April 1, 2019

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Ronald Vitiello
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Dear Messrs. Kelly and Vitiello,

As the nation's largest Sikh American civil rights organization, the Sikh Coalition[1] is a key stakeholder and enjoys a strong working relationship with government agencies designed to address civil rights concerns. We appreciate and value the work done by your offices, particularly as it relates to ensuring that national security concerns do not erode civil rights. It is in this context that we write to request your assistance in addressing several problems brought to our attention, which Sikh detainees have been experiencing in ICE custody. While we have been in touch with detainees at the El Paso and Otero facilities, it is our understanding that these problems extend to other facilities as well.

It is important to note that our concerns, with regard to language access, prolonged detention, medical care, and religious accommodations are not new. The Sikh Coalition originally brought the issue of parole denials to the Office of Civil Rights and Civil Liberties ("CRCL") in a letter of complaint dated April 16, 2014 ("April 16, 2014 letter to CRCL"). We also sent a letter to DHS's Office of Inspector General ("OIG") on February 12, 2019 to address concerns related to bond, parole, language access, and the denial of religious accommodations. ("February 12, 2019 letter to the OIG"). Importantly, the OIG expressed similar concerns about language access, medical care, the use of solitary confinement, and generally inappropriate treatment of detainees in its December 11, 2017 memorandum entitled "Concerns about ICE Detainee Treatment and Care at Detention Facilities."[2]

[1] By way of background, the Sikh Coalition is a community-based organization that defends civil rights and civil liberties in the United States, educates the broader community about Sikhs and diversity, and fosters civic engagement amongst Sikh Americans. The Sikh Coalition originated to combat uniformed discrimination against Sikh Americans after the events of September 11, 2001. Since its inception, the Sikh Coalition has worked with government agencies and the private sector to achieve mutually acceptable solutions to the accommodation of Sikh articles of faith.

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[2] Office of the Inspector General, Department of Homeland Security, Memorandum *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, (Dec. 11, 2017) ("OIG

While that report expresses concerns related to the OIG's investigation of five facilities, four of those five facilities were the subject of the memorandum. Thus, 80% percent of the facilities investigated proved highly problematic. Both this complaint and the OIG Memorandum address problems occurring in the Otero detention facility, and several of our concerns are overlapping. These results are worrisome, as they show a high rate of poor treatment and rights violations within ICE facilities and also evidence a lack of corrective measures. We, therefore, ask that you conduct an agency-wide investigation to address these serious issues across all ICE facilities.

I. Sikh detainees with limited English proficiency ("LEP") have insufficient access to translated documents and competent interpreters and thus no "Meaningful Access" to vital detention and immigration related documents

One of the most concerning issues affecting Sikh and Punjabi-speaking detainees is the lack of adequate language access. The OIG Memorandum detailed several of these issues,[3] as did our February 12, 2019 letter to the OIG. However, after speaking with leadership staff at the El Paso detention facility and members of CRCL, it appears that these concerns have not been disseminated and that corrective measures have not been put in place. As you are aware, an individual's inability to understand their rights, the immigration process, and facility rules permeates all aspects of the detention and immigration processes.

The Supreme Court, in *Lau v Nichols*, 414 U.S. 563 (1974), found that the failure to provide a meaningful opportunity to participate in federally-funded programs is a form of national origin discrimination in violation of Title VI of the Civil Rights Act of 1964. See also *Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), rev'd on other grounds, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F.Supp.2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI). Title VI protections were extended to federal agencies under Executive Order 13166 and the accompanying guidance provided by the Department of Justice.[4] In order to comply with these requirements, ICE adopted a Language Access Plan ("LAP").[5] It does not appear

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Memorandum"), available at https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf.

[3] The OIG Memorandum specifically stated: The OIG Memorandum stated that the "lack of communication and understanding creates barriers between facility staff and detainees" and created a situation in which confusion about the rules lead to disciplinary issues. Moreover, the "lack of communication and understanding impacts the overall well-being of detainees and the security of the facility." OIG Memorandum at 4.

[4] Exec Order No. 13166, 65 Fed. Reg 159 (Aug. 16, 2000), available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/eolep.pdf.

