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July 16, 2021

Re: Immigrant Advocacy Organizations' Statement of Concern re Source of Funding and Recommendations for Best Practices, Immigration & Customs Enforcement (ICE) [Request for Information \(RFI\) for National Case Management Program](#)

To Whom It May Concern:

The undersigned national and regional organizations that advocate for the rights of immigrants, people seeking protection, and refugees write to respond to the recently-issued ICE RFI for a National Case Management Program. Our organizations include some that provide services and others that do not; however, this response is not intended to be a statement of capabilities. Rather, we provide here a comment on the issuance of the RFI itself and information regarding principles underlying community support programming.

Our organizations all wholeheartedly endorse the concept of providing opt-in community-based support services to assist those in the immigration process to successfully navigate that process while finding stability in the community for themselves and their families. We are heartened to see the administration further explore community-based support options. Much of this letter outlines how international and domestic studies and guiding principles can best inform successful implementation of community-based support, and we hope these are taken into consideration in any forthcoming case management efforts by the administration.

However, as detailed below, we have deep concerns over the ability of such community-based services to be provided meaningfully and successfully if housed in and funded by ICE, and urge the administration to instead fund such services outside of ICE and, ideally, outside of the Department of Homeland Security (DHS) altogether.

I. Case Management Programming should be separated from enforcement and must not be operated through or funded by ICE.

ICE states as its goal in this RFI that it seeks to provide case management assistance “to ensure stability and safety during immigration proceedings.” However, evidence and recognized best practices suggest an inherent conflict of interest in having services intended to help an individual or family successfully navigate the immigration process be controlled and funded by the agency also prosecuting them and seeking their deportation.

Years of analyses¹ of international and U.S.-based Alternative to Detention (ATD) programming have shown that successful community-based services or case management rely on trust in the immigration process and the support being received. That trust is compromised from the start if such services are housed in ICE, the agency with overarching decision-making power over an individual or family’s immigration proceedings and their liberty.²

We know with certainty from ICE’s previous and ongoing efforts at contracting or subcontracting case management services to community-based partners (through the Intensive Supervision Appearance Program, ISAP, or the more holistic-but-terminated Family Case Management Program, FCMP) that under this model it is ICE and only ICE who maintains control over a range of critical decision-making for participants. ICE determines, for example, whether someone can and should receive services and for how long, when access to services are changed, and when an individual is “escalated” into surveillance or detention, often without transparency or accountability. ICE’s interest in these decisions is inherently compromised because of its role as prosecutor and jailer in immigration proceedings. In addition, the ICE contracted (or subcontracted) model of case management raises serious concerns regarding the organizations’ ability to hire appropriate case management staff and control information and data relating to participants receiving their services.³

¹ See generally: International Detention Coalition, [There are Alternatives](#) (2015); Alice Edwards, United Nations High Commissioner for Refugees, Legal and Protection Policy Research Series: [Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants](#) (April 2011); Women’s Refugee Commission, [Why Case Management Can and Must Be Part of the US Approach to Migration](#) (June 2019); National Immigrant Justice Center, [A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration](#) (April 2019); American Immigration Council and Women’s Refugee Commission, [Community Support for Migrants Navigating the US Immigration System](#) (March 2021).

² The United Nations High Commissioner for Refugees’ white paper on best practices for alternative to detention programming recommends that “the official immigration reporting requirements that lead to sanctions and enforcement” be disconnected from case management and service delivery. Edwards, supra n. 1 at 87.

³ Women’s Refugee Commission, [Why Case Management Can and Must Be Part of the US Approach to Migration](#), supra n. 1.

Moreover, a recent survey by the Women’s Refugee Commission (WRC) and American Immigration Council (AIC)⁴ demonstrates that many NGOs eager to provide and expand immigration case management may be less likely to do so if the funding comes through ICE. The WRC / AIC survey was conducted in late 2020 on a voluntary basis, with over 300 offices from 244 organizations responding, ranging from affiliates of major national immigration service providers to smaller, regional organizations. Eight-seven percent of organizations surveyed said they would consider state or local funding to expand their services, yet only 30% of organizations surveyed said they would consider ICE funding for community support services.

Our organizations share the desire expressed in the RFI for community-based support services to those in the immigration process to succeed in providing comprehensive and appropriate support that will serve both them and the immigration process. But we are deeply concerned that housing such services in ICE will inevitably set them up for failure—failure that would be harmful to those participating in the new program envisioned by the RFI, *and* potentially sabotage the prospects of future programming.

