

Patrick J. Lechleitner
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

July 19, 2023

Dear Acting Director Lechleitner:

The National Immigrant Justice Center (NIJC) is a legal services, advocacy, and litigation organization with offices in Illinois, Indiana, California and Washington, D.C. Our mission is to advance human rights, due process rights, and asylum access for immigrant communities. Our clients include people newly arrived to the United States seeking asylum and longtime community members.

For our clients, the decisions made by Immigration and Customs Enforcement (ICE) officers and attorneys are often life-changing. An ICE officer's decision to release a person from detention on recognizance, for example, might mean that a mother is reunited with her children. An ICE attorney's decision to join in a motion to reopen, as another example, might allow a young person a second chance to rebuild their life in the United States after involvement in the criminal legal system. Perhaps most drastically, an officer's decision to initiate removal proceedings may result in a deportation that permanently separates a father from their child or spouse.

As you assume leadership over this agency that so directly impacts lives, we write to share with you five priority issue areas of concern to our clients and their communities, including: 1) due process violations caused by the Family Expedited Removal Management program; 2) persistent substandard conditions, human rights and due process concerns in ICE detention; 3) entanglement between federal immigration and local law enforcement, including the 287(g) program; 4) ICE's reliance on unreliable and prejudicial evidence in taking enforcement actions; and 5) barriers to return for deported people with a claim to protection in the United States.

1. Harms caused by the Family Expedited Removal Management program and surveillance-based case management

In May, ICE announced the launch of the [Family Expedited Removal Management \(FERM\) program](#), through which families arriving at the southern border to seek asylum are placed into expedited processing, with the head of the household placed on an ankle monitor and home

curfew. Parents in the program are required to present their asylum claim at a Credible Fear Interview within days or weeks of arriving in the United States. We are extremely concerned that this program is setting families up to fail and punishing them for the act of seeking asylum.

Simply *finding* a lawyer takes far more than the time families on FERM are given before their fear interview; even those able to find a lawyer will struggle to [adequately prepare](#) and present their claim under such compressed deadlines. At NIJC we have tried but struggled to even identify families placed into the program in the Chicago area; by the time most families are able to identify a local legal service provider, their interview has passed.

In addition to the rushed timeline, FERM places unnecessarily onerous supervision requirements on its participants. [Study after study](#) has proven that punitive measures such as ankle monitors and curfews are harmful and [unnecessary](#) to promote compliance. In contrast, legal representation and community-based support services are proven to support [nearly 100% appearance rates](#). For these reasons we are equally concerned about the recently launched Young Adult Case Management Program, which places unnecessarily onerous obligations on young people, centers the provision of referrals over actual services, and [does not follow best practices](#) for case management.

Recommendations:

- ICE should terminate the FERM program.
- ICE should work with the Department of Homeland Security to [sever case management services from enforcement, and move them out of ICE](#), particularly in the case of the Young Adult Case Management Program.

2. Substandard conditions, human rights and due process concerns in ICE detention

Government watchdog agencies, investigative journalists and advocates have documented persistent human rights abuses in ICE custody for decades. Administrations of both political parties have overseen dramatic growth in ICE's detention system without taking meaningful steps to mitigate these harms or impose accountability. This is true even in extreme cases; ICE has, for example, recently increased its use of the Torrance County Detention Facility even after the Department's own Inspector General found conditions so deficient that it [urged the agency](#) to immediately remove all people detained there, findings confirmed by [civil society](#).

NIJC is one of many organizations to have documented [appalling conditions](#) for people in ICE custody living with mental illness, including a pervasive use of [solitary confinement](#) as a way to "manage" mental illness. This issue has been repeatedly raised to oversight bodies, including a [complaint filed last week](#) about the abusive use of solitary confinement for people with mental health concerns at the Aurora detention center.

Access to counsel is also a significant concern in ICE custody; legal service providers recently filed a [civil rights complaint](#) regarding the Pike County Correctional Facility, where there is literally no way for attorneys to call or leave messages for their clients.

[Due process concerns](#) remain paramount for those in ICE custody. Although ICE detention is civil in nature, people in ICE jails and prisons have fewer due process protections than people in state or federal pretrial criminal detention. More than half of those detained never have administrative or judicial review of the necessity of their detention, and those who do receive a bond hearing face an onerous evidentiary burden that begins with a presumption of detention.

