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VIA CERTIFIED U.S. MAIL & EMAIL

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Re: Investigating religious-freedom violations by Border Patrol and ICE

Dear Ms. Quinn and Msrs. Kelly, Vitiello, and McAleenan:

We are deeply concerned that Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) are routinely violating immigrants' religious-liberty rights. For example, Border Patrol denies detained immigrants food that complies with their religious beliefs. According to one recent report, Border Patrol repeatedly fed a Muslim immigrant pork sandwiches. Border Patrol also seizes immigrants' religious

effects at the border. The confiscated items are rarely returned and frequently end up in the trash.

The situation does not improve for individuals in ICE custody. In the past year, hundreds of thousands of immigrants have been detained by ICE at its own jails and in private prisons, federal prisons, and local jails that contract with ICE. At those facilities, they have been denied access to religious worship services, clergy and faith counseling, religious head coverings and other religious articles, holy texts, and meals that comport with their religious dietary needs. These practices violate the Free Exercise Clause of the First Amendment to the U.S. Constitution, the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.*, and (in the case of immigrants detained at non-federal facilities) the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc *et seq.*

President Trump and other officials in his administration have repeatedly emphasized their commitment to protecting religious liberty. The President’s own executive order, “Promoting Free Speech and Religious Liberty,” proclaims that religious people should be “free to practice their faith without fear of discrimination or retaliation by the Federal Government” and directs the executive branch to “vigorously enforce Federal law’s robust protections for religious freedom.”¹ Similarly, former Attorney General Jeff Sessions issued a memo to the entire executive branch declaring that the “free exercise of religion is not a mere policy preference to be traded against other policy preferences” but rather a “fundamental right.”² These directives ring hollow, however, in light of the appalling abuses suffered by detained immigrants who seek to practice their faith. These abuses stain our nation’s longstanding reputation as a beacon of religious liberty. We ask that you immediately conduct an investigation and take the steps necessary to protect immigrants’ religious-liberty rights.

Religious-freedom infringements suffered by detained immigrants in Border Patrol’s custody

When immigrants enter the United States and are apprehended by Border Patrol, the agency confiscates nearly all of their property.³ This includes religious property, such as religious texts, head coverings, and jewelry.⁴ In most cases, these sacred items are never returned, instead ending

¹ Exec. Order No. 13798, 82 Fed. Reg. 21675 (May 4, 2017).

² Memorandum from U.S. Attorney Gen. to All Exec. Dep’ts and Agencies, Federal Law Protections for Religious Liberty, at 1 (Oct. 6, 2017).

³ Ari Selk, ‘I Wanted to Stop Her Crying’: the Image of a Migrant Child that Broke A Photographer’s Heart, The Washington Post (June 18, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/06/18/i-wanted-to-stop-her-crying-the-image-of-a-migrant-child-that-broke-a-photographers-heart/?noredirect=on&utm_term=.4e221281ac31 (“Border Patrol confiscates all personal items from everyone. They take hairbands, they take shoelaces, they take belts, they take money, they take wedding rings, they take all personal items. They took the shoelaces from the children.”).

⁴ See, e.g., Amanda Terkel, *Kids Taken from Their Parents at the Border Get Their Toys Confiscated Too*, HuffPost (June 20, 2018), https://www.huffingtonpost.com/entry/kids-toys-border_us_5b2a629ce4b05d6c16c99fd7; Peter C. Baker, *A Janitor Preserves the Seized Belongings of Migrants*, The New Yorker (Mar. 12, 2017), <https://www.newyorker.com/culture/photo-booth/a-janitors-collection-of-things-confiscated-from-migrants-in-the-desert>; *Teneng et*

up in the trash.⁵ Throwing religious items into the garbage violates CBP's personal-property policy, which states that non-contraband items "will be safeguarded, itemized, . . . and documented."⁶ It also completely disregards CBP's "Religious Sensitivity" policy, which directs officers and agents to "remain cognizant of an individual's religious beliefs while accomplishing an enforcement action in a dignified and respectful manner."⁷ In fact, CBP's national standards authorize detained immigrants to "keep some personal items in their possession, as long as a particular item does not pose a threat to the security or good order of the facility."⁸ Thus, there is no reason for CBP to seize most religious items in the first place.

