



Written Statement of

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**For a Hearing of the
House of Representatives Committee on the Judiciary,
Subcommittee on Immigration and Citizenship**

“The Expansion and Troubling Use of ICE Detention”

**Thursday, September 26, 2019
2141 Rayburn House Office Building**

I am Bishop Joe S. Vásquez, Bishop of Austin, Texas and Chairman of the Committee on Migration of the U.S. Conference of Catholic Bishops (USCCB). On behalf of the Committee on Migration, I would like to thank the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, as well as Chairwoman Zoe Lofgren and Ranking Member Ken Buck for the opportunity to submit this written statement for the record. In this statement, I will share the Catholic Church's perspective on the use of detention by the Immigration and Customs Enforcement (ICE) office of the U.S. Department of Homeland Security (DHS).

The practice of long-term and large-scale detention of undocumented adult immigrants and immigrant families within the United States are matters of great concern to the Catholic Church. My statement today focuses on ICE's enforcement and management of the U.S. immigrant detention system and its attempts to expand detention bed capacity, including for vulnerable populations. Specifically, my statement provides recommendations to Congress regarding family detention, Alternatives to Detention (ATD) programs, and mandatory detention.

I. Catholic Social Teaching and Opposition to Immigrant Detention

Immigrant detention is an explicit concern of the U.S. Catholic bishops. As stated in *Responsibility, Rehabilitation and Restoration, A Catholic Perspective on Crime and Criminal Justice*: "We bishops have a long history of supporting the rights of immigrants. Therefore, the special circumstance of immigrants in detention centers is of particular concern."¹ The USCCB has partnered with ICE to assist individuals released from detention, and has a documented history of working on immigrant detention issues at the community level throughout the U.S.

USCCB's Migration and Refugee Services (USCCB/MRS) and its affiliates have operated several ATD programs to assist immigrant families and other vulnerable populations. From 1999 to 2002, INS (Immigration and Naturalization Service), the legacy DHS department, collaborated with Catholic Charities of New Orleans to work with 39 asylum seekers released from detention and 64 "indefinite detainees" who could not be removed from the United States. The court appearance rate for participants was 97%. Further, from January 2014 to March 2015, the USCCB/MRS, in partnership with ICE, ran a community support alternative to detention program through its Catholic Charities partners in Baton Rouge, Louisiana and in Boston, Massachusetts that utilized case management and served individuals who would have not been ordinarily released from detention. The program yielded an over 95% appearance rate.

In addition to working directly with ICE, the USCCB and its Catholic partners around the country have led delegation trips to detention facilities to speak to those detained and observe the flaws in the current system. They have also provided legal services efforts for those detained, as well as offered immigration detention visitation programs, housing efforts, chaplaincy and pastoral outreach efforts, and support for countless families negatively impacted by immigration detention in local communities throughout the U.S. In 2015, USCCB and the Center for Migration Studies conducted a delegation to five ICE detention facilities to observe conditions and provide recommendations for reform, which are documented in our report, *Unlocking Human Dignity*.²

¹ USCCB, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, A Statement of the Catholic Bishops of the United States (2000).

² U.S. CONFERENCE OF CATHOLIC BISHOPS/MIGRATION AND REFUGEE SERVICES AND THE CENTER FOR MIGRATION STUDIES, *UNLOCKING HUMAN DIGNITY: A PLAN TO TRANSFORM THE U.S. IMMIGRANT DETENTION SYSTEM* (2015),

As my brother bishops and I have explained, the Catholic Church views immigrant detention from the perspective of our biblical tradition, which calls us to love, act justly toward, and identify with persons on the margins of society, including newcomers and imprisoned persons. Our long experience as a pilgrim people in a pilgrim church has made us intimately familiar the experience of being with uprooted, persecuted, and imprisoned.

Many Old Testament narratives speak very directly to the reality of migrants and newcomers. Like many migrants, Jacob's son, Joseph was sold into involuntary servitude and trafficked to a foreign land, Egypt (Gen 37: 18-36), where he became a devoted and trusted servant (Gen 39: 1-6). After being falsely accused by his master's wife, he was imprisoned (Gen 39: 11-20). Pharaoh ultimately found him "endowed with the spirit of God" and put him in charge of the land of Egypt (Gen 41: 37-41). Given a chance to succeed, Joseph more than fulfilled his responsibilities, by saving the people of Egypt and "the whole world" from the effects of a devastating famine (Gen 41: 55-57).

