

April 4, 2013

Honorable Charles Schumer  
Chair, Subcommittee on Immigration, Refugees and Border Security  
Committee on the Judiciary  
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](mailto: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  
Migrant Rights & Justice Program Women's Refugee Commission  
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  
The Young Center for Immigrant Children's Rights at the University of Chicago

***Individuals***

F. Willis Caruso, Clinical Professor, Co-Executive Director of the Fair Housing Legal Support Center, & Director of Pro Bono Program, The John Marshall Law School  
Katherine Fennelly, Professor, Humphrey School of Public Affairs, University of Minnesota  
Susan R. Gzesh, Senior Lecturer & Executive Director, Human Rights Program, University of Chicago  
Barbara Hines, Clinical Professor of Law, Immigration Clinic, University of Texas School of Law  
Hiroko Kusuda, Assistant Clinic Professor, Loyola University New Orleans College of Law Clinic and Center for Social Justice  
Irene Scharf, Professor, UMass School of Law