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President
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May 15, 2007

The Honorable Jorge Bustamante
Special Rapporteur on the Human Rights of Migrants
Office of the High Commissioner for Human Rights
United Nations
1211 Geneva 10
Switzerland

Dear Special Rapporteur Bustamante:

The American Civil Liberties Union of New Jersey (ACLU-NJ) regrets to learn that your scheduled visit to the Monmouth County Correctional Institution in Freehold, New Jersey has been canceled. We were looking forward to your visit as an opportunity to draw attention to the conditions immigrant detainees endure and are troubled that the jail appears to be operating under a shroud of secrecy at a time when such facilities are in dire need of reform.

The ACLU-NJ is a nonpartisan, nonprofit organization dedicated to defending the individual freedoms and rights guaranteed to all people by the U.S. Constitution, the New Jersey Constitution and the laws of this state. We have 15,000 members in the state of New Jersey and our national organization, the ACLU, has more than half a million members across the country.

The detainees housed in U.S. immigration detention centers, including those in New Jersey, are civil, not criminal, detainees, a fact not well known to the general public. Some are asylum seekers, some are those who entered the country without proper documentation and others are lawful residents who were convicted of offenses (including nonviolent, minor offenses) that made them deportable after they had served their sentences under a 1996 U.S. law.

The vast majority of these detainees (nearly 60 percent) in the United States are housed in the jails under contract with the U.S. Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE). County jails, on average, receive \$90 per day per detainee to provide beds to this particular class of immigrants, a figure that is generally higher than the cost for federal and state prison inmates.

The U.S. Constitution, U.S. Supreme Court decisions and other laws make clear that all people in the United States are entitled to basic rights, regardless of their immigration status. However, because immigration detainees do not enjoy the right to appointed legal counsel, as criminal defendants do, visits by ACLU-NJ and other public interest lawyers are the only legal information or guidance these detainees, who are mostly poor, will ever receive.

In New Jersey, five counties currently hold immigrant detainees: Hudson, Middlesex, Monmouth, Bergen and Sussex. The Passaic County Jail discontinued its contract with ICE at the end of 2005, a few months after the Department of Homeland Security began auditing the facility. In addition, a

private contractor, the Corrections Corporation of America, operates the Elizabeth Detention Center in Union County.

Approximately, 1,000 immigrant detainees are confined in New Jersey facilities. They come from a range of countries, including Egypt, Albania, the former Soviet Union, Ghana, Pakistan, Haiti, Gambia, Trinidad, Jordan, the Dominican Republic, Peru, Jamaica, Guyana, Afghanistan, Belize, Sudan and Mauritania.

Between March and July 2006, in response to numerous complaints about conditions of detention, the ACLU-NJ undertook a series of interviews with detainees in the county jails in an effort to shed light on the conditions of confinement. The project resulted in a comprehensive report, *Behind Bars: The Failure of the Department of Homeland Security to Ensure Adequate Treatment of Immigration Detainees*, which we have enclosed for your information.

The ACLU-NJ interviewed detainees ranging in age from a 58-year-old man in a wheelchair to a 17-year-old youth who reported being confined to his cell for 16 hours a day. One detainee interviewed by the ACLU-NJ has been in immigration detention for five years.

Most detainees are men, though the ACLU-NJ did interview women, including a 23-year-old, who was a Rutgers University honor student, detained for a visa error made by her mother when she arrived in this country as a toddler. Another woman, a 36-year-old confined to the Middlesex County Jail, reported that detainees are subject to frequent lockdown, including a lockdown that lasted for more than five days.

The ACLU-NJ also has received letters from detainees, including a June 2006 petition (copy enclosed) signed by 103 immigrant detainees in the Monmouth County Correctional Institution, which you were scheduled to visit on Monday. Detainees there outlined numerous problems, including reports of physical abuse by jail officers.

The ACLU-NJ's report describes a range of consistent and pervasive concerns in detention facilities throughout the state. Among these problems are: physical and verbal abuse, aggravated by racial and ethnic slurs; inadequate and delayed medical care; frequent and sudden transfers between detention facilities in the state and sometimes to other states, which makes visits by lawyers and family difficult if not altogether impossible; restricted or limited phone and library access; frequent use of lockdown, which confines detainees to their cells; improper limitations on or denial of ability to practice religion; and commingling of immigrant detainees (who are civil detainees) with the general (criminal) inmate population.

To begin to address these problems, the ACLU-NJ makes the following recommendations, which we urge you to discuss with federal officials when you meet with them later this week:

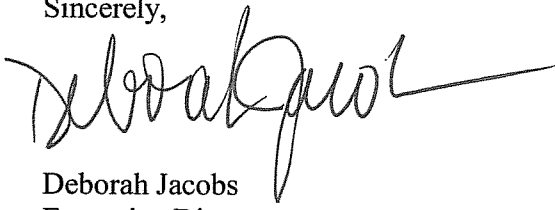
- The U.S. Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE) standards regarding immigration detention are now only guidelines. These standards must be strengthened to meet human rights principles and become enforceable regulations so that breaches and violations of these standards may be legally challenged by detainees themselves or through their representatives.
- To ensure compliance with the standards, the ICE district offices in New York and New Jersey must exercise greater oversight of detention conditions and treatment of detainees. At

a minimum, they should conduct inspections of all county jails and other facilities holding immigration detainees once every six months.

- Breaches of the detention standards, such as denial of phone access, medical care and dental care, must be rectified immediately.
- Every effort should be made to prevent the commingling of immigration detainees, particularly asylum seekers and women, with the general inmate population.
- Given the human and financial costs of detention, ICE should explore noncustodial alternatives such as parole, supervised release to family members, regular reporting requirements or bond options.
- International law unequivocally mandates the humane treatment of all detainees, regardless of the reason for their detention. In particular, the detention of asylum seekers violates the laws and conventions — such as the International Covenant on Civil and Political Rights — to which the United States is a signatory. Consequently, asylum seekers should be detained only to the extent necessary to verify an asylum seeker's identity and to determine whether the individual is asserting a legitimate claim for asylum.
- The ICE district offices in New Jersey and New York must ensure that detainees who continue to remain in custody receive prompt and fair custody reviews and implement release programs for persons who are stateless or cannot be deported to their home countries. The prolonged and indefinite detention of immigration detainees is a violation of both international and U.S. law.

In closing, we thank you for your interest in immigrant detention conditions and hope that your tour of the United States and subsequent report will inspire desperately needed reform.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Jacobs', with a long horizontal flourish extending to the right.

Deborah Jacobs
Executive Director