



U.S. Immigration
and Customs
Enforcement

July 18, 2022

The Honorable Martin Heinrich
United States Senate
Washington, DC 20510

Dear Senator Heinrich:

Thank you for your December 16, 2021 letter to the Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

The Biden-Harris Administration is committed to streamlining and improving the U.S. immigration system by restoring trust, respecting human dignity, and promoting equity. U.S. Immigration and Customs Enforcement (ICE) remains firmly committed to continually enhancing civil detention operations to promote a safe and secure environment for detained noncitizens and for staff.

With respect to the Torrance County Detention Facility (TCDF), noncitizens detained at TCDF have access to legal counsel seven days a week, including holidays, for a minimum of eight hours per day on regular business days (Monday through Friday), and a minimum of four hours per day on weekends and holidays. In addition to legal visitation, noncitizens also have telephonic resources and receive a legal-rights group presentation, as mandated by the ICE Performance-Based National Detention Standards (PBNDS) 2011 (revised 2016). Also, in accordance with ICE detention standards and Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 2000), TCDF utilizes bilingual staff and/or professional language services to communicate with limited English proficient (LEP) noncitizens in a language they understand.

To provide detained LEP noncitizens meaningful access to its programs and services, TCDF uses three professional language lines for over-the-phone interpretation, written translation, and audio transcription. ICE Enforcement and Removal Operations (ERO) also has access to language services in more than 200 common, rare, and indigenous languages, including Haitian Creole, through two professional language lines.

To further facilitate legal access, noncitizens are provided with a list of pro bono legal service providers maintained by the Department of Justice's Executive Office for Immigration Review, as well as contact information for the DHS Office of Inspector General (OIG), the

ICE Office of Professional Responsibility (OPR) Joint Intake Center (JIC) and nongovernmental organizations and advocacy groups on ICE's pro bono platform. Additionally, noncitizens are able to make free, unmonitored, and unrecorded calls to pro bono legal service providers and consular officials. Other legal service provider lists, including the Immigration Advocates Network list of service providers that serve detention facilities, are also included in the LexisNexis electronic law library, under "Immigration Legal Assistance Providers." There are supplementary lists in the Supplement to the Women's Refugee Commission's toolkit, *Detained or Deported: What About My Children*, which includes additional legal service providers lists and state bar association information. This toolkit is also available on the LexisNexis electronic law library.

PBND 2011 (revised 2016) states that detained noncitizen telephone calls regarding legal matters shall be secured and confidential. These standards indicate that, "detainees shall be able to make free calls to ICE ERO provided list of free legal service providers (e.g., The New Mexico Immigration Law Center (NMILC)) for the purpose of obtaining initial legal representation, to consular officials, to the DHS OIG and to ICE OPR JIC. Indigent detainees, who are representing themselves pro se, shall be permitted free calls on an as-needed basis to family or other individuals assisting with the detainee's immigration proceedings."

ICE does not prohibit legal representation and considers access to legal counsel to be of paramount importance to detained noncitizens. ICE has made efforts to ensure such access has continued unabated, even while ICE works to safeguard the health and safety of those in its custody and to detect and mitigate the spread of COVID-19. In accordance with Section 240(b)(4)(A) of the Immigration and Nationality Act, all noncitizens in removal proceedings are entitled to retain counsel of their choosing to represent them at no expense to the government. Additionally, at the request of the NMILC, a legal rights group presentation by immigration attorneys was held April 29, 2022. The presentation covered immigration court, bonds, asylum, appeals and other processes that noncitizens may encounter during their immigration proceedings. ICE notes that legal rights group presentations are conducted regularly at the request of the presenting group and are available to any detained noncitizen interested in attending.

In accordance with ICE detention standards, each facility is to provide detained noncitizens with reasonable and equitable access to telephones and access to reasonably priced telephone services. To ensure sufficient access, each facility is required to provide at least one operable telephone for every 25 detained noncitizens and to maintain telephones in proper working order. Each facility is required to provide telephone access rules in the facility handbook and to post these rules where detained noncitizens may easily see them (i.e., in all housing units and at intake, though the actual location may vary by facility). At TCDF, the facility handbook is available in English and Spanish and is orally interpreted through a professional language line for LEP noncitizens who speak another language. CoreCivic is currently working on translating the handbook into 11 other languages, including Haitian Creole, and other prevalent language(s) among the facility's noncitizen population, and is estimated to be completed by June 15, 2022. ICE conducts a presentation on all pertinent information regarding the facility, including the use of phones and electronic tablets, to every noncitizen upon arrival. All presentations are conducted using professional interpretation services, as needed.

