allowable 48 hours, without the need for any formal agreement or housing contract. The safest transfer of custody for a criminal alien to ICE is within the detention setting, completely controlled for the safety of everyone. When ICE has to go out and search to locate and re-arrest a wanted individual, it creates risk for everyone to include ICE, local law enforcement, the wanted person, and the public.

There is no plausible or logical reason that every jurisdiction should not cooperate with ICE and hold an individual with a detainer or removal order for transfer to ICE. Law enforcement cooperates with every other federal law enforcement agency and honors detainers and fugitive warrants from state to state. This is simply the way our criminal justice system is structured. To not honor an ICE detainer simply breaks the chain in our effort to enforce the federal immigration laws that have been blatantly set aside and ignored for years.

Access to acceptable detention is a necessary priority for ICE. In addition to maintaining current ICE detention facilities, local jurisdictions and jails should be encouraged to participate through funding incentive programs, and the simple message that providing detention services will create safer communities. As an informational side note to this committee, federal detention standards for ICE inmates in any facility are much higher than most state or local jail standards. There can be no complaints by ICE detainees because they simply have it better in jail. I know because Frederick County undergoes Office of Detention Operations (ODO) inspections and does meet those higher federal standards.

As a Sheriff speaking to the United States Congress, I am appealing to you to uphold the law as we are all sworn to do and support ICE in carrying out their mission to enforce the immigration laws of this nation. You have an obligation to American citizens first and foremost, before any obligation you might feel you have to people in this country illegally. Americans are frustrated and tired of the open border issue and not enforcing the law. This is all about the rule of law and a civil society in this great nation. The justice system cannot sustain the numbers of criminal aliens entering the country. Start at securing our borders with a completed border wall as a starting point, and then structure for and consistent interior enforcement. Adequate and effective ICE detention will be the key to successful enforcement.



Ms. JAPAYAL. Thank you, Sheriff Jenkins. We will now proceed under the 5-minute rule with questions, and I will begin by recognizing myself for 5 minutes.

It occurs to me in listening to the compelling testimonies of our first three witnesses that there are two stories being told here. And one is the story of immigrants being murderers, criminals, rapists, people to fear, and the other the story of countless thousands of people who are being put into immigration jails and incarcerated when they are here with no charge, no conviction, and just awaiting their immigration process to continue. In the last few years, the Trump Administration has gone around Congress and has taken millions in funding for crucial functions like hurricane preparedness to unlawfully expand detention. The Trump Administration would like to have you believe that this is necessary, but I do not believe that is the case.

Mr. Barón, your organization, the Northwest Immigrant Rights Project, provides legal services to people detained at one of the largest detention facilities in the country, the Northwest Detention Center. What does the detained population there look like? Who are the vast majority of people, the tens of thousands of people that NIRP has served over the many years in service? Tell us about that detained population. Who are they?

Ms. BARON. Yes, most of the people that we serve and most of the people who are detained at the Northwest Detention Center are asylum seekers who have been detained. That sometimes surprises people because there actually have been people who have been detained at the southern border by Customs and Border Protection and then brought up to the Northwest Detention Center to undergo their asylum hearings. In most cases, they have already passed their credible fear interview, meaning that they have already been screened and found to have a significant possibility of qualifying for humanitarian protection here in the U.S. And those are the majority of the people who are in our detention center.

Ms. JAYAPAL. Thank you. Ms. Altman, in your role as policy director at the National Immigrant Justice Center, is that consistent with national trends that you see? Who do you typically see making up the vast majority of people in detention?

Ms. ALTMAN. It is consistent, Congresswoman. As of the most recent data released by ICE, about 65 percent of those in detention were transferred from the border, which is almost exclusively an asylum-seeking population, 35 percent taken from communities inside the United States.

Ms. JAYAPAL. And we have three witnesses here today who are survivors of the U.S. detention system. I am so sorry on behalf of our government for what you have experienced, but I am glad that you are here today to courageously share your stories. Ms. Saavedra Roman, ICE detained you for over a month, even though you have legal status under DACA, correct?

Ms. ROMAN. Yes, ma'am. DACA was current during that time.

Ms. JAYAPAL. So you had current legal status, and yet you were detained as if you were a prisoner, as you said. Mr. Davydov, ICE detained you for 46 days, even though you were complying with your court proceedings and you had a pending asylum case, a case which you just won a few months ago, correct?

Mr. DAVYDOV. Yes, it is correct.

Ms. JAYAPAL. And, Ms. Engochan, you came to the United States seeking asylum, and ICE detained you for 6 months, releasing you after you were granted asylum, correct?

Ms. ENGOCHAN. Yes, over 6 months.

Ms. JAYAPAL. Ms. Altman, according to the 2019 Senate Appropriations Committee report, ICE continues to spend at an unsustainable rate. The report proposes that, "In light of the committee's persistent and growing concerns about ICE's lack of fiscal discipline, whether real or manufactured, and its inability to manage detention resources within the appropriations made by law, without the threat of anti-deficiency, the committee strongly discourages transfer or reprogramming requests to cover ICE's excesses." In light of this report, would you recommend that ICE continue to be given appropriations that are outside the "appropriations made by law?"

Ms. ALTMAN. I would certainly recommend against that and strongly recommend that DHS' transfer and reprogramming authority be restricted into the ICE enforcement and detention account. And it is warranted by a history now that we know at least 4 years in a row of overspending what Congress has provided, and then taking accounts, as you mentioned, money from other priorities, such as FEMA, to make up for it.

Ms. JAYAPAL. Ms. Schikore, what is the cost of detention compared to the cost of alternatives to detention that could be used for people that have never been convicted, much less charged with a crime?

Ms. SCHIKORE. The cost difference of ATDs?

Ms. JAYAPAL. Yes.

Ms. SCHIKORE. As I mentioned, ATDs cost a fraction of what detention costs. Studies put the cost between \$12 and \$50 a day for ATDs versus \$70 to \$200 a day for detention. And as I mentioned in my testimony, you have to ask what are you getting for this money.

Ms. JAYAPAL. And how have other countries made use of ATDs? What are some of those examples of successes, and what best practices can be applied?

Ms. SCHIKORE. The International Detention Coalition has identified over 250 examples of alternatives from 60 different countries. One that I could highlight is the Toronto Bail Program in Canada. This program has been operating since 1996. It is funded by the government, and it relies on strong case management, support, information, and advice, and supervision. The case managers also identify and address issues such as substance abuse, drug addiction, mental health needs, as our program does. This program only costs Canada \$10 to \$12 per person compared to \$179 for detention, and has maintained a retention rate from 94 to 96 percent.

Ms. JAYAPAL. Thank you, Ms. Schikore. My time has expired. And with that, I recognize the gentleman from Arizona, Mr. Biggs.

Mr. BIGGS. Thank you, Madam Chair, and I will just say that this hearing is meant to be on the expansion of ICE facilities and ICE detentions. So I just want to talk about some of the things that actually happen in ICE detention, at least in one facility. They have awarded 2,779 GEDs and high school equivalency degrees,

awarded 9,131 vocational training certifications, and awarded 8,842 substance abuse treatment program completions in the 2018 time period. That is remarkable by any standards. By any standards.

But we are not spending our time talking about any of this today. We have had some testimony. I want to say thank you, Mr. Homan and Sheriff Jenkins, for being here. I thought your testimony was compelling as well. And I have to say, and I am going to bring it up, and I am not trying to defend. I just want to talk about facts. The DACA Program is not a change of status from illegal to legal. What it is is deferment actions that provides use of temporary status to be in this country illegally. So that works out that way.

But DACA is very clear. You can't leave the United States without prior authorization. To do so is a violation of DACA and, in turn, actually has the potential to actually change your status. And so I'm sorry you were detained, but that is the law. I mean, this is a rule of law country. That is what makes America different. Those protections preserve Americans' freedom throughout the world is the rule of law in and of itself.

Mr. Davydov, I am glad you got asylum. I am okay with that. But you said in your testimony, in your written, I came on a tourist visa with the intention to stay in the U.S. Guess what that is? That is a violation of the law. And then you waited until that visa expired and applied for asylum. Guess what that is? That is a violation of law. That is what it says in your statement. That is what you said today. So even though you were granted, it is unusual, I think, to say I can break the laws of this country twice, but I want to asylum to be here. I am fine with you being here, but the point is you violated the law twice.

The testimony and the evidence is clear and the data is clear, 9 out of 10 people that are in ICE custody have some kind of criminal background. That is why they are there. ICE is out there, but they are criticized. We have people saying let's defund ICE. We have people on this panel today say let's reduce the funding for ICE.

ICE is under tremendous pressure because someone mentioned the astonishing growth in ICE detentions. Well, you know what caused that? How about 148,000 people rushing the border in 1 month in this country, 1 month on the southern border. I live in a border State. I grew up in southern Arizona. I have been down to the border, and I have visited facilities a half a dozen times, I believe it is, this year. I have spent weeks literally on the border accumulated this year, and in ICE detention facilities and other holding facilities.

I know what goes on, so when you say go down, I am there. I am there. I see it. I talk to people almost every day, whether they are ranchers, or how about this one? How about the Steve Ronnebeck family? Explain to them, Grant killed by an illegal alien. Shot point blank. The man was deported twice. Mary Ann Mendoza who lost her son, Brandon. Killed by an illegal alien. We don't hear about that.

How about this? We are talking about 287(g), Sheriff Jenkins. How about this? You got Santa Clara County, California. Guess

what? Guess what we just have here? What you have is on Monday, ICE captured a violent criminal and convicted rapist who was a fugitive for a year and a half. The reason he was a fugitive is because Santa Clara County refused to honor an ICE detainer in February of 2018, even though he was arrested. Why was he arrested? For not registering as a sex offender. These programs put Americans in jeopardy.

Mr. Homan, is there anything you would like to respond to, what you have heard today?

Mr. HOMAN. Yeah, I would like to respond to Acting Chairman Jayapal and your comment about the Trump Administration moving money around for more detention beds. I would like to remind you under the Obama Administration we did it most of the years he was President. We moved money around DHS. It is called reprogramming. We did that under the Obama Administration, and I don't remember any hearings on that. And also I would like to remind you that under the Obama Administration, I mean, you are quick to point out the cages were built under the Obama Administration. I was there. Family detention. We had 100 family beds. Under the Obama Administration we built 3,000 more.

So when there was a surge in Fiscal Year 2014 and Fiscal Year 2015 on the border, Congress was quick to give all the money we needed to build detention facilities, get transportation contracts. We reprogrammed money the majority of the years he was President. That was fine. Under the Obama Administration, Fiscal Year 2012, we removed 409,000, people of what was removed last year. There was no hearings on that. So, you know, if this is about transparency, let's be factual about it.

Ms. JAYAPAL. The time of the gentleman has expired. Since you did address some comments at me, I will just say that I didn't like it under the Obama Administration either. In fact——

Mr. HOMAN. Well, be honest with the American people.

Ms. JAYAPAL. Excuse me.

Mr. HOMAN. You can't point out faults in the Trump Administration when it happened under the Obama Administration.

Ms. JAYAPAL. Mr. Homan.

Mr. HOMAN. That is dishonesty. It is pathetic, and it is sad.

Ms. JAYAPAL. Mr. Homan, I control the time, and I am the chairwoman of the committee. Thank you for respecting that. I didn't like it under the Obama Administration, and I will remind you, Mr. Homan, that you also testified before Congress in support of the Obama's priorities and enforcement program before the Senate Judiciary Committee on May 19th, 2016, which had a very different approach.

Mr. HOMAN. Well, can I respond to that?

Ms. JAYAPAL. With that——

Mr. HOMAN. Can I respond to that?

Ms. JAYAPAL. No, you may not.

Mr. HOMAN. Of course not.

Ms. JAYAPAL. With that, I recognize the chairman of the Judiciary Committee, Mr. Nadler, for 5 minutes.

Chairman NADLER. Thank you. I want to make a couple comments before I start the questions. We have heard about the overcrowding, about the lack of adequate funding, about the over-

crowding, about how many people are kept in detention, and how necessary it is to protect the public safety.

We heard from three witnesses here. We heard from Ms. Saavedra Roman. She was a DACA recipient. She was a threat to nobody. Her employer made a mistake and said as a flight attendant she should go to a foreign country. It wasn't her fault. And she was kept in detention for 38 days, wasting money, not to mention her liberty. We heard from Mr. Davydov that he fled for his life. Yeah, he may have come here under false pretenses. That is what asylum seekers fleeing for their life, they have to do. He was granted asylum because our courts recognized the threat to his life, and we heard how in custody his medical needs were ignored. He got infections because HIV medications were not provided, and there was a total lack of regard by ICE for his medical condition.

So we heard from Ms. Engochan who fled for her life from Cameroon and was granted asylum by our courts, recognizing the threat to her life. She was kept in custody for 6 months. We also heard from Mr. Davydov that while he was in custody, he missed an asylum hearing or a credible fear hearing, and apparently ICE doesn't allow people to go to their asylum or credible fear hearings? I am not sure how he got asylum anyway, but that certainly risked it.

So I am unimpressed when I hear from Mr. Homan about the good, and we heard about the terrible conditions, the lack of heat, the lack of decent food, the terrible crowding, we have heard that before. So I am unimpressed when I hear from Mr. Homan about how wonderful the facilities are.

Ms. Schikore, I want to discuss alternatives to detention. We have heard a lot from the Administration about how individuals in removal proceedings do not show up to their court dates when they are in an alternative to detention, like ankle monitors and phone check-ins. At the same time, I have seen data that shows how compliance rates are high and even higher, around 95 percent, when an individual actually has an attorney. What is the likelihood someone will show up to court under alternatives to detention as compared to in detention?

Ms. SCHIKORE. In our particular program, we have had full compliance, and this includes someone——

Chairman NADLER. One hundred percent.

Ms. SCHIKORE. A hundred percent in our program, and this includes someone who ultimately was deported who turned himself in. Across the board, the literature shows, the research shows that compliance rates are high. Community-based programs address the factors that make compliance difficult, such as substance abuse, drug addiction, mental health issues, and things like a lack of transportation, a lack of understanding of court proceedings, and legalese. In Chicago we had an issue where there was a lack of signage in the courts, so people couldn't understand it and were not making their court dates. And then there is also the concern about wrong court dates and the use of fake court dates on placeholders when people get notice. That is a big problem for people showing up on time. But across the board, the alternatives have very high compliance rates.

Chairman NADLER. High compliance rates. Thank you. Ms. Altman, I want to turn to you. Could you help us address some of the issues that have been mentioned related to immigrants and crime and deportations and crime rates? My understanding is that the data shows no correlation between deportations and a reduction in crime rates. Is that correct?

Ms. ALTMAN. That is correct, Congressman, and I thank you for your comments at the outset. The public safety arguments today attempt to paint immigrants in broad strokes. I agree that they further racist tropes. Most importantly, though, they are specious. They are not based on the data. ICE's own data disproves them in addition to the numerous studies that you mentioned that show that there is absolutely no correlation between place of birth or immigration status and crime rates in the United States.

We actually have a whole body of new evidence that just came out this summer, very robust evidence out of the University of California-Davis showing that programs like 287(g) and Secure Communities the sheriff trumpets, programs that increase deportations and detentions in community, have absolutely no impact on crime rates, and, in fact, showed a very marginal increase in crime rates. On the other hand, we know from, again, numerous studies that what these increased detentions and deportations do is to destabilize communities, to disrupt families, to take breadwinners away from their homes leading to homelessness, food insecurity, and numerous problems with outcomes of children who are being raised now without a mother or father.

Chairman NADLER. So the propaganda about the connection between immigrants and crime is just that, propaganda, and that there is no evidence or considerable evidence to the contrary that immigrants, whether legal or otherwise, commit crimes at a lower rate, equal or lower rate than people here to start with? Is that correct?

Ms. ALTMAN. That is correct. It is for political purposes, sir.

Chairman NADLER. Thank you very much. I yield back.

Ms. JAYAPAL. The time of the gentleman has expired. I now recognize the gentlewoman from Arizona, Mrs. Lesko, for 5 minutes.

Mrs. LESKO. Thank you, Madam Chairman. Thank you, all of you, for being here today. One of the witnesses, I think Melanie Schikore, if I said your name right, said, "We really need to address the root causes of migration," people coming here, and I couldn't agree more. In fact, the Republicans on this committee, including myself, I have six bills myself that have been sent to the Judiciary Committee that I believe will get to the root cause of the problem and help solve the border crisis. And I hope that Chairman Nadler will hear those bills so we can get to the root cause of the problem.

I live in Arizona. I recently toured the Eloy, Arizona Detention Facility there. I went inside a cell. I saw what was happening with the health checkups, and I also sat down and ate lunch with the detainees, and it was like cafeteria food, kind of like from school. And I have to tell you, I didn't see all these egregious things that have happened, and so obviously if there are bad things happening, we need to correct them.

And so, Mr. Homan, you know, the inspector general has certain recommendations when there was problems in detention centers. And do you know if ICE has agreed to fix those problems and what is the status of fixing those problems?

Mr. HOMAN. Yeah, when the inspector general has a finding, ICE has a certain amount of days to correct that finding and return the report to the IG. So, yeah, there are instances where there are failures, but we got to remember, you can point out six, seven cases here all day, but 400,000 people come through our system a year. And my testimony, even though some people may be unimpressed with it, is factual. The highest detention standards in the industry. Highest. And Congressman——

VOICE. [Off audio.]

Mr. HOMAN. Yeah, made a statement earlier about, you know, how many people got GEDs, but no one here is talking about how many lives we saved in immigration detention. Many times we are the first doctors these people see. They come to us in bad shape after making a terrible journey. Many times we provide the first doctor they have ever seen. In our family residential centers, we provide the first vaccinations for these children.

Mrs. LESKO. Well——

Mr. HOMAN. And as far as the criminals have no impact on crime, removing 127,000 criminal aliens from the United States certainly has an impact on less crime in the United States. And as far as illegal aliens committing less crimes, I don't know. I know the Cato study everybody once referred to is a flawed study because it wasn't based on data. It wasn't based on State and local arrests because most crimes are State and local arrests.

Here is the question that needs to be answered. How many crimes could have been prevented if the illegal alien wasn't here? If we had true border security, we could prevent a lot of crimes from happening. So it isn't who commits more. It is that this series of crimes was certainly preventable if we secure our border.

Mrs. LESKO. Well, and thank you. And so, you know, I basically want to say the facilities I have been to, they were all clean, well maintained. I have not only gone to a detention center, I went to a facility where they house unaccompanied children. That was a very nice facility. We are doing education. And if there are problems, they need to be addressed just like in any agency. And so my understanding is that ICE has said, yes, we will follow the recommendations by the inspector general and have worked on correcting them.

I want to applaud the men and women that work for ICE and our Customs and Border Patrol. Unfortunately, you are right, they have been villainized. Now, are there cases that may be bad? There are cases that are bad in any type of agency. We need to address them. But let's please not villainize our law enforcement. They are doing the best they can under a very huge crisis problem. And I agree, we need to get to the root of the problem. We need to reform our immigration laws because right now they are an incentive for all these people to have to travel thousands of miles from Central America to come here, that is what we need to get at.

And I hope, Mr. Chairman, that you will hear our bills in committee. And with that, I yield back my time.

Ms. JAYAPAL. The gentlewoman yields back. The gentlewoman from California is recognized for 5 minutes.

Ms. LOFGREN. Thank you. I think this is a useful hearing, and I have got to say that asylum is part of American immigration law. It is not illegal to apply for asylum. Having said that, I think obviously there are issues going on in Central America that have led people to flee, and it would be very useful for the United States to play the lead to try and help those countries stabilize so that people don't have to flee for their lives. Having said that, we have a lady here today who fled for her life from Cameroon, so there are people who are seeking political asylum from all over the world, and our laws provide for that because we have been a beacon of hope and a sign of freedom, an example for the world, for many years.

Now, I want to talk to you because you live in my district, Mr. Davydov. I want to thank you for coming to tell your story. As someone who is HIV positive, you obviously need specific medical attention and care, which you mentioned. Can you describe the medical treatment you receive or didn't receive in a little more detail in ICE detention?

Mr. DAVYDOV. Sure. I received my prescribed medicine, but I received it in California after I told them I needed it. But the problem is, the HIV treatment is just a part of the whole thing.

Ms. LOFGREN. Just a part of it?

Mr. DAVYDOV. Yes, and since I didn't know the cause of my infections, either it was stress or, like——

Ms. LOFGREN. You cannot, your immune——

Mr. DAVYDOV. Yes, my immune system showed some signs of infection, and it was the problem, my secondary infections, then they started manifesting. I could not get treatment or a doctor who could even tell me anything about that. And in some cases, I was waiting for many days to just be seen by a doctor.

Ms. LOFGREN. You know, I just to want to mention a concern that I have. In December of 2017, the Trump Administration ended what had been a presumption that if you are pregnant, that you will be released from custody because of the vulnerability you have as a pregnant woman. That is no longer the case. And so we have got pregnant women in custody who are seeking asylum, and the number of miscarriages has doubled. We have even stillbirths in custody. And I think that I would just say that is something that ought to be revisited because to have miscarriages or stillbirths is just not the right thing. And this policy does promote that, and it serves no one's interest to have that occur.

I would just say further, I have also visited these facilities, and I know that when I have visited facilities, there is a scurry around in advance to clean things up a little bit before you come. I think it is telling that we have had an employee of the Department of Homeland Security in the Trump Administration advising that there are serious problems in ICE custody provisions, a report in December of 2017. You are right, Mr. Homan, you have a chance to respond and to improve. But that was followed by a similarly damaging report in September of 2018 from the Inspector General of the Department of Homeland Security. And, again, just this June we had what was transmitted as an emergency report from



the Department of Homeland Security about conditions in confinement.

We have a problem here in how individuals are being treated in these facilities. I think there is a management problem here. I mean, to think that we would have this young lady, a flight attendant, held at tremendous government expense, she doesn't pose a threat to anybody, or Mr. Davydov, he doesn't pose a threat to anybody, or the gentlelady from Cameroon, she doesn't pose a threat to anybody. And we spent a whole lot of money keeping them chains as if they were a threat. It is a waste of money. It is a waste of the taxpayers' money in addition to being very traumatic for the individuals involved.

I think we need to revisit how we are spending our money, and we are wasting huge amounts of the taxpayers' money locking people up who pose no threat and really not honing in on things that are important. You know, I realize there can be a circumstance when someone does need to be detained. You know, we all know that that is the case. But to spend our resources for this flight attendant was really a waste of taxpayer's money. I yield back, Madam Chair.

Ms. JAYAPAL. I thank the gentleman for yielding, and I now recognize the gentleman from Florida, Mr. Steube, for 5 minutes.

Mr. STEUBE. Thank you, Madam Chair. There is a crisis at our southern border. And just for this year—I had staff pull the number—just for this year, and this does not include September numbers, just for this year, 811,000 illegal immigrants have been detained at the southern border. Now, let me put that in perspective for you. That is larger than my entire congressional district. So an entire congressional district of people, which I represent nine counties in the State of Florida, nine counties in the State of Florida, more than that population have illegally entered our country.

In Fiscal Year 2018, 92 percent of aliens in ICE custody were either convicted criminals, had pending criminal charges, or were recent border entrants, and the cite is on ICE's website. It is the Fiscal Year 2018 report. All you have to do is go and look. That is what the report states. Yet we sit here and we do absolutely nothing to address this crisis at our border. I see people here who appear to have children or family members that were killed by illegal immigrants, yet we are doing absolutely nothing to address illegal immigrants that are coming into our country and killing our own very citizens.

I think Mr. Homan said it best. Our country is upside down. We have those breaking our Federal laws being characterized as victims, and those who are enforcing our laws, the laws that this body created, being demonized as villains. And thank God we have a President willing to take on this crisis. Thank God we have men and women in our ICE and in our law enforcement that are willing to stand up and swear an oath to our Constitution to serve and protect our Nation and our country.

I don't know. My father is a retired sheriff. My brother is a deputy in a local sheriff's office in Manatee County, Florida. He has served for 18 years. And I have frequent conversations with them. I don't know how Americans today would be willing to serve in law enforcement. During the time that my dad went in 40 years ago,

law enforcement officers were respected, they were revered, and that just isn't the case anymore. I don't know anybody that would be willing to serve right now given the fact that law enforcement officers are specifically targeted to be killed. They are being, as Mr. Homan elucidated and talked about at our ICE detention centers, shot at. Their families are being threatened. And these are the people that simply want to serve our country, serve our Nation, and serve our community in the defense of our laws, and they are being demonized. And it is a sad state of affairs in our country that we are at this place.

I want to thank Mr. Homan for his testimony today and the sheriff today for coming here today. I would yield the remainder of my time to Mr. Homan. You were cut off earlier, and you weren't able to respond to a question that the chairwoman gave to you. So you have 2 minutes to respond to that question.

Mr. HOMAN. Well, sir, I was supportive of President Obama's policies. I supported many of his policies. But we got to remember, I was a career law enforcement officer. My job is to execute a mission within the framework provided me. So when the White House or the Department of Homeland Security issues a priority, my job isn't to question it. My job is execute it like I am executing the mission of this President.

And President Obama gave me a presidential rank award, the highest award available to a civilian because I think I did my job pretty good. I think we saved many, many lives in ICE. And a couple of things I agreed with him on. The Priority Enforcement Program. It was the only game in town. We were locked out of jails, so the Private Enforcement Program gave us access to jails so at least we could get the felons. That was better than nothing.

And Secretary Jeh Johnson, who I respect greatly, gave me a seat at the table and we talked about all the executive actions. He gave me a seat at the table and said here is what we are proposing, what are your thoughts on it. He gave me input. Now, I didn't win most of those arguments, and if Secretary Jeh Johnson was sitting here, he would tell you we disagreed on a lot of things. But I was grateful that the Administration gave me a seat at the table at least so I could hear things that were coming.

So the Obama Administration wasn't all bad. He gave us unlimited money, unlike you are fighting today, to give us the detention facilities we need, give us the policies we need. Family detention and 100 beds. They gave us 3,000 more. So, yeah, President Obama, I agreed with a lot of things he did. I didn't agree with everything. I didn't agree with most, but I agreed with a lot of what he has done. So, again, but when I became ICE director, I came back from retirement because this President, President Trump, had it right across the board from day one. From his speech in Arizona, he was right on the money every step of the way.

So I thank you for your comments because ICE agents and Border Patrol agents are national heroes. They are American patriots. They leave the safety and security of their home every day to defend this Nation, so thank you for those comments. We got to remember, these Border Patrol agents, they take sicknesses home to their own families every day. These Border Patrol agents brought toys from their own children to the family residential centers so

these children have something to play with at the Border Patrol stations. These are moms and dads, too. They didn't hang their heart at the foot of the door when they put that badge on. These are American patriots and need to be honored rather than vilified by many members of Congress.

Ms. JAYAPAL. Thank you. The time of the gentleman has expired.

Mr. HOMAN. Ma'am, everybody else went over 5 minutes.

Ms. JAYAPAL. Excuse me, Mr.——

Mr. HOMAN. Can I get 1 more minute. One more minute, please?

Ms. JAYAPAL. I am sorry, Mr. Homan. The time of the gentleman has expired. Before I got to the next witness, without objection, I would like to make the following documents part of the record: a statement from the ACLU, a statement from Asian-Americans Advancing Justice, a statement from the American Immigration Council, a statement from Al Otro Lado, a statement from the Center for Victims of Torture, a statement from Detention Watch Network, a statement from Friends Committee on National Legislation, statement from the Government Accountability Project, from the Interfaith Immigration Coalition, from the National Immigration Forum, from the Southeast Asia Resource Action Center, from United We Dream, and a statement from an impacted individual, Abdikadir Abdulahi Mohamed.

[The information follows:]

**REP. JAYAPAL FOR THE RECORD**

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Written Statement of the Record  
American Civil Liberties Union

National Political Advocacy Department  
Ronald Newman, National Political Director  
Naureen Shah, Senior Policy and Advocacy Counsel

Submitted to the  
House Committee on the Judiciary  
Immigration and Citizenship Subcommittee

For a Hearing On:  
“The Expansion and Troubling Use of ICE Detention”

Sept. 26, 2019

The ACLU appreciates the opportunity to submit a statement for the record for the House Judiciary Committee, Immigration and Citizenship Subcommittee hearing titled *The Expansion and Troubling Use of ICE Detention*. We thank Subcommittee Chairwoman Zoe Lofgren and Vice Chair Pramila Jayapal for holding this hearing.

The American Civil Liberties Union (ACLU) is a nonpartisan public interest organization with more than 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve individual rights and civil liberties, including immigrants' rights. The ACLU vigorously defends the constitutional right of due process for all Americans—both citizens and immigrants—and advocates for policies that protect these rights.

### I. Overview

In summer 2019, about 85,000 adults and children languished in some form of immigration detention.<sup>1</sup> The government's detention network includes holding centers run by Customs and Border Protection (CBP); warehouse-sized shelters for unaccompanied children run by the Office of Refugee Resettlement; and hundreds of jails and prisons under contract with Immigration and Customs Enforcement (ICE) or operated by it directly. In July, as these agencies petitioned Congress for emergency funding, the public heard accounts of serious abuse at their hands—dangerously unsanitary conditions, the neglect of children, deaths and serious illness. These agencies' abusive practices—distinct in character and level—violated the law and agency rules. In some cases, they occurred despite warnings and serious objections by career agency staff.<sup>2</sup>

The agencies involved in immigration detention have different cultures, responsibilities and practices. What they have in common is the Trump administration: It is issuing policy after policy designed to deter and punish people who come to the United States in pursuit of safety or a better life. As a result, the immigration detention complex has grown larger than ever before seen in this country. Despite outrage by the public and Congress, it continues to be rife with abuse. Today, tens of thousands of adults and children are suffering in immigration detention.

This hearing focuses on ICE detention. Of all the agencies involved in detention, it is ICE that generally holds people for the longest—for months or even years. It is responsible for the lion's share of immigration detention; in mid-September 2019, ICE reported an average daily population of nearly 52,000.<sup>3</sup> Most of these individuals could be free: Released on their recognizance, an affordable bond,

<sup>1</sup> See ICE, "Detention Statistics: Currently Detained Population by Arresting Agency as of 09/14/2019," <https://tinyurl.com/yxzn6llc> (describing an average daily population range of 54,253 to 55,241 from June to August 2019); Senate Committee on Homeland Security and Government Affairs, Hearing on Unprecedented Migration at the U.S. Southern Border, July 30, 2019 (noting that CBP held 19,699 individuals with a capacity of 4,000 in June 2019) (transcript on file with ACLU); House Committee on Appropriations, Subcommittee on Labor and Health and Human Services, Hearing on Oversight of the Unaccompanied Migrant Children Program, July 24, 2019 (describing "about 10,000 children in our care") (transcript on file with ACLU).

<sup>2</sup> *Id.*

<sup>3</sup> See ICE, "Detention Statistics: Currently Detained Population by Arresting Agency as of 09/14/2019," <https://tinyurl.com/yxzn6llc>

humanitarian parole or through community-based alternative to detention programs. Instead, they face inhumane and sometimes life-threatening conditions of detention. The Trump administration, like its predecessors, is offering false justifications for mass immigrant detention. Congress should immediately take measures to reverse the growth of immigration detention and prevent abuses in detention, as we describe below.

## II. The Dramatic Expansion of ICE Detention Is a Result of ICE's Policy Choices

ICE detains thousands of people for the duration of their removal proceedings, even though many do not pose a flight risk or danger to the community. While mass immigrant detention did not begin under the Trump administration, its policies and practices attempt to expand it. In this section we describe three such policies and practices: (1) elimination of bond hearings for asylum seekers; (2) denial of humanitarian parole for asylum seekers; and (3) exorbitant bond amounts for all detained immigrants. The ACLU and its partners are challenging these practices in court as violations of federal law and the Constitution.

### *Elimination of Bond Hearings for People Seeking Protection from Persecution and Torture*

For at least half a century, the government has provided bond hearings to people in deportation proceedings after they entered the United States, including to people who entered without inspection.<sup>4</sup> Even after Congress created the expedited removal process in 1996 and expanded it in 2004 to certain noncitizens who entered the country without inspection,<sup>5</sup> government regulations continued to entitle those individuals to a bond hearing if they established a credible fear of persecution or torture through a screening interview—known as a credible fear interview.<sup>6</sup> Congress required that these individuals be removed from the expedited removal process and placed in regular removal proceedings before a judge, to protect their right to fair adjudication of *bona fide* asylum claims.<sup>7</sup>

Until recently, these individuals, if apprehended inside the country, could request bond from the judge. However, in April 2019 Attorney General William Barr issued *Matter of M-S-*, stripping immigration judges' authority to grant bond to them.<sup>8</sup> If it goes into effect, the decision means that every year thousands of individuals pursuing *bona fide* claims for protection through regular removal proceedings will be detained for months and even years without ever receiving a bond hearing.

The ACLU and its partners are currently challenging this policy in *Padilla v. ICE*. Our lead plaintiff, Yolany Padilla, is seeking asylum from violence and persecution in Honduras, with her 6-year-old son. An immigration judge ordered her release on an \$8,000 bond. Under the Attorney General's decision, Yolany faces the risk of being redetained—and separated from her child—even though a judge found she poses no flight risk and no threat to anyone.<sup>9</sup> In July 2019, we secured a nationwide preliminary

<sup>4</sup> For a brief history, see *Padilla v. Immigration and Customs Enforcement*, No. 2:18-cv-00928 (W. D. Wash.) Plaintiffs-Appellees' Answering Brief, 3-7 (Aug. 28, 2019), <https://tinyurl.com/y2l2ogq2>.

<sup>5</sup> See ACLU, *American Exile: Rapid Deportations That Bypass the Courtroom* (2014), <https://tinyurl.com/y39voqfp>.

<sup>6</sup> See *Matter of X-K-*, 23 I. & N. Dec. 731, 732, 734-35 (BIA 2005)(construing 8 C.F.R. §§ 1003.19(h)(2), 1236.1(c)(11), (d)).

<sup>7</sup> See 8 U.S.C. § 1225(b)(1)(A)(ii), (b)(1)(B)(ii); 8 C.F.R. §§ 208.30(f), 1235.6(a)(ii)-(iii).

<sup>8</sup> *Matter of M-S-*, 27 I. & N. Dec. 509, 2019 WL 1724249 (U.S. Att'y Gen. 2019).

<sup>9</sup> See Michael Tan, "Attorney General Barr Says ICE Has Power to Lock Up Asylum Seekers Without Hearings," ACLU, May 2, 2019, <https://tinyurl.com/y3mqjwvc>.

injunction in *Padilla*, under appeal in the Ninth Circuit Court of Appeals. However, due to ongoing litigation, the future of this policy remains uncertain—leaving thousands of individuals at risk.

#### *Denial of Parole for Asylum Seekers*

ICE also has the option to release detained asylum seekers on humanitarian parole. Congress established the parole process to provide for the temporary release from detention of noncitizens seeking admission to the United States, including asylum seekers.<sup>10</sup> Pursuant to the statute and regulations, asylum seekers who do not pose a flight risk or a danger to the community may be paroled by ICE during the pendency of their immigration cases on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”<sup>11</sup> Parole is the only hope for asylum seekers who lawfully presented themselves at a port of entry for the purpose of seeking asylum, since the Immigration and Nationality Act (INA) requires their detention and bars them from release on bond.<sup>12</sup>

In 2009, DHS issued a policy directive providing that, absent exceptional overriding factors, an asylum seeker who has established a credible fear of persecution should be granted parole in the “public interest” and released from detention while pursuing his or her asylum claims if the individual (a) establishes his or her identity to the satisfaction of DHS; and (b) presents neither a flight risk nor danger to the community. The parole directive requires ICE field offices to follow a “binding roadmap” in determining whether to grant an individual parole.<sup>13</sup> In the years after DHS issued the directive, it released asylum seekers at a 90 percent rate nationwide.<sup>14</sup>

The 2009 directive remains in force.<sup>15</sup> But the Trump administration has eviscerated the parole process. It has denied parole in all cases thus far in 2019 and nearly all cases in 2018 in the five states under the jurisdiction of ICE’s New Orleans Field Office.<sup>16</sup> From February to September 2017, ICE Field Offices in El Paso, Newark and Philadelphia denied 100 percent of parole applications, and the Los Angeles and Detroit Field Offices denied 92 and 98 percent of applications.<sup>17</sup>

The ACLU and its partners challenged these practices in two class action lawsuits in the U.S. District Court for the District of Columbia. We secured a preliminary injunction in July 2018 applying to five field offices; ICE was evidently undeterred and continued to deny parole at in nearly all cases in five southern states, prompting us to file our second lawsuit.<sup>18</sup> Although we secured preliminary injunctions in

<sup>10</sup> See 8 U.S.C. § 1182(d)(5)(A).

<sup>11</sup> 8 U.S.C. § 1182(d)(5)(A), 8 C.F.R. § 212.5(b); see also 8 C.F.R. § 235.3(c).

<sup>12</sup> See 8 C.F.R. § 1003.19(h)(2)(i)B.

<sup>13</sup> *Heredia Mons v. McAleenan*, No. 19-1593, 2019 WL 4225322, \*2 (D.D.C. Sept. 5, 2019); see also U.S. Immigration and Customs Enforcement, Fact Sheet: Revised Parole Policy for Arriving Aliens with Credible Fear Claims,” Dec. 16, 2009, <https://tinyurl.com/y5th9lf5>.