We have repeatedly spoken of the Gospel imperative to protect the rights of refugees, to promote the reunification of families, and to honor the inherent dignity of all migrants, whatever their status. Unfortunately, the U.S. immigrant detention system represents a far cry from solidarity or communion. It divides us from our brothers and sisters and separates families. We are particularly concerned about family detention, which goes against the basic tenets of Catholic social teaching. Detaining young migrant mothers and fathers with their children as a response to their flight from persecution violates human dignity and human rights. The Convention on the Rights of the Child (CRC), for example, has been found to prohibit states from detaining migrant children with their families as it is not in the best interest of the child.³ And, scholars have found that "[a]lthough the United States has not ratified the CRC, it is nevertheless bound to comply with the 'best interests of the child' standard as a matter of both treaty and customary law."⁴

This is not to say that we do not acknowledge the role of the government in ensuring public safety and agree that those who are a threat to our communities should be detained. However, mandatory detention contributes to the misconception that all immigrants are criminals and a threat to our unity, security, and well-being. It engenders despair, divides families, causes asylum-seekers to relive trauma, leads many to forfeit their legal claims, and fails to treat immigrants with dignity and respect. More broadly, we believe that human flourishing occurs in relation to others and through participation in society. Detention incapacitates and segregates people, denying them their freedom and preventing their participation in society.

For these reasons, we urge you to consider our recommendations to reform the existing ICE detention system, as set forth below.

available at <http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf>.

³ LARA DOMINGUEZ, ET AL., YALE LAW SCHOOL, U.S. DETENTION AND REMOVAL OF ASYLUM SEEKERS 24 (2016), available at https://law.yale.edu/sites/default/files/area/center/schell/document/human_rights_first_-_immigration_detention_-_final_-_20160620_for_publication.pdf.

⁴ *Id.*

II. Policy Recommendations

Current immigrant detention policies are costly, inhumane, and destructive to families, which are the foundation of American society. Many immigrants are held in detention centers, away from their families and communities, and are unable to access legal assistance or other support. In fact, 81 percent of the individuals currently in detention lack legal representation.⁵ Moreover, with an average of over 396,448 immigrants being detained annually at a cost of over \$2.5 billion to taxpayers, the immigrant detention system is in disarray and must be fixed.⁶

Specifically, we urge Congress to require ICE to:

A. End Family Detention.

We are deeply concerned by the Trump Administration's continuation of attempts begun during the Obama Administration to expand its family detention capacity, which is already over 3,000 beds.⁷ The President's Fiscal Year (FY) 2020 appropriations request includes in its \$2.7 billion ask for detention bed funding, sufficient resources to support an increase of its family detention network by 10,000 beds.⁸ The Trump Administration also recently released a new rule that would curtail existing restrictions, found in the Flores Settlement Agreement of 1997 and corresponding case law, on the detention of accompanied children. If permitted to proceed by the courts, this rule would allow DHS to detain accompanied children for prolonged periods in facilities, including the three existing family detention centers, that have not received state licensing for childcare. We have firmly opposed this rule as it "will have heart-breaking consequences for immigrant children – those whom Pope Francis has deemed 'the most vulnerable group' among migrants."⁹

The health and safety consequences of detaining families in DHS custody are severe. Detained children experience developmental delay, poor psychological adjustment, post-traumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems.¹⁰ In fact, two medical and psychiatric experts hired by DHS itself expressed their concerns with the practice of family detention, noting: "The fundamental flaw of family detention is not just the risk posed by the conditions of confinement – it's the incarceration of children itself."¹¹ Detention, even for brief

⁵ See *Details on Deportation Proceedings in Immigration Court*, TRAC IMMIGRATION (Aug. 2019), <https://trac.syr.edu/phptools/immigration/nta/>.

⁶ See ICE, *ERO FY 18 Achievements*, <https://www.ice.gov/features/ERO-2018> (last updated Apr. 2, 2019); DHS/ICE, CONGRESSIONAL BUDGET JUSTIFICATION FOR FY 2020 16 (2019), available at https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf.