Immigrants of various faiths have been affected by these practices. For example, Catholic and Seventh Day Adventist immigrants have had their Bibles taken away at the border.⁹ Most detained immigrants' religious texts are never returned or replaced.¹⁰ Border officials likewise have seized rosaries from Catholic immigrants.¹¹ One janitor found so many rosaries discarded by CBP officials that he was able to create and photograph an entire collection of them.¹² Similarly, many Sikh immigrants have had their turbans and sacred religious bracelets (called "karas") confiscated at the border. Despite repeated requests, these, too, are not returned.¹³ We have received at least one report from a Sikh immigrant that border officials tossed his kara into the trash bin while he was in the room.

Immigrants detained by Border Patrol also have been denied access to diets that comply with their religious tenets. According to a recent report, for example, the only food that Border Patrol provided for a detained Muslim immigrant was a pork sandwich every eight hours.¹⁴ For six days, he was forced to eat only the slices of bread from the sandwich.¹⁵ Although he explained

al. v. Trump, No 5:18-cv-01609 (C.D. Cal. Aug. 1, 2018), ECF No. 1-4, Decl. of Atinder Paul Singh ¶¶ 5,9; ECF No. 1-6, Decl. of Noe Mauricio Granados Aquino ¶ 24; ECF No. 1-20, Decl. of Dervi Garcia Perez ¶ 10.

⁵ Terkel, *supra* note 4; Baker, *supra* note 4.

⁶ *National Standards on Transport, Escort, Detention, and Search*, U.S. Customs and Border Protection 26 (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

⁷ *Id.* at 4.

⁸ *Id.* at 27.

⁹ See, e.g., *Teneng*, *supra* note 4, ECF No. 1-6, Granados Aquino. Decl. ¶ 24; ECF No. 45-3, Decl. of Gabriel Antonio Manzanilla Pedron ¶¶ 20, 23.

¹⁰ See, e.g., *Teneng*, *supra* note 4, ECF No. 1-6, Granados Aquino. Decl. ¶ 24; ECF No. 45-3, Decl. of Gabriel Antonio Manzanilla Pedron ¶¶ 20, 23.

¹¹ See, e.g., *Teneng*, *supra* note 4, ECF No. 1-20, Garcia Perez Decl. ¶ 10; see also, e.g., Baker, *supra* note 4.

¹² Baker, *supra* note 4.

¹³ See *Teneng*, *supra* note 4, ECF No. 1-4, Paul Singh Decl. ¶¶ 5, 9; ECF No. 1-5, Decl. of Gurjinder Singh ¶¶ 5-6; ECF No. 1-12, Decl. of Sarvejeet Singh ¶ 8.

¹⁴ Roque Planas, *Border Patrol Fed Pork To Muslim Detainee For 6 Days*, HuffPost (Feb. 27, 2019), https://www.huffpost.com/entry/border-patrol-fed-pork-to-muslim-detainee-for-six-days_n_5c76f474e4b0d3a48b5627a2.

¹⁵ *Id.*

to officials that Islam prohibits adherents from eating pork, no alternative meals were provided,¹⁶ even though CBP policy states that officers and agents “should remain cognizant of a detainee’s religious or other dietary restrictions.”¹⁷ Indeed, CBP policy grossly understates the legal obligations of its officers and agents. Under federal law, detained immigrants “have the right to be provided with food sufficient to sustain them in good health that satisfies the dietary laws of their religion.” *McElyea v. Babbitt*, 833 F.2d 196, 198 (9th Cir. 1987). It has long been “clearly established” that Muslim prisoners “have the right to avoid contact with pork or with any food that has been contaminated by pork.” *Hayes v. Long*, 72 F.3d 70, 74 (8th Cir. 1995).¹⁸ CBP’s failure to provide religiously appropriate food for Muslim immigrants or detained immigrants of any faith is, therefore, legally and morally indefensible.