<sup>14</sup> *Heredia Mons v. McAleenan*, No. 19-1593, 2019 WL 4225322, \*2 (D.D.C. Sept. 5, 2019).

<sup>15</sup> DHS, Fact Sheet: Executive Order Border Security and Immigration Enforcement, Improvements, Feb. 21, 2017, <https://tinyurl.com/jzdttrzt> (“The ICE policy directive with respect to parole for certain arriving aliens found to have a credible fear of persecution or torture shall remain in full force and effect”).

<sup>16</sup> See *Heredia Mons v. McAleenan*, No. 19-1593, 2019 WL 4225322, \*2 (D.D.C. Sept. 5, 2019).

The five states are Alabama, Arkansas, Louisiana, Mississippi and Tennessee.

<sup>17</sup> See *Damus v. Nielsen*, 313 F. Supp. 3d 317, 339 (D.D.C. 2018).

<sup>18</sup> See *Damus v. McAleenan*, No. 1:18-cv-00578 (D.D.C.); *Heredia Mons v. McAleenan*, No. 1:19-cv-01593 (D.D.C.).



both cases, we are concerned that ICE continues to deny parole at high rates. For instance, ICE's Los Angeles Field Office instructed staff to "[d]o what you always do" and is not complying with the preliminary injunction.<sup>19</sup>

The experience of Ansly Damus, our lead plaintiff, shows the injustice of ICE's practices. Ansly was a teacher in Haiti. His troubles began when he spoke out against corruption in Haitian politics and referred to a local government official. An armed gang that supported the official threatened his life. He fled and sought asylum at the U.S. border in California. For two years, ICE incarcerated him in an Ohio jail with no outdoor space. He spent all of his time in a windowless dormitory. An immigration judge granted him asylum twice, but the government appealed. ICE denied his request for parole and he remained in detention, even though a local community group rallied behind him and assured ICE it would provide him support if released. In November 2018, ICE finally released Ansly—without offering any explanation for his two-year imprisonment and on condition that he wear an ankle monitor.<sup>20</sup>

#### *Exorbitant Bond Amounts for All Detained Immigrants*

Even when individuals in ICE detention receive a bond hearing and immigration judges find they do not pose a danger to the community or flight risk that requires their detention, immigration judges routinely set bond at high amounts they cannot pay. The ACLU estimates that since 2016, more than 9,000 people have remained locked up in ICE custody for over 30 days despite having been granted bond. While in federal and many state criminal bail systems, judges are required to consider a defendant's ability to pay a bond,<sup>21</sup> DHS and immigration judges are not subject to a similar requirement.<sup>22</sup> As a result, thousands of individuals languish in immigration detention for months or even years simply because they cannot afford to post bond.

The exception is in areas of the country covered by the Ninth Circuit Court of Appeals. In 2017, the Ninth Circuit Court of Appeals in *Hernandez v. Sessions* upheld a preliminary injunction requiring immigration officials to consider ability to pay and release on alternative conditions of supervision when making a bond determination, in a class action lawsuit brought by the ACLU.<sup>23</sup> One of our plaintiffs, Cesar Matias, spent four years in ICE detention because he could not afford the \$3,000 bond set by an immigration judge.<sup>24</sup>

In June 2019, the ACLU and its partners filed another challenge, *Abiala v. Barr*, in Georgia. ICE jailed one of our plaintiffs, Jose Torres-Soto, after he was in a traffic accident with a police car. He waited five months for a bond hearing. The immigration judge refused to set his bond lower than \$18,000, and did not

<sup>19</sup> *Damus v. Nielsen*, No. 1:18-cv-00578 (D.D.C.), Plaintiff's Motion and Supporting Memorandum For A Finding of Civil Contempt (filed April 11, 2019) (on file with ACLU).

<sup>20</sup> See Amrit Cheng, "ICE Jailed An Asylum Seeker For Two Years For No Reason, But His Community Fought Back," ACLU, Dec. 6, 2018, <https://tinyurl.com/yvuualav>.

<sup>21</sup> Despite these requirements in the criminal system, hundreds of thousands of individuals are held in pretrial detention because they cannot afford cash bail. See Udi Ofer, "We Can't End Mass Incarceration Without Ending Money Bail," ACLU, Dec. 11, 2017, <https://tinyurl.com/yy2zs4jt>.

<sup>22</sup> See ACLU, "Discretionary Detention by the Numbers," <https://tinyurl.com/vxquufkc>.

<sup>23</sup> *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

<sup>24</sup> See Michael Tan, "Victory: Federal Court Holds That the Government Can't Lock Up Immigrants for Being Poor," ACLU, Nov. 16, 2018, <https://tinyurl.com/y23u58fw>.

explain why. Before ICE detained him, he worked overtime as a manufacturing company machine operator. A father of four, he barely made ends meet. Torres-Soto and his family did not have the means to pay, so he remained in detention for months, as his family was deprived of their primary breadwinner.<sup>25</sup> The court has not yet issued a decision.

#### *Effect of Trump Administration's Asylum Bans*

In July 2019, the Department of Justice (DOJ) and DHS issued an interim final rule making anyone who transits through another country prior to reaching the southern border of the United States ineligible for asylum, with narrow exceptions.<sup>26</sup> It follows a November 2018 rule making anyone who enters the country between ports of entry ineligible for asylum.<sup>27</sup> These bans are part of the Trump administration's effort to significantly undermine, if not virtually repeal, asylum law.

The ACLU and its partners are challenging both bans as direct violations of the Immigration and Nationality Act (INA).<sup>28</sup> While the first asylum ban is subject to a nationwide preliminary injunction, the second ban is in effect as the case is litigated.<sup>29</sup> Right now, the ultimate effect of these bans on the immigration detention system is unclear. However, we are concerned that the Trump administration may invoke the bans as a reason to detain thousands of asylum seekers who can be safely released to the community.

### **III. The Human Costs of ICE Detention Are Grave**

For an individual in detention, the costs are grave. He is torn from his children and his partner. His lifeline is a phone call to them, which may cost him anywhere from 25 cents to \$8 per minute.<sup>30</sup> He has lost his job on the outside and he cannot hold a job inside—other than working for \$1 a day, in the kitchen or as a janitor.<sup>31</sup> He struggles to find legal counsel because he is detained hundreds of miles away from home; ICE has strategically located a growing number of detention facilities in areas without an established network of lawyers able to provide removal defense.<sup>32</sup>

<sup>25</sup> Torres-Soto v. Barr, No. 7:19-CV-00082 (M.D. Ga.) (refiled as Abiala v. Barr), <https://tinyurl.com/y5cmbsrs>.

<sup>26</sup> See DOJ and DHS, Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829 (July 16, 2019).

<sup>27</sup> See DOJ and DHS, Aliens Subject to a Bar on Entry Under Certain

Presidential Proclamations; Procedures for Protection Claims, 83 Fed. Reg. 55934 (Nov. 9, 2018).

<sup>28</sup> See East Bay Sanctuary Covenant v. Barr, No. 3:19-cv-04073 (N.D. Calif.), <https://tinyurl.com/y2wv5qra> (challenging second asylum ban); East Bay Sanctuary Covenant v. Trump, No. 18-cv-06810 (N.D. Calif.), <https://tinyurl.com/y2lmqwbj> (challenging first asylum ban).

<sup>29</sup> See ACLU, "Supreme Court Grants Trump Asylum Ban Request," Sept. 11, 2019, <https://tinyurl.com/yxafjgy8>.

<sup>30</sup> See Letter from 150 Members of Congress to ICE Acting Director Ronald D. Vitiello, July 20, 2018 available at <https://tinyurl.com/y2kgxvp7>.

<sup>31</sup> See Katherine Hignett, "ICE Detainees Who Earn \$1 a Day Can't Afford \$11 Toothpaste on Sale at Private Detention Center: Report," Newsweek, Jan. 1, 2019, <https://tinyurl.com/y53j78ah>; Southern Poverty Law Center, "Court allows claims to move forward against private prison company that profits from forced labor of detained immigrants," Aug. 21, 2018, <https://tinyurl.com/yvceq3ns>.

<sup>32</sup> See Yuki Noguchi, "Unequal Outcomes: Most ICE Detainees Held in Rural Areas Where Deportation Risks Soar," National Public Radio, Aug. 15, 2019, <https://tinyurl.com/yxk3yndt>; Patrick G. Lee, "Immigrants in Detention Centers Are Often Hundreds of Miles From Legal Help," ProPublica, May 16, 2017, <https://tinyurl.com/yxk3yndt>; Kyle Kim, "Immigrants held in remote ICE facilities struggle to find legal aid before they're deported," Los Angeles Times, Sept. 28, 2017, <https://tinyurl.com/y6grokt5m>.

He spends weeks on the phone, calling legal aid staff who say they cannot take any more cases. Many immigrants cannot afford to hire a private attorney. An individual who is not detained is five times more likely to have legal counsel—and thus far more likely to win legal relief.<sup>33</sup> Indeed, according to one study, just 3 percent of individuals in detention and without a lawyer succeeded in their cases, whereas 74 percent of individuals who were released or never detained and had a lawyer succeeded in theirs.<sup>34</sup>

#### *Life-threatening Conditions*

In ICE detention for weeks, months or even years, a detained individual faces life-threatening and abusive conditions. Many report that they cannot get access to prescribed medications, medical tests or treatment for serious conditions such as HIV and diabetes. Medical staff routinely provide only the most basic of medications—a tube of anti-itch cream, a few aspirin.<sup>35</sup> There are numerous accounts of detained individuals suffering severe pain and medical neglect that culminates in preventable deaths, loss of hearing and sight, amputations and suicide.<sup>36</sup>

In at least 57 ICE detention sites, infectious diseases like mumps, measles, influenza and chicken pox have spread due to unsanitary conditions in the past year.<sup>37</sup> In contrast, prior to 2018, there were no confirmed ICE detention cases of mumps.<sup>38</sup> Thousands of individuals have been quarantined.<sup>39</sup> For a detained individual, quarantine has serious consequences. Confined to his pod or group of cells, he misses meetings with his attorney; the ability to attend in-person court hearings; the chance to see his loved ones in visitation rooms; access to the law library; and any relief from the feeling of being trapped and alone.<sup>40</sup>

#### *Solitary Confinement*

A detained individual lives under threat of solitary confinement. It is often arbitrarily imposed, in violation of ICE's directive, for "infractions" like menstruating on a uniform, wearing a hand cast, or looking at a guard the wrong way.<sup>41</sup> ICE has placed thousands of individuals with mental illnesses in

<sup>33</sup> Ingrid Eagly, et al. *A National Survey of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 32 (2015).

<sup>34</sup> Stacy Caplow et al., "Accessing Justice: The Availability and Adequacy of Counsel Removal Proceedings: New York Immigrant Representation Study Report," 33 Cardozo L. Rev. 357 (2011-2012), <https://tinyurl.com/yxdd7zpp>.

<sup>35</sup> See Southern Poverty Law Center, "SPLC, allies sue ICE for ignoring medical, mental health and disability needs of detained immigrants," Aug. 19, 2019, <https://tinyurl.com/yvym9y8r>; Charles Bethea, "A Medical Emergency, and the Growing Crisis at Immigration Detention Centers," The New Yorker, Sept. 13, 2017, <https://tinyurl.com/vc3fi9rx>; Southern Poverty Law Center, Shadow Prisons: Immigration Detention in the South (2017), <https://tinyurl.com/yv7pvnew>.

<sup>36</sup> See, e.g., Human Rights Watch et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*, June 2018, <https://tinyurl.com/y9gey2zy>; Katherine Hawkins, "Medical Neglect at a Denver Jail," Project on Government Oversight, May 21, 2019, <https://tinyurl.com/yym14vly>; ACLU, *Fatal Neglect: How ICE Ignores Death in Detention* (2016), <https://tinyurl.com/y2l8g6mq>.

<sup>37</sup> See Jessica Leung, et al., "Notes from the Field: Mumps in Detention Facilities that House Detained Migrants - United States, September 2018 - August 2019," Centers for Disease Control and Prevention, Aug. 30, 2019, <https://tinyurl.com/y4d2xf9q> (describing 898 cases of mumps in 57 ICE detention facilities).

<sup>38</sup> *Id.*

<sup>39</sup> See Rafael Bernal, "Thousands of migrants in ICE custody under quarantine for mumps, chicken pox exposure," June 14, 2019, <https://tinyurl.com/yvzdhsvd>.

<sup>40</sup> See, e.g. Mica Rosenberg and Kristina Cooke, "Mumps, other outbreaks force U.S. detention centers to quarantine over 2,000 migrants," Reuters, March 10, 2019, <https://tinyurl.com/y3nab6e2>.

<sup>41</sup> See Ian Urbina, "The Capricious Use of Solitary Confinement Against Detained Immigrants," The Atlantic, Sept. 6, 2019, <https://tinyurl.com/y6rc6blz>; Spencer Woodman et al., "Solitary Voices: Thousands of Immigrants Suffer in

solitary as “protective custody”—citing their own safety, even though experts agree that solitary confinement is psychologically devastating. For some it has lasted months and more than a year.<sup>42</sup> In one case reported by *The Atlantic*, a pregnant woman in solitary took pills in an apparent suicide attempt. The pills caused a miscarriage; she was taken to the hospital. ICE then returned her to solitary, “where she was kept naked, despite still bleeding from the miscarriage.”<sup>43</sup>

#### *Sexual Abuse*

ICE detention sites are also unsafe because of sexual violence and the retaliation that detained people face when they come forward to report abuse. One investigation into sexual abuse in immigration detention revealed 1,448 allegations of sexual abuse filed with ICE between 2012 and March 2018.<sup>44</sup>

Congress passed the Prison Rape Elimination (PREA) in 2003 to protect against sexual assault in prisons and jails across the country. DHS did not finalize regulations implementing PREA until more than a decade later, in 2014. Even with those regulations in place, DHS PREA standards do not protect immigrants in all detention facilities because the agency has taken the position that the requirements only apply when the agency enters into a new contract, renews a contract or modifies one.<sup>45</sup>

#### *Accountability*

The detained individual faces these risks of abuse and medical neglect indefinitely—until the end of her removal proceedings, which may last months or even years. There is no end in sight. Many have felt coerced into giving up their claims for legal relief.

DHS is not doing enough to monitor, detect and prevent abuses in detention. Inspections of ICE jails are conducted by ICE itself or subcontracted to a private company, Nakamoto Group. Inspections occur infrequently and are limited to a narrow set of standards that are inconsistent across facilities. Moreover, inspectors coordinate visits with the facilities; visits are perfunctory and designed to ensure the facilities will pass. In 2018, the DHS Inspector General issued a report finding that even when these inspections detect violations, ICE fails to “systematically hold facilities accountable” and “some deficiencies remain unaddressed for years.” One ICE official even suggested the inspections are “useless.”<sup>46</sup>

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Solitary Confinement in ICE Detention,” *The Intercept*, May 21, 2019, <https://tinyurl.com/vxdgp7j9>; Naureen Shah, “DHS Is Locking Immigrants in Solitary Confinement,” *ACLU*, May 24, 2019, <https://tinyurl.com/y2e8o4f6>.

<sup>42</sup> See Project on Government Oversight, “Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months,” Aug. 14, 2019, <https://tinyurl.com/y3kxydnp>.

<sup>43</sup> Ian Urbina, “The Capricious Use of Solitary Confinement Against Detained Immigrants,” *The Atlantic*, Sept. 6, 2019, <https://tinyurl.com/y6rc6blz>.

<sup>44</sup> See Alice Speri, “Detained, Then Violated,” *The Intercept*, April 11, 2018, <https://tinyurl.com/ybburtda>.

<sup>45</sup> See Victoria López and Sandra Park, “ICE Detention Center Says It’s Not Responsible for Staff’s Sexual Abuse of Detainees,” *ACLU*, Nov. 6, 2018, <https://tinyurl.com/y45vj4qu>; DHS, “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 6 CFR Part 115, 79 Fed. Reg. 45 (March 7, 2014).

<sup>46</sup> DHS Office of Inspector General, “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements,” June 26, 2018, <https://tinyurl.com/vc9ksa4w>.

#### IV. The Trump Administration's Justifications for Detention Are False

##### *Failure to Appear for Hearings*

The Trump administration claims that detention is justified because asylum seekers do not show up for their hearings.<sup>47</sup> But Justice Department statistics analyzed by the American Immigration Council indicate that over the last decade, at least 87 percent of asylum seekers who went through the credible fear process appeared in immigration court for all scheduled removal proceedings.<sup>48</sup>

Even the issuance of a removal order for failure to appear does not mean that the asylum seeker absconded. Many immigrants fail to appear in court through no fault of their own. As the ACLU described in our July 2019 complaint in *Asylum Seeker Advocacy Project v. Barr*, the government has sent notices to appear in court to incorrect addresses; after the hearing date passed; for dates when courts are not in session; and in some cases for court dates that literally did not exist (weekends and September 31).<sup>49</sup> For example, on January 31, 2019, thousands of asylum seekers lined up for hours at courts across the country with paperwork showing that date for their hearings, only to be told there would be no hearings that day. Many of them were ordered deported for failing to appear.<sup>50</sup>

##### *Detention as Deterrence*

The Trump administration, like its predecessors,<sup>51</sup> has also sought to increase its authority and capacity to detain individuals in order to deter them from coming to the country in the first place. For example, Acting Director of U.S. Citizenship and Immigration Services Ken Cuccinelli described the administration's proposal to allow indefinite detention of immigrant families as "a deterrent, because they know that instead of rushing the border...now they can and will to the extent we're able to do so, hold them until those hearings happen."<sup>52</sup> Following reports of horrific detention conditions in July 2019, President Trump tweeted: "If Illegal Immigrants are unhappy with the conditions in the quickly built or refitted detention centers, just tell them not to come. All problems solved!"<sup>53</sup>

<sup>47</sup> See, e.g., White House Fact Sheet, "President Donald J. Trump is Working to Stop the Abuse of Our Asylum System and Address the Root Causes of the Border Crisis," April 29, 2019, <https://tinyurl.com/y2btj2ij>.

<sup>48</sup> See Declaration of Aaron Reichlin-Melnick, *Innovation Law Lab v. Nielsen*, No. 3:19-cv-00807, para. 9 (N.D. Calif.), <https://tinyurl.com/y37sr8ws>.

<sup>49</sup> *Asylum Seeker Advocacy Project v. Barr*, No. 1:19-cv-06443 (S.D.N.Y.); see also New York Civil Liberties Union, "ACLU Files Preemptive Lawsuit to Protect Refugees From Massive Trump ICE Raids," July 11, 2019, <https://tinyurl.com/y3p9z2qz>.

<sup>50</sup> *Id.*

<sup>51</sup> The Obama administration likewise sought to "send a message that...if you come here, you should not expect to simply be released" through its detention policies. Julia Preston, *Detention Center Presented as Deterrent to Border Crossings*, N.Y. Times (Dec. 15, 2014), <https://perma.cc/2S5L-F4UP>; see also ACLU, *RILR v. Johnson* (summary), July 31, 2015 <https://tinyurl.com/p7cgbn>. The use of immigration detention as a deterrent dates to at least the 1980s. See Emily Ryo, "Detention as Deterrence," *Stanford Law Review Online* Vol. 71 (March 2019), <https://tinyurl.com/yxrph7qy>.

<sup>52</sup> Veronica Stracqualursi, "Trump immigration official says new rule detaining families indefinitely is a 'deterrent,'" CNN, Aug. 23, 2019, <https://tinyurl.com/y37srvhk>.

<sup>53</sup> Twitter, <https://tinyurl.com/y2elxpfo>.

The theory that immigration detention will deter irregular migration has no evidentiary basis, as applied in the United States<sup>54</sup> or anywhere else in the world.<sup>55</sup> It also directly conflicts with controlling Supreme Court precedent. The Supreme Court has emphasized that deterrence is not a lawful basis for civil detention, such as immigration detention.<sup>56</sup> It has permitted immigration detention based only on “characteristics inherent in the alien himself or in the category of aliens being detained—that is, the Court countenanced detention of an alien or category of aliens on the basis of those aliens’ risk of flight or danger to the community.”<sup>57</sup>

In 2015 the ACLU successfully challenged ICE’s policy of detaining asylum-seeking families for the purpose of deterrence. The district court for the District of Columbia emphasized that the Due Process Clause does not permit the detention of a particular individual “for the sake of sending a message of deterrence to other Central American individuals who may be considering immigration.”<sup>58</sup>

#### V. ICE Should Use Alternatives to Detention

ICE should immediately redress abusive detention conditions; moreover, it should end the detention of individuals pending their immigration proceedings. ICE has several alternatives to detention: (1) release individuals on their own recognizance, meaning that the individual is released without bond or conditions of supervision; (2) release the individual without bond but subject to conditions of supervision; (3) release an individual on humanitarian parole; or (4) detain the individual subject to a monetary bond amount, which depends on the individual’s ability to pay, and release the individual once bond is posted.

The Trump administration is frequently choosing not to avail itself of these release options, resulting in skyrocketing detention levels; in just three years, ICE increased detention from an average of 34,000 detained immigrants per day in 2016 to an all-time high of 55,000 people per day in summer 2019—a rise of 20,000 in *less than three years*.<sup>59</sup> Apprehension rates do not justify the increase: ICE detention is ballooning even though the number of people the government apprehends is less than in peak years. In

<sup>54</sup> “The data show that both family detention and family separation policies have not deterred families from coming to the United States in the past—and are unlikely to do so in the future.” Center for American Progress, “Do Family Separation and Detention Deter Immigration?” July 24, 2018, <https://tinyurl.com/v3jg5dng>; Adam Cox and Ryan Goodman, “Detention of Migrant Families as ‘Deterrence’: Ethical Flaws and Empirical Doubts,” Just Security, June 22, 2018, <https://tinyurl.com/v8rhml0s>.

<sup>55</sup> “[T]here is no evidence that detention has any deterrence effect on irregular migration.” UN High Commissioner for Refugees, “Detention Guidelines,” 2012, <https://tinyurl.com/v67d9px9>. “There is no empirical evidence to suggest that the threat of being detained deters irregular migration. Rather, existing evidence, and government and judicial statements suggest a policy of detention is neither effective nor reasonable in deterring refugees and irregular migrants.” International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, 2015, <https://tinyurl.com/vxgfs9aj>.

<sup>56</sup> See *Kansas v. Hendricks*, 521 U.S. 346, 372 (1997) (Kennedy, J., concurring) (“[W]hile incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.”).

<sup>57</sup> See *RILR v. Johnson*, 80 F. Supp. 3d 164, 188-89 (D.D.C. 2015).

<sup>58</sup> *RILR*, 80 F. Supp. 3d at 188-89. Detention on deterrence grounds would also violate the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a). Although the Attorney General has construed the statute to authorize detention based on general deterrence, that interpretation is incorrect. <sup>58</sup> See ACLU Comment, Re: DHS Docket N. ICEB-2018-0002, HHS Docket ID HHS-OS-2018-0023-0001, Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, Nov. 6, 2018.

<sup>59</sup> Noah Lanard, “ICE Just Quietly Opened Three New Detention Centers, Flouting Congress’ Limits,” Mother Jones, July 9, 2019, <https://tinyurl.com/v6jvbu7>.

1994, Border Patrol apprehended about 1 million people, and yet ICE detained on average about 7,000 a day.<sup>60</sup> In contrast, in 2018 Border Patrol apprehended about 400,000 but ICE reached an average high of more than 42,000 people a day.<sup>61</sup> A significant reduction in the size of the system is realistic.

#### *Family Case Management Program*

In early 2017—around the time that then-DHS Secretary John Kelly was contemplating a family separation policy—the Trump Administration ended the short-lived Family Case Management Program, operated by GEO Care.<sup>62</sup> According to DHS, the program was more than 99 percent effective—meaning that almost every single person in the program showed up for all immigration appointments and court hearings. It provided case management, referrals for support services and legal orientation—in partnership with community-based non-governmental organizations—to ensure that vulnerable families’ most urgent needs were met and they had the information they needed to comply with legal obligations. It was also fiscally responsible, costing just \$36 per day per family, compared to \$319 per day per person for family detention.<sup>63</sup> If DHS were serious about addressing capacity issues, it would restart case management programs for families and individuals—without GEO Care and in partnership with non-profit service providers. It would also make maximum use of the other alternatives described above.<sup>64</sup>

#### *Intensive Supervision Appearance Program III*

Currently ICE contracts with the private GEO Group subsidiary BI, Inc., to run the Intensive Supervision Appearance Program III (ISAP III). ISAP III subjects participants to either telephonic reporting requirements; or GPS location monitoring using ankle monitors or a smartphone application called SmartLINK that relies on facial recognition. As of September 14, 2019, almost 100,000 people were enrolled in ISAP III.<sup>65</sup>

DHS admits that ISAP III is not an alternative to or substitute for detention, according to the Congressional Research Service. Rather, DHS says that “these programs have enhanced ICE’s ability to

<sup>60</sup> See Congressional Research Service, *Immigration-Related Detention: Current Legislative Issues*, Apr. 28, 2004, <https://tinyurl.com/vylxaob2>.

<sup>61</sup> See CBP Enforcement Statistics FY 2019, <https://tinyurl.com/y9c4c6ft> (last visited Sept. 24, 2019); Geneva Sands, “This year saw the most people in immigration detention since 2001,” CNN, Nov. 12, 2018, <https://tinyurl.com/v5xq52fg>.

<sup>62</sup> See John Haltiwanger, “John Kelly proposed separating children from their parents to deter illegal immigration last year, and now the Trump administration can’t get its story straight,” Business Insider, June 18, 2019, <https://tinyurl.com/vvk9kt3j>.

<sup>63</sup> See Congressional Research Service, “Immigration: Alternatives to Detention (ATD) Programs,” July 8, 2019, <https://tinyurl.com/vxmihvj>; Ruthie Epstein, “The Tried-and-true Alternatives to Detaining Immigrant Families,” ACLU, June 22, 2018, <https://tinyurl.com/y5vozb2a>.

<sup>64</sup> In Fiscal Year 2019, Congress appropriated \$15.2 million for family case management and directed ICE to “prioritize the use of ATD programs for families, including family case management.” Explanatory Note, Consolidated Appropriations Act 2019, <https://tinyurl.com/y25vewrm>. Non-governmental organizations have made recommendations for a revived and improved family and individual case management program. See National Immigrant Justice Center, “A Better Way: Community Based Programming as an Alternative to Immigrant Incarceration,” April 2019, <https://tinyurl.com/y444n5wh>; Women’s Refugee Commission, *The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration*, June 2019, <https://tinyurl.com/y6jw9y7r>.

<sup>65</sup> See ICE, “Detention Statistics: Currently Detained Population by Arresting Agency as of 09/14/2019,” <https://tinyurl.com/yxzn6llc>.

monitor more intensively a subset of foreign nationals released into communities.”<sup>66</sup> ISAP III enables ICE to expand its surveillance of immigrants it seeks to deport. Because it does not serve to reduce the number of people in detention, it should not be considered a true alternative to detention. Additionally, it is not clear that DHS has strong policies to protect the privacy of location and other personal data collected via ISAP III, including restrictions on federal agencies using the data for purposes unrelated to court appearance—as they did in the 2019 workplace raids in Mississippi.<sup>67</sup> Unless ISAP III is transformed into an actual alternatives program with strong privacy protections, it should be cancelled.

## VI. Congress Should Reverse ICE’s Detention Expansion

### *ACLU’s Policy Position on Resorting to Immigration Detention*

The ACLU believes that immigration detention should only be used for individuals with final orders and for the brief period of time necessary to effectuate those orders, and where no less-restrictive alternative to detention is available. Members of Congress should call for a moratorium on detention and a reduction by at least 75 percent.

The Fifth Amendment protects all “persons”—including immigrants—from the deprivation of liberty without due process of law. As the Supreme Court has said, “in our society, liberty is the norm, and detention without trial is the carefully limited exception.”<sup>68</sup> Government intrusions on such liberty must be “narrowly focused” in service of a “legitimate and compelling” interest.<sup>69</sup> The government may not achieve its purpose “by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”<sup>70</sup>

Here, the government’s sole legitimate purpose is to effectuate a final order of removal. Because government intrusions on liberty must be narrowly drawn, only individuals who are subject to a final order of removal—not those who are awaiting their immigration proceedings—should be subject to detention. Moreover, the government should operate under a presumption of liberty for all individuals subject to removal. Finally, government policies and practices should reflect that alternatives to detention will generally suffice to address the government’s interest in effectuating a final order of removal.

While the INA recognizes flight risk and public safety as bases for detention, flight risk can generally be addressed through alternatives to detention. Furthermore, immigration detention should not be used to address generalized fears about public safety; otherwise, it would bypass due process protections that the

<sup>66</sup> Congressional Research Service, “Immigration: Alternatives to Detention (ATD) Programs,” July 8, 2019, <https://tinyurl.com/yxnmjhyj>.

<sup>67</sup> Jeff Amy, “Documents: Plant owners ‘willfully’ used ineligible workers,” Associated Press, Aug. 9, 2019, <https://tinyurl.com/y66258vb>.

<sup>68</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (internal citations and quotations omitted).

<sup>69</sup> *See Foucha v. Louisiana*, 504 U.S. 71, 80–81 (1992) (affirming the “‘fundamental nature’ of the individual’s right to liberty” and invalidating a Louisiana statute that authorized civil commitment on a finding of dangerousness without any finding of mental illness) (internal citation omitted); *see also Covington v. Harris*, 419 F.2d 617, 623 (D.C. Cir. 1969) (“A statute sanctioning such a drastic curtailment of the rights of citizens must be narrowly, even grudgingly, construed in order to avoid deprivations of liberty without due process of law.”).

<sup>70</sup> *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).



criminal system owes to everyone charged with violating criminal law.<sup>71</sup> It is true that the Supreme Court has recognized immigration detention on the basis of flight risk or danger to the community.<sup>72</sup> But the unprecedented mass immigrant detention of today—in which the government systematically and routinely denies liberty to tens of thousands of immigrants without regard for their individual characteristics or the availability of less-restrictive alternatives—is antithetical to a free society.

*Public Support for Reversing Mass Immigrant Detention*

While our policy position on detention is a significant departure from ICE's practices, it is warranted by the inhumanity of mass immigrant detention. Moreover, the public would support members of Congress adopting our position.

A wave of opposition to ICE practices is sweeping across American cities. Much of the general public is horrified by detention conditions across the DHS system, particularly in Customs and Border Protection (CBP) custody. More than 80 percent of individuals in an August 2019 Pew Research poll said providing safe and sanitary conditions for asylum seekers in detention is "important," and more than half said it was "very important."<sup>73</sup> A majority of voters, 53 percent, are in favor of releasing immigrants from detention even if they may not return to court, while only one-third support "detaining immigrants, even if it causes overcrowding or bad conditions," according to a July 2019 poll.<sup>74</sup>

Likewise, many are outraged by the arrest of long-time residents with deep community ties, and offended by the anti-immigrant rhetoric of Trump administration officials and their surrogates.<sup>75</sup> Six in 10 Americans oppose the Trump administration's agenda of deporting all immigrants without lawful status.<sup>76</sup> The public is deeply concerned about the entirety of the Trump administration's indiscriminate deportation agenda—including detention.

As a result, local and state governments continue to enact laws or policies limiting local cooperation with ICE and preventing the expansion of ICE detention.<sup>77</sup> In 2019 alone, legislatures in Illinois, Washington and California passed legislation limiting ICE detention in those states,<sup>78</sup> while local officials in cities

<sup>71</sup> When a person is convicted and sentenced for a crime, he should not face the additional punishment of immigration detention after he has served the sentence determined appropriate under the criminal system.

<sup>72</sup> See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

<sup>73</sup> Pew Research Center, "Public's Priorities for U.S. Asylum Policy: More Judges for Cases, Safe Conditions for Migrants," Aug. 12, 2019, <https://tinyurl.com/y2tryeuu/>.

<sup>74</sup> Quinnipiac University Poll, "Trump is Racist, Half of U.S. Voters Say," July 30, 2019, <https://tinyurl.com/y37jg2j3>.

<sup>75</sup> See Laura Muñoz Lopez, "Anti-Immigrant Rhetoric Was Defeated in the 2018 Midterm Elections," Center for American Progress, Dec. 13, 2018, <https://tinyurl.com/y2vt45m8>.

<sup>76</sup> Frank Newport, "Immigration, Public Opinion and Congress," Gallup, Feb. 12, 2019, <https://tinyurl.com/y2tks6pn>.

<sup>77</sup> For a compilation of measures limiting local-ICE cooperation, see Immigrant Legal Resource Center, "National Map of Local Entanglement with ICE," <https://tinyurl.com/y9s79273> (last updated May 22, 2019).

<sup>78</sup> Ill. Gen. Assemb., HB-2040 (2019), <https://tinyurl.com/y3owangp>; Wash. Legis. SB 5497 (2019), <https://tinyurl.com/y2ngqwp9>; Calif. Legis. Assemb. AB-32 Reg. Sess. 2019-2020 (2019), <https://tinyurl.com/y3t6j92y>; see also Naureen Shah, "As Trump Tweets Hateful Threats, States are Protecting Immigrant Rights," ACLU, June 21, 2019, <https://tinyurl.com/y4tj995q>; Lora Adams, "State and Local Governments Opt Out of Immigrant Detention," July 25, 2019, <https://tinyurl.com/y4xotzk6>.

across the country canceled ICE detention contracts.<sup>79</sup> These measures are a powerful signal of public opinion; they should embolden members of Congress to resist and reverse ICE's detention expansion.

#### *Recommendations for Congress*

The ACLU recommends that members of Congress take the following actions:

1. *Reverse the expansion of ICE detention.* Call for an immediate moratorium on the expansion of ICE detention and, in the long-term, a significant reduction of at least 75 percent.<sup>80</sup>
2. *Co-sponsor the Dignity for Detained Immigrants Act of 2019 (H.R. 2415/S. 1243).* This bill would significantly reduce the number of people held in immigration detention. It would end unfair mandatory detention laws that prevent immigration judges from making fair and individualized release determinations and end detention profiteering by private prisons and local jails. It would also set enforceable standards to ensure those who remain in custody are in a system that is safe, humane, transparent, subject to robust oversight, and accountable to the public.
3. *Cut funding for ICE detention and enforcement.* In any appropriations bill, support language that prohibits ICE and CBP from transferring and/or reprogramming funds to expand enforcement or detention operations. Support language that instead reduces funding for ICE detention.
4. *Fund community-based alternatives to detention.* Ensure full funding for new community-based case management programs for individuals and families. End funding for the Intensive Supervision Appearance Program III.
5. *Visit ICE detention facilities.* These visits should include private interviews with individuals in detention. Prior to their visit, Members should consult with local community groups, legal services providers, and impacted people who have been detained or have had family members detained. Regular monitoring of places of detention, along with private interviews, are a necessary safeguard against abuses and poor conditions of detention. ICE is more likely to grant members of Congress access to ICE detention sites than members of the general public. Members have a unique platform to bear witness to the treatment of people inside these sites, to urge improvement and to inform the public.
6. *Require transparency on mass detention.* Require ICE to publicly release detailed data on a monthly basis, at the individual level (e.g. one row per person or detention stint), regarding people in detention; people released from detention on recognizance, bond, parole, or other alternative; people removed; detainers lodged against people in state and local custody; and risk classification assessments. Demand that ICE comply in a timely manner with its obligation to produce annual reports on the detention of asylum seekers, required under the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998.

<sup>79</sup> See Simon Romero, "All Over U.S., Local Officials Cancel Deals to Detain Immigrants," N.Y. Times, June 28, 2019, <https://tinyurl.com/y3tbx5f6>.

<sup>80</sup> The ACLU has urged all presidential candidates to commit to reducing immigration detention by at least 75 percent. See ACLU, Rights For All, <https://www.rightsforall.us/immigrant-justice/>.

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

House Judiciary's Subcommittee on Immigration and Citizenship

September 26, 2019

*The Expansion and Troubling Use of ICE Detention*

Contact Information:

Gisela Perez Kusakawa

NAPABA Law Foundation Community Law Fellow

gkusakawa@advancingjustice-aaajc.org

Megan Essaheb

Director of Immigration Advocacy

messaheb@advancingjustice-aaajc.org

Asian Americans Advancing Justice | AAJC submits this testimony for the record for the public hearing entitled, "The Expansion and Troubling Use of ICE Detention" held on September 26, 2019 by the House Judiciary's Subcommittee on Immigration and Citizenship in Washington, D.C. Asian Americans Advancing Justice | AAJC ("Advancing Justice | AAJC") is a national non-profit organization founded in 1991 dedicated to advancing civil and human rights for Asian Americans. Advancing Justice | AAJC is the leading national advocate for immigration policy on behalf of the Asian American community, and in this capacity, we work to reunite and keep immigrant families together. We appreciate this opportunity to submit a written statement for today's hearing and thank the committee members for holding this hearing to examine the Trump Administration's problematic use and expansion of ICE detention centers.

