

United States Senate

WASHINGTON, DC 20510

February 24, 2025

President Donald J. Trump
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Trump:

We write to object to your illegal and unjustified transfers of noncitizens from the United States to the detention center at Naval Station Guantánamo Bay,¹ which follows your directive to the Secretaries of Defense and Homeland Security to prepare the base to hold tens of thousands of noncitizens.² These actions are unprecedented, unlawful, and harmful to American national security, values, and interests.

The United States has *never* sent *anyone* from the United States to be detained at Guantánamo before now.³ More than three decades ago, the base was used temporarily to house sudden influxes of migrants from Haiti and Cuba who were interdicted at sea by the U.S. Coast Guard.⁴ Since then, the Department of State and Department of Homeland Security (DHS) have jointly provided housing and other services for a small number of migrants interdicted at sea at the Migrant Operations Center (MOC). Operations supporting even this limited number of migrants have proven challenging and there have been serious concerns regarding the living conditions of the MOC and insufficient access to basic legal rights and services.⁵

There is no basis in U.S. immigration law for transferring noncitizens arrested inside the United States to a location *outside* of the United States for detention prior to or for the purposes of conducting removal proceedings. Noncitizens inside the United States are entitled to numerous protections under U.S. immigration law and the U.S. Constitution.⁶ For example, removal processes under our immigration laws afford noncitizens due process and an opportunity to seek

¹ Hamed Aleaziz, Eric Schmitt, Carol Rosenberg, *U.S. Is Holding Migrants in Cells That Once Held Al Qaeda Suspects*, N.Y. Times (Feb. 5, 2025), <https://www.nytimes.com/2025/02/05/us/politics/migrants-trump-Guantánamo-prison.html>.

² Memorandum from President Donald J. Trump to Sec'y of Def. and Sec'y of Homeland Sec., *Expanding Migrant Operations Center at Naval Station Guantánamo Bay to Full Capacity*, (Jan. 29, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/expanding-migrant-operations-center-at-naval-station-Guantánamo-bay-to-full-capacity/>.

³ Steve Vladeck, *Bonus 120: Trump's Guantánamo Memo*, One First (Jan. 30, 2025), <https://www.stevvladeck.com/p/bonus-120-trumps-guantanamo-memo>.

⁴ Ben Fox, *'Frankly Insane': Trump's Plan to Ship Migrants to Guantanamo Could Quickly Collapse*, Politico Magazine (Feb. 5, 2025 12:00 PM), <https://www.politico.com/news/magazine/2025/02/05/frankly-insane-trumps-plan-to-ship-migrants-to-guantanamo-could-quickly-collapse-00202374>.

⁵ International Refugee Assistance Project, *Offshoring Human Rights: Detention of Refugees at Guantánamo Bay* (Sep. 2024), <https://refugeerights.org/news-resources/offshoring-human-rights-detention-of-refugees-at-guantanamo-bay>; National Immigrant Justice Center, *Pushing Back Protection* (Aug. 2021), https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2021-08/Offshoring-Asylum-Report_final.pdf; Harold Koh, *The Human Face of the Haitian Interdiction Program*, 33 Va. J. Int'l L. 483 (1993)

protection from removal to a place where they could face persecution or torture.⁷ These rights cannot be extinguished by transfer to a location outside the United States. Simply put, if the processes for obtaining a lawful removal order have not been followed, the forcible removal of a noncitizen to Guantánamo violates U.S. immigration law.

Moreover, U.S. immigration law does not provide authority to detain noncitizens *after* their removal from the United States following a final order of removal.⁸ Immigration custody authority is based on immigration enforcement powers to seek and execute a removal order. Once an individual with a removal order departs the United States and arrives in a location outside the United States, the removal order has been executed. After that point, there is no basis under immigration law to retain custody of the individual. In addition, individuals in civil immigration detention have a right to access counsel under ICE detention standards,⁹ and immigration laws governing removal proceedings.¹⁰ Impeding access to counsel for detained noncitizens also may violate the Constitution in some circumstances.¹¹ In addition, individuals in immigration detention may have appeal or other review rights¹² and cannot be held indefinitely,¹³ and the only effective means by which a detained individual could assert these rights would be through access to counsel.

Based on information provided to the Judiciary Committee and in court filings, we are concerned that your Administration did not consider these serious legal concerns or have any plan to address them prior to transferring noncitizens from the United States to Guantánamo. In response to the Judiciary Committee's inquiry regarding how noncitizens will access counsel once on the base, DHS stated, "Removable aliens housed will be those with final orders pending removal." This suggests that noncitizens with final orders of removal do not need access to counsel, which is inaccurate. After individuals and legal organizations filed suit seeking access to the noncitizens, the Department of Justice filed a brief arguing that these noncitizens' constitutional rights were not violated, because, though they did not have a right to meet with attorneys in person under the circumstances, other means of communicating with counsel, such as by

⁶ Jonathan Hafetz and Rebecca Ingber, *What Just Happened: At Guantanamo's Migrant Operation Center*, Just Security (Feb. 6, 2025), <https://www.justsecurity.org/107405/what-just-happened-Guantanamo/>; Steve Vladeck, *Bonus 120: Trump's Guantánamo Memo*, One First (Jan. 30, 2025), <https://www.stevevladeck.com/p/bonus-120-trumps-guantanamo-memo>.