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[5] See ICE Language Access Plan (June 14, 2015), ("LAP") available at https://www.ice.gov/sites/default/files/documents/Document/2015/LanguageAccessPlan.pdf.

that ICE is adhering to the LAP, and in some situations the LAP is woefully inadequate and out of date.

It has come to our attention that Sikh detainees held in the El Paso and Otero detention facilities do not have access to vital documents translated in Punjabi, and serious concerns have been raised about the quality of and access to interpretation services both through the immigration courts and within ICE facilities. What is most alarming about this situation is that, after being told by the El Paso ICE Field Director's office on February 27, 2019 that the National Detainee Handbook ("NDH")[6] had not been translated into Punjabi, we later learned that it was, in fact, translated into Punjabi in 2016. It has not, however, been provided to Punjabi-speaking detainees. This issue was addressed in the 2017 OIG Memorandum which states: "[A]ccording to the PBNDS, when detainees arrive, they are supposed to receive the [NDH] and a local facility detainee handbook. These handbooks cover essential information, such as the grievance system, services and programs, medical care, and access to legal counsel. At three facilities we inspected, detainees were not always given handbooks in a language they could understand. These language barriers could prevent detainees from fully comprehending basic facility rules and procedures."[7] Despite the report's findings, this issue has not been resolved.

It appears that this initial problem can be easily corrected by updating the LAP. Presently, ICE's LAP states: "ICE provides a Detainee Handbook, in either English or Spanish, to every ICE detainee during the intake process. The Handbook has been translated into Chinese (Simplified), Portuguese, French, Arabic, and Vietnamese, and is made available to detention facilities upon request."[8]

This list of languages into which the NDH has been translated appears exhaustive, but it is incomplete. For example, it does not state that the NDH has been translated into Punjabi. Yet, we have been provided with a copy of the Punjabi version and know it exists. Thus, this list is inadequate for ICE officers who should be tasked with knowing ICE's policy directive on language access, leading to a number of additional problems. First, the LAP places the onus of requesting non-English handbooks on detention centers without providing them with a full list of languages into which that the NDH has been translated, essentially ensuring that these requests will never be made for many languages. Second, where both ICE Field Offices and ICE officers within individual facilities are unaware of what languages the NDH has been translated into, the detainees themselves will be unaware that such handbooks exist in a language they can understand. This leaves detainees without information vital to their ability to understand their rights - including religious accommodations and civil rights - and the policies and procedures they are required to follow.

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[6] National Detainee Handbook (April, 2016) ("NDH"), available at https://www.ice.gov/sites/default/files/documents/Document/2017/detainee-handbook.PDF.
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[7] OIG Memorandum at 4.
[8] LAP at p. 6.

Additionally, based on our conversation with the El Paso ICE Field Office on February 27th, there is no requirement under the LAP policy directive requiring ICE officers to notify detainees who are not English speakers that detainee handbooks in their languages exist. This alarmingly results in many LEP detainees explaining to other detainees with even less English proficiency what they have been able to piece together regarding their rights, the immigration process, and facility rules. According to what we learned from the El Paso ICE Field Office leadership, this is deemed an acceptable manner for detainees to obtain meaningful access to understanding their rights. As we pointed out to them in that phone conference, while some detainees may have a stronger grasp of the English language than others, there is a significant difference between understanding basic English and understanding legal terminology. The idea that LEP detainees' explanation of the nuances of immigration law, the rules of the facility, the grievance process, how to request medical attention, and religious or other rights to other detainees is sufficient in providing meaningful language access is a violation of ICE's own policy directives.[9]

ICE's failure to provide the requisite information - specifically the NDH which has already been translated into Punjabi - is a direct violation of ICE's language access policy, which has adopted a broad definition of meaningful access,[10] and of Executive Order 13166. This failure is tantamount to an abdication of ICE's responsibility to LEP immigrants, who remain in its custody. Moreover, the NDH is not the only vital document that ICE has failed to provide in translated form to detainees. For instance, individual facilities have their own supplements to the NDH, which provide facility-specific rules. Failing to abide by federal and facility-level rules can result in disciplinary action, including solitary confinement, a practice shown to have long-term negative effects on detainees' mental and physical health. Further, because a detainee's disciplinary action may be used to assess whether they are suitable for release on bond or parole, a lack of adequate language access that prevents detainees from fully understanding the facility rules may have significant impact on their immigration case as a whole.