Immigrant detention should be a last resort, not the norm; however, the Department of Homeland Security continues to increase the number of detained immigrants despite there being adequate, cheaper, 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 are not safe and provide inadequate medical care leading to human rights abuses. We urge Congress to not let these human rights abuses continue, and to 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.<sup>1</sup> Based simply on their ancestry, Japanese Americans were guilty based on race and 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.<sup>2</sup> George Takei likened the Japanese American internment and the modern day detention centers to concentration camps.<sup>3</sup> He compared the family separation experienced by Japanese Americans with what many immigrant families face today in detention centers.<sup>4</sup> 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.

Detaining and separating families has a real human price that people continue to pay today. Just this past March, the U.S. reached a historic high of 50,059 detained immigrants.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> Just

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<sup>1</sup> 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).

<sup>2</sup> *Id.*

<sup>3</sup> *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=aHR0cHM6Ly93d3cuZ29vZ2x1LnNvbS8&guce\\_referrer\\_sig=AQAAACBr eMqk0eT4UKSrEYj1LdhMw3gE\\_pMwIQ8sZZ3X30XH8q46mcjWUu3\\_5tU1XAcFj6i\\_zFv\\_ZwNFXVEADBZz4JBH63uLu7vW0KJEdxesCibxLRnbTK2tFLbs34TDFJgQBulspxR8DH0pvYJqfHG50TqUfG-ExnyO06eMus8x7v](https://www.huffpost.com/entry/concentration-camps-border-george-takei-family-separation_n_5d2533a1e4b0cfb595fd8e65?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LnNvbS8&guce_referrer_sig=AQAAACBr eMqk0eT4UKSrEYj1LdhMw3gE_pMwIQ8sZZ3X30XH8q46mcjWUu3_5tU1XAcFj6i_zFv_ZwNFXVEADBZz4JBH63uLu7vW0KJEdxesCibxLRnbTK2tFLbs34TDFJgQBulspxR8DH0pvYJqfHG50TqUfG-ExnyO06eMus8x7v) (last visited September 25, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> 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-comp ressed.pdf](https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-comp ressed.pdf).

<sup>6</sup> 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-comp ressed.pdf](https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-comp ressed.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> 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

from October 2014 to April 2018, over 17,000 South Asians were arrested by Border Patrol.<sup>9</sup> In June 2018, over 3,000 South Asian migrants were detained.<sup>10</sup> Many South Asian immigrants are simply seeking asylum in the United States and fleeing persecution in their home countries. 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.<sup>11</sup> 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.<sup>12</sup> The percentage of Lao and Cambodian Americans detained who lived here for over twenty years is even higher at 86% and 75%, respectively.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> As a result of his detention,

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[https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153\\_AAJC\\_Immigration\\_Final\\_Pages\\_LR-compessed.pdf](https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compessed.pdf).

<sup>9</sup> 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>.

<sup>10</sup> 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-compessed.pdf](https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compessed.pdf).

<sup>11</sup> *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).

<sup>12</sup> 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-compessed.pdf](https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compessed.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> 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](https://www.searac.org/wp-content/uploads/2018/09/dreams_detained_in_her_words_report-2.pdf).

<sup>15</sup> 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).

his family experienced both emotional and financial hardship.<sup>16</sup> Since Thear was the main provider for his family, his detention meant that his high school daughter could no longer go to her after-school activities.<sup>17</sup> His mother, who is a breast cancer survivor, developed depression and had difficulty eating and sleeping following her son's arrest.<sup>18</sup> The impact of his arrest ripples out to whole communities.<sup>19</sup> 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."<sup>20</sup> 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.<sup>21</sup>

## II. Troubling Use of the Detention Centers

### A. Detention Centers are Inadequate and Unsafe

Detention centers provide inadequate medical care, and are not safe for detainees. In many instances, they are even life-threatening for immigrants. From 2003 until January 2018, about 188 detainees died in ICE detention facilities.<sup>22</sup> The death rates have only worsened under the Trump administration. In FY 2017, more immigrants had died in detention than in any year since 2009.<sup>23</sup> A leading cause of death for detainees is inadequate medical care.<sup>24</sup>

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.<sup>25</sup> Pregnant women who need special care, have suffered miscarriages during their detainment.<sup>26</sup> In 2018, at least 18 women suffered miscarriages.<sup>27</sup> The number of miscarriages have doubled under the first two years of the Trump administration.<sup>28</sup>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (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. Lehen, "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 over \$8," *Intercept* (April 19, 2018)), available at [https://www.advancingjustice-aaic.org/sites/default/files/2019-06/1153\\_AAIC\\_Immigration\\_Final\\_Pages\\_LR-comp-ressed.pdf](https://www.advancingjustice-aaic.org/sites/default/files/2019-06/1153_AAIC_Immigration_Final_Pages_LR-comp-ressed.pdf).

<sup>23</sup> *Id.* at 62-63.

<sup>24</sup> *Id.* at 63.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

There have been reports of children being subjected to inhumane conditions at detention centers.<sup>29</sup> They have been forced to sleep on cement floors and lack adequate health care or hygiene.<sup>30</sup> The Associate Press reported that 250 infants, children, and teenagers were housed in a Texas migrant detention facility in Clint, Texas.<sup>31</sup> There, the children lacked food, water, and adult supervision.<sup>32</sup> 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 warehoused, as many as 300 children in a cell, with almost no adult supervision.”<sup>33</sup> We must stop using detention centers which harm children and other vulnerable populations.

Moreover, there must be more oversight over ICE facilities and detention activities. 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.<sup>34</sup> 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,<sup>35</sup> a process that two of the individuals have described as both painful and dehumanizing.<sup>36</sup> Additionally, South Asian and Sikh detainees in Victorville, California were not provided any religious accommodations.<sup>37</sup> They were banned from wearing their religiously-mandated turbans and no accommodations were made for their religious dietary restrictions.<sup>38</sup> Detention centers are ripe with violations of ethics, international law, and constitutional rights.

AAPI detainees are subject to much of the same mistreatment as other immigrants and asylum seekers in ICE and CBP facilities. In OIG’s inspection of four ICE detention centers, all four

<sup>29</sup> *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).

<sup>30</sup> *Id.*

<sup>31</sup> *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).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Spencer Woodman, Private Prison Continues to Send ICE Detainees to Solitary Confinement for Refusing Voluntary Labor, THE INTERCEPT (January 11, 2018).

<sup>35</sup> 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).

<sup>36</sup> 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/>

<sup>37</sup> *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](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).

<sup>38</sup> *Id.*

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 stalls.<sup>39</sup> Similarly, OIG observed serious overcrowding problems in the El Paso Del Norte Processing Center in their May report<sup>40</sup>, and again at five separate Border Patrol facilities and two ports of entry in the Rio Grande Valley<sup>41</sup>. DHS' standards and internal oversight of these facilities are inadequate to protect the rights of detainees.

A June 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."<sup>42</sup>

#### **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.<sup>43</sup> This leaves indigent immigrant populations vulnerable<sup>44</sup>, 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.<sup>45</sup> The representation rate for detained immigrants was only 14% between 2007 and 2012.<sup>46</sup> This

<sup>39</sup> *Id.* at 3.

<sup>40</sup> 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>

<sup>41</sup> *Id.* at 4.

<sup>42</sup> 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>

<sup>43</sup> 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).

<sup>44</sup> *Id.*

<sup>45</sup> ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES 62 (2019) (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,



representation rate is even lower at 10% for detained immigrants in a small city or rural area.<sup>47</sup> 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.<sup>48</sup> These are life-changing cases that decide whether families stay together or are torn apart.

### III. Despite Existing Inadequate Facilities, Detention Centers Continue to Expand

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.<sup>49</sup> As of February 2019, we have 45,890 detained immigrants compared to 6,785 in 1994.<sup>50</sup> We reached a historic high of 50,059 detained immigrants as of March 6, 2019.<sup>51</sup> Moreover, Congress continues to increase funding for detention. The ICE detention and deportation budget has actually increased 40% since Trump became president.<sup>52</sup> That 40% increase equates to an almost one billion dollar increase from \$4.3 to \$4.1 billion.<sup>53</sup> Even with these increases, ICE overspends its congressionally appropriated budget.<sup>54</sup> Despite overspending, DHS still transferred \$271 million from the Federal Emergency Management Agency (FEMA), the Coast Guards, and other accounts for detention spending.<sup>55</sup> Although, Congress has reprimanded ICE for what it considers to be a “lack of fiscal discipline”, Congress still continues to increase

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2017)), available at

[https://www.advancingjustice-aaic.org/sites/default/files/2019-06/1153\\_AAIC\\_Immigration\\_Final\\_Pages\\_LR-compressed.pdf](https://www.advancingjustice-aaic.org/sites/default/files/2019-06/1153_AAIC_Immigration_Final_Pages_LR-compressed.pdf).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> 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-aaic.org/sites/default/files/2019-06/1153\\_AAIC\\_Immigration\\_Final\\_Pages\\_LR-compressed.pdf](https://www.advancingjustice-aaic.org/sites/default/files/2019-06/1153_AAIC_Immigration_Final_Pages_LR-compressed.pdf).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 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-aaic.org/sites/default/files/2019-06/1153\\_AAIC\\_Immigration\\_Final\\_Pages\\_LR-compressed.pdf](https://www.advancingjustice-aaic.org/sites/default/files/2019-06/1153_AAIC_Immigration_Final_Pages_LR-compressed.pdf).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *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=IwAR1IGzYYw3Ge\\_Xmr7x9EiT6RHFGKGnJwO18mPuUXw4x1O0UrJOP8AcAjoBc](https://www.npr.org/2019/08/27/754838143/as-puerto-rico-braces-for-storm-dhs-fema-to-move-271-million-to-border-operation?fbclid=IwAR1IGzYYw3Ge_Xmr7x9EiT6RHFGKGnJwO18mPuUXw4x1O0UrJOP8AcAjoBc) (last visited September 25, 2019).

funding. In FY 2019, ICE was allocated a record-breaking amount of \$4.2 billion for detention and deportation activities.<sup>56</sup>

#### **IV. Recommendations**

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 are often subject to years and decades of uncertainty and bureaucratic delay, they are often prone to longer periods of detention. All immigrants should get an individualized determination as to whether they are a threat to public safety or a flight risk that can't be addressed by some 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**

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 immigrant communities. We urge Congress to stop the human rights abuses that occur due to our current immigration

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<sup>56</sup> *Id.*

enforcement and detention system. We should turn to community-based solutions that help keep our immigrant communities strong and vibrant.



## STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE HOUSE SUBCOMMITTEE ON  
IMMIGRATION AND CITIZENSHIP

HEARING ON THE EXPANSION AND  
TROUBLING USE OF ICE DETENTION

September 26, 2019

Contact:  
Jorge Loweree  
Policy Director  
[JLoweree@immcouncil.org](mailto:JLoweree@immcouncil.org)  
Phone: 202-507-7543

1331 G Street NW,  
Suite 200  
Washington, D.C.  
20005

The American Immigration Council (“Council”) is a non-profit organization that has worked to increase public understanding of immigration law and policy—and the role of immigration in American society—for over 30 years. We write to thank the Subcommittee for scheduling this hearing to discuss ICE immigration detention facilities and their impact on immigrants, their families, and communities across the United States.

Immigration detention in the United States is rife with problems that limit due process and negatively impact the ability of immigrants to effectively defend themselves in court. In recent years, the Council has submitted numerous complaints to the Department of Homeland Security's Office of Civil Rights and Civil Liberties documenting widespread abuse in ICE detention. Today, we write to share our knowledge about these problems and inform the Subcommittee of these systemic human rights and due process violations. We hope that our perspective provides insight and context for this important hearing.

### **Systemic Failures: Inadequate Medical and Mental Healthcare Treatment for People Detained in ICE Facilities**

Far too frequently, immigrants in ICE detention experience civil and human rights violations, including inadequate medical care, sexual and physical abuse, exploitative labor practices, and even death.

The placement of ICE detention centers in rural areas—including facilities used to detain children and families—creates significant barriers to obtaining needed medical care.<sup>1</sup> Moreover, even detention centers that are located in urban areas are often understaffed and inadequately prepared to meet the



needs of the detained populations.<sup>2</sup> The systemic understaffing of medical units in ICE detention centers has serious consequences for the people detained in them.

For example, in June 2019, the Council identified a 71-year-old pre-diabetic man suffering from Parkinson's disease, a traumatic brain injury, chronic kidney disease, heart disease, and dementia who was detained by ICE in Aurora, Colorado ("Aurora"). The level of care in this contract facility was so deficient that this man was forced to rely on other detainees for help with day-to-day activities, such as showering. He was also denied critical medication because—according to the nurse—the facility did not have sufficient medicines in stock.<sup>3</sup> His condition deteriorated considerably while he was detained in Aurora. He told family members that he feared he would die in detention. He ultimately lost the ability to walk.<sup>4</sup>

Another person - a 28-year-old man detained in Aurora for five months in 2019 - suffered from serious physical and emotional effects relating to prior sexual trauma. He reported that, while he was detained in Aurora, he experienced severe pain and bleeding stemming from his prior experience. This man and his advocates reported difficulty in obtaining medical treatment for his condition as well as his medical records. His condition went untreated for the duration of his detention.<sup>5</sup> He described his experience in Aurora as follows:

Being detained there was terrible. The guards don't treat people well. They even say that they will not get us medical help unless we're dying. Not until we are dead will they help us.<sup>6</sup>

Further, another man detained in Aurora from August 2018 until June 2019 suffered from the effects of a traumatic brain injury, a seizure disorder, depression, anxiety, bipolar disorder, and post-traumatic stress disorder (PTSD). He experienced at least two seizures while in custody in Aurora. He had a history of at least two suicide attempts prior to being detained by ICE—both of which occurred while he was held in segregation at other facilities in the past. He also attempted suicide during his detention in Aurora. At the end of April, this man suffered a mental health crisis prompted by his frustration with his inadequate medical care. He injured his hand and yet did not receive medical attention for two days; he had to elevate his request with a GEO lieutenant in order to gain access to a medical provider. However, once examined, the nurse mocked him, causing his mental stability to spiral. Based on threats of self-harm, he was placed on suicide watch at the Aurora facility.<sup>7</sup>

Similar issues are also prevalent in the family detention context.<sup>8</sup> In 2015, the Council filed a complaint regarding inadequate medical treatment at the South Texas Family Residential Treatment Center in Dilley, Texas, where women were required to wait for up to 14 hours in the sun to receive medical care. For example, a woman with two broken fingers and a child who was vomiting blood were both instructed to "drink water" and were denied further care; more than 250 children were improperly administered adult doses of the Hepatitis A vaccine; intravenous fluids were administered through a bent needle; a five-year-old was denied prescription medication; and a woman with breast cancer was repeatedly denied care.<sup>9</sup> One woman described her experience with medical staff at the South Texas Family Residential Center in these words:



Simply, they don't care. What is more important for them is control. These are delicate situations when someone is sick and vulnerable. They just care about control.<sup>10</sup>

Four years after this complaint, the Council continues to document ongoing medical problems at the South Texas Family Residential Center. After an alarming increase in the number of infants held in detention, we raised the alarm about their treatment and urged their immediate release.<sup>11</sup>

Immigration detention facilities have also faced allegations of physical and sexual abuse of people in their custody.<sup>12</sup> In fiscal year 2015, 729 reports of abuse by ICE personnel or the staff at detention facilities were reported through ICE's Enforcement and Removal Operations' Detention Reporting and Information Line.<sup>13</sup> In Aurora, the Council documented physical and sexual harassment, including an instance when contract staff tackled and restrained a detainee to remove his shoes and socks before placing him in solitary confinement. The Council has also documented the confinement of a transgender woman in men's housing, where she was denied critical medical attention and subjected to extensive verbal and sexual harassment.<sup>14</sup> The woman said that:

People at Aurora Facility—both male detainees and guards—sometimes think it is their right to harass and grope me.<sup>15</sup>

For many, the failure to provide adequate medical care or protection from abuse has dire consequences. ICE has acknowledged at least 185 deaths of immigrants in detention between October 2003 and July 2018.<sup>16</sup> A whistleblower email obtained by the press indicates that at least some of these deaths were preventable.<sup>17</sup> Just this year, eight people have died in ICE custody.<sup>18</sup>

#### **Systemic Failures: Due Process Violations**

The over-detention of people across the country in jail-like settings undermines due process and prevents thousands of people from having their fair day in court.

Immigration detention is strictly civil in nature, which means that it is supposed to be "nonpunitive and merely preventative."<sup>19</sup> However, many aspects of immigration detention make it indistinguishable from criminal incarceration.<sup>20</sup> For example, detainees' liberty is highly restricted by regimented daily scheduling: there is constant surveillance, limited visitation hours and phone calls, and required government-issued uniforms and identification wristbands.<sup>21</sup> Additionally, immigration detainees can be disciplined, subjected to limited contact with outsiders, and ultimately held in segregation.<sup>22</sup>

Working with experienced and competent counsel significantly impacts the likelihood of success in immigration removal proceedings, and despite the fact that immigrants are subject to criminal-like detention, they are not provided government-appointed counsel.<sup>23</sup> Immigrants in removal proceedings only have legal representation when they are able to obtain counsel at their own expense.<sup>24</sup> In the family detention context, immigrants who are represented by attorneys are 14 times more likely to win their cases in court.<sup>25</sup> While nearly 40 percent of immigrants nationally are



represented by counsel, less than 20 percent of immigrants in ICE detention are represented by attorneys.<sup>26</sup> Moreover, ICE detention facilities present several unique and significant barriers that prevent immigrants from obtaining attorneys.<sup>27</sup>

As an example, contact with outsiders can be limited or unnecessarily expensive for immigration detainees held in privately-run detention facilities in which officials are permitted to control and manipulate the price of phone calls, including calls to legal counsel.<sup>28</sup> These prices are often too high for detainees to afford.<sup>29</sup> Immigration detention facilities are often located in rural, remote locations of the U.S. where it is difficult to find competent and experienced legal counsel.<sup>30</sup> Additionally, ICE regularly transfers immigration detainees between facilities, sometimes in different states. The Council has found that more than half of all detained immigrants are subject to such transfers.<sup>31</sup> Because transfers can cross state and circuit-court jurisdictional lines, it can be difficult for detainees to find legal counsel who can represent them throughout the entirety of their cases.<sup>32</sup>

#### **Systemic Failures: Immigration Detention Is Exceptionally Expensive**

Privately-run immigration detention centers cost the government exorbitant amounts of money each year. The average cost of detaining someone in ICE custody is approximately \$130 per day, although that cost varies depending on prices set by private prison companies.<sup>33</sup> Despite this high cost, the federal government has become more and more reliant on immigration detention. At the end of 2018, the President's budget request provided for 52,000 beds in immigrant detention centers.<sup>34</sup> And yet, detention is typically not necessary to ensure that immigrants and families appear in court. Our research shows that from January 2008 - June 2019, less than 20 percent of all non-detained immigrants in removal proceedings failed to appear in court.<sup>35</sup> Of those non-detained immigrants who were represented by counsel, 97 percent showed up in court.<sup>36</sup>

In contrast, the Executive Office for Immigration Review's Legal Orientation Program, which provides help to detainees seeking legal counsel, saved the government nearly 18 million dollars.<sup>37</sup> Similarly, releasing individuals on parole, under Orders of Supervision (electronic monitoring, periodic check-ins with ICE officers, or travel restrictions), or on their own recognizance after they have signed paperwork committing to attend scheduled immigration court hearings, are viable alternatives to detention.<sup>38</sup>

In light of the foregoing facts, we urge the committee to demand greater accountability from those tasked with enforcing our immigration laws, and to work to foster a system with greater respect for due process and the needs of vulnerable populations across the United States.

We thank you for the opportunity to submit this statement, and for the Subcommittee's efforts to engage in a thoughtful conversation about the impact of ICE detention on immigrants throughout the U.S.



- <sup>1</sup> Letter from American Immigration Council, American Immigration Lawyers Association, and Catholic Legal Immigration Network, Inc. to Cameron Quinn and John V. Kelly (February 28, 2019), [https://americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_urges\\_immediate\\_release\\_of\\_infants\\_from\\_immigration\\_detention.pdf](https://americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_urges_immediate_release_of_infants_from_immigration_detention.pdf).
- <sup>2</sup> Letter from American Immigration Council and American immigration Lawyers Association to Assistant Director Stewart D. Smith, Acting Inspector General Jennifer Costello, Officer Cameron Quinn, and Acting Director Mark Morgan, 5-6 (June 11, 2019), [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_supplement\\_failure\\_to\\_provide\\_ad\\_equate\\_medical\\_and\\_mental\\_health\\_care.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_ad_equate_medical_and_mental_health_care.pdf).
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.*
- <sup>5</sup> *Id.* at 8-9.
- <sup>6</sup> *Id.*
- <sup>7</sup> *Id.* at 3-4.
- <sup>8</sup> American Immigration Council, "Deplorable Medical Treatment at Family Detention Centers" (Washington, DC: 2015), <https://www.americanimmigrationcouncil.org/news/deplorable-medical-treatment-family-detention-centers> (last visited Sept. 23, 2019).
- <sup>9</sup> *Id.*
- <sup>10</sup> *Id.*
- <sup>11</sup> AIC, *supra* note 1.
- <sup>12</sup> Ian Peacock and Emily Ryo, *The Landscape of Immigrant Detention in the United States* (Washington, DC: American Immigration Council, 2018), 5, <https://americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states>.
- <sup>13</sup> *Id.* at 25-26.
- <sup>14</sup> AIC, *supra* note 2 at 6-7.
- <sup>15</sup> *Id.* at 7.
- <sup>16</sup> Peacock, *supra* note 12 at 5.
- <sup>17</sup> Ken Klippenstein, "ICE Detainee Deaths Were Preventable: Document," TYT, June 3, 2019, <https://tyt.com/stories/4vZLCHuQrYE4uKagv0oyMA/688s1LbTKvQKNCv2E9bu7h>.
- <sup>18</sup> See, e.g. U.S. Immigration and Customs Enforcement, "ICE detainee from Mexico passes away at Illinois hospital," June 12, 2019, <https://www.ice.gov/news/releases/ice-detainee-mexico-passes-away-illinois-hospital> (last visited September 23, 2019).
- <sup>19</sup> Peacock, *supra* note 12 at 8.
- <sup>20</sup> *Id.*
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.*
- <sup>23</sup> *Id.*
- <sup>24</sup> Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court* (Washington, DC: American Immigration Council, 2016), 1, <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.
- <sup>25</sup> TRAC, *Representation makes fourteen-fold difference in outcome: immigration court "women with children" cases*, 2015, <http://trac.syr.edu/immigration/reports/396/> (last visited September 23, 2019).
- <sup>26</sup> *Id.* at 5.
- <sup>27</sup> *Id.* at 1.
- <sup>28</sup> PennState Law Center for Immigrants' Rights Clinic, *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers*, 2017, 43, [https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\\_Justice\\_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).
- <sup>29</sup> *Id.*
- <sup>30</sup> Peacock, *supra* note 12 at 15-16, 21.
- <sup>31</sup> *Id.* at 18.
- <sup>32</sup> *Id.* at 19.
- <sup>33</sup> Southern Poverty Law Center, National Immigration Project of the National Lawyers Guild, and Adelante Alabama Worker Center, *Shadow Prisons: Immigrant Detention in the South*, 2016, 10, <https://perma.cc/2GMD-M9RD>.
- <sup>34</sup> Peacock, *supra* note 12 at 7.
- <sup>35</sup> American Immigration Council, *Immigrants and Families Appear in Court: Setting the Record Straight* (Washington, DC: 2019), 2, [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_and\\_families\\_appear\\_in\\_court\\_setting\\_the\\_record\\_straight.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_and_families_appear_in_court_setting_the_record_straight.pdf).
- <sup>36</sup> *Id.*
- <sup>37</sup> Cost Savings Analysis - The EOIR Legal Orientation Program, 3 (2012), [https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/14/LOP\\_Cost\\_Savings\\_Analysis\\_4-04-12.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/03/14/LOP_Cost_Savings_Analysis_4-04-12.pdf).





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<sup>38</sup> American Immigration Council, *Seeking Release From Immigrant Detention* (Washington, DC: 2013), 2, [https://www.americanimmigrationcouncil.org/sites/default/files/research/seeking\\_release\\_from\\_immigration\\_detention.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/seeking_release_from_immigration_detention.pdf).

**Statement for the Record**

Erin Anderson  
 Pro Bono Coordinator | Al Otro Lado  
[erin@alotrolado.org](mailto:erin@alotrolado.org)  
 952.465.2200

The first time I set foot in an immigration detention center was in Ocilla, GA. I was working as a Project Coordinator for the Southern Poverty Law Center and had been sent in to the Irwin County Detention Center (ICDC) to conduct intakes with potential clients. I spoke with several detained individuals that day and left feeling shocked and appalled at the fact that people were locked up all across our country in conditions like those I witnessed at ICDC. I spent one year working with folks detained at ICDC, and it was the most difficult year of my life to date. Meeting with parents ripped from their children's arms, talking with adults clearly displaying indicia of mental illness but forced to represent themselves in proceedings, and watching over and over again as our clients were denied bond, parole, and immigration relief by judges who heard their hearings via video teleconference was disheartening to say the least. Needless to say, I was immensely excited to begin a new position with Al Otro Lado in San Diego, CA working with detained individuals at the Otay Mesa Detention Center (OMDC). I had assumed that, due to its urban location, this facility would offer greater attorney access and better conditions than the rural facility in southern Georgia. I was terribly wrong. Wait times to meet with clients detained at OMDC were rarely under two hours. Staff simply "forgot" to call for clients to come up to our meetings on multiple occasions, meaning that my time and my trip out to the facility were wasted. I met with countless individuals who complained of atrocious medical neglect.

It would be impossible to accurately convey all the pain, suffering, and hopelessness that our clients and other detained persons at these facilities experienced, but below are several stories that stand out to me during my two years of working primarily on detained removal defense:

- M.A. was a mother of three children whose husband had horribly abused her. She had filed multiple restraining orders against him, and he was ultimately deported from the United States. As a single mother, she worked multiple jobs to support her children. She was arrested for driving without a license and detained at ICDC. When I met with her, she had been detained for several months, leaving behind her three young children to fend for themselves with the support of a local church group. We represented M.A. for purposes of release on bond. Her bond was set at \$12,000, an absolutely unattainable amount for someone in her circumstances. We watched her lose significant weight and physically deteriorate as she remained detained and separated from her children because she did not have \$12,000. She wept every single time we met with her. She could not focus, and

she was almost unrecognizable as the weeks dragged on. Her kids were going to go into foster care and suffered greatly from the separation and their concern for their mother. Eventually, after pro bono attorneys prepared a robust motion to reconsider the original bond amount and went to argue it twice, M.A.'s bond was lowered by the immigration judge in Atlanta to \$6,000. M.A. was finally released after half a year in detention away from her school-age children.

- S.E.C. was a 20-year-old Guatemalan asylum seeker who had been detained for eight months when I first met with him. He had been arrested in California for being on a beach without a permit and transferred across the country away from his family to Georgia, where he was shuffled between three different facilities.

**He had not had a single court hearing due to all this moving around by the time our team learned about him.** Naturally, he was desperate for help and felt isolated and lonely since he was too far away from his family for them to visit. We quickly prepared a motion to request his release on bond. Though S.E.C. had no criminal history and the immigration judge concluded that he had a colorable claim for relief, his bond was set at \$12,000.

- M.V.G. was a single mother of six minor United States Citizen children who had been detained for over one year when I first met with her at ICDC. I was shocked to hear that she had been detained for so long. I was even more shocked to learn that M.V.G. has won immigration relief in immigration court six months prior to our meeting but remained detained. We found out that the government had appealed the immigration judge's decision to grant her relief, and the government continued to detain her while the appeal wound its way through the Board of Immigration Appeals. The father of M.V.G.'s six children had been deported to Mexico and been severely physically handicapped in a tragic car accident, rendering him completely unable to provide support to the family in M.V.G.'s absence. All of her children had to relocate from their schools and move in with M.V.G.'s father into a small apartment. We requested that M.V.G. be released on bond, and she was finally released two months after we met with her. Had we not stepped in, she may still be detained today.
- M.T.T. was a Cameroonian asylum-seeker who had been detained for well over a year when I first met with her. Her husband was the survivor of brutal torture at the hands of the Cameroonian government, and she had fled to the United States when the government came looking for him and tortured and threatened her in an attempt to get to him. M.T.T. had been detained in ICDC while her husband had been sent to a different facility, where he was quickly able to obtain release. Because M.T.T. was in a separate facility from her husband, and because her husband had been released, their cases were not joined. She was ordered removed by an immigration judge in Atlanta although she had a colorable claim for asylum

(the Atlanta immigration court denies nearly 97% of asylum cases). My team submitted a parole request asking for M.'s release from ICDC so that she and her husband could reunite and join their asylum cases. We did not receive any response to that request for months, and only when we followed up multiple times were we told that the request had been denied. By the time my contract ended in Ocilla, M. was still detained. At that time, she had been detained for two years.

- J.G.S. is a Honduran political asylum-seeker who had been detained for nearly six months when I first met him. During the first four months of his detention, he had not had any court hearings because he contracted chicken pox and was quarantined. He was sickly and evidently deteriorating in detention. We immediately requested a bond hearing for J.G.S. We were absolutely shocked when bond was denied. J.G.S. has no criminal history whatsoever and has family ties to the United States, as well as a colorable claim for immigration relief. He was devastated at the decision. His brother, with whom he had come to the United States seeking protection, was separated from him and held at Adelanto Detention Center, a remote facility hours and hours from J.G.S. His brother and him had not spoken for six months when J.G.S. found out he had given up due to hopelessness and self-deported. Our team submitted a motion to reconsider the immigration judge's decision regarding bond and, thankfully, J.G.S. was released several weeks later. If our team had not stepped in, he would likely still be in detention.
- Y.E. is a trans woman from Mexico. She was brutally raped again and again, tortured, beaten and kept hostage by the cartels for months because she dressed as a woman. The rapes caused tears in her anus and rectum. The rapes also resulted in her being HIV positive. After she presented herself at the border, lawfully asking for asylum, she was placed in a detention center and was taken off medication for HIV for a significant amount of time. In addition, she repeatedly asked for help with the tears in anus/rectum. The medical staff at the detention center refused to address it because it did not happen at the facility and because they believed it to be too invasive. Because no treatment was given, Y.E. caught an infection that resulted in anal bleeding. She was held in custody for months before finally being released on parole.

These are but a few stories of the ways in which immigration detention causes needless suffering. Immigration detention does not make the United States safer -- it only endangers the most vulnerable among us. There are effective, reliable alternatives to detention that we must explore if we want to be a country with a conscience. For instance, assigning a case manager to newly arriving immigrants would help to ensure that respondents are familiar with the

immigration court system, know how to access attorneys, and have the information necessary to attend their hearings and check-ins with officials. Most court hearings are missed not because respondents do not want to zealously pursue their cases, but rather because they lack access to the vital information they need. I have worked daily with detained immigrants for two years, and I have never been more confident that detention is inhumane and completely unnecessary. If we want to be on the right and just side of history, we must end the needless practice of detaining individuals for no reason other than the fact that they lack immigration status. No immigrant in detention is there for a crime: if an immigrant has committed a crime, he or she has already served time in our criminal justice. Immigration detention is doubly punitive for such individuals. For asylum seekers, detention is re-traumatizing and prevents them from zealously pursuing their cases because it strips them of access to critical resources required to prepare asylum claims.

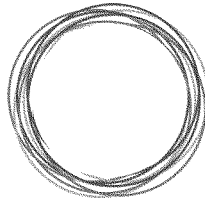
I urge our government to reconsider the current use and expansion of immigrant detention. There are humane alternatives. We must pursue them.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Erin Anderson', with a stylized, cursive script.

Erin Anderson



The  
CENTER for  
VICTIMS of  
TORTURE

**Statement for the Record by the Center for Victims of Torture**  
**U.S. House of Representatives Committee on the Judiciary**  
**Subcommittee on Immigration and Citizenship**  
**“The Expansion and Troubling Use of ICE Detention”**  
**September 26, 2019**

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The Center for Victims of Torture (CVT) commends the House Judiciary Committee for holding an oversight hearing on the expansion and troubling use of detention by U.S. Immigration and Customs Enforcement (ICE). We appreciate the opportunity to submit this statement for the record.<sup>i</sup>

Founded in 1985 as an independent non-governmental organization, the Center for Victims of Torture is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives of more than 25,000 primary and secondary survivors, including children. CVT also conducts research, training, and advocacy, with each of those programs rooted in CVT’s healing services. The organization’s policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational / humanitarian aid providers, and foreign policy experts. The vast majority of CVT’s clients in the United States are asylum seekers. Indeed, research has shown that an astonishing number of number of refugees and asylum seekers—as many as 44% across certain populations—are torture survivors.<sup>ii</sup>

Since 2016, CVT has operated a torture survivor treatment program in the State of Georgia, home to several immigration detention centers, including Stewart, Irwin, Folkston and now Deyton. During that time, CVT-Atlanta clinicians have provided healing care to hundreds of primary and secondary survivors of torture, including those who have been detained in Georgia’s immigration detention centers while seeking asylum.

CVT’s extensive experience providing mental health services to asylum seekers and refugees both inside and outside the United States uniquely positions us to speak to the adverse mental and physical health effects of prolonged detention in harsh, prison-like conditions, especially—though not only—for individuals who have come to the United States seeking refuge from persecution in their homelands.

**The Indefinite Nature of Immigration Detention, Particularly When Prolonged, Can Cause Both Psychological and Physical Trauma.**

CVT considers detention “indefinite” when it is without charge or trial for an undefined duration throughout which the individual does not know when or whether she will be released. In the immigration context, length of detention often depends on a variety of factors, most of which are entirely outside of detainees’ control and are not clearly communicated or predictable. Individuals typically have limited access to information about their options or what they can do or expect at each stage, and the information they do receive may be in a language (or legal jargon) they do not understand.<sup>iii</sup>

From three decades of experience healing torture survivors, CVT knows that indefinite detention can cause such severe and protracted health problems that it rises to the level of cruel, inhuman, and degrading treatment.<sup>iv</sup> The indeterminacy of indefinite detention can be overpowering—it creates such uncertainty, unpredictability, and loss of control over the basic aspects of one’s life that it seriously harms healthy individuals, independent of other aspects or conditions of detention.

Indeed, as CVT has previously explained, “medical examinations have documented indefinite detention leading to profound depression and vegetative symptoms, with all the attendant degradation of multiple aspects of health.”<sup>v</sup> Indefinite detention’s harmful psychological and physical effects can include:

- Severe and chronic anxiety and dread;
- Pathological levels of stress that have damaging effects on the core physiologic functions of the immune and cardiovascular systems, as well as on the central nervous system;
- Depression and suicide;
- Post-traumatic stress disorder (PTSD); and
- Enduring personality changes and permanent estrangement from family and community that compromises any hope of the detainee regaining a normal life following release.<sup>vi</sup>

Many of CVT’s clients who were subjected to indefinite detention speak of the absolute despair they felt, never knowing if their detention would come to an end.

*Fahran worked as a translator to the U.S. Army in Afghanistan. He fled to the United States after being targeted for this work. After several months of travel via planes, road, and rivers through Dubai, Brazil, Ecuador, Colombia, Central America, and Mexico, he arrived at the U.S. border. He was ultimately transferred to a Texas detention center, where he remained for 23 months before being granted asylum. He spoke of the state he observed in other detainees there. “I saw people who lost their minds. They couldn’t take it. It just became too much. One guy was not able to eat. He wouldn’t talk. He felt too much pressure; he started to breakdown. Then he just vanished from the dorms and we never knew what happened to him.”<sup>vii</sup>*

As one CVT clinician explained: “Imagine living with the constant question: Am I ever going to get out of here? . . . In the context of everything that is happening—from apprehension at the

border and throughout their time in detention—the indefinite nature of the detention experience is a destructive blanket over it all.”<sup>viii</sup>

Indefinite detention also affects individuals beyond the detainee himself / herself. When a loved one is indefinitely detained, families are separated; parents, spouses, and children can suffer—and have suffered—similar feelings of uncertainty, unpredictability, and uncontrollability, leading to the physical and psychological effects described above.

**U.S. Asylum Seekers, Many of Whom Have Suffered Significant Trauma, Are Routinely Detained in ICE Detention Facilities.**

Large numbers of people seeking protection in the United States have already survived deeply traumatic experiences, including torture. They are doctors, lawyers, accountants, teachers, students, mothers and fathers who were targeted in their home countries for opposing corrupt regimes, speaking out for democracy, practicing their faith, or refusing to participate in violent conflict. By the time they reach the U.S. border, most have made long and perilous journeys with little more than the clothes on their backs. CVT clients have traveled to the U.S. border in search of asylum from Afghanistan, Ethiopia, Eritrea, Cameroon, Central America, Brazil, Colombia and Venezuela.