Religious-freedom infringements suffered by detained immigrants in ICE custody

The situation is no better for immigrants detained in ICE jails, federal prisons, and other ICE-contracted facilities, where they have been denied the ability to engage in even basic religious practices. For example, a lawsuit filed in late February details the harrowing treatment to which detained Muslim immigrants have been subjected at the Glades County Detention Center (GCDC) in Florida. They have been denied access to adequate religious diets and prayer services, the Qur’an, prayer rugs, and kufis.¹⁹

Moreover, according to a report released this month by Disability Rights California (DRC), an investigation at the Adelanto ICE Processing Center—the largest ICE jail in California—revealed various religious-freedom violations.²⁰ During the investigation last year, DRC investigators “heard many reports about meals that lacked sufficient nutrition, did not comply with religious and medical dietary needs, and were often spoiled.”²¹ In addition, rather than providing desperately needed mental health treatment, staff improperly recommended “religious coping,” even for detained immigrants “who explain[ed] that they [did] not have religious beliefs.”²² And, in any event, immigrants who were religious and advised by clinical staff to turn to their religion

¹⁶ *Id.*

¹⁷ Planas, *supra* note 14.

¹⁸ The U.S Court of Appeals for the Eighth Circuit reached this holding even though the Muslim prisoner in *Hayes* asserted a claim under the Free Exercise Clause of the First Amendment, under which the applicable legal test generally confers less protection for religious exercise than do RFRA and RLUIPA.

¹⁹ See generally *Abdulkadir v. Hardin*, No. 2:19-cv-00120-SPC-MRM (M.D. Fla. Feb. 27, 2019), Complaint, ECF No. 1.

²⁰ See generally *There Is No Safety Here: The Dangers for People with Mental Illness and Other Disabilities in Immigration Detention at GEO Group’s Adelanto ICE Processing Center*, Disability Rights California (Mar. 2019), https://www.disabilityrightscalifornia.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf. The 2018 investigation was conducted pursuant to DRC’s “legal authority to inspect and monitor conditions in facilities that provide care and treatment to people with mental illness and other disabilities.” *Id.* at 9.

²¹ *Id.* at 17.

²² *Id.* at 21.

for mental health support were denied adequate “access to religious texts related to their faith or in their language.”²³ In fact, while investigating complaints that very little reading material was available to immigrants detained at Adelanto, DRC staff observed that the scarce reading materials included a “noticeably large number of Bibles and other Christian literature, *but few or no books related to other religions.*”²⁴

These conditions mirror those faced by immigrants who were detained by ICE in federal prisons last year. In June 2018, for example, ICE transferred hundreds of immigrants to the Federal Correctional Institution in Victorville, California.²⁵ While detained there, immigrants were not allowed to attend worship services or participate in group prayer or religious study.²⁶ They also had no access to religious leaders or spiritual counseling.²⁷ And their ability to obtain and wear religious head coverings and garb was severely restricted.²⁸ Many went hungry for weeks because they were not provided with meals that met their religious needs.²⁹ One individual was even admonished and threatened with punishment for singing hymns to himself *while inside his own cell.*³⁰

The circumstances were just as dire for immigrants detained by ICE at the federal prison in Sheridan, Oregon. They had no access to clergy, worship services, religious texts, religious diets, or an appropriate place to pray: Many were forced to pray in their cells next to dirty toilets.³¹ Detained Sikh immigrants were denied turbans, and when they tried to wear towels or t-shirts on their heads during prayer, as a substitute for their turbans, the guards ripped them off.³²

²³ *Id.*

²⁴ *Id.* at 23 (emphasis added).

²⁵ See generally Paloma Esquivel, *US Officials Move to House 1,000 Immigration Detainees at Federal Prison in Victorville*, LA Times (June 7, 2018), <http://www.latimes.com/local/lanow/la-me-ln-victorville-ice-detention-20180607-story.html>; Conrad Wilson, *Hundreds of Immigrant Detainees Held in Federal Prisons*, NPR (Aug. 23, 2018), <https://www.npr.org/2018/08/23/641165251/legal-battles-began-when-migrants-were-sent-to-federal-prisons>.

