

Statement to the U.S. Department of Homeland Security
One Year after the Transfer of Varick Detainees
February 28, 2011

We, the undersigned community groups, legal service providers, and advocacy organizations, write to express, once again, our support for the release of immigrant detainees and the use of community-based alternatives to detention in lieu of detention expansion in our region.

One year ago, we came together to call upon the U.S. Department of Homeland Security (DHS) to undertake a case-by-case review of detention decisions for hundreds of New Yorkers whom DHS sought to transfer to a New Jersey facility following the closure of Varick Federal Detention Facility in New York.¹ Instead of engaging the community in its offer to facilitate the release of Varick detainees back to their families and communities, DHS insisted that it had no resources for case reviews but promised to continue longer-term efforts to promote alternatives to detention and meaningful reforms for our area.²

Rather than deliver on that promise, DHS has recently announced that it intends to enter into a contract with Essex County, New Jersey, to add up to 2,750 new detention beds—doubling immigration detention in the region.³ If the plan is approved, these detention beds will be overseen by a local county correctional institution and a private prison corporation in New Jersey.⁴

We once again renew our collective call to DHS: no person should be detained when community-based alternatives to detention are possible. Detention—whether in New Jersey or elsewhere—is a deprivation of liberty for our community members that negatively impacts their families and comes at great financial expense to taxpayers.⁵ Building more detention facilities

¹ See, e.g., *Statement to the U.S. Department of Homeland Security Regarding Detainees at Varick Federal Detention Facility* (Feb. 1, 2010), available at www.nyclu.org/news.nyclu-coalition-of-organizations-urge-timely-release-of-immigrant-detainees-varick-detention-ce; see also Nina Bernstein, *Illness Hinders Plans to Close Immigration Jail*, N.Y. Times (Feb. 23, 2010) (linking to request of community groups to provide assistance in conducting case-by-case reviews of Varick detainees prior to their transfer to New Jersey); Albor Ruiz, *Shifting Detainees Just Un-American*, N.Y. Daily News (Feb. 4, 2010) (describing request of community groups).

² See, e.g., Bernstein, *supra* note 1 (reporting DHS's rejection of community groups' request to conduct case-by-case reviews due to lack of resources). DHS announced its detention reform plans in October 2009, and included a strong emphasis on alternatives to detention. See, e.g., Dora Schriro, U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* (Oct. 6, 2009) (calling for emphasis on alternatives to detention); U.S. Department of Homeland Security, *ICE Detention Reform: Principles and Next Steps* (Oct. 6, 2009) (announcing key principles of detention reform, including the creation of a nationwide implementation plan for alternatives to detention) (hereinafter "*DHS Principles and Next Steps*"). One year later, DHS continued to state its support for alternatives to detention, but failed to implement many of its key reforms. See National Immigrant Justice Center, Detention Watch Network, & Midwest Coalition for Immigrant Rights, *Year One Report Card: Human Rights & the Obama Administration's Immigration Detention Reforms*, 7 (Oct. 6, 2010) (noting that no nationwide implementation plan for alternatives to detention has been developed) (hereinafter "*Year One Report Card*").

³ See Kirk Sample, *Plan to Upgrade New Jersey Jail into Model for Immigration Detention Centers*, N.Y. Times (Jan. 27, 2011) (describing DHS' plan for detention expansion in Essex County, NJ). DHS met with local area stakeholders to announce its plans on December 20, 2010.