Yet, when asylum seekers reach the U.S. border, they are increasingly denied entry and forced to remain in Mexico, or otherwise pressured to turn back. If they manage to enter, they are almost always handcuffed and detained in terrible and prison-like conditions.<sup>ix</sup>

*When Pablo and his wife arrived at the U.S. port of entry, fleeing persecution in Colombia, they presented themselves to Customs and Border Protection officials and asked for asylum. “At the border,” recalled Pablo, “Immigration tried to force us to sign some papers and go back to Mexico. We kept saying ‘we are here for help.’” Pablo and his wife were both handcuffed and taken to Laredo, Texas, but were separated soon afterward. She was sent to a facility in Taylor, Texas, while Pablo was shackled—hands, waist and feet—and put on a plane to another facility in Buffalo, New York. “I kept saying, ‘I’m here to apply for asylum in the United States. Why are you treating me this way?’ It was very traumatic to be arrested and separated like that.”<sup>x</sup>*

Asylum seekers regularly express disbelief that they have been criminalized by virtue of trying to find protection. Research conducted by the United Nations High Commissioner for Refugees (UNHCR) suggests, “[M]any asylum seekers are unaware of the detention policies of their destination countries, or indeed have little or no say about their journey or their final destination.”<sup>xi</sup> In a 2011 report, Physicians for Human Rights (PHR) noted, “[I]ndividuals who are detained by repressive regimes on account of their political activities tend to survive the experience with fewer short and long term health consequences than individuals who are shocked to find themselves in custody [in the place where they seek refuge].”<sup>xii</sup>

**Detention in ICE Facilities Exacerbates Pre-Existing Trauma.**



The profound health consequences of indefinite immigration detention—described above—are intensified in people who have been traumatized before being detained. For survivors of torture, even detention for a short period can be extremely harmful, bringing the original torture experience back to mind and exacerbating their mental health symptoms.<sup>xiii</sup>

As CVT has previously reported:

Detention is a daunting experience for anyone, but particularly egregious for survivors of torture. To experience torture is to be dehumanized, psychologically dismantled, humiliated, forced to endure excruciating pain, and rendered powerless. For survivors, whose torture may have occurred while in a confinement setting, the immigration detention experience is often retraumatizing and may lead survivors to relive their horrid experiences of torture, including the profound sense of powerlessness and loss of sense of self, contributing to further psychological damage.<sup>xiv</sup>

Multiple studies evaluating the detention of asylum seekers have demonstrated that detention has a particularly negative impact on trauma survivors.<sup>xv</sup> Indeed, a 2015 systematic study of research into the mental health impact of detention on asylum seekers found “evidence to suggest an independent deterioration of the mental health due to detention of a group of people who are already highly traumatized. Adverse effects on mental health were found not only while the asylum seekers were detained . . . extending well beyond the point of release into the community.”<sup>xvi</sup>

An October 2018 literature review conducted by Physicians for Human Rights (PHR) corroborates, and expands upon, these conclusions:

The data . . . demonstrates that detention negatively impacts mental health outcomes for refugee children, adolescents, and adults. The marginalizing and restricting environment re-traumatizes asylum seekers, an already vulnerable population with a significant pre-history of trauma, instead of providing them with the safety that they need. The experience of detention is associated with increased rates of psychological and developmental disorders among refugees, which include PTSD, major depressive disorders, attachment disorders, separation anxiety, episodes of self-harm, and attempted and completed suicides.<sup>xvii</sup>

Other studies have shown similar negative impacts even when detention was relatively brief (approximately 30 days).<sup>xviii</sup> These findings are consistent with CVT’s clinical experience. According to CVT’s Director of Client Services, Dr. Andrea Northwood:

One of the features of PTSD is that its symptoms (nightmares, flashbacks, feeling the same terror one felt during a previous trauma, etc.) are often triggered by exposure to reminders of that trauma. Immigration detention facilities are replete with these reminders: uniformed guards, institutional settings, guns, limited control or movement, shackles, wearing a prison-like uniform, being threatened with forced removal (routinely regarded as a death sentence for CVT asylum-seeking clients), being under the control of a government authority. These are all

common features of traumatic events that persons who are fleeing political persecution and human rights violations have already experienced. In my experience, trauma survivors in institutional settings such as locked hospital wards or prisons experience significant exacerbation of their PTSD re-experiencing and hyper-arousal symptoms in the presence of these triggers, with accompanying heightened distress and emotional dysregulation. It has been my consistent clinical observation in treating asylum seekers that symptoms of Major Depression and PTSD [also] increase substantially in environments of deprivation and boredom.... Sitting around all day with nothing to do is described as a major stressor (at best) and even a cause of insanity (“going crazy”) by our asylum-seeking trauma survivors, as they use “keeping busy” and meaningful activity to distract themselves from involuntary, disturbing traumatic memories as well as profound sadness and loss.

**Inadequate Medical Care and Excessive Use of Isolation in Immigration Detention Centers Put Detainees—Torture and Trauma Survivors in particular—at Risk of Serious Harm and Even Death.**

Since opening a torture survivor treatment center in Georgia, CVT has been stunned and concerned by the repeated allegations of human rights violations at Stewart Detention Center in Lumpkin, Georgia, run by the for-profit company CoreCivic. Torture survivors have complex mental health needs, and the lack of adequate health care and the excessive use of isolation that has been documented at Stewart places survivors at grave risk of harm and even death.

In 2018, the Atlanta public radio station WABE and Reveal from the Center for Investigative Reporting obtained nearly one hundred pages of records from the U.S. Department of Homeland Security’s Office of Inspector General. These unveiled serious issues at Stewart, including inadequate medical staff and long-term use of solitary confinement.<sup>xx</sup> Although Stewart is one of the country’s largest immigration detention centers, records confirmed it had no psychiatrist on staff, “chronic shortages” of almost all medical positions, and was described by its own staff as a “ticking bomb.”<sup>xx</sup> Similar concerns were also identified in a report by the DHS Office of Inspector General released in December 2017.<sup>xxi</sup>

Advocates have similarly documented grave human rights violations at Stewart over the past several years.<sup>xxii</sup> Perhaps most concerning to CVT are the findings about the continuing absence of adequate mental health care at Stewart, coupled with the use of prolonged solitary confinement for people suffering from mental health issues.

According to a 2019 Submission to the U.S. Commission on Civil Rights by Project South:

Most detained immigrants at Stewart reported that they have no access to therapists or psychiatrists, and many were not even aware that such services were available. Those suffering serious mental afflictions are placed in handcuffs and helmets and put in solitary confinement. As a result, detained immigrants who suffer from mental health issues and are aware of potential mental health services are often too fearful to express their need for care.<sup>xxiii</sup>

A 2018 Submission by Penn State Law School and Project South to the Inter-American Commission on Human Rights also noted:

[S]olitary confinement also represents the default assignment for detained immigrants who express mental health issues and seek counseling. Detained immigrants convey that if individuals tells a staff member or nurse that they were feeling suicidal, they would be placed in a straitjacket and sent to solitary confinement. . . . One male detained immigrant from Nigeria recounted: "Segregation is like hell. It is total isolation." Within solitary confinement units at Stewart, detained immigrants reported being unable to tell day from night; being denied access to the commissary or showers; and being prohibited from using phones, obtaining medical attention, and engaging in recreational activities.<sup>xxxiv</sup>

The misuse of solitary confinement at Stewart has already resulted in the death of two men with diagnosed mental health issues. (In total, four men have died at Stewart in the last two years alone).<sup>xxxv</sup> In July 2018, Efrain Romero de la Rosa, a 40-year-old immigrant detained at Stewart, with bipolar disorder, died of suicide after 21 days in solitary confinement. One year before Efrain's death—on May 15, 2017—Jeancarlo Jiménez-Joseph, a 27-year-old immigrant with schizophrenia detained at Stewart, died of suicide by hanging himself after 19 days in solitary confinement. An ICE "detainee death review," found staff at the agency's Stewart Detention Center in Lumpkin, Georgia, failed to refer Jean Carlos Jimenez-Joseph for an "urgent mental health assessment," even after he reported auditory hallucinations and told staff he was trying to kill himself when he jumped from a second-tier balcony.<sup>xxxvi</sup> CVT's Senior Public Policy Counsel recently assisted with the case of a torture survivor detained at Stewart who had not been provided with mental health services despite showing symptoms clearly demonstrating a need for such services.

#### **Immigration Detention Often Results in Family Separation, Which Has A Devastating Impact on Families.**

Because immigration detainees are often held in detention facilities far from their family members, or, as in Georgia, in remote locations that are difficult to access, immigration detention can lead to family separation, which itself has a devastating impact on families.

Family separation is common at Georgia's Stewart Detention Center. CVT's Senior Policy Counsel recently traveled to the facility located in Lumpkin, Georgia, where the nearest hotel is a 45-minute drive away and affordable public transportation is non-existent. Most families of detainees live hundreds, even thousands, of miles from the detention center. Often the breadwinner is the one behind bars, and having to make the trip to visit loved ones further strains the pockets of families as they take time off work and spend money on attorneys and hotels. As a recent five-city study shows, the effects of immigration detention on the finances, health and well-being of families are starting to reverberate in our communities.<sup>xxxvii</sup>

Highly-traumatized populations are particularly vulnerable to the adverse effects of family separation. In a letter to then-DHS Secretary Kirstjen Nielsen and then-Attorney General Jeff Sessions, over 20,000 medical and mental health professionals and researchers working in the

United States that the “relationship of parents and children is the strongest social tie most people experience, and a threat to that tie is among the most traumatic events people can experience.”<sup>xxviii</sup>

Separating a child from parents can have extreme consequences causing an effect known as adverse childhood experience (ACE). ACEs can lead to multiple forms of impairment and increased risk of serious mental health conditions, including post-traumatic stress disorder (PTSD).

### Conclusion

CVT thanks the House Judiciary Committee for the opportunity to share some of the harmful and life-threatening effects of immigration detention on survivors of torture and their families seeking refuge in the U.S. Congress can and should take the following steps:

- Reduce funding for ICE and shift resources to humane alternatives to detention (ATD). Data on ATD programs demonstrates that they produce a 99.3 percent immigration court attendance rate.<sup>xxx</sup> More importantly to tax payers, alternatives to detention cost \$38 per day per family unit, while detention costs \$320 per day per family unit—around 10 times more.<sup>xxx</sup>
- Terminate DHS’s authority to transfer and reprogram funds for the purpose of detention.
- Place strong guardrails on the treatment of people in ICE custody.

<sup>i</sup> For questions or for more information about CVT’s work in this area and on related issues, please contact Andrea Carcamo, CVT’s Senior Policy Counsel ([acarcamo@cvt.org](mailto:acarcamo@cvt.org)), or Darlene Lynch, Head of External Relations for CVT-Atlanta ([dlynch@cvt.org](mailto:dlynch@cvt.org)).

<sup>ii</sup> Office of Refugee Resettlement, *Survivors of Torture Program*, <https://www.acf.hhs.gov/orr/programs/survivors-of-torture>; Kalt, et al. *Asylum Seekers, Violence and Health: A Systemic Review of Research in High Income Host Countries*, march 2013, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673512/>

<sup>iii</sup> the Center for Victims of Torture & The Torture Abolition and Survivor Support Coalition, *Tortured & Detained – Survivor Stories of U.S. Immigration Detention* (2013) (hereinafter “Tortured and Detained”) at 11. [https://www.cvt.org/sites/default/files/Report\\_TorturedAndDetained\\_Nov2013.pdf](https://www.cvt.org/sites/default/files/Report_TorturedAndDetained_Nov2013.pdf).

<sup>iv</sup> Brief for the Center for Victims of Torture as Amicus Curiae at 8, *Al Bihani et al. v. Trump*, 09-cv-00745-RCL (D.C. Dist. Ct., January 24, 2018) (hereinafter “CVT Guantanamo Amicus Brief”). <https://www.cvt.org/sites/default/files/Final%20Amicus%20Brief-4-Jan%202018.pdf> (citing Curt Goering, The Center for Victims of Torture, Testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights: Closing Guantanamo: The National Security, Fiscal, and Human Rights Implications 1 (2013), <http://www.cvt.org/sites/default/files/attachments/u10/downloads/CVT-Testimony-SenateClosingGuantanamo-2013July.pdf>); see also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/HRC/28/68 (Mar. 5, 2015) (by Juan Mendez) at 17 (calling on states to “expeditiously and completely, cease the detention of children, with or without their parents, on the basis of immigration status,” and concluding that “the deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity,” ... “becomes grossly disproportionate,” and “may constitute cruel, inhuman or degrading treatment of migrant children.”), <https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session28/pages/listreports.aspx>.

<sup>v</sup> CVT Guantanamo Amicus Brief at 8.

<sup>vi</sup> *Id.* at 9.

<sup>vii</sup> *Tortured and Detained* at 2, 11.

<sup>viii</sup> *Tortured and Detained* at 2-3.

<sup>ix</sup> CVT, “Eight Facts About Refugees and Asylum-Seekers,” <https://www.cvt.org/EightFactsAsylum>.

<sup>x</sup> Id. at <https://www.cvt.org/AsylumFact4>.

<sup>x1</sup> Edwards, Alice, "Detention Under Scrutiny," Forced Migration Review, Issue 44 at 5 (September 2013), <http://www.fmreview.org/en/detention.pdf> (citing Costello C & Kaytaz E, Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva, UNHCR Legal and Protection Policy Research Series (June 2013), available at [www.unhcr.org/51c1c5cf9.html](http://www.unhcr.org/51c1c5cf9.html)).

<sup>x2</sup> Physicians for Human Rights, "Punishment Before Justice: Indefinite Detention in the U.S.," at 11 (2011), [https://s3.amazonaws.com/PHR\\_Reports/indefinite-detention-june2011.pdf](https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf).

<sup>x3</sup> Tortured and Detained at 12; Physicians for Human Rights, "Punishment Before Justice: Indefinite Detention in the U.S.," at 11 (2011), available at [https://s3.amazonaws.com/PHR\\_Reports/indefinite-detention-june2011.pdf](https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf). ("[These harms] threaten to severely exacerbate existing severe physical and psychological symptoms, perpetuate mental suffering, and thereby foreclose any opportunity for healing.").

<sup>x4</sup> Torture and Detained, 2-3.

<sup>x5</sup> Id. at 13 n.26 (citing relevant studies).

<sup>x6</sup> Filges, T., Montgomery, E., Kastrop, M., Jorgensen, A.K., The impact of detention on the health of asylum seekers: A systematic review at 40, *Campbell Systematic Reviews* (2015).

<sup>x7</sup> The Impact of Immigration Detention on Migrant Mental Health at 5, PHR Issue Brief, October 2018, [https://s3.amazonaws.com/PHR\\_other/factsheets/PHR\\_Asylum\\_Issue\\_Brief\\_Immigration\\_Detention\\_Impact\\_on\\_Mental\\_Health.pdf](https://s3.amazonaws.com/PHR_other/factsheets/PHR_Asylum_Issue_Brief_Immigration_Detention_Impact_on_Mental_Health.pdf); see also From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers at 10, Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, June 2003, <https://phr.org/wp-content/uploads/2003/06/persecution-to-prison-US-2003.pdf>.

<sup>x8</sup> Cleveland, J., Rousseau, C., Psychiatric symptoms associated with brief detention of adult asylum seekers in Canada at 58, *The Canadian Journal of Psychiatry*, 409-416 (2013).

<sup>x9</sup> Elly Yu, WABE, Exclusive: An ICE Detention Center's Struggle With 'Chronic' Staff Shortages, May 13, 2018, <https://www.wabe.org/exclusive-an-ice-detention-centers-struggle-with-chronic-staff-shortage>, citing Records of U.S. Department of Homeland Security, Office of Inspector General, Office of Inspections & Evaluations, provided in response to Freedom of Information Request, dated January 11, 2018, [https://www.wabe.org/wp-content/uploads/2018/05/2018-IGFO-00059\\_Final-Response\\_watermark-4.pdf](https://www.wabe.org/wp-content/uploads/2018/05/2018-IGFO-00059_Final-Response_watermark-4.pdf).

<sup>x0</sup> Id.

<sup>x1</sup> Department of Homeland Security, Office of Inspector General, "Concerns about ICE Detainee Treatment and Care at Detention Facilities," December 11, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

<sup>x2</sup> Penn State Law, Center for Immigrants' Rights Clinic and Project South, "Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers," May 2017, [https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\\_Justice\\_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf); Project South/Detention Watch Submission to Inter-American Commission on Human Rights, July 17, 2018, [https://projectsouth.org/wp-content/uploads/2018/07/IACHR-Request-For-Hearing-Immigrant-Detention-in-Georgia\\_169-Period-of-Sessions.pdf](https://projectsouth.org/wp-content/uploads/2018/07/IACHR-Request-For-Hearing-Immigrant-Detention-in-Georgia_169-Period-of-Sessions.pdf); Project South/Detention Watch Submission to the US Commission on Civil Rights, May 13, 2019, <https://projectsouth.org/wp-content/uploads/2019/05/Comment-to-U.S.-Commission-on-Civil-Rights-Georgia-Detention-Centers.pdf>.

<sup>x3</sup> Project South/Detention Watch Submission to the US Commission on Civil Rights, May 13, 2019, <https://projectsouth.org/wp-content/uploads/2019/05/Comment-to-U.S.-Commission-on-Civil-Rights-Georgia-Detention-Centers.pdf>.

<sup>x4</sup> Project South/Detention Watch Submission to Inter-American Commission on Human Rights, July 17, 2018, [https://projectsouth.org/wp-content/uploads/2018/07/IACHR-Request-For-Hearing-Immigrant-Detention-in-Georgia\\_169-Period-of-Sessions.pdf](https://projectsouth.org/wp-content/uploads/2018/07/IACHR-Request-For-Hearing-Immigrant-Detention-in-Georgia_169-Period-of-Sessions.pdf).

<sup>x5</sup> In January 2018, 33-year-old Yulio Castro Garrido died of pneumonia while detained at Stewart despite being healthy prior to detention. In July 2019, Pedro Arriago-Santoya, a 44-year-old Mexican national who had been in ICE custody awaiting removal at the Stewart Detention Facility in Lumpkin, Georgia, died from cardiac arrest after complaining of abdominal pain.

<sup>x6</sup> Erin Donaghue, CBS News, "ICE review found failures in care of mentally ill detainee who died by suicide," August 22, 2019, <https://www.cbsnews.com/news/jean-carlos-jimenez-joseph-ice-review-documented-failures-in-care-of-mentally-ill-detainee-who-died-by-suicide/>.

<sup>x7</sup> Kaiser Family Foundation, Issue Brief, "Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being," Sep 18, 2018, <https://www.kff.org/report-section/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being-issue-brief/>.

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<sup>xxviii</sup> Letter to Kirstjen Nielsen, Secretary, U.S. Department of Homeland Security, June 14, 2018, [https://s3.amazonaws.com/PHR\\_other/Separation\\_Letter\\_FINAL.pdf](https://s3.amazonaws.com/PHR_other/Separation_Letter_FINAL.pdf).

<sup>xxlix</sup> Women's Refugee Commission, Backgrounder on Family Case Management Program, <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>.

<sup>xxx</sup> Id.

Detention Watch Network submits the following testimony to the Immigration and Citizenship Subcommittee of the House Judiciary Committee for the hearing on “The Expansion and Troubling Use of ICE Detention.” Detention Watch Network is a national membership organization building power through collective advocacy, community organizing, and strategic communications to abolish immigration detention in the United States.

## **I. Size and Scope of the System**

The Department of Homeland Security (DHS) operates a sprawling network of more than 200 long term (more than 72 hour) immigration jails across the country that are managed and overseen by Immigration and Customs Enforcement (ICE). As of September 14, 2019, ICE is detaining 51,814 individuals after reaching a historic high of over 55,000 people in detention in August of 2019.<sup>1</sup> This massive detention system is a recent development, as detention was rarely used prior to the 1980s. However, spurred by migration of individuals from Haiti and Cuba in the 1980s, the US began to detain migrants both as a way of managing immigration cases as well as a tactic to deter people from migrating in the first place.<sup>2</sup>

The ICE detention system arbitrarily detains tens of thousands of people every day in inhumane and punitive conditions. It is a rapidly expanding system that is wholly unaccountable and incentivizes profiteering and politics over human dignity and due process.

## **II. Perverse Financial Incentives and Dubious Contracting**

In its current form, the system is largely operated by private prison companies and local and county jails. As of 2017, approximately 71% of people in immigration detention were held in privately operated jails, and 29% were held in jails where ICE is contracting with a local or county government, through an Intergovernmental Service Agreement.<sup>3</sup> In both cases, private prison companies and local/county jails are motivated by profit rather than upholding human dignity.

Private prison companies are incentivized to cut corners, like cutting medical staffing and denying care, for a greater payout to shareholders, putting migrant lives at risk.<sup>4</sup> Despite this risk, the agency’s reliance on private prisons continues to grow. Since February of this year, ICE has eight new contracts with detention centers in Louisiana and Mississippi alone, all operated by private prison companies.<sup>5</sup>

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<sup>1</sup> ICE posts current detention data on its website at <https://www.ice.gov/detention-management#tab2>.

<sup>2</sup> Ana Raquel Minian, The New York Times, “America Didn’t Always Lock Up Immigrants,” Dec. 1, 2018, <https://www.nytimes.com/2018/12/01/opinion/sunday/border-detention-tear-gas-migrants.html>.

<sup>3</sup> Tara Tidwell Cullen, National Immigrant Justice Center, “ICE Released Its Most Comprehensive Immigration Detention Data Yet. It’s Alarming,” (March 2018), <https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>.

<sup>4</sup> Carl Takei, Michael Tan, Joanne Lin, American Civil Liberties Union, “Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons,” (September 2016), [https://www.aclu.org/sites/default/files/field\\_document/white\\_paper\\_09-30-16\\_released\\_for\\_web-v1-opt.pdf](https://www.aclu.org/sites/default/files/field_document/white_paper_09-30-16_released_for_web-v1-opt.pdf).

<sup>5</sup> Noah Lanard, “Congress told ICE to Detain Fewer People. Instead it Keeps Adding Private Prisons,” Mother Jones, August 22, 2019: <https://www.motherjones.com/politics/2019/08/congress-ice-louisiana-mississippi-private-prisons/>

Local and county jails have the same perverse incentives. The Department of Homeland Security's Office of the Inspector General (OIG) found that conditions in county jails that contract with ICE to augment municipal revenue prove just as harsh, if not worse, than private prisons.<sup>6</sup> Last year, it was reported that a Sheriff in Etowah County, Alabama, the site of one of the harshest immigrant detention facilities in the country, retained over a million dollars in funds intended for food provision as personal profit.<sup>7</sup>

Yet ICE relies on the agility of private prison companies to move quickly, and regularly engages in concerning contracting practices in its effort to massively expand the detention system. In July of 2018, ICE modified the existing Intergovernmental Service Agreement with the city of Eloy, Arizona and private prison company CoreCivic to hold 1,000 additional adults at the La Palma Correctional Center.<sup>8</sup> ICE used the city of Eloy as a "middleman" to broker this agreement between CoreCivic and La Palma, repeating a technique the agency previously used to establish the Dilley Family Residential Center and which the Department of Homeland Security's Office of Inspector General deemed both improper and unnecessary.<sup>9</sup> In the same month of 2018, ICE also entered into a contract with the Management and Training Corporation (MTC) to reopen 1,000 beds at the former Willacy County Correctional Center, in Raymondville, Texas.<sup>10</sup> This facility had previously been shuttered twice, the last time due to a rebellion by those held there amid accounts of poor medical care, sexual abuse, and oppressive conditions.<sup>11</sup> ICE renamed the facility to the El Valle Detention Center, but it is unclear what, if any, changes were made to prevent systemic abuse from plaguing the facility once again.<sup>12</sup>

### III. Growth of the System by Manipulation of Appropriations

The immigration detention system has expanded by over 60% in the last two years, from an average of 34,000 people in detention per day in 2016 to a current population of nearly 52,000 people.<sup>13</sup> Much of this growth has been facilitated by purposeful financial mismanagement by the agency in an effort to rapidly expand immigration detention, evade congressional oversight, and avoid accountability for detention abuses. Since 2015, ICE has perfected a scheme to expand

<sup>6</sup> DHS Office of the Inspector General, *Issues Requiring Action at the Essex County Correctional Facility in Newark, New Jersey*, February 13, 2019, <https://www.oversight.gov/sites/default/files/oig-reports/OIG-19-20-Feb19.pdf>.

<sup>7</sup> Connor Sheets, *Here's how federal inmates made an Alabama sheriff \$1.5 million*, "al.com," <https://www.al.com/news/2019/09/high-risk-of-deadly-rip-currents-along-area-beaches-through-monday.html>.

<sup>8</sup> Globe Newswire, *CoreCivic Enters Into New Agreement With Federal Government to Utilize the La Palma Correctional Center*, July 24, 2018, <https://globenewswire.com/news-release/2018/07/24/1541538/0/en/CoreCivic-Enters-Into-New-Agreement-With-Federal-Government-to-Utilize-the-La-Palma-Correctional-Center.html>.

<sup>9</sup> DHS Office of Inspector General, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*, February 21, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>.

<sup>10</sup> Management Training Corporation, *MTC Signs Contract with ICE to Operate Detention Facility in Raymondville*, July 18, 2018, <https://www.mtc trains.com/wp-content/uploads/2018/07/MTC-TO-OPERATE-FACILITY-IN-RAYMONDVILLE.pdf>.

<sup>11</sup> Seth Freed Wessler, *The True Story of a Texas Prison Riot*, *The Nation*, June 23, 2015, <https://www.thenation.com/article/the-true-story-of-a-texas-prison-riot/>.

<sup>12</sup> Jeremy Raff, *ICE Is a Godsend for One Small Town in Texas*, *The Atlantic*, July 11, 2018, <https://www.theatlantic.com/politics/archive/2018/07/ice-prison-trump-immigration-crackdown/564539/>.

<sup>13</sup> For the most recent Average Daily Population Data, ICE typically updates its Detention Management page every two weeks at: <https://www.ice.gov/detention-management#tab2>.



detention beyond its appropriation and has ignored congressional direction to live within its appropriated means and improve its “lack of fiscal discipline and cavalier management of funding for detention operations.”<sup>14</sup>

Truly, ICE’s detention expansion is not an issue of mismanagement or lack of fiscal discipline, but rather a calculated scheme to bypass congressional power. Since 2015, ICE has taken advantage of series of continuing resolutions to expand detention by using either a lump sum bonus at the start of a continuing resolution, known as an anomaly, or an advance of funding granted by the Office of Management and Budget, known as an exception apportionment. Congress then negotiates the following year’s spending based upon this elevated detention level. During the course of the fiscal year, ICE will subsequently overspend its appropriated budget for detention and enforcement, typically by notifying Congress of their intent to transfer and reprogram funds from other parts of DHS.

ICE is on track to use this scheme once again as we enter fiscal year 2020. Throughout a series of continuing resolutions and a partial government shutdown from October through February of last year, ICE used an exception apportionment to expand detention by approximately 8,000 people per day above its appropriated average daily population of 40,500.<sup>15</sup> Then in mid-February, Congress signed the fiscal year 2019 supplemental appropriations act which appropriates a historic high average daily population of 45,274.<sup>16</sup> Congress made clear that the elevated average daily population in the FY19 supplemental appropriations package was to course correct for ICE’s overspending and instructed the agency to “glide down” to 40,500 by the end of the fiscal year. Yet, ICE expanded to over 55,000 people detained per day, precisely by using its transfer and reprogramming authority to cover for the additional 16,000 beds above its appropriated number. Specifically, ICE transferred \$116 million from CBP, Coast Guard and FEMA in order to compensate for this massive expansion.<sup>17</sup>

#### IV. Inhumane Conditions

ICE’s manipulation of the federal appropriation’s process is done with the explicit intent to grow the system at a rapid rate rather than invest in improving conditions or caring for those in its custody. Since 2003, 195 people have died in ICE detention; and eight people have died in ICE custody in fiscal year 2019 alone.<sup>18</sup> Abuse and neglect is endemic to the massive ICE detention system. The DHS OIG has released reports decrying “egregious” food quality and safety issues,

<sup>14</sup> See House Report, Division F (Homeland Security), Consolidated Appropriations Act of 2017, 131 Stat. 135, Public Law No. 115-31, May 4, 2017, <http://docs.house.gov/bills-115/20170501/DIVISION%20F-%20HOMELAND%20SOM%20OCR%20FY17.pdf>.

<sup>15</sup> Julia Ainsley and Heidi Przybyla, *Why the Trump admin wants more detention space for migrants and Democrats want a limit*, NBC News, February 11, 2019, <https://www.nbcnews.com/politics/immigration/why-ice-wants-more-detention-space-migrants-democrats-want-cap-n970071>

<sup>16</sup> Dara Lind, *Congress’s deal on immigration detention, explained*, Vox, February 12, 2019, <https://www.vox.com/2019/2/12/18220323/immigration-detention-beds-congress-cap>

<sup>17</sup> Julia Ainsley and Frank Thorp V., “Trump admin pulling millions from FEMA disaster relief to send to southern border,” NBC News, August 27, 2019, <https://www.nbcnews.com/politics/immigration/trump-admin-pulling-millions-fema-disaster-relief-send-southern-border-n1046691>

<sup>18</sup> Detention Watch Network, *Another death in ICE custody after ICE grabs \$271 million from FEMA and other DHS agencies*, September 13, 2019, <https://www.detentionwatchnetwork.org/pressroom/releases/2019/another-death-ice-custody-after-ice-grabs-271-million-fema-other-dhs>

hygiene issues so severe that they cause health risks for individuals in detention, and limited basic clothing and hygiene supplies.<sup>19</sup>

This endemic abuse and neglect impact all individuals detained in ICE jails, but disproportionately impacts vulnerable populations. Autopsy reports from the death of trans asylum seeker Roxana Hernandez Rodríguez found that she died due to lack of medical treatment but also exhibited “deep bruising” indicative of physical abuse that she likely endured while detained in the Cibola County Correctional Center in New Mexico.<sup>20</sup> Roxana’s experience is not an anomaly, but rather symptomatic of the callousness of an agency working on behalf of an administration dedicated to cruel anti-immigrant policies.

## V. Ineffective Inspections and Total Lack of Accountability

As the ICE detention system has been plagued by grossly poor conditions and mounting deaths, the agency has been totally unable to turn the tide due to its failure to invest in robust inspections or meaningful accountability. Recent investigations into deaths in ICE detention have found that in nearly half, violations of medical standards or medical neglect were contributing, or even causal factors.<sup>21 22 23</sup> Despite this, in all but one case, the facility passed its inspection immediately before and immediately after the death occurred. The Department of Homeland Security’s Inspector General has found that ICE’s inspections process is entirely inadequate with some deficiencies unaddressed for years, and numerous inspections of individual facilities have found deficiencies severe enough to threaten the health and safety of detained people.<sup>24 25 26</sup> Further, even when deficiencies are found in inspections, ICE routinely issues waivers to provide

<sup>19</sup> Department of Homeland Security Office of the Inspector General, *Concerns About ICE Detainee Treatment and Care at Four Detention Facilities* OIG 19-47, June 3, 2019, p. 4, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

<sup>20</sup> Scott Bixby, Betsy Woodruff, Trans Woman Was Beaten Before Death, Autopsy Finds, *The Daily Beast*, November 26, 2018, [https://www.thedailybeast.com/trans-woman-roxana-hernandez-rodriquez-beaten-in-ice-custody-before-death-pathologist-finds?source=TDB&via=FB\\_Page&fbclid=IwAR14MDowg4-edLiHzaIzXo1tLkH1o4r1efMhLE5F5tIPX0bw3xmxmE3c](https://www.thedailybeast.com/trans-woman-roxana-hernandez-rodriquez-beaten-in-ice-custody-before-death-pathologist-finds?source=TDB&via=FB_Page&fbclid=IwAR14MDowg4-edLiHzaIzXo1tLkH1o4r1efMhLE5F5tIPX0bw3xmxmE3c)

<sup>21</sup> Human Rights Watch, *Code Red: The Fatal Consequences of Substandard Medical Care in Detention*, June 20, 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>

<sup>22</sup> American Civil Liberties Union, Detention Watch Network, National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths In Detention*, February 2016,

<https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal%20Neglect%20ACLU-DWN-NIJC.pdf>

<sup>23</sup> Human Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*, May 8, 2017, <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>

<sup>24</sup> DHS Office of the Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 26, 2018,

<https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

<sup>25</sup> DHS Office of the Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, December 11, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>

<sup>26</sup> DHS Office of the Inspector General, *Management Alert – Issues Requiring Action and the Adelanto Processing Center in Adelanto, California*, September 27, 2018.

exemptions rather than penalizing contractors for failing to meet the relevant detention standards.<sup>27</sup>

#### VI. Solutions

As the Immigration and Citizenship Subcommittee of the House Judiciary Committee considers the above testimony as well as the testimony from policy experts and people with experience in the detention system, Detention Watch Network sincerely urges committee members to consider the reports of abuse, neglect, mismanagement and callous cruelty not as anomalies, but as basic tenets of the immigration detention system. The alarming death toll in ICE detention underscores that the immigration enforcement system is plagued by egregiously poor conditions, a lack of accountability and a culture of violence and secrecy. As such, it is not a system that can be reformed through additional funding or minor changes to policy. Rather, it is a system that needs to be dismantled as the United States reimagines our approach to migration and works to build a society that is centered on dignity, freedom and justice. Detention Watch Network proudly endorses the Dignity for Detained Immigrants Act, H.R., 2415, an important step to provide accountability and protect the health and safety of those in ICE custody.

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<sup>27</sup> DHS Office of the Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, January 29, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>



Friends Committee on  
National Legislation  
A Quaker Lobby in the Public Interest

**The Friends Committee on National Legislation's Statement as it pertains to  
the House Committee on the Judiciary's Subcommittee on Immigration  
Hearing: "The Expansion and Troubling Use of Immigrant Detention"**

September 26, 2019

The Friends Committee on National Legislation is committed to pursuing a U.S. immigration system that respects and promotes the rights, safety, and dignity of all migrants, refugees, and immigrants. The current use of immigrant detention is unnecessary, unaccountable, dangerous, and increasingly fatal.<sup>1</sup> As Quakers, we are grounded in the knowledge that there is 'that of God' in every person, regardless of their immigration status. We applaud members of this subcommittee for bringing to light the moral, fiscal, and human costs of immigrant detention and **urge this body to pass detention reform legislation such as the *Dignity for Detained Immigrants Act* (H.R. 2415).**

**FCNL urges Congress to eliminate our nation's dependence on unjust immigrant detention.** Amid a swell of refugees at our southern border and increased interior immigration enforcement, immigrant detention has increased by nearly 50% in just three years. This year the administration is on track to detain more than half a million people. By the government's own statistics, around seventy-percent of immigrants detained today have no criminal record.<sup>2</sup> Many of the remaining thirty-percent may only have migration-related convictions.<sup>3</sup> **Immigrant detention does not keep our nation safer.** We rebuke the presumption that any immigrant – by nature of where they were born or their immigration status – is inherently a potential threat to Americans and should therefore be subjected to banishment, surveillance, or mistreatment. Immigrants are detained simply for not having the right papers, not because they are serving time or paying a debt to society. More people remain in detention because of laws that mandate criminal prosecutions for unlawful entry and detention, as well as policies that sustain the private prison industry's profiting off of increased detention.<sup>4</sup> Immigration and Customs Enforcement (ICE) locks up asylum seekers and families who are seeking safety in this country, along with longtime community members who yearn to stay with their families but cannot access any visa.<sup>5</sup> It is past time Congress envisions a new framework for people navigating the immigration system.

**We urge Congress to make community-based alternatives the default response to immigrants and asylum seekers navigating legal proceedings.** There are underused, tested alternatives to detention that can keep families together and healthy, allow individuals access to legal support and due process, and invest in communities rather than for-profit prison corporations.<sup>6</sup> One such program, the Family Case Management Program (FCMP), allowed new asylum-seeking families to remain in communities while assigned a case worker to see them through to the end of their asylum proceedings. Most families won their cases and gained permanent relief, before it was administratively ended in the summer of 2017. Congress re-instated the program this past February, but immigration enforcement agents are now overseeing the casework, rather than having community-based organizations run the programmatic support. Congress must ensure that the goals of this program continue to be centered in providing legal support and guidance in adherence to international and U.S. asylum obligations, and not a fast-track for removal.

Improving access to legal counsel is another way to help immigrants access justice outside of detention. Only **14 percent** of detained immigrants acquire legal counsel as compared to **66 percent** of those out of detention.<sup>7</sup> Lack of access to counsel or even basic legal orientation contributes to the more than one million case backlog<sup>8</sup> and means justice denied for many immigrants who are deported. When people have access to the right information and legal support, they show up to their court hearings.<sup>9</sup> Our immigration laws and processes should focus on ensuring due process for all individuals so that fewer of our neighbors are faced with the impossible choices and instead given support

1 of 2 — 9/25/2019

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to remain with their families and communities in this country. We urge congressional courage to re-design our system to restore dignity and grace to our community members facing unjust deportation.

