



**U.S. Immigration
and Customs
Enforcement**

JAN 11 2017

The Honorable Paul Wickham Schmidt
jennings12@aol.com

Dear Judge Schmidt:

Thank you for your October 31, 2016 letter. Secretary Johnson asked that I respond on his behalf.

U.S. Immigration and Customs Enforcement (ICE) is charged with enforcing federal immigration law and protecting public safety through the arrest and detention of removable individuals, including those subject to mandatory detention. Congress has long provided for discretionary and mandatory detention as an essential tool in the enforcement of the immigration laws. ICE uses its detention authority to accomplish its public safety mission, which includes detaining those identified as a priority under Secretary Johnson's November 20, 2014 memorandum, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*, including those with criminal convictions.

Over the past several years, ICE has taken and continues to take substantial steps to reform its immigration detention system to accommodate the unique administrative nature and purpose of immigration detention. All ICE facilities undergo robust inspections to ensure that they meet applicable ICE detention standards with respect to medical care, access to legal resources, food service, telephone access, visitation, recreation, and numerous other aspects of detention. In addition to ICE Enforcement and Removal Operations' own robust inspections program and detention oversight process, many other entities review and report on ICE detention facilities. Such oversight helps ensure that ICE will continue to carry out its mission safely, responsibly, and with integrity.

The Department of Homeland Security (DHS) has taken steps to ensure that individuals pursuing claims for humanitarian relief or protection, such as asylum and withholding of removal, are able to assert those claims consistent with the procedural safeguards and protections afforded under our immigration laws. In 2009, ICE issued Policy No. 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* (Dec. 8, 2009) (the "Credible Fear Parole Directive"). This Directive remains in full force and effect, and continues to guide ICE Field Office personnel in making individualized discretionary decisions concerning the parole of arriving aliens who have been found to have a credible fear of persecution or torture by U.S. Citizenship and Immigration Services or an immigration judge.

Consistent with the Credible Fear Parole Directive, ICE makes parole decisions on a case-by-case basis, taking into account the facts and circumstances of the individual's case. Parole determinations may include release conditions, such as payment of a bond or enrollment in an alternatives to detention program, including the ICE Family Case Management Program. The Immigration and Nationality Act (INA) also permits the release of certain aliens during the pendency of removal proceedings, including on bond and recognizance. See INA § 236(a).

While ongoing litigation imposes some limitations on our ability to comment comprehensively on family residential center operations, ICE understands the sensitive and unique nature of detaining families, and we are committed to continually evaluating our processes. Since we initially expanded our family residential center capacity in 2014, Secretary Johnson and other DHS officials have directed many refinements to our family detention practices, including the discontinuance of long-term detention once a family has established eligibility for asylum or other relief. ICE family residential centers are designed to ensure family unity and promote a safe environment for families going through immigration proceedings or awaiting return to their home countries. We have received the report from the Advisory Committee on Family Residential Centers and are currently reviewing its findings and recommendations.

With regard to legal representation, ICE takes measures to ensure that detainees obtain appropriate information about their ability to retain counsel. All individuals detained by ICE, or whom ICE seeks to remove, are given a list of pro bono legal service providers in the area. In addition, Legal Orientation Program presentations are provided by non-governmental organizations contracted by the Department of Justice's Executive Office for Immigration Review. Individuals in detention are permitted to have contact with their attorneys by telephone or in person in designated attorney visitation areas. ICE also works with pro bono organizations in order to facilitate access to its family residential centers and the residents, as appropriate. DHS will continue to review the findings and evaluate our policies and practices, and will keep your research and recommendations in mind.

Additionally, DHS also has a proactive case review process of any family detained beyond 90 days, wherein their case is reevaluated for a determination of whether detention during the pendency of the immigration case is still appropriate. ICE records indicate that the vast majority of families are now released from ICE custody within a target of 20 days or less. Family detention decisions are made on a case-by-case basis and depend on the specific circumstances involved.

Regarding your recommendation relating to Temporary Protected Status (TPS) for the Northern Triangle countries and Haiti, please note that the Secretary's discretionary authority to designate a country for TPS is based on specific statutory criteria. To designate a country for TPS, the Secretary must find, after consultation with appropriate U.S. Government agencies, one or more of the following: (1) there is an ongoing armed conflict within the country that would pose a serious threat to the personal safety of the country's nationals if they were returned; (2) there has been an environmental disaster resulting in a substantial, but temporary, disruption of the living conditions in the area affected, the country is temporarily unable to handle adequately the return of its nationals, and the country has officially requested TPS designation; or (3) there

are extraordinary and temporary conditions in the country that prevent nationals from returning safely, and the Secretary does not find that permitting the country's nationals to remain temporarily in the United States would be contrary to the national interest of the United States. See INA Immigration and Nationality Act § 244(b)(1).

Honduras has been designated for TPS since 1999, and El Salvador since 2001, with over 300,000 individuals having been granted TPS under the two countries' designations. Haiti has been designated for TPS since 2010, with almost 60,000 beneficiaries under its designation. DHS regularly reviews conditions in all countries currently designated for TPS to determine whether the conditions continue to support each country's existing designation for TPS, as well as any potential redesignation. DHS also monitors conditions in countries that are not currently designated to assess whether they may warrant a discretionary TPS designation under the statute.

With respect to your concerns about the use of private detention facilities, Secretary Johnson announced the formation of a Homeland Security Advisory Council subcommittee on August 29, 2016 to evaluate whether ICE should move away from private detention facilities. The subcommittee was directed to review and consider all factors, including current policies, practices, and fiscal requirements, and any relevant differences between the needs of the Department of Justice and DHS.

On December 1, 2016, the Council submitted the subcommittee's report to Secretary Johnson. A copy of the report is enclosed.

The report recognizes ICE's ongoing commitment to providing a secure and humane environment for those in custody, while making the best use of agency resources. Secretary Johnson has asked me to review and consider the council's recommendation and implement any changes, as appropriate.

Thank you again for your interest in these important issues. Please share this response with the co-signers of your letter.

Sincerely,



Sarah R. Saldaña
Director

Enclosure