October 31, 2016

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

We, the 231 undersigned organizations write to express our alarm over the Department of Homeland Security (“DHS”) record-level immigration detention rates, and to request a meeting to discuss this crisis as soon as possible.

The Wall Street Journal has reported that in coming weeks and months the immigration detention rate will hit a historic high of 45,000 immigrants detained per day and could climb to 47,000 by June.¹ These numbers far exceed the congressionally imposed bed quota of 34,000, shattering all prior detention records. The agency’s own officials report they are “scraping the bottom looking for beds,” raising concerns that new facilities will not conform with the Prison Rape Elimination Act regulations or with the most recent detention standards.² The final year of the Obama administration has ushered in the highest rate of immigration detention that the U.S. has ever seen.

Beyond the record-breaking detention levels, we are astonished that Immigration and Customs Enforcement (“ICE”) recently renewed a contract with Corrections Corporation of America (“CCA”) — one of the nation’s largest for-profit prison companies — to continue detaining Central American families in Dilley, Texas. ICE renewed the Dilley 2,400-bed contract for another five years, through September 2021.³ This CCA contract extension came at a time when the Homeland Security Advisory Council is actively evaluating whether DHS should end the use of private prisons, and only weeks after the DHS Advisory Committee on Family Residential Centers recommended that DHS end family detention and overhaul immigration policies to safeguard child welfare.⁴ The Dilley contract extension has made it unmistakably clear that DHS will continue to do big business with private prison titans at the expense of the most vulnerable in our midst — Central American children and mothers who remain detained for months, sometimes longer than a year, as they pursue their asylum claims.

**The mass detention of families and asylum seekers must end.** DHS detains approximately 3,600 mothers and children per day,⁵ the vast majority of whom have endured violence and persecution in Central America and have significant claims for humanitarian protection.⁶ At the same time, DHS has significantly increased its detention of adult asylum seekers who are fleeing persecution in Central America, Africa, and other regions.

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² Id.
The mass detention of asylum seekers has been driven by two major policy shifts since 2014: a deterrence-based detention policy directed at Central Americans seeking asylum and the November 20, 2014 immigration enforcement priorities memorandum which has been interpreted to treat asylum seekers “apprehended at the border or at ports of entry attempting to unlawfully enter the United States” as top enforcement priorities. The use of immigration detention to deter future migration is inherently arbitrary, as it sidesteps the requirement for an individualized assessment of the need to detain, and is therefore prohibited under Article 9 of the International Covenant on Civil and Political Rights (ICCPR). In addition, the current interpretation of the 2014 enforcement priorities has effectively led to a penalization of asylum seekers in violation of Article 31 of the 1951 United Nations Convention relating to the Status of Refugees, which provides that states may not penalize asylum seekers for their “illegal” entry or presence in the country.

U.S. international legal commitments also require that detention for immigration purposes be used only in limited circumstances and for the shortest time possible, with procedures in place for individual reviews of custody before a court. Despite U.S. policies that allow for release on parole, bond, or other conditions, failures to implement these policies have led to the often prolonged and unnecessary detention of asylum seekers. For example, reports indicate that asylum seekers are needlessly detained for many months or longer despite meeting ICE’s publicly enumerated criteria for parole. Moreover, arriving asylum seekers are not afforded access to immigration court custody reviews, other than in the Second and Ninth Circuits, and there only after six months of detention.

**The immigration detention system is now driven by profits and devoid of due process.** ICE is the biggest federal client of the private prison industry. Approximately 73 percent of detained immigrants are held in facilities operated by private, for-profit prisons corporations. In August the Deputy Attorney General announced that the Bureau of Prisons will phase out the use of private prisons. These are the very same private prisons that are doing big business with DHS to detain the vast majority of immigrants.

Profiteering should never play a role in any detention system, especially when it deprives the liberty of children, mothers, and asylum seekers. The results of privatized detention have been tragic. At the Eloy Detention Center, run by CCA, 14 people have died since 2003. Despite death reviews documenting alarming lapses in medical care, ICE has continued the Eloy contract with CCA. Similarly, in 2009-10 a CCA transport guard sexually assaulted multiple women locked up at the Hutto detention facility.

