

January 27, 2010

Mr. John Morton
Assistant Secretary, Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20536

Re: ICE's Response to Detainee Deaths—Recommendations for Moving Forward

Dear Assistant Secretary Morton:

We are writing in response to the articles published earlier this month by the *New York Times* describing in detail several heartbreaking deaths in immigrant detention and revealing evidence that immigration officials' response to these deaths focused on public-relations and cost-savings exercises. These reports highlight the fact that the agency is not functioning in a manner that prioritizes the health, safety and well-being of those in its custody.

It is critical that ICE Headquarters understand that while the deaths described in the *New York Times* articles occurred two years ago, the pervasive problems that led to those deaths still exist. Even within this past year, immigration detainees with contagious and potentially fatal diseases have been denied medical attention. ICE must act now to end the mistreatment of detainees and avoidable deaths in detention.

In response to these public allegations, we urge you to take immediate and concrete steps to bring greater accountability to officials directly responsible for ensuring that individuals are held in safe conditions, and treated with dignity and respect.

The Need for Transparency

While you have committed to designing a system that is "open, transparent and accountable," the agency's culture of secrecy is antithetical to that mission. There are several steps that ICE should take to make the agency more transparent. For example, ICE should share more information on its website without waiting for advocacy groups to request information via the Freedom of Information Act. In addition, ICE should follow the example of the U.S. Citizenship and Immigration Service (USCIS) and conduct monthly national stakeholder meetings that can be attended either in person or via telephone. USCIS's recent calls have allowed it to disseminate information about Haitian TPS quickly. Their monthly calls have also proved useful in identifying persistent problems at the service centers. National stakeholder meetings by ICE could help dispel some of the frustration and confusion in the immigrant advocacy community.

We will be meeting with Phyllis Coven, Acting Director of the Office of Detention Policy and Planning on Friday, January 29, 2010, to learn about her team's proposals for

broader access to detainees by families, legal counsel, and other visitors. We also encourage ICE to continue this effort.

Immediate Communication with Officials in the Field

As we noted in our memo to Ms. Coven on December 1, 2009 (please find attached), it is critical that ICE Headquarters communicate immediately its commitment to reform and its expectations to both field office staff and detention facility staff. We are pleased that Ms. Coven will be traveling throughout the country in the coming months to meet with detention officers and local immigrant advocates. Some local Field Officer Directors—for example, in Washington, DC—have held meetings with advocates to discuss detention reform and to build relationships. However, this is not occurring consistently across the country. We would therefore encourage ICE to supplement Ms. Coven's visits with phone calls to Field Officer Directors and directly to detention facility leadership to reinforce ICE's public commitment to reform.

Ensuring Appropriate Medical Care

The members of the health care advisory group have been working diligently with Ms. Coven's team to shape a medical screening system for all intake facilities, a robust classification system, and a satisfactory covered services package. It is our understanding that the position of Senior Advisor on Detainee Health is now vacant. The person in this position will play a critical role in improving the health care offered to immigrant detainees. ICE must move quickly to appoint a Senior Advisor on Detainee Health who not only has the experience and technical expertise to understand the interface between federal standards and local facility operations but who can also work effectively with immigrant advocates. In addition to the specific recommendations of the health care advisory group, we would also make the following suggestions.

- Full peer reviews of unexpected deaths.
- Transparent policy regarding public disclosure and documentation of detainee deaths.
- Detainees should be transferred with a minimum of seven days' worth of prescription medications (for tuberculosis, detainees should be transferred with a 15 day supply) to ensure continuity of care.
- Detainees should be seen within 24 hours of a request being made, regardless of when medical staff is next scheduled to visit the facility.
- In accordance with the National Commission on Correctional Healthcare guidelines, individuals with a chronic medical problem must be provided with an individual treatment plan for regular, on-going care. The treatment plan must be identified at their first chronic care visit and shared with the detainee.
- Detainees must be provided with adequate mental health services, including access to psychologists and other providers. Detainees with mental health issues must be placed in appropriate housing facilities, and should not be placed in administrative segregation.

Conducting Individualized Custody Determinations

As noted in the *New York Times* articles, ICE detains immigrants who do not pose a danger to the community or a flight risk. Immigrant advocates have been working with Ms. Coven on a risk assessment tool and on proposals for alternatives to detention. We welcome the opportunity to collaborate on this work. We also make the following recommendations, which should be implemented in the short term.

- Send guidance to the field re-enforcing officers' current authority under the law to exercise discretion when reaching custody determinations and the availability of release options.
- Conduct immediate custody reviews for all detainees who have been held more than six months. Detainees who have been detained beyond six months should be released from detention, unless it is determined that no conditions of release, including electronic monitoring, would be sufficient to ensure compliance and public safety.
- End the arbitrary and indefinite detention of refugees for failing to submit an application for a green card.

Support Legally Enforceable Detention Standards

Given the recent news articles as well as the numerous detention reports released by advocates and by DHS in just this past year detailing grave human rights abuses in immigrant detention, ICE cannot reasonably insist that enforceable detention standards and independent oversight are not necessary to protect individuals in its custody. In order to establish clear lines of accountability and ensure uniformity and consistency in detention conditions, ICE should commit to supporting standards that are legally enforceable and should work with the NGO community to promulgate effective regulations. Additionally, ICE should support the call from members of Congress and the public for greater accountability and independent oversight.

This list of short-term recommendations is neither complete nor exclusive. We will continue to work with Ms. Coven and others at ICE on the important work of reforming ICE's immigrant detention system. We thank you for your public and continued commitment to detention reform, and we look forward to concrete results for immigrant detainees in the near future.

Sincerely,

African Services Committee
American Civil Liberties Union of New Mexico, Regional Center for Border Rights
American Friends Service Committee
American Immigration Council
American Immigration Lawyers Association
Amnesty International USA
Asian American Justice Center

Capital Area Immigrants' Rights Coalition
Coalition for Humane Immigrant Rights of Los Angeles
Chicago New Sanctuary Coalition
Criminal Defense Immigration Project of the New York State Defenders Association
Detention Watch Network
Friends Committee on National Legislation
Denise Gilman, Clinical Professor of Law, University of Texas School of Law (title and affiliation listed for informational purposes only)
Hebrew Immigrant Aid Society
Barbara Hines, Clinical Professor of Law, University of Texas School of Law (title and affiliation listed for informational purposes only)
Human Rights Watch
Immigrant Law Center of Minnesota
Immigration Equality
Lutheran Immigration and Refugee Service
Massachusetts Immigrant and Refugee Advocacy Coalition
National Asian Pacific American Women's Forum
National Center for Transgender Equality
National Council of La Raza
National Immigrant Justice Center
National Immigration Project of the National Lawyers Guild
Northwest Immigrant Rights Project
Rights Working Group
South Asian Americans Leading Together
Survivors of Torture, International
Shoba Sivaprasad Wadhia, Director, Center for Immigrants' Rights, Penn State Dickinson School of Law (title and affiliation listed for informational purposes only)
Southern Coalition for Social Justice
Torture Survivors Project of the Legal Aid Foundation of Los Angeles
Washington Defender Association's Immigration Project
Dr. Mary White
Women's Refugee Commission
World Relief

cc: David Venturella, Acting Director, Office of Detention and Removal Operations
Phyllis Coven, Acting Director, Office of Detention Policy and Planning
Susan Cullen, Office of Policy
Andrew Lorenzen-Strait, Office of Policy