



February 25, 2015

**RE: ACLU Opposes Funding for Family Detention, Immigration Detention Bed Quota, and ICE 287(g) Program in H.R. 240, Department of Homeland Security FY15 Appropriations**

Dear Senator:

For nearly 100 years, the American Civil Liberties Union (“ACLU”) has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country.

Yesterday, Senate Majority Leader Mitch McConnell (R-KY) announced that he would bring a “clean” Department of Homeland Security (DHS) appropriations bill free of riders to the floor. A recorded vote on this legislation is anticipated on the Senate floor sometime this week.

This letter addresses the ACLU’s views on the spending bill only and does not address any policy riders. While we understand that there is a need to resolve the DHS spending impasse, the ACLU opposes legislation that funds the detention of children and their mothers. **We urge Senators who choose to support H.R. 240 to qualify their votes with explicit opposition to the family detention provision, as well as to the ongoing Immigration and Customs Enforcement (ICE) detention bed quota and the controversial, flawed ICE 287(g) program.** Specifically, we oppose the provision of funds in Title II of the underlying bill that would increase funding for family detention, maintain the 34,000 ICE detention bed quota, and continue the 287(g) program. These three detailed concerns, it should be noted, do not exhaust the ACLU’s views on the provisions of this spending bill. The ACLU urges the Senate to oppose the following provisions in Title II of H.R. 240, which fund the activities of DHS Immigration and Customs Enforcement (ICE):

**I. ACLU Opposes Funds Provided in Title II of H.R. 240 That Would Dramatically Increase Family Detention Funding. Family Detention Is Extremely Costly to Taxpayers, Profits Private Prison Companies, Violates Due Process, And Has Led to The Deaths of Children Deported to Central America.**

This past year, 2014, ushered in dramatic changes in ICE’s treatment of families seeking asylum protection: Between 2010 and June 2014, ICE generally did not detain families seeking asylum protection in the U.S. It was ICE policy that families who passed a credible fear of persecution screening conducted by a DHS asylum officer, should be released on bond or conditional parole if they pose no flight risk or danger to the community. However, beginning in June 2014, in response to increased numbers of Central Americans entering South Texas, ICE started locking up families in large numbers. ICE also embarked on a rapid, massive expansion of family detention facilities. As recently as May 2014, ICE had fewer than 100 family detention beds. By summer 2015 the administration is expected to operate a total of 3,700 ICE family detention beds nationwide.<sup>1</sup>

<sup>1</sup> Franco Ordoñez, “U.S. looks to detain more mother, child migrants, sometimes for months,” *McClatchy DC News* (Feb. 10, 2015), available at <http://www.mcclatchydc.com/2015/02/10/256181/us-looks-to-detain-more-mother.html>.

In the summer of 2014 ICE also adopted a No-Release Policy for families in order to deter other Central Americans from coming to the U.S. Under this policy, ICE has refused to release Central American families from detention on bond or other conditions (“No Release Policy”), even where families have demonstrated a credible fear of persecution and are eligible to be considered for release. ICE has instead insisted on locking up these families, but not because they pose a danger to the community or flight risk that requires their detention. Rather, ICE claims that family detention is necessary on “national security” grounds in order to deter other Central Americans from coming to the U.S.

Up to this point, Congress has not appropriated specific funds to support mass detention of children and their mothers. However, the [Explanatory Statement to H.R. 240](#) states that, of the above mentioned appropriations for detention, enforcement, and removal operations, Title II of the Act will provide “an increase of \$362,155,000 to support additional staffing and detention capacity secured by ICE in response to the significant growth in family units crossing the Southwest border.” This \$362 million allocation is designed to support the construction and adaptation of facilities to lock up Central American children and mothers fleeing brutal violence and seeking protection in the U.S. The ACLU strongly objects to funding of family detention and urges Senators to qualify their votes with explicit opposition to the family detention provision.

- Private prison companies stand to make handsome profits from operating family detention facilities. In summer 2014 ICE embarked on an aggressive strategy to stand up two mass family detention facilities—located in Karnes County, Texas (opened in August 2014) and Dilley, Texas (opened in December 2014). Both family detention facilities are operated by private prison companies—The GEO Group (Karnes) and Corrections Corporation of America “CCA” (Dilley). For the fourth quarter of 2014 alone, CCA “[recognized \\$21.0 million in revenue](#)” associated with the Dilley family detention contract.<sup>2</sup>
- Family detention is extremely expensive and is costing taxpayers hundreds of millions of dollars. According to a recent [New York Times article](#) (Feb. 4, 2015), the cost to house each detainee at the newest family detention center in Dilley, Texas is “about \$108,000 per year.”<sup>3</sup> At full capacity, the Dilley facility will detain 2,400 children and mothers daily, which will cost ICE over \$259 million annually for that family detention facility alone.
- Sexual abuse is taking place inside family detention facilities: In January 2015, a man employed at the family detention facility in Berks County, Pennsylvania was criminally charged with seven counts of institutional [sexual assault](#), involving a 19-year-old Central American woman detained at the Berks facility.<sup>4</sup>
- **A federal court has blocked the ICE No Release Policy of locking up asylum-seeking mothers and children as a strategy to deter future migration by Central Americans.** The No-Release Policy has been a critical piece of the administration’s overall deterrence strategy, as made clear on multiple occasions by DHS Secretary Jeh Johnson, most recently in December 2014. At a press conference outside the Dilley family detention facility, [Secretary Johnson stated](#), “Frankly, we want to send a message that our border is not open to illegal migration, and if you come here, you should not expect to simply be released.”<sup>5</sup> H.R. 240’s Explanatory Statement states that the funding for family detention is “intended to serve as a deterrent to future illegal migration.” However, the government’s deterrence rationale has now been expressly rejected by a [federal court](#)<sup>6</sup> in [R.I.L.R. v.](#)

