



## The Friends Committee on National Legislation's Statement as it pertains to the House Committee on the Judiciary's Subcommittee on Immigration Hearing: "The Expansion and Troubling Use of Immigrant Detention"

September 26, 2019

The Friends Committee on National Legislation is committed to pursuing a U.S. immigration system that respects and promotes the rights, safety, and dignity of all migrants, refugees, and immigrants. The current use of immigrant detention is unnecessary, unaccountable, dangerous, and increasingly fatal.<sup>i</sup> As Quakers, we are grounded in the knowledge that there is 'that of God' in every person, regardless of their immigration status. We applaud members of this subcommittee for bringing to light the moral, fiscal, and human costs of immigrant detention and **urge this body to pass detention reform legislation such as the *Dignity for Detained Immigrants Act (H.R. 2415)*.**

**FCNL urges Congress to eliminate our nation's dependence on unjust immigrant detention.** Amid a swell of refugees at our southern border and increased interior immigration enforcement, immigrant detention has increased by nearly 50% in just three years. This year the administration is on track to detain more than half a million people. By the government's own statistics, around seventy-percent of immigrants detained today have no criminal record.<sup>ii</sup> Many of the remaining thirty-percent may only have migration-related convictions.<sup>iii</sup> **Immigrant detention does not keep our nation safer.** We rebuke the presumption that any immigrant – by nature of where they were born or their immigration status – is inherently a potential threat to Americans and should therefore be subjected to banishment, surveillance, or mistreatment. Immigrants are detained simply for not having the right papers, not because they are serving time or paying a debt to society. More people remain in detention because of laws that mandate criminal prosecutions for unlawful entry and detention, as well as policies that sustain the private prison industry's profiting off of increased detention.<sup>iv</sup> Immigration and Customs Enforcement (ICE) locks up asylum seekers and families who are seeking safety in this country, along with longtime community members who yearn to stay with their families but cannot access any visa.<sup>v</sup> It is past time Congress envisions a new framework for people navigating the immigration system.

**We urge Congress to make community-based alternatives the default response to immigrants and asylum seekers navigating legal proceedings.** There are underused, tested alternatives to detention that can keep families together and healthy, allow individuals access to legal support and due process, and invest in communities rather than for-profit prison corporations.<sup>vi</sup> One such program, the Family Case Management Program (FCMP), allowed new asylum-seeking families to remain in communities while assigned a case worker to see them through to the end of their asylum proceedings. Most families won their cases and gained permanent relief, before it was administratively ended in the summer of 2017. Congress re-instated the program this past February, but immigration enforcement agents are now overseeing the casework, rather than having community-based organizations run the programmatic support. Congress must ensure that the goals of this program continue to be centered in providing legal support and guidance in adherence to international and U.S. asylum obligations, and not a fast-track for removal.

Improving access to legal counsel is another way to help immigrants access justice outside of detention. Only **14 percent** of detained immigrants acquire legal counsel as compared to **66 percent** of those out of detention.<sup>vii</sup> Lack of access to counsel or even basic legal orientation contributes to the more than one million case backlog<sup>viii</sup> and means justice denied for many immigrants who are deported. When people have access to the right information and legal support, they show up to their court hearings.<sup>ix</sup> Our immigration laws and processes should focus on ensuring due process for all individuals so that fewer of our neighbors are faced with the impossible choices and instead given support

to remain with their families and communities in this country. We urge congressional courage to re-design our system to restore dignity and grace to our community members facing unjust deportation.

**Congress can begin reforming our detention system through crafting just spending bills this year.** Each year, the best avenue for oversight and accountability is within the federal appropriations process. However, for the fourth year in a row, the administration increased the number of people in immigrant detention without congressional consent. In August 2019, 55,000 people<sup>x</sup> languished behind bars while Congress had funded an average daily population of 45,200 – both historically high numbers of immigrants behind bars.<sup>xi</sup> The reprogramming of funds came at the expense of other functions within the Department of Homeland Security including disaster relief, coast guard readiness, and drug interdiction programs. **Congress should end DHS’ authority to transfer funds into dangerous, costly, and unnecessary detention. Otherwise DHS’ unchecked expansion will undermine reform efforts.**<sup>xii</sup>

**Congress must also exert robust oversight over facility conditions and ensure that migrants cease languishing in detention without access to basic needs and resources.** The expansion of detention has come without commensurate oversight of facilities prone to abuse, neglect, and other gross human rights violations.<sup>xiii</sup> ICE and Customs and Border Patrol (CBP) should not be able to expand detention capacity without meaningful accountability for their failure to care for the people in their custody. The agencies’ Inspector General flagged major concerns with the existing internal inspections of facilities.<sup>xiv</sup> Congress has an opportunity to cease funding facilities that are habitually in violation of existing detention standards, as well as ensure through ongoing independent inspections that all existing facilities are brought up to compliance with the 2011 Performance-Based National Detention Standards (PBNDS), as amended in 2016.<sup>xv</sup>

**The Dignity for Detained Immigrants Act aligns with FCNL’s principles on immigrant detention.** H.R. 2415 would eliminate mandatory detention, restoring necessary discretion to the system. The bill requires immigration enforcement agencies to prioritize community-based alternatives for most immigrants who are currently funneled into dangerous detention conditions – including families, primary caregivers, pregnant women, asylum seekers, and people under 21. As the number of people subjected to detention is reduced, the bill would also require all facilities to be owned and operated by the Department of Homeland Security with higher standards and additional congressional oversight.<sup>xvi</sup>

**It is crucially important that Congress pursue meaningful reforms to immigrant detention through standalone legislation like H.R. 2415, increase oversight of existing facilities, and end its unchecked expansion through the annual appropriations process.**

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<sup>i</sup> Human Rights Watch *et al.*, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention*, June 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>, American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Inspections Ignore Deaths in Detention*, (February 2016), <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>, Human Rights Watch, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, (May 2017), <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

<sup>ii</sup> Available online at <https://www.ice.gov/detention-management#tab2>

<sup>iii</sup> Available online at <https://trac.syr.edu/immigration/reports/564/>

<sup>iv</sup> Available online at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

<sup>v</sup> Prolonged detention stories: <https://www.prolongeddetentionstories.org/the-stories>

<sup>vi</sup> Available online at <https://www.immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration>

<sup>vii</sup> Available online at [https://www.americanimmigrationcouncil.org/sites/default/files/research/access\\_to\\_counsel\\_in\\_immigration\\_court.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf)

<sup>viii</sup> Available online at <https://trac.syr.edu/immigration/reports/574/>

<sup>ix</sup> Available online at <https://www.americanimmigrationcouncil.org/research/immigrants-and-families-appear-court>

<sup>x</sup> See <https://www.ice.gov/detention-management#tab2> under “FY2019 YTD ICE Average Daily Population and ICE Average Length of Stay”

<sup>xi</sup> <https://thehill.com/homenews/administration/444730-more-than-52000-migrants-detained-by-ice-marks-all-time-high>

<sup>xii</sup> Available online at <https://www.fcnl.org/updates/congress-can-halt-overspending-on-immigrant-detention-and-enforcement-2371>

<sup>xiii</sup> See first citation.

<sup>xiv</sup> DHS Office of Inspector General, *OIG-18-67: ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 2018, at p. 10, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

<sup>xv</sup> Available online at <https://www.ice.gov/detention-standards/2011>.

<sup>xvi</sup> See a bill analysis here: <https://www.fcnl.org/updates/the-dignity-for-detained-immigrants-act-bill-analysis-1868>