Recommendations:

- ICE should decrease the overall size of its detention system, including by terminating contracts with facilities with consistent substandard conditions and particularly bad human rights records.
- ICE should end the use of solitary confinement in all facilities and adopt a presumption of release for people with mental health challenges.
- ICE, in partnership with the Department of Homeland Security and the Department of Justice, should promulgate rules to ensure that individuals facing prolonged detention have access to a bond hearing and by requiring the government, rather than the detained individual, to bear the burden of proof in bond hearings.

3. Harms caused by programs that entangle federal immigration enforcement and local law enforcement (287(g), etc.)

Programs that [entangle local law enforcement and federal immigration enforcement](#) have a documented track record of undermining public trust in government institutions and [exacerbating racial profiling](#). On the campaign trail, President Biden vowed to “end all the agreements entered into by the Trump Administration, and aggressively limit the use of 287(g) and similar programs that force local law enforcement to take on the role of immigration enforcement.” Many prominent law enforcement officials themselves [have urged](#) an end to these entanglement programs, noting the myriad ways they undermine community policing goals. [Members of Congress](#) and [civil society](#) have echoed this call. ICE has, however, continued nearly all of the new 287(g) agreements entered into during the Trump administration and failed to limit the use of others.

Recommendations:

- ICE should end the 287(g) program, including the Warrant Service Officer program.
- ICE should end the Secure Communities program and end or severely reform its current detainer practice.

4. ICE's reliance on prejudicial and unreliable evidence in undertaking enforcement actions

Many of ICE's enforcement actions (decisions to arrest, initiate removal proceedings, detain, maintain custody, and/or deport) are made in the context of discretionary agency decisionmaking or court proceedings where the federal rules of evidence do not apply. As a result, ICE officers and attorneys often base life-altering decisions on evidence that is unreliable and prejudicial, frequently without providing the individual the opportunity to review or rebut the evidence.

In a series of two reports, NIJC has documented the ways in which ICE relies on [police reports](#) and [data obtained from foreign governments](#) to deprive people of their liberty and due process rights, and the ensuing harms. Nearly every federal circuit court of appeals and Congress has recognized the inherently unreliable nature of police reports for revealing what actually occurred in a given incident; nonetheless, ICE officers and attorneys frequently assume the truth of the allegations therein, even when the underlying charge is unadjudicated. The same is true of arrest warrants issued by foreign governments against people seeking safety in the United States, even when these warrants are issued by the government from which the person is fleeing.

Recommendations:

- ICE should end or strongly discourage the use of police reports from pending criminal cases and information obtained from foreign governments in immigration decision-making.
- ICE should ensure that people facing deportation and detention have the right to refute any police report or information obtained through foreign data sharing used against them through submission of a written affidavit and/or live testimony.

5. Post-deportation requests to return

Current immigration laws and policy provide procedures that allow individuals to seek to return to the United States after deportation if they have newly available claims to lawful status, and/or if there are urgent humanitarian concerns necessitating their return. In working with deported individuals seeking to return, however, NIJC has learned that these mechanisms are cumbersome and often difficult or impossible to access for unrepresented people who are limited in resources. We have also observed a worrisome hesitation among ICE officers and attorneys to even consider requests for return, regardless of their legal merit.

An openness to reviewing old removal orders and their impact should be a matter of integrity for ICE's enforcement mission, in much the same way that many state prosecutors have begun establishing units to review old criminal convictions. People seeking to return include long time green card holders whose criminal convictions have been vacated or pardoned; people who have succeeded in reopening their immigration court cases or prevailed on appeal subsequent to

deportation; and people whose deportation represents a manifest abuse of discretion. In 2021, NIJC presented a [white paper](#) to the administration proposing the creation of a centralized unit within the Department of Homeland Security to consider and adjudicate applications to return (similar to the successful ImmVets program). This proposal is supported by [dozens of Members of Congress](#) and [more than 100](#) non-governmental organizations.

Recommendations:

- NIJC has identified [numerous individuals](#) nationwide whose applications to return are languishing or have been wrongly denied. ICE must ensure that these and other applications are expeditiously considered, with an eye toward family reunification.
- ICE should streamline and centralize its processes for considering requests for return made via humanitarian parole applications, the 2012 Return Directive, and/or requests for joinder on motions to reopen. Adjudicators should be trained to consider these applications with a humanitarian, rather than enforcement-minded, approach.

Thank you in advance for your time and attention to these important and weighty matters. We hope to have the opportunity to discuss these priorities with you soon.

Sincerely,

/s/ Mary Meg McCarthy
Executive Director

/s/ Heidi Altman
Director of Policy