II. We encourage the administration to issue a new RFI for an NCMP program operated outside of ICE and operating under the following best practices.

For too long the United States’ approach to migration processing has centered around enforcement and detention programs, under-investing in legal service and social service programs that provide vital support to immigrant communities as they establish their new lives in the United States. The undersigned organizations applaud the administration’s intention to invest in community-based support programs, and urge DHS and White House leadership to ensure that these programs are informed by and developed in accord with best practices established by decades of studies of case management programs as alternatives to detention utilized in the United States and throughout the world.⁵ We present some of these best practices here.

- **Support services should be opt-in, not mandatory.**

The goal of case management programming is to ensure that people navigating the United States immigration court system have the information, support and services they need to thrive in their communities and meaningfully participate in their immigration proceedings. Many immigrants are already established in their communities, and/or are integrating into vibrant communities already providing them the support they need. In these cases, requiring mandatory case management services, or services that are not tailored to individual needs, can be counter-

⁴ American Immigration Council, Women’s Refugee Commission, [Community Support for Migrants Navigating the U.S. Immigration System](#) (February 2021).

⁵ See n. 1.

productive, layering unnecessary appointments and obligations on individuals who do not need them and potentially interfering with work schedules and family obligations.

- **Programs must be operated by non-profit organizations with experience serving immigrant and refugee communities.**

Case management programming should never be operated or overseen by organizations that are incentivized, financially or otherwise, to impose more restrictive measures.⁶ Specifically, this means that alternatives must never be operated by private prison companies or their subsidiaries whose profit motives incentivize the use of onerous compliance obligations and pushing people out of alternatives and back into detention beds.

Furthermore, because the success of case management programming rises and falls on participants' trust in their case managers,⁷ the government must ensure that trusted organizations with experience serving and working alongside immigrant and refugee communities are selected to lead. In fact, an evaluation of the Family Case Management Program, the short-lived ICE program that for the first time in nearly two decades took a more community-based approach to offering support for those in the immigration process, found that the program fell far short of its full potential because GEO Care, a subsidiary of the GEO Group, was its primary contractor.⁸

- **Alternative programs must be centered around services that are holistic and based on individualized assessments, with transparency around enrollment and disenrollment.**

Not surprisingly, studies find that individuals are more likely to comply with the obligations placed on them—and accept the outcome of their immigration court proceedings even if that outcome is negative—if they are well-informed and trust they have been through a fair and timely process with their basic needs met.⁹ New alternative programming must be centered around thoughtful case management that utilizes screening and assessment tools to tailor management and placement decisions and provide holistic services focused on positive case resolution. Case managers should support participants in exploring all options to remain in the

⁶ Edwards, supra n. 1 at n. 506 (noting that ICE's ATD programming runs at odds with this best practice, because "the U.S. government's contract with Behaviour Inc. [sic] included payments for how many ankle bracelets were employed and thus was seen as encouraging the unnecessary tagging of many persons.").

⁷ Edwards, supra n. 1 at 86 ("The role of the case manager or coach in working with and building trust with people on their immigration options as early as possible, ensuring access to legal advice and repatriation assistance, appear to be key factors in whether individuals engage constructively with the process").

⁸ Women's Refugee Commission, [Why Case Management Can and Must Be Part of the US Approach to Migration](#), supra n. 1.

⁹ Edwards, supra n. 1 at 84 ("Treatment within asylum and other legal procedures seems to be one of the biggest factors contributing to positive engagement with the system. Where individuals are disgruntled with the system, or feel they have been dealt with unfairly, their ability to cooperate with the same system towards the end of the process and to make decisions about return is less likely.").

country legally and all avenues for voluntary or independent departure, with supportive repatriation options available if needed.

- **Program participants should be treated with dignity, humanity, and respect at all times, with assistance to meet social and legal needs.**

Individuals who are treated disrespectfully are less likely to engage positively with case management or to comply with court-imposed obligations because they do not see the immigration system as fair.¹⁰ Participants in ICE’s current primary ATD program, ISAP, have long endured indignities including confusing and opaque processes, harassment by ICE and BI officials, and arbitrarily imposed obligations and penalties.¹¹

Case management programs should be built around a culture of respect for the dignity of participants, with robust provision of social services and referrals for needed housing, legal services, medical and mental health care, education services for children, and other human needs. Referrals to legal services are particularly critical; all program participants must be regularly advised by competent professionals of their rights and obligations in every aspect of the immigration process, and clearly advised regarding consequences of failures to comply.