²⁶ There were no Presbyterian, Catholic, Seventh Day Adventist, Sikh, Hindu, Islamic, or other religious services provided for immigrants detained at Victorville. See, e.g., *Teneng*, *supra* note 4, ECF No. 1-2, Decl. of Marcel Ngwa ¶ 9; ECF No. 1-6, Granados Aquino Decl. ¶ 23; ECF No. 1-7, Decl. of Thea Akes ¶ 13; ECF No. 1-9, Decl. of Marlon Esoto Cortez ¶ 9; ECF No. 1-12, Sarvejeet Singh Decl. ¶ 7; ECF No. 1-18, Decl. of Ousmane Diallo ¶ 2; ECF No. 45-3, Manzanilla Pedron Decl. ¶¶ 21-24; ECF No. 45-7, Decl. of Fabio Jose Serrano Solozano ¶¶ 15-16.

²⁷ See, e.g., *Teneng*, *supra* note 4, ECF No. 1-2, Ngwa Decl. ¶ 9; ECF No. 1-7, Akes Decl. ¶ 13; ECF No. 45-7, Serrano Solozano Decl. ¶ 16.

²⁸ See, e.g., *Teneng*, *supra* note 4, Paul Singh Decl. ¶¶ 5, 10; ECF No. 1-5, Gurjinder Singh Decl. ¶¶ 4-6; ECF No. 1-12, Sarvejeet Singh Decl. ¶¶ 4-6.

²⁹ See, e.g., *Teneng*, *supra* note 4, ECF No. 1-4, Paul Singh Decl. ¶ 11; ECF No. 1-5, Gurjinder Singh Decl. ¶¶ 7-8.

³⁰ *Teneng*, *supra* note 4, ECF No. 45-3, Manzanilla Pedron Decl. ¶ 24.

³¹ See, e.g., *ICE Detainees Nos. 1-74 v. Salazar et al.*, No. 3:18-cv-01279-MO (D. Or. July 18, 2018), ECF No. 2, Decl. of ICE Detainee No. 2 ¶ 4; see generally *id.*, ECF No. 11, Memo. in Support of Petition 15.

³² *ICE Detainees*, *supra* note 31, ECF No. 11, Memo. in Support of Petition 31.

The practices at the GCDC, Victorville, and Sheridan facilities do not comport with ICE policy, which requires that detained immigrants “have regular opportunities to participate in practices of their religious faiths, limited only by a documented threat to the safety of persons involved in such activity itself or disruption of order in the facility.”³³ To that end, each “facility administrator shall allow detainees to have access to personal religious property.”³⁴ Religious headwear and property should be “handled with respect at all times, including during the in-take process.”³⁵ In addition, under ICE policy, detained immigrants are allowed to retain their personal religious headwear where it does not pose security concerns, and every facility is directed to “ensure that detainees are provided conforming religious headwear for free or at a de minimus [sic] cost” where their personal headwear has been confiscated for security reasons.³⁶ Special diets are also to be provided for those whose religious beliefs require adherence to religious dietary laws.³⁷ In other words, ICE’s recent treatment of immigrants in their custody has fallen far short of what even its own policies demand.

Although ICE moved all of the immigrants detained at Victorville to other facilities after the ACLU and others filed suit, and ICE has stopped detaining immigrants at federal prisons, for now, there remains strong cause for concern. ICE has not committed to permanently ending the practice—even though the Bureau of Prisons has made clear that it neither has the capacity to protect immigrants’ religious-liberty rights nor cares to do so. Moreover, ICE continues to detain immigrants in local and regional jails that have a history of religious-freedom violations, such as the Northern Oregon Regional Corrections Facility (NORCOR). In 2017, the ACLU of Oregon detailed just some of the appalling conditions for those held at NORCOR, including the jail’s unlawful confiscation of religious items, such as Bibles, prayer rugs, and rosaries, and inadequate access to clergy and spiritual counseling.³⁸ NORCOR also does not provide religious diets to detained immigrants.³⁹ Yet, ICE continues to use the jail, and it has been reported that the jail keeps its local law enforcement arrests low to make room for more immigrants detained by ICE.⁴⁰ As demonstrated by their documented abuses of detained immigrants, facilities like NORCOR and

³³ See *Performance-Based National Detention Standards 2011*, U.S. Immigration and Customs Enforcement 375 (rev. Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/5-5.pdf>.