⁷ Maria Sacchetti, *ICE to Resume Detaining Migrant Families at Texas Facility*, THE WASHINGTON POST (Sept. 21, 2019), https://www.washingtonpost.com/politics/ice-to-resume-detaining-migrant-families-at-texas-facility/2019/09/21/0b3207e8-dcb5-11e9-bfb1-849887369476_story.html.

⁸ THE WHITE HOUSE, A BUDGET FOR A BETTER AMERICA: FY 2020 51 (2019), <https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>.

⁹ *Chair of USCCB's Committee on Migration Denounces New Rule Undermining Existing Protections for Immigrant Children*, USCCB (Aug. 23, 2019), <http://www.usccb.org/news/19-154.cfm>.

¹⁰ J. M. Linton, *et al.*, *Detention of Immigrant Children*, 139 PEDIATRICS 1-13 (2017).

¹¹ Scott Allen, MD & Pamela McPherson, MD, *Letter to Senate Whistleblowing Caucus* (July 17, 2018), available at <https://www.whistleblower.org/sites/default/files/Original%20Docs%20Letter.pdf>.

periods, negatively effects not only the child, but also the adult and family structure by undermining parental authority and the ability of parents to respond to the needs of their children.¹²

In addition to the grave moral and human rights concerns that family detention poses, the costs to maintain such facilities are extreme and irresponsible in this era of fiscal austerity. It is estimated that detaining a member of a family unit in one of these facilities costs the American taxpayer roughly \$269 per individual per night.¹³ Such expenses to detain families are wasteful and particularly hard to justify when compared to costs for alternatives to detention programs, which range from just 70 cents per day¹⁴ to \$36 per day,¹⁵ depending on the type of monitoring involved.

B. Expand Case Management-Focused ATD Programs for Immigrant Families.

A spectrum of ATDs have long existed as an option the government can use in place of mass and family detention. In particular, we ask that Congress direct ICE to focus resources on community support case-management ATD models for recently arrived immigrant families. We appreciate the funding for case-management ATD programming that Congress provided in the Consolidated Appropriations Act of 2019, and we urge further support for and expansion of such programming.

We have seen through our pilot ATD program, as well as through our work serving nearly 900 of the reunified and released families subject to the zero-tolerance policy in 2018,¹⁶ that many immigrants and asylum seekers have strong community ties and credible asylum claims. As a result, these individuals have robust incentives to appear in immigration court, and their release to the community with individualized case management services is both appropriate and preserves family unity and human dignity.¹⁷

Community-based case management alternatives are effective at ensuring compliance, without using electronic monitoring.¹⁸ For example, the ICE Family Case Management Program (FCMP), which ran from January 2016 through June 2017, had compliance rates of over 99% with court hearings and ICE appointments, all at a cost far below that of detention.¹⁹ And, while critics have suggested that the FCMP was not effective in terms of removal rates,²⁰ these arguments are unsupported by comprehensive data due to the government's decision to prematurely end the program.

¹² *Id.* at 6.

¹³ DHS/ICE, CONGRESSIONAL BUDGET JUSTIFICATION FOR FY 2020, *supra* note 8, at 16.

¹⁴ Laurence Benenson, *The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply* (May 9, 2018), <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>.

¹⁵ USCCB, et al., *The Real Alternatives to Detention*, JUSTICE FOR IMMIGRANTS (2019), <https://justiceforimmigrants.org/wp-content/uploads/2017/07/The-Real-Alternatives-to-Detention-FINAL-06.27.17.pdf>.

¹⁶ U.S. CONFERENCE OF CATHOLIC BISHOPS AND LUTHERAN IMMIGRATION AND REFUGEE SERVICE, *SERVING SEPARATED AND REUNITED FAMILIES: LESSONS LEARNED AND THE WAY FORWARD TO PROMOTE FAMILY UNITY* (2018), *available at* https://justiceforimmigrants.org/2016site/wp-content/uploads/2018/10/Serving-Separated-and-Reunited-Families_Final-Report-10.16.18-updated-2.pdf.

¹⁷ USCCB, et al., *The Real Alternatives to Detention*, *supra* note 15.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See, e.g., Senate Homeland Security and Government Affairs Committee Hearing on The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives* (2018), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Albence-2018-09-18.pdf> (discussing concerns with the FCMP during questioning of Matthew T. Albence (ICE)).