- **Surveillance is unnecessary and overly burdensome.**

Evidence has shown time and again that the overwhelming majority of people show up for immigration court proceedings when they are not detained.¹² Electronic surveillance and other restrictions are wholly unnecessary. A recent data analysis found that 98.7% of non-detained asylum seekers with pending applications appeared for every court hearing in fiscal year 2019.¹³ Another recent study found that 95% of people who pursued asylum or another form of relief from removal on non-detained dockets appeared for every hearing in their case from 2008 to 2018.¹⁴ Studies have also shown that families appear at very high rates (85.5% of the time) after release from detention, and families with legal representation appear at even higher rates (99% of the time).¹⁵

¹⁰ See n. 9.

¹¹ National Immigrant Justice Center, [A Better Way](#), supra n. 1 at 10.

¹² Nina Siulc and Noelle Smart, [Evidence Shows That Most Immigrants Appear for Immigration Court Hearings](#), Vera Institute of Justice (October 2020).

¹³ Transactional Records Access Clearinghouse (TRAC), [Record Number of Asylum Cases in FY 2019](#) (January 2020).

¹⁴ Ingrid Eagly and Steven Shafer, [“Measuring In Absentia Removal In Immigration Court,”](#) 168 U. Penn. L. Rev. at 817 (March 2020).

¹⁵ Transactional Records Access Clearinghouse (TRAC), [Most Released Families Attend Immigration Court Hearings](#) (June 2019).

Imposing surveillance and other restrictions without any evidentiary basis is arbitrary enforcement that criminalizes people who are majority Black and Brown, and echoes the invidious racial, national origin, and religious discrimination of the now-discredited NSEERs program.¹⁶ The troublesome nature of this enforcement is compounded because ICE frequently reserves it for people ICE deems appropriate for release, rather than people who ICE would ordinarily detain.¹⁷ These are people who should be released on recognizance, without restrictions on liberty. To ensure the highest appearance rates, as demonstrated by the evidence,¹⁸ federal funding should be directed to growing legal representation programs.

If restrictions and compliance obligations continue to be placed on immigrants, they should be the least onerous possible. The United Nations High Commissioner for Refugees (UNHCR) has recommended that ankle and wrist monitors should be avoided because they can interfere with a person's ability to work and meaningfully engage in open society, in addition to criminalizing the wearer.¹⁹ A recent study of ICE's use of ankle monitor devices found that nearly 90 percent of survey participants experienced harm to their physical and mental health as a result of wearing an ankle monitor, and an overwhelming 97 percent reported experiencing social isolation due to wearing of the device.²⁰ Experts agree that immigrants are most likely to engage and comply with their immigration proceedings if they feel they have been through a fair process, and not while at constant risk of detention and forced removal, or subject to unnecessary restrictions on liberty. Any new alternative programming should also be based on individualized assessments. Finally, the process and procedure for escalation or de-escalation of obligations should be transparent and easily understood by participants and their counsel.

III. Referrals to legal services are a critical component of case management, but legal representation providers must be funded for their services independent of case management programming.

Landmark studies on case management-based ATDs consistently reveal that referrals for robust legal advice and representation, early in the asylum process, are critical for success and compliance.²¹ In fact, having legal representation is one of the best ways to ensure a non-detained individual appears in court. Ninety-six percent of non-detained represented individuals

¹⁶ Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic, Freedom for Immigrants & Immigrant Defense Project, [Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles](#) (2021); Anjilee Shah, The World, [“The US has already tried registering Muslims. It didn't work.”](#) (Dec. 14, 2016).

¹⁷ Congressional Research Service, [Immigration: Alternatives to Detention \(ATD\) Programs](#) (July 8, 2019), at 6 (“More broadly, DHS maintains that ATD programs should not be considered removal programs or a substitute for detention. Instead, according to DHS, these programs have enhanced ICE's ability to monitor more intensively a subset of foreign nationals released into communities.”).

¹⁸ See *supra* n. 12.

¹⁹ Edwards, *supra* n. 1 at 78.

²⁰ Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic, et al, *supra* n. 16 at 3.

²¹ Edwards, *supra* n. 1 at 83.

between 2008 and 2018 appeared for all of their immigration court proceedings, compared to 83% of those not represented.²² Providing case management that includes meaningful referrals for legal representation is critical to any successful case management-based program.

