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Gregory J. Archambeault
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Re: **Detention of Maria Solis at Otay Mesa Detention Facility**

Dear Acting Director Homan and Field Office Director Archambeault,

We write to urge you to release Ms. Maria Solis, a pregnant woman and domestic violence survivor currently detained by Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Facility (“Otay Mesa”), operated by CoreCivic (formerly Corrections Corporation of America). We are deeply concerned about Ms. Solis’s health and by troubling reports of her treatment in detention.

Incarceration creates serious health risks for expectant mothers. The emotional and physical pressures inherent to detention produce unnecessary stress and trauma that can cause complications during pregnancy.¹ Among other problems, high levels of pre-natal stress can increase the risk of

¹ Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*. March 17, 2009. <https://www.hrw.org/report/2009/03/17/detained-and-dismissed/womens-struggles-obtain-health-care-united-states>; Yamileth Garcia, *The Guardian*, “Immigration Detention is Inhumane. But for Pregnant Women, it’s Trauma.” July 27, 2015. <https://www.theguardian.com/commentisfree/2015/jul/27/immigration-detention-pregnant-women-conditions>.

stillbirth² and cause brain disorders.³ Because of these concerns, there is a growing consensus that detention of pregnant women should be avoided.⁴

Recognizing these risks, former Secretary of the Department of Homeland Security (“DHS”) Jeh Johnson issued a policy memorandum in 2014 dictating that, absent extraordinary circumstances or the requirement of mandatory detention, DHS will generally not detain pregnant women.⁵ As recently as a year ago, current Acting Director of ICE Homan reiterated and expanded this policy, issuing a directive that when a pregnant detainee is not subject to mandatory detention, as is the case with Ms. Solis, the Field Office Director (“FOD”) “*shall ensure she... is released from detention unless the FOD determines that ‘extraordinary circumstances’ warrant detention.*”⁶ (emphasis added). In July 2017, an ICE spokesperson reportedly confirmed the Homan Memo remains in force.⁷

Nevertheless, in apparent violation of the Homan Memo, on August 31, 2017, Assistant Field Office Director Joseph Greene denied Ms. Solis’s request for release. The two-sentence letter from AFOD Greene does not provide any justification for Ms. Solis’s continued detention, including whether it is the government’s position that she is subject to mandatory detention or that extraordinary circumstances exist. *See* Ex. A, Greene Letter.

The Homan Memo also requires that “[a]t least weekly,” ICE shall “evaluate whether each pregnant detainee’s continued detention is appropriate.” Homan Memo at 8.1. While it is unclear whether this weekly evaluation has been conducted in Ms. Solis’s case thus far, we urge you to review her case and promptly order her release, as there are no extraordinary circumstances to warrant her continued detention while she pursues relief from removal. We also request that you take steps to ensure that the detention and care of all pregnant women in ICE custody accords with detention policies, including at least weekly review of the continued need for their detention.

² Rachael Rettner, *Live Science*, “Stress in Pregnancy Boosts Stillbirth Risk,” March 27, 2013, <https://www.livescience.com/28229-pregnancy-stress-stillbirth.html>.

³ Jašarević et. Al., *Alterations in the Vaginal Microbiome by Maternal Stress Are Associated With Metabolic Reprogramming of the Offspring Gut and Brain*, *ENDOCRINOLOGY*. 2015 SEP;156(9):3265-76 (first trimester stress linked to brain disorders). <https://www.ncbi.nlm.nih.gov/pubmed/26079804>.

⁴ *See, e.g.*, United Nations, *Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders*, A/C.3/65/L.5, 6 October 2010, Rule 64 (“Non-custodial sentences for pregnant women ... shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger”),

<http://www.unhcr.org/refworld/docid/4dcbb0ae2.html>; Asylum Aid, *Detention of Pregnant Women: New Guidance*, August, 2016, <http://www.asylumaid.org.uk/detention-pregnant-women-new-guidance/> (noting new guidance by the United Kingdom’s Home Office that detention of pregnant women be limited to 72 hours, with possible extension to 7 days in “exceptional circumstances” and only with ministerial approval).

⁵ *See* DHS Memo, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, Nov. 20, 2014 (“Johnson Memo”), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

⁶ *See* ICE Memo, *Identification and Monitoring of Pregnant Detainees*, Aug. 15, 2016 (emphasis added) (“Homan Memo”), https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf

⁷ Liz Jones, *KUOW*, “Her Miscarriage in ICE Detention Raises Questions About Care,” July 19, 2017, <http://kuow.org/post/her-miscarriage-ice-detention-raises-questions-about-care>. Nevertheless, ICE reportedly held 292 pregnant women in custody during the first four months of 2017, and detention of women generally rose by 35 percent compared to the same period in 2016.

