



July 20, 2016

Sarah Saldaña
Director
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

Kevin Landy
Assistant Director
Office of Detention Policy and Planning
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

Thomas Homan
Executive Associate Director
Office of Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

Tae Johnson
Assistant Director for Custody Management
Office of Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

RE: Call for Immediate Remedy for the Transfer of Women in DHS Custody at T. Don Hutto Residential Facility to the Laredo Processing Center

Dear Director Saldaña, Mr. Landy, Mr. Homan, and Mr. Johnson:

We, the undersigned attorneys and organizations, seek your immediate intervention to resolve the serious problems created by the June 27th transfer of approximately sixty women

314 E. Highland Mall Blvd • Ste. 501 • Austin • TX • 78752 • T: 512-478-0546 • F: 512-387-2650 •
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detained at the T. Don Hutto Residential Facility in Taylor, Texas to the Laredo Processing Center. Specifically, we request that you release from detention those women who were transferred, given the prolonged detention they have already faced, which was made significantly worse by the transfer into harsh conditions at the Laredo facility. For those women who will not be released, we urge you to transfer them immediately back to the Hutto detention center.

Many of the transferred women have pro bono or other legal representation and are pursuing pending asylum and withholding-of-removal cases. They were notified of the transfer late Friday night, June 24th, 2016, and were transferred during the early morning hours of Monday, June 27th, 2016. ICE provided no notice directly to counsel during this time period. That Saturday and Sunday, women frantically tried to contact their attorneys to notify them of the transfer, many of whom were unreachable because it was the weekend. ICE officers did not notify attorneys of the transfer until Monday when the women were already in route to Laredo. Over the last two weeks, the transfer has wreaked havoc on court proceedings, attorneys' efforts to represent their clients, and the women's own well-being.

Though this is not the first time such a transfer has taken place from Hutto to Laredo, this is by far the most harmful large-scale transfer we have seen. This transfer represents a grossly inefficient use of resources, violates detainees' due process rights, and has severely impacted the women's basic human rights because of harsh detention conditions at the Laredo facility.

Inefficient Use of Resources

The decision to transfer approximately sixty women, many of whom were already scheduled for hearings before an immigration judge, has wasted judicial resources. Not only were attorneys not notified in advance of the transfer, but EOIR was also not informed. This led to chaos in the San Antonio immigration court on June 28th as judges dialed into the Hutto courtrooms only to find that respondents had been transferred to Laredo the day before. Even attorneys from the DHS Office of the Chief Counsel seemed surprised by the transfer. Once it was clear where the respondents were physically located, court personnel still had technical difficulties connecting to the televideo system leading to further delays and rescheduled hearings for an already backlogged docket. These problems are likely to continue, because the video technology at Laredo is limited and there is not sufficient courtroom space at the facility to allow for a detained court docket to proceed at an acceptable pace.

In one specific instance, a woman was transferred from Hutto the day before her final merits hearing. The woman's attorney was not able to reach her client by phone for almost two days because of the transfer. The judge agreed that the final hearing must be rescheduled for a later date to allow the attorney and client to confer. However, days later, the hearing was once again rescheduled because the one courtroom available for televideo hearings in the Laredo

facility was utilized for other cases. This woman will suffer prolonged detention because of a careless decision to transfer her one day before her final court hearing.

Attorneys who represent the transferred women, many of whom are appearing pro bono, are now forced to expend even greater resources to represent their clients in Laredo. Unlike the Hutto facility, women detained in Laredo do not have access to email. Furthermore, all calls to the facility are monitored. This means that a legal representative must travel in person to Laredo in order to communicate privately with their client, a serious burden given that the majority of attorneys representing women in the Hutto facility are located in Austin and San Antonio and must now travel five to eight hours round trip to meet with their clients. The decision to transfer women who were scheduled for hearings and represented by counsel has interfered with the court dockets, disrupted representation and led the government and counsel alike to expend additional resources unnecessarily.

Due Process Violations

The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.” INA § 292 also states that a detainee has a right to counsel before an immigration judge in any removal proceedings. The right to counsel is an issue of “fundamental fairness.” The June 27th transfer violates the INA and detainees’ due process rights by effectively denying access to counsel. It is also inconsistent with the ICE/ERO Detainee Transfers Directive.¹ While the directive does not apply directly since the transfer took place within a single area of responsibility, the intention of the directive was to avoid transfers of individuals who have counsel and ongoing proceedings in a particular location. The physical distances involved here raise the exact same concerns addressed in the directive.

The transfer directly interferes with legal representation. As mentioned previously, the Laredo Processing Center is remotely located from other major Texas cities. Without private phone calls or email, attorneys who represent the transferred women must now travel a great distance in order to communicate with their clients. Communication between counsel and clients is necessarily limited as a result, as is the ability of attorneys to prepare their clients for high-stakes hearings. We have received reports that Laredo Processing Center staff have confiscated detainee’s legal documents and that the women are thwarted in their efforts to send outgoing mail even to their attorneys. Moreover, many women were not able to retain counsel before the transfer and so will likely remain unrepresented. Unfortunately, it is extremely difficult to

¹ Policy 11022.1: Detainee Transfers (Jan. 2012).

engage a legal representative in the Laredo area, especially if the detainee has limited financial resources and is seeking pro bono assistance.

American Gateways provides weekly Know Your Rights presentations and pro se asylum and bond workshops at the T. Don Hutto Detention Facility. The University of Texas School of Law Immigration Clinic offers legal assistance on asylum cases to women detained at Hutto. Grassroots Leadership coordinates a visitation program for Hutto detainees. Unfortunately, there are no organizations providing services of this kind at the Laredo Processing Center. Without these services, the women who were transferred without legal representation will struggle to navigate the asylum process on their own. There will be no assistance for these women in Laredo, and many will be denied relief simply because they are unable to access the system.