As noted above, detained noncitizens have access to telephones for legal consultations and other conversations; the detainee telephone system (DTS) contract is responsible for providing and maintaining a pro bono telephone network. Additionally, during April 2020, in recognition of the COVID-19 pandemic curtailing visitation, ICE began providing 520 free telephone minutes per month at the 39 primary DTS facilities, including TCDF, where the detainee telephone system contractor also provides full telephone services. These free minutes allow a detained noncitizen to call anyone—family, friends, attorneys—domestically and internationally. The 520 free minutes are distributed in 13 ten-minute increments each week. Moreover, ICE established a process that requires an attorney to email the ICE contact box to notify ICE that they need to speak with their client. ICE then advises the appropriate noncitizen of the legal consultation request. Following notification, it is the responsibility of the noncitizen to return counsel’s telephone calls.

Your letter also requests that ICE extend the immigration hearing dates for Haitian nationals detained at TCDF until they receive access to legal representation. DHS shares your concern about the grave humanitarian crisis in Haiti, and we continue to monitor the situation closely in coordination with our counterparts at the Department of State. Additionally, while noncitizens are provided the opportunity to pursue any form of relief or protection from removal for which they are statutorily eligible, this does not guarantee that every person seeking to remain in the United States will be able to do so. In accordance with U.S. immigration law, DHS and ICE ensure that these removals are conducted in a lawful, safe, and humane manner.

ICE considers it a top priority to provide detainees reasonable access to legal and language interpretation services and guaranteeing that the rights of all individuals, including Haitian nationals, are protected. The agency delivers on its mission to protect the national security and public safety of the United States while ensuring a fair and lawful immigration process for all.

Thank you again for your letter. Should you wish to discuss this matter further, please do not hesitate to contact the ICE Office of Congressional Relations at (202) 732-(b)(6);
(b)(7)(C)

Sincerely,

Tae D. Johnson
Acting Director

cc: The Honorable Ben Ray Luján
The Honorable Melanie Stansbury
The Honorable Teresa Leger Fernandez

Congress of the United States
Washington, DC 20510

December 16, 2021

Hon. Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528

Hon. Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Damon T. Hininger
President and CEO
CoreCivic
10 Burton Hills Blvd.
Nashville, TN 37215

RECEIVED
By ESEC at 8:38 am, Apr 15, 2022

Dear Secretary Mayorkas, Acting Director Johnson, and Mr. Hininger:

We write to request the Department of Homeland Security (DHS) conduct increased oversight on CoreCivic’s management of Torrance County Detention Facility (Torrance) in Estancia, New Mexico and for ICE and CoreCivic to implement immediate remedial measures addressing current barriers to legal counsel and language interpretation services experienced by Haitian asylum seekers detained at this facility.

In May 2021, DHS publicly stated it would not tolerate the mistreatment of individuals in civil immigration detention or substandard conditions of detention.¹ Yet, the Department continues to detain individuals at Torrance, which failed an ICE-contracted inspection less than four months ago.² In the year leading up to the failed inspection, Torrance received 43 grievances from individuals detained at the facility regarding safety concerns, medical care, and food violations.³ The fact that Torrance had advance notice of the inspection, and still failed it, underscores the deeply rooted structural problems at the facility.⁴

Approximately two months after Torrance failed its inspection, ICE transferred into the facility a group of approximately 80 Haitian migrants. Some of these individuals suffered inhumane abuse in Del Rio, Texas at the hands of U.S. Border Patrol (USBP), actions which were strongly

¹ Department of Homeland Security Press Release, “ICE to Close Two Detention Centers,” May 20, 2021
<https://www.dhs.gov/news/2021/05/20/ice-close-two-detention-centers>