⁷ *See, e.g.*, 8 U.S.C. §1225(b); 8 U.S.C. §1231(b)(3); 8 U.S.C. §1158.

⁸ *See* 8 U.S.C. §1226(a) (giving the Attorney General the authority to arrest and detain "pending a decision on whether the alien is to be removed from the United States.")

⁹ *See* U.S. Immigration and Customs Enforcement, Fiscal Year 2023 Report to Congress (Feb. 20, 2024), https://www.dhs.gov/sites/default/files/2024-04/2024_0220_ice_access_to_due_process.pdf ("While detained in ICE custody, all noncitizens have access to counsel and legal resources, irrespective of where the detention facility is located.")

¹⁰ *See* 8 U.S.C. 1229a(b)(4)(A); 8 U.S.C. 1362; 8 C.F.R. 1103.16(b); 8 C.F.R. 1240.3; *see also Las Americas Ad. Ctr v. Wolf*, 507 F. Supp. 3d 1, 11 (DDC 2020).

¹¹ *See e.g., Torres v. United States Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036 (C.D. Cal. 2019); *Americans for Immigrant Justice v. DHS*, No. 22-cv-3118, 2023 WL 1438376 at *12, 21 (DDC Feb. 1, 2023), and *SPLC v. DHS*, No. 19-760, 2020 WL 3265533 at *18-19 (DDC Jun. 17, 2020) (limitations on access to counsel in ICE civil detention may constitute constitutional violations if conditions of confinement are equal to or worse than conditions experienced by individuals in criminal confinement).

¹² *See e.g.*, 8 USC §§1252(a)(5), 1225(b)(1)(B)(iii)(III), 1225(b)(1)(C); 8 CFR §§ 1240.15, 1240.53(a).

¹³ *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

telephone, were available.¹⁴ Yet just the day before, when the Judiciary Committee requested details regarding how noncitizens being held at Guantánamo could contact counsel when granted access to a phone, DHS did not know what, if any, procedures were in place to notify them of their rights or provide them with contact information for legal services. Your Administration's actions and these responses raise serious legal concerns and call into question what effort, if any, was put into ensuring that the transfer of noncitizens complied with applicable laws and regulations.

While such clarification should be unnecessary, we must also emphasize that there is no colorable argument that noncitizens, including those convicted, accused, or suspected of crimes or criminal associations, can be held in law of war detention or in Department of Defense custody, whether at Guantánamo or anywhere else.¹⁵ The law of war detention facility at Guantánamo has been used to hold alleged members of al Qaeda and "associated forces" in connection with the armed conflict between the United States and these groups following the 9/11 attacks. While these detention operations have been the subject of significant controversy and criticism, these detainees have all been captured abroad and detained pursuant to the 2001 Authorization for Use of Military Force and Section 1021 of the FY 2012 National Defense Authorization Act.¹⁶

While no noncitizen should be sent from the United States to Guantánamo, it also appears that your Administration's claims that it was sending "worst of the worst" there are misleading.¹⁷ Public reporting indicates that noncitizens who DHS deemed low risk were sent to Guantánamo.¹⁸ In response to inquiries from Judiciary Committee staff, your Administration has even left open the possibility that families, including children, will be detained at Guantánamo, stating that future decisions regarding detention would be made on a "case-by-case basis."

Your efforts to house or detain noncitizens forcibly removed from the United States at the MOC and the Camp 6 law of war detention facilities at Guantánamo are cruel, unlawful, and unprecedented. Such hasty and unlawful actions will cause harms to the United States for years to come. As those familiar with the long history of operations at Guantánamo can tell you, detaining individuals there is not a quick fix.¹⁹ Congress has not appropriated funds for such purposes for good reason. Given the isolated location of the base, its controversial history, and

¹⁴ Respondents' Opp'n to Mot. for Temporary Restraining Order, *Las Americas Immigrant Advocacy Center v. Noem*, No. 25-0418 (D.D.C. Feb. 20, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.277395/gov.uscourts.dcd.277395.14.0.pdf>.

¹⁵ Jonathan Hafetz and Rebecca Ingber, *What Just Happened: At Guantánamo's Migrant Operation Center*, Just Security (Feb. 6, 2025), <https://www.justsecurity.org/107405/what-just-happened-Guantánamo>.

¹⁶ Jennifer K. Elsea, Michael John Garcia, *Wartime Detention Provisions in Recent Defense Authorization Legislation*, Congressional Research Service (Mar. 14, 2016), Doc. No. 7-5700, <https://sgp.fas.org/crs/natsec/R42143.pdf>.

