



January 15, 2020

Kristin Acuff
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528
[REDACTED] [.hq.dhs.gov](mailto:[REDACTED].hq.dhs.gov)

Re: Manuel de Jesus AMAYA PORTILLO, A [REDACTED]

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

PLEASE RESPOND TO
NATIONAL PRISON PROJECT
915 15TH STREET, NW
7TH FLOOR
WASHINGTON, DC 20005-2112
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F/202.393.4931
WWW.ACLU.ORG

DAVID C. FATHI
DIRECTOR
ATTORNEY AT LAW*

*NOT ADMITTED IN DC:
PRACTICE LIMITED TO FEDERAL
COURTS

Dear Ms. Acuff,

We write in response to your inquiry about our client, Mr. Manuel Amaya Portillo. Mr. Amaya Portillo is currently detained in the custody of Immigration and Customs Enforcement (“ICE”) at the LaSalle Detention Center in Jena, Louisiana (“LaSalle”), as he awaits his immigration proceedings for humanitarian relief. You have requested further information regarding Mr. Amaya Portillo’s request for a wheelchair at the Winn Correctional Center in Winnfield, Louisiana (“Winn”) and his placement in a medical cell, where he was given sedatives. Further information is provided below.

Mr. Amaya Portillo suffers from obvious and severe congenital physical disabilities. He is twenty-three years old and is approximately four feet tall. His left leg is malformed and approximately half the length of his right leg, and he has great difficulty walking, especially for long distances. He has six fingers on each hand, all of which are short. He was born extremely underweight as an infant, and he has suffered from neurological and heart issues that have required extensive surgery. Mr. Amaya Portillo’s disability substantially limits his major life activities, and he qualifies for protection under the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

Mr. Amaya Portillo has faced discrimination and has been excluded from the immigration adjudication process and detention services, programs, and activities as a result of his disability. We have requested in prior correspondence your investigation into USCIS’s failure to provide a Reasonable Fear Interview (RFI) in a manner that accommodates Mr. Amaya Portillo’s disability, and unlawful conditions of confinement at Winn, where Mr. Amaya Portillo was detained between October 30 and December 18, 2019. Since our correspondence of December 17, 2019, Mr. Amaya Portillo has been transferred to the LaSalle Detention Center, where he continues to experience discrimination and exclusion from detention services, programs, and activities as a result of his disability; we also request your investigation and resolution of these conditions.

A. Mr. Amaya Portillo Was Excluded from Proper Adjudication Services for His Reasonable Fear Determination as a Result of His Disability.

Mr. Amaya Portillo has suffered significant stigma, persecution, and torture in Honduras as a result of his disability. *Tchoukhrova v. Gonzales*, 404 F.3d 1181, 1188-89 (9th Cir. 2005) ("persons with disabilities are precisely the kind of individuals that our asylum law contemplates by the words 'members of a particular social group'" (abrogated on unrelated grounds)). Mr. Amaya Portillo received a negative credible fear determination by an asylum officer in a telephone interview. However, the administrative record clearly indicates that the asylum officer made the negative credible fear determination without full information and consideration of Mr. Amaya Portillo's obvious physical disability. Indeed, the asylum officer marked "No" to question 2.19, stating that he had not observed any indication of any medical condition during the telephone interview. ("Does applicant claim to have a medical condition (physical or mental), or has the officer observed any indication that a medical condition exists?"). The asylum officer also summarily concluded, without any basis, that Mr. Amaya Portillo's persecution was based on his height, fundamentally misunderstanding the nature and extent of his disability and basis for persecution. ("Q: Have you ever been harmed or threatened for any other reason in Honduras other than being a person of low height?"). Based on this flawed and incomplete understanding of Mr. Amaya's claim, the asylum officer found that Mr. Amaya Portillo failed to establish persecution and that he could safely relocate to a different part of Honduras.

Mr. Amaya Portillo's IJ review of this credible fear determination via video was similarly flawed and incomplete, as he, appearing pro se, was fully seated during the entirety of the video hearing, without the ability to present the full nature of the basis of his claim. U.S. Citizenship and Immigration Services ("USCIS") failed to provide Mr. Amaya Portillo with reasonable accommodations to adjudication services, in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. After we requested intervention by your office, the DHS Office of Inspector General, and the Senate and House Judiciary Committee, USCIS concluded on December 19, 2019 that Mr. Amaya had demonstrated reasonable fear of persecution, and notified him that he would be issued a Notice to Appear and enter proceedings under INA § 240.