I. Ms. Solis's Treatment at Otay Mesa Detention Center

We understand that ICE officers arrested Ms. Solis on August 1, 2017, seeking to reinstate an expedited removal order from 2007 that she incurred when she was only 19 years old. Ms. Solis learned that she was pregnant just days prior to her arrest and promptly notified officials of that fact. Currently nine weeks pregnant, Ms. Solis has been in detention for over a month. Her continued detention and separation from her young U.S. citizen children have caused Ms. Solis a great deal of stress resulting in medical concerns that put her health as well as that of her unborn child at severe and unnecessary risk.

Ms. Solis has had a series of difficult pregnancies. Her first daughter swallowed amniotic fluid during her premature birth, had difficulty breathing, and had to be placed in an incubator for a week and a half. During her second pregnancy, Ms. Solis was on doctor-ordered bedrest beginning in her second trimester, and that child was born nearly a month premature, as was her third child. Given these complications, her anxiety about her current pregnancy in detention is certainly understandable.

Ms. Solis has experienced severe cramping while in Otay Mesa, particularly when feeling the stress of detention. Ms. Solis's health concerns are compounded by incidents revealing a lack of adequate care at Otay Mesa. For instance, it is our understanding that, after a recent legal visit, while she was waiting to be transported back to her detention unit she became light-headed and dizzy. Her attorney believes she lost consciousness after the dizzy spell, and Ms. Solis woke up hours later to find herself still abandoned in the locked legal visitation room. We understand she had to pound on the door to get the CoreCivic staff's attention to be released.

We are troubled as well by reports of delayed or inconsistent access to appropriate pre-natal vitamins, fainting episodes, a broken ultrasound machine in the medical facility, close exposure to cleaning chemicals, manual labor, and harsh treatment by facility staff. Ms. Solis has reported that a doctor at the facility told her, "If you have a miscarriage here, it's not our fault, and there's nothing we can do about it."⁸

Ms. Solis's concerns are consistent with assertions made by pregnant women in other immigration detention facilities.⁹ Alarmingly, several women detained by ICE have reported miscarriages while in custody.¹⁰ This is precisely why existing ICE policy requires release of pregnant women absent extraordinary circumstances.

II. Ms. Solis's Continued Detention Violates ICE Policy

Ms. Solis's detention and treatment raise a number of grave concerns regarding compliance with applicable ICE policy. Under the Johnson and Homan Memos, Ms. Solis should not be

⁸ Jean Guerrero, KPBS, "Pregnant Mother Fights For Release From Immigration Detention Facility In Otay Mesa," August 25, 2017, <http://www.kpbs.org/news/2017/aug/25/pregnant-san-diego-mothers-detention-could-reflect/>.

⁹ See, e.g., Yamilith Garcia, *supra* n. 1.

¹⁰ See, e.g., Jones, *supra* n. 3; see also ACLU of Northern California, *Shackle a Pregnant Woman, Risk a Foreseeable Tragedy*, June 18, 2015, <https://www.aclunc.org/blog/shackle-pregnant-woman-risk-foreseeable-tragedy>.

detained unless there are “extraordinary circumstances” or mandatory detention is required. However, Ms. Solis is not subject to mandatory detention. Accordingly, not only is her release authorized, but it is required by the Homan Memo because there are no “extraordinary circumstances” justifying detention, and she cannot plausibly be deemed a flight or safety risk.

A. Because Ms. Solis is Not Subject to Mandatory Detention, ICE Policy Requires Her Release Absent Extraordinary Circumstances.

Ms. Solis is not subject to mandatory detention. Although ICE reinstated Ms. Solis’s 2007 expedited removal order, she has been referred to an immigration judge because she established a reasonable possibility that she would be persecuted if removed to Mexico. 8 C.F.R. § 208.31(d), (e). In this posture, the Ninth Circuit currently dictates that her detention is governed by 8 U.S.C. § 1231(a). *Padilla-Ramirez v. Bible*, 862 F.3d 881, 886 (9th Cir. 2017); *but see Guerra v. Shanahan*, 831 F.3d 59 (2d Cir. 2016) (holding that individuals in Ms. Solis’s posture are eligible for bond hearings because they are detained pursuant to 8 U.S.C. § 1236(a)).

While individuals detained pursuant to Section 1231(a) are not entitled to immediate bond hearings before an immigration judge, it does not follow that they are subject to mandatory detention. In fact, the statute makes clear that they are not, as release from detention is forbidden *only* for individuals who are removable on certain criminal or terrorist grounds, none of which apply to Ms. Solis. 8 U.S.C. § 1231(a)(2) (“Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible... or deportable under” the criminal or terrorist removability provisions of the Immigration and Nationality Act.). By explicitly designating certain categories of people pursuant to Section 1231(a) for whom release is expressly forbidden, it may be presumed that Congress intended that other persons not expressly listed may be released. *See Silvers v. Sony Pictures Entm’t, Inc.*, 402 F.3d 881, 885 (9th Cir.2005) (en banc) (“The doctrine of *expressio unius est exclusio alterius* ‘as applied to statutory interpretation creates a presumption that when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions.’”).