¹⁷ Silvia Foster-Frau, Ana Vanessa Herrero and María Luisa Paúl, *Relatives and records cast doubt on Guantánamo migrants being 'worst of the worst.'* Washington Post (Feb. 16, 2025), <https://www.washingtonpost.com/immigration/2025/02/16/trump-guantanamo-migrants-deportations-venezuela/>.

¹⁸ Camilo Montoya-Galvez, *U.S. sending nonviolent, "low-risk" migrants to Guantánamo, despite vow to detain "the worst" there*, CBS News (Feb. 12, 2025), <https://www.cbsnews.com/news/guantanamo-bay-migrants-trump/>.

¹⁹ Ben Fox, *'Frankly Insane': Trump's Plan to Ship Migrants to Guantánamo Could Quickly Collapse*, Politico Magazine (Feb. 5, 2025 12:00 PM), <https://www.politico.com/news/magazine/2025/02/05/frankly-insane-trumps-plan-to-ship-migrants-to-Guantánamo-could-quickly-collapse-00202374>.

the lack of legal authority to detain noncitizens there, continuing down this path will invite more litigation, drain resources, place undue strain on our servicemembers, diminish military readiness, undermine support from our allies, and harm our standing in the world.²⁰

We urge you to heed these lessons, follow the law, refrain from any further expansion of facilities, and cease transferring noncitizens to Guantánamo. To inform our oversight of this situation, please answer the following questions by March 10, 2025:

1. What is your Administration's claimed legal authority for transporting noncitizens from the United States to the Naval Station at Guantánamo Bay? Relatedly, what is your claimed legal basis for detaining noncitizens there, whether at the MOC, JTF-GTMO, or other facilities?
2. What are your Administration's criteria for determining which noncitizens would be sent to Guantánamo?
3. Will you definitively state that families and children will not be sent to Guantánamo?
4. For what crimes, if any, were the individuals previously sent to Guantánamo convicted? Were individuals provided with representation in their criminal proceedings?
5. To what legal processes and rights does your Administration consider individuals sent to Guantánamo to be entitled, including relative to individuals in immigration detention inside the United States and individuals currently housed at the MOC?
6. How will your Administration ensure that these rights, such as access to counsel and administrative and judicial review, are upheld given the restricted access to Naval Station Guantánamo Bay?
7. How many ICE personnel are stationed at the MOC? How many are stationed at Camp 6?
8. What are the projected costs of expanding the MOC and any other operations or actions associated with the transfer of noncitizens to or from Naval Station Guantánamo Bay? How much have the actions already taken cost U.S. taxpayers and how does that compare to the cost of detaining immigrants inside the U.S.? What is the source of funding for these efforts?
9. What impact will these operations and expenditures have on military readiness and availability of funds for immigration detention and enforcement inside the United States?
10. How does your Administration plan to ensure the facilities meet required standards of care for housing, food, medical care, security, sanitation, education, employment, and the like for both detained noncitizens and U.S. military personnel at the base, given the

²⁰ *Id.*

already deteriorated state of facilities at the base? What contingency plans do you have in place for weather conditions or other emergency situations?

11. How does your Administration plan to ensure that Congress and the American people, including the press and civil society, have access to information regarding these operations, including who is, was, or will be detained there and under what conditions and authorities?
12. What is your long-term objective and strategy for these detentions, including your plan for individuals for whom repatriation or resettlement may not be feasible?
13. Reporting indicates that in one case, you have brought a noncitizen you had transferred to Guantánamo back to the United States. Is this true? If so, why, and under what authorities?

We look forward to your prompt response.

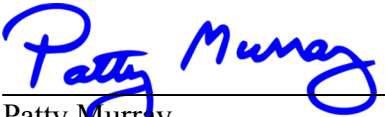
Sincerely,



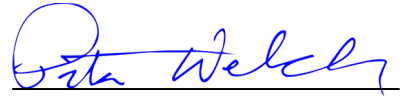
Richard J. Durbin
United States Senator
Ranking Member, Senate
Committee on the Judiciary



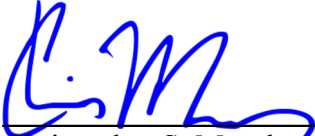
Alex Padilla
Ranking Member, Judiciary
Subcommittee on Border
Security and Immigration



Patty Murray
Vice Chair
Committee on Appropriations



Peter Welch
Ranking Member,
Subcommittee on the
Constitution
U.S. Senate Committee on
the Judiciary



Christopher S. Murphy
United States Senator

cc: The Honorable Charles E. Grassley
Chairman, Senate Committee on the Judiciary

The Honorable Pam Bondi, Attorney General
The Honorable Kristi Noem, Secretary of Homeland Security
The Honorable Pete Hegseth, Secretary of Defense