B. Mr. Amaya Portillo Made Repeated Requests for a Wheelchair at the Winn Correctional Center.

Mr. Amaya Portillo faced significant challenges while detained at Winn due to ICE and Winn's failure to provide proper accommodations. At Winn, Mr. Amaya Portillo required a wheelchair, both inside and outside the residential unit. The Winn facility is spread out over several acres, and Mr. Amaya Portillo was unable to walk independently from Residential Unit B (commonly referred to as the "Birch Unit") to the cafeteria where all meals were served, or attend Legal Orientation

Program and religious services without a wheelchair. He could not use the shower independently, as he could not reach the faucet controls to turn on the water or to regulate the water temperature, which became dangerously hot. Mr. Amaya Portillo also faced trouble reaching the toilet and sink in the residential unit. Because Mr. Amaya Portillo depended on other detainees to assist him, he went many days without bathing because he could not find anyone to help him, and he faced similar challenges with using the toilet and sink. On several occasions, Mr. Amaya Portillo requested that he be able to attend the Legal Orientation Program and religious services, but guards in his unit would not allow him to go, which he believes is because of the work it would take to transport him from the unit.

Mr. Amaya Portillo arrived at Winn on October 30, 2019, and asked an officer for a wheelchair the following day, on October 31, 2019. The officer told Mr. Amaya Portillo that the medical unit would address his request. Mr. Amaya Portillo, however, was not provided with a wheelchair. Instead, he was told that he would not eat in the cafeteria with other detainees but would eat meals in the residential unit. Mr. Amaya Portillo continued to make requests for a wheelchair with the medical staff at Winn each time he had a visit, but he was never provided with a wheelchair or other accommodations for his disability.

C. Mr. Amaya Was Locked in the Medical Unit and Given Sedatives During an Oversight Inspection of the Winn Correctional Center.

Mr. Amaya Portillo was placed in a medical cell and given sedatives on or about Tuesday, November 5, 2019 at Winn, which we understand took place during the Nakamoto Group, Inc.'s ("Nakamoto") inspection of the facility.¹ ICE has contracted with Nakamoto to conduct annual inspections of ICE detention centers. Mr. Amaya Portillo had requested a medical visit before this date, and he believes that he was scheduled for a visit on Monday, November 4, 2019. However, he was instead brought to the medical unit on November 5.

When Mr. Amaya Portillo arrived at the medical unit, medical staff placed him in a room away from other detainees also waiting for a medical visit. Mr. Amaya Portillo recalls noticing people with cameras coming through the medical unit. After they left the medical unit, a nurse made him swallow a sleeping pill, which he had not requested and did not want to take. Mr. Amaya Portillo was locked in this room for approximately three hours. He later learned from other detainees that investigators with cameras had interviewed detainees in the medical unit and in his residential unit (Unit B or "Birch") about conditions at the facility that day.

After learning about this incident, the ACLU sent a litigation hold letter to ICE Acting Field Office Director Brian Lund and Warden Keith Deville on December 2, 2019. That same day, Mr. Amaya was given a notice of an

¹ A prior letter stated that the Nakamoto visit took place sometime during the week of November 11, 2019, but this was a typographical error on our part.

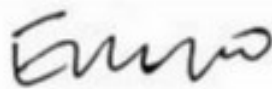
Immigration Judge hearing for review of his negative credible fear determination, which took place, *pro se*, on December 5, 2019. The IJ summarily approved his negative credible fear determination that day, and she ordered Mr. Amaya Portillo removed from the United States. Only after we requested intervention by your office, the DHS Office of Inspector General, and the Senate and House Judiciary Committee, did USCIS reverse its decision and conclude that Mr. Amaya Portillo had demonstrated reasonable fear of persecution, and it issued a Notice to Appear.

D. LaSalle Detention Center Has Failed to Provide Reasonable Accommodations to Mr. Amaya Portillo.

ICE transferred Mr. Amaya Portillo from Winn to the LaSalle Detention Center on December 18, 2019. However, he continues to face significant challenges in accessing facilities critical to his daily functioning. Although Mr. Amaya Portillo has now received a wheelchair, he is unable to navigate the wheelchair in the detention dormitory at LaSalle. Because he has received no other assistance for his disability, he is forced to request assistance from other detainees, who often make fun of him and bully him due to his appearance. Mr. Amaya Portillo also experiences great difficulty in using the toilet, sink, and shower, as he cannot access the toilet or sink due to his height. He also faces great difficulty bathing, as he cannot reach the handles to the shower facilities, and no shower seat is available in the detention unit. Because the water is often scalding hot, he is in danger of injury, as he cannot turn the water on or off by himself. He continues to face potential injury getting in and out of the bunkbeds. Mr. Amaya Portillo also continues to suffer from heart and bone pain due to his congenital health issues, and he has not received sufficient treatment for these ailments while in custody.

We appreciate your investigation into the matter. Please contact Eunice Cho, Sr. Staff Attorney, ACLU National Prison Project at echo@aclu.org and cell at 202-440-0383, or Katie Schwartzmann at kschwartzmann@laaclu.org or 504-522-0628 x 125 with any questions.

Sincerely,



Eunice Cho
Senior Staff Attorney
ACLU National Prison Project

/s/ Katie Schwartzmann
Katie Schwartzmann
Legal Director
ACLU of Louisiana