**Congress can begin reforming our detention system through crafting just spending bills this year.** Each year, the best avenue for oversight and accountability is within the federal appropriations process. However, for the fourth year in a row, the administration increased the number of people in immigrant detention without congressional consent. In August 2019, 55,000 people<sup>7</sup> languished behind bars while Congress had funded an average daily population of 45,200 – both historically high numbers of immigrants behind bars.<sup>8</sup> The reprogramming of funds came at the expense of other functions within the Department of Homeland Security including disaster relief, coast guard readiness, and drug interdiction programs. **Congress should end DHS’ authority to transfer funds into dangerous, costly, and unnecessary detention. Otherwise DHS’ unchecked expansion will undermine reform efforts.**<sup>9</sup>

**Congress must also exert robust oversight over facility conditions and ensure that migrants cease languishing in detention without access to basic needs and resources.** The expansion of detention has come without commensurate oversight of facilities prone to abuse, neglect, and other gross human rights violations.<sup>10</sup> ICE and Customs and Border Patrol (CBP) should not be able to expand detention capacity without meaningful accountability for their failure to care for the people in their custody. The agencies’ Inspector General flagged major concerns with the existing internal inspections of facilities.<sup>11</sup> Congress has an opportunity to cease funding facilities that are habitually in violation of existing detention standards, as well as ensure through ongoing independent inspections that all existing facilities are brought up to compliance with the 2011 Performance-Based National Detention Standards (PBNDS), as amended in 2016.<sup>12</sup>

**The Dignity for Detained Immigrants Act aligns with FCNL’s principles on immigrant detention.** H.R. 2415 would eliminate mandatory detention, restoring necessary discretion to the system. The bill requires immigration enforcement agencies to prioritize community-based alternatives for most immigrants who are currently funneled into dangerous detention conditions – including families, primary caregivers, pregnant women, asylum seekers, and people under 21. As the number of people subjected to detention is reduced, the bill would also require all facilities to be owned and operated by the Department of Homeland Security with higher standards and additional congressional oversight.<sup>13</sup>

**It is crucially important that Congress pursue meaningful reforms to immigrant detention through standalone legislation like H.R. 2415, increase oversight of existing facilities, and end its unchecked expansion through the annual appropriations process.**

<sup>7</sup> Human Rights Watch et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention*, June 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>, American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Inspections Ignore Deaths in Detention*, (February 2016), <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>, Human Rights Watch, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, (May 2017), <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

<sup>8</sup> Available online at <https://www.ice.gov/detention-management#tab2>

<sup>9</sup> Available online at <https://trac.syr.edu/immigration/reports/564/>

<sup>10</sup> Available online at <https://www.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

<sup>11</sup> Prolonged detention stories: <https://www.prolongeddetentionstories.org/the-stories>

<sup>12</sup> Available online at <https://www.immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration>

<sup>13</sup> Available online at <https://www.americanimmigrationcouncil.org/sites/default/files/research/access-to-counsel-in-immigration-court.pdf>

<sup>14</sup> Available online at <https://trac.syr.edu/immigration/reports/574/>

<sup>15</sup> Available online at <https://www.americanimmigrationcouncil.org/research/immigrants-and-families-appear-court>

<sup>16</sup> See <https://www.ice.gov/detention-management#tab2> under “FY2019 YTD ICE Average Daily Population and ICE Average Length of Stay”

<sup>17</sup> <https://thehill.com/homenews/administration/444730-more-than-52000-migrants-detained-by-ice-marks-all-time-high>

<sup>18</sup> Available online at <https://www.fcni.org/updates/congress-can-halt-overspending-on-immigrant-detention-and-enforcement-2371>

<sup>19</sup> See first citation.

<sup>20</sup> DHS Office of Inspector General, *OIG-18-67: ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 2018, at p. 10, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

<sup>21</sup> Available online at <https://www.ice.gov/detention-standards/2011>.

<sup>22</sup> See a bill analysis here: <https://www.fcni.org/updates/the-dignity-for-detained-immigrants-act-bill-analysis-1868>



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1612 K Street, NW, Suite #1100  
Washington, DC 20006  
(202) 457-0034 | info@whistleblower.org

**Written Statement for the Record**

by

**Dana L. Gold, Esq.**  
**Government Accountability Project**

for the

**House Committee on the Judiciary**  
**Subcommittee on Immigration and Citizenship**

Hearing On

**The Expansion and Troubling Use of ICE Detention**

September 26, 2019

Dear Committee Members:

Thank you for the opportunity to submit written comments in support of your hearing, “The Expansion and Troubling Use of ICE Detention.”

I serve as Senior Counsel for Government Accountability Project, a national not-for-profit whistleblower protection and advocacy organization. My organization currently represents three DHS whistleblowers, Dr. Scott Allen, Dr. Pamela McPherson, and Ms. Ellen Gallagher, who have raised serious concerns about the very topic of this hearing: the expansion and troubling use of ICE detention, and more specifically, the real threat of physical and psychological harm posed by ICE detention practices. That these whistleblowers’ disclosures have gone unheeded by DHS and ICE while detention has rapidly expanded under the administration’s “zero-tolerance” immigration policy is troubling in itself; the effects of that expansion are not merely troubling, but unconscionable.

By describing for the Committee in some detail the nature of the warnings raised by these whistleblowers about harmful ICE detention practices, which have only been exacerbated by expanded detention, Congress, along with the DHS, can again be on notice that current ICE detention practices not only violate federal detention standards, but threaten the health and safety of migrant detainees in

ICE detention facilities. This situation must be fully investigated and reformed to prevent the foreseeable harm about which these whistleblowers have sought to address.<sup>1</sup>

#### A. Knowing Endangerment of Children in Detention

Our clients Drs. Allen and McPherson serve respectively as the medical and mental health subject-matter experts in detention for the Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL). In the course of investigating four of the Family Residential Centers for CRCL between 2014-2017—Artesia in New Mexico, Karnes and Dilley in Texas, and Berks in Pennsylvania—Drs. Allen and McPherson consistently raised concerns in their reports to CRCL as well as in extensive oral briefings about both the harms posed to children in detention generally as well as specific and systemic problems related to practices and policies at the family detention centers that endangered children. Indeed, their findings resulted in shutting down Artesia as too rife with problems to protect children at that facility.

When the Trump administration began expanding family detention as part of its “zero-tolerance” immigration policy, the doctors became gravely concerned that the issues that compromised care, and which had not yet been resolved, would be further exacerbated with the increased populations. This predictably put children at imminent risk of harm. In June 2018, Drs. Allen and McPherson exercised their rights as whistleblowers by communicating these concerns to CRCL management, to the DHS OIG, and to Congress.<sup>2</sup>

In addition to their overarching warnings that detention, **for any amount of time**, harms children, their specific concerns about systemic weaknesses at detention facilities included the lack of qualified medical and mental-health professionals; a lack of language translators making diagnoses exceedingly difficult; inadequate and dangerous facilities posed by the retrofitted prisons used to house families with small children; failure to provide trauma informed care; lack of training of custodial staff to care for at-risk children; inadequate detention standards; and confusing lines of authority and weak coordination between different agencies, program partners and government departments that can cause dangerous communication breakdowns and accountability failures that put children at risk.

CRCL refused to investigate the doctors' concerns, claiming that the Inspector General had jurisdiction over their complaint. However, the OIG never acknowledged receipt of let alone conducted an investigation into Drs. Allen and McPherson's disclosures, first submitted on June 25, 2018, despite the doctors' explicit warnings that a hastily deployed expansion of family detention unnecessarily places children at **imminent threat of risk** of significant mental health and medical harm.

Notably, CRCL has not conducted onsite investigations of family detention centers since **September 2017**, despite being aware of the systemic problems that put children in detention at risk of physical

<sup>1</sup> The following descriptions of our clients' disclosures are substantially similar to those included in testimony I recently submitted for a related House Homeland Security Committee Hearing, *Oversight of ICE Detention Facilities: Is DHS Doing Enough?* (Hearing Date: September 26, 2019).

<sup>2</sup> See, e.g., July 17, 2018 Letter to Senate Whistleblower Caucus Chairs from Drs. Scott Allen and Pamela McPherson.

and psychological harm and despite receiving numerous complaints from or on behalf of detainees which would justify investigation.<sup>3</sup>

Not only did the doctors receive no indication from DHS oversight mechanisms that their concerns were being addressed, their warnings about harms to children in detention, echoed by more than fourteen medical professional associations, including the American Medical Association, the American Academy of Pediatrics, the American College of Physicians, and the American Psychiatric Association,<sup>4</sup> were being willfully ignored, as DHS in September 2018 proposed rule-making to replace the *Flores* settlement agreement, having the intended effect of allowing for prolonged and indefinite detention of children. Drs. Allen and McPherson, in written comments to DHS and ICE, expressed their opposition to practices that would prolong detention of children, particularly while the systemic issues they had identified that pose imminent harm remained unaddressed.

With all oversight mechanisms failing to end detention of children, the doctors escalated their concerns to the press by going on the record with *60 Minutes*, *NPR*, and *The Washington Post*, writing in December 2018 after the death of seven year old Jakelin Caal Maquin in CBP custody, “We warned DHS that a migrant child could die in custody. Now one has.”

Rather than minimize detention as its own ICE Advisory Panel recommended in 2016,<sup>5</sup> DHS decided instead to prolong detention indefinitely in its recent final rule replacing the *Flores* Settlement Agreement standards, reflecting not only a disregard of its own medical and mental health subject matter experts within its own oversight entities, but the willful endangerment of migrant children in order to deter migration at the southern border.

Further, DHS recently announced just days ago that it intends to resume detaining migrant families at the Karnes County Residential Center,<sup>6</sup> one of the detention facilities about which Drs. Allen and McPherson identified concerns about the ability to prevent harm to children. Given that CRCL has not conducted any on-site investigations of DHS family detention centers since September 2017, it belies credulity to think Karnes will have remedied the myriad problems identified by Drs. Allen and McPherson that existed even before a surge in family detention. Expansion of detention in the face of known systemic problems not only puts employees at these facilities in the impossible situation of not

<sup>3</sup>See March 19, 2019 Letter to Congress from Drs. Allen and McPherson, <https://jayapal.house.gov/wp-content/uploads/2019/03/031919-whistleblowers-letter-to-Congress-w-cover-letter-fact-sheet-re-children-in-detention.pdf>.

<sup>4</sup> See Letter to House Judiciary Committee, House Energy and Commerce Committee, House Homeland Security Committee, and House Appropriations Committee (July 24, 2018) (letter viewable at [https://www.aconline.org/acp\\_policy/letters/letter\\_house\\_oversight\\_request\\_on\\_child\\_detention\\_centers\\_2018.pdf](https://www.aconline.org/acp_policy/letters/letter_house_oversight_request_on_child_detention_centers_2018.pdf)); Letter to Senate Judiciary Committee, Senate HELP Committee, Senate HSGAC Committee, and Senate Appropriations Committee (July 24, 2018) (letter viewable at <https://www.psychiatry.org/newsroom/news-releases/apa-joins-health-care-community-in-calling-on-congress-to-hold-hearings-on-treatment-of-children-separated-from-parents-at-border>); American College of Physicians, *Internists Call for Congressional Oversight of Family Detention* (July 20, 2018), <https://www.aconline.org/acp-newsroom/internists-call-for-congressional-oversight-of-family-detention>.

<sup>5</sup>Report of the ICE Advisory Committee on Family Residential Centers (October 7, 2016), <https://www.ice.gov/sites/default/files/documents/Report2016/acfrc-report-final-102016.pdf>.

<sup>6</sup>



being able to provide adequate care for families under such conditions, but it foreseeably poses an imminent threat of harm to children.

**B. ICE's Widespread Use of Solitary Confinement on Mentally Ill and Medically Vulnerable Adult Detainees**

Attorney Ellen Gallagher, when working as a Senior Policy Advisor within the immigration section of DHS's Office of Civil Rights and Civil Liberties, discovered in reading hundreds of ICE segregation reports that ICE was regularly putting mentally ill and medically vulnerable adult migrant civil detainees in solitary confinement across dozens of ICE facilities in violation of statutory mandates and federal detention standards, practices that qualify as torture under United Nations standards. Often segregation was used for reasons directly related to their mental illness.

These practices revealed that detainees—notably in civil detention which is by definition not punitive—were deprived of proper medical care and attention, even when suicidal; many were shackled, strip-searched, silenced, and brutalized; others missed immigration court dates that otherwise might have enabled them to seek bond, legal protection and counsel.

Examples she discovered and disclosed were, often on the face of the segregation reports and in the notes, egregious and troubling. One detainee was diagnosed with schizoaffective disorder with hallucinations and suicidal ideation, yet spent months in and out of solitary confinement before being sentenced to 390 more days for throwing his feces at a security guard. Another was sentenced to 45 days in "twenty-four-hour lockdown" because guards during a search of his cell found a single anti-anxiety pill, hidden in a book he was reading. Detainees on "suicide watch" were routinely placed in isolation without information as to the length of time they would remain there, whether or how frequently they would be monitored, or the medical treatment they would receive. Reports from a regional jail showed mentally ill immigration detainees naked in deplorable conditions and denied reentry to the general population until they agreed to maintain "proper hygiene." Other detainees were sentenced to periods from 15 to 45 days in disciplinary segregation for offenses including "insolence," "spitting," "possession of a cellphone," "failure to follow an order," "attempted horseplay" and "attempted fighting."

Ms. Gallagher began raising concerns in 2014 about ICE's practices internally to CRCL management, which repeatedly chose not to investigate the individual cases she raised that evidenced serious violations of detention standards. She then raised concerns to DHS's Office of Inspector General (OIG), and also filed a whistleblower disclosure with the Office of Special Counsel (OSC). The OSC deferred to the OIG, which failed to investigate the full scope of Ms. Gallagher's disclosures. Despite two separate requests for reconsideration to the OSC to independently review the disclosures and supporting evidence, the OSC instead deferred to the OIG's own incomplete investigation. During this period as well, Ms. Gallagher's disclosures to Congress did not generate meaningful action.

In May 2019, Ms. Gallagher finally decided to go on the record after years of raising her concerns through every avenue within the government had failed to result in any meaningful investigation to address the widespread use of solitary confinement in immigration detention.<sup>7</sup>

On June 3, 2019, the Department of Homeland Security Office of Inspector General (DHS OIG) issued a report, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, that failed to address the systemic abuses and violations across ICE facilities reported by Ms. Gallagher, instead focusing on wrongdoing at only the four adult detention facilities it visited. The OIG report found, among other violations, that three out of four sites visited used improper segregation practices which both violated ICE policy standards and infringed upon detainee rights. The findings included premature placement into solitary confinement, use of restraints at all times when detainees were outside their cells, strip searches upon entering isolation, and inadequate time outside cells. While this report's conclusions substantively confirmed Ms. Gallagher's disclosures, made over a period of almost five years and documenting hundreds of examples of ICE's inappropriate use of solitary confinement, the report's recommendations were limited only to reforms at the four facilities visited by the OIG.

Despite the limited scope of the OIG's investigation and findings, Ellen Gallagher's warnings regarding ICE's use of solitary confinement were recently validated and expanded upon by the Project on Government Oversight (POGO), which last month released a report, *ISOLATED: ICE Confines Some Detainees with Mental Illness in Solitary for Months*, demonstrating that approximately 40% of detainees placed in solitary confinement between January 2016 and May 2018 have mental illness, with more than 4,000 of the 6,559 records reviewed showing detainees being confined for more than 15 days. Ms. Gallagher's disclosures about ICE's inappropriate use of solitary confinement across dozens of its facilities have thus been confirmed as continuing and increasing.

### **C. The Expansion of ICE Detention Amounts to Knowing Endangerment of Vulnerable Migrant Detainees**

Despite the fact that these civil servants—DHS's own experts—have communicated their specific and verified concerns with increasing escalation, the detention practices they have warned as being harmful to migrant detainees have not only continued, but have increased in the surge of detention under the Trump administration's "zero-tolerance" immigration policy. DHS oversight functions have further failed to investigate and step in to address the whistleblowers' disclosures, having the effect of allowing the knowing endangerment of children and vulnerable adult migrant detainees in ICE detention facilities.

<sup>7</sup> See Maryam Saleh and Spencer Woodman, "A Homeland Security Whistleblower Goes Public About ICE Abuse of Solitary Confinement," *The Intercept* (May 21, 2019), and Hannah Rappleye et al., "Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers," *NBC News* (May 21, 2019). These press accounts also document Ms. Gallagher's efforts to disclose evidence of ICE's inappropriate use of solitary confinement in adult detention.

There is a dire need for legitimate oversight by Congress that captures the full extent of the conditions and practices at ICE detention facilities disclosed by DHS's own whistleblowers which have never been fully investigated or addressed by DHS oversight entities despite the seriousness of the risk of harm posed to children and vulnerable adult detainees. Indeed, to date, DHS has largely ignored these whistleblowers' warnings, as evidenced by its expansion of detention.

Whistleblowers are essential warning systems to prevent problems and address abuses. These whistleblowers gave DHS the opportunity to prevent harm to children and adult migrants in the civil detention system, but DHS in failing to heed their warnings continues to prioritize confinement and deterrence over not just compliance with minimum detention standards, but the duty to prevent foreseeable harm. The fact that these whistleblowers' disclosures have to date failed to prompt fundamental changes in ICE detention practices that knowingly harm children speaks to why Congress's oversight and investigation of these issues is so critical.

It should be noted that leadership at both the DHS OIG, where Ms. Gallagher currently works as a senior advisor, and at CRCL, for which Drs. Allen and McPherson continue to serve as contracted subject matter experts, have not taken any retaliatory action to date against any of our clients, recognizing the rights of employees and contractors to raise concerns about serious abuses. Indeed, these particular whistleblowers are deeply committed to serving in their current roles as valuable contributors to the important oversight roles of CRCL and the OIG. They also stand ready to support all of Congress's efforts to address the problems with expanded ICE detention about which they have been warning for years.

Thank you for the opportunity to contribute written testimony in support of this hearing.

/s/

Dana L. Gold

Counsel for Dr. Scott Allen, Dr. Pamela McPherson, and Ms. Ellen Gallagher



FOR IMMEDIATE RELEASE: September 25, 2019

Contact: Lynn Tramonte | [media@interfaithimmigration.org](mailto:media@interfaithimmigration.org) | 202-255-0551

## On Immigration Detention - Hearings Are Needed, But Congress Must Stop Expanding This Abusive System

Link: <http://bit.ly/ICDetentionHearing>

Washington, DC - "Forty years ago, this system did not exist." That's the starting point of a new exposé on the rise (and rise) of civil immigration detention in the United States, published by The Guardian and the Marshall Project. Their deep analysis comes just ahead of a vital congressional hearing on "The Expansion and Troubling Use of ICE Detention," taking place Thursday in the House Judiciary Committee's Subcommittee on Immigration and Citizenship.

This system incarcerates asylum seekers, legal immigrants, and people who have lived here for decades. It takes moms and dads from their kids and good people away from their homes, jobs, and communities. Under President Trump it has bloated to the largest ever--more than 52,000 people detained for civil immigration reasons today--but there is bipartisan shame to go around.

U.S. tax dollars have fed and enriched a whole new industry of private prisons. The Guardian/Marshall Project study explains: "Over the last four decades, a series of emergency stopgaps and bipartisan deals has created a new multibillion-dollar industry built on the incarceration of immigrants."

"Hearings are needed. Continuous exposure of this administration's treatment of refugees, migrants, and families is needed. But what is also needed is for Congress to stop funding the unchecked expansion of an unaccountable, abusive system," said **Hannah Graf Evans, Legislative Representative, Immigration & Refugee Policy, Friends Committee on National Legislation.**

Also this week, two House subcommittees held a much-needed hearing on the administration's refugee and Muslim bans. And twenty-two Conference Ministers with the United Church of Christ came to Washington, DC to "lift a single prophetic voice for the first time in recent memory by advocating directly with members of Congress and speaking outside the U.S. Capitol."

**Rev. Justo González II, Illinois Conference intentional interim conference minister** said: "We speak for justice for immigrants, against the violation of human dignity and 'hell no' to kidnapping children from their parents. The forced separation of families and cages are un-American and will not be tolerated. Our children matter. They are not animals to be locked up in cages."

**Edith Guffey, Kansas-Oklahoma Conference Minister**, said she simply had to be part of this effort. "Only we know when we reach the point that something that has been comfortable for us becomes so uncomfortable it simply has to change -- when what has been really can't be any longer. On this one for me, the sidelines aren't good enough. It's time for me to step outside my comfort zone," she said.

**Rev. Shari Prestemon of Minnesota** explained: "I think there's a consensus that immigration justice is a critical issue in this moment of our nation's history that has deep moral implications. It is also an issue that our sacred texts have a lot to say about, and thus we as Church must be bold enough to step into the public square and speak clearly with one voice."

Faith leaders of other organizations are also raising their voices. Said **Sister Simone Campbell, SSS, Executive Director of NETWORK Lobby for Catholic Social Justice**: "I weep at what President Trump's inhumane policies have done in our names. Men, women, and children come to our country and ask us for protection. Instead, we rig the system against them and throw them in cages. We keep them locked up indefinitely to kill their spirits and hope they will give up their search for safety. What a cruel, sad policy for a land that once claimed to stand for freedom and opportunity. But hope is not lost! Congress can change this and create an immigration system that respects the dignity of all people."

**Sr. Marie Lucey, OSF, Associate Director of Franciscan Action Network** offered: "This nation of immigrants, as we sometimes call ourselves with pride, is failing today's asylum seekers and legal immigrants. In our name this administration detains children and families, and uses tax dollars to build an unnecessary wall and fund private prisons. As people of faith we decry this assault on brothers and sisters in our human family. As U.S. citizens, we are outraged that our home is no longer seen as a welcoming place for those seeking safety from violence and opportunity for their children."

**Rev. John L. McCullough, CWS President and CEO**, said: "We demand that Congress stop the administration's intentionally deadly anti-asylum and anti-immigrant policies. Stop turning away asylum seekers. Stop separating families. Stop detaining children. Stop militarizing the border. We need policies that affirm each person's humanity and treat all children the way we would treat our own and not leave them to die in the desert or force them to risk their lives in the river. In this moment, we will be judged by how we treat migrants at our doorstep. I pray we choose life over death."

**Susan Gunn, Director of the Maryknoll Office for Global Concerns**, said: "Maryknoll missionaries join Pope Francis in expressing our solidarity with migrants around the world: Welcoming others means welcoming God in person. We believe that in the process of enforcing immigration laws, the U.S. government must protect the human rights and dignity of all migrants, with particular consideration for those most vulnerable -- refugees, asylum seekers, and children. We call on Congress to work to end the cruel and inhumane practice of immigration detention and advance humane alternatives to detention, particularly community-based alternatives based on a case management model."

And **Rabbi Josh Lesser, President Bridges Faith Initiative**, stated: "Our tradition mandates that we must not stand idly by in the face of injustice. When children are detained, when human beings are detained it requires a response. We must not stay silent when these detentions

unjustly tear apart the fabric of our society. We demand that Congress stop the administration's intentionally anti-immigrant policies that is shredding our American values of welcome and due process."

Read the [letter](#) from over thirty national, faith-based organizations calling for a reduction in "the Department of Homeland Security's (DHS) budget for deportation, detention, and border militarization." Instead, they urge support for programs that include "community-based alternatives to detention, mitigation of the root causes of forced migration, and meaningful reforms that would reunite families permanently and allow our communities to flourish."

Alternatives to detention are cost-effective, practical, and humane; read about them [here](#).

*The Interfaith Immigration Coalition is made up of 53 national, faith-based organizations brought together across many theological traditions with a common call to seek just policies that lift up the God-given dignity of every individual. In partnership, we work to protect the rights, dignity, and safety of all refugees and migrants.*

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**Statement for the Record**

**U.S. House of Representatives Committee on the Judiciary - Subcommittee  
on Immigration and Citizenship**

**Hearing on "The Expansion and Troubling Use of ICE Detention"**

**September 26, 2019**

The National Immigration Forum (the Forum) advocates for the value of immigrants and immigration to the nation. Founded in 1982, the Forum plays a leading role in the national debate about immigration, knitting together innovative alliances across diverse faith, law enforcement, veterans and business constituencies in communities across the country. Leveraging our policy, advocacy and communications expertise, the Forum works for comprehensive immigration reform, sound border security policies, balanced enforcement of immigration laws, and ensuring that new Americans have the opportunities, skills, and status to reach their full potential.

Introduction

The Forum appreciates the opportunity to provide our views on the excessive levels of immigration detention. We believe that the record number of detainees are unnecessary and exorbitant. With Congress already demonstrating a commitment to fund safe and effective alternatives to detention (ATDs), there is no reason why immigration detention has reached record levels – with an average daily population exceeding 50,000.<sup>1</sup>

Maintaining an average daily population of immigrant detainees above 50,000 is a waste of taxpayer funds and is in tension with congressional spending limits. In fiscal year (FY) 2016, U.S. Immigration and Customs Enforcement (ICE) maintained an average of 34,000 beds,<sup>2</sup> which itself represented a significant increase over detention levels of the 1990s and 2000s. Even with the influx of Central American migrants in recent years, an increase of 50 percent or more above that already inflated number is unwarranted and unnecessary, and represents a drain on taxpayer funds. Given the negative impacts of

<sup>1</sup> Spencer Ackerman, "ICE Is Detaining 50,000 People, an All-Time High," The Daily Beast, Updated Mar. 8, 2019, <https://www.thedailybeast.com/ice-is-detaining-50000-people-a-new-all-time-high>.

<sup>2</sup> Laurence Benenson, National Immigration Forum, "The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply," May 9, 2018, <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>.

detaining individuals in immigration detention, especially children and families,<sup>3</sup> the Forum believes that ATDs are a humane substitute that also save taxpayers money.

#### Alternatives to Detention Are Cheap and Effective

Detention of non-dangerous immigrants is a budget item ripe for cost savings. Such savings can be achieved by deprioritizing the detention of immigrants without criminal records and moving those immigrants into alternatives to detention (ATD) programs. ATDs can cost as little as 70 cents to \$17 per person per day, with an average ATD contract costing between \$5 and \$6 per person per day.<sup>4</sup> In contrast, ICE spends an average of more than \$200 each day to detain someone in immigration detention, and, when detaining families, spends even more – upwards of \$300 per person per day.<sup>5</sup>

U.S. Immigration and Customs Enforcement (ICE) relies on several different approaches to ATDs, including electronic monitoring, case management, parole/bond, and check-ins. ATDs have proven to be highly effective in ensuring immigration court attendance, with many programs exceeding 90 percent success rates,<sup>6</sup> with some “full service” ATD programs featuring case management yielding success rates above 95 percent.<sup>7</sup> Accordingly, the Department of Homeland Security (DHS) has recently endorsed ATDs, touting its high success rates and “strong alien cooperation.”<sup>8</sup>

In recent years, Congress has prioritized ATDs, funding a projected average of approximately 80,000 participants at \$187 million in FY 2018.<sup>9</sup> This represents a significant increase above FY 2012 levels, when Congress appropriated \$38 million for approximately 12,000 ATD slots.<sup>10</sup>

The use of electronic monitoring, specifically through ankle monitors, has become increasingly prevalent. In July 2018, over 38,000 immigrants were fitted with ankle

<sup>3</sup> National Immigration Forum, “Fact Sheet: Family Separation at the U.S.-Mexico Border,” June 20, 2018, <https://immigrationforum.org/article/factsheet-family-separation-at-the-u-s-mexico-border/>.

<sup>4</sup> See “The Math of Immigration Detention.”

<sup>5</sup> See “The Math of Immigration Detention.”

<sup>6</sup> American Immigration Lawyers Assoc., et al., “The Real Alternatives to Detention,” June 2019, <https://www.aila.org/infonet/the-real-alternatives-to-detention>.

<sup>7</sup> National Immigration Forum, “Infographic: Alternatives to Detention,” June 27, 2018, <https://immigrationforum.org/article/infographic-alternatives-to-detention/>.

<sup>8</sup> U.S. Department of Homeland Security, Fiscal Year 2018 Budget Justification, at ICE-O&S-179, [https://www.dhs.gov/sites/default/files/publications/CFO/17\\_0524\\_U.S.\\_Immigration\\_and\\_Customs\\_Enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/CFO/17_0524_U.S._Immigration_and_Customs_Enforcement.pdf).

<sup>9</sup> Christian Penichet-Paul, Omnibus Appropriations for Fiscal Year (FY) 2018: Department of Homeland Security (DHS), Mar. 29, 2018, <https://immigrationforum.org/article/omnibus-appropriations-fiscal-year-fy-2018-department-homeland-security-dhs/>.

<sup>10</sup> See “The Math of Immigration Detention.”



monitors, representing nearly half of all individuals in the Intensive Supervision of Appearance Program (ISAP), ICE's primary ATD program.<sup>11</sup>

#### As the Use of ATDs Rises, Detention Levels Should Fall

DHS' increasing reliance on ATDs has not been met with a corresponding reduction in immigration detention.<sup>12</sup> ATDs all too often have been used to supplement, rather than replace, immigrants held in detention.<sup>13</sup> With detention levels and ATD slots both reaching record levels, the end result is that significantly more people are under some form of DHS detention or monitoring. The Forum believes that increasing ATDs without a corresponding reduction in immigration detention is a missed opportunity that minimizes the positive impacts of ATDs.

By not utilizing ATDs as actual "alternatives" — and not removing low-priority individuals from the detained population — the federal government has missed opportunities for cost savings. Over the past decade, Congress and multiple administrations have failed to take advantage of opportunities to save taxpayer funds unnecessarily spent on immigrant detention.

Over the past three years, Congress has repeatedly increased funding for immigration detention and boosted the detained immigrant population.<sup>14</sup> And even when Congress has sought to limit detention levels, as it did in the February 2019 budget deal, the current administration has continued to use reprogramming authority to shift additional DHS funds into immigration detention.<sup>15</sup>

The continuing cycle of increasing immigration detention funding year after year is wasteful and unnecessary. As detention levels and detention costs continue to rise, these unnecessary taxpayer expenses will only climb further. Absent additional pushback from Congress, through the appropriations process and elsewhere, such trends are likely to continue for the foreseeable future.

#### Conclusion

The National Immigration Forum believes that immigration detention levels are excessive and waste taxpayer dollars. At the same time, the Forum is encouraged by the success of ATD programs that are cheap and effective. Congress should act to ensure DHS utilizes

<sup>11</sup> Colleen Long, et al., "ICE issuing more immigrant ankle monitors. But do they work?" Associated Press, Aug. 25, 2018, <https://www.apnews.com/d6dc6302e154753a526c04706df45d6>.

<sup>12</sup> See "The Math of Immigration Detention."

<sup>13</sup> American Immigration Lawyers Assoc., et al., "The Real Alternatives to Detention," June 2019, <https://www.aila.org/infonet/the-real-alternatives-to-detention>.

<sup>14</sup> See "The Math of Immigration Detention."

<sup>15</sup> See Dara Lind, "Congress's deal on immigration detention, explained," Vox.com, Feb. 12, 2019, <https://www.vox.com/2019/2/12/18220323/immigration-detention-beds-congress-cap>.

ATDs as originally intended – as a substitute for immigration detention. Immigrants who pose no threat to public safety and are likely to appear in immigration court under ATDs, should be placed on ATDs, rather than detained.



**SEARAC**

September 25, 2019

The Honorable Zoe Lofgren  
Chair  
Subcommittee on Immigration and  
Citizenship  
1401 Longworth HOB  
Washington, DC 20515

The Honorable Andy Biggs  
Ranking Member  
Subcommittee on Immigration and  
Citizenship  
1318 Longworth HOB  
Washington, DC 20515

RE: Statement for the Hearing Record for the House Judiciary Subcommittee on  
Immigration and Citizenship Hearing "The Expansion and Troubling Use of ICE  
Detention"

Dear Chair Lofgren, Ranking Member Biggs, and Members of the Subcommittee:

On behalf of the Southeast Asia Resource Action Center (SEARAC) and Many Uch, we  
thank you for the opportunity to submit this statement and the story of Many Uch for  
inclusion in the record for the hearing on "The Expansion and Troubling Use of ICE  
Detention."

SEARAC is a national civil rights organization that empowers Cambodian, Laotian, and  
Vietnamese American communities to create a socially just and equitable society. As  
representatives of the largest refugee community ever resettled in the United States,  
SEARAC stands together with other refugee communities, communities of color, and  
social justice movements in pursuit of social equity.

#### **Detention Harms Southeast Asian American Communities**

Southeast Asian Americans are the largest community of refugees ever resettled in the  
United States. Many families relocated because of political, ethnic, and religious  
persecution from their countries of origin due to allyship with the United States during  
the Vietnam War and the Secret Wars in Laos and because of political upheaval in their  
home country as a partial result of U.S. foreign intervention in Cambodia and Laos.

However, during the resettlement process, these communities were often placed in high  
crime and high poverty communities with little support and few opportunities. To this  
day, Southeast Asian American communities continue to struggle economically and

educationally, with poverty and high school attainment rates similar to Black and Latinx communities.

Some individuals committed crimes or were involved in illegal activities, mistakes they have already served time for, before being detained in immigration detention, with some being eventually deported. To date, over 17,000 Southeast Asian Americans have been given a final order of removal; of these individuals, about 15,000 still live in the United States. Certain individuals have spent more time in Immigration and Customs Enforcement (ICE) detention than in prison because of mandatory detention laws. One SEARAC constituent, Lundy Khoy, was only in prison for two months before being released on good behavior, but was detained for nine months in ICE custody. Some Southeast Asian American immigrant detainees continue to suffer from mental health issues because of their detainment, with one person, Kunthy Nov from Washington state, suffering prolonged post-traumatic stress disorder from his detention.

Immigrant detentions not only harm a detained individuals own wellbeing but also negatively impact the lives of their families, including their spouses and children. As mentioned previously, many Southeast Asian American families already struggle financially. But immigrant detention in these communities often results in the detainment of one of two primary caregivers. When Jenny Srey's husband was detained in August 2016, her family lost a significant portion of their family's income. In addition to paying \$20,000 for attorney fees to release her husband from detention, her family also lost their health insurance despite the increased need for mental health services for both her and their two children.

Increased ICE detentions of Southeast Asian Americans harm entire families. Without concern for the detainment of primary caregivers and vulnerable populations, ICE continues to push already impoverished families further into poverty without consideration for the other consequences of their detention. Bills like the Dignity for Detained Immigrants Act that end mandatory detention and creates proper alternative to detention (ATD) programs are necessary to prevent further harm in families suffering because their loved ones are in deportation proceedings.

### **The Story of Many Uch: The Effects of Indefinite Detention**

Many Uch arrived in the U.S. as a refugee from Cambodia in 1984 when he was eight years old and settled into a Seattle-area public housing complex. At 14, he was swept up into a local gang with his peers, and in 1994, he was arrested for driving a car for some of his friends who had committed an armed robbery.

Many served 40 months in prison, where he grew up and transformed his life. Unfortunately, during this time in prison, Congress passed the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) and other legislation that retroactively made Many's crime a deportable offense with no opportunity for relief. As soon as he was released, he was detained held by ICE and held in immigrant detention for an additional 28 months. Cambodia began accepting deportees from the U.S. in 2002, but with

hundreds of others on the list, it was impossible to know when he might have been deported.

There were two suicides during six months that Many was detained in the Seattle detention center. Many individuals didn't know if they would ever be released, including Many. His mother would inquire about when he'd be released, but he was never able to answer her. The uncertainty drove Many to begin considering self-deporting. Fortunately, he was eventually released. By that point, his mother just couldn't believe that he'd ever be released, and so she sent a family friend to pick him up instead of going herself.

Afterward, he devoted his life to helping other Cambodian youth avoid the mistakes he had made. He started by a Little League team in his neighborhood, and helped found the grassroots social justice group Khmer in Action to organize the community around the deportation issues affecting so many young men. Many speaks often at schools and youth groups about gang prevention.

Today, Many is married to a U.S. citizen and is raising two daughters, while he continues to work as a pivotal community activist and a national advocate for humane and fair immigration laws. On June 28, 2010, Washington Gov. Christine Gregoire pardoned Many's 1994 conviction. Fortunately, changes in post-conviction release laws in Washington State and sentencing reform in his county allowed Many to reduce his convictions to non-deportable misdemeanors, and ICE terminated his deportation case in May of 2019.

### **Conclusion**

SEARAC is increasingly concerned about ICE's continued expansion of immigrant detention. The many Southeast Asian Americans our partners have worked with pose no harm to their communities and many have already turned their lives around. Congress must move forward with legislation that ends mandatory detention, decreases detention usage, and increases alternatives to detention. For any questions, please contact Kham S. Moua, SEARAC Immigration Policy Advocate at [kham@searac.org](mailto:kham@searac.org).



**Statement for the Record from**

Sanaa Abrar  
Advocacy Director  
United We Dream

**Submitted to the House Judiciary, Immigration and Citizenship Subcommittee  
Hearing on The Expansion and Troubling Use of ICE Detention**

**Thursday, September 26, 2019**

**Contact:** Sanaa Abrar, [sanaa@unitedwedream.org](mailto:sanaa@unitedwedream.org)

United We Dream is the largest immigrant youth-led network in the United States. We create welcoming spaces for young people—regardless of immigration status—to support, engage, and empower them to make their voices heard and win. We have an online reach of five million and are made of a powerful membership of 500,000 members and 112 local groups across 28 states. Over 60 percent of our members are women and 20 percent identify as LGBTQ.

Led by and accountable to youth leadership, United We Dream advocates for a multi-racial democracy where immigrants and communities of color live safely, with dignity and can thrive.