The NDH and facility supplements provide vital information on obtaining medical care, requesting religious accommodations and special meals, and filing complaints and grievances. The NDH also provides information on how to access legal information and tools; how to communicate with family, friends, and legal representatives; and provides information about certain rights, including due process rights, and the immigration process. Many of these detainees are suffering from some mental or physical trauma as a result of their experiences, and the ability to obtain medical care, practice their faith, and communicate with friends, family, and legal representatives is essential to their physical

[9] *See* OIG Memorandum.

[10] "Meaningful access" is defined in ICE's LAP as "[l]anguage assistance that results in accurate, timely, and effective communication and that is available at no cost to the LEP person. For LEP persons, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to program or activity access provided to English proficient persons." See LAP at p.6.

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and mental well being. A number of these detainees are also unrepresented by counsel and require access to legal materials in preparation for their case to be heard by an immigration judge. Not understanding the important information contained in the NDH and facility supplements can have serious and long-term consequences for all detainees, especially asylum seekers. If they are unable to access legal information or are mentally or physically unfit to share relevant details about their experiences, their applications could be denied, thereby subjecting them to deportation, which could have life-threatening consequences.

Furthermore, we are also concerned about the quality of the interpreters being provided within ICE facilities for both immigration hearings and telephonic interpretation services. There is no doubt Hindi, Urdu, and Punjabi are distinct languages that do not place identical meanings on certain words and phrases. Pursuant to our interview of forty-two detainees in both the El Paso and Otero detention centers, it has come to our attention that Punjabi-speaking detainees do not consistently receive interpretation assistance from individuals who are competent in Punjabi. The consequences of an asylum-seeker's inability to effectively communicate the danger they face if deported are severe, as are the consequences for other detainees who seek interpretation services in requesting bond or parole hearings or review, or other court proceedings.

We have similar concerns about the contractors ICE hires to translate documents. While comparing the English and Punjabi versions of the NDH, we found several discrepancies. On the section entitled "Rights and Responsibilities"[11] alone, we discovered six separate translation errors, excluding the numerous spelling and grammatical errors also contained in that section. For example, the English version of the subsection entitled "You also have the right to the following" states: "File a complaint about living conditions with the facility or the Department of Homeland Security (DHS)." The Punjabi version of that text states: "Facility or department of the life conditions complain register Homeland Security (DHS)."

Similarly, the English version of the subsection entitled "YOUR IMMIGRATION CASE" states, in relevant part: "You have the right to obtain a lawyer or approved legal representative of your choice, at no cost to the U.S. government. It is your responsibility to obtain the services of the attorney. That person must sign Form G-28 to notify the facility that they represent you." Whereas the Punjabi translation of that text states: "You have the right to get any attorney or certified legal representative of your choice, for this no cost American Government attorney getting services is your responsibility that person to inform the facility needs to sign form G-28 who wants to represent you." The English text of the next point in this subsection reads: "Depending on your case, you may have the right to a hearing before an immigration judge. You or your lawyer or legal representative are responsible for presenting your case to the immigration judge." The Punjabi translation reads: "Based on you case, before any immigration judge you might

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[11] NDH at p. 4.

have a right for a hearing, you, your lawyer or your legal representative are responsible for presenting your case to the immigration judge."

The translation errors cited above evidence a broader problem in ICE's current language access services. Based on these factors, LEP detainees are unlikely to adequately understand their rights, the immigration process, or the rules and procedures they must adhere to, thereby depriving them of Due Process rights necessary to ensure they receive fair consideration of their circumstances.

ICE's current LAP states that it "will continue to engage with external stakeholders on language access."[12] Moving forward, we ask that ICE consult with external parties and key stakeholders to ensure that translated documents are an accurate reflection of their English counterparts and that oversight policies be put in place to ensure that both interpretation and translation service providers are actually competent to provide language assistance.

