

Overcoming the Barriers Faced by Immigrants

**Briefing Report
September 2010**

The United States Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957, reconstituted in 1983, and reauthorized in 1994. It is directed to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; submit reports, findings, and recommendations to the President and Congress; and issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

State Advisory Committee Reports

The State Advisory Committee reports to the Commission are wholly independent, and are reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. SAC reports are not subject to Commission approval, fact-checking or policy changes.

This report is the work of the New Jersey State Advisory Committee to the U.S. Commission on Civil Rights. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

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**Overcoming the Barriers
Faced by Immigrants:
A Briefing Report by the
New Jersey State
Advisory Committee to
the United States
Commission on Civil
Rights**

Letter of Transmittal

New Jersey State Advisory Committee to
the United States Commission on Civil Rights

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The New Jersey State Advisory Committee submits this report, *Overcoming the Barriers Faced by Immigrants: A Briefing Report by the New Jersey State Advisory Committee to the United States Commission on Civil Rights*, in furtherance of its responsibility to advise the Commission on civil rights issues in New Jersey.

This report was adopted by a vote of 15 to 1, with two members abstaining. The dissenting member—Brian M. Gaffney—was given an opportunity to prepare a dissenting statement. No statement was submitted.

On May 8, 2009, the Committee invited government officials, scholars, advocates, and members of the public to make presentations at a public briefing to address the most pressing civil rights issues affecting immigrants in New Jersey. The briefing explored a wide range of issues including what role, if any, state and local governments should have in enforcing immigration law, the critical employment and housing barriers facing immigrants in New Jersey, and the particular challenges faced by asylum seekers and other immigrants subject to detention.

The Committee heard from a diverse group of stakeholders and experts from around the State and gained valuable insight into each of these issues affecting immigrants in New Jersey. For example, the Committee learned that many believe that local enforcement of federal immigration law is counterproductive. Advocates and community representatives expressed concern that local participation in federal immigration enforcement efforts discourages immigrants from reporting crimes out of fear they will jeopardize their own immigration status. Indeed, many law enforcement officers believe that such participation detracts from their ability to carry out public safety functions.

The Committee also learned that many vulnerable immigrants in New Jersey commonly face labor and workplace safety violations. Too many unscrupulous employers deny immigrants fair wages, safe working conditions, and other basic rights, and such abuses often occur with impunity because of underenforcement of labor and workplace safety law or because workers are

too afraid to come forward or do not know their rights. Most experts, advocates and laborers believe that better enforcement of existing labor and workplace safety laws would substantially remedy this problem, as would greater efforts to educate immigrant workers regarding their rights.

The Committee also heard from several panelists and members of the public who urged the Committee to endorse legislative measures that would permit undocumented children to obtain legal status after obtaining a college degree as well as efforts to make those students eligible for in-state tuition. Finally, the Committee heard about the difficult and sometimes deadly conditions faced by immigrants, including asylum seekers, detained at the Elizabeth Detention Center and county jails in New Jersey.

The Committee recognizes that many of the challenges faced by immigrants in New Jersey and across the country may be addressed, or the landscape changed, if and when Congress enacts comprehensive immigration reform that could allow the millions of individuals currently living in the United States without lawful status to come out of the shadows where they are often exploited, abused, or unable to fully utilize their skills and talent. Putting the need for comprehensive immigration reform aside, however, the Committee believes that federal, state and local authorities in New Jersey and elsewhere can and should take a number of steps that would serve to better guarantee basic civil rights to immigrants. The Committee thus offers the enclosed report with recommendations which identify several areas upon which federal, state and local governments should focus their attention in order to protect and promote the civil rights of their foreign-born residents.

Through this report, which focuses upon conditions in New Jersey, the Committee endeavors to promote greater understanding of the challenges faced by immigrants both here and throughout the country with respect to essential civil rights, in particular housing and employment. By engendering a public discussion of these issues and making specific policy recommendations, the Committee seeks to protect and promote the civil rights of one of the largest and most diverse populations living and working within New Jersey, and to encourage a nationwide dialogue on these issues.

Sincerely,

Leanna Y. Brown, Chair, New Jersey State Advisory Committee*

*Leanna Y. Brown was chair of the NJ State Advisory Committee (NJ SAC) at the time that this report was adopted by the SAC. William J. Stephney is the current chair of the NJ SAC.

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Acknowledgments

The New Jersey Advisory Committee thanks all of the participants in the May 8, 2009 hearing for sharing their expertise and, in some cases, deeply personal stories, on this most important issue. The Committee extends a special appreciation to Jenny-Brooke Condon, Esq. for her hard work and invaluable assistance in preparing this report. The Committee greatly appreciates the leadership of Lawrence S. Lustberg, the Subcommittee Chair, and Richard F. Collier, Jr., the Subcommittee Vice Chair, as well as the many contributions of our fellow Immigration Subcommittee members who helped set the agenda, identify and interview the participants, and produce this report. Lastly, the Committee thanks the staff of the Eastern Regional Office of the U.S. Commission on Civil Rights—Ivy L. Davis, Director and Barbara Delaviez, Deputy Director for the administrative support that they provide to the 14 state advisory committees assigned to the Eastern Regional Office.

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Introduction

Federal Immigration Context

Article I, Section 8 of the United States Constitution confers on Congress the power to “establish a uniform Rule of Naturalization.” As a result, whether a foreign-born individual is permitted to enter or stay in the United States is a question of federal law, over which the political branches of government possess plenary authority. Congress, through the Immigration and Naturalization Act (INA), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),¹ which amended the INA, comprehensively addressed which individuals may lawfully enter the United States and which persons are unlawfully present and may be removed by the federal government. The Department of Homeland Security (“DHS”) is the federal agency with primary authority for granting immigration benefits and enforcing immigration laws through its composite agencies, the U.S. Citizenship and Immigration Service (“USCIS”) and Immigration and Customs Enforcement (“ICE”). DHS took over the functions and responsibilities of the former Immigration and Naturalization Service in March 2003.

The U.S. Commission on Civil Rights has previously addressed concerns about civil rights issues flowing from United States immigration laws and policies, and in particular with respect to IIRIRA, which, the Commission has noted, has engendered repeated calls for legislative reform.² Although immigrants’ rights groups and public officials have consistently advocated for comprehensive immigration reform in the years since 1996, when IIRIRA was enacted, Congress has consistently failed to pass such measures. President Obama has stated that he is committed to passing comprehensive immigration reform in his first term as President, which will focus on “clarify[ing] the status of millions who are here illegally.”³

One particular change that occurred as a result of IIRIRA and which remains a source of controversy in New Jersey is section 287(g) of the INA, which authorizes the Secretary of DHS to contract with state and local law enforcement agencies to assist in the enforcement of immigration laws. This program has been a contentious issue in a number of New Jersey municipalities, most notably Morristown, where the former Mayor long advocated entering into a 287(g) agreement with the federal government and finalized such an agreement on his last day in office in December 2009.⁴ In addition, in the Fall of 2009, DHS announced plans to expand 287(g), noting that twelve additional jurisdictions reached agreements with the Department and were awaiting local approval.⁵ Approval of these agreements would bring the total number of localities participating in the program to over 70.⁶

¹ Pub. L. 104-208, Div. C, 110 Stat. 3009-546 (1996).

² U.S. Commission on Civil Rights, *Crossing Borders: The Administration of Justice and Civil Rights Protections in the Immigration and Asylum Context, Project Summary* (2003), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12b642.pdf>.

³ Roger Runnigen, *Obama Committed to Overhauling U.S. Immigration Laws*, Bloomberg, June 19, 2009, available at <http://www.bloomberg.com/apps/news?pid=20601103&sid=avxmcRABpSIw>.

⁴ Jamie Duffy, *New Jersey’s Latino Leadership Asks Obama to Rescind Morristown’s 287(g) Status*, Star-Ledger, Jul. 20, 2009, available at http://www.nj.com/morristown/jamieduffy/index.ssf/2009/07/new_jerseys_latino_leadership.html; Tanya Drobness, *Outgoing Mayor Enrolls Morristown into Immigration Program to Deputize Officers*, Star-Ledger, Dec. 30, 2009, available at http://www.nj.com/news/index.ssf/2009/12/outgoing_mayor_enrolls_morrist.html.

⁵ See Press Release, Dept. of Homeland Security, ICE Announces Standardized 287(g) Agreements with 67 State and Local Law Enforcement Partners (Oct. 16, 2009), available at

Nonetheless, even if Congress does not enact comprehensive immigration reform, particular immigration law proposals may be considered and adopted by Congress. For example, the Development, Relief and Education for Alien Minors Act (“DREAM Act”),⁷ which is pending before Congress, would provide qualified immigrant students the chance to obtain permanent residency status if they earn a college degree or serve in the military. As introduced, the law would apply to foreign-born students who entered the United States as children, graduate from U.S. high schools, possess good moral character, and have been continuously present in the United States for at least five years.⁸

Whether or not the federal government ultimately enacts comprehensive immigration reform that allows the millions of individuals currently living in the United States without lawful status a path to normalize their immigration status, all immigrants living within the United States and in New Jersey are protected by certain laws, including those governing fair labor standards, workplace safety, and access to fair housing free of discriminatory treatment. This report focuses on those critical areas.

Immigration in New Jersey

Illegal employment practices and the denial of fair housing are civil rights issues with particular salience for New Jersey’s large and diverse immigrant community. With the sixth largest population of immigrants in the nation, the 1.75 million foreign-born individuals residing in New Jersey account for 20.1 percent of the State’s total population.⁹ Only two other states, California and New York, have a larger proportion of immigrant residents.¹⁰

While international migration to New Jersey is no longer on the rise, the number of residents of Latino or Hispanic origin is expected to increase by 27.9 percent from 2006 to 2016, as compared with a 0.3 percent increase expected for the non-Hispanic population.¹¹ The Department of Labor and Workforce Development estimates that 94 percent of New Jersey’s population growth between 2006-2016 will be attributable to Hispanics, while the non-Hispanic white population is expected to decline.¹²

<http://www.ice.gov/pi/nr/0910/091016washingtondc.htm>; *see also* Muzaffar Chisti & Claire Bergeron, Migration Policy Institute, *New and Revised ICE Agreements Met with Criticism*, Aug 18, 2009, http://axisoflogic.com/artman/publish/Article_56673.shtml.

⁶ Press Release, Dept. of Homeland Security, *supra* note 5.

⁷ S. 729, 111th Cong. § 1545 (2009).

⁸ *Id.*

⁹ Report to Governor Jon S. Corzine, The Governor’s Blue Ribbon Advisory Panel on Immigrant Policy 27-39 (2009), *available at* http://www.nj.gov/publicadvocate/home/immigrant_panel.html [hereinafter *Governor’s Report*].

¹⁰ *Id.* at 27.

¹¹ Div. of Lab. Mkt. & Demographic Research, N.J. Dep’t. of Lab. & Workforce Dev., *Projections 2016: New Jersey Employment and Population in the 21st Century* 8 (2008), *available at* http://lwd.state.nj.us/labor/lpa/dmograph/lfproj/proj_%202016.pdf.

¹² Sen-Yuan Wu, N.J. Dep’t. of Lab. & Workforce Dev., *Population and Labor Force Projections for New Jersey: 2006-2025* 10, 13 (2008), http://lwd.state.nj.us/labor/lpa/dmograph/lfproj/plfproj_nj.pdf.