⁴ See Sample, *supra* note 3. Essex County will be quadrupling detention bed space at Essex County Correctional Facility, a penal institution which currently holds up to 100 immigrant detainees per day. *Id.* Several hundred additional beds will be distributed among facilities run by Community Education Centers, Inc. ("CEC"), which is a private prison corporation with facilities across the United States. *Id.* Essex County will be financing the construction of the beds under the proposal. *Id.*

⁵ Detention costs the federal government approximately \$1.7 billion a year, costs which have risen exponentially in recent years. See Detention Watch Network, *About The U.S. Detention and Deportation System* (2009). Detaining an individual at Essex

through correctional institutions and private prison corporations only exacerbates the problems that the federal government and nongovernmental organizations have identified in the current detention system.⁶ Nor is detention expansion a “solution” to the problems created by flawed new deportation programs.⁷

Given the problems in the detention system, the first question that the federal government should ask is not *where* people are being detained, but *why* people are being detained. At this moment, DHS incarcerates immigrants who can and should be released on bond, parole, or community-based alternatives to detention. These individuals include:

- People with “serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest”⁸
- People who are eligible for bond but who have not yet been given bond determinations
- People who have been given bond determinations but should be given administrative bond redeterminations (and, where necessary, timely bond redetermination hearings) to

currently costs the federal taxpayer \$105 a day—while alternatives to detention cost as little as \$12 a day. See *Semple, supra* note 3 (stating detention costs at Essex); Amnesty International, *Jailed without Justice: Immigration Detention in the USA* (2009) (describing costs of alternatives to detention). In this time of budget crisis, it is fiscally irresponsible to pay for detention when alternatives are available.

⁶ Several reports have documented problems at Essex, other New Jersey detention facilities, and detention facilities operated by county jails and private prison corporations nationwide. See, e.g., American Friends Service Committee, New Jersey Advocates for Immigrant Detainees, and NYU Immigrant Rights Clinic, *Locked Up But Not Forgotten: Opening Access to Family & Community in the Immigration Detention System* 12, 19, 29-30 (April 2010) (describing human rights abuses in New Jersey facilities and listing several examples of recent failures by Essex County to meet minimum detention standards, including standards governing medical care, detainee transfers, law library and legal materials, staff training, visitation, telephone access, food service, and correspondence and mail); *Year One Report Card, supra* note 2; Schriro, *supra* note 2; Amnesty International, *supra* note 5; American Civil Liberties Union-New Jersey, *Behind Bars: The Failure of the Department of Homeland Security to Ensure Adequate Treatment of Immigration Detainees* (2007). DHS itself has recognized the importance of moving away from penal and contract models. See *DHS Principles and Next Steps, supra* note 2, at 2 (noting that DHS’s reliance on correctional standards and principles impose more restrictions and carry more costs than necessary, and that one goal of reform would be to reduce reliance on contractors and increase oversight). A year after detention reform was announced, however, oversight of private contractors’ human rights abuses has not significantly improved and DHS continues to rely on restrictive penal settings for civil detention. See *Year One Report Card, supra* note 2, at 12-19.

⁷ During the December 20, 2010 stakeholders meeting, DHS explained that its expansion of detention space in the Northeast was motivated in part by the implementation of “Secure Communities” (“S-Comm”), a mass deportation program that requires local law enforcement agencies to forward the fingerprints of every arrested person to federal immigration databases. See *Semple, supra* note 3. DHS noted that more detention space was needed in order to curb the number of immigrant detainees who would otherwise be transferred to facilities in the South. See *id.* Again, this “solution” only exacerbates the problem at issue—why so many immigrants must be detained through programs like S-Comm in the first place. Local community groups, law enforcement officials and associations, domestic violence victims’ advocates, anti-trafficking groups, religious leaders and faith-based organizations, labor organizations, elected officials, and others have voiced their desire for our communities to be able to prevent, rescind, or opt-out of S-Comm. See, e.g., Westchester Blacks in Law Enforcement, *Secure communities program will continue the divide between law enforcement the immigrant communities* (Feb. 6, 2011); Roger Clark, *Immigrant Groups Urge State To Re-Think “Secure Communities,”* NY1 (Dec. 9, 2010); Campaign Against Secure Communities in New Jersey, Letter to Governor Christie opposing S-Comm (Dec. 2010); Letter of approximately 80 organizations to Governor Paterson seeking immediate rescission of S-Comm (Oct. 20, 2010). DHS has thus far prevented localities from withdrawing from the program. See Suzanne Gamboa, *‘Voluntary’ immigration program not so voluntary*, AP (Feb. 16, 2011). Changing DHS policy on S-Comm is the more effective, humane, and fiscally responsible way of addressing the problems of transfers and detention that the S-Comm program itself creates.