II. Sikh detainees have been subjected to excessively prolonged detention

Sikh detainees who were found to have a credible fear of persecution have been denied their right to be released from detention while their asylum cases are pending. This problem exists in several forms: (1) bond is regularly denied, (2) where bond is granted, the monetary amount set is excessively high and too burdensome to pay compared to individuals of other national origins, and (3) parole is routinely denied. These practices violate the Due Process provision of the Fifth Amendment[13] and the prohibition against excessive bond contained in the Eighth Amendment.[14]

The Fifth Amendment[15] prohibits the deprivation of liberty without due process of law. The Supreme Court has held that "government detention violates the [Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and narrow non-punitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The Eighth Amendment[16] prohibits excessive bail. This prohibition is not limited to criminal proceedings. *Austin v. United States*, 509 U.S. 602, 607-08 (1993). Rather, the Supreme Court opined that "[b]ail, by its very nature, is implicated...when there is a direct government restraint on personal liberty, be it in a criminal case or in a civil deportation proceeding." *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 263 n.3 (1993).

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[12] LAP at 2.
[13] U.S. Const. Amend. V.: "No person shall...be deprived of life, liberty, or property, without due process of law [...]."
[14] U.S. Const. Amend. VIII: "Excessive bail shall not be required [...]."
[15] U.S. Const. Amend. V.
[16] .S. Const. Amend. VIII.

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It is essential to remember that these particular Sikh detainees are asylum seekers, not criminals. Thus, their immigration matters are undisputedly civil and non-punitive in nature. *R.I.L.-R v. Johnson*, 80 F.Supp.3d 164, 187 (D.C. Cir. 2015). Yet, asylum-seekers are being held in prison-like conditions for months or years while their immigration cases are under consideration. In most cases, there is no reason to suspect they are a danger to the community or a flight risk. In fact, many arrive into this country with a valid passport and the support of some family or friend who is willing to sponsor them. Instead of helping these asylum seekers navigate the system they have fled to in the hopes of avoiding dangerous or persecutory conditions in their home countries, current ICE practice is to do the following: hold them in custody without providing individualized assessments for bond and parole decisions; create policies (even if discretionary) or rely on flawed risk assessment software, which automatically recommends that Sikh asylum seekers are detained;[17] hold them in custody to deter future immigrants from seeking asylum in the U.S. under what essentially amounts to zero tolerance for immigration where asylum seekers are concerned; and refuse reasonable conditions for release. All of these practices constitute a violation of the detainees' rights under the Fifth and Eighth Amendments.

It is our understanding that the 2009 Parole Directive is still in effect. That policy makes granting parole the rule, not the exception,[18] and requires individualized assessments in determining whether to grant or deny parole.[19] However, the ICE facilities in El Paso and Otero are not abiding by this Parole Directive and are, instead, issuing blanket denials of parole without conducting individualized assessments as to whether a specific detainee presents a danger to the community or is a flight risk. This practice is extremely troubling, as the parole process is the only means by which asylum seekers who presented themselves at an official port of entry may be released while their immigration case is pending. *Jennings v. Rodriguez*, 138 S.Ct. 830, 844 (2018). It is also a violation of the Parole Directive, the Immigration and Naturalization Act and implementing regulations, and the Administrative Procedure Act. *See* Parole Directive at § 6.2; 8 U.S.C. § 1182(d)(5)(A), 8 C.F.R. § 212.5(b), 8 C.F.R. § 235.3(c); 5 U.S.C. § 706(2).

What is most problematic about this situation is that the Office of Inspector General has already concluded that the risk assessment software used by ICE is ineffective and leads

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[17] *See* Daniel Oberhaus, '*ICE Modified Its Risk Assessment Software So It Automatically Recommends Detention',* Motherboard, (June 26, 2018), https://motherboard.vice.com/en_us/article/evk3kw/ice-modified-its-risk-assessment-software-so-it-automatically-recommends-detention.

[18] See U.S. Immigration and Customs Enforcement, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," Directive 11002.1 § 6.2 (Eff. Jan. 4, 2010) ("Parole Directive"), stating: "When an arriving alien found to have a credible fear established to the satisfaction of the DRO his or her identity and that he or she presents neither a flight risk or danger to the community, DRO should, absent additional factors, parole the alien on the basis that his or her continued detention is not in the public interest."

