May 23, 2011

Hon. Elton Gallegly
Chairman
House Judiciary Subcommittee on
Immigration Policy and Enforcement
Committee on the Judiciary
Rayburn House Office Building
Washington, DC 20515

Hon. Zoe Lofgren
Ranking Member
House Judiciary Subcommittee on
Immigration Policy and Enforcement
Committee on the Judiciary
Rayburn House Office Building
Washington, DC 20515

Re: Proposed Legislation That Would Expand Prolonged and Indefinite Immigration Detention

Dear Chairman Gallegly and Ranking Member Lofgren:

We write in reference to the Subcommittee’s upcoming hearing on legislation that would overturn limitations imposed by the Supreme Court on the extended and unnecessary detention of immigrants. Based on our 25 years of expertise in detention issues, we urge the Subcommittee to reject this dangerous and inhumane proposal without delay.

Numerous reports by government agencies and nongovernmental organizations have detailed the injustices in the current immigration detention system. The proposed legislation would increase those injustices. Congress should not curtail immigration judges’ authority to make detention decisions. If Congress entrusts Immigration Judges with the authority to permit individuals to enter or remain in the United States as asylees or permanent residents – to be our neighbors and co-workers and our children’s classmates – it follows that judges should also have the discretion to decide if detention is appropriate. In our experience, immigration judges make detention decisions largely based on whether a noncitizen is likely to ultimately prevail; for individuals ultimately granted relief, a six to twelve month detention is damaging to the individual, to the nation’s budget, and to our commitment to fairness and justice.

Heartland Alliance’s National Immigrant Justice Center (NIJC) is a Chicago-based, non-governmental organization dedicated to safeguarding the rights of noncitizens, including immigrants, refugees, victims of human trafficking, unaccompanied minors, and asylum seekers. NIJC’s Detention Project provides legal advice to hundreds of detained immigrants each month and represents dozens of detained immigrants in immigration court, before the Board of

1 See, for example, http://bit.ly/d2O0eU.
Immigration Appeals, and in federal court. NIJC staff, pro bono attorneys and volunteers travel hundreds of miles each month to provide the only legal orientation presentations available in remote detention facilities. In our statement, we will highlight the case stories of five clients, whose experiences in detention exemplify the lengthy and unnecessary detention suffered by many immigrants each day.

**Refugee, Translator for U.S. Military in Iraq, Detained for Eleven Months**

In 1997, NIJC client Louie Al-Bareh came to the United States as a political refugee from Iraq. He became a lawful permanent resident (LPR) several years later. In 2005, he used his language skills to work as a translator for the United States Army in Iraq. After a wire fraud conviction, the Department of Homeland Security (DHS) sought to terminate his LPR status and deport him to Iraq.

During these proceedings, DHS detained Mr. Al-Bareh. An immigration judge terminated Mr. Al-Bareh’s lawful permanent residence but, based on a finding that he was more likely than not to face persecution in Iraq due to his work for the U.S. Army, the judge granted withholding of removal. Despite the grant of withholding of removal and the fact that there was no likelihood of removal, the government continued to detain Mr. Al-Bareh during the removal period, and considered him subject to procedures for release pursuant to Zadvydas.

After nearly a year in detention, DHS placed Mr. Al-Bareh on an order of supervision three years ago. Today, he has a steady job, does not have an arrest record and has complied with the requirements of his immigration supervision.

**Estimated Cost of Detention: $40,870**

**Long-time Lawful Permanent Resident, Father of Two U.S. Citizen Children, Detained for Five Years**

“I cannot understand why I should have been detained for five years and suffer as much as I did in a country like this, just because I exercised my rights to challenge my deportation.” — Carlyle Dale

Carlyle Dale, a Jamaican citizen, entered the United States in 1971 and became a lawful permanent resident in 1977. He married and had two children in the United States. He studied and worked in various industries until 2000, when he was charged with attempted aggravated assault, stemming from an altercation. In 2005, after completing his parole, DHS sought to terminate his LPR status, alleging that his crime was an “aggravated felony.”

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During these proceedings – which lasted more than five years – DHS detained Mr. Dale. He appeared in the proceedings without counsel, where he disputed DHS’s characterization of his conviction. In June 2010, in his second appeal to the Fifth Circuit Court of Appeals – and now with pro bono assistance from Kirkland & Ellis and NIJC attorneys – the court found that Mr. Dale’s conviction did not meet the definition of an “aggravated felony,” and remanded his case to the Board of Immigration Appeals. In June 2010, after extraordinary attempts by legal counsel to obtain medical attention for him, including appeals to the White House, a petition to the United Nations Working Group on Arbitrary Detention, and an article in the New York Times, DHS placed Mr. Dale in a supervised release program.

Since his release, Mr. Dale has lived in Florida with his son’s family and he is actively involved in community life. He has complied with the conditions and requirements of his supervised release with DHS.