As compared to the rest of the nation, New Jersey's immigrant population is particularly diverse.¹³ Although nearly half of New Jersey's immigrants are Latino,¹⁴ the State's foreign-born residents originate from nearly 100 different countries and speak more than 165 languages.¹⁵ New Jersey's immigrant population is similarly diverse with respect to immigration status, education level, and socio-economic status. More than half of New Jersey's foreign-born residents are U.S. citizens,¹⁶ and many are entrepreneurs and innovative leaders in business and industry.¹⁷ On the other hand, approximately a half million undocumented immigrants live in New Jersey, often engaged in poorly paid, temporary labor.¹⁸

The rich diversity that characterizes New Jersey's immigrant population means that obstacles to employment and housing do not affect all foreign-born residents uniformly. This report, therefore, does not attempt to address all of the housing and employment issues affecting New Jersey's varied immigrant communities; instead, it aims to highlight several issues which currently affect the civil rights of large numbers of New Jersey's foreign-born residents.

Chapter One: Background on Labor and Workforce Issues Affecting Immigrants in New Jersey

Foreign-born residents make significant contributions to the State's workforce and economy.¹⁹ Nearly 70 percent of all immigrants in New Jersey participate in the State's labor force, a number that is several percentage points higher than that of the native-born population.²⁰ Immigrants dominate the workforce in critical occupations at both ends of the earnings spectrum. For example, immigrants account for more than 40 percent of the State's chemists and physicians, but also more than 40 percent of its housekeepers and maintenance workers.²¹ Because earnings from immigrants account for almost one quarter of all income statewide, the labor of foreign-born residents is an essential component of the State's tax base, and research suggests that immigrants have a positive impact upon the State's fiscal health and are "integral to New Jersey's thriving Economy."²²

The extent to which the benefits of working in New Jersey redound to immigrants, however, varies greatly depending upon whether immigrants are lawfully permitted to reside and work in

¹³ Ira N. Gang & Anne Morrison Piehl, Eagleton Inst. of Pol., *Destination, New Jersey: How Immigrants Benefit the State Economy* 7 (2008) (noting New Jersey "draws a more diverse immigrant population than the U.S."), available at <http://www.eagleton.rutgers.edu/programs/immigration/documents/NJImmigrationReport.pdf> [hereinafter *Eagleton Report*].

¹⁴ U.S. Census Bureau, American Fact Finder (2005-2007 American Community Survey), <http://factfinder.census.gov>.

¹⁵ *Eagleton Report*, *supra* note 13, at 3.

¹⁶ *Id.*

¹⁷ *Governor's Report*, *supra* note 9, at 28 (noting that "New Jersey is the third leading state in prevalence of immigrant-founded, venture-backed firms, totaling six percent of all companies").

¹⁸ Elizabeth Llorente, *Working in Fear; Crackdown Shakes North Jersey Illegals*, *Employers*, Record, Jan. 31, 2007, at A1.

¹⁹ *Governor's Report*, *supra* note 9, at 27-39.

²⁰ *Id.* at 27.

²¹ *Eagleton Report*, *supra* note 9, at 3.

²² *Id.*

the United States or whether they are undocumented. New Jersey attracts a great number of highly skilled immigrants who are able to obtain work visas for well-paid and coveted positions in academia, as well as in the pharmaceutical, technology, and medical fields.²³ On the other hand, New Jersey's half million undocumented workers often work in "poor working conditions [with] low pay and benefits and limited health and safety regulations."²⁴

In recent years, federal immigration authorities, with the help of local governments, have launched an aggressive enforcement campaign aimed at undocumented immigrants and their employers, including charging some workers and employers with criminal offenses.²⁵ Indeed, "[w]orksit enforcement arrests by ICE have increased dramatically in the past few years" with the number of persons detained through such raids more than doubling between 2005 and 2006.²⁶ As noted by the Government Accountability Office ("GAO"), those conducting such enforcement operations often disregard the constitutional and civil rights of workers.²⁷ Thus, for example, workers targeted in such raids report being denied the right to contact lawyers, the ability to communicate with their families, and the opportunity to make arrangements for young children left without their parents.

Although undocumented immigrants are protected by wage and hour laws in New Jersey²⁸ as well as by federal labor and workplace safety laws,²⁹ this group of immigrants is particularly vulnerable to exploitation. The State's Department of Labor and Workforce Development, Division of Wage and Hour Compliance, enforces New Jersey's labor laws, investigating complaints of underpayment and late payment of wages, workplace conditions, and worker misclassifications.³⁰ The Division "does not investigate or inquire into" the immigration status of workers, "applies New Jersey's labor laws without regard to a worker's legal status," and "does not share information with Immigration."³¹ Nevertheless, immigrants reportedly fear that contacting the Division or pursuing their rights through enforcement of wage and hour laws will result in the exposure of their immigration status, resulting in severe consequences for them and their families. Unscrupulous employers take advantage of this fear, calculating that they can pay undocumented workers less than they are owed, or nothing at all, without suffering the consequences. The Division considers threats by employers, to report undocumented workers to ICE, to be a form of retaliation.³²

Day laborers, who are overwhelmingly immigrants, are particularly susceptible to employment abuses in New Jersey. As the *Report of the Governor's Blue Ribbon Advisory Panel on*

²³ *Id.* at 8. In fact, New Jersey ranks third in the nation in its number of immigrant-founded, venture-backed firms and is home to 37.6 percent of all companies founded by immigrants in the United States, including 7.3 percent of all immigrant-founded engineering or technology companies. *Governor's Report*, *supra* note 9, at 28.

²⁴ *Id.* at 10.

²⁵ Llorente, *supra* note 18 ("In 1999, only 24 work-site arrests resulted in criminal charges. But in 2006, more than 700 arrests carried criminal charges.").

²⁶ *Governor's Report*, *supra* note 9, at 73.

²⁷ *Id.*

²⁸ N.J.S.A. 34:11-56a *et seq.*

²⁹ 29 U.S.C.A. § 201 *et seq.* (Fair Labor Standards Act).

³⁰ *Governor's Report*, *supra* note 9, at 30.

³¹ N.J. Dep't. of Labor & Workforce Dev., Wage & Hour Compliance FAQs, http://lwd.state.nj.us/labor/wagehour/content/wage_and_hour_compliance_faqs.html#q12.

³² *Governor's Report*, *supra* note 9, at 33.

Immigrant Policy concluded in 2009, “[t]here are few in our society as economically and otherwise vulnerable as recent immigrants to this country who toil as laborers, seek work on a day-to-day basis and have limited English proficiency.”³³ Most day laborers seek work on an *ad hoc* basis, gathering on street corners, in parking lots, or other public locations where interested employers solicit their work. Day laborers, who primarily perform physical work as gardeners, landscapers, painters, roofers, or drywall installers,³⁴ regularly suffer workplace safety and employment abuse, including wage theft, denial of food, water and breaks while working, workplace injuries, and harassment by merchants and police when they gather to seek work.³⁵

This temporary labor market is largely unregulated and is a flashpoint for local tensions. Some residents in New Jersey have alleged that day laborers constitute a public nuisance and take service jobs away from U.S. citizens, a sentiment that has led to a backlash against day laborers in several municipalities. For example, Freehold Borough passed an anti-loitering ordinance motivated by the desire to stop day laborers from seeking employment in public spaces.³⁶ The ordinance provoked a lawsuit which ended with the municipality paying as much as \$278,000 to settle the matter.³⁷ In addition, in 2007, the then-Mayor of Morristown proposed a controversial plan to take part in the federal 287(g) program, whereby local Morristown police officers would be deputized to enforce federal immigration policy with the goal of “breaking up the overcrowded houses where many day laborers live and [] stop[ping] many contractors who hire them from coming to Morristown.”³⁸ The proposal, which provoked both protests and support within Morristown, set off a local debate that mirrored similar clashes taking place in other states over whether immigration should be addressed as a local police matter, given the consequences for immigrant communities and the municipality at large.³⁹

Attempting to address the marginalization of immigrants, advocates and local leaders have proposed the creation of worker centers where “immigrant laborers and others [can] seek gainful employment . . . enabl[ing] the temporary labor market to function in a more equitable and effective way, and serve an important role in integrating immigrants into the life of a community.”⁴⁰ For example, the City of Passaic launched the first day laborer center in New Jersey at the beginning of 2007.⁴¹ A year after this center opened, however, the Passaic police reportedly were still “cracking down on laborers who solicited work anywhere but at [the] city-sanctioned hiring center.”⁴² Those developments suggest that hiring halls are not necessarily an

³³ *Id.* at 68.

³⁴ Abel Valenzuela Jr., et al., Los Angeles Ctr. for the Study of Urban Poverty, *On the Corner: Day Labor in the United States I* (2006), available at http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf.

³⁵ *Id.*

³⁶ Michele Wucker, *A Safe Haven in New Haven*, N.Y. Times, Apr. 15, 2007, at 14LI.

³⁷ *Id.*

³⁸ Kareem Fahim, *Should Immigration Be a Police Issue?* N.Y. Times, Apr. 29, 2007, at 14LI.

³⁹ *Id.* (describing experiences with local enforcement of immigration law in New York, Connecticut, and Florida and the various perspectives within those affected communities).

⁴⁰ *Governor’s Report*, *supra* note 9, at 69 (quoting LaQuanda Brown & Kaitlyn Muller, *Local Labor Worker Centers* (paper presented at Immigrant Policy Symposium of Student Research, Rutgers University, Camden, N.J. (Dec. 9, 2008)).

⁴¹ John Holl, *Passaic Opens Center for Day Laborers*, N.Y. Times, Jan. 7, 2007, at 14NJ.

⁴² Paul Cox, *Passaic Cops Crack Down on Day Laborers*, Associated Press, Dec. 31, 2008.

easy or complete fix for addressing the needs of day laborers and the concerns of community members.

Moreover, day laborers are not the only vulnerable temporary workers in New Jersey. Southern New Jersey is also home to a significant number of migrant farm workers. An estimated 15,000 to 18,000 migrant farms workers contribute seasonal labor to the State's 9,924 farms.⁴³ The State heavily regulates farm labor through the New Jersey State Seasonal Farm Labor Act, Crew Leader Registration Act and Drinking Water and Toilet Facilities Act and regulations.⁴⁴ Nevertheless, immigrants working in the agricultural sector in New Jersey often suffer unpaid wages, the denial of minimum wage protections, and violations of farm labor housing requirements.⁴⁵

While the critical employment and labor issues described above most frequently affect undocumented workers, foreign-born residents who are legally working in New Jersey still encounter wage and hour abuses, employment discrimination and other barriers to gainful employment. For example, the *Report of the Governor's Blue Ribbon Advisory Panel on Immigrant Policy* notes that a federal pilot program known as E-Verify, operated by DHS in conjunction with the Social Security Administration (SSA), has resulted in increased "discrimination and profiling against legal workers and naturalized citizens."⁴⁶ According to the report, that program, which allows employers to electronically verify an individual's eligibility for employment, has been plagued by inaccurate data, with sometimes devastating effects on the ability of otherwise eligible foreign-born citizens to work.

In addition, as a 2006 study by the Government Accountability Office has demonstrated, employers frequently violate the rights of immigrant workers by purposefully misclassifying them as independent contractors in an attempt to avoid state and federal taxes, wage and hour laws, and other workplace protections.⁴⁷ When employers misclassify workers, they impermissibly deny such workers Social Security, Unemployment, Workers Compensation and Disability benefits.⁴⁸ Significantly, immigrant workers are disproportionately more likely to be misclassified by employers as independent contractors than are workers who are born in the United States.⁴⁹

⁴³ *Governor's Report*, *supra* note 9 at 34.

⁴⁴ N.J.S.A. 34:9A-1 *et seq.*

⁴⁵ *Id.*

⁴⁶ *Governor's Report*, *supra* note 9, at 29

⁴⁷ *Id.* at 30.

⁴⁸ *Id.* at 29.

⁴⁹ *Id.* at 30.