[19] *Id*.

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to blanket Parole denials, stating that, "[While] ICE developed a Risk Classification Assessment to assist its release and custody classification decisions[,] the tool is time consuming, resource intensive, and not effective in determining which aliens to release or under what conditions."[20] It seems ICE continues to use this Risk Assessment software despite knowing that it disregards immigrants' Due Process rights.

Moreover, the U.S. District Court for the District of Columbia enjoined five ICE detention facilities from denying parole absent an individualized assessment that a particular asylum-seeker presents a flight risk or danger to the community.[21] The El Paso facility is one of the five facilities included in that order.[22] While the order applies only to certified class members, the agency as a whole - and the El Paso detention facility specifically - was placed on notice that ICE's blanket parole denial practices are contrary to law, as agencies are legally required to follow their own rules and policy directives.[23]

Similarly, individualized assessments, which must include an assessment of an immigrant's ability to pay, are required in determining whether to grant or deny bond. *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017). "In the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id*. at 990 (internal citations omitted). Thus, these blanket refusals of bond, the continual use of dangerously flawed risk assessment software that routinely recommends denying parole, and general zero tolerance policies to impose excessive bond constitute violations of the Fifth and Eighth Amendments and the Administrative Procedure Act.

III. Sikh detainees receive insufficient access to proper medical care

Several Sikh detainees in the El Paso detention center engaged in a hunger strike to protest staff misconduct and rights violations.[24] Some of these men were transferred to El Paso from Otero and were protesting conditions in both facilities. We interviewed thirty-one Sikh detainees in Otero who reported they had been on hunger strikes in the past at various times while in Otero in an effort to protest inadequate treatment in that facility. As you are aware, detainees have a very limited ability to protest the denial and

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[20] See John Roth, Office of the Inspector General Report, Department of Homeland Security, 'U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised)', (Feb. 4, 2015), available at https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf.

[21] *Damus v. Nielsen*, 313 F.Supp.3d 317,342-43 (D.C. Cir. 2018) ("*Damus* decision").

[22] The *Damus* decision applies to the Detroit, El Paso, Los Angeles, Newark, and Philadelphia ICE Field Offices. *Id*. at 325.

[23] *Id*. at 337.

[24] See Daniel Borunda, 'ICE Halts force-feeding detainees on hunger strike at El Paso detention center,' USA Today, (Feb. 15, 2019), available at, https://www.usatoday.com/story/news/nation/2019/02/15/ice-halts-force-feeding-immigrant-detainees-el-paso-detention-center/2879201002/.

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deprivation of their rights. Furthermore, their ability to protest unfair or illegal conditions is made more difficult when they are deprived of meaningful language access and therefore do not understand their rights under the NDH. Consequently, hunger strikes become a common form of detainee protest. During the hunger strike, several of the men were force-fed. We have received reports indicating they were subjected to extremely cruel physical and verbal treatment while undergoing this procedure.

We have been advised that the tubes used were much larger than the tubes generally used for feeding procedures. The larger sized tubes are much more painful than the narrower tubes used by most medical professionals. Additionally, detainees have complained and shown us bruising to indicate that staff members held their bodies down to insert the tubes by placing their knees and elbows on the detainees' bodies to hold them still. We also received reports that staff members stepped on or held tubes during feeding procedures so that the liquid went through the tubes and into the men's noses much faster than it should. The speed causes increased pressure, which has led to excessive pain and bleeding in some instances, as well as scarring. Further, during visits with legal counsel or friends it became clear that the men on hunger strike grew increasingly weak. Despite their condition, they were denied wheelchairs. On March 3, 2019, during a visit with an outside advocate, one of the men on hunger strike was so weak he fell to the floor. Instead of immediately helping him up and securing a wheelchair to bring him back to the infirmary, staff allowed him to remain on the floor for several minutes and then roughly picked up and took him out of the visitation room.[25]

When we brought some of these concerns regarding verbal or physical abuse to the attention of the El Paso ICE Field Office, they informed us that detainees have the right to file complaints or grievances about this behavior and can also request medical assistance as they see fit. However, because these men have not been provided with adequate language access tools including a Punjabi version of the NDH, as noted by the OIG Memorandum specifically in relation to medical care,[26] the majority of Sikh detainees do not understand how to request medical assistance, are not receiving medical care in a timely manner, are not able to effectively communicate their medical concerns, and have no recourse to file complaints or grievances in regards to any abusive treatment they may suffer. Furthermore, given their inadequate understanding of rights and facility

[25] Brown, Margaret Vega and Nathan Craig, "'*A New Horror:' Sikh Men Go on Hunger Strike in ICE Detention,*" The Nation (March 7, 2017), available at https://www.thenation.com/article/ice-hunger-strike-el-paso/.

