United States Senate
WASHINGTON, DC 20510

October 23, 2015

The Honorable Jeh Johnson
Secretary of the Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Johnson:

We write to express serious concern regarding reports that U.S. Immigration and Customs Enforcement (ICE) is interfering with the ability of asylum-seeking mothers and children to access legal representation at the South Texas Family Residential Center (STFRC) in Dilley, Texas. On at least two occasions, attorneys have been banned from STFRC,[1] and many others have had access to their clients restricted without adequate justification. Also troubling are allegations that ICE and its contractor have barred *pro bono* counsel from being present during meetings at which detained mothers were provided with inaccurate information regarding immigration bonds and alternatives to detention.[2]

These reports are particularly concerning given the unique vulnerabilities of the population detained at STFRC: young children and their mothers, the vast majority of whom are fleeing violence in their home countries and are pursuing valid claims for asylum and other protection under U.S. law. Their ability to access free legal assistance as they make their way through our complex immigration detention and removal system is vital to ensuring their welfare, and must be given every support.

ICE has made a public commitment to facilitate access to *pro bono* legal services at all family detention centers. Actions that restrict the ability of attorneys to advocate on behalf of their clients not only undermine that pledge, but they are incompatible with our nation's commitment to fundamental fairness. We continue to urge you to end the presumptive detention of families; however, in recognition of our shared interest in ensuring that all noncitizens in detention have access to a fair process and are able to exercise their rights free from coercion, we urge you to timely investigate and respond to the formal administrative complaints that have been lodged with DHS, and to allow attorneys unfettered access to their clients during interactions that may affect their legal cases or the terms of their release.

In light of these reports, we request that you provide more information about ICE's policies and practices regarding detained individuals' access to counsel. Please provide detailed written answers to the following questions by November 6, 2015:

1. What is ICE's current policy regarding access by attorneys to family detention facilities? Please provide a copy of the policy.

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[1] *See, e.g.,* Jason Buch, "Two Lawyers Banned from Detention Center: Attorneys say immigrants' rights violated," San Antonio Express-News, August 27, 2015, *available at* http://www.expressnews.com/news/local/article/Two-lawyers-banned-from-detention-center-6469502.php.

[2] Complaint submitted by American Immigration Lawyers Association, American Immigration Council, Catholic Legal Immigration Network, Inc., and Refugee and Immigrant Center for Education and Legal Services to the DHS Office for Civil Rights and Civil Liberties and Office of the Inspector General dated September 30, 2015, *available at* http://www.aila.org/advo-media/press-releases/2015/coercion-intimidation-detained-mothers-children.

2. Does ICE require that this policy be posted at its family detention facilities? If so, where in the detention facilities is the policy posted?

3. Which ICE officials are responsible for implementing this policy at each of the facilities? Do the officials check periodically to determine whether or not the policy is being followed?

4. What role, if any, do contractors have in controlling attorneys' access to the facilities?

5. How many attorneys have been banned from ICE detention facilities to date? What are the duration of these bans? What is the justification for these bans? Have any bans been lifted?

6. Please explain what role, if any, you or officials at ICE or DHS headquarters have in reviewing a determination to ban an attorney from an ICE facility or to lift such a ban.

7. Is it ICE policy or practice to restrict or prohibit detained individuals' access to counsel during meetings at which the timing and conditions of their release are determined? Is it ICE policy or practice to have individuals in detention—who have secured legal representation—sign documents or make decisions affecting their legal case or the terms of their custody and/or release outside the presence of their attorney? If so, which decisions, and which documents? Please explain.

8. What information do detained individuals receive from ICE regarding the possibility of bond as a condition of release?

9. What information do detained individuals receive from ICE regarding their right to seek a custody redetermination before an immigration judge?

10. What information do detained individuals receive from ICE regarding ankle monitors?

11. What written guidance do field offices—whether ICE or contractors—receive from DHS or ICE regarding the timing and circumstances under which a noncitizen's ankle monitor will be removed, and their supervision de-escalated?

12. What steps has ICE taken to come into compliance with the recent federal court order by Judge Dolly Gee in the *Flores* litigation?

Sincerely,

AL FRANKEN
United States Senator

CHRISTOPHER A. COONS
United States Senator

SHERROD BROWN
United States Senator

ROBERT MENENDEZ
United States Senator

MAZIE K. HIRONO
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TAMMY BALDWIN
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PATRICK J. LEAHY
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