Chapter Two: Background on Immigrants' Access to Fair Housing in New Jersey

While a lack of affordable housing affects all New Jersey residents, for low-income immigrants “who face language barriers” and “unfamiliarity with the systems that support access to housing” the problem is often acute.⁵⁰ In addition to being unable to afford New Jersey’s exceptionally high housing and rental prices, undocumented immigrants are ineligible for federal government subsidies, such as Section 8 and public housing, which are limited to U.S. citizens and immigrants with lawful permanent resident status.⁵¹ Thus, less educated immigrants, who are often employed in the low-skill service sector and lack access to credit, have limited options for affordable housing and the “housing they do find is sometimes overcrowded and substandard in quality.”⁵²

Foreign-born residents of New Jersey also confront additional, non-economic barriers to obtaining safe and affordable housing, including “discriminatory landlord practices; anti-immigrant ordinances; [and] exclusionary zoning.”⁵³ The federal Fair Housing Act (“FHA”)⁵⁴ and the New Jersey Law Against Discrimination (“LAD”)⁵⁵ prohibit landlords from denying housing to anyone on the basis of race, national origin, ancestry, or familial status.⁵⁶ In spite of these laws, many new immigrants do not know their rights or “often fail to report housing discrimination because they fear retaliation.”⁵⁷

The Division of Civil Rights in New Jersey’s Department of Law and Public Safety has noted that local ordinances restricting undocumented immigrants from residing and working in municipalities, like the illegal denial of housing by landlords and property sellers, may violate the LAD.⁵⁸ The Division has expressed particular concern with “growing attempts to apply governmental ordinances and practices selectively to people of particular races and nationalities.”⁵⁹ For example, in 2006, Riverside, New Jersey, passed an ordinance designed in part to penalize landlords who rented to undocumented immigrants.⁶⁰ The ordinance was finally

⁵⁰ *Id.* at 69.

⁵¹ *Id.*

⁵² *Id.* at 70.

⁵³ *Id.* (quoting Kristina Smith & Alison Whittenberg, *Immigrants and Affordable Housing* (paper presented at Immigrant Policy Symposium of Student Research, Rutgers University, Camden, N.J. (Dec. 9, 2008)).

⁵⁴ 42 U.S.C.A. § 3601 *et seq.*

⁵⁵ N.J.S.A. 10:5-1 *et seq.*

⁵⁶ See Rigel C. Oliveri, *Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination*, 62 VAND. L. REV. 55, 57 (2009) (arguing that ordinances that require landlords to discriminate against tenants on the basis of immigration status are likely to lead to “discriminating based on accent, surname, appearance, or other ethnic markers” in violation of the Fair Housing Act); Kristina M. Campbell, *Local Illegal Immigration Relief Act Ordinances: A Legal, Policy, and Litigation Analysis*, 84 DENV. U. L. REV. 1041, 1052 (2007) (“[L]ocal ordinances prohibiting the rental of property to undocumented persons will lead to landlords turning away United States citizens and legal permanent residents whom they believe may be illegally present merely because of their race, color, or national origin in violation of the Fair Housing Act.”).

⁵⁷ *HUD Meets with Chinese Media to Talk About Fair Housing*, Fair Housing News (Dep’t. of Housing and Urban Dev., Washington D.C.), Fall 2006, available at <http://www.hud.gov/offices/fheo/library/newsletter-fall06.pdf>.

⁵⁸ Div. of Civil Rights, N.J. Dep’t. of Law & Pub. Safety, *New Jersey Fair Housing Report, Housing Discrimination Enforcement and Initiatives in 2007* 11 (2007), available at <http://www.nj.gov/lps/dcr/downloads/Fair-Housing-Report-2007.pdf>.

⁵⁹ *Id.*

⁶⁰ Maya Rao, *In N.J., a Fight for Immigration Changes*, Philadelphia Inquirer, Nov. 30, 2009, at B1.

rescinded after a costly court battle. Then, in 2008, another novel attempt to restrict the rights of immigrants to obtain housing was the subject of litigation in New Jersey. The Immigration Reform Law Institute filed a lawsuit against a Plainfield-based properties company, claiming that the company violated federal racketeering laws by renting apartments to undocumented immigrants.⁶¹ According to the plaintiffs, the landlord “allow[ed] so many undocumented tenants to live in its buildings that it should be considered a criminal enterprise” that illegally harbored undocumented persons and encouraged illegal immigration.⁶² On April 8, 2009, a federal judge in New Jersey dismissed the racketeering claim, concluding that the plaintiffs failed to plead sufficient facts to prove the necessary elements of such a claim. The case nevertheless illustrates the extent to which neutral laws that have no connection with immigration may be manipulated to exclude immigrants from living and working in particular communities.

These efforts can extend even to immigrants with lawful immigration status. In 2007, Woodbridge Township launched a stepped-up inspection effort to punish local housing code violations, an initiative seemingly targeted at immigrants.⁶³ The town’s efforts to increase the number of citations for illegal subdivisions and overcrowding not only affected homes shared by Latino day laborers, but also “middle-class Indians who rent rooms or parts of rooms to Indian students, technology workers” and other newcomers to the United States.⁶⁴

In sum, while New Jersey’s large immigrant population enhances the State’s cultural diversity and contributes to the State’s economy, many immigrants nevertheless face considerable barriers to fair treatment with respect to employment and housing. The *Report of the Governor’s Blue Ribbon Advisory Panel on Immigrant Policy* demonstrates that while many individuals and institutions in New Jersey are committed to respecting the civil rights of foreign-born residents, that commitment will undoubtedly be tested on a state and local level as “[i]mmigrants continue to contribute their talent, creativity, and labor to New Jersey’s economy.”⁶⁵

Chapter Three: Summary of Presentations to the New Jersey State Advisory Committee on May 8, 2009, Trenton, New Jersey

Panel One: State and Local Enforcement of Immigration Laws

Ronald K. Chen, Former New Jersey Public Advocate (2006-2010)

The Public Advocate, Ronald K. Chen, spoke about state and local enforcement of immigration law. Mr. Chen began by noting the March 2009 release of the *Report of the Governor’s Blue Ribbon Advisory Panel on Immigrant Policy*, a panel which was chaired by Mr. Chen. He noted

⁶¹ Associated Press, *Group Wields Racketeering Law Against Landlords to Combat Illegal Immigration*, N.Y. Times, Jun. 22, 2008, at A26.

⁶² *Id.*

⁶³ Kareem Fahim, *Housing Crackdown Hits Indian Immigrants*, N.Y. Times, Aug. 6, 2007, at B1.

⁶⁴ *Id.*

⁶⁵ Nicholas V. Montalot, Ph.D, Nat’l. Immigration Forum & N.J. Immigration Policy Network, *Out of the Many One: Integrating Immigrants in New Jersey*, (2006), available at <http://demo.njipn.com/downloads/Out%20of%20the%20Many%20One.pdf>.

that the panel discovered that municipal law enforcement personnel—serving both rural and urban municipalities—overwhelmingly believe that local enforcement of federal immigration law is misguided because it interferes “with their primary obligations of maintaining the safety and welfare of the community,” and discourages “the immigrant community from cooperating with the police.” Mr. Chen reported that during the panel’s investigation, he did not recall speaking with a single police chief who desired a role in the enforcement of federal immigration law. He also learned that federal immigration officers feel similarly, preferring that local officials simply refer cases to ICE when they have a concern that there is an immigration issue, rather than having to train local law enforcement officials in federal immigration law.

Mr. Chen also addressed the experience of Riverside, New Jersey in passing an ordinance in 2006 that penalized employers and landlords for renting to or hiring undocumented immigrants. He noted that the lesson learned from Riverside’s experience is that it is “really not practical . . . for every municipality to try to have its own immigration policy” or for “the State of New Jersey to have its own immigration policy.” Riverside’s attempt to discourage immigrants from locating to the municipality resulted in a significant drop of income for the town and a host of related challenges. Mr. Chen therefore recommended that municipalities adopt neutral methods of addressing such issues as overcrowding and zoning without interfering with the federal government’s plenary authority over questions regarding who is lawfully permitted to be in the United States and who is not.

Deborah Jacobs, Executive Director, ACLU of New Jersey

Addressing the lack of success of the 287(g) program, Ms. Jacobs noted a January 2009 report issued by the Government Accountability Office,⁶⁶ which found that the program had no clearly stated objectives and was marked by a lack of supervision, misuse of authority, and racial profiling. According to Ms. Jacobs, the report noted widespread concerns that use of the program leads to racial profiling and intimidation by law enforcement officials. Based on the ACLU’s experience challenging racial profiling in New Jersey, Ms. Jacobs noted “there is a lot of evidence to suggest that if the culture allows for special scrutiny of immigrants, then you will have unintended consequences that relate to racial profiling.” Ms. Jacobs’s testimony also focused on the ways in which the 287(g) program is ineffective at stopping or reducing crime. Specifically, she noted that 287(g) is often employed in areas in which crime rates are high, so that there is a misdirection of resources from the traditional, much-needed work of law enforcement to complex matters involving immigration law for which local law enforcement officials are ill-equipped and inadequately trained. Ms. Jacobs further noted that local enforcement of immigration law poses significant consequences for crime victims, particularly victims of domestic violence, who resist reporting crimes out of fear that they will face deportation. Noting that the International Association of Chiefs of Police does not support 287(g), Ms. Jacobs cited evidence from the Association indicating that undocumented immigrants already tend to be reticent to report crimes to the police, such that local 287(g) participation will likely discourage this group even further from reporting crimes, making immigrants easy victims for criminals.

⁶⁶ U.S. Gov’t. Accountability Office, Publ’n No. GAO-09-109, *Immigration Enforcement, Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws* (2009), available at <http://www.gao.gov/new.items/d09109.pdf>.

In addition, Ms. Jacobs identified two other emerging civil rights issues affecting immigrants that she suggested should be addressed through legislation or regulation. She noted that the State should provide immigrants with language services so that they can access essential government resources to which they are entitled. She further noted that where and how day laborers may gather and be deployed, and whether they are being paid acceptable wages are growing problems that need to be addressed.

Donald Cresitello, former Mayor of Morristown (2006 through 2009), Statement for the Record

Mr. Cresitello, an advocate of municipal involvement in the enforcement of immigration laws, agreed to participate in this panel, but did not appear. He did, however, submit a copy of the letter he sent to then-United States Attorney Christopher Christie on August 16, 2007, expressing his interest in collaborating with the U.S. Attorney's Office, along with ICE and possibly the FBI, to "establish a task force to investigate, detect, and deter violations of federal immigration law by employers in the Town of Morristown." In his letter, Mr. Cresitello noted that he had also made a separate request to ICE on behalf of Morristown to participate in the 287(g) program. That request was later approved and eventually finalized on Mr. Cresitello's last day in office in December 2009.⁶⁷ Although Mr. Cresitello signed and delivered a document to ICE that finalized the town's participation in the federal program, the new Mayor of Morristown, Tim Dougherty, opposes the 287(g) program and has said that he will not implement the agreement.⁶⁸

As set forth in his letter to then-U.S. Attorney Christie, Mr. Cresitello believed that local law enforcement can play a vital role in reducing illegal immigration. Although Mr. Cresitello acknowledged "that many undocumented workers are good people seeking income for their families" he expressed concern "that their unlawful presence attracts the criminal illegal aliens who prey upon them and the lawful residents of Morristown." Mr. Cresitello is not alone in his belief that 287(g) can "help treat the symptoms of this problem by focusing on the criminal aliens." As noted, by fall of 2009, approximately 70 states and localities had also entered into 287(g) agreements with ICE or had reached tentative agreements that were pending local approval.

