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I would like to thank the Democratic Progressive Caucus, the House Judiciary Democrats, the Congressional Hispanic Caucus, the Congressional Asian Pacific American Caucus, the Congressional Black Caucus and members of Congress for the opportunity to provide a statement regarding the detention of Central American mothers and children, fleeing severe violence and persecution in their home countries.

I am currently a Senior Fellow at the Emerson Collective. I am also a coordinating member of the RAICES/ Karnes pro bono project.¹ Until last December, I was a Clinical Professor of Law at the University of Texas School of Law and the co-director of the immigration clinic there. I have been involved in litigation and advocacy to end the detention of families since 2006 when the Department of Homeland Security (DHS) opened the T. Don Hutto family detention facility in Taylor, Texas. I was co-counsel in the litigation that resulted in the closing of the Hutto facility. Since the re-establishment of family detention last summer, I have focused on the direct representation of women and children at the Karnes detention center, as well as local and national advocacy and litigation to end this shortsighted practice. Based on my experiences, I am convinced that there is no humane, moral or legal way to detain families, particularly in large, secure facilities operated by private for-profit prison companies.²

The Failed Experiment at the T. Don Hutto Detention Center

In 2006, DHS, under the Bush administration, detained over 500 mothers, fathers and children, many of whom were asylum seekers, at the T. Don Hutto detention center, a former medium security prison, operated by the Corrections Corporation of America (CCA). The facility was not licensed under any Texas child welfare law or regulation. Families were subjected to deplorable conditions and a penal-like regime; children and their parents wore prison uniforms, had no free movement within the jail, were subjected to multiple daily prison counts and prohibited from having toys and writing implements in their cells.³ Until ensuing media attention and litigation, CCA provided only one hour of education per day. The image of a three-month old Iraqi baby in a prison uniform remains with me

¹ RAICES is a non-profit organization in San Antonio, Texas, that provides legal services to immigrants. <http://raicestexas.org>

² The T. Don Hutto family detention center was operated by the Corrections Corporation of America (CCA). The Karnes detention center is operated by the GEO Corporation while the Dilley center is operated by CCA.

³ Unlike the current family detention system that targets only mothers and children, at that time, fathers were also detained at Hutto.

today. She spent six months of her young life at Hutto until she and her parents were granted asylum.⁴

In 2007, the American Civil Liberties Union, the University of Texas Immigration Clinic and the former law firm of LeBouef Lamb Green and McRae sued to enforce the *Flores* settlement.⁵ *Flores* favors the release of immigrant children and requires that if immigrant children are detained, they must be housed in the least restrictive alternative setting in a facility that is licensed under state law.⁶ The parties in the Hutto litigation reached a settlement that lasted for two years. In August, 2009, as the expiration of the settlement approached, DHS, under President Obama's newly elected administration, made the legally correct and humane decision to end family detention, except for a small 90 bed facility in a former nursing home in Berks County, Pennsylvania.⁷ Generally, as was the practice before 2006, families were released into the community to pursue their immigration cases.⁸

The failed Hutto experiment is relevant to frame today's debate. The Obama administration previously recognized that there is simply no humane way to detain families. The deleterious effects of detention on children and their mothers and the complaints that were reported at Hutto of inadequate medical care, weight loss, inedible food, threats of separation as a disciplinary tool and more are remarkably similar to conditions and complaints at the today's detention centers. It is lamentable that the current administration which ended family detention in 2009 has now expanded the incarceration of vulnerable mothers and children to unprecedented levels.

Family Detention 2014

In June, 2014, after an increase in the number of Central American children and families fleeing horrific conditions in the Northern Triangle,⁹ DHS implemented the most punitive response possible to this humanitarian crisis. In spite of evidence

⁴ <http://www.newyorker.com/magazine/2008/03/03/the-lost-children>

⁵ *In Re Hutto Family Detention Center*, A-07-CA-164-SS (W. D. Tex. 2007), available at https://www.aclu.org/sites/default/files/field_document/hutto_settlement.pdf

⁶ *Flores v. Reno*, available at

https://www.aclu.org/sites/default/files/field_document/flores_settlement_final_plus_extension_of_settlement011797.pdf; now *Flores v. Johnson*, CV-85-4544 (DMG) (C.D.Cal. 2015) See discussion, *infra*, regarding the *Flores* settlement.

⁷ Congress noted that the Berks facility was "more homelike" than Hutto, but that it still violated the *Flores* settlement. House Committee on Appropriations, DHS appropriations bill, 2007: report together with additional views to accompany H.R. 5441, 109th Cong., 2nd Session, 2006, H. Rep. 109-476. Since 2014, Berks has expanded its capacity and families there have been subjected to prolonged detention under ICE's no release policy. Advocates and lawyers report the same detrimental and inhumane conditions at Berks as Karnes and Dilley. <http://www.humanrightsfirst.org/press-release/human-rights-first-tours-berks-family-detention-facility>

⁸ Declaration of Barbara Hines, filed in *RILR v. Johnson*, CA-15-11 (JEB) (D.D.C. 2015).

⁹ El Salvador, Guatemala and Honduras.

to the contrary, DHS characterized mothers and children as illegal border crossers without valid refugee claims.¹⁰ DHS reinstated family detention and this time around, insisted that all families should be detained without any individualized consideration of the need to detain.