[26] "At times, language barriers prevented detainees from understanding medical staff. Although it might have cleared up confusion, staff did not always use language translation services, which are available by phone, during medical exams of detainees. Some medical consent forms were not always available in Spanish, and staff did not always explain the English forms to non-English speaking detainees. As a result, detainees may not have been providing enough information about their medical conditions to ensure adequate medical treatment while in detention." The OIG Memorandum specifically recommended that ICE review its use of language services; ICE agreed to advise compliance personnel to integrate assessments of this issue. OIG Memorandum at 4-5, 8-9. It does not appear that those assessments have been effective.

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procedures, Sikh detainees are fearful that complaints will lead to retaliation in the form of solitary confinement, deportation, or other forms. These types of concerns are not unusual. Indeed, the OIG Memorandum specifically addressed issues surrounding staff members' discouragement of detainee grievances and retaliation against complaining detainees.[27]

IV. Sikh detainees are not receiving appropriate religious accommodations in violation of federal law

Finally, it is our understanding that several Sikh men have been denied certain religious accommodations in both the El Paso and Otero detention centers. While we highlight these issues within El Paso and Otero, we are gravely concerned that these problems are occurring in other facilities as well.

The First Amendment prevents Congress from prohibiting the free exercise of religion. U.S. Const. Amend. I. Individuals in custody retain their First Amendment religious rights. *Cruz v. Beto*, 405 U.S. 319, 321 (1972). Prison regulations cannot impinge on those rights unless they are "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). It should be noted, though, that punishment is not a legitimate penological interest in civil detention. *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Immigration proceedings are civil in nature. *Zadvydas v. Davis*, 533 U.S. at 690.

Under the Religious Freedom Restoration Act ("RFRA"), individuals in federal custody are protected from substantial burdens on their religious practice if those burdens are not narrowly tailored to achieve a compelling government interest.[28] The Religious Land Use and Institutionalized Persons Act ("RLUIPA") prohibits the government from imposing a substantial burden on the religious exercise of individuals "residing or confined to an institution."[29] In order to overcome this prohibition, the government must show that the imposition of the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling government interest." *Id*.

Despite these legal requirements and internal rules, the Sikh men detained at the El Paso and Otero detention facilities complained that they have been denied religious accommodations. For example, observant Sikhs adhere to a strict vegetarian diet, but Sikh detainees have experienced difficulty in adhering to this dietary requirement due to cross-contamination of food in the dining area. Specifically, several detainees in Otero complained that chunks of meat end up in rice or potatoes in the dining area. Rather than eat food that has been contaminated, they would take two slices of bread instead of just one as their meal. After doing so, they were disciplined and sent to solitary confinement[30]

[27] OIG Memorandum at 5.
[28] 42 U.S.C. § 2000bb(b).
[29] 42 U.S.C. § 2000cc-1(a).
[30] This misuse of solitary confinement falls in line with the discussion on the violations of solitary confinement policies detailed in the OIG Memorandum. It is important to note that the Otero detention facility, where the event we describe occured, is one of the facilities the OIG

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without regard to their complaints that they were unable to eat the non-vegetarian contaminated food based on their religious beliefs. However, 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). ICE's own policy recognizes this requirement. Its Performance-Based National Detention Standards ("PBNDS") clearly provides that "[s]pecial diets shall be provided for detainees whose religious beliefs require adherence to religious dietary laws."[31] Thus, ICE's failure to provide Sikh detainees with food that complies with their religious mandates violates federal law and its own policies.