Panel Two: Housing and Employment Discrimination

Jill Rottman, Executive Director, Covenant House

Ms. Rottman spoke about the confluence of housing and employment barriers for homeless immigrant youth in New Jersey. She reported that thirty percent of the young people who are homeless in New Jersey have "aged out" of the foster care system while others ended up on the streets after being trafficked to the United States and escaping from their captors. According to Ms. Rottman, a lack of lawful immigration status exacerbates the challenges faced by homeless youth in seeking housing, employment, and stability because undocumented youth are unable to

⁶⁷ Tanya Drobness, *Outgoing Mayor Enrolls Morristown into Immigration Program to Deputize Officers*, Star-Ledger (Dec. 30, 2009) available at http://www.nj.com/news/index.ssf/2009/12/outgoing_mayor_enrolls_morrist.html.

⁶⁸ *Id.*

lawfully work and are ineligible for public housing. Ms. Rottman noted that the economic recession has posed particular problems for immigrant youth who, in addition to lacking both a connection to the community and English language skills, now face even greater competition for low-skill jobs and housing.

Joseph Young, Director, Disability Rights New Jersey

Mr. Young spoke about the civil rights challenges faced by immigrants with disabilities in New Jersey, noting that undocumented immigrants are often subjected to overextended stays in psychiatric hospitals due to cultural miscommunication and a lack of effective bilingual treatment. Mr. Young noted that misinformation about how immigration status affects persons with disabilities is also a significant problem, describing instances in which hospitals wrongly informed immigrants with serious injuries that they were not entitled to any health services. He also pointed to the disproportionately low numbers of immigrant families who are able to access needed health services, even for U.S. citizen-children. He explained that families of children who are entitled to such services may refrain from obtaining needed services because of fears of jeopardizing the parents' residency. Finally, he noted that the challenges faced by immigrants when seeking housing and employment are even greater for disabled immigrants, who may face additional discrimination and be unfamiliar with their rights as both immigrants and persons with disabilities.

Kenneth H. Zimmerman, Chair, Lowenstein Center for the Public Interest

Mr. Zimmerman spoke about the critical impact of the housing and foreclosure crisis on minority populations, in particular Latinos, and the need to address the crisis at the state and federal level. Mr. Zimmerman noted that Latinos as a group confront what is referred to as a "thin credit file," meaning that they lack a credit history that enables them to borrow in order to obtain a home and frequently do not have a basic checking or savings account. As a result, Latino homebuyers have been steered into high-cost, sub-prime loans at a rate far greater than white homebuyers. Mr. Zimmerman noted that borrowers of color are approximately "30 percent more likely to receive higher cost loans than similarly risky white borrowers." Mr. Zimmerman also cited evidence that Latino borrowers are more likely than their white counterparts to face foreclosure. Mr. Zimmerman discussed a number of specific recommendations being debated on the federal level that would address some of these issues, by, for example, codifying and extending the Federal Reserve Bank's current prohibition on unfair practices and high-priced loans, implementing the SAFE Act,⁶⁹ which would regulate mortgage brokers, providing for greater coordination between law enforcement and bank regulatory agencies across all spectrums to address the rise of foreclosure rescue scams, and requiring better data collection with respect to unfair lending and refinancing practices.

⁶⁹ The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") was enacted into law on July 30, 2008 as Title V of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, Div. A, 122 Stat. 2810 (2008). Since the testimony of Mr. Zimmerman at the May 8, 2009 hearing, the Department of Housing and Urban Development has proposed a rule implementing the SAFE Act. *See* SAFE Mortgage Licensing Act: HUD Responsibilities Under the SAFE Act, 74 Fed. Reg. 66,548 (Dec. 15, 2009) (to be codified at 24 C.F.R. pt. 30 and 3400).

Mr. Zimmerman also addressed exclusionary zoning and housing practices, noting that targeted code and zoning enforcement disproportionately affects minority and immigrant populations. Acknowledging that health and safety are legitimate concerns to be addressed through zoning and code enforcement, Mr. Zimmerman nevertheless noted that the use of these measures to inappropriately discourage growing immigrant and Latino population from living in certain communities requires more robust civil rights enforcement by the U.S. Department of Justice and the Attorney General's office. Specifically, Mr. Zimmerman recommended reinvigorated enforcement of the federal Fair Housing Act and New Jersey's Law Against Discrimination, as well as a concerted effort to educate local communities regarding the rights of immigrants to fair housing and employment.

Frank Tinari, Professor Emeritus of Economics, Seton Hall University

Professor Tinari offered a different perspective on issues of housing discrimination faced by immigrants, discussing, in particular, the advantages and disadvantages of immigrants living together in ethnic enclaves. Professor Tinari suggested that a disadvantage of immigrants living together in tightly-knit communities is that immigrants rely solely upon one another for civic and cultural information, and are therefore not exposed to the larger community of New Jersey. But the professor also noted an important advantage that flows from the strong social support that immigrants draw from one another when they live closely together in ethnic communities. He explained that affordable housing legislation arguably discounts this benefit by encouraging immigrants to move into the suburbs, potentially disrupting the benefits of living in urban, tightly-knit ethnic communities. While Professor Tinari agreed that discriminatory housing and zoning policies often inappropriately hinder the ability of immigrants to move to areas of opportunity, he posited that perhaps the State should seek to preserve the benefits of tightly-knit immigrant communities while still exposing immigrants to a full range of opportunities through transportation services between urban and suburban areas. Professor Tinari questioned whether housing codes should be relaxed, particularly those regulating the number of individuals living together, so as not to impose middle-class standards on immigrant families trying to save to improve their family's future.

With respect to whether additional laws would be needed to help address employment and housing barriers facing immigrants, Professor Tinari noted that some of those issues may not be readily fixed through legal reforms. As an example, he suggested that legislative reforms would likely not assist immigrant families in obtaining a house or auto loan when they do not have a credit record, such that more creative solutions might be needed.

Carmen Martino, Co-Director, Rutgers Occupational Training and Education Consortium

Mr. Martino addressed the experience of immigrants in New Jersey employed by low-wage temporary work agencies. Mr. Martino noted that these working arrangements are often ripe for abuse because the terms of employment, including the work to be performed, the rate of pay, and length of employment are frequently not in writing. Additionally, Mr. Martino noted that employers create a market for temporary employment agencies "to provide them with cheap, disposable labor" with maximum flexibility and minimum responsibility for employees' well-being or training. Mr. Martino also faulted the government for failing to regulate the temporary

employment industry with respect to wages, hours, health, safety, and unemployment compensation in the same manner as other forms of employment. He noted that such agencies have the freedom to operate like employment agencies, unencumbered by regulations.⁷⁰ In describing employment abuses, Mr. Martino noted that such agencies typically compensate temporary workers by issuing a separate check for each assignment. According to Mr. Martino, that means that while workers often work more than 40 hours a week, they never are paid overtime. In addition, Mr. Martino noted that temporary workers are vulnerable to added costs and financial exploitation because of their vulnerable positions. He explained, for example, that immigrant temporary workers often have no choice but to pay extra amounts to the agency to cash their paychecks at the agency's offices because many immigrant workers do not have bank accounts that would enable them to cash their checks elsewhere. He further noted that temporary agencies take advantage of the fact that immigrant workers are unable to obtain drivers' licenses, and thus have to rely on the agency to transport them to work at warehouses in central New Jersey. Such agencies typically deduct additional fees for travel to and from these places of employment, which travel often occurs in overcrowded, unsafe vans. Mr. Martino further described how safety is a particular concern for temporary workers. Whether unloading trucks, filling pallets, digging ditches, or cleaning bathrooms, temporary workers are often not provided with any training or instructions and frequently work with hazardous materials or in dangerous conditions. When workers are injured, he explained, they do not receive compensation for the time they are out of work, whether or not the agency has paid its workers' compensation insurance. Temporary workers are also vulnerable to abuse and exploitation because they often do not know their rights under state law.

To begin to address the exploitation of temporary workers, Mr. Martino proposed greater organization of workers' unions and hiring halls similar to the ones common during the 1930s and 1940s. According to Mr. Martino, if the source of the workforce were the hiring hall rather than the temporary employment agency, workers would be better able to negotiate such terms as hourly rates of pay and conditions of employment. Mr. Martino acknowledged that organizing temporary workers is very difficult in warehouses in particular because the facilities often operate through a tiered series of contract agencies. Finally, to better regulate employer conduct, he stressed the need for more effective enforcement of the law, including licensing laws governing temporary employment agencies.

⁷⁰ This should not be the case, since at least some temporary employment agencies appear to be subject to the Employment and Personnel Services Act, N.J.S.A. 34:8-43 to -66. That law extensively regulates employment agencies, by prohibiting certain unfair employment practices, requiring employment agreements to be in writing, and providing penalties for agency misconduct. *See* N.J.S.A. 34:8-51 (obligations of agencies); 34:8-52 (prohibited acts). While that law specifically exempts "temporary help service firm[s]" which do not "[c]harge a fee or liquidated charge to any individual employed by the firm or in connection with employment by the firm," N.J.S.A. 34:8-46h(1), that exemption does not appear to apply to the agencies discussed by Mr. Martino who take a fee off the top of the hourly rate.

Panel Three: The Immigrant Experience

Nelson Carrasquillo, Comite De Apoyo A Los Trabajadores Agricolas / Farmworkers Support Committee

Mr. Carrasquillo, the leader of Los Trabajadores, a membership-driven organization of largely undocumented migrant farm workers in New Jersey, Pennsylvania, and Maryland, focused on the experience of immigrant farm workers. He noted that farm workers often come to this country because they are unable to make a living in their home countries and are required to work extremely long hours so that they can send money back home to their families. He noted that such workers are willing to do whatever they can to survive and help their families.

According to Mr. Carrasquillo, employers often take advantage of this desperation and resiliency by paying them less than they would pay non-immigrants and by cutting corners on workplace safety. Mr. Carrasquillo cited pesticide exposure and unsafe transportation as two key safety issues confronting farm workers. While laws govern the conditions and work of farmworkers in New Jersey, Mr. Carrasquillo noted that, in practice, the interests of migrant farmworkers are insufficiently protected.

Shai Goldstein, Executive Director, New Jersey Immigration Policy Network

Mr. Goldstein spoke about the massive underreporting of employment discrimination against immigrants, which he suggested will never be addressed until there is comprehensive immigration reform at the federal level. Mr. Goldstein suggested that only by bringing 12 million undocumented people out of the shadows, ensuring in-state tuition for immigrant students, passing the DREAM Act, and ensuring fair access to employment and housing, will American democracy and the economy continue to thrive. Mr. Goldstein specifically recommended that the Commission endorse the DREAM Act, which would provide citizenship to deserving individuals who otherwise have no ability to obtain lawful status. He noted that allowing the 12 million undocumented persons in the United States to contribute their entrepreneurial spirit to the advancement of the nation would help change perceptions of immigration and be less expensive than focusing on a detention regime.

Willie Campoverde, Laborer

Mr. Campoverde, a laborer, reported that he came to the United States eight years ago to earn money to send back home to his family so that his children could attend college in his home country. He described how not knowing the language was the biggest barrier he faced when he arrived, but that he was proud to work ten hour days, knowing that he was helping his family. Mr. Campoverde also described how two-and-a-half years ago he suffered an accident while employed as a temporary worker. He fell from a third-story building and lost consciousness. The persons who took him to work that day left him there for dead. Witnesses to the accident called emergency services, and he woke up in the hospital. Mr. Campoverde called his employer several times after his accident, but the employer never took his calls. He was not paid for the week that he worked before the accident and the employer confiscated tools that Mr. Campoverde had purchased himself. Mr. Campoverde noted that his story is common to many laborers in New Jersey who regularly wait for temporary employment on street corners, not

knowing whether their employer will be fair to them that day or even pay them for the hours that they work. He described how a friend provided an employer with documents so that he could file his taxes. After the friend worked, the employer refused to pay him and refused to return his documents. Mr. Campoverde opined that he and others who have suffered similar experiences are taken advantage of because they are Latinos.