We appreciate the Subcommittee for acknowledging the wrong being carried out by Immigration and Customs Enforcement (ICE) to immigrants at these detention centers by holding this hearing. It is an important step forward in holding this administration accountable for their cruel misdeeds and marks a departure from the cruel status quo that has enabled the incarceration of immigrants in this country for far too long.

Under the Trump administration, immigrant youth, their families, and communities of color have experienced firsthand the impact of white supremacist immigration enforcement and criminal legal systems. Inherently institutionally racist in nature, the Trump administration mercilessly expanded these systems and unleashed their full force as a single, unified deportation force acting upon vulnerable communities. At the border, the implementation of cruel and unnecessary policies [including MPP (Migrant Protection Policy) and Zero Tolerance] has caused irreparable harm to those seeking refuge and a better life in our country, and has allowed ICE and CBP (Customs and Border Protection) now operates, serving as the frontline in a war on immigrants and communities of color.

This statement addresses the need made all the clearer by ICE and CBP's wrongdoings, to end immigrant detention and deportations. This will ensure their abuse of power and illegal activities are stopped and we can turn our attention to helping people without harming people. We urge all of Congress to defund ICE and CBP, enact accountability measures to stop their abuses of power, and to enact permanent protections for all immigrants that are not tied to added resources for detentions, deportations, or further border militarization.

Today's hearing is a step in the right direction towards exposing ICE and CBP, agencies that have torn families apart and sowed fear in our communities. We especially appreciate the inclusion of three directly impacted witnesses to testify at the hearing regarding their experiences at the hands of ICE. It is important to hear from those directly impacted by these atrocious policies.

Various reports by the Department of Homeland Security (DHS) Office of Inspector General<sup>1</sup> detail the inhumane conditions in which asylees and refugees are kept in detention. The conditions themselves are grotesque, and detention itself is unnecessary, given that asylum seekers show up for their immigration hearings if released<sup>2</sup>. Family separation, an intended consequence of the zero tolerance policy, is considered unlawful<sup>3</sup> by the United Nations. This indiscriminate detention adds to a harmful and dangerous narrative which paints all immigrants as criminals. We urge Congress to refuse any additional funding to ICE and CBP, but in fact to decrease their funding. Additionally, Congress must restrict DHS' authority to transfer funds to the agencies of ICE and CBP that enables increased detentions and deportations as well as including stopgaps in their ability to overspend beyond their congressionally allotted budget.

United We Dream, supported by our members, opposes any increases to ICE or CBP's budget or any policy that further endangers or maligns our communities, including those who only hope to find a safe haven in this country.

Our priorities are to ensure the safety and humane treatment of anyone who seeks to enter the United States as well as pursuing our communities' freedom to move and freedom to stay, regardless of immigration status. Policies such as the zero tolerance policy which mandates the detention of anyone who crosses the border without previous authorization are a twisted attempt to deter migration that only result in the mass incarceration and increased deportations of migrants and asylum seekers. This is unnecessary and an abuse of power implemented under the auspices of deterrence for further immigration.<sup>4</sup> It also exacerbates the inhumane conditions in detention camps by increasing the number of detainees to unprecedented levels.

This increase in detention caused by this administration's own gratuitously cruel and arbitrary policies have served as the Administration's backward rationale that more money is necessary to detain more people; it has been a deadly cycle that has contributed to DHS' ever-growing presupposed need for larger budgets. They have demanded more funding and we have fought

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<sup>1</sup> Concerns about ICE Detainee Treatment and Care at Four Detention Facilities, June, 2019.

<https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>

Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley (Redacted), July, 2019.

[https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19\\_.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf)

<sup>2</sup> FACT CHECK: Asylum Seekers Regularly Attend Immigration Court Hearings.

<https://www.humanrightsfirst.org/resource/fact-check-asylum-seekers-regularly-attend-immigration-court-hearings>

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<sup>3</sup> "Taking Migrant Children From Parents Is Illegal, U.N. Tells U.S." The New York Times, June 5, 2018

<https://www.nytimes.com/2018/06/05/world/americas/us-un-migrant-children-families.html>

<sup>4</sup> "Here are the administration officials who have said that family separation is meant as a deterrent." Bump, Phillip. June 19, 2018.

<https://www.washingtonpost.com/news/politics/wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-deterrent/>



against additional funds at every step of the budget negotiations and through every avenue permitted to them. In the past year alone, their budget has been increased by billions through appropriations (by \$874,514 between 2018 and 2019<sup>5</sup>), anomalies (at least \$41.6 million<sup>6</sup>), supplemental budgets (\$4.5 billion<sup>7</sup>), and the process of exception apportionments which has enabled budget advances (\$200 million), not to mention the transfers of funds between DHS agencies (\$10 million from FEMA)<sup>8</sup>.

These funds are only used to further their new defacto mission to deter immigration by terrorizing our communities. This administration, fueled by its white supremacist agenda, has attempted to end all migration from certain parts of the globe by enacting bans<sup>9</sup>, ending protection programs<sup>10</sup>, decreasing refugee admissions and other avenues of entry, causing undue burden on not only aspiring immigrants but their legal resident and citizen loved ones<sup>11</sup>. The current administration has also attempted to deter migration and access to asylum by enacting inhumane policies through targeting and detention of community members<sup>12</sup>, raids in the workplace<sup>13</sup> and other previously considered sensitive locations<sup>14</sup> such as schools, courthouses and hospitals, as well as U.S. Customs and Immigration Services (USCIS) offices<sup>15</sup>.

In our 2019 report, *The Truth About ICE and CBP*, we tell the stories of those directly impacted by the attacks carried out by ICE. Guadalupe Garcia was arrested by ICE in early 2017 at one of her USCIS check-ins and consequently deported, as well as her mother, who was also arrested and deported for going to her regular USCIS check-in a year later. Another case featured in the report is that of Miguel Reyes Garcia, a DACA recipient arrested by ICE on his way to get coffee.

<sup>5</sup> FY 2019 Budget in Brief, pg 11. <https://www.dhs.gov/sites/default/files/publications/DHS%20BIB%202019.pdf>

<sup>6</sup> Department of Homeland Security U.S. Immigration and Customs Enforcement Budget Overview - Fiscal Year 2018 <https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf>

<sup>7</sup> "The furious, last-minute fight over the House and Senate border aid bills, explained." Vox, Jun 27, 2019 <https://www.vox.com/policy-and-politics/2019/6/27/18761674/house-passes-senate-border-relief-bill>

<sup>8</sup> "It's not just FEMA: ICE quietly got an extra \$200 million." CNN, September 12, 2018.

<https://www.cnn.com/2018/09/12/politics/ice-more-money-fema-dhs/index.html>

<sup>9</sup> Timeline of the Muslim Ban. <https://www.aclu-wa.org/pages/timeline-muslim-ban>

<sup>10</sup> Trump Moves to End DACA and Calls on Congress to Act. New York Times, Sept 2017.

<https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html>

Trump administration puts end of TPS on hold for Hondurans and Nepalis. Vox, Mar 12, 2019.

<https://www.vox.com/policy-and-politics/2019/3/12/18262314/tps-honduras-nepal-lawsuit-news-status>

<sup>11</sup> All the ways President Trump is cutting legal immigration." USA Today, June 12, 2018

<https://www.usatoday.com/story/news/world/2018/06/12/donald-trump-cutting-legal-immigration/692447002/>

<sup>12</sup> More Than 2,000 Migrants Were Targeted in Raids. 35 Were Arrested. The New York Times, July 23, 2019.

<https://www.nytimes.com/2019/07/23/us/ice-raids-apprehensions.html>

<sup>13</sup> "680 undocumented workers arrested in record-setting immigration sweep on the first day of school." CNN, August 9, 2019 <https://www.cnn.com/2019/08/08/us/mississippi-immigration-raids-children/index.html>

<sup>14</sup> "Arresting immigrants at schools, hospitals and courthouses isn't just cold-hearted, it's counterproductive" Los Angeles Times, Mar 16, 2017.

<https://www.latimes.com/opinion/editorials/la-ed-trump-ice-courts-20170316-story.html>

<sup>15</sup> "ICE continues to Arrest Immigrants at their Hearings for Legal Residency." Pacific Standard, June 5, 2019.

<https://psmag.com/social-justice/ice-continues-to-arrest-immigrants-at-their-hearings-for-legal-residency-status>

When presented with his work permit, “ICE instead confiscated [it], destroyed it, and arrested him.” At a courthouse, shortly after being granted a protective order by a judge and eligible for a U visa, Irvin Gonzalez, a transgender woman was arrested by ICE.<sup>16</sup>

Innumerable reports, have revealed the mistreatment of migrants at ICE detention camps. Children being made to take care of each other, go through their days in soiled clothing, not being fed nutritious meals or sufficient amounts, not receiving adequate medical care if any, being denied educational and recreational activities, and eventually dying in the care of these agencies are only the beginning of these agencies criminal neglect<sup>17</sup>. Adults in detention are treated just as terribly, being put in solitary confinement<sup>18</sup>; being denied medical care; female hygiene products and medical care<sup>19</sup> and also dying inside these camps<sup>19</sup>. The list of indecencies and inhumanity is long and should be sufficient reason to disband ICE altogether.

United We Dream’s report, *The Truth About ICE and CBP: A Comprehensive Analysis of the Devastating Human Impact of the Deportation Force by the Immigrant Youth & Families Who Know It Best*, provides a comprehensive overview of the expansive increase in enforcement under this administration. United We Dream has also regularly conducted surveys of thousands of DACA recipients, collecting and analyzing data points on economic gains, attitudes, and other metrics. We submit both reports for the record as part of this statement.

However, beyond the mistreatment of people, this administration’s actions and rhetoric serves to add to a dangerous narrative that immigrants are criminals. Our immigration system is shamefully tied with our criminal legal system, from increased criminal prosecutions for immigration-related offenses by the federal government; racial profiling, arrest, killings, and prosecution of Black and brown people by state and local enforcement (and collateral immigration consequences); to the double-standard for immigrants in terms of rehabilitation and post-conviction relief. The criminal legal system works in tandem with our civil immigration system to disqualify individuals from relief and future immigration relief cannot exacerbate this poisonous dynamic.

In August, the mass shooting in El Paso, where a white supremacist specifically targeted Latinos<sup>20</sup> and the Mississippi ICE raids that abducted nearly 700 individuals and tore families apart<sup>21</sup>,

<sup>16</sup> <https://unitedwedream.org/wp-content/uploads/2019/02/TheTruthICECBP-02052019-v3.pdf>

<sup>17</sup> “Mother whose toddler died after Ice detention speaks out in emotional testimony” The Guardian.

<https://www.theguardian.com/us-news/2019/jul/10/house-hearing-migrant-children-detention-facilities>

<sup>18</sup> “The Capricious Use of Solitary Confinement Against Detained Immigrants.” The Atlantic, Sept 6, 2019.

<https://www.theatlantic.com/politics/archive/2019/09/ice-uses-solitary-confinement-among-detained-immigrants/597433/>

<sup>19</sup> “24 immigrants have died in ICE custody during the Trump administration.” NBC, June 9, 2019.

<https://www.nbcnews.com/politics/immigration/24-immigrants-have-died-ice-custody-during-trump-administrati-on-n1015291>

<sup>20</sup> “The El Paso shooter told police that he was targeting Mexicans.” Vox, Aug 9, 2019.

<https://www.vox.com/2019/8/6/20756750/el-paso-shooter-targeted-latinx-walmart>

shook our communities to the core and the need for a change in narrative has been made saliently important. Giving ICE and CBP more money so they can ramp up their mission to terrorize and imprison Black and brown people will only serve to stoke the racial-animus already rampant in the country.

While all these atrocities are happening, it is imperative that we hear from those directly impacted by such policies. UWD deeply appreciates the care and thoughtfulness this subcommittee has shown in featuring those voices along with allies who are serving our communities. This hearing contributes to the effort and aids in our fight to decriminalize immigration and create a world where we can all be free.

Future immigration legislation must not contain onerous interior or border enforcement provisions; further criminalize immigrants; expand the nation's deportation apparatus; continue or expand the funding of immigration enforcement; or close off our immigration system to future immigrants, especially Black and brown immigrants. Specifically, in terms of enforcement, legislation providing permanent protection for immigrant youth must not: (a) fund additional ICE or CBP agents; (b) foster the expansion or continuation of our nation's sprawling and inhumane network of detention camps; (c) further criminalize immigrants by expanding the grounds of inadmissibility or deportability; or (d) continue the ongoing militarization of the border. In terms of benefits, legislation must not: (a) eliminate legal paths to immigration, including the diversity visa, sibling visa category, or other family-based immigration paths; (b) gut our nation's humanitarian forms of relief, including asylum; or (c) prohibit immigrant youth who receive relief from sponsoring their parents or other relatives in the future.

With all of this in mind, Congress must reject any increase in funding to ICE and CBP; it should in fact defund their activities, decrease their overall funding, and end DHS' authority to transfer funds to these agencies in the upcoming federal budget. We will oppose any attempts to allocate extra funds to ICE and CBP, and we will continue to expose their abuses of our people. Immigrant youth feel and experience the terror inflicted upon our communities.

In spite of relentless assault on immigrant freedoms, we along with our families have organized in the streets and all levels of government and have delivered a stinging rebuke to this administration—that no matter how fervent its commitment to xenophobia, racism, and criminalization, immigrants are #HereToStay.

We will keep organizing and building until every member of our community is protected and can thrive.

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<sup>21</sup> "680 undocumented workers arrested in record-setting immigration sweep on the first day of school." CNN, August 9, 2019 <https://www.cnn.com/2019/08/08/us/mississippi-immigration-raids-children/index.html>

9/25/2019

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IMMIGRATION

## DACA Recipients' Livelihoods, Families, and Sense of Security Are at Stake This November

By Tom K. Wong, Sanaa Abrar, Claudia Flores, Tom Jawetz, Ignacia Rodriguez Kmec, Greisa Martinez Rosas, Holly Straut-Eppsteiner, and Philip E. Wolgin | Posted on September 19, 2019, 5:00 am



Getty/Corbis News/VIEWpress/Kena Betancur

A woman takes part in a New York City march against President Trump's decision to end DACA, September 2017.

<https://www.americanprogress.org/issues/immigration/news/2019/09/19/474636/daca-recipients-livelihoods-families-sense-security-stake-november/>

1/7

*Note: The survey results can be found [here](#). For more information on the survey, please contact Tom K. Wong.*

Since it was first announced on June 15, 2012, the Deferred Action for Childhood Arrivals (DACA) policy has provided temporary relief from deportation as well as work authorization to approximately 825,000 undocumented young people across the country.

From August 14 to September 6, 2019, Tom K. Wong of the U.S. Immigration Policy Center at the University of California, San Diego; United We Dream; the National Immigration Law Center; and the Center for American Progress fielded a national survey to further analyze the experiences of DACA recipients. This study includes 1,105 DACA recipients in 40 states as well as the District of Columbia.

2019 marks the fifth consecutive year that the authors have surveyed DACA recipients. This research, as with previous surveys, continues to show that DACA recipients are making significant contributions to the economy. In all, 96 percent of respondents are currently employed or enrolled in school.

Moreover, for the first time, the survey provides data about the widespread harms that DACA recipients could endure if they lost their status and faced potential deportation. A full 93 percent of respondents reported concerns about either their or their family's physical safety; ability to access health care or education; food security; or risk of homelessness if they were deported to their respective countries of birth. With the Supreme Court set to hear oral arguments on the legality of DACA's termination on November 12, these data make clear that the stakes could not be higher.

## **DACA's impact on employment**

Work authorization has been critical in helping DACA recipients participate more fully in the labor force. The data show that 89 percent of respondents are currently employed. Among respondents ages 25 and older, the employment rate jumps to 91 percent.

After receiving DACA:

- 58 percent of respondents moved to a job with better pay.
- 48 percent of respondents moved to a job with better working conditions.
- 53 percent of respondents moved to a job that "better fits [their] education and training."

- 52 percent of respondents moved to a job that “better fits [their] long-term career goals.”
- 53 percent of respondents moved to a job with health insurance or other benefits.

The data also show that 6 percent of respondents started their own businesses after receiving DACA. Among respondents 25 years and older, this figure increases to 9 percent. As the authors have noted in previous surveys, DACA recipients are outpacing the general population in terms of business creation. DACA business owners with full-time employees (48 percent of all DACA business owners), on average, employ 4 1/2 workers other than themselves.

Moreover, 17 percent have obtained professional licenses after receiving DACA. Among respondents 25 years and older, this figure increases to 20 percent.

## DACA's impact on earnings

Several years of data, including this 2019 survey, make clear that DACA is having a positive and significant effect on wages. Respondents' average hourly wage increased by 86 percent since they received DACA, rising from \$10.46 per hour to \$19.45 per hour. And among respondents 25 years and older, the average hourly wage increased by 128 percent since receiving DACA. These higher wages are not just important for recipients and their families but also for tax revenues and economic growth at the local, state, and federal levels.

The data also show that respondents' average annual earnings come out to approximately \$42,000, and their median annual earnings total \$38,000. Among respondents 25 years and older, these figures are \$49,790 and \$44,583, respectively.

In addition, DACA has led to greater financial independence and security for recipients and their families.

- 79 percent of respondents reported that their increased earnings have “helped [them] become financially independent.”
- 79 percent reported that their increased earnings have “helped [their] family financially.”
- 25 percent reported that their increased earnings have “helped [them] take care of an elderly parent or relative.”

Specifically, among respondents currently in school, 80 percent reported that their increased earnings helped pay for tuition, and among respondents with children, 47 percent reported that

their increased earnings have helped to pay for child care expenses. Meanwhile, 47 percent of respondents reported that their increased earnings have helped pay for medical expenses, and 46 percent reported being able to move into better or improved housing.

## **DACA's impact on the economy**

DACA recipients' purchasing power continues to increase. For example, 60 percent of respondents reported buying their first car after receiving DACA. These large purchases contribute to state revenue, as most states collect a percentage of the purchase price in sales tax, along with additional registration and title fees. The added revenue for states comes in addition to the safety benefits of having more licensed and insured drivers on the roads.

The data also show that 14 percent of respondents purchased their first home after receiving DACA. Among respondents 25 years and older, this figure increases to 19 percent. The broader positive economic effects of home purchases include increased job creation and the infusion of new spending in local economies.

These effects come on top of the combined \$8.8 billion in federal, state, and local taxes paid annually by households with DACA recipients.

## **DACA's impact on education**

Overall, 40 percent of respondents are currently in school, a large majority—83 percent—of whom are pursuing a bachelor's degree or higher. When it comes to educational attainment, 46 percent of respondents reported already having a bachelor's degree or higher. Importantly, among those who are currently in school, a robust 93 percent said that because of DACA, "[They] pursued educational opportunities that [they] previously could not."

## **Potential risks of deporting DACA recipients**

As stated earlier, for the first time, the survey reveals DACA recipients' deep fears of return and the potential harms that they could face if they lost their protection and were deported. The results are stark:

- 80 percent reported, "In my country of birth, I would be concerned about the physical safety of myself and my family."
- 75 percent reported, "In my country of birth, I would be concerned about the quality of healthcare for myself and my family."

- 77 percent reported, "In my country of birth, I would be concerned about the quality of education for myself and my family."
- 58 percent reported, "In my country of birth, I would be concerned about food insecurity for myself and my family."
- 41 percent reported, "In my country of birth, I would be concerned about homelessness for myself and my family."

Altogether, 93 percent of respondents reported concerns about either their or their family's physical safety, health care, education, food security, or risk of homelessness in their respective countries of birth.

Strikingly, the average age of arrival to the United States among respondents is just 6.1 years old, and more than two-thirds—69 percent—reported not having any immediate family members who still live in their respective countries of birth. These findings make clear that deporting DACA recipients would not only mean sending them to countries they barely know, but it would also put their physical safety, well-being, and livelihood at serious risk.

## Civic engagement of DACA recipients

Despite DACA's uncertainty, the data continue to show tremendous resolve among DACA recipients and suggest that the program is associated with a greater sense of belonging. Fifty-seven percent of respondents reported that they have become more involved in their communities after receiving DACA. After their DACA application was approved, 67 percent reported, "I am no longer afraid of my immigration status," and 67 percent reported, "I feel more like I belong in the U.S." Nearly half of respondents reported that they have become more politically active since receiving DACA.

## The uncertainty of life with DACA

The legal and political uncertainty surrounding DACA continues to weigh heavily on the minds of DACA recipients. For example, 56 percent of respondents reported that they think about either being detained in an immigration detention facility or deported from the United States at least once a day; and an even greater percentage, 69 percent, reported that they think about a family member being detained or deported at least once a day.

Fear of family separation is particularly strong among DACA recipients who are parents. Among those with children, 75 percent reported that they think about "being separated from [their] children



because of deportation" at least once a day, while 72 percent reported thinking about "not being able to see [their] children grow up because of deportation" at least once a day.

## Conclusion

As the Supreme Court prepares to hear arguments on DACA's termination on November 12, 2019, the implications for DACA recipients, their families, and the U.S. economy as a whole are clear. DACA has been a major success, evidenced by recipients' gains in employment outcomes and educational attainment, increased sense of belonging and stability, and contributions to local communities and economies. But now, these gains are on the line. And as the data show, stripping recipients of protections would have potentially disastrous impacts on them and their families, including the nearly 256,000 U.S. citizen children who have a parent with DACA.

*Tom K. Wong is associate professor of political science and founding director of the U.S. Immigration Policy Center at the University of California, San Diego, as well as a senior fellow at the Center for American Progress. Sanaa Abrar is advocacy director at United We Dream. Claudia Flores is the immigration campaign manager at the Center for American Progress. Tom Jawetz is vice president for Immigration Policy at the Center for American Progress. Ignacia Rodriguez Kmec is immigration policy advocate at the National Immigration Law Center. Greisa Martinez Rosas is deputy executive director at United We Dream. Holly Straut-Eppsteiner is research program manager at the National Immigration Law Center. Philip E. Wolgin is managing director for Immigration Policy at the Center for American Progress.*

*The authors would like to thank all those who took and shared the survey for their time and effort in helping to bring these stories to light.*

## Methodology

The questionnaire was administered to an online panel of DACA recipients recruited by the partner organizations. Several steps were taken to account for the known sources of bias that result from such online panels. To prevent ballot stuffing—one person submitting multiple responses—the authors did not offer an incentive to respondents for taking the questionnaire and used a state-of-the-art online survey platform that does not allow one IP address to submit multiple responses. To prevent spoiled ballots—people responding who are not undocumented—the authors used two validation tests for undocumented status. Multiple questions were asked about each respondent's migratory history and DACA application history. These questions were asked at different parts of the questionnaire. When repeated, the questions were posed using different wording. If there was agreement in the answers such that there was consistency regarding the respondent's migratory

9/25/2019

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history and DACA application history, the respondent was kept in the resulting pool of respondents. If not, the respondent was excluded.

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**REP. JAYAPAL FOR THE RECORD**

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United We Dream report entitled, "The Truth About ICE & CBP" -  
<https://docs.house.gov/meetings/JU/JU01/20190926/110017/HRG-116-JU01-20190926-SD015.pdf>

**STATEMENT OF ABDIKADIR ABDULAHI MOHAMED\***  
**Before the House Committee on the Judiciary:**  
**Subcommittee on Immigration and Citizenship**  
September 26, 2019

Thank you very much, Chairwoman Zoe Lofgren and Vice Chairwoman Pramila Jayapal, for holding this hearing and for allowing me to share my story.

My name is Abdikadir Abdulahi Mohamed. Everyone calls me Abdi. I landed at JFK international airport on December 13, 2017 as a healthy 30-year-old dad, ready to build my life with my family. Seventeen months later, due to the Department of Homeland Security's overreach and complete medical neglect, I left a privately-operated immigration detention center in Elizabeth, New Jersey, having missed the birth of my second daughter, Suheyba, and having developed a dangerous life-threatening disease which will reverberate for the rest of my life.

I should never have been detained in the first place. The immigration judge should have released me. But she was legally forbidden from even considering that as an option. Because ICE jailed me in terrible conditions and denied me necessary treatment, I developed active tuberculosis ("TB"). My only option was to ask ICE, my jailer, to release me. They repeatedly denied my requests without explanation, no matter how sick I became.

I am a Muslim man from Somalia. In 2010, I was forced to leave my family and fled to South Africa. While an asylum seeker in South Africa, my life was very hard. I faced the constant threat of xenophobic violence targeting Somalis. I lost many friends to senseless killings. However, it was during my time in South Africa that I met my beautiful wife Malyuun online. She is a U.S. citizen from Somalia. She brightened each day for me and continues to be my guiding light.

We were married in South Africa in May 2016 and, shortly after, she became pregnant with our first child, Suheila. The following month, we started the process of reuniting our family. Malyuun petitioned for me to move to the United States permanently as a green card holder to live with them. I was finally issued an immigrant visa in November 2017. In December I boarded a plane to finally join my pregnant wife and daughter. I was so excited during the flight – I had never been on a plane before. I could not wait to begin my new life with Malyuun, Suheila and our second baby on the way. Upon arrival in the U.S., my visa was stamped "Admitted-NYC" and at that point, I thought I was a lawful permanent resident.

My dream of reuniting with my family was crushed that day at that airport and quickly became a nightmare. An officer from a secretive branch of CBP called the Tactical Terrorism Response Team intercepted me on my way to my connecting flight. He approached and asked me if I was "from Mogadishu," the capital of Somalia, pulled me into an interview room, and interrogated me for 15 hours without a Somali interpreter, even though I asked for one repeatedly. At one point during the interrogation, the CBP officers even tried to deport me, telling me that they would send me back to Somalia. Finally, because I was afraid to return to Somalia, I was not deported. Instead, I was shackled and transferred to an ICE processing center and then the Elizabeth Detention Center ("EDC"). Core Civic, a private for-profit prison company operates the facility.

Even though I came here with my green card, the government classified me as someone who didn't have immigration status. I was forced to ask for asylum. Because I was classified as an asylum seeker encountered at the border, I was legally not even able to ask a judge to set bond in my case.

The only way I could request release was through the "humanitarian parole" process. In this process you ask ICE itself to let you out. I made this request three different times. I provided them with many pages of evidence in support of my requests. It didn't matter; my requests were denied every time. The first time I was just given a standard form with boxes checked denying the request. My second request was also denied. ICE, again, didn't follow its own rules in making its decision – I was never provided an interpreter or interviewed. I got a similar denial form. A federal court has recognized that the way parole applications are being processed violates even the minimal standards that ICE has set for itself and has ordered it to change its procedures.

This didn't matter. After I developed a life-threatening disease, I again asked for parole, this time with the support of two independent doctors who assessed my condition and found that I had developed TB while detained at EDC and was being inadequately treated. ICE still denied my application without considering the required criteria.

So, I remained jailed for 17 months while was forced to fight my legal case while incarcerated. When I arrived in December 2017, I was healthy. I have always been an active person and was used to working long hours and playing sports. A few days after I arrived at EDC I was sent to the hospital because I had a positive PPD test, indicating exposure to TB. My chest x-ray was normal and I was sent back to EDC. I asked the medical unit at EDC why I went to the hospital. When they told me it was to check for TB, I asked them what the results of the test were. They snickered and said if I had had TB they would not have brought me back to the jail. I thought everything was fine.

I now know that the Centers for Disease Control and Prevention ("CDC") recommends providing treatment to someone who has a positive PPD and a normal x-ray when they come from countries like Somalia, with high rates of tuberculosis. This treatment is to prevent active tuberculosis from developing. Being in jail also increases the risk of developing active tuberculosis. The crowding and poor air circulation make it easy for the disease to spread. I knew none of this at that time.

Despite the CDC protocol, ICE and Core Civic failed to provide me with the prescribed treatment. They also chose to keep me in jail despite the grave risks to me and everyone else in the detention center. They held me in a small open-air dormitory room with 44 other men at the EDC. There were no windows; the ventilation system was very poor. The beds were very close together. There were only a few bathrooms which were very dirty. The dorm walls were dirty and paint was falling from the walls. The drinking water didn't taste right and some of the Core Civic guards even told us not to drink too much of the water. They all drank bottled water.

Starting around June 2018, I started to feel ill and began losing weight. I soon started feeling fatigued while exercising and had terrible pain in my right rib area. At this point I started going to the medical unit more often. I had never felt anything like this before and it concerned me. I stopped exercising altogether and by August I was having trouble breathing. The pain in my lungs

and on my right side was worsening. I got really scared. By October, the pain was unbearable and I started getting feverish. I frequently asked to see a doctor, but I was only seen by a nurse that month. I told the nurse about my pain and concerns about a possible infection. She said I did not need antibiotics. I was not given a chest x-ray. My concerns were blown off. I was only given Tylenol despite my severe pain.

By November 2017, I was feeling much worse. In addition to the constant pain in my right side, I was also coughing a lot. Despite falling increasingly ill, the medical staff seemed uninterested in my condition. I was gravely ill for 10 days before eventually being taken to the hospital. In those 10 days I was in agonizing pain. I had chills, a fever and used three blankets at night to stay warm. When I was finally seen by a nurse practitioner on November 8, 2018, I had not eaten and had difficulty getting out of bed for days because I was simply too weak. I had a fever and my heart rate was faster than normal. I thought I was dying and I was afraid I would never see my family again. Despite my symptoms and desperate pleas to the medical staff, they continued to prescribe Tylenol. On the few occasions when I was able to see a doctor, he always downplayed my condition. Neither he nor I spoke English very well so it was very difficult to communicate. At no time during my medical treatment at EDC was I offered the assistance of a Somali language interpreter, even though I asked for one repeatedly. They always told me that because I spoke some English I didn't need an interpreter.

When I could not get out of bed any longer they finally took me to the hospital. I spent 11 days there. During that time I never understood what was wrong with me. Even the hospital never provided me with an interpreter. They drained my lungs multiple times, which was incredibly uncomfortable and painful. It was even more uncomfortable because I was shackled, often by three limbs, to the bed, with guards stationed at all times outside my door. Being shackled to the bed was dehumanizing, especially given my excruciating pain. It was almost unbearable.

To add further agony and stress to the already scary experience, I was not allowed to communicate with the outside world from the hospital. My attorneys only discovered I was in the hospital when they appeared for a court date and I was not there. Malyuun was worried sick. My attorneys made repeated daily attempts to get information about my health but their requests were repeatedly rebuffed by ICE. ICE instructed the hospital staff not to talk to anyone, not to share any information and not to let me talk to anyone. After my attorneys' advocacy, after about ten days in the hospital, I was able to briefly speak to my wife one time. My legal team and family were explicitly warned not to visit me while in the hospital multiple times.

Imagine being shackled to a hospital bed, having your lungs drained, not really understanding what is going on, feeling like you may die, and not being able to talk to your wife. After 11 days in the hospital, I was transferred back to EDC. There, the unrelenting neglect and indifference to my needs continued to threaten my life. Because I had no interpreter at the hospital, I had no way of knowing that the medication which had been prescribed to me could have caused major liver damage and other life-threatening consequences. I was so uninformed about my own health that I wasn't even told that I actually had TB until about a month after I was released from the hospital.

I now know that the hospital provided the detention facility with strict instructions for my continued care and treatment. The EDC medical staff failed to follow the hospital's orders nearly

every step of the way. They did not regularly monitor my blood, despite the hospital orders to closely monitor my liver. The hospital also prescribed a detailed six-month treatment regimen for TB. At one point the medical staff at EDC took me off my medicine for 3 days, which I later learned could have had life-threatening consequences. Any disruption in TB treatment could have led to drug-resistance.

My entire illness could have totally been avoided if I had not been detained in the first place, or if I had a chance to ask for bond or release from a judge. I also believe I would not have gotten so sick if there had been stronger standards governing the medical care in the jail. Unfortunately, it seemed EDC and Core Civic had no real procedures in place, which resulted in my developing a dangerous illness that could have harmed others. After all, this entire situation would have been completely avoided if ICE and Core Civic had followed the CDC protocol when I initially entered the facility.

On July 2nd, 2019, after nearly 17 months in detention, I was finally granted asylum and released. I am now finally living happily with my wife, Malyuun, and our children in Columbus, Ohio, as I intended to do nearly two years ago. It has been incredible to reunite with my wife and daughters. Malyuun and I are expecting our third child in April. I am taking various classes so that I can get a good job to support my family. The doctors say I am clear from TB but I still have lingering pain. I still cannot sleep on my right side. They have said that due to the delays in treatment, I may suffer from chronic pain and other long-term consequences for the rest of my life.

Please, I call on you all to adopt the Dignity for Detained Immigrants Act. This Act will ensure that all immigrants in detention are considered for release or bond within days of their detention. This ensures that a judge can review these determinations. These are important rights for all immigrants. This Act will also help ensure that individuals who are detained and fall ill will receive the care they need. We need national standards to make sure people are properly treated.

If this Act would have been in place when I was in detention I likely would have been released, would not have been subjected to the conditions that led to my development of TB and would not have missed Suheyba's birth. Please, I ask you to create a system of accountability for these detention centers. Private facilities like those run by Core Civic must be eliminated. I am writing not only for myself, but for the thousands of others who remain detained today and do not have a voice or cannot find the strength to share their pain. Many of them were my friends at EDC. I ask you to pass this bill for them.

I am a believer that something good comes from every struggle. All of my pain and suffering would be for nothing if I do not take this opportunity to tell my story and make sure that no one else is treated like I was. No person should be detained without a meaningful right to ask for release. No person should be denied access to basic health care. No family should have to suffer like mine did. What I am asking for is nothing more than basic human rights and dignity for immigrants, who are people just like you.

I want to end by thanking the countless people who supported me and my case. Thank you to my legal team – the students and attorneys from the City University of New York School of Law's CLEAR Project and the Immigrant and Non-Citizen Rights Clinic. Thank you to Congresswoman



Ilhan Omar's office for its diligent efforts to advocate for my release; and to the good people at the Black Alliance for Just Immigration, Color of Change, Families for Freedom, Freedom to Thrive, and UndocuBlack for organizing and advocating on my behalf. Thank you also to Congresswoman Joyce Beatty's office. Just as importantly, thank you to the nearly 20,000 individuals who signed petitions and made calls to ICE asking for my release.

Thank you again for allowing me to share my story. I hope you will take it into consideration as you push forward to pass this desperately needed legislation.

\*I hereby confirm that the above statement was conveyed in the Somali language and that it is true and correct to the best of my knowledge and belief.

Ms. JAYAPAL. And with that, I now recognize the gentlewoman from Texas, Ms. Garcia, for 5 minutes.

Ms. GARCIA. Thank you, Madam Chair. And first I want to begin by associating myself with the opening remarks of the chairman when he pointed out that it is simply not true that immigrants commit more crimes than native-born Americans. I agree with him. The statistics show just quite the opposite. Secondly, I want to thank the three witnesses today that are here to share their stories. I just cannot imagine being held in detention even 1 day, and I know that most of you have spent many, many more days. And I was particularly moved by the written statements of our friend from—

[Disturbance in hearing room.]

Ms. GARCIA. Madam Chair, if I can restore some of my time.

Ms. JAYAPAL. Order. Order. I will advise the individuals in the audience that you are not allowed to speak, and you are not allowed to make any demonstrations. Thank you. The gentlewoman is recognized. Please restore her time.

Ms. GARCIA. Thank you. I was particularly moved by the comments and the written statement by our friend, Ms. Engochan, where she describes the detention center as “a house of tears.” “A house of tears.” Just imagine being there and really not having been convicted of any crime. So you’re not a criminal, and you describe in your notes, “What is really most troubling about some of these detention centers, that they are really more incarceration centers than detention centers.”

I personally have visited over 10 detention facilities and ORR facilities, and I have seen what is going on in some of these facilities. And I must say that I disagree with my colleague from Arizona. I don’t see school cafeteria-like food. In fact, I joked at one center and asked who has got the contract for the frozen burritos because it seems like that is the staple in almost every single one of them. Or the one from the Ramen noodles because that seems to be a staple.

And for my colleagues who say that we are doing nothing, they seem to forget that just yesterday we passed a bill out of the House that not only creates an ombudsman, but also provides for more training and some more assistance for some of the officers. And then we also passed a bill that set humanitarian standards for medical needs and human needs that Dr. Reese filed that we passed before the recess. So we are doing something.

But the point is, it is not enough, and for me, I think it is more concerning, and I want to ask the lawyers. And thank you to all of the lawyers that are there to represent people who so desperately need help. I am more concerned with not only the criminalization and incarceration at these facilities, but also the for-profit motive of many of the facilities that I have visited. So I wanted to ask a question specifically about some of our vulnerable populations, and my colleague from California already asked about pregnant women. I am particularly concerned about the shackling of pregnant women. Does that practice still take place, either one of the lawyers?

Ms. ALTMAN. Thank you so much for raising that question, Congressman Garcia, and for all you have done on this issue. You

know, we don't have good information in many cases and on many issues out of ICE for what is happening in detention, and so I can't answer with certainty if right now shackling is occurring with pregnant women. We do know that it has been an issue that has persisted. Generally, if I can, though, I would take the opportunity to note that that is one of many issues in which the standards that Mr. Homan is lifting up today are flagrantly violated. They also happen to be standards that are taken from correctional standards, and so I would argue that the very use of them in this context is improper.

The OIG has reported, repeatedly reported, on the fact that even well-documented deficiencies of their own standards that ICE has repeatedly committed to correct go uncorrected for years. And so certainly the shackling and mistreatment of pregnant women is one of many issues that fall within that category.