We believe that the key to an ATD program's success is the extent to which immigrants are oriented as to their rights and provided with robust support.²¹ When these elements are present, studies show that ATD participants trust the fairness of the system and are very likely to comply with obligations placed upon them.²² For these reasons, we encourage ICE to ensure its programs be grounded in trauma-informed care, provide critical connections to social services and legal information, and include a heightened focus on cultural orientations. We also recommend that programs include an individual risk assessment, shared between both DHS and the implementing grantee, to determine an individual's suitability for enrolment. Finally, we urge Congress to fund an independent study on the effectiveness of such community-based case management alternatives that considers data through the entire life-cycle of the program.

C. End Large Scale Use of Mandatory Immigrant Detention.

Immigrant detention in the United States has reached record levels. This increase can be largely attributed to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which mandated the detention of broad categories of inadmissible or removable non-citizens,²³ including persons subject to "expedited removal" (those who are arrested without documents or with improper documents at ports-of-entry or cannot prove they have been in the United States for at least two years).²⁴ In fact, the average daily population of those detained rose from 6,785 in 1994 to 55,000 in August 2019;²⁵ further, the numbers detained annually increased from fewer than 204,459 in 2001 to 396,448 in 2018.²⁶ And, as of June 2018, an estimated 70 percent of this detained population was subject to mandatory detention.²⁷ The increase in detention is incredibly costly, with DHS stating that the average immigration detention bed will cost \$130 per day in FY 2020.²⁸

We are deeply troubled by the current structure of the federal government's immigrant detention program, which we believe is broken and should be reformed. Mandatory detention is very expensive, and it is unjustifiable to continue to enforce default mandatory detention for most of the immigrants being detained. We therefore urge you to instruct ICE to revisit and revise its implementation of mandatory detention for a majority of immigrants detained by law enforcement.

III. Conclusion

We must reject proposals to expand our broken and inhumane immigrant detention system and efforts to curtail existing protections for children and families. We are hopeful that as our public

²¹ USCCB, et al., *The Real Alternatives to Detention*, *supra* note 15.

²² *Id.*

²³ INA §§ 236 (c)(1); 236A, 212(a)(3)(b); 237(a)(4)(B)).

²⁴ INA §235.

²⁵ ICE, FY 2013 YTD AVERAGE DAILY POPULATION BY DETENTION FACILITY (2013), <http://www.ice.gov/doclib/foia/dfs/detaineepopytd2013.pdf>; Representative Roybal-Allard, *Letter to Acting DHS Secretary Kevin McAleenan* (Aug. 23, 2019).

²⁶ DORIS MEISSNER, DONALD KERWIN, MUZAFFAR CHISHTI, CLAIRE BERGERON, MIGRATION POLICY INSTITUTE, IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF FORMIDABLE MACHINERY 131 (2013); DOJ Bureau of Statistics, *Federal Criminal Case Processing Statistics*, <https://www.bjs.gov/fjsrc/> (last visited May 28, 2019); ICE, *ERO FY 18 Achievements*, <https://www.ice.gov/features/ERO-2018> (last updated Apr. 2, 2019).

²⁷ Andrea Castillo, *With or Without Criminal Records, Some Immigrants Spend Many Years in Detention*, LA TIMES (Nov. 12, 2018), <https://www.latimes.com/local/lanow/la-me-immigrant-detainees-20181112-story.html>.

²⁸ DHS/ICE, CONGRESSIONAL BUDGET JUSTIFICATION FOR FY 2020, *supra* note 8, at 16.

officials debate this issue, that migrants, regardless of their legal status, will be treated with dignity and compassion when they arrive to our country. Rhetoric that attacks the human rights and dignity of the migrant is unfitting of a nation of immigrants.

We strongly believe that ending family detention and reforming and moderating the mandatory immigrant detention system should be priorities for Congress and the Administration. We look forward to working with you and the Trump Administration in the months ahead to fashion a more cost-effective and humane immigration detention system - one that upholds the human dignity of immigrants and reaffirms the United States as a nation of immigrants. Thank you for your consideration of our views and recommendations.