Mr. Campoverde described his belief that the hard work of immigrant laborers will help move the United States out of the current economic recession because of the willingness of these workers to undertake whatever labor is necessary, irrespective of its difficulty and without regard to the elements. He expressed regret that in spite of the fact that he and other workers are willing to work, they still face discrimination in the United States.

Amy Gottlieb, Director, Immigrant Rights Program, American Friends Service Committee

Ms. Gottlieb addressed conditions for asylum seekers and others subjected to immigration detention in New Jersey. New Jersey is home to one of the largest immigration detention facilities in the country. The Elizabeth Detention Center, a 300-bed facility, opened in 1997 after IIRIRA made the detention of arriving asylum seekers mandatory. Ms. Gottlieb noted that because of the surge in detainees resulting from IIRIRA's detention regime, private prison companies have reaped enormous financial gains from contracts with the federal government. With respect to detention conditions, Ms. Gottlieb noted that although the Elizabeth Detention Center houses asylum seekers who have not been convicted of any crimes, in form and practice it functions as a prison. It has no windows or outdoor space, provides absolutely no privacy in dorms and even bathrooms, and only allows for non-contact family member visitation behind plexiglass. She noted that while all detention facilities are governed by ICE detention standards, those standards are only non-binding policy recommendations. (See letter from Steven Owen, Director, Communications, Corrections Corporation of American, at Appendix A.)

An estimated 80 individuals nationwide have died in detention since 2003, a number of them because of inadequate medical care while detained. She noted that six county jails in New Jersey have contracts with ICE to house detainees. There have been deaths at the Bergen, Middlesex, and Monmouth County Jails. She attributed this to the lack of accountability with respect to detention health care. Ms. Gottlieb explained that the U.S. Public Health Service provides health services to immigrants in detention. However, there are no full-time health care providers on staff, such that guards who have no medical training or expertise typically make critical decisions about when someone is sick enough to be taken to the hospital. (See letters from Leo P. McGuire, Sheriff, Bergen County Sheriff Appendix B; Captain Thomas Fatigante, Monmouth County Sheriff's Office, Appendix C; Eric M Aronowitz, Esq., First Deputy County Counsel, County of Middlesex, Appendix D.)

Ms. Gottlieb testified that while asylum seekers may, by law, be paroled into the community to stay with a family member, community representative, or church group, since 1997 New Jersey has had the lowest rate of parole of any state. For those who are paroled, Ms. Gottlieb noted that they still face a crisis in support services and therefore face great difficulty in obtaining Social Security cards, work permits, counseling services, and housing. Ms. Gottlieb also noted that asylum seekers are in many ways treated as criminals. They are detained, shackled, and treated

as if they have been convicted of crimes. Furthermore, because immigration proceedings are actually civil in nature, immigrants seeking protection are not protected by basic criminal procedure protections, including the right to counsel. She noted that because most *pro bono* counsel are funded through philanthropy or private donations, such funding has been reduced or jeopardized by the recent financial downturn, and the opportunities for immigrants to obtain counsel are therefore increasingly scarce.

Ms. Gottlieb recommended that, in improving conditions for asylum seekers, reform efforts should focus on alternatives to detention, providing counsel to immigrants, creating transitional housing programs, and facilitating greater support services upon release. Ms. Gottlieb recommended that meaningful relief be made available through immigration proceedings so that valuable public resources are not expended on detaining individuals in private or county jails. She also noted that enacting binding detention standards and improving oversight and accountability over immigration detention are critically important in light of the growing numbers of deaths and serious untreated illnesses or injuries suffered by immigrants in detention. She stressed the importance of providing services to immigrant detainees at New Jersey's county jails, noting that providing detainees kitchen work or other activities or services that are provided to criminal detainees is essential to detainees' well-being.

Marlene Lao-Collins, Director of Social Concerns, New Jersey Catholic Conference

Ms. Lao-Collins reported on the high cost of housing in New Jersey and its disproportionate impact on immigrant workers. Ms. Lao-Collins noted that although the National Low Income Housing Coalition calculates a housing wage of \$23.12 per hour which would allow the average person to pay 30 percent of their wages toward housing and then still afford food, clothing, and medicine, the vast majority of immigrants in New Jersey earn only about \$7.15 an hour. According to Ms. Lao-Collins, that means that in order for immigrants to be able to afford an apartment in New Jersey, at least three individuals must combine their income. She opined that the high cost of housing has led to overcrowding in certain neighborhoods and has polarized communities, leading to anti-immigrant practices by landlords. In some towns, Ms. Lao-Collins noted, landlords require tenants to provide Social Security numbers, visas and/or birth certificates to obtain housing in order to restrict access to housing to legal residents or citizens. Ms. Lao-Collins also noted that many landlords violate rent-control ordinances when renting to immigrants, taking advantage of the fact that immigrants may not know the law and that many are unlikely to report violations because of their fear of the repercussions. Landlords also frequently threaten to report undocumented immigrants to federal immigration authorities as a means of intimidating tenants not to speak up about housing violations. In Ms. Lao-Collins's view, remedying the housing problems facing immigrants in New Jersey would be best be achieved by increased investigation and enforcement of fair housing law.

Patricia Fernandez-Kelly, Ph.D., Chair, Latin American Legal Defense and Education Fund

Dr. Fernandez-Kelly urged the Commission to disabuse the public of what she believed was a misconception, fueled by radio and television commentators, that immigration results in crime. She stated that the vast majority of immigrants who come to this country simply seek better

opportunities for their families, and particularly for their children. She noted that when society reacts with hostility to an influx of immigrants, the result is the creation of a disenfranchised, disaffected population, particularly in the succeeding generation. Dr. Fernandez-Kelly argued that immigrants are suffering, citing the separation of families through deportation, the treatment of immigrants as criminals, and the impact of all of the above on children. She noted that when a family is destroyed by separation through failed immigration policies, children suffer irreparably, and that if measures are not taken to correct this in the future, the United States will experience a new class of disaffected children, many of whom are American citizens.

Dr. Fernandez-Kelly noted that the Latin American Legal Defense and Education Fund encourages the Commission to support immigration reform, by actively and decisively supporting educational and health-related rights for the children of immigrants, an increase in access to medical service, and in-state tuition for qualified immigrant children. She noted that colleges and universities in New Jersey should be encouraged to extend in-state tuition to immigrant children without waiting for legislation to be enacted. Dr. Fernandez-Kelly noted that she strongly believes that the U.S. Commission on Civil Rights can serve an important role with respect to immigration reform by engaging in an educational campaign that focuses on reshaping the public debate. She noted that the Commission could emphasize that immigrants come here as workers, not criminals, and that statistics support the conclusion that crime rates are extraordinarily low for first-generation immigrants, that the workforce benefits immensely by the contribution of immigrant workers, and that providing access to education and property rights enables immigrants to contribute to the growth and progress of the nation.

Marisol Conde-Hernandez, Advocate

Ms. Conde-Hernandez spoke about the problems confronting children and young adults who came to the United States as children and who, though they feel American in every sense, are not citizens of the United States by birth and are not able to obtain legal status. Ms. Conde-Hernandez explained that she cannot legalize her status because when she was a toddler her parents entered the United States from Mexico without inspection. Thus, even if she had a member of her family or an employer eligible to sponsor her for legal immigration status, she is barred from doing so because of the period of her unlawful presence in the United States. Ms. Conde-Hernandez noted that she and others in her position are, accordingly, left in a perpetual state of instability. She noted statistics by the Pew Center from May 2009 indicating that there are approximately four million U.S.-born children living with undocumented parents in the United States and an additional 1.5 million children who are undocumented themselves.⁷¹

Noting that one out of every three children of undocumented parents lives in poverty, Ms. Conde-Hernandez noted that the cycle of poverty is even harder for undocumented youth to overcome. Though Ms. Conde-Hernandez, an undergraduate sociology major at Rutgers University, lives in New Jersey, she noted that she pays out-of-state tuition for her education: \$632 per credit hour, while other New Jersey residents pay \$299. And like other undocumented immigrants, Ms. Conde-Hernandez has no ability to obtain financial aid or scholarships. She recommended the adoption of the DREAM Act at the federal level and that in-state tuition be

⁷¹ See Jeffrey S. Passel & D'Vera Cohn, Pew Research Center, *A Portrait of Unauthorized Immigrants in the United States* (2009), <http://pewresearch.org/pubs/1190/portrait-unauthorized-immigrants-states>.

afforded to undocumented students in New Jersey, noting that New Jersey has the fifth highest undocumented population among the states, but is the only one of those top five states that does not provide in-state tuition to non-citizens.

Open Session: Statements from the Public

Diane Mejia, representing American Friends Service Committee, spoke about the impact of the 287(g) program on the immigrant community in Morristown. She noted that before the town expressed an interest in enforcing federal immigration law, the immigrant community had a good relationship with the police. She noted, however, that now immigrants are so afraid of the police that they avoid reporting crimes or seeking protection, which undermines the safety of the entire community.

Brother John Skrodinsky, Director of Migrant Ministry, Roman Catholic Diocese of Paterson, noted that undocumented immigrants' fear of reporting abuses is a major obstacle to ending the exploitation of undocumented workers. He noted that in the employment context, this results in employers denying immigrants fair wages and overtime pay, while in the housing context it often leads to wrongfully retained security deposits, inappropriately high rents, and overcrowding. Brother Skrodinsky also spoke about the fear that accompanies the failure to provide drivers' licenses to undocumented immigrants—the idea that society would be rewarding individuals who broke the law. Brother Skrodinsky urged the State to reject that fear and to instead focus on the benefits to the State that could be obtained from providing immigrants with drivers' licenses, including an increase in insurance revenues, registration, and mobility. He also recommended that in focusing on greater enforcement of existing housing and employment laws to protect immigrants, the Department of Labor and community organizations must do more to educate employees about their rights in order to increase the reporting of violations.

Sebastian Londono, a graduate of Morristown High School, spoke about his personal experience as an immigrant coming to the United States at the age of nine, doing well in school both academically and athletically, scoring a 1700 on his SATs, but lacking any opportunity to pursue college. Mr. Londono explained that though many schools were interested in having him enroll, he cannot now pursue a college education because he lacks valid immigration status, and therefore is ineligible for scholarships and loans that would enable him to pursue his education. Mr. Londono urged the Committee to support the DREAM Act.

Melissa Avila, a high school student from Morristown, likewise noted that many of her friends cannot continue their education because they lack immigration status. Ms. Avila and her friends started a support and outreach group through a community resource center, known as Wind of the Spirit, in Morristown, to bring attention to the DREAM Act and the problems associated with the 287(g) program.

Kiera Lopez, a student from Morristown High School, also discussed her frustration with knowing that so many of her intelligent and talented friends cannot pursue their dreams of becoming dentists, pharmacists, and doctors because of their immigration status.

Harry Perryman, President of the Irvington Rotary Club, noted that as a substitute teacher in the Newark Public School System, he was consistently impressed with the ability, character, and manners of the immigrant students in his classes. He noted that by not allowing immigrant students to further their education, the State is squandering precious talent and losing out on a source of great economic stimulus. He opined that the nation must stop seeing immigrants as a threat, and instead view them as an asset.

