

April 4, 2013

Honorable Charles Schumer
Chair, Subcommittee on Immigration, Refugees and Border Security
Committee on the Judiciary²
United States Senate
Washington D.C. 20510

Re: Solitary Confinement in Immigration Detention and Opportunities for Detention Reform

Dear Senator Schumer:

As organizations and individuals who work to protect and advance the rights of non-citizens in immigration detention, we were pleased to see your letter to Immigration and Customs Enforcement (ICE) Director John Morton regarding the agency's use of solitary confinement. We agree that ICE must take swift action to limit solitary confinement and recognize that legislative steps may be necessary.

As you know, solitary confinement in immigration detention facilities is often arbitrarily applied, significantly overused, harmful to detainees' health, and inadequately monitored. But solitary confinement is just one extreme example of the failures of our current immigration detention system. These failures include: the over-reliance on detention when cheaper, extremely effective alternatives are available; the lack of discretion to release many individuals who pose no threat to public safety; the absence of adequate legal representation for most detainees; and the inadequacy of facilities to properly accommodate the needs of those being held in civil – not criminal – confinement. The use of solitary confinement cannot adequately be addressed until the root deficits of our immigration detention system are confronted. Together, the common sense detention reforms outlined below would foster due process and save taxpayer dollars without compromising public safety.

Rigid Detention Levels Should Be Eliminated

The Department of Homeland Security (DHS) interprets appropriations language as mandating a daily detention level of approximately 34,000 individuals, a micro-managing approach that does not exist in any other law enforcement context. The bed "mandate" steers the agency away from making decisions about detention based on its enforcement priorities and individualized assessments, and instead creates an arbitrary quota that drains government resources. It also creates disincentives for DHS to pursue cost-saving policies, such as alternatives to detention, which can address many public safety concerns and provide for an efficient immigration adjudicative process at a fraction of the cost. A better solution would be to increase the use of alternatives to detention, which are cost-effective, ensure that people appear at their court hearings, and are better suited for the vulnerable populations who face harm in detention.

Congress should:

- **Eliminate the detention quota to allow ICE to determine, on a case-by-case basis, the agency's need to detain individuals for immigration purposes.**
- **Clarify that ICE may choose alternatives to detention for anyone in their custody.**
- **Increase access to community support programs, which provide case management and matching with local services for individuals released from immigration detention.**

Bond Hearings are Needed for all Detainees

Detention without a bond hearing is contrary to basic due process and U.S. human rights commitments, yet individuals awaiting civil immigration proceedings are frequently detained for weeks without a hearing or never receive one. Additionally, existing laws have been interpreted by ICE to require detention – and prohibit bond hearings – for entire categories of noncitizens (including asylum seekers), often based on very old acts or very minor single offenses.

Congress should:

- **Guarantee prompt bond hearings by immigration judges for everyone in immigration detention.**
- **“Mandatory custody” and “mandatory detention” laws should be repealed and replaced with language granting immigration judges the authority to determine in each case whether custody is necessary and lawful.**

Access to Counsel and Legal Information Should Be Enhanced

Immigration proceedings are a daunting labyrinth for any individual to navigate alone, yet 84 percent of detained immigrants go through the process without counsel. The Executive Office for Immigration Review’s Legal Orientation Program (LOP) offers basic legal information to detained immigrants so they can understand the process and helps connect them to non-profit and *pro bono* resources. LOPs have received widespread praise, including praise from immigration judges, for promoting the efficiency and fairness in the removal process. Yet LOPs are only available in 24 facilities that detain immigrants in 13 states. This leaves over 200 immigration detention facilities without LOP coverage.

Congress should:

- **Provide counsel for children, individuals with mental disabilities, and particularly vulnerable detained individuals.**
- **Mandate Legal Orientation Program in all facilities that detain immigrants for ICE for more than 72 hours and ensure that this program reaches detainees in solitary confinement.**

Oversight and Compliance Should Be Strengthened

If an immigration detention facility fails to meet basic detention standards, including standards on segregation and solitary confinement, ICE should not house individuals there.

The American Bar Association has recommended independent monitoring of detention facilities in addition to internal accountability mechanisms. Without oversight, the immigration detention system will remain plagued with complaints of inadequate medical care, poor conditions, and solitary confinement.