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Mass detention of immigrants is costly to American taxpayers, devastating to immigrants and their families, and profitable to private prison corporations. In these final months of the Obama administration we urge you to immediately take measures to reduce unnecessary and prolonged detention and to move toward more rights-respecting and cost-effective policies:

- End the detention of families and stop placing families in expedited and reinstatement of removal proceedings.

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8 See *Shutting Down the Profiteers*, supra n. 5.
• End the “mandatory detention” of asylum seekers by placing asylum seekers into regular removal proceedings rather than summary processing.
• To the degree that individuals seeking protection are processed through expedited or reinstatement of removal, robustly exercise existing humanitarian parole authority for these asylum seekers and issue written guidance reminding ICE Field Offices that the 2009 Asylum Parole Directive is in full force and must be followed.
• Commit to a complete phase out of ICE’s contracts with private prison companies and direct ICE not to enter into any new contracts with local jails.
• Provide all individuals detained by ICE prompt access to individualized custody redetermination hearings before an immigration judge, and implement automatic court custody redetermination hearings for every individual detained for more than six months, as numerous federal circuit courts of appeal have found the Constitution to require.
• Require that ICE consider a person’s ability to pay when setting bond.

Eight years ago this administration began with a commitment to overhaul our immigration detention system “thoughtfully and humanely.”

This administration is ending its tenure with skyrocketing detention rates that have shattered all prior records, locking up more children and asylum seekers than ever before, and running an out-of-control detention system where for-profit prison titans are profiting at the expense of taxpayers and immigrants. On behalf of the men, women and children who remain needlessly behind bars, we urge you to take immediate action.

We request a meeting with you to discuss these concerns and recommendations as soon as possible. To facilitate this request, please contact Heidi Altman at the National Immigrant Justice Center at haltman@heartlandalliance.org or 312-718-5021.

Sincerely,

Advocates for Immigrant Rights & Reconciliation
Alliance San Diego
America's Voice Education Fund
American Civil Liberties Union (ACLU)
American Friends Service Committee
American Immigration Council
American Immigration Lawyers Association
Americans for Immigrant Justice
Amnesty International USA
Arizona Coalition to End Sexual and Domestic Violence
Arkansas United Community Coalition
Arlington Street Church- Boston (Social Action Committee)
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice - Los Angeles
Asian Americans Advancing Justice | AAJC
Asian Law Alliance
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Asian Pacific Institute on Gender-Based Violence