Chapter Four: Findings and Recommendations

The Committee believes that the exploitation, abuse, and marginalization of millions of undocumented persons and other immigrants living within the United States—whose labor helps fuel the American economy—are likely to continue unless Congress addresses the underlying status of foreign-born residents that renders them vulnerable to exploitation and that allows fear to accompany any effort to remedy violations of their rights. While not all immigrants are exploited or suffer unfair treatment, too many do not demand fair treatment by employers or landlords because they fear that they will be detained, separated from their families, deported, and unable to send money to loved ones dependent upon them in their home countries. Furthermore, far too many employers, landlords, and others in New Jersey and likely elsewhere have exploited undocumented persons, mistreated them, or attempted to exclude immigrants from living in their community, all because they believe that individuals who lack lawful immigration status are not entitled to the same basic civil rights as others. For these reasons, the Committee believes that Congress must enact comprehensive immigration reform in order to end the marginalization of the millions of undocumented persons living within the United States, including the nearly half million individuals living and contributing to the economy of New Jersey.

The Committee believes that comprehensive immigration reform is an essential step in guaranteeing the civil rights of immigrants living within the United States in general and New Jersey in particular. The Committee therefore concludes that federal, state and local authorities here and elsewhere should consider a number of critical actions in the interim to guarantee the civil rights of undocumented immigrants living in the United States.

Based on the record that has now been developed, the New Jersey State Advisory Committee offers the following Findings and Recommendations addressed to enhancing greater awareness of and accountability for housing and employment violations, and the need for corresponding policy development, legislation, data collection, training and education, all of which it believes federal, state and local officials should undertake in order to protect and promote the civil rights of foreign-born residents of this and other states.

Finding 1: Underenforcement of Employment and Labor Violations

Enforcement of existing labor and workplace safety laws is an essential first step in protecting the basic rights of immigrants. The Committee heard from a number of experts and stakeholders who agreed that violations of immigrant workers' rights does not reflect an absence of applicable laws or regulations; rather, the problem is one of enforcement. The Committee also learned that

there are certain industries in New Jersey in which employees are particularly vulnerable to abuse and fair labor violations, including the temporary labor and farming sectors. To ensure that existing labor and workplace safety laws, which apply to all workers, reach some of the most vulnerable, government officials at all levels must implement strategies to ensure that extant law has its intended reach and effect, including the allocation of adequate personnel and other resources for outreach, education, investigation and enforcement functions.

Recommendation 1: Adopt Fair Labor Enforcement Plan of Action

Federal labor agencies, as well as state agencies such as the New Jersey Department of Labor and Workforce Development (“LWD”) must work to ensure that fair labor standards and worker protection laws are enforced for all immigrant workers within their respective jurisdictions. Because the record reveals that certain industries have particularly high rates of non-compliance with labor and workplace safety laws, such as the farm labor and temporary worker industries, the Committee recommends that enforcement efforts be targeted at those industries. Specifically, the Committee recommends federal and state agencies adopt a plan of action that makes the investigation of employers in industries with high rates of non-compliance a high priority and includes an education and outreach effort aimed at educating employers in those industries about fair labor and workplace safety obligations. Agencies, including the LWD, should remind employers that wage and hour laws apply to all covered workers and that employers are required to pay temporary disability benefits for workers, including undocumented workers. In adopting a plan of action to improve enforcement of existing fair labor law, such agencies should consider:

- Partnerships with local community organizations and legal service organizations to improve representation of victims of fair labor violations;
- Public service announcements targeting employers;
- Creation of a task-force to address labor and workplace safety violations affecting immigrants.

Finding 2: Underreporting of Employment and Labor Violations

The Committee heard from a number of advocates and immigrant workers themselves who testified that violations of immigrant worker rights frequently occur with impunity because victims are hesitant to report unscrupulous employers to the authorities or are scared to pursue remedies for violations of their rights. The Committee learned that while the LWD has a policy of not reporting undocumented workers who complain of labor violations to the immigration authorities, many workers, nevertheless, do not know their rights or remain too fearful to seek help. Greater reporting of employment and labor violations by immigrant workers is thus a necessary precursor to more rigorous enforcement of labor laws in New Jersey and elsewhere.

Recommendation 2: Outreach and Education Targeting Immigrant Workers

To encourage greater reporting of fair labor and workplace safety violations, authorities must work to instill greater trust and confidence among immigrant workers. In this regard, the Committee recommends greater consideration of, and perhaps more widespread adoption of, reforms like the policy of the LWD not to report undocumented workers to the immigration

authorities when it investigates labor violations and pursues violators. In addition, the Committee recommends that the State work to better educate workers in order to increase awareness that they will not face immigration consequences if they come forward and report employment abuses. To that end, the Committee recommends that the State, in conjunction with community partners, pursue an education and outreach effort targeting immigrant workers in order to assure this population of laborers that they will not be in jeopardy of detention or deportation simply because they report violations of workplace abuses. The LWD should consider whether additional policies or procedures are necessary to reassure workers that confidentiality will not be compromised and to ensure that workers feel comfortable reporting such abuses. The Committee believes that similar strategies should be adopted and implemented by other federal, state and local labor and workplace safety agencies in New Jersey and, following appropriate analysis and discussion, throughout the United States.

Finding 3: Fair Housing Violations: Exclusionary Zoning and Code Enforcement

While the Committee recognizes that municipalities have a legitimate interest in promoting the public health, safety, and welfare of local communities through zoning and code enforcement, the Committee concludes that these interests are not served when such mechanisms are employed only as a means of targeting immigrants, whether or not on account of inappropriate motivations or bias. The Committee concludes that exclusionary zoning practices, unfair rental practices, and discriminatory code enforcement violate principles and laws guaranteeing fair housing and undermine the economic interests of the State. The Committee heard from a number of experts and stakeholders who testified that in recent years New Jersey has experienced a rash of discriminatory housing practices targeting immigrants, including exclusionary zoning ordinances and discriminatory enforcement of neutral housing code laws. A number of panelists suggested that addressing these civil rights violations would not require legal reform. Rather, as with employment issues, the record suggests that more rigorous enforcement of existing housing laws would be a major step forward toward significantly remedying these problems.

Recommendation 3: Greater Enforcement of Fair Housing Law

The Committee recommends that the U.S. Department of Justice and state Attorneys General in New Jersey and elsewhere commit their agencies to reinvigorated enforcement of the federal Fair Housing Act and state laws prohibiting housing discrimination, such as the New Jersey Law Against Discrimination. In doing so these entities should consider:

- Collecting data to determine how frequently neutral housing laws are employed in a discriminatory manner so as to deny immigrants access to housing, and to document the most frequent forms of such abuse in the State;
- Adopting policies to eliminate over-zealous enforcement of code and zoning laws motivated by a discriminatory animus against immigrants;
- Allocating adequate numbers of investigators and prosecutors to enforcement of these laws, training investigators and prosecutors to be aware of the unlawful and abusive practices, and pursuing enforcement actions targeting these civil rights violations when they arise.

Finding 4: Exclusionary Practices Are Contrary to State and Local Interests

The Committee concludes that zoning and code enforcement policies that inappropriately discourage growing immigrant populations from living in certain communities are not in the interests of the State or local communities. Experts and stakeholders who testified before the Committee cited the benefits that immigrant workers contribute to local communities and, in particular, the economic harm experienced by Riverside, New Jersey when it attempted to exclude immigrants from working or renting homes within municipal borders.

Recommendation 4: Education and Outreach Regarding Exclusionary Practices

The Committee recommends that the Commission evaluate the extent of exclusionary zoning and discriminatory code enforcement practices and determine whether and to what extent such practices have harmed local interests. To the extent these practices are widespread and warrant a systemic solution, the Committee recommends education and outreach efforts aimed at informing local communities of the adverse consequences for municipalities when local governments curtail the movement of immigrants to areas of opportunity through zoning and code enforcement.

Finding 5: Discriminatory Lending and Mortgage Practices Affecting Immigrants

While data confirms that nationally, approximately 40 percent of all loans made to Latinos are sub-prime, there is insufficient data available describing how unfair lending and refinancing practices affect New Jersey's immigrant population.

Recommendation 5: Data Collection on Unfair Lending and Mortgage Practices

The Committee recommends that the Commission undertake a comprehensive, nationwide investigation of the impact of fair lending and refinancing practices on immigrants. Meanwhile, New Jersey should take a leadership role in the national effort to understand how unfair lending and refinancing practices affect vulnerable communities, by working to collect better data regarding the impact of these practices on immigrant communities in the State. Informed by such data, the Commission and the State should develop strategies for providing immigrants greater access to fair and affordable loans in order to develop credit histories necessary for renting and purchasing homes.

Finding 6: Immigration Detention Conditions

The Committee finds that while immigration detention is a matter of federal immigration policy, because detention occurs within New Jersey, the State and local communities have a particular interest and obligation to protect the civil rights of individuals who are detained. The record raises serious questions regarding the conditions in which immigrants are detained in New Jersey, warranting, at the very least, further exploration and potential remedial action. The Committee further recognizes the importance of this issue given that New Jersey is home to one of the largest immigration detention facilities in the nation, the Elizabeth Detention Center, where hundreds of asylum seekers, including torture survivors, are detained. The Committee also

recognizes that a number of county jails in New Jersey serve as detention facilities for immigrants as well. The Committee heard testimony and reviewed documents in the record recounting the difficult conditions faced by individuals at these facilities, and in particular, the reports that since 2003, a number of immigrants have died in detention centers because of inadequate health care. The Committee was troubled to learn that although asylum seekers in detention have not been convicted of any crimes, they are routinely denied access to the outdoors for long periods of detention, are subjected to no-contact family visitation, and are regularly denied parole notwithstanding that they pose neither a risk of flight nor a danger to the community.

Recommendation 6: Assess and Improve Detention Conditions

The State should form a task force to examine conditions at the Elizabeth Detention Center and the six county jails where immigrant detainees are held and make recommendations to the Department of Homeland Security to improve conditions for asylum seekers and others subject to immigration detention. The task force should assess, among other subjects, the provision of medical care to detainees, detainees' access to sunlight and the outdoors, and use of no-contact family visitation. In examining these issues, the task force should also study the use of parole at the Elizabeth Detention Center to determine whether parole and/or other alternatives to detention are underutilized. The task force should, based upon its review, call upon the Department of Homeland Security to make appropriate revisions to detention policy and practice.

Although the State of New Jersey lacks jurisdiction over detainees at county jails or private correctional institutions within the State, the New Jersey Administrative Code (N.J.A.C. 10A:34), grants authority to the State to determine minimum detention standards for these institutions.⁷² Thus, the State may set minimum detention standards for county jails housing immigrant detainees and private detention facilities and should assess whether conditions at New Jersey's county jails and at the Elizabeth Detention Center comply with existing state standards and whether any new minimum standards are needed. The Committee also urges the Department of Homeland Security to adopt binding detention condition standards that would apply to the Elizabeth Detention Center, and county jails that house immigrants in New Jersey.

Finding 7: Public Safety Enhanced by Law Enforcement Relationships with Immigrant Communities

Trust between immigrant communities and local police departments is essential to ensuring the public's health, safety, and welfare. When immigrants refrain from reporting crimes or seeking the protection of the police, the safety of entire communities is compromised. A number of individuals who testified at the public hearing explained that many immigrants are increasingly afraid to report crimes or to seek the protection of the police in light of practices such as the 287(g) program. These immigrants are fearful that reporting crimes will lead to detention, deportation, and separation from their families. The Committee also heard from the Public Advocate who testified, based on his service as Chair of the Governor's Blue Ribbon Advisory

⁷² See *Governor's Report*, Executive Summary, *supra* note 9, at 24; N.J.A.C. 10A:31-1.1 (establishing "minimum criteria for the administration of adult county correctional facilities" and "guidelines for the provision of programs and services to inmates in adult county correctional facilities").