Additionally, DHS regulations explicitly classify “[w]omen who have been medically certified as pregnant” as eligible for parole for “urgent humanitarian reasons” or where parole would provide a “significant public benefit” provided that the individual does not present a security or flight risk. 8 C.F.R. § 212.5(b)(2).

Because ICE is permitted to release people under Section 1231(a) if they don’t fall under the criminal or terrorist carve outs, Ms. Solis should not be subject to mandatory detention. Consequently, the Homan Memo requires her release absent extraordinary circumstances.

B. Ms. Solis’s Case Does Not Involve Extraordinary Circumstances.

There are no extraordinary circumstances to justify the continued detention of Ms. Solis. She is not a flight risk, has no criminal record, and is eligible for at least two forms of relief from removal. Her release is warranted for urgent humanitarian reasons and would provide significant public benefit.

It is implausible to argue that Ms. Solis presents any kind of security or flight risk. Ms. Solis is firmly rooted in the United States, where she has lived for most of her life. She lives with her U.S. citizen daughters and U.S. citizen husband. Her father and seven siblings are also U.S. citizens, and her mother is a Lawful Permanent Resident. Ms. Solis has no criminal record, and, far from posing any kind of safety threat, she has been embraced by her community, as thousands of people have signed an online petition asking for her release.¹¹ She wants nothing more than to come home to her children and to be in a safe environment during the duration of her pregnancy and while she pursues relief from removal, for which she has at least two strong claims.

First, she has already established a reasonable possibility that she would be persecuted if removed to Mexico and has been referred to an immigration judge for consideration of her requests for withholding of removal and/or protection under the United Nations Convention against Torture. *See* 8 C.F.R. § 208.31(d), (e).

Furthermore, both the Oceanside Police Department and a Superior Court judge who issued a restraining order on her behalf have certified that she is a domestic violence survivor who cooperated with police by reporting her ex-husband's domestic violence, which led to his deportation several years ago. As a result, she appears *prima facie* eligible for a U-Visa and has already submitted that application.

Release is also justified under 8 C.F.R. § 212.5(b)(2), which permits parole of pregnant women. There are clear humanitarian reasons supporting Ms. Solis's release from detention, and her release would provide a significant public benefit. Most importantly, Ms. Solis's health is at risk, and her pregnancy is in increasing jeopardy each day that she remains in detention. It is inhumane and anti-therapeutic to force her to endure these risks, and to suffer the concomitant stress and anxiety. As a domestic violence survivor who courageously stood up to her abuser by reporting his crimes, she is precisely the type of non-citizen for whom Congress sought to provide legal status when it created the U visa.¹² Moreover, Ms. Solis's detention is keeping her away from her three young daughters, aged 11, 4 and 2, who have undoubtedly been traumatized by prolonged separation from their mother. There is a strong public interest in avoiding any exacerbation to this trauma that would result from further prolonging Ms. Solis's detention while she pursues legal avenues for relief.

* * *

Assistant Field Office Director Greene's August 31 letter denying release of Ms. Solis makes no reference to "extraordinary circumstances," in apparent violation of the Homan Memo. It is also unclear whether ICE has engaged in "[a]t least weekly" review of whether Ms. Solis's "continued

¹¹ <https://www.change.org/p/u-s-pregnant-mom-detained-by-ice-help-us-reunite-her-with-her-daughters/u/21137521>

¹² As described by a DHS website, "Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes." <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

detention is appropriate.” ICE “is obligated to follow its own policy.” *McDonald v. Gonzales*, 400 F.3d 684, 690 (9th Cir. 2005); *see also Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by certain internal policies is well-established.”) (collecting cases). Therefore, ICE must conduct a weekly review of Ms. Solis’s case to determine if continued detention is warranted by extraordinary circumstances, and if it is not, she must be released.

Because there are no extraordinary circumstances in this case, we urge you to release Ms. Solis under appropriate and reasonable conditions immediately. Should you decline to do so, please provide an account of precisely what extraordinary circumstances apply to Ms. Solis’s case to warrant her continued detention, confirm whether the Homan Memo remains in effect, and if rescinded, when such rescission took place. Because of the urgency of Ms. Solis’s situation, we look forward to your prompt response.

Sincerely,

/s Bardis Vakili
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Exhibit A

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**U.S. Immigration
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Enforcement**

AUG 31 2017

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RE: Request for discretionary release of Maria XXXXXX SOLIS-XXXX, AXXX XXX XXX

Dear Ms. Chavarria:

This letter is in response to your request for discretionary release of your client, Maria XXXXXX SOLIS-XXXX, on an order of supervision pending her application for withholding of removal/convention against torture and her recent U visa application with United States Citizenship and Immigration Services (USCIS). I have reviewed all relevant factors in this case and have determined that release on an order of supervision is not warranted.

Sincerely,

A handwritten signature in black ink that appears to read "Joseph Greene".

Joseph Greene
Assistant Field Office Director
Otay Mesa Detention Center