Families for Freedom
Fig Tree Revolution
First Congregational UCC Ypsilanti MI
First Focus
First Friends of New Jersey and New York
Florence Immigrant & Refugee Rights Project
Florida Coastal Immigrant and Human Rights Clinic
Florida Council of Churches
Florida Immigrant Coalition, Inc.
Franciscan Action Network
Franciscan Peace Center
Franciscans for Justice
Free Migration Project
Friends Committee on National Legislation
Friends of Broward Detainees
Friends of Miami-Dade Detainees
Futures Without Violence
Georgia Coalition Against Domestic Violence
Georgia Detention Watch
Grassroots Leadership
Greater Hartford Legal Aid
Greater Rochester Coalition for Immigration Justice
Grupo de Apoyo e Integracion Hispanoamericano
HIAS
Hilton Head for Peace
Human Rights First
Human Rights Initiative of North Texas
Human Rights Observation/Honduras
Interfaith Movement for Human Integrity
Illinois Coalition Against Domestic Violence
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defenders Law Center
Immigrant Defense Project
Immigrant Detainee Accompaniment Program
Immigrant Justice Corps
Immigrant Law Center of Minnesota
Immigrant Law Group
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center
Immigration Center for Women and Children
Immigration Equality
Immigration Resource Center of San Gabriel Valley
Interfaith Center for Worker Justice of San Diego County
Interfaith Committee for Detained Immigrants
International Detention Coalition
InterReligious Task Force on Central America and Colombia
Iowa Coalition Against Sexual Assault
Irish International Immigrant Center
Jesuit Refugee Service/USA
Just Foreign Policy
Just Neighbors
Justice for All
Justice for Our Neighbors Southeastern Michigan
Justice Strategies
Kentucky Coalition for Immigrant and Refugee Rights
Kentucky Council of Churches
Kids for College
Kids in Need of Defense (KIND)
Kino Border Initiative
Korean American Resource and Cultural Center
La union del pueblo Entero
Las Americas Immigrant Advocacy Center
Latin America Working Group
Latino Commission on AIDS
Leadership Conference of Women Religious
League of United Latin American Citizens
Logan Square Neighborhood Association
Long Beach Immigrant Rights Coalition
Long Island Wins
Los Angeles Center for Law and Justice
Lowcountry Immigration Coalition
Make the Road Action
Marin Task Force on the Americas
Massachusetts Immigrant and Refugee Advocacy Coalition
Massachusetts Law Reform Institute
Mennonite Central Committee U.S. Washington Office
Mexicanos en Exilio
Mexico Solidarity Network
Mid-South Immigration Advocates
Migrant Justice
Mujeres Latinas en Accion
Mujeres Unidas y Activas
My Sisters' Place
National Asian Pacific American Families Against Substance Abuse
National Asian Pacific American Women's Forum
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Education Association
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Latina/o Psychological Association
National Lawyers Guild - Los Angeles Chapter
National Network for Immigrant and Refugee Rights
National Network to End Domestic Violence
NC Council of Churches
Nebraska Appleseed Center for Law in the Public Interest
Nebraska Coalition to End Sexual and Domestic Violence
NETWORK Lobby for Catholic Social Justice
New Mexico Asian Family Center
New York Justice For Our Neighbors
Nicaragua Center for Community Action
NM Faith Coalition for Immigrant Justice
Northwest Immigrant Rights Project
Ohio Council of Churches
OneAmerica
Oregon Interfaith Movement for Immigrant Justice
Pangea Legal Services
PASO - West Suburban Action Project
Pax Christi Florida
Pax Christi USA
PICO National Network/LA RED
Project IRENE
Project South
Puentes: Advocacy, Counseling & Education
Queens Legal Services
Reformed Church of Highland Park
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Refugee Well-being Project
Refugio del Rio Grande
Rockland Immigration Coalition
San Diego Immigrant Rights Consortium
Services, Immigrant Rights, and Education Network (SIREN)
Sisters and Brothers of Immigrants, Inc.
Sisters of Charity of New York
Sisters of Mercy of the Americas
Sisters of St. Francis of Philadelphia
Skagit Immigrant Rights Council
SOA Watch
SOA Watch - San Francisco
SOLACE
South Asian Americans Leading Together (SAALT)
South Asian Fund For Education, Scholarship & Training (SAFEST)
South Texas Human Rights
South Texas Human Rights Center
Southeast Asia Resource Action Center (SEARAC)
Southern Border Communities Coalition
Southern Poverty Law Center
Southwest Organizing Project
Tacoma Community House
Tahirih Justice Center
Taos Refugee and Immigration Network
Task Force on the Americas
The Center for Popular Democracy
The Leadership Conference on Civil and Human Rights
Transnational Institute for Grassroots Research and Action (TIGRA)
UC Davis School of Law Immigration Law Clinic
Unitarian Universalist Service Committee
United We Dream
UNO Immigration Ministry
Virginia Council of Churches
Voces de la Frontera
W. Haywood Burns Institute
Washington Immigration Defense Group
Washtenaw Interfaith Coalition for Immigrant Rights
Wayne Action for Racial Equality
We Belong Together
Wilco Justice Alliance (Williamson County, TX)
Wisconsin Council of Churches
Women's Refugee Commission
Worker Justice Center of New York
Workers Defense Project
Wyoming Coalition Against Domestic Violence and Sexual Assault
Yolo Interfaith Immigration Network