² The Nakamoto Group, Inc. Annual Inspection of the Torrance County Detention Facility, July 29, 2021
<https://www.ice.gov/doclib/facility%20inspections/TOORANM21-TorranceCoDetFac-CL-07-29-2021.pdf>

³ “Facility Significant Incident Summary (SIS) for Torrance County Detention Facility”, July 29, 2021
<https://www.ice.gov/doclib/facility%20inspections/TOORANM21-TorranceCoDetFac-SIS-07-29-2021.pdf>

⁴ Id.

condemned by the American public and President Biden. At Torrance, these individuals have faced severe barriers to legal representation, prohibiting them from being able to prepare for their asylum hearings, which are scheduled in an immigration court with an asylum denial rate of 93%.⁵ It took over two months for ICE to grant a group of attorneys and legal representatives permission to speak with many of these individuals⁶, during which at least four were given deportation orders who had not had access to legal representation. Providing detainees with access to legal services, particularly for non-English and non-Spanish speakers, is integral to a fair and just immigration system.

Furthermore, due to CoreCivic's failure to provide language interpretation services, Haitian Creole-speaking detainees are unable to communicate with detention officers present at the facility. Documented onsite visits reveal CoreCivic staff have provided individuals limited information about the asylum process and without interpretation to Haitians in Creole. On the rare occasions that attorneys had success meeting with Haitian detainees, they were also not provided interpretation services to effectively communicate with their clients. Due to the lack of interpretation services and the steep barriers blocking access to counsel, Haitian asylum seekers detained in Torrance face the nearly impossible task of being prepared for their immigration hearings and thus finding refuge in the United States.

Lastly, given that some of the Haitian migrants at Torrance were subject to the USBP's abusive treatment in Del Rio, Texas, DHS must take all necessary actions to ensure that potential witnesses are not removed from the United States pending the Office of Professional Responsibility's investigation on such abuse. For this reason, and the aforementioned barriers to legal representation at Torrance, we request DHS and ICE take the following actions:

- 1) Conduct immediate, comprehensive oversight on CoreCivic's management of Torrance to ensure:
 - Attorneys can schedule attorney/client calls on a regular basis that are free, confidential, and unlimited in time;
 - Detainees and attorneys are provided unfettered access to ICE's language interpretation call-line; and
 - Haitian detainees have interpretation services to understand ICE-provided information on the asylum process, such as legal orientations and informational videos.
- 2) Work with the Executive Office for Immigration Review to extend the immigration hearing dates for those detained at Torrance until they receive the counsel that has been unduly inaccessible to them.

Thank you for your attention and we look forward to hearing about the actions you will expeditiously take to remediate these issues.

⁵ TRAC: "Asylum Decisions (El Paso-EPD Immigration Court)." <https://trac.syr.edu/phptools/immigration/asylum/>

⁶ "American Immigration Council, American Immigration Lawyers Association and Partners File Oversight Complaint on Violations of Due Process and Inhumane Conditions at Torrance County Detention Facility," November 23, 2021. <https://immigrationjustice.us/advocacy/advocacy-issues/due-process-in-court/council-and-partners-file-oversight-complaint-violations-due-process-torrance/>

Sincerely,



MARTIN HEINRICH
United States Senator



BEN RAY LUJÁN
United States Senator



MELANIE STANSBURY
United States Representative



TERESA LEGER FERNANDEZ
United States Representative



U.S. Immigration
and Customs
Enforcement

June 6, 2022

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Jason P. Houser *for [Signature]*
Chief of Staff

SUBJECT: **Request for Approval: U.S. Senator Martin Heinrich and Three Members of Congress Wrote DHS regarding the Torrance County Detention Facility [WF 1230864]**

Context: On December 16, 2022, Senator Heinrich and three members of Congress wrote Secretary Mayorkas regarding CoreCivic's management of the Torrance County Detention Facility. ICE drafted a response and will respond on behalf of the Secretary.

OGC/Chief Counsel Coordination: This document was reviewed in its entirety for legal sufficiency by Deputy Chief of Staff [redacted (b)(6); (b)(7)(C)]. The document has not changed substantially since OGC's final review.

[redacted box]
(b)(7)(E)

Timeliness: This response is delayed due to draft and Component coordination.