Ms. GARCIA. Well, I filed a bill to stop that, but I am also concerned because in Homestead when I visited at the invitation of my colleague from Florida, who will speak after me, as soon as the child turns 18, ICE comes to pick them up at the ORR center, and they put them in handcuffs and shackling. Why would they do that? They have not been convicted of any crime. They are not prisoners. Well, at that point they are 18, so I guess they are adults, but it is not a crime to be an adult, is it?

Ms. ALTMAN. It is not a crime, and I would also say because we do actually have pending litigation on this issue, that it is also an unlawful practice by ICE. The law requires that in the case of vulnerable 18-year-olds who are coming out of shelter, that there be consideration of placement in an alternative to detention program or a continuum of care, like the programs that Mr. Correa has described, and ICE is flagrantly ignoring this instruction. We have seen a massive increase, and the detention is extremely disorienting for 18-year-olds who are largely seeking asylum in the United States to go from an ORR shelter into the kind of incarceration-like setting that you have described today.

Ms. GARCIA. Right. And, is it Ms. Schikore?

Ms. SCHIKORE. Schikore.

Ms. GARCIA. Schikore. I wanted to ask you. I was struck. You said that the program that you run is considerably more cost-efficient and costs less than what it takes for us to detain someone. I really, really want to dig in a little bit more on that. I think I was restored about a minute. Can I just finish the question? Very quickly.

Ms. JAYAPAL. Very quickly.

Ms. GARCIA. What we also have found out is that at for-profit centers, they are getting paid a lot more per day for each person or detainee than the nonprofit centers. Are you finding that to be true also?

Ms. SCHIKORE. Yeah, that is definitely true that the private centers get a higher per diem. We deal with four county jails in the Chicago area, and their per diem is somewhere between \$70 and \$90 depending on which jail.

Ms. GARCIA. Okay. And Homestead—

Ms. JAYAPAL. The time of the gentlewoman has expired. The time of the gentlewoman has expired.

Ms. GARCIA. I yield back. Thank you.

Ms. JAYAPAL. Thank you. I would like to briefly address the members of the audience in the hearing room today. We welcome you. We respect your right to be here. We also ask in turn for your respect as we proceed with the business of the committee today. It is the intention of this committee to proceed with this hearing without disruptions, and we expect everyone to observe proper decorum. And with that, I yield to the ranking member of the committee, Mr. Buck, for 5 minutes.

Mr. BUCK. I thank the chairwoman. I want to clarify something. In my home county in Colorado, we have many illegal immigrants. And they are hardworking, they are nonviolent, and they are, other than being in this country illegally, they are law abiding, mostly because they don't want to be noticed, and they don't want to be deported. And I think that is true when I talk to my colleagues around the country. However, it is not racist to talk about the folks who have lost loved ones as a result of murders. It is not racist to talk about how we could do better to increase public safety in this country.

It is an absolutely necessary conversation that we need to have. And murder that is committed by an illegal immigrant or a crime that is committed by an illegal immigrant is an unnecessary crime because that illegal immigrant should not be in this country, and we have to get that straight. It is not a matter of race. It is a matter of public safety.

I recognize that we have a serious problem. We have a serious problem at our border. We have a serious problem by not recognizing how we can help those in our own hemisphere build their economies so they don't have the motive to come to this country illegally. We have a serious problem with sanctuary cities. We have serious problems across the border that this body should be dealing with. But do not call others racists and impugn the integrity and the motives of others because we on this side of the aisle want to raise a very important issue because of the hardship that others are suffering in this country.

Ms. Schikore, I want to ask you a question. I was a prosecutor for 25 years at the Federal level and at the State level, and we sought alternatives to detention as much as we could for taxpayer reasons. We were trying to save money. And what we tried to do when we advocated in court was we tried to make sure we distinguished between those who were violent and should not be placed in community detention, and those who were nonviolent and not a flight risk and were more appropriate for community detention. Would you agree with that philosophy as it applies to those that could be detained by ICE?

So asylum seekers without any violent history, without a flight risk, those that have ties to the community, and others who are violent, would you agree that that should be taken into account when looking at a facility such as yours?

Ms. SCHIKORE. Indeed that should be taken into account, and we do in our program. We don't take people into our program who have a violent history. The nuance that I would like to add is that what we define as criminal is problematic in this country, and we are aware of, for example, of people that we were trying to get re-

leased to our program who the only crime they had committed was returning to the U.S. a second time after experiencing additional violence in home country after being deported. And that was a reason they couldn't be released to us.

Mr. BUCK. Sure, and there are other crimes that we might disagree about. Identity theft is a very common crime with people who are in this country illegally. It is not a violent crime, but it is something that concerns those of us in law enforcement. And we might disagree about the appropriateness, but there are certainly on the edges, there are people on both sides that we would say are appropriate and not appropriate.

Sheriff Jenkins, I want to ask you the same question. Having been in law enforcement, I think we would probably agree that to save taxpayer money—you are an elected official—to save taxpayer money, you want to look at non-detention alternatives when appropriate.

Sheriff JENKINS. Correct. We don't really have the option under our agreement with ICE as far as our non-detention alternatives, therefore, actually other incarcerates in the local system. But I will tell you this. Every incarcerate in our jail through the 287(g) Program or the housing program has been convicted of a crime or has a serious criminal history, so. So I would argue with some of the statements made here this morning about those incarcerated are not criminals or convicted criminals.

Mr. BUCK. I understand. And, Mr. Homan, I want to give you some time, but I do want to ask one quick question, and I want to make one quick statement. I find it very offensive that anybody would compare any Federal employee, frankly, to the Gestapo or running Nazi concentration camps. That is very offensive. I have 15 seconds, and I yield to you.

Mr. HOMAN. Thank you for saying that. I wish some in the Democratic leadership would say that out loud. Look, you want to know why there is 50,000 people in detention? Do you want to know why we have illegal entries in the United States? Do you want to know why we have these issues? Because you have failed to secure the border. You guys failed to work with this President to close the three loopholes we have asked for for 2 years to close.

Ms. JAYAPAL. The time of the gentleman has expired.

Mr. HOMAN. So if you want to know why this issue exists, you need to look in the mirror.

Ms. JAYAPAL. The time of the gentleman has expired.

Mr. HOMAN. You have failed the American people by not securing the border—

Ms. JAYAPAL. Mr. Homan.

Mr. HOMAN [continuing]. And closing loopholes.

Ms. JAYAPAL. Mr. Homan, please respect the chair and the authority of the chair. The time of the gentleman has expired.

Mr. HOMAN. I have asked you politely—

Ms. JAYAPAL. The gentleman from—

Mr. HOMAN [continuing]. To let me go beyond my time.

Ms. JAYAPAL. The gentleman from—

Mr. HOMAN. And you let other people go beyond their time.

Ms. JAYAPAL. The gentleman—

Mr. HOMAN. But not to Tom Homan.

Ms. JAYAPAL. We have——

Mr. HOMAN. He don't get to go beyond his time.

Ms. JAYAPAL. Mr. Homan, we have approved——

Mr. HOMAN. This is a circus. This is a circus.

Ms. JAYAPAL [continuing]. An agreement between the Republicans and the Democrats with the ranking member. We increased the time of one member of Congress who was interrupted by a protest. That is done with the approval of the ranking member. Please respect the chair's authority. The gentleman——

Mr. HOMAN. I respect the chair's authority, but the chair——

Ms. JAYAPAL. Mr. Homan. Excuse me.

Mr. HOMAN. You work for me. I am a taxpayer. I am a taxpayer. You work for me.

Ms. JAYAPAL. The witness will suspend. The gentlewoman from Florida is recognized, Ms. Mucarsel-Powell.

Ms. MUCARSEL-POWELL. Thank you, Madam Chair. We are losing our civility in this country, and I want to make something very clear to everyone. To the witnesses, thank you for coming here this morning. We are all Americans. We must all respect the rule of law. We all work very hard to keep our country and our communities safe. But every person that is in the United States deserves due process, and in the United States of America, we do not violate human rights.

And the ICE detention system must be reformed. That is why we are having this hearing here today. There is an alarming lack of oversight in many of the ICE detention facilities. There are many deaths that could have been avoided that have been reported. We know that 26 people have already lost their lives under ICE custody in the past 2-and-a-half years, and many of these have been due to medical negligence. The DHS inspector general has found that many of these facilities pose health risks, and there is not proper hygiene, proper oversight. Overall, there is a lack of accountability.

In my district in South Florida, we have an ICE detention facility, the Krome Processing Center. And my office has received multiple complaints that Krome does not offer adequate medical or mental healthcare. We have heard that immigrants are often placed in isolation, solitary confinement, a concern that the DHS inspector general has raised at other facilities like Krome. We have heard that officers are sometimes slow to respond to concerns raised by detainees, and they have fatal consequences.

We heard of a story of the death of Jose Leonardo Lemus Rajo. Jose was a severe alcoholic when he was admitted to Krome in 2016. Despite notifying the center of his condition, Jose did not receive the medical attention. His condition quickly deteriorated because of his withdrawals. He experienced tremors. He was foaming at the mouth and suffered from hallucinations. He died days after he was admitted to this facility. Doctors reviewing Jose's case indicated that his death was entirely preventable had he received the right treatment. Instead, staff treated Jose with sporadic and inadequate doses of medication that ultimately causes his death.

Instances like the death of Jose cannot be allowed to occur in our immigration system again. We are in the United States of America. We do not violate human rights. We protect every individual's right

to due process. Everyone. We must ensure that adequate oversight is conducted over ICE, and we must never forget that the safety and the wellbeing of all individuals in this country come first.

And I see the pictures, and I want to tell you I am very, very sorry for your loss, and criminals that commit crimes need to pay the consequences. I agree with you. We just yesterday had a hearing on banning assault weapons. And so this doesn't justify protecting people that have taken the lives of your family members, and for that I am truly, truly sorry. We are talking accountability and oversight of a Federal agency that is violating human rights for people that have not committed those crimes.

So my question is to Mr. Davydov. The Office of Refugee Resettlement operates the Homestead Detention Facility in my district, and Homestead is a facility designed for children, and it houses children of all ages, from 13 to 17. And when they turn 18, like my colleague mentioned, they are taken on their birthday in shackles to adult detention facilities. Can you just tell me a little bit about what you experienced at the Krome Detention Facility in my district?

Mr. DAVYDOV. Yes. I stayed in the Krome facility. I was moved there after, like, a 24 hour process. I was held in this dormitory with, like, 100 bunk beds. At the time I showed up, there was no bed for me. They offered me this, like, I don't know, foldable bed. But because I was admitted in the medical facility after that, by the time I returned, they found me a place. So it was super loud. It was very cold at night. It has only, like, four showers also working, the shower. So basically, and it was—

Ms. MUCARSEL-POWELL. Thank you. I am sorry. My time is up. Would you say that it would be appropriate for—

Ms. JAYAPAL. The time of the gentlelady has—

Ms. MUCARSEL-POWELL [continuing]. A child to be in that facility?

Ms. JAYAPAL. The time of the gentlewoman has expired. With that, I would like to—

Ms. MUCARSEL-POWELL. If you could just answer—

Ms. JAYAPAL. I would like to recognize the gentleman from Colorado.

Ms. MUCARSEL-POWELL. Thank you.

Mr. NEGUSE. Madam Chair, I want to thank you for hosting this important hearing, and also for your leadership with respect to the Dignity in Detention Act that you have introduced that I am proud to be a co-sponsor of. And we appreciate your leadership so much in this Congress on these issues for so long.

I hadn't planned on saying this, but I want to associate myself with the remarks of the distinguished gentlelady from Florida, and that is I have served on this committee now for 10 months. I am new to Congress. And we have had a number of witness panels where the majority and the minority select witnesses who have much to say and make their case in a compelling way to the members here. And that is certainly the case today with many of the folks who are assembled here.

But I do think the bluster and the attacks in opening statements by one witness in particular on other members of this body whom are not here to defend themselves, I think is inappropriate. I don't

think it is conducive to constructive work on these policy items. And I respect, you know, my colleagues on the other side of the aisle very much. I understand that we have differing political views on these issues, but that fundamentally we all are trying to do right by our constituents.

And so I would just ask as we think about the witnesses that we call, because, you know, I just for the record will submit this. This is an article dated July 15th, 2019, "Ex-ICE Director Says That He Considered Beating Latino Congressman During Hearing," and this is from Newsweek. I will submit it to the record with unanimous consent.

Ms. JAYAPAL. Without objection.  
[The information follows:]



**REP. NEGUSE FOR THE RECORD**

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## Ex-ICE Director Says He Considered 'Beating' Latino Congressman During Hearing

[newsweek.com/ex-ice-director-beating-latino-congressman-1449343](https://www.newsweek.com/ex-ice-director-beating-latino-congressman-1449343)

By Jason Lemon On 7/15/19 at 4:10 PM EDT

### U.S. Thomas Homan Ice Fox & friends Congress

Former Immigration and Customs Enforcement (ICE) acting director Thomas Homan said on Monday that he thought about "beating" Democratic Representative Jesús García during a congressional hearing last week.



During the Friday hearing, Homan was visibly angered as he responded to a line of questioning by García, who is Mexican-American and represents Illinois. The former ICE director, who served in the acting leadership role under President Donald Trump from January 2017 until June 2018 when he retired, discussed the interaction in a Monday morning interview with *Fox & Friends*.

"I hesitated a minute before I started yelling because I actually think about getting up and throwing that man a beating right there in the middle of the room [sic]," Homan admitted. "Because when you tell somebody that spent their career saving lives that I don't care about dying children and I'm a racist, that's where I broke and that's where I had enough," he asserted.



Thomas Homan, acting director of Immigration and Customs Enforcement, delivers remarks during a law enforcement roundtable on sanctuary cities held by President Donald Trump at the White House on March 20, 2018 in Washington, D.C. Kevin Dietsch-Poo/Getty

Prior to Homan's angry response on Friday, Garcia had lashed out at the "zero-tolerance" migrant family separation policy implemented by the Trump administration until it was struck down by a federal judge last year. "Mr. Homan, do you understand that the consequences of separation of many children will be lifelong trauma and carried across generations?" the congressman asked. Pointing out that he himself was a father, Garcia asked if Homan had children and how he could "possibly allow this to happen" under his watch.

"Do you not care? Is it because these children do not look like children that are around you? I don't get it. Have you ever held a deceased child in your arms?" Garcia asked. At least five migrant children have died in custody since December.

"First of all," Homan responded, "your comments are disgusting."

Garcia shot back: "I find your comments disgusting as well, sir."

Homan yelled over the congressman to continue. "I've served my country 34 years and yes, I held a five-year-old boy in my arms," he said, claiming he said a prayer for that deceased child. "For you to sit there and insult my integrity and my love of my country and for children, that's why this whole thing needs to be fixed."

#### Related Stories

As acting director of ICE, Homan served during the Trump administration's family separation policy, which tore thousands of immigrant children from their parents or guardians. That controversial policy drew national and international condemnation. [A report](#) from the Department of Health and Human Services' Inspector General found earlier this year that the Trump administration did not even know how many children had been separated from their families. Furthermore, government officials had lost track of the whereabouts of many children, making reuniting them with their parents or legal guardians, as a federal judge had ordered, even more difficult.

As Garcia pointed out, detaining minors and separating them from their parents can cause lifelong psychological trauma, according to experts. Dr. Judy Ho, a clinical psychologist, [told CNN](#) earlier this month that detained children "have higher risk of depression and suicidal thoughts as they grow older." She also warned of the possibility of them suffering from PTSD and "having functional difficulties as adults as well as worse physical outcomes."

Mr. NEGUSE. I would just say that to me, it is relevant that we have witnesses before us from both sides of the aisle who come to these issues in good faith to work with members of this body rather than insulting them, and I am certainly going to take that approach. I would hope the minority would do the same.

I want to thank witnesses for sharing your stories, those of you who have been detained. As the son of immigrants, I want to say to you that you are just as American as anyone else here in this room, and we appreciate you speaking truth to power and sharing your stories today. We have heard already from a number of my colleagues about the reality of the growth in immigration detention at an alarming rate since 2017 after two executive orders were issued by the President, which prioritized all undocumented immigrants for detention and removal.

The average daily population of people in ICE custody this month is over 54,000, a 54 percent increase from 2016. Even more troubling, nearly 75 percent of these immigrants are detained by ICE in for-profit facilities. These facilities, in my view, put profits for shareholders above the safety and the care of those in detention, and the results in many cases have been disastrous. And I will just give you one example.

In 2017, Kamyar Samimi, a legal permanent resident of the United States, died while in custody of the Aurora Detention Facility in Colorado. To date, over 30 immigrants, including seven children, have died in ICE custody under the current Administration. In my home State of Colorado, Geo Group operates the Denver Contract Detention Facility in Aurora for ICE that holds close to 1,500 people. In 2018, the American Immigration Council and the American Immigration Lawyers Association filed a complaint about inadequate medical care in Aurora. That was followed by a supplemental complaint that was filed just a few months ago in June of this year. And most recently, the ACLU released a report just last week outlining the horrendous conditions at the Aurora facility.

I would ask unanimous consent, Madam Chair, to enter both the American Immigration Council and the ACLU report into the record.

Ms. JAYAPAL. Without objection.  
[The information follows:]

**REP. NEGUSE FOR THE RECORD**

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AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

**VIA ELECTRONIC MAIL**

**Assistant Director Stewart D. Smith**

ICE Health Services Corps. (IHSC)  
Immigration and Customs Enforcement  
Department of Homeland Security  
Washington, DC

**Officer Cameron Quinn**

Office for Civil Rights and Civil Liberties  
Department of Homeland Security  
Washington, DC

**Acting Inspector General Jennifer Costello**

Office of the Inspector General  
Department of Homeland Security  
Washington, DC

**Acting Director Mark Morgan**

Immigration and Customs Enforcement  
Department of Homeland Security  
Washington, DC

**RE: SUPPLEMENT—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility**

Dear Dr. Smith, Officer Quinn, Acting Director Morgan, and Acting Inspector General Costello:

The American Immigration Council (Council) and American Immigration Lawyers Association (AILA) submit this supplement to a complaint filed one year ago on June 4, 2018 on behalf of individuals detained at the Denver Contract Detention Facility in Aurora, Colorado—commonly known as the “Aurora facility.”<sup>1</sup>

We remain concerned regarding the dangerously inadequate medical and mental health care at the Aurora facility, which threatens the health and welfare of detained individuals,<sup>2</sup> as well as their ability to pursue their immigration and asylum claims.

Several circumstantial factors over the past year have made the situation for individuals detained in the Aurora facility measurably worse. In January 2019, GEO Group, Inc. (GEO), the

<sup>1</sup> “Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility,” American Immigration Council and American Immigration Lawyers Association, June 4, 2018, [http://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_demands\\_investigation\\_into\\_inadequate\\_medical\\_and\\_mental\\_health\\_care\\_condition\\_in\\_immigration\\_detention\\_center.pdf](http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf).

<sup>2</sup> Immigrant detainees in Aurora are being held pursuant to administrative—not criminal law—and therefore their care should be assessed under a Fifth Amendment due process standard, which mandates adequate medical care for civil detainees. See *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Circ. 2004), *cert denied*, 546 U.S. 820 (2005).

largest private prison company in the United States and which owns and operates the Aurora facility, expanded the detention center by opening a 432-bed annex (“Aurora South”), increasing the facility’s capacity to 1,532.<sup>3</sup> Despite the drastic expansion, staffing of both GEO and ICE employees remains insufficient to manage the growing population. In fact, GEO continues to contract only one physician on staff at any one time to oversee the entire detained population.<sup>4</sup>

Meanwhile, the Department of Homeland Security (DHS) continues to request additional funding from Congress to detain an unprecedented number of immigrants in its network of immigration detention facilities across the country—recent reports indicate about 52,000 single adults are currently in ICE custody.<sup>5</sup> Yet, the evidence continues to mount—in Aurora and elsewhere—that DHS is neither able nor inclined to responsibly and humanely hold those in its custody.

Earlier this month, the Office of the Inspector General (OIG) issued a report documenting “egregious” conditions at ICE facilities, including the Aurora facility, in 2018.<sup>6</sup> The OIG produced the report following several unannounced site inspections between May and November 2018.<sup>7</sup>

Recently leaked DHS documents containing an internal memo bearing the subject line, “Urgent Matter,” indicate that the deaths of multiple individuals detained in ICE custody were preventable. In a December 3, 2018 memo addressed to Matthew Albence, then acting deputy director of ICE, one ICE supervisor stated: “IHSC [ICE’s Health Service Corps] is severely dysfunctional and unfortunately preventable harm and death to detainees has occurred.”<sup>8</sup> In addition, ICE’s official review of the December 2017 death of Mr. Kamyar Samimi shortly after

3 “Immigration Detention Facility in Aurora Expands With 432-Bed Annex,” *Westword*, February 1, 2019, <https://www.westword.com/news/aurora-immigration-detention-facility-in-aurora-expands-with-432-bed-annex-11212275>.

4 “ICE facility in the middle of chicken pox outbreak has one doctor to treat 1,500 detainees, congressman says,” *Vice News*, Feb 21, 2019, [https://news.vice.com/en\\_us/article/gyawby/ice-facility-in-the-middle-of-chickenpox-outbreak-has-one-doctor-to-treat-1500-detainees-congressman-says](https://news.vice.com/en_us/article/gyawby/ice-facility-in-the-middle-of-chickenpox-outbreak-has-one-doctor-to-treat-1500-detainees-congressman-says).

5 “ICE acting director says migrant family deportations are an option,” *CNN politics*, June 4, 2019, <https://www.cnn.com/2019/06/04/politics/ice-deportation-migrant-families/index.html>.

6 “Concerns about ICE Detainee Treatment and Care at Four Detention Facilities,” Office of the Inspector General, June 3, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

7 “Exclusive: Homeland Security watchdog finds ‘egregious’ conditions at ICE facilities in 2018,” *CNN Politics*, June 6, 2019, <https://www.cnn.com/2019/06/06/politics/ice-detention-center-ig-report/index.html>.

8 “ICE Detainee Deaths Were Preventable: Document,” *TYT Investigates*, June 3, 2019, <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu7h#.XPVRqqvwu1E.twitter>.



being taken to the ER from the Aurora facility revealed that medical staff grossly mishandled his treatment.<sup>9</sup> According to one account: “Along with failing to comply with ICE medical standards in a dozen instances, facility staff watched, but failed to effectively intervene, as Samimi deteriorated from opioid withdrawal.”<sup>10</sup>

Several outbreaks of mumps and chickenpox have taken place in the Aurora facility over the past few months.<sup>11</sup> GEO’s failure to vaccinate and properly screen individuals for medical and mental health, in addition to disability issues, has exacerbated the situation. The outbreaks and resulting cohorts to segregate the population have impeded access to attorneys, complicating immigrants’ ability to prepare for their legal case and underscoring the critical need for adequate medical care.

Enclosed you will find five additional stories which illustrate the government’s ongoing failure to provide adequate medical and mental health care to individuals detained in the Aurora facility. As in the original complaint, the following cases demonstrate how ICE and GEO repeatedly violate applicable detention standards, the U.S. Constitution, domestic law, and international law.

**“Patrick,”<sup>12</sup> Stateless Man from Sudan, History of Suicide Attempts**

Patrick was released from the Denver Contract Detention Facility in Aurora, Colorado the first week of June 2019 and was in the custody of ICE since August 2018. He has been diagnosed with a traumatic brain injury, a seizure disorder, depression, anxiety, bi-polar disorder, and post-traumatic stress disorder (PTSD). Patrick experienced at least two seizures while in custody in Aurora.

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9 External Reviews and Analysis Unit, Detainee Death Review, Kamyar SAMIMI, Denver Contract Detention Facility, U.S. Department of Homeland Security, Immigration and Customs Enforcement, May 22, 2018, [https://bento.cdn.pbs.org/hostedbento-prod/filer\\_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf).

10 “Report: Immigration Detention Facility Mishandled Detainee Who Died,” *Westword*, May 21, 2019, <https://www.westword.com/news/report-aurora-immigration-detention-facility-mishandled-kamyar-samimi-11351337>.

11 “2,200 quarantined over mumps outbreak at ICE immigration centers in Aurora and Louisiana,” *The Denver Post*, March 12, 2019, <https://www.denverpost.com/2019/03/12/mumps-outbreak-quarantine-aurora-ice-immigration-center/>.

12 “Patrick” is a pseudonym which is being used at the request of the detained individual, who fears retaliation from ICE or GEO in connection to sharing details about his case.

Patrick has a history of at least two suicide attempts prior to being detained by ICE—both of which occurred while he was held in segregation at other facilities in the past. Patrick also attempted suicide during his detention at the Aurora facility. At the end of April, Patrick suffered a mental health crisis prompted by his frustration with the inadequate medical care he was receiving in detention. Prior to being detained, Patrick benefitted from weekly individual therapy, weekly group therapy, had a nurse who made house calls, and had access to a physician to regularly modify his prescriptions so that his medications could best meet his needs. He reports that he never had access to therapy in detention and as a result, his coping mechanisms to deal with stress deteriorated. Namely, after injuring his hand it took him two days to receive medical attention; he needed to elevate his request with a GEO lieutenant in order to gain access to a medical provider. However, once examined, the nurse mocked him, causing his mental stability to spiral. Based on threats of self-harm, Patrick was placed on suicide watch at the Aurora facility.

Patrick states that he initially refused to enter the room used for suicide watch because it was filthy. GEO staff members cleaned it in order for it to be habitable. Next, GEO guards forced Patrick to remove his shoes and socks—tackling and restraining him to ensure his compliance. Once left alone, Patrick tried to strangle himself using his clothing. Desperate, Patrick then began ramming his head into the wall. Shortly thereafter, he blacked out and does not remember the events that followed. GEO guards later told Patrick that he suffered from a seizure; however, this is not reflected in his medical records.

Patrick was subsequently held on suicide watch for about one week. Immediately following Patrick's suicide attempts he was seen by the GEO mental health provider who informed him that he would be sent to punitive segregation immediately following his time on suicide watch. Alarmed at the prospect of sending to segregation someone with a history of suicidal ideation in solitary confinement, Patrick's attorney reached out to GEO directly as well as ICE to ensure Patrick's medical history was in the forefront of the facility's calculation when determining the risk of placing him in punitive segregation. Patrick's attorney successfully leaned on disability rights attorneys to pressure the facility to place him back in the general population.

Separately, Patrick reports that for months he regularly received the wrong dose of his medications to control his seizure, and for his depression and anxiety, and the administration of his medications was improper. He has set times of the day when he has been instructed to take his medication for best efficacy. However, the distribution of medications during his detention was irregular—particularly during the evening shift at the detention facility—which sometimes caused Patrick to receive medication three to four hours later than the recommended time.

**“Omar,”<sup>13</sup> National of Mexico, Disabled Senior Citizen**

Omar is 71 years old and confined to a wheelchair. He suffers from Parkinson’s Disease, a traumatic brain injury, chronic kidney disease, heart disease, a history of heart attacks, and dementia. He also has asthma, panic attacks, impaired vision and hearing, chronic lower back pain, depression, anxiety and PTSD, and is pre-diabetic. He has been detained in Aurora for 11 months, since July 2018.

Omar’s daughter comments on her father’s deteriorating health:

It hurts to see my father in such bad condition. It’s painful. He used to be so independent and walked just fine. Now he’s so dependent on others and has to use a wheelchair. I wish I could be the one to help him. I am a certified nurse and it’s so hard to see my dad suffering so much. It’s really hard to hear suicidal thoughts that he never had until he came here.

Omar was able to walk when he arrived at the Aurora facility. However, his mobility has severely deteriorated since being detained. Omar is unable to perform many daily tasks without assistance, including bathing, so relies on other people detained in the facility to help him including being pushed around the facility in this wheelchair. Omar has reported falling in the shower on more than one occasion. This poses serious safety risks due to the real potential for injury from a fall in the shower, and from care being delivered by unlicensed persons, other than his family, in incredibly private and personal circumstances.

Omar has stated that the administration of his medication is inconsistent. He suffers from daily migraines and complains that he is unable to sleep through the night on account of the pain he experiences. Omar reports being disoriented when the medical staff change the number of pills he is receiving each day without explaining why and he is unable to effectively report which medications he is not receiving when there are gaps in the administration of his medication. According to Omar, the nurse informed him that he was receiving fewer pills because they ran out of the medication he is supposed to receive. Because of Omar’s profound impairments, he is unable to determine whether he is receiving the correct medications and dosage and cannot self-advocate for adequate care. Omar reports that he fears he will die in the facility and never have the opportunity to return to his family.

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<sup>13</sup> “Omar” is a pseudonym which is being used at the request of the detained individual, who fears retaliation from ICE or GEO in connection to sharing details about his case.

It is unclear how many requests for medical attention Omar has successfully filed because he does not receive a copy of any communications electronically submitted on his behalf.<sup>14</sup> Omar's attorney has also requested specialized medical care for Omar and notified ICE of his inconsistent administration of medications.

An independent physician was contracted by Omar's attorney to complete a medical evaluation in support of his legal case. In her report, the doctor describes some of her concerns:

It is my opinion that, if this client remains in detention or is deported to his home country, there could be potentially multiple risks to his health. He is living with physical disabilities, as well as mental disorders and disabilities that are not currently being appropriately treated. Specifically, in detention he has not received appropriate treatment for his asthma, panic attacks, anxiety, vision or hearing impairment, low back pain, headaches or Parkinson's Disease [sic].

In April 2019, ICE denied Omar's request for release on humanitarian parole, which was submitted due to concerns about his medical and mental health disabilities. After the immigration judge denied Omar's request for a bond hearing, he appealed the denial to the Board of Immigration Appeals.

Omar is currently held in a dorm that is subject to a varicella "cohort" and was not brought for a legal visit with his attorney the first week of June 2019. Given Omar's age and myriad medical vulnerabilities he is concerned about what this quarantine means for his wellbeing.

**"Isabel,"<sup>15</sup> National of Mexico, Transgender Woman Housed in Men's Dorm without Medications**

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<sup>14</sup> Omar is impeded from submitting requests for medical attention on his own because the process of doing so recently changed from a paper-based system to an all-electronic system through which people must submit complaints, grievances, requests for information, and medical appointment requests via tablets. Omar reports that he is not accustomed to using technology and he is unable to see well enough to submit the requests because of his deteriorating eyesight, so must rely on other detained individuals to help him.

<sup>15</sup> "Isabel" is a pseudonym which is being used at the request of the detained individual, who fears retaliation from ICE or GEO in connection to sharing details about his case.

Isabel is a transgender woman who has been detained in the men's dorm at the Aurora Facility since January 2019. During her period of detention, Isabel has been denied critical medical attention and has suffered repeated verbal and sexual harassment.

Isabel began hormone replacement therapy in 2011. Upon her arrival to the Aurora Facility in January 2019, she was forced to abruptly stop taking hormones despite notifying the medical staff that she had previously been on hormone therapy. Isabel has been deprived of hormones now for over three months, during the entire period of her detention. Isabel reports that at one point, medical staff informed her that she would be put on a list to see a specialist who could prescribe her hormones. In addition, both Isabel and her attorney have made numerous requests for medical care. However, Isabel still has not received an appointment with a specialist or received any form of hormone treatment. As a result, Isabel has suffered changes in her mood, appetite, and sleep in addition to physiological changes such as hair regrowth that have ultimately caused Isabel to experience feelings of depression and hopelessness. Isabel describes the effects that hormone withdrawal have had on her:

The experience of being taken off hormone treatment has been difficult for me. Being off hormones for months on end after taking them for eight years has changed my mood and made me feel depressed. I have lost a lot of hair. It is just not fair that they would treat me this way.

Isabel has also experienced significant harassment during her period of detention as a result of her transgender identity. Her placement in a men's dorm in the Aurora Facility is problematic because Isabel is a transgender woman. To afford her some level of privacy, the intake staff at the Aurora Facility gave Isabel a sheet to obstruct others' view while she uses the bathroom. However, on several occasions a detention center guard has taken the sheet down, exposing Isabel to the entire dorm. Isabel reported the harassment by the guard, and her attorney sent "high priority" messages to her Deportation Officer, the Aurora Facility Warden, and the GEO Prevention of Sexual Assault Compliance Manager; neither GEO nor ICE effectively responded to the complaints. Instead, a GEO representative suggested that Isabel hang a sign outside of the bathroom to notify the dorm and guards that a woman is using the restroom. Isabel has also been harassed by two male detainees housed in her dorm. Again, Isabel reported these incidents of harassment, and ICE failed to take any action. In Isabel's words:

People at Aurora Facility—both male detainees and guards—sometimes think it is their right to harass and grope me. I think it is easy for them to target me because I am a transgender woman and they know I will not be able to defend myself.

Isabel's attorney has requested that Isabel be immediately released from detention so that she may be free from harassment and receive the medical care she requires.

**“Manuel,”<sup>16</sup> El Salvador, Victim of Sexual Violence**

Manuel is a 28-year-old man from El Salvador who was detained at the Aurora facility from January 2019 until May 2019. He suffers from a sexual trauma that he experienced in El Salvador before fleeing his country. He continues to suffer physically and psychologically from this past trauma. Manuel reports that during his period of detention, he experienced bleeding from his anus and severe pain when he used the restroom.

During his detention in the Aurora facility, Manuel was very ashamed and fearful about notifying medical staff or requesting medical attention due to the personal nature of his medical needs. He states that he was afraid other detained individuals would read the medical request form and draw assumptions that would make Manuel feel emasculated or subject him to abuse within the facility.

Manuel describes in his own words what he experienced in Aurora:

I don't wish this on anybody. Being detained there was terrible. The guards don't treat people well. They even say that they will not get us medical help unless we're dying. Not until we are dead will they help us. I would not wish this on anybody. There were so many bad experiences there.

Manuel's advocates encouraged him to seek medical help. They also requested his medical records and submitted a request for medical care on his behalf to the GEO Health Service Administrator. A week later, his advocates had not received a response to either inquiry. They included additional medical providers (the records department) on an email to elevate both the records request and the notification of his medical concerns. Two weeks later, his advocates had still not received a response to either inquiry. His attorney contacted the records department again, and finally received a response releasing his records. Neither Manuel nor his advocates ever received a response to their notification of his medical concerns, and his condition went untreated for the duration of his detention.

Manuel also suffered from overwhelming symptoms of psychological trauma including nightmares, sobbing, feeling like he was back in El Salvador being persecuted, consuming thoughts, overwhelming dread and sadness, feelings of hopelessness and anxiety, hypervigilance, and regret that the gang members hadn't killed him. Manuel's advocates

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<sup>16</sup> “Manuel” is a pseudonym which is being used at the request of the detained individual, who fears retaliation from ICE or GEO in connection to sharing details about his case.

arranged for an independent evaluator to come to the detention center to assess his mental health. A Licensed Clinical Social Worker conducted an evaluation with Manuel and diagnosed him with PTSD. She noted in her evaluation that the experience of being detained negatively impacted and exacerbated his PTSD symptoms.

Manuel was released from the detention facility on May 1, 2019. He failed to receive any medical care during his entire period of detention while at the Aurora facility despite multiple requests.

**“Judith,”<sup>17</sup> National of Mexico, Untreated Chronic Pain**

Judith is a 42-year-old woman detained in the Aurora facility. She is currently being held in a new 432-bed wing of the facility called “Aurora South.” Before her detention in Aurora, Judith was detained at a detention center in Eloy, Arizona, where she slipped and fell while working in the kitchen. She received medical attention at the Eloy facility, including cortisone shots for her arm and knee injuries.

After her transfer to the Aurora facility, she was moved from one part of the facility to a different wing, Aurora South. Her condition worsened, in part because she had to carry her belongings from one part of the facility to another, exacerbating her injuries. Judith reports that simple tasks like going to the restroom, brushing her teeth, and combing her hair cause her great pain in her right arm. She walks unsteadily because her knee hurts and has not been treated. She even struggles to sleep because she is in such pain. Additionally, Judith reports that she and other detained individuals recently developed what appears to be an allergic reaction that covered her body in bumps and hives.

Judith met with a doctor in March 2019, four weeks after first requesting medical care. Judith reports that when she was seen by a doctor, the pills he prescribed did not alleviate her pain but rather caused an allergic reaction.

On two occasions—April and again in May—Judith authorized the transfer of her medical records from Eloy containing a prescription for the cortisone shots. However, to date, the records still have not been transferred to the medical personnel at Aurora and Judith has not been given any effective treatment for her condition. She has requested to see a specialist to receive a prescription for cortisone shots to ease her constant pain, but she has yet to be seen by a specialist.

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<sup>17</sup> “Judith” is a pseudonym which is being used at the request of the detained individual, who fears retaliation from ICE or GEO in connection to sharing details about her case.

At her most recent medical visit in May 2019, the doctor recommended that Judith receive an MRI to assess her injuries, but she has not yet had this exam three weeks later. According to Judith, one medical staff member recommended exercise to alleviate her pain; yet another medical staff member told her she shouldn't exercise if it is too painful.