Panel on Immigrant Policy, that most law enforcement personnel disfavor section 287(g), believing that it undermines trust between immigrant communities and the police and requires law enforcement to divert resources from traditional public safety functions to enforcing a complicated area of the law for which they lack sufficient training. The Committee finds that local police departments should adopt measures that strengthen, not weaken, the relationship between immigrants and law enforcement so that local officials can better advance the health, safety, and welfare of the community as a whole.

Recommendation 7: Adopt Strategies for Strengthening the Relationship Between Immigrant Communities and the Police

Local governments should refrain from entering into section 287(g) agreements with the federal government, recognizing that local law enforcement agencies are not well-suited to enforce federal immigration law, and that doing so diverts valuable resources from their core public safety function and undermines public safety and welfare by discouraging immigrants from coming forward to report crimes. Police departments should develop strategic partnerships with community organizations in order to assure immigrant communities that individuals who come forward to report crimes will not be reported to the immigration authorities, and that cooperation between immigrant communities and the police is essential for strong, safe, and vibrant communities.

Finding 8: State Interests Are Not Served by Denying Exceptional Students an Education

The Committee heard from a number of advocates and members of the public who testified as to the unique hardships of children who have spent most of their lives in the United States and are familiar only with this country, and yet have no opportunity to normalize their immigration status or pursue a college education because they and their parents lack lawful immigration status. The Committee learned that many undocumented children in New Jersey, even those of extraordinary academic and athletic ability who possess great leadership skills and character, are unable to obtain a college education because they are not entitled to in-state tuition at state educational institutions and are ineligible for federal loans and most scholarships. The Committee finds that denying talented and hard-working students who call New Jersey home the opportunity to contribute their talents to the State is misguided, and an unfair penalty for children to bear because their parents brought them to the United States as minors.

Recommendation 8: Provide In-State Tuition for Qualified Immigrants

The Committee urges all public higher education institutions in New Jersey and elsewhere to voluntarily provide immigrants who are otherwise admitted to attend those institutions in-state tuition. The Committee further recommends that the New Jersey Legislature adopt legislation that would mandate that in-state tuition rates be provided to all students living in New Jersey, irrespective of their immigration status. The Committee believes that doing so will enable a generation of motivated, accomplished individuals to use their skills to advance the progress of the State, and will provide an example for other states to follow.

The Committee also urges Congress to enact the DREAM Act, which would provide qualifying immigrant students the possibility of obtaining lawful immigration status upon graduation from college or service in the military.

Conclusion

Lawmakers, public officials, law enforcement agencies, community organizations and members of the public must work together to ensure that the civil rights of immigrants are protected within New Jersey and throughout the United States. That requires increased reporting of civil rights violations by members of immigrant communities, as well as more rigorous enforcement of existing civil rights law to protect the interests of immigrant workers and tenants. Essential to both developments, however, is greater trust between immigrant communities and the public officials and institutions that enforce the law. The Committee therefore recommends that improving conditions and opportunities for immigrants in the employment and housing context, and beyond, such as with respect to immigration detention conditions, relationships with local police agencies, and access to education, are essential steps in assuring respect for the basic civil rights of immigrants.

Appendices A-D

Appendix A



Sent via email: idavis@usccr.gov

January 20, 2010

Ivy L. Davis, Director
Eastern Regional Office – USCCR
624 Ninth Street, NW
Suite 740
Washington, DC 20425

Dear Director Davis:

Thank you for your recent correspondence regarding USCCR's pending release of an Advisory Committee Report and the opportunity to respond to statements about CCA's Elizabeth Detention Center that will be included in said report.

CCA has worked in partnership with Immigration and Customs Enforcement (previously INS) for a quarter of a century. In that capacity, we meet the expressed needs of ICE for detention services and bed space at multiple facilities, including the Elizabeth Detention Center. CCA provides services for immigration detention but as a company does not take a position with respect to the broader immigration policy. However, our company is committed to ensuring that individuals placed in our care are treated appropriately and with respect.

Inclusion of the phrases "detention regime" and "reaped enormous financial gains" by Ms. Gottlieb are clearly intended to paint a negative and inaccurate picture of the federal government's use of contract providers in this area. In helping our government partner meet its ongoing detention needs, CCA provides value and cost savings for which we are compensated. Any rational person would acknowledge that it is reasonable in any profession to expect compensation for services provided. Characterizations like the ones at issue here don't help the public understand the issues at stake; in fact, they confuse and distort, undermining the public's important right to know and understand the facts needed to make informed policy decisions.

We respectfully disagree with Ms. Gottlieb's mischaracterizations of EDC. The facility securely confines detainees as required by law and in accordance with our government partner's expectations and requirements. CCA/EDC strives to humanely operate a safe, secure facility that upholds the dignity of all detainees entrusted to our care.

Contrary to Ms. Gottlieb's assertions, the facility does contain windows in addition to significant natural lighting, all of which meets or exceeds applicable standards. EDC provides outdoor space that is not external to the facility, which might explain Ms. Gottlieb's misstatement about the absence of outdoor space. With respect to concerns over detainee privacy and visitation, reasonable accommodations are made to the extent they do not undermine our top priorities of safety and security for detainees and staff.

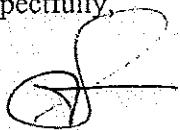
Ms. Gottlieb also questions the enforceability of detention standards. The CCA Elizabeth Detention Center is contractually required by ICE to meet or exceed their comprehensive detention standards. Failure to meet these high standards can result in the immediate removal of detainees and penalties up to and including termination of contract.

It is worth noting that ICE maintains an on-site staff presence at EDC that is also complimented with a full-time monitor who is contracted by the agency (Nakamoto Group). These full-time ICE and contract employees enable the agency to ensure contract compliance, provide another path for detainees to communicate their needs or concerns, and expedite resolutions when problems arise. Furthermore, CCA/EDC is frequently accessed by federal, state and local government officials as well as immigration attorneys and advocates. In short, the level of oversight and scrutiny in these facilities is unprecedented.

Every day our hard working, dedicated employees at Elizabeth provide a safe and secure environment for the detainees entrusted to our care, and do so in a professional manner that respects the dignity of every individual. While CCA understands that U.S. immigration laws and policies evoke strong ideological differences and activism, we feel it is misguided and unwarranted to besmirch our credibility and that of our dedicated employees.

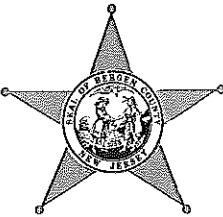
On behalf of CCA, I again thank the Commission for the opportunity to respond. Please feel free to contact me with any questions the Commission might have about this matter or CCA.

Respectfully,



Steven Owen
Director, Communications

Appendix B



USCCR-ERO
RECEIVED

I-54

2010 JAN 21 PM 3:15

OFFICE OF THE BERGEN COUNTY SHERIFF

BERGEN COUNTY JUSTICE CENTER

HACKENSACK, N.J. 07601

(201) 336-3500

WWW.BCSD.US

LEO P. McGuire
SHERIFF

January 11, 2010

Ivy Davis
Eastern Regional Office-USCCR
624 Ninth Street, NW
Suite 740
Washington, D.C. 20425
(202) 376-7756

Re: Allegations in your letter dated December 31, 2009

Dear Ms. Davis,

It has come to my attention that a letter from you dated December 31, 2009 makes serious allegations regarding several jails within the State of New Jersey including the Bergen County Jail, which I oversee. In my capacity as administrator of that facility I must advise you that the accusations regarding the medical treatment of our I.C.E. detainees are simply untrue and flagrantly misleading. It appears that the comments made about lack of proper medical care were intended to be general in nature as applied to *most* jails. However, the tone of the letter seemed to imply that the deficiencies were specific to the Bergen County Jail. I would have taken the opportunity to reach out to your office sooner but the Bergen County Sheriff's Office was never made aware of the May 8, 2009 New Jersey Advisory Committee's public hearing regarding the civil rights issues of New Jersey I.C.E detainees. Further, no one from your organization endeavored to review our policies, speak to any of our personnel, or visit our facility. I have to take exception to the idea that any inquiry can reach an adequate conclusion using accusations in lieu of evidence.

My office would have appreciated a chance to discuss these issues with you and would have gladly offered the opportunity for members of your office to tour our top-rate facility; that offer I am pleased to extend to you now. I am very proud of the standards we espouse and employ regarding the medical and behavioral health treatment of all our inmates. The level of care is no different for I.C.E. detainees than it is for any other inmate in our facility, nor is that level of care different than found at any civilian medical facility. Our ongoing relationship with I.C.E. is subject to monthly inspections. To date these inspections have not produced anything to

shake I.C.E.'s confidence in our ability to ably and effectively care for the detainees entrusted to our care.

Please be advised that the Bergen County Sheriff's Office advances the following statistics related to our medical care at the Bergen County Jail including Behavioral Health, which directly contradict the allegations in your letter as follows:

- A full time doctor is on staff Monday through Friday and is on call 24/7.
- A full time Nurse Practitioner / Chief Nursing Officer is on staff Monday through Friday and is on call 24/7.
- Thirteen (13) full-time nurses work round-the-clock consisting of eleven (11) Registered Nurses and two (2) Licensed Practical Nurses.
- We maintain a per diem pool of a minimum of twelve (12)RN's to fill in any shifts not covered by our existing staff in addition to staff overtime.
- Physical Therapy is provided once a week for several hours depending on inmates' needs.
- Laboratory services are provided five (5) days a week.
- X-rays are conducted as needed three (3) days a week but are available seven (7) days a week for add-ons and emergencies that do not require a visit to the hospital.
- Full pharmacy services are provided and medications are delivered directly to inmates as needed on all three shifts.
- We have an infirmary within the jail where inmates are housed who are in need of skilled nursing care.
- Our hospital affiliate for those needing hospitalization is the Bergen Regional Medical Center ("BRMC") and Hackensack University Medical Center is less than one mile away for all emergencies.
- We have a Dentist & Dental Assistant on staff as well as an Oral Surgeon on call.
- We have twenty-five (25) hours of on-site Psychiatric coverage by three Psychiatrists.
- We have a full-time Director of Behavioral Services/LCSW, Mental two (2) full-time mental health clinicians, and two (2) per diem clinicians who cover weekends for a total of seven (7) days per week of behavioral health coverage.
- We have an eleven (11) bed hospital-based forensic unit located at the BRMC for acute psychiatric and medical treatment.

-Every inmate is screened for behavioral health issues/suicidal ideation; first by a booking officer and then by a nurse who also does a full nursing assessment at intake. The Bergen County Jail does approximately nine thousand (9,000) such screenings every year.

-The Behavioral Health Unit provides additional assessments to approximately twenty-five hundred (2,500) inmates per year. There are an additional forty-five hundred (4,500) follow up behavioral health contacts per year, for a total of seven thousand (7,000) behavioral health contacts annually.

-There are approximately twenty-five hundred (2,500) contacts by a psychiatrist per year.

-At any given time there are approximately two hundred (200) inmates being prescribed psychiatric medications.

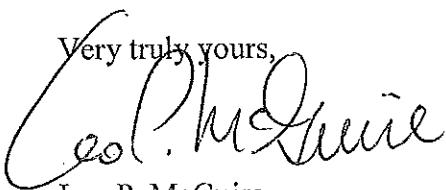
-Our policy manual makes no distinction between immigration detainees and inmates when it comes to medical care.

As you can see based upon the information above, the Bergen County Jail takes its medical treatment of inmates very seriously and adheres to the highest standards in correctional health care. I.C.E. agrees with this analysis as evidenced by their latest rating.

In addition, Members of the New Jersey Commission on Civil Rights have toured our facility and I am sure they would be willing to provide their own assessment of the medical and behavioral health care provided.