Congress should:

- **Following on the precedent set for U.S. Citizenship and Immigration Services, create an Ombudsman’s office with jurisdiction over ICE that can inspect detention facilities and receive public complaints.**
- **Require the imposition of meaningful financial penalties upon non-compliant detention facilities and close facilities/ terminate contracts for those with persistent and substantial non-compliance.**

Senator Schumer, we welcome your pledge to ensure that our detention system adheres to the highest standards of security and human decency. You and your colleagues have an opportunity within immigration reform legislation to transform the immigration detention system. We look forward to your continued engagement on detention reform.

We request a meeting at your earliest convenience to discuss these important issues. We remain available for additional information and suggested solutions. Should you have any questions, please feel free to contact Alexis Perlmutter, Associate Director of Policy, National Immigrant Justice Center at aperlmutter@heartlandalliance.org or at 312.660.1363.

Sincerely,

Advocates for Basic Legal Equality
African American Ministers in Action
African Services Committee
All of Us or None
Alliance San Diego
American Civil Liberties Union
American Civil Liberties Union Foundation of Massachusetts
American Civil Liberties Union of Iowa
American Friends Service Committee
American Gateways
American Immigration Lawyers Association
Americans for Immigrant Justice
Amnesty International USA
Asian American Justice Center, member of the Asian American Center for Advancing Justice
Asian Law Caucus
Brooklyn Defender Services
Casa de Esperanza
CASA de Maryland, Inc.
Center for Gender & Refugee Studies
Chicago Religious Leadership Network on Latin America
Community Immigration Law Center
Cornell Law School Immigration Appellate Law and Advocacy Clinic
Detention Watch Network
Ella Baker Center for Human Rights
Fahamu Refugee Programme
Family Equality Council
Farmworker Justice
Florence Immigrant & Refugee Rights Project
Florida Justice Institute, Inc.
Franciscan Action Network
Gamaliel
Hofstra Law School Asylum Clinic, Maurice A. Deane School of Law at Hofstra University

Human Rights Defense Center
Human Rights First
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights
Immigrant and Refugee Rights Clinic, CUNY School of Law
Immigrant Defense Project
Immigrant Justice Clinic, University of Wisconsin Law School
Immigrant Law Center of Minnesota
Immigrant Legal Resource Center
Immigrant Rights Clinic at Rutgers School of Law - Newark
Immigrant Rights Project, University of Tulsa College of Law
Immigration Clinic, University of Miami School of Law
Immigration Equality
Interfaith Coalition on Immigration
International Foundation for Gender Education
The John Marshall Law School Human Rights Clinic
Johnson & Brennan, PLLC
The Leadership Conference on Civil and Human Rights
Legal Aid Justice Center
Legal Services for Prisoners with Children
LGBTQ Immigrant Rights Coalition of Chicago
Lutheran Immigration and Refugee Service
Maria Baldini-Potermin & Associates, P.C.
Massachusetts Immigrant and Refugee Advocacy Coalition
Monmouth County Coalition for Immigrant Rights
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Council of La Raza
National Day Laborer Organizing Network
National Gay and Lesbian Task Force Action Fund
National Guestworker Alliance
National Immigrant Justice Center
National Immigrant Solidarity Network
National Immigration Forum
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Latina Institute for Reproductive Health
National Lawyers Guild Queer Caucus
National Religious Campaign Against Torture
NC Immigrant Rights Project
NETWORK, A National Catholic Social Justice Lobby

New Orleans Workers' Center for Racial Justice
New York Immigration Coalition
Northwest Immigrant Rights Project
NYU Immigrant Rights Clinic at Washington Square Legal Services, Inc.
The Office of Immigration Issues, the Presbyterian Church (U.S.A.)
Out4Immigration
Physicians for Human Rights
Political Asylum Immigration Representation Project
Progressive National Baptist Convention, Inc.
Public Law Center
Racial Justice Action Center
Reformed Church of Highland Park, NJ
Rocky Mountain Immigrant Advocacy Network
San Diego Immigrant Youth Collective
Sisters of Mercy of the Americas
Survivors of Torture, International
Texas Civil Rights Project
Torture Abolition and Survivor Support Coalition
Transgender Law Center
UC Davis King Hall Immigrant Detention Project
Unitarian Universalist Service Committee
United We Dream
We Belong Together: Women for Common Sense Immigration Reform
Who Is My Neighbor? Inc.
Wind of the Spirit Immigrant Resource Center
Women's Refugee Commission
The Young Center for Immigrant Children's Rights at the University of Chicago

Individuals

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