However, simply referring people to already-swamped legal service organizations is not sufficient to ensure representation. The immigration legal services bar is overwhelmed and under-resourced. Despite tremendous efforts by the pro bono bar and non-profit legal service providers, today 54% of all immigrants facing removal are unrepresented, and 81% of those who are detained do not have representation.²³ The WRC / AIC survey of service providers—including legal services organizations—indicated that additional funding would be needed to provide expanded legal services to complement any case management-based ATD.²⁴

It is a recipe for failure to require case managers to refer National Case Management Program participants to legal service providers who are not sufficiently resourced to provide services. Even in the ten cities the administration has identified as having “established communities of service providers,”²⁵ there are more than 140,000 unrepresented people currently in immigration proceedings.²⁶ The Biden administration must provide sufficient and urgent funds for the provision of appointed counsel through a program independent of the National Case Management Program. We encourage these funds to come through the Department of Justice’s newly reinvigorated Office for Access to Justice,²⁷ as part of the administration’s commitment to expanding legal services to those in need. Funding for legal service provision independent of the National Case Management Program is critical to ensuring that there is real access to legal representation.

IV. Conclusion and Contact Information

We are grateful for your time and consideration and look forward to working together with the Biden-Harris administration to develop, implement, and scale up a community-based case management program that is divorced from enforcement functions and operates in accordance with evidence-based best practices.

With questions or for further engagement, please contact:

²² See supra n. 14.

²³ Per TRAC data through May 2021, available [here](#).

²⁴ [AIC / WRC survey](#), supra n. 4.

²⁵ U.S. Department of Justice, [DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration Hearings](#), May 28, 2021.

²⁶ Per TRAC data through May 2021, available [here](#).

²⁷ White House, [Memorandum on Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White House’s Legal Aid Interagency Roundtable](#), May 18, 2021.

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Sincerely,

Advocate Visitors with Immigrants in Detention in the Chihuahuan Desert
Alianza Americas
American Gateways
American Immigration Lawyers Association
Bellevue Program for Survivors of Torture
Bend the Arc: Jewish Action
Catholic Charities of Southern New Mexico
Catholic Legal Immigration Network, Inc.
Center for Gender & Refugee Studies
Center for Law and Social Policy (CLASP)
Center for Popular Democracy
Center for Victims of Torture
Central American Resource Center - CARECEN- of California
Central American Resource Center --CARECEN of Northern CA
Charlotte Center for Legal Advocacy
Church World Service
Colorado Immigrant Rights Coalition
Community Asylum Seekers Project
Community Immigration Law Center
Community Legal Services in East Palo Alto
Connecticut Institute for Refugees and Immigrants
Dolores Street Community Services
Erie County Bar Association Volunteer Lawyers Project, Inc.
Familia: Trans Queer Liberation Movement
First Focus on Children
Florence Immigrant & Refugee Rights Project
Freedom Network USA
Galveston-Houston Immigrant Representation Project
Georgia Asylum and Immigration Network
HIAS Pennsylvania
Home is Here NOLA

Houston Immigration Legal Services Collaborative
Human Rights First
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Action Alliance
Immigrant Defenders Law Center
Immigrant Legal Defense
Immigrant Legal Resource Center
International Rescue Committee
ISLA: Immigration Services and Legal Advocacy
Jewish Family and Community Services of Pittsburgh
Latino Racial Justice Circle
Law Office of Helen Lawrence
Legal Aid Justice Center
Legal Services of New Jersey
Lively Law Firm
Lutheran Immigration and Refugee Service
Mariposa Legal
Massachusetts Law Reform Institute
Michigan Immigrant Rights Center
Mississippi Center for Justice
Muslim Voices Coalition
National Immigrant Justice Center
National Immigration Law Center
National Immigration Litigation Alliance
National Immigration Project (NIPNLG)
National Network for Immigrant and Refugee Rights
Neighbors Link
New York County Defender Services
New York Immigration Coalition
New York Lawyers for the Public Interest
New York Legal Assistance Group (NYLAG)
Open Immigration Legal Services
Oxfam America
Presbyterian Church USA
Public Counsel
RAICES
Refugees International
Rocky Mountain Immigrant Advocacy Network
Safe Horizon
Safe Passage Project

South Asian Americans Leading Together (SAALT)
Southern Poverty Law Center
Southwest Asylum & Migration Institute
STERN Law, LLC
Takoma Park Mobilization Equal Justice
The Advocates for Human Rights
The Bronx Defenders
The Legal Aid Society (New York)
The Public Defenders Coalition for Immigrant Justice
Transgender Law Center
U.S. Committee for Refugees and Immigrants (USCRI)
UndocuBlack Network
United Stateless
UnLocal
Voces Unidas: Louisiana Immigrants Right's Coalition
Witness at the Border
Women's Refugee Commission
Young Center for Immigrant Children's Rights