

**Statement to the U.S. Department of Homeland Security
Regarding Detainees at Varick Federal Detention Facility**
February 1, 2010

We, the undersigned community groups, legal service providers, and advocacy organizations, write to express our support for the timely release of detainees currently held at Varick Federal Detention Facility.

No person should remain detained or be transferred to another facility who can be released to their families and community here in the New York/New Jersey area. Continuing to detain these individuals, or transferring them to already overburdened detention facilities in New Jersey and elsewhere, only exacerbates the problems that the federal government and nongovernmental organizations have identified in the detention system.¹ Detention—whether here or in New Jersey or elsewhere—is a deprivation of liberty for our community members that negatively impacts their families and comes at great financial expense to taxpayers.² Moreover, transferring detainees to other facilities where detainees will face similarly unacceptable conditions of confinement, in addition to heightened barriers to access to counsel, family members, and community support, is no solution to the problems at Varick.³

Given the problems at Varick and other facilities, the first question that the federal government should ask is not *where* people are being detained, but *why* people are being detained. People who may be eligible for a timely release from Varick may include:

- People who are eligible for bond but who have not yet been given bond determinations
- People who have been given bond determinations but should be given administrative bond redeterminations (and, where necessary, timely bond redetermination hearings) to reassess high bond amounts⁴ and/or be released on their own recognizance or under reasonable conditions of supervision
- People who have been mislabeled as ineligible for bond due to a misapplication of the mandatory detention statute

¹ Several reports have documented problems at Varick, various New Jersey detention facilities, and detention facilities nationwide. See, e.g., City Bar Justice Center, *NYC Know Your Rights Project: An Innovative Pro Bono Response to the Lack of Counsel for Indigent Immigrant Detainees* (Nov. 2009); Peter Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 *FORDHAM L. REV.* 541 (2009); Dora Schriro, Department of Homeland Security, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* (October 6, 2009); Amnesty International, *Jailed without Justice: Immigration Detention in the USA* (2009); American Civil Liberties Union-New Jersey, *Behind Bars: The Failure of the Department of Homeland Security to Ensure Adequate Treatment of Immigration Detainees* (2007).

² Detention costs the federal government approximately \$1.7 billion a year, costs which have risen exponentially in recent years. See Detention Watch Network, *About The U.S. Detention and Deportation System* (2009). Detaining an individual at Varick or Hudson costs \$253 and \$111 a day respectively—while alternatives to detention cost as little as \$12 a day. See Nina Bernstein, *Immigrants in Detention to Be Sent Out of State*, *NY TIMES* (Jan. 14, 2010) (stating current costs of detention); Amnesty International, *supra* note 1 (describing costs of alternatives to detention). In this time of budget crisis, it is fiscally irresponsible to pay for detention when alternatives are available.

³ The federal government indicates that its decision to close Varick and transfer detainees to Hudson is a response to the lack of outdoor recreation and visitation services at Varick. See ICE Press Release, *ICE to Suspend Use of Varick Facility to House Detainees* (Jan. 14, 2010). However, detainees in Hudson also lack adequate recreation and visitation services, and transfers will only exacerbate detainee's lack of access to family and community support as well as legal counsel. See, e.g., Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* (Dec. 2, 2009); Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers*, OIG 10-13 (Nov. 2009). Asking detainees and their advocates whether they would rather stay in Varick or be transferred to Hudson where both places have significant problems and do not meet detention standards is a false choice.

⁴ According to data obtained by the National Immigrant Justice Center, the New York Field Office has the highest average bond determination amounts in the country—an average of \$9,831 as of Jan. 2009. High bond amounts make it difficult for detainees in the New York area to secure their release. See Markowitz, *supra* note 1.

- People who are eligible for Temporary Protected Status, particularly in light of the new availability of TPS for Haitians and the new memorandum clarifying the eligibility requirements for TPS⁵
- People who are eligible for parole, including but not limited to medical parole
- People who face prolonged detention, including but not limited to people from Haiti and other countries not receiving deportees

The Department of Homeland Security should engage in a case-by-case review of detention decisions for each detainee at Varick prior to making an ultimate determination of whether to continue detaining or transferring him. Several of the service providers among those listed below are willing to assist the Department in this review by providing intake and know your rights sessions at the Varick facility, and assisting individuals in submitting applications for bond, parole, TPS, and other forms of relief. However, the Department should take the initiative of conducting this review and working with us to identify affirmatively people eligible for release.

For those individuals who remain detained, we have serious concerns about their access to counsel, family, and community support. Any plan to detain or transfer these individuals must account for these due process concerns as well as the conditions of confinement at any facility here or elsewhere. We do not want our community members and clients here or in New Jersey or anywhere in the U.S. to bear the burden of the Department's failure to overhaul the detention system. Detention itself is a relatively new, costly, and inappropriate response to other problems within the deportation system that are better addressed by true alternatives to detention aimed at reducing rather than expanding the detention system as a whole.⁶

We are interested in discussing these issues with you so we may take timely action in light of any changes at Varick. No one should remain detained and deprived of their liberty when we can act now to ensure their release.

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⁵ See U.S. Citizenship and Immigration Services, *Temporary Protected Status adjudications involving New York traffic infractions or New York violations* (Jan. 17, 2010) (stating policy that New York infractions and violations no longer be deemed "misdemeanors" for purposes of the two-misdemeanor bar to TPS).

⁶ See Detention Watch Network, *The History of the Immigration Detention System in the U.S.* (2009) (noting that the federal government suspended immigration detention from the 1950s through the 1980s and the system has only rapidly grown in recent years); Amnesty International, *Jailed without Justice: Immigration Detention in the USA* (2009) (advocating for expanded use of alternatives to detention to release individuals who would otherwise be detained and critiquing the misuse of alternatives to place people who would not otherwise be detained under greater supervision); Human Rights First, *U.S. Detention of Asylum Seekers Seeking Protection, Finding Prison* (April 2009) (same).

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