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<sup>2</sup> Corrections Corporation of America News Release, “CCA Reports Fourth Quarter and Full Year 2014 Financial Results” (Feb. 11, 2015), available at <http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-newsArticle&ID=2015860>.

<sup>3</sup> Wil S. Hylton, “The Shame of America’s Family Detention Camps,” *New York Times* (Feb. 4, 2015), available at <http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html>.

<sup>4</sup> “Berks County Residential Center employee charged with institutional sexual assault,” *Reading Eagle* (Jan. 17, 2015), available at <http://readingeagle.com/news/article/berks-county-residential-center-counselor-charged-with-institutional-sexual-assault>.

<sup>5</sup> Julia Preston, “Detention Center Presented as Deterrent to Border Crossers,” *New York Times* (Dec. 15, 2014), available at <http://www.nytimes.com/2014/12/16/us/homeland-security-chief-opens-largest-immigration-detention-center-in-us.html>.

<sup>6</sup> *R.I.L.R. v. Johnson*, No. 15-11 (D.D.C. Feb. 20, 2015) (order granting preliminary injunction).

Johnson (Feb. 20, 2015) which granted a preliminary injunction prohibiting ICE from detaining mothers and children “for the purpose of deterring future immigration to the United States and from considering deterrence of such immigration as a factor in [its] custody determinations.” Under the court order, ICE is now blocked from relying on general deterrence as a basis to detain Central American families.

- **ICE’s aggressive family detention strategy has led to the deaths of children deported to Central America.** As reported by the New York Times (Feb. 4, 2015), “The refugees who are returned to Central America can be subject to even greater harassment by gangs for having fled. Hector Hernandez, a morgue operator in Honduras, has said that children who come back from U.S. detention ‘return just to die.’ Jose Luis Aguilar, the city councilor for Artesia, recalled a group deportation on the day in July when Secretary Johnson visited the [Artesia family detention] facility. ‘He came in the morning, and that same night, they took 79 people and shipped them to El Salvador on the ICE plane,’ Aguilar said. ‘We got reports later that 10 kids had been killed. The church group confirmed that with four of the mortuaries where they went.’”<sup>7</sup>

Family detention is costly to taxpayers, profits private prison companies, violates due process, and has led to the deaths of children deported to Central America. **The ACLU strongly urges the Senate to NOT appropriate any funds to support or expand family detention.**

## **II. ACLU Opposes Funds Provided in Title II of H.R. 240 That Would Provide Continued Spending on Immigration Detention Beds**

- Title II of H.R. 240 would provide continued funding to maintain no less than 34,000 detention beds, while providing over \$3 billion for “detention, enforcement, and removal operations.” As in years past, the ACLU continues to object to the continued appropriation for 34,000 immigration detention beds. The 34,000 detention bed quota is completely arbitrary and perpetuates wasteful and irresponsible spending. Instead of funding 34,000 detention beds, Congress should appropriate funds for community-based alternatives to detention with case management services. **The ACLU strongly urges the Senate to NOT appropriate any funds to continue the immigration detention bed quota.**

## **III. ACLU Opposes Funds Provided in Title II of H.R. 240 That Would Continue ICE’s Flawed, Controversial 287(g) Program**

- Title II of H.R. 240 delegates “no less than \$5,400,000...to facilitate agreements consistent with section 287(g) of the Immigration and Nationality Act.” ICE’s 287(g) program, which authorizes designated local law enforcement agencies to conduct immigration enforcement, is a failed program that promotes racial profiling of Latinos, undermines community cooperation with local police, and wastes federal funds. Congress should end funding for the flawed 287(g) program. **The ACLU strongly urges the Senate to NOT appropriate any funds to continue ICE’s 287(g) program.**

For more information, please contact ACLU legislative counsel Joanne Lin (202/675-2317; [jlin@aclu.org](mailto:jlin@aclu.org)).

Sincerely,



Michael W. Macleod-Ball  
Acting Director



Joanne Lin  
Legislative Counsel

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<sup>7</sup> *Supra* at 3.