Additionally, it is our understanding that Sikh detainees are treated differently from other religious groups by ICE when it comes to providing religious accommodations. For instance, several detainees informed us that getting the cloth to wear a turban was difficult or they had to create the turban out of bed sheets or other materials. Yet, the PBNDS provides that turbans - like yarmulke, kufi, hijab, and crown - are considered "generally accepted religious headwear"[32] which should be restricted only "as necessary to maintain the safety, security and the orderly operation of the facility."[33]

Others reported that their Sikh religious articles of faith, such as the *kara* which is a steel bracelet worn on the wrist, were confiscated by ICE officials and not returned. Additionally, and potentially most egregious, some Sikh detainees reported that they were denied the right to congregate in the religion room in El Paso for prayer services, despite ICE policy that "[d]etainees shall have regular opportunities to practice their religious faiths, limited only by a documented threat to safety of persons involved in such activity itself or disruption of order in the facility."[34] The ability to congregate and pray with others of the same faith is a cornerstone of most major religions and is a practice that other faiths, including Catholics and Muslims, are given access to within detention centers.

Following these denials of their religious and other rights, several Sikh detainees went on hunger strike as a means of protest. ICE officers then coerced them into eating by promising appropriate religious accommodations,[35] accommodations ICE was legally

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Memorandum addresses. The OIG Memorandum specifically suggests a review of the use segregation and disciplinary actions. OIG Memorandum at 6-8. Following this recommendation, ICE agreed to advise compliance personnel to integrate assessments in relation to this practice. OIG Memorandum at 9. However, it appears that the Otero facility is still inappropriately using solitary confinement.

[31] Performance-Based National Detention Standards 2011, U.S. Immigration and Customs Enforcement 375 (rev. Dec. 2016) ("PBNDS"), available at https://www.ice.gov/doclib/detention-standards/2011/5-5.pdf.

[32] *Id*. at 383.

[33] *Id*.

[34] *Id*. at 375.

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[35] This type of coercive techniques was also addressed in the April 16, 2014 letter to CRCL in relation to hunger strikers.

required to provide. However, shortly after they began eating again, their access to congregate in the religion room was again denied. They were unable to file a grievance about this issue because they were unaware of the grievance process and lacked Punjabi translated grievance forms to make the ICE Field Office aware of their plight.

Upon listening to our concerns about these reports, the El Paso ICE Field Office indicated that the Sikh detainees could, pursuant to policy, request the religion room in order to congregate and pray together as long as they were not criminally violent. To be clear, none of the Sikh detainees who described this lack of religious accommodations were considered criminally violent. They are, however, without properly translated materials advising them of how to make requests for religious accommodations and are, therefore, unaware of their rights and processes by which they may complain of abuses or make special requests under the PBNDS rules.

Unquestionably, providing the NDH, facility specific rules, and other vital documents to these detainees in Punjabi is something ICE is required to do and has not done to the detriment of these particular detainees. Thus, according to reports we have received in El Paso and Otero, these facilities are in violation of the First Amendment's Free Exercise Clause, RFRA, RLUIPA, and ICE's PBNDS.

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Consequently, we are greatly concerned about the treatment Sikh Punjabi-speaking detainees are suffering while in ICE detention centers, especially in regards to adequate language access, prolonged detention, medical care, and religious accommodations. ICE's failure to abide by its own policy directives as well as federal law and the U.S. Constitution result in what should be an agency-wide investigation as to these matters. We appreciate your assistance and look forward to working with you to address these concerns.

Sincerely,

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Chairman Ron Johnson, U.S. Senate Committee on Homeland Security & Governmental Affairs
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Chairman Bennie Thompson, U.S. House Committee on Homeland Security
Ranking Member, Mike Rogers, U.S. House Committee on Homeland Security
Chairman Jerrold Nadler, U.S. House Committee on the Judiciary
Ranking Member Doug Collins, U.S. House Committee on the Judiciary
Chairman Lindsey Graham, U.S. Senate Committee on the Judiciary
Ranking Member Dianne Feinstein, U.S. Senate Committee on the Judiciary
Assistant Attorney General Eric S. Dreiband, U.S. Department of Justice, Civil Rights Division
Comptroller Gene L. Dodaro, U.S. Government Accountability Office

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