Estimated Cost of Detention: $222,650

Long-time Lawful Permanent Resident, Detained for Four Years

Domingo Cueto Estrada, a Mexican national, became a LPR in 1990. Fifteen years later, in January 2005, following a probation violation for a controlled substance conviction, DHS unexpectedly detained Mr. Cueto Estrada and prepared to remove him to Mexico. Mr. Cueto Estrada then learned – for the first time – that the United States Citizenship & Immigration Service (USCIS, formerly the Immigration & Naturalization Service or INS) claimed to have rescinded his LPR status almost a decade earlier. Based on this alleged rescission of his status, DHS issued a deportation order.

Mr. Cueto Estrada, who had never received notice that USCIS had rescinded his immigration status, contested DHS’s deportation order. Mr. Cueto Estrada maintained that (1) USCIS had not rescinded his status and (2) his conviction did not constitute an aggravated felony. For the following five years, Mr. Cueto Estrada challenged the agency’s determination. He twice appealed DHS’ deportation order – initially without counsel, and then with pro bono assistance from attorneys at Sidley Austin and NIJC – and he prevailed in both appeals.

Although his case is not settled, in May 2010 – after more than 4 years in detention – DHS placed Mr. Cueto Estrada on an order of supervision, which allows him to live with his family in the Chicago suburbs. Without family in Mexico, Mr. Cueto Estrada has reunited with a sister battling a serious medical illness, and has committed himself to being a productive member of society by maintaining steady employment. He has had no further encounters with the law and has complied with all conditions and requirements of his supervised release with DHS.

Estimated Cost of Detention: $178,120

Asylum Seeker, Detained More than Two Years

Ms. Roome Joseph, a native of Pakistan, entered the United States in 1998 as a minor with her mother and siblings and applied for asylum based on fear of persecution because of her Christian
beliefs. DHS denied the family’s asylum application. Ms. Joseph was subsequently convicted of two theft offenses, leading to her detention by DHS, which sought to deport her to Pakistan. Ms. Joseph feared returning to Pakistan, where her family, who had been abusive to her in the past, threatened to force her into an arranged marriage.

Based on this fear, Ms. Joseph filed a motion to reopen her case to renew her request for asylum. Represented pro bono by attorneys from Mayer Brown and NIJC, Ms. Joseph appealed her case to the Seventh Circuit Court of Appeals, which twice granted petitions for review in her case.

DHS detained Ms. Joseph for two years. Although her case is not completed, DHS has now placed Ms. Joseph on an order of supervision. Ms. Joseph has complied with the requirements and conditions of her supervised release. She has attended all immigration court hearings and has had no further encounters with the authorities.

**Estimated Cost of Detention: $89,160**

**Wife of U.S. Citizen, Mother of a Six-Year-Old Daughter, Detained for More Than One Year**

“…[I]t seems that Atunnise’s ‘no’ answer to one confusing bullet point is the reason she has been detained in a cell for two years.”

– Judge Rovner, Seventh Circuit Court of Appeals

Christiana Atunnise, a native of Nigeria, arrived in Chicago in 2006 with her six-year-old daughter to join her husband, a U.S. citizen. Although DHS had issued Ms. Atunnise an entry visa, DHS detained her and her daughter upon arrival at Chicago's O'Hare Airport. DHS charged that she should have sought a waiver because she had previously admitted a desperate attempt to enter the U.S. by fraud to be with her husband; and argued that the waiver could only have been sought while she was abroad.

While DHS released her six-year-old daughter to the custody of Ms. Atunnise’s husband, it detained Ms. Atunnise during the removal proceedings, and Ms. Atunnise was initially unsuccessful in the immigration courts. With pro bono attorneys from Jenner & Block and NIJC, Ms. Atunnise appealed to the Seventh Circuit Court of Appeals, which found in her favor and remanded her case to allow her to apply for adjustment of status.

In 2007, while her federal appeal was pending, DHS placed Ms. Atunnise on an order of supervision, after keeping her separated from her family for over a year. Since then, she has been raising her daughter and caring for her husband, as her family tries to recover from the effects of that horrible time. Ms. Atunnise’s daughter suffered anxiety and depression and Ms. Atunnise became clinically depressed because she was separated from her family. Now Ms. Atunnise

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3 In fact, the government had released Ms. Atunnise during the Court of Appeals litigation, after detaining her for more than one year; but it had not informed the Court of Appeals.
volunteers at her daughter's school and at her church, where she participates in the choir. Ms. Atunnise has complied with all obligations of her order of supervision.

Estimated Cost of Detention: $44,530

Recommendation

Louie Al-Bareh, Carlyle Dale, Domingo Cueto Estrada, Roome Joseph, and Christiana Atunnise are representative of the fathers, mothers, wives, and grandfathers that NIJC attorneys meet in immigration detention each day. The scale of unnecessary and prolonged detention is unprecedented in this country’s history and unmatched in any other industrialized country. The legislation before this Subcommittee would directly conflict with our international human rights obligations, would harm vulnerable immigrants including asylum seekers, and would unnecessarily waste government resources. We urge the Subcommittee to reject this legislation outright and without delay.

Thank you for the opportunity to submit this statement to the Subcommittee. If you need any further information, please don’t hesitate to contact me.

Sincerely,

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