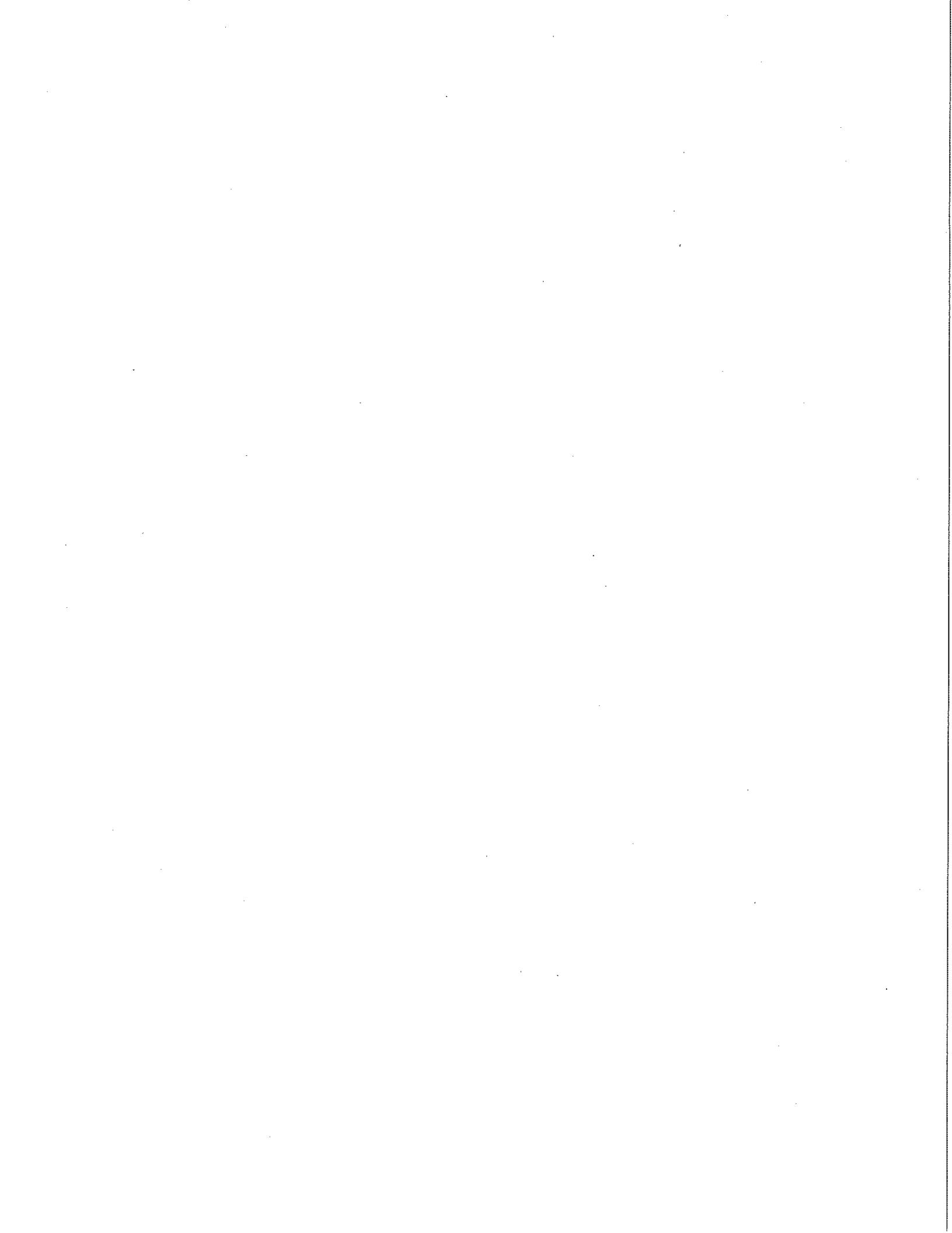
If you require any additional feedback or would like to schedule a tour of our facility, I would be happy to help facilitate such a visit.

Very truly yours,


Leo P. McGuire
Bergen County Sheriff

TQ/qt

cc: Bergen County Counsel
New Jersey Commission on Civil Rights



**MONMOUTH COUNTY SHERIFF'S OFFICE**
Correctional Institution

SHER-ERO

RECEIVED

PO Box 5007, 1 Waterworks Road
Freehold, New Jersey 07728-5007
732-431-7860 (FAX) 732-294-5985J-19
17 AM 10:09William J. Fraser
WardenJeffrey W. Sauter
Business AdministratorShaun E. Golden
Acting Sheriff

February 16, 2010

VIA FAX

Ivy Davis
Director, Civil Liberties Office
Washington, D.C.
202-376-7548

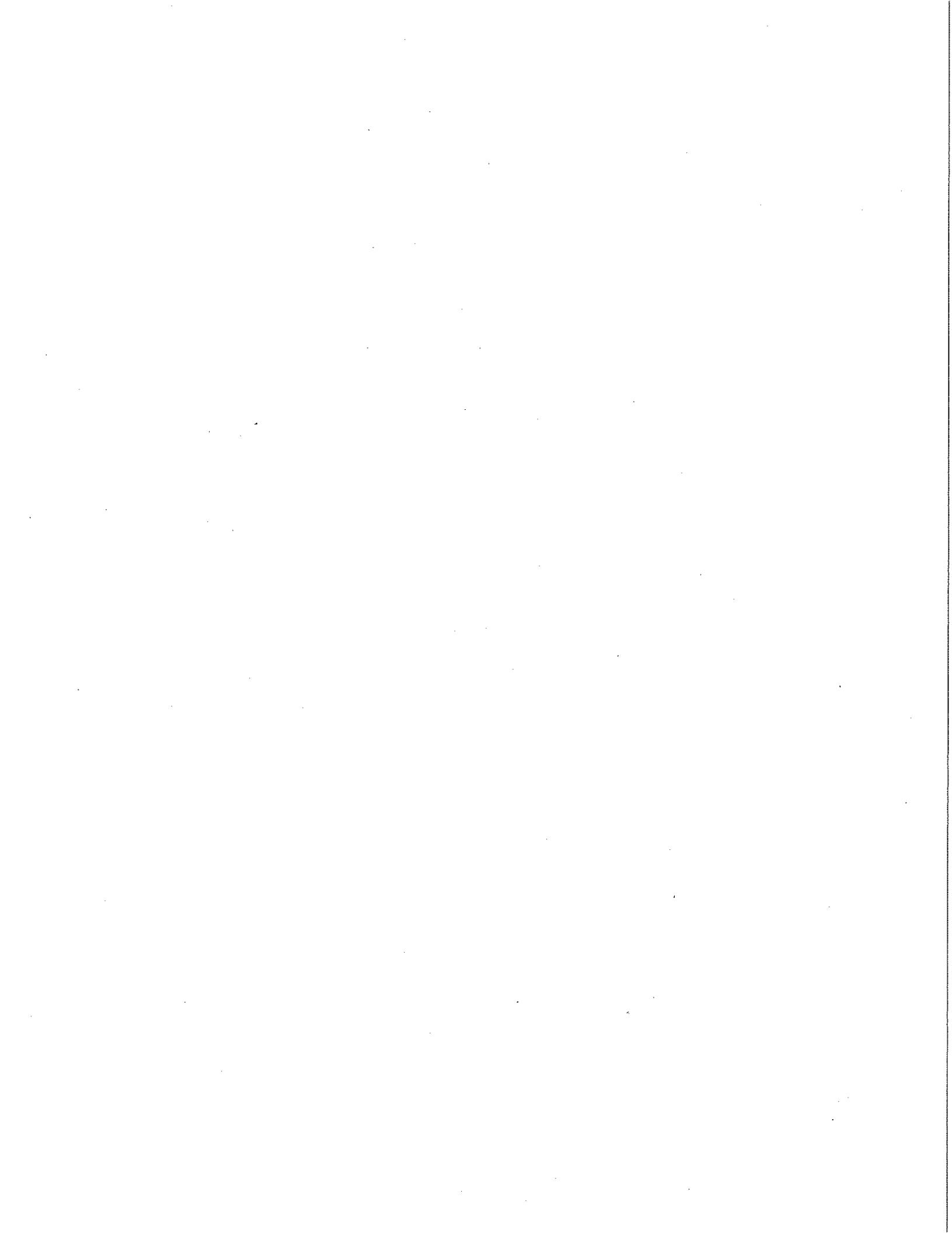
Dear Ms. Davis

This letter is to confirm that the subject of your inquiry which was referred to this office has been directed to I.C.E. representatives.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. T. Fatigante".

Captain Thomas Fatigante



Appendix D



USCCR-ERO
RECEIVED
I-16
2010 JAN 15 AM 9:05

Stephen J. Dalina

Freeholder Director

Christopher D. Rafano

Deputy Director

Carol Barrett

H. James Polos

Ronald G. Rios

Mildred S. Scott

Blanquita B. Valenti

Freeholders

Mildred S. Scott
Chairperson, Committee of
Law & Public Safety

John A. Pulomena
County Administrator

Thomas F. Kelso
County Counsel

732-745-3228
FAX 732-745-4539

COUNTY OF MIDDLESEX
OFFICE OF THE COUNTY COUNSEL
75 BAYARD STREET, SECOND FLOOR
NEW BRUNSWICK, NJ 08901

January 7, 2010

Ivy L. Davis, Director
Eastern Regional Office
U.S. Commission on Civil Rights
624 Ninth Street NW – Suite 740
Washington, DC 20425

Re: New Jersey Committee Advisory Report

Dear Ms. Davis:

This office represents the County of Middlesex and the Middlesex County Adult Correction Center. Your December 31, 2009 e-mail to Warden Edmond Cicchi has been forwarded to me for response.

As an initial matter, I would like to thank you for the opportunity to respond to Ms. Gottlieb's comments which are factually incorrect as they relate to the Middlesex County Adult Correction Center. Middlesex County contracts with CFG Health Systems to provide medical services to the Adult Correction Center. Our contract requires CFG to have health care professionals at the Correction Center 24 hours a day. At no time are Corrections Officers required to make "critical decisions about when someone is seriously sick enough to be taken to the hospital", as the draft report indicates.

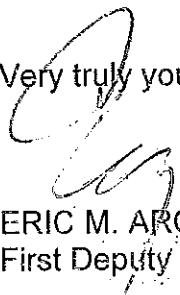
Additionally, while no specific detainee is referenced in your e-mail, we assume that Ms. Gottlieb is referring to the case of Arturo Suares-Almenares, who was detained at the Adult Correction Center and died on March 2, 2008 at St. Peter's University Hospital in New Brunswick. I am enclosing a copy of the Middlesex County Medical Examiner's Report which states that Mr. Suares-Almenares died of natural causes.

COUNTY OF MIDDLESEX
THOMAS F. KELSO
COUNTY COUNSEL

Ivy L. Davis, Director
US Commission on Civil Rights
January 7, 2010
Page 2

Finally, an investigation into Mr. Suares-Almenares' death was conducted by the Department of Homeland Security, Immigration and Customs Enforcement. This Report concluded that there was no mistreatment or failure to provide medical assistance to Mr. Suares-Almenares. The County is not permitted to release said Investigative Report. However, you may request a copy directly from the FOIA office of the U.S. Immigration and Customs Enforcement.

Should you have any questions, please feel free to contact this office or Warden Cicchi.


Very truly yours,

ERIC M. ARONOWITZ, ESQ.
First Deputy County Counsel

EMA:cal
Enclosures

cc: Mildred S. Scott, Freeholder
John A. Pulomena, Administrator
Edmond Cicchi, Warden - Adult Corrections

U.S. Commission on Civil Rights

Eastern Regional Office

624 9th Street, NW

Washington, DC 20425

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