Judith shares:

This place is awful. The lack of medical attention, the way the guards treat us... It is humiliating, rude, and inhumane. At one point, the pain after my accident was somewhat bearable. Now, my condition has become complicated because of their neglect. I was transferred here in February 2019. Four months later, I have not had proper medical attention, no transfer of past medical records, no MRI, and the medication I have been given has caused me more harm. I cannot take the pain any longer.

Judith has also requested to meet with a psychologist during her detention in Aurora South. She reports that she is feeling helpless, fatigued, and stressed as a result of her constant pain.

### **Conclusion**

One year ago, our organizations shared grave concerns regarding the systemic failure on the part of both ICE and GEO to provide appropriate medical and mental health care to individuals detained in the Aurora facility. Problematic care, such as the cases described above, not only causes unnecessary suffering and places lives at risk, but it also profoundly impacts the ability of these individuals to effectively work with counsel and fight for their immigration cases. To date, we have failed to see any efforts taken by the agency to implement our recommendations or address these concerns in any meaningful way. In fact, despite site visits by both the Office for Civil Rights and Civil Liberties (CRCL), and the Office of the Inspector General (OIG), conditions continue to worsen and the population continues to grow.

We urge the Department of Homeland Security to take immediate action and implement meaningful oversight mechanisms to improve medical and mental healthcare at the Aurora facility. Until then, individuals will continue to needlessly suffer—and perish—in immigration detention facilities such as Aurora. As before, given the severity of these violations and the immediate impact on the health and safety of individuals detained in the Aurora facility, we request that you consider this supplement, and the original complaint, in an expedited manner.



**SUPPLEMENT—Failure to Provide Adequate Medical and Mental Health Care to Individuals in the Denver Contract Detention Facility**  
American Immigration Council and AILA | June 11, 2019

If you have any questions or require additional information, please contact Katie Shepherd of the American Immigration Council at [KShepherd@immcouncil.org](mailto:KShepherd@immcouncil.org). Pseudonymized declarations of the above complainants may be available upon request.

Sincerely,

American Immigration Council

American Immigration Lawyers Association

**REP. NEGUSE FOR THE RECORD**

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ACLU Colorado report entitled, "Cashing in on Cruelty: Stories of death, abuse and neglect at the GEO immigration detention facility in Aurora" -  
<https://docs.house.gov/meetings/JU/JU01/20190926/110017/HHRG-116-JU01-20190926-SD017.pdf>

Mr. NEGUSE. You know, I know that my time is limited, and so I will just say this. I do think facts matter, and there are a variety of reasons that I believe justify ending for-profit detention in the United States of America, the obvious moral reasons that I think compel us as a body to take that step. But we also are not entitled to our own set of facts. And, Mr. Homan, in your written testimony, you noted, in your view, that “Using outside contractors that run facilities like these as their core business function not only save millions in taxpayer funds, but it increases the quality of care for those being detained.”

With respect to the financial piece of this, I have here the Fiscal Year 2018 ICE report from the Department of Homeland Security that details the total direct costs: \$149.58 for contract detention facilities per bed, and \$98.27 for intergovernmental service agreement facilities, IGSA facilities. I don’t think there is any question that we are wasting millions of taxpayer dollars, in my view, by having these for-profit facilities.

Ms. JAYAPAL. The time of the gentleman has expired.

Mr. NEGUSE. And with that, I yield back the balance of my time.

Ms. JAYAPAL. Thank you. The time of the gentleman has expired.

Mr. BIGGS. May I make a parliamentary inquiry?

Ms. JAYAPAL. State your parliamentary inquiry.

Mr. BIGGS. I am not sure if it is technically parliamentary, but it is the only way I figure I can ask you a question, and you can rule me as not parliamentary if you want. I am requesting that we allow the minority to have a hearing on this very important topic, and I will follow that up with a letter making that request. But I am—

Ms. JAYAPAL. We will take that under consideration.

Mr. BIGGS. Thank you.

Ms. JAYAPAL. Thank you. The gentleman has yielded back. I now recognize the gentlelady from Texas, Sheila Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Let me, first of all, thank the chairwoman twice and ranking member for this hearing. And I must thank my good friend from Colorado, Mr. Neguse, for his initial courtesies to yield to me. I had to step out of the room at the time that he would have done so, and hopefully clarify the rules that when you yield to an individual, you do not lose your time. I wanted to make sure I put that on the record.

Let me indicate that I have the deepest amount of sympathy for anyone that loses a loved one. And having been on the Homeland Security Committee dealing with these issues for 20 years plus, I have seen a lot of tragedy, and I have recognized the pain of families, recognized the pain and the loss of officers, and also have worked hard to provide the appropriate equipment necessary for our work to be done. With that in mind, I believe that we will not succeed in this if we talk at each other instead of to each other. This is a Nation of immigrants and a Nation of laws, and all people must be protected.

The three witnesses that we heard from—if I might call them by their first names, Selene, and Denis, and Blanche—are not criminals, have no intent to kill or maim anyone. What we are speaking about today is the question of the dignity of America, the basic

sense of human rights, and the Bill of Rights that adhere to anyone on our soil to be treated decently. When the gentleman who said he was awarded by President Obama and worked with our good friend, Mr. Jeh Johnson, all secretaries of Homeland Security, have known all of the leadership I have known, it makes a difference when the leadership sets the tone that these people are human beings.

So this is not ICE because I have seen ICE and I have worked with ICE. But when you begin to get the kind of toxic leadership, no one wins, families who are trying to have justice or innocent persons who simply have come to this Nation because they cannot live anywhere else. And in this Nation, we have always been a place. The Statue of Liberty did not collapse when those towers were hit. It stood, and it still stands.

I reject and resent the actions that have been dictated by the toxicity at the top, that have turned decent Americans who work every day, who I have worked with, into the pressure, cannot imagine the burden to act like they are presiding over terrorists and ne'er-do-wells. So let's get it straight that we are all in the same boat. We all care about the same things.

So let me just, as I quickly ask this question, might I please, let me ask the question to you, Heidi, and you see my time, on sexual abuse. We understand the numbers between 2010 and 2017, 1,224 complaints. You answered that question. To Jorge, can you answer the question about the importance of the asylum process being fair and the importance of immigration judges working my constituent that people are pleading, decent human being, picked up, Muslim, is now trying to get a stay of his removal. And he is being held by ICE. We are negotiating that he is where he is with the immigration courts. Everyone feels the pressure of toxicity so that asylum becomes useless. Would you answer that question?

I want to put on the record that I am against the NPP. I want to put on the record as well my amendment and legislation regarding Freedom of Information Act applying to all centers, profit and nonprofit. I would appreciate a comment on that, and that is before what we are going to do about these centers. But if the two of you would answer, I would appreciate it, and I will have something to put in the record in a moment. If you could quickly answer those questions, please.

Ms. ALTMAN. Thank you, Congresswoman. I will answer quickly. You ask about the prevalence of sexual abuse in immigration custody, which is unfortunately quite prevalent and largely met with impunity. And I think that this goes to the overarching point that you have made, which is that there is a toxicity. When asylum seekers, as has happened frequently throughout the hearing today, are referred to as criminals, when there is a dehumanization of those who are in custody that trickles down to the officers who are coming to work every day and showing up. One example that I will just end with is that you heard reference today to the nooses hanging in the jails in Adelanto. There was a suicide just a year earlier, and we were told that the guards laughed.

Ms. JAYAPAL. The time of the gentlewoman has expired.

Ms. JACKSON LEE. Can he answer the question, the other gentleman that I asked about the asylum?

Ms. JAYAPAL. We have unfortunately been having situations where people have been going too far over.

Ms. JACKSON LEE. No problem.

Ms. JAYAPAL. So I need to stick to the rules.

Ms. JACKSON LEE. No problem. Let me put into the record, if I might ask unanimous consent, an article by Dylan Petroleus, I believe, dated August dated August 5th. And I thank the gentlelady, and I would also join the gentlelady in asking witnesses to be here with the spirit of information and not with the spirit of being—

Ms. JAYAPAL. Without objection.

[The information follows:]

**REP. JACKSON LEE FOR THE RECORD**

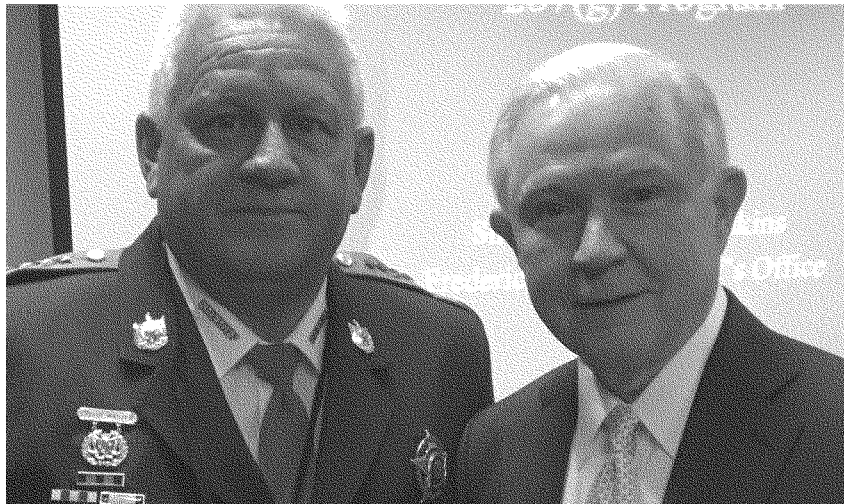
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## Between White Nationalism and Sheriff Chuck Jenkins



Dylan Petrohilos [Follow](#)  
Aug 5 · 5 min read

### How Frederick, MD elected an alt-right sheriff.

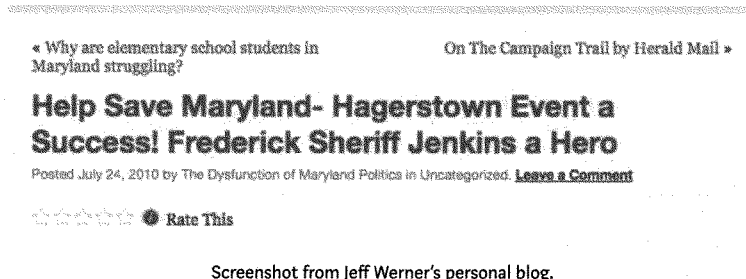


Sheriff Jenkins with former Attorney General Jeff Sessions

**In** 2008, Frederick, Maryland's sheriff Chuck Jenkins implemented a 287 (g) agreement. 287 (g) agreements are a controversial program that deputizes local police as ICE agents. Over the past decade, 287 (g) has criminalized whole communities in dozens of different counties. In the case *Santos v. Frederick County Board of Commissioners et al* a judge found that Chuck Jenkins and his deputies violated the civil rights of Roxanna Orellana Santos when she was arrested.



Sheriff Jenkins claims that there is nothing inherently racist about his program. The reality is that Sheriff Jenkins has time and again been connected to far-right extremists. Some extremists openly identifying as the alt-right, such as Dennis Michael Lynch, and some just clearly promote their politics, such as Jeff Werner.



Screenshot from Jeff Werner's personal blog.

## Help Save Maryland

In partnership with *Help Save MD*, Sheriff Chuck Jenkins went on a speaking tour to different Maryland counties to promote the 287 (g) agreement he implemented in Frederick.

*Help Save Maryland* is a far-right group connected to the Federation for American Immigration Reform, NumbersUSA, and leadership has had an open dialogue with VDARE.com. HSM's own social media accounts often spread misinformation about undocumented immigrants, campaigns against migrants coming to Maryland, and tweet often about ms-13.

The July 2010 Sheriff Jenkins spoke at an event organized by the *Help Save Maryland* chapter of Washington County. The event was promoted and organized by Jeff Werner.

Jeff Werner is currently living in West Virginia and still contributes to *Help Save Maryland* as their social media director. Jeff Werner personal blog has spread conspiracies about white genocide, promoted islamophobic ideas, linked to neo-nazi websites like National Policy Institute, and Vdare.

VDARE.com is a known white nationalist website and whose own editor-and-chief has spoken at Richard Spencer's of National Policy Institute. Richard Spencer is, of course, famous for saying "Hail Trump" while giving Hitler Salutes. At least one member of HSM's leadership used to regularly contribute to the website.



From Left to Right: Richard Spencer, Peter Brimlow (VDARE), Jared Taylor author of White Identity, Kevin McDonald, and Millennial Albooze.

Low and behold, we find the xenophobic sheriff connecting to these extremists. It doesn't stop there. Sheriff Jenkins has a track record of connecting with right-wing extremists.

Some with institutional power like FAIR who produced Stephen Miller. Some who are local right-wing extremists such as Jeff Werner.

Either way, it should trouble residents of Frederick, MD that have looked the other way and believed sheriff Chuck Jenkins is not a racist.

Sheriff Jenkins bringing Dennis Michael Lynch to Frederick County for a showing of his documentary "They Came To America."

### **The Came To America**

In August of 2012, Blaine Young and Sheriff Chuck Jenkins brought Dennis Micahel Lynch to Frederick Community College. Dennis produced the documentary "They Came To America."

Fast forward four years, Dennis would be openly identifying with the "Alt-Right." While he later would delete pro-alt-right blog posts, his own documentary showed people using racial slurs to describe latinx people.

Though he later would delete pro-alt-right posts on his website.

← **Tweet**



**Dennis Michael Lynch** ●  
@realDennisLynch

**WHAT IS ALT RIGHT? Here is the answer**  
**[dennismichaelynych.com/highlight-two/...](http://dennismichaelynych.com/highlight-two/...)**

11:28 PM · Aug 29, 2016 · Twitter Web Client

**37 Retweets** **55 Likes**



### **Federation For American Immigration Reform**

In 2014, Sheriff Chuck Jenkins visited the border for a trip funded by FAIR (Federation for American Immigration Reform). Without doing further research than looking at organizations' sites and putting in talking points, the Frederick News-Post broke the story.

From the article "The White Nationalists No One Protested:"

*FAIR was founded in 1979, by John Tanton, would also found NumbersUSA, and Center for Immigration Studies (CIS), the "big three" of anti-immigrant groups, that would go on to mastermind everything from SB-1070 to the VoterID campaign which kicked millions of voters, largely of color, off the voting rolls. The group's stated goal was to keep America as much a white nation as possible and preserve white supremacy within the United States by keeping non-white immigration down. Tanton stated:*

**"I've come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that." — John Tanton, letter to eugenicist and**

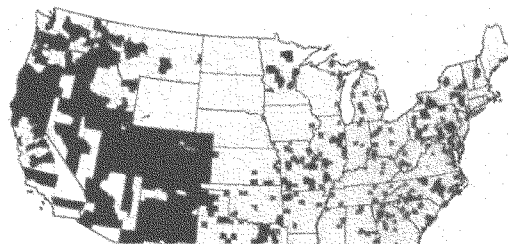
ecology professor Garrett Hardin (now deceased),  
Dec. 10, 1993

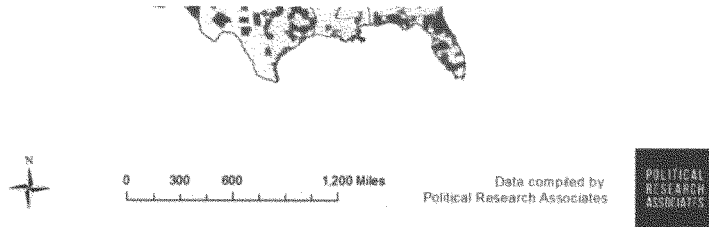


Chuck Jenkins speaking at Center For Immigration Studies

Beyond the big three anti-immigrant organizations, FAIR produced White House senior policy adviser Stephen Miller who advanced the Family Separation Zero-Tolerance Border Policy, Muslim Ban, and is admired by Richard Spencer.

### **County Sheriffs affiliated with the Patriot Movement (2013-2019)**





### **Constitutional Sheriffs and Peace Officers Association**

But other connection may be more important to Jenkins' status as an alt-right sheriff than Jenkins' membership to the Constitutional Sheriffs and Peace Officers Association, an organization which is co-founded by Richard Mack, a founding member of the OathKeepers.

The OathKeepers founder and current board member of CSAPOA once stated: "that there is nothing that the UN or the New World Order boys or the feds want to shove down our otherwise healthy throats that we cannot stop at the county level with a constitutionally educated sheriff." Spreading New World Order conspiracies is a part of the alt-right.

Some of the largest figures of the anti-Semitic New World Order conspiracies include Alex Jones of Infowars, Paul Joeseph-Watson of Prison Planet, and many other political extremists.

In addition, Richard Mack also tried to organize sheriffs to openly defy and refuse to implement the supreme court ruling on gay marriage.

. . .

While Chuck Jenkins may not be aware that he's palling around with racists, he's associated with some of the most racist political figures and organizations in the nation.

It should be alarming to Frederick residents that the top cop in the county might be one or two steps away from the people who organized Unite The Right. Chuck Jenkins is part of the political milieu that's led to numerous politically motivated shootings and terror attacks. Antifascists in the DMV need to be aware of the connection between cops and the far right.

Although Chuck Jenkins may be an extreme example, he's not far from mainstream among police. The fact that he's so motivated to keep Latinx families out of Frederick County should alarm residents who care about those families.

The only thing 1,300 plus people who've been deported because of 287 (g) have done to receive this attention is not have documentation.

*Special thanks to Johnny Ringo for writing about sheriff Chuck Jenkins in the past. Their research was used in writing this article.*

[Politics](#) [Alt Right](#) [Nazis](#) [Frederick](#) [Maryland](#)

[About](#) [Help](#) [Legal](#)

Ms. JACKSON LEE [continuing]. Because of who they are and their race. I yield back.

Ms. JAYAPAL. The gentlewoman has yielded. I now recognize the ranking member of the full committee, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Madam Chair, I appreciate that. You know, the interesting thing about this hearing is, one, I guess I am glad we are having it. It is as I have said before, the reason that you have hearings is to lead to answers. Well, we are here again having a hearing, but no answers. We have been here for 9 months with no answers. What we have heard a lot of is how bad our agents are, how bad those in law enforcement are, how bad conditions are.

We put forward a bill just a few months that we talked about. I mean, it is not into law. Oh, that is right because it can't pass the Senate. It would supposedly help conditions, but it dealt more with environmental issues and other things. And we don't deal with the very issue at the border of why people are coming across, and how this is happening, and why this is happening, and the three areas of things that we need to be talking about: Flores, asylum, and Trafficking in Victims Protection Act. But we don't want to do that because that is too simple and it doesn't play politically.

I am sorry for the DACA recipients. We could have fixed DACA, by the way. I am sorry that, you know, some people didn't know that you couldn't travel, and I understand that. And it may not have been our bill, but there was a bill, and we discussed a bill passed out of here that many of us on the Republican side would love to have fixed and the President would have. And the majority leader of this House actually got on the floor and said last year this could have happened, and there was a bill that was within one or two signatures away of being taken off the desk and voted on.

And instead of taking that bill which would have got 40 or 50 or maybe even 60 Republicans to pass this year, went to the Senate, passed, and the President sign it so there is no more problem here, we chose to pass a partisan DACA bill, which can't pass, which means that, frankly, it seems the majority is only interested in using DACA as a political issue and not a solution. If you don't believe it, just look at the results. Don't look at the rhetoric. Look at the results, not the rhetoric. It is one thing to tell you something. It is another thing to promise you something. It is another thing to bring people to come here and testify to the conditions, and I appreciate that and sympathetic to that. But don't look at the rhetoric. Look at the results.

I would love to see this committee actually propose results. I said this a week or two ago when we were having this, again, discussion on immigration and talking about how dehumanizing it is. It is dehumanizing to continue to come here and talk about it and not put a bill before this committee. I got you. Too dehumanizing. So you can come and be witnesses, the majority witness or the minority, but it is dehumanizing to come here and not know that this committee could actually pass bills and choose not to.

With that, Mr. Homan, again, it has been one of those days—

Mr. HOMAN. I appreciate it. First of all, I think everybody needs to be reminded, entering this country illegally is a crime. There is no prerequisite you got to commit yet another crime to enforce the

law. That is the law you enacted. The young lady over here mentioned 26 deaths in ICE custody. Wrong. That number is nine, and one is too many, but out of the majority of those nine deaths, which is the lowest of any Federal and State facility, most of them died within days of detention. It wasn't ICE's fault. They came into ICE's custody in bad condition. So and the year before that, the majority of them were heart attacks. Heart attacks happen across this country every day. I don't know how you prevent that. So nine, not 26.

And finally, I will say this, sir. Your comment about me wanting to assault a lawmaker. Let me explain myself to that. Probably not the right thing to say, but I was angry, and let me tell you why I was angry. Because you or no one in this room have seen what I have seen in my 34 years. You didn't stand in the back of tractor trailers finding 19 dead aliens that suffocated to death because the smuggler didn't care, including a 5-year-old boy. What do you think his last 30 minutes were like?

I was there. I seen it. I seen it. I saw it. And I had a 5-year-old boy at the time, and it changed me for the rest of my life. I have seen people who couldn't pay their smugglers and got stabbed in the face 22 times. Thirty-one percent of migrant women are being raped crossing this border. Children are dying. Cartels are getting rich. Why am I angry? Because you haven't done anything to fix it. Nothing.

We have been up here for 2 years trying to close the three loopholes that Congress says needs to be closed, and you haven't taken one action. But if there is a policy or initiative that is going to cause an illegal alien being arrested or be detained or be removed, we are going to have a hearing within days. Within days. But I am still waiting on a hearing on sanctuary cities because these people's lives have been changed forever. Where is the hearing on sanctuary cities? Where is the hearing on the asylum abuse? Where is the hearing on the TVPRA so we treat children from Central America better?

That is why I am angry, sir. I notice you are not paying attention, but that is why I am angry because you have not seen what I have seen, and it has affected me in my life. I have spent my career trying to save lives, and when I see what is going on the southern border right now and you are ignoring it for political reasons. Why not have a hearing on that? Why not fix the problem and close the loopholes? Why not? There is no downside in securing our border. There is no downside in illegal immigration being decreased. There is no downside on less drugs coming in this country. Opioids. ICE has seen enough opioids to kill every man, women, and child 3 times. There is no downside in taking money out of cartels' hands. None.

Mr. COLLINS. I yield back.

Ms. JAYAPAL. Thank you. And with that, we do conclude today's hearing. I would like to say that the truth is our country is far too reliant on the incarceration of immigrants. The beneficiaries are for-profit prison companies. But we do have sensible, humane, cost-effective solutions that would be provided under my bill, the Dignity for Detained Immigrants Act. And I do think it is unfortunate, and I will just—



Mr. COLLINS. Will the gentlelady yield?

Ms. JAYAPAL. But I do think that it is unfortunate——

Mr. COLLINS. Point of order. Is the committee over or is it a time for another 5-minute round?

Ms. JAYAPAL. No, it is not a time for another 5-minute round.

Mr. COLLINS. Then it is time to adjourn the committee, Madam Chair.

Ms. JAYAPAL. I just said to the ranking member of the subcommittee that I was going to make one brief statement.

Mr. COLLINS. But as the ranking member of the committee, I am calling a point of order and saying it is time to end this committee.

Ms. JAYAPAL. Okay. Well, I would like to say that I hope that witnesses called by the minority in the future respect the authority of the committee.

Mr. COLLINS. I wish the committee chair right now would recognize the fact that she is supposed to be calling this committee——

Ms. JAYAPAL. I would once again like to——

Mr. COLLINS. There is not 5 minutes extra.

Ms. JAYAPAL. Thank you, Mr. Collins. I would once again like to thank the panel of witnesses, and particularly those who traveled far away to be with us today.

Without objection, all members will have 5 legislative days to submit additional questions for the witness or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 12:53 p.m., the committee was adjourned.]

## **APPENDIX**

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**SHEILA JACKSON LEE**  
18th District, Texas

**WASHINGTON OFFICE:**  
2435 Rayburn House Office Building  
Washington, DC 20515  
(202) 225-3816

**DISTRICT OFFICE:**  
1919 Smith Street, Suite 1180  
The George "Mickey" Leland Federal Building  
Houston, TX 77002  
(713) 655-0050

**ACRES HOME OFFICE:**  
6719 West Montgomery, Suite 204  
Houston, TX 77019  
(713) 691-4882

**HEIGHTS OFFICE:**  
420 West 10th Street  
Houston, TX 77008  
(713) 961-4070

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515

**COMMITTEES:**  
**JUDICIARY**

**SUBCOMMITTEES:**  
CRIME, TERRORISM, AND HOMELAND SECURITY

**Revised Member**  
IMMIGRATION, BORDER SECURITY, AND CLAIMS

**HOMELAND SECURITY**

**SUBCOMMITTEES:**  
INTELLIGENCE, INFORMATION SHARING, AND  
TERRORISM RISK ASSESSMENT

ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION,  
AND CYBERSECURITY

MANAGEMENT, INTEGRATION, AND OVERSIGHT

**SCIENCE**

**SUBCOMMITTEES:**  
ENERGY

SPACE AND AERONAUTICS

**Members:**  
DEMOCRATIC CAUCUS POLICY AND  
STEERING COMMITTEE

**Co-Chair:**  
CONGRESSIONAL CHILDREN'S CAUCUS

## CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS



### HOUSE JUDICIARY COMMITTEE

### SUBCOMMITTEE ON IMMIGRATION AND

### CITIZENSHIP

## HEARING ON THE EXPANSION AND TROUBLING USE OF ICE DETENTION

**SEPTEMBER 26, 2019 – 10:00 AM**

**2141 RAYBURN HOUSE OFFICE BUILDING**

- Thank you, Madam Chairwoman for convening this important hearing on the Expansion and Troubling Use of ICE Detention.
- Thank you to our witnesses:
  - Selene Saavedra-Roman, a DACA-recipient and flight attendant, ICE detained Ms. Ramon in February 2019;

- Denis Davydov, a gay, HIV-positive asylum seeker from Russia. He came to the United States on a visa in 2014 and applied for asylum in 2015, and after several weeks in detention, he developed an opportunistic infection, which was particularly dangerous due to his compromised immune system;
- Blanche Engochan, an asylum seeker from Cameroon, Ms. Engochan sought asylum at the U.S. southern border in February 2019, passed her credible fear interview, and was subjected to mandatory detention;
- Heidi Altman, Director of Policy, National Immigrant Justice Center;
- Jorge Baron, Executive Director, Northwest Immigrant Rights Project;
- Melanie Schikore, Executive Director, The Interfaith Community for Detained Immigrants;
- Thomas D. Homan, Former Acting Director, U.S. Immigration and Customs Enforcement; and
- Charles A. Jenkins, Sheriff, Frederick County Sheriff's Office.
- The hearing will explore a variety of issues related to ICE immigration detention, including:
  - the reasons for detention; detention conditions and the experiences of detained individuals including asylum seekers and other vulnerable populations;
  - the role and influence of for-profit companies on increased detention capacity;

- access to legal counsel and appropriate medical care;
  - the sufficiency of agency oversight, accountability, and transparency within the detention system; and
  - the effectiveness of community-based alternatives to detention.
- Let me indicate that I have the deepest amount of sympathy for anyone who loses a loved one.
- Having been on the Committee for Homeland Security dealing with these issues for over 20 years, I have seen a lot of tragedy and I have recognized the pain of families, the pain and the lose of officers and have also worked very hard to provide the appropriate equipment necessary for the work to be done.
- With that in mind, I do not believe we will be successful if we talk AT each other instead of TO each other.
- This a nation of immigrants and a nation of laws and all people must be protected.
- The three witnesses who spoke about their experience in detention centers are not criminals, have no intent to kill or maim anyone.

- What we are speaking about today is the question of the dignity of America, the basic sense of human rights, the Bill of Rights that adhere to anyone on our soil to be treated decently.
- It makes a difference when the leadership sets the tone that the people coming to this country are human beings.
- This is not ICE because I have seen ICE and I've worked with ICE.
- When you get toxic leadership, no one wins: families who are trying to have justice or innocent persons who simply have come to this country because they cannot live anywhere else.
- The Statue of Liberty did not collapse when the Towers were hit.
- It stood and it still stands today and I reject and resent the actions that have been dictated by the toxicity at the top that has turned decent Americans, who work every day who I have worked with into the pressure, I cannot imagine the burden to act like they are presiding over terrorists.
- We are all here together and we all care about the same things.
- Border Patrol data indicating that 826 (31 percent) of the 2,669 children at these facilities had been held longer than the 72

hours generally permitted under the TEDS standards and the Flores Agreement.

- A July 2, 2019 DHS Inspector General report reveals that hundreds of children have fallen ill while in custody, including many requiring urgent medical attention.
- I and my staff worked diligently for me to get into the Emancipation Avenue ORR facility located in my District.
- Though I did not receive a warm welcome from the HHS employees, the detainees were very happy to see us as we encouraged them to stay strong during the process.
- After I returned, I cosponsored Rep. Raul Ruiz's Humanitarian Standards for Individuals in Customs and Border Protection Custody Act (H.R. 3239), which would require CBP to perform an initial health screening on all individuals in CBP custody and ensure that each individual in custody has access to water, sanitation and hygiene, food and nutrition, and safe shelter, among other provisions.
- Within DHS, providing long-term detention is the responsibility of U.S. Immigration and Customs Enforcement (ICE), not CBP.

- My trip to the facility prompted me to authored the “Detainee’s Rights” Amendment so that detainees would be aware of their rights under H.R. 3239.
- I have had serious concerns about private for-profit facilities working with CBP and ICE.
- The U.S. government detains immigrants throughout a network of more than 200 facilities across the country, including county and local jails and facilities operated by private, for-profit companies.
- The number of detained individuals includes a growing number of women (including pregnant women) and asylum seekers.
- According to a study performed by The Center for Public Integrity in June 2019, the number of people in ICE custody who have not been convicted of a crime has risen significantly—by 39 percent in December 2018 as compared to September 2016.
- In March 2018, the Trump Administration reversed the general prohibition on the detention of pregnant women instituted under the Obama Administration.
- Concurrently, the number of pregnant women who have miscarried while in detention has nearly doubled in the first two years of the Trump Administration.
- Reports indicate that pregnant women receive only the bare minimum of services and accommodations, and are routinely denied extra blankets, dietary needs, and adequate prenatal care.



- Pregnant women referred to outside obstetricians for care were often shackled during transport to and from the physicians' offices, with sometimes horrific consequences.
- OIG has concluded that the inspection and monitoring of ICE detention facilities does not facilitate compliance or lead to systemic improvements to the detention system.
- ICE inspections are announced in advance, allowing facilities with well-documented violations to regularly pass inspection and continue to receive government funding.
- Moreover, the DHS OIG has found that "ICE does not adequately hold detention facility contractors accountable for not meeting performance standards. "
- OIG observed nooses dangling from air vents; individuals unable to access basic dental care for months and years, resulting in avoidable tooth loss; and a disabled man in a wheel chair being placed in segregation and not once being moved to a bed to sleep or being permitted to brush his teeth for nine days.
- In August 2019, a class action lawsuit was filed against the Trump Administration on behalf of detained individuals in 158 ICE facilities throughout the country.
- The lawsuit alleges that ICE is systematically denying medical care to individuals in its custody and that a lack of oversight has contributed to egregious lapses in health care."
- A large percentage of ICE detention centers are located in rural areas, hours away from the nearest medical center equipped to provide emergency care.

- ICE facilities are also frequently under-staffed or staffed with medical providers lacking proper qualifications.
- As a result, reports of medical issues and emergencies arising in ICE detention centers has increased.
- For example, during fiscal years 2017 and 2018, 28 women reported miscarriages while in ICE custody.
- This represents a nearly two-fold increase from fiscal year 2016.
- In July 2019, Pedro Arriago-Santoya died of complications from cardiac arrest at a hospital in Georgia.
- Immediately prior to his transfer to the hospital, Arriago-Santoya was detained at the Stewart Detention Center in Lumpkin, Georgia.
- His death is the fourth at Stewart in a period of just two years, including the suicide of Jean Carlos Jimenez-Joseph in 2017.
- Officials at Stewart failed to refer Jimenez-Joseph for a mental health assessment, even after he reported auditory hallucinations, called a help line alerting ICE headquarters to his situation, and attempted to kill himself by leaping from a second floor balcony.

- Instead, of being provided the urgent help he required, he was held in solitary confinement for 18 days, before he hanged himself.
- Reports also indicate instances in which Otero staff or ICE officials allegedly withheld personal hygiene products as a means of punishment or retaliation.
- This is why I authored the “Detainee’s Bill of Rights” Amendment.
- Instead of relying primarily on the physical detention of immigrants, ICE could employ a broad array of alternatives to detention to ensure that people appear for their immigration proceedings.
- The Family Case Management Program (FCMP) that ICE operated from January 2016 through June 2017 produced compliance rates of 99 percent with immigration check-in appointments and court appearances at a cost of just \$38 per family, per day.
- Thank you for convening this hearing, Madam Chairwoman and I look forward to hearing from the witnesses.

**The Washington Post**  
*Democracy Dies in Darkness*

## The other problem with ICE detention: Solitary confinement

By **Ellen Gallagher**

Ellen Gallagher currently serves as a senior advisor with the Department of Homeland Security's Office of Inspector General. She is represented by Government Accountability Project, a whistleblower protection and advocacy organization.

August 28, 2019 at 6:00 a.m. EDT

Many of us were distressed this month as the Department of Homeland Security's Immigration and Customs Enforcement launched its largest worksite raid in a decade, arresting 680 workers and again separating children from their parents.

The administration's apparent commitment to knowingly traumatizing children to deter immigration across the U.S.-Mexico border has been a growing source of civic and congressional outrage. But while Congress and the general public are rightly concerned about the human rights violations resulting from overcrowding at border facilities, DHS and ICE are also traumatizing migrants behind closed doors. This is occurring through a more insidious form of abuse — the use of prolonged solitary confinement, which the United Nations deems a form of torture. Tragically, this is what might await many of the workers arrested in the raids.

As a DHS whistleblower, I have spent years attempting to expose ICE's repeated violations of statutory mandates and federal detention standards in its regular use of solitary confinement, particularly for mentally ill and medically vulnerable detainees. While employed in Homeland Security's Office of Civil Rights and Civil Liberties, I read hundreds of ICE's segregation reports from dozens of detention facilities that revealed systemic abuse of detainees' rights and a stunning disregard of the medical and mental-health harms posed by segregation.

For example, one detainee was diagnosed with schizoaffective disorder with hallucinations and suicidal ideation, yet spent months in and out of solitary confinement before being sentenced to 390 more days for throwing his feces at a security guard. Another was sentenced to 45 days in “twenty-four-hour lockdown” because guards during a search of his cell found a single anti-anxiety pill, hidden in a book he was reading. Detainees on “suicide watch” were routinely placed in isolation without information as to the length of time they would remain there, whether or how frequently they would be monitored, or the medical treatment they would receive; other detainees were sentenced to periods from 15 to 45 days in disciplinary segregation for offenses including “insolence,” “spitting,” “possession of a cellphone,” “failure to follow an order,” “attempted horseplay” and “attempted fighting.”

Desperate to call attention to what rises to the level of torture of migrant populations, and in the face of muted responses from executive and legislative oversight entities, I agreed to go on the record with the press. In May, the International Consortium of Investigative Journalists, in conjunction with the Intercept, NBC News and Univision, published the results of an extensive investigation on the use of solitary confinement in immigration detention. The investigation, which reviewed 8,488 recorded stays in solitary confinement from 2012 to early 2017, found isolation used “to punish immigrants for offenses as minor as consensual kissing and to segregate hunger strikers, LGBTQ detainees and people with disabilities.” Over half of all stays exceeded 15 days, a period the United Nations has deemed “inhuman and degrading treatment.” This description is not surprising given the severe psychiatric harm associated with solitary confinement. (ICE told the journalism consortium that its use of solitary confinement “protects detainees, staff, contractors, and volunteers from harm” and that, on average, one-half of 1 percent of detainees were confined in solitary for more than 14 days last year.)

Although these abuses did occur under the Obama administration, the cruel and deliberate harm caused by the Trump administration's "zero-tolerance" immigration policy has prompted heightened congressional scrutiny into DHS practices, including ICE's use of solitary confinement. These practices are especially concerning as the number of migrants in detention has exploded. Indeed, the Project on Government Oversight released a report this month that shows how the rapid increase in detained migrants is causing more harm. In reviewing more than 6,559 records it received through the Freedom of Information Act about conditions at ICE facilities between January 2016 and May 2018, the report notes that "as ICE detains more immigrants than ever before, detention centers have filed more reports of detainees being held in solitary confinement." Those documents reveal that about 40 percent of the detainees placed in solitary confinement have mental illness; slightly more than 4,000 of the 6,559 records in the report show detainees confined for more than 15 days.

Until ICE's systemic abuse of civil detainees is eliminated, individuals like those apprehended in Mississippi will foreseeably be at risk of becoming victims of torture. I applaud the recent class-action lawsuit filed by several public-interest organizations against ICE for its systematic denials of care for migrant detainees with medical and mental-health conditions, and misuse of solitary confinement. But DHS and Congress, fully aware of the nature and extent of ICE's use of segregation, must act to enforce compliance with federal standards that mandate its use only as a last resort and in the most limited of circumstances. Failure to act in the face of overwhelming evidence of abuse amounts to the enabling of, if not complicity with, indefensible and deliberate harm. Every day we permit the inhumane treatment of migrants, we further diminish our own humanity.

**Read more:**

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