⁸ John Morton, Assistant Secretary of Immigration and Customs Enforcement, *Memo: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (Jun. 30, 2010) (stating that detention resources should not be expended on these groups, and that in cases where such individuals fall under “mandatory detention,” counsel for Immigration and Customs Enforcement may be consulted to determine whether discretion may be exercised).

reassess high bond amounts⁹ and/or be released on their own recognizance or under reasonable conditions of supervision

- People who have been mislabeled as ineligible for bond due to a misapplication of the mandatory detention statute¹⁰
- People who are eligible for Temporary Protected Status
- People who are eligible for parole¹¹
- People who face prolonged and/or indefinite detention¹²

DHS should implement a case-by-case review of detention decisions for every detainee in the Northeast region to (1) release detainees and (2) reassess whether its calculations of current and anticipated detention needs are overinflated and can be addressed by more humane and cost-effective policies. DHS should prioritize the creation and development of formal community-based alternatives to detention and reduce its reliance on detention. We again offer DHS our assistance and support in engaging in these case-by-case reviews and developing true alternatives to detention.

For those individuals who remain detained, we have serious concerns about their access to counsel, family, and community support.¹³ All detention facilities must account for these due process concerns as well as the conditions of confinement. We do not want our community members and clients here in the Northeast or anywhere in the U.S. to bear the burden of the Department's failure to overhaul the detention system. Detention itself is a relatively new, costly, and inappropriate response to other problems within the deportation system that are better addressed by true alternatives to detention aimed at reducing rather than expanding the detention system as a whole.¹⁴

We are interested in discussing these issues with you so we may take timely action in light of any proposed changes in the detention system in the Northeast. No one should remain detained and deprived of their liberty when we can act now to ensure their release.

⁹ According to data obtained by the National Immigrant Justice Center, the New York Field Office has the highest average bond determination amounts in the country—an average of \$9,831 as of Jan. 2009. High bond amounts make it difficult for detainees in the New York area to secure their release. See Peter Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 FORDHAM L. REV. 541 (2009).

¹⁰ DHS should ensure proper review and training for its officers with respect to mandatory detention determinations. In addition, DHS should review its position on all contested issues of the interpretation of the mandatory detention statute. DHS recently took steps to change its policy regarding one aspect of its interpretation of the law, leading to a new nationwide position in *Matter of Garcia-Arreola*, 25 I&N Dec. 267 (BIA 2010), overruling an overly expansive interpretation in *Matter of Saysana*, 24 I&N Dec. 602 (BIA 2008). We urge DHS to take similar steps to seek reconsideration of other problematic and widely rejected interpretations of the mandatory detention statute, including but not limited to *Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001).

¹¹ This includes individuals eligible for conditional parole or humanitarian parole.

¹² See American Civil Liberties Union Immigrants' Rights Project, *Issue Brief: Prolonged Immigration Detention of Individuals Who are Challenging Removal* (July 2009), available at http://www.aclu.org/files/images/asset_upload_file766_40474.pdf (discussing the problem of prolonged detention and possible government solutions).

¹³ See American Friends Service Committee, *supra* note 6.

¹⁴ See Detention Watch Network, *The History of the Immigration Detention System in the U.S.* (2009) (noting that the federal government suspended immigration detention from the 1950s through the 1980s and the system has only rapidly grown in recent years); Amnesty International, *Jailed without Justice: Immigration Detention in the USA* (2009) (advocating for expanded use of alternatives to detention to release individuals who would otherwise be detained and critiquing the misuse of alternatives to place people who would not otherwise be detained under greater supervision); Human Rights First, *U.S. Detention of Asylum Seekers Seeking Protection, Finding Prison* (April 2009) (same).

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