Human Rights Abuses

The transfer also raises issues of basic human rights given the deeply problematic nature of the transfer and the conditions of detention at the Laredo facility. The Laredo Processing Center is primarily used to house men and women who are being processed for transfer to other detention centers around the country or for immediate deportation. As problematic as the conditions are for short-term detention pending removal or transfer, they are simply unacceptable for longer-term detention faced by individuals in ongoing proceedings with pending claims to relief.

The Center is not structured to hold people who are in the CFI/RFI process or removal proceedings. We know this because we have been informed that the Asylum Office will not be able to conduct CFIs and RFIs for the women transferred until early September when systems can be put in place at the facility. Furthermore, the Center only has one courtroom, which will significantly backlog the removal cases as judges and respondents vie for an opening on the docket. Not having access to the CFI/RFI process or court, means that women are facing prolonged detention. There is not a sufficient justification for the prolonged detention; any justification is far outweighed by the significant deprivation of liberty these women are suffering.

We have heard first-hand reports from several of the women transferred that the conditions in Laredo are altogether unsuited to civil detention. At Laredo, the women must be escorted by a guard and are frisked anytime they leave or enter the recreation room or medical facility. The women are forced to wear prison jumpsuits and are yelled at by guards with words such as "rat," "thief," and "criminal." Census counts are conducted every two hours, even when women are sleeping. Reports of retaliation from the guards are common, including one recent claim that guards were sounding alarms every five minutes from 4:00a.m. until 7:00p.m. in an effort to disorient the women. Women have reported that guards have stopped to observe them as they shower. Women have further reported that guards have ripped up complaints about

conditions prepared by the detained women. One woman told us she was traumatized by the transfer with increased feelings of depression and anxiety. These conditions are simply inhumane.

The transfer itself also caused intense stress and violated basic rights. It has been confirmed by several women that they were notified of the transfer to Laredo on Friday, June 24th between 10:00p.m. and 11:00p.m. On Sunday, June 26th at 8:00p.m., the approximately sixty women who were being transferred were put in one room where they were monitored until the following morning at 6:00a.m. at which point the bus departed for Laredo. The women traveled until around 5:00p.m. on Monday, arriving in Laredo to registration and a barrage of medical checks. The process did not end until around 8:00a.m. on Tuesday morning at which point the women were finally allowed to sleep. The women lost two nights of sleep during this transfer.

Not surprisingly, many women who were transferred to Laredo are asking for their deportations because they feel they cannot continue living under these conditions. It is simply unacceptable that the conditions and treatment by ICE and CCA employees are serving to coerce women into abandoning their claims for relief.

Recommendations

A. Immediate Release

We seek the release of the women who were transferred on June 27th. The ICE Field Office Director has the discretion to release the women transferred on an Order of Release on Recognizance or Order of Supervision. The current situation merits this positive use of discretion. The women affected by this transfer should not have to suffer through prolonged detention in unacceptable conditions, without adequate access to counsel, as they continue to proceed with their cases.

In the alternative, we urge the transfer of this group of women back to Hutto. The Laredo Processing Center is not intended to house people at this stage of removal proceedings. It is inappropriate and a waste of resources to keep them detained in the Center where they have limited access to attorneys and court, and the CFI/RFI process has not yet been put in place. The women should be moved back to Hutto where there are established systems and they can complete their interviews and court cases.

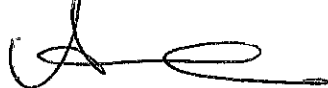
B. Create Policy for Individualized Review of A-File and Communication with EOIR Prior to Transfer

The decision to transfer this specific group of women with scheduled hearings has greatly congested an already backlogged docket in the San Antonio court. Women should never have been transferred away from counsel days before hearings were scheduled. An individualized review of each woman's A-file as well as communicating with EOIR about hearing schedules prior to transfer would have prevented the waste of untold resources. It is for this very reason, that the Department of Homeland Security Inspector General recommended in his memorandum to your agency that ICE "establish a national standard for reviewing A-files prior to transferring a detainee" and "implement a policy requiring Field Offices to develop protocols with EOIR court administrators for exchanging custody hearing and detainee transfer schedules."² In fact, ICE agreed with the Inspector General.³

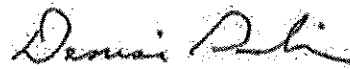
New policies and practices must be adopted to prevent such a situation arising again in the future. This policy should require a review of each detainee's A-file and communication with EOIR regarding the docket schedule prior to transfer. Such a policy is necessary to avoid wasted resources and violations of due process and basic human rights.

Thank you for your prompt attention to these matters. Should you have any questions, please do not hesitate to contact Analí Looper at AnaliG@americangateways.org or (512) 478-0546, ext. 211 or Denise Gilman at DGilman@law.utexas.edu or (512) 232-7796.

Sincerely,



Analí Looper
Staff Attorney
Hutto Program Coordinator
American Gateways



Denise Gilman
Director
Immigration Clinic
University of Texas School of Law

Along with:

Grassroots Leadership
Texas United for Families

² Department of Homeland Security Office of Inspector General, "Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers" at 5, November 10, 2009.

³ *Id.* at 7.

Hutto Visitation Program

Stephanie Taylor,

Law Office of Hansen & Taylor

Jennifer Walker Gates,

Law Office of Walker Gates Vela

Jose Chito Vela,

Law Office of Walker Gates Vela

Kate Lincoln-Goldfinch,

Law Office of Kate Lincoln-Goldfinch

Matt Trevena,

The Law Office of Matt Trevena