³⁴ *Id.* at 380.

³⁵ *Id.*

³⁶ *Id.* at 383.

³⁷ *Id.* at 375.

³⁸ Letter to Bryan Brandenburg and Rod Runyon, Re: Unconstitutional conditions of confinement for immigration detainees at NORCOR, 7-8, https://aclu-or.org/sites/default/files/field_documents/acluor_norcor_demand_letter_9.12.2017.pdf.

³⁹ Katie Shepherd, *An Oregon Jail Housing Immigration Detainees Failed to Meet 81 Federal Rules. Here Are Six*, Willamette Week (July 11, 2018), <https://www.wweek.com/news/courts/2018/07/11/an-oregon-jail-housing-immigration-detainees-failed-to-meet-81-federal-rules-here-are-six/> (records obtained by reporter revealed that NORCOR “did not provide meal options for detainees with religious restrictions”).

⁴⁰ See Conrad Wilson, *Oregon Jail Has Released Inmates To Save Space For ICE Detainees*, Oregon Public Broadcasting (Nov. 15, 2018), <https://www.opb.org/news/article/oregon-jail-norcor-release-inmates-ice-detainees/>.

GCDC offer no relief for immigrants of faith who simply want to observe their sincerely held religious beliefs.

Finally, tens of thousands of other immigrants remain in jails operated by ICE as well as county jails and facilities operated by private prison companies.⁴¹ Given the recent, well-documented failures in ICE contracting, inspections, and oversight,⁴² there is a pressing need for your offices to intervene and investigate religious-freedom violations system-wide.

Federal law violations

The practices detailed above demonstrate that Border Patrol and ICE widely and plainly violate RFRA and RLUIPA, which provide heightened legal protections for religious exercise.⁴³ Under the statutes, the government must demonstrate that any substantial burden placed on immigrants' exercise of their sincerely held religious beliefs is the least restrictive means of furthering a compelling governmental interest.⁴⁴ Here, it is obvious that Border Patrol and ICE routinely impose substantial burdens on detained immigrants' ability to engage in some of the most basic and fundamental religious practices. And, because both CBP and ICE policies expressly allow and accommodate the very type of religious activities that are now restricted in facilities housing detained immigrants, the current practices are *not* the least restrictive means of furthering any compelling governmental interest.

These abuses are particularly troubling because many immigrants who seek refuge in the United States have faced persecution in their home countries based on their religious beliefs. They were undoubtedly drawn here by the American promise of religious freedom for people of all faiths. Unfortunately, that promise has been tarnished. Both CBP and ICE have demonstrated their contempt for the right of immigrants to practice their faith and cannot be counted on to honor their legal obligations. A full and thorough investigation of these abuses—across every Border Patrol

⁴¹ Spencer Ackerman, *ICE Is Detaining 50,000 People, an All-Time High*, The Daily Beast (Mar. 8, 2019), <https://www.thedailybeast.com/ice-is-detaining-50000-people-a-new-all-time-high>.

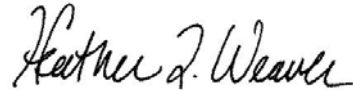
⁴² See, e.g., *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, Dep't of Homeland Security, Office of the Inspector General (Jan. 19, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>; *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, Dep't of Homeland Security, Office of the Inspector General (June 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

⁴³ Some of these practices also violate the less stringent standard applied under the Free Exercise Clause of the First Amendment because they bear no rational relationship to a legitimate penological objective. See *Hayes*, 72 F.3d at 74; *supra*, note 18.

⁴⁴ 42 U.S.C. § 2000bb-1(b). Indeed, ICE's decision to place detained immigrants in federal prisons, as well as local and regional jails that have a history of religious-freedom abuses, is itself a violation of RFRA. And to the extent that immigrants detained by ICE at local and regional jails, such as NORCOR and GCDC, are subjected to practices like those detailed above, those practices violate RFRA's sister statute, RLUIPA.

and ICE or ICE-contracted detention facility—is a necessary first step toward holding accountable those responsible for this mistreatment and ensuring that it is not repeated in the future.

Sincerely,



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