In its escalation of family detention, DHS has ignored its domestic and international obligations to protect families seeking refuge in the United States. In fact, asylum applicants cannot apply for asylum in their home countries.¹¹ Furthermore, contrary to DHS' contentions, the vast majority of the families have credible asylum claims and many have won their asylum cases on the merits.¹² Yet, even in light of these facts, DHS, until very recently, continued to argue that mothers and children, the most vulnerable of all migrants, should be detained without the possibility of release.

The former Artesia detention center and the current Karnes and Dilley centers are located in remote rural areas which, as discussed below, present a significant impediment to pro bono legal representation. The Karnes detention center, operated by the GEO corporation, is located in the small town of Karnes City, Texas, approximately one hour from San Antonio, Texas, and two hours from Austin, Texas. Karnes currently has capacity to house 532 mothers and children, with plans to expand to almost 1200 beds. The Dilley detention center, operated by CCA, in an even smaller community in Dilley, Texas, is located more than one hour from San Antonio, Texas, and more than two hours from Austin, Texas. Dilley has capacity for 2,400 mothers and children. It is most disturbing that DHS awarded another contract for the care of families to CCA, the very entity that designed the penal-like regime at Hutto.

Neither the Karnes nor Dilley facility is licensed to house children under child welfare standards in the state of Texas.¹³ A lack of a licensing means that there is no independent oversight, binding child welfare standards or child care expertise to

¹⁰ <http://www.dhs.gov/news/2014/06/20/fact-sheet-artesia-temporary-facility-adults-children-expedited-removal>

¹¹ "Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...) irrespective of such alien's status, may apply for asylum in accordance with this section..." INA § 208(a); "The term refugee means... any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country..." INA §101(a)(42)(A).

¹² More than 87.9 per cent of the families have passed the credible fear interview, the threshold review to establish asylum eligibility. <http://www.humanrightsfirst.org/sites/default/files/hrf-one-yr-family-detention-report.pdf>; <http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-family-facilities-FY2015Q2.pdf>

¹³ In May, 2015, almost six months after opening, Dilley received a Temporary Shelter Program license which allows it to "care" for 24 children during the day for short periods of time, for example, while their mothers are in court or at the medical facility. <http://ncronline.org/news/politics/detention-center-receives-child-care-license-state-texas>

ensure children's safety and well-being. Guards do not have training in addressing either the needs of mothers and children seeking asylum nor trauma survivors.¹⁴ Women have no control over their children's lives. Both facilities are secure lockdown detention centers run on a rigid schedule, including meal times, wake-up and lights-out times, and multiple body counts and room checks during the day and night.

Bond and Release Practices

In addition to its rapid expansion of family detention in June, 2014, DHS simultaneously instituted an across the board, no-release policy for women and children, claiming that such a policy would send a message of deterrence to other Central Americans, fleeing violence in the Northern Triangle. DHS characterized its policy as an "an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers."¹⁵ Thus, ICE placed families into expedited proceedings that require mandatory detention until a screening interview could be held. Then, even after detained women passed their credible fear interviews establishing eligibility to pursue their asylum cases, ICE refused to conduct individualized determinations of flight risk or danger to the community. This practice violates long standing principles of civil detention that require an individualized evaluation to determine whether detention is necessary in the first place. ICE's policy of no-bond applies only to women and children. Central American fathers travelling with their children are generally released at the border and single Central American women, although initially detained, are granted bond by ICE after passing the credible fear interviews.

Before the immigration courts, ICE lawyers aggressively opposed all requests for redetermination of custody to secure release of mothers and children on reasonable conditions or upon payment of a monetary bond. ICE relied on the inapposite post-9/11 decision of the Attorney General in *Matter of D-J*, and argued that all women and children posed national security risks and that their migration diverted DHS resources needed for immigration enforcement.¹⁶ ICE's intransigence regarding the release of women resulted in families being detained for longer

¹⁴ Memorandum in Support of Motion to Enforce Settlement of Class Action, *Flores v. Johnson*, Case 2:85-cv-04544-RJK (D. Ca. 2015); <http://www.expressnews.com/news/local/article/Activists-complain-about-conditions-in-Dilley-6016044.php>

¹⁵ U.S. Dep't of Homeland Sec., Statement by Secretary of Homeland Security Jeh Johnson Before the Senate Committee on Appropriations, June 10, 2014, available at <http://www.dhs.gov/news/2014/07/10/statement-secretary-homeland-security-jeh-johnson-senate-committee-appropriations>.

¹⁶ 23 I&N Dec. 572 (A.G. 2003); See Immigration Court Declaration of Philip T. Miller, ICE Assistant Director of Field Operations for Enforcement and Removal Operations ("Miller Decl.") at 55 (Aug. 7, 2014) available at <http://www.aila.org/content/default.aspx?docid=49910>; Immigration Court Declaration of Traci A. Lembke, ICE Assistant Director over Investigation Programs for HSI and ICE ("Lembke Decl.") at 60 (Aug. 7, 2014) ("[i]mplementing a 'no bond' or 'high bond' policy would help. . . by deterring further mass migration."

periods of time until they were able to secure pro bono counsel, appear for a hearing before the immigration court and pay the bond amount.

In February, 2015, in response to a class-action law suit filed by the American Civil Liberties Union, the University of Texas Law School, and the law firm of Covington and Burling, the federal court in *R-I-L-R* issued a preliminary injunction, prohibiting the use of deterrence as a rationale for detention of families or factor in required, individualized custody determinations. The court also recognized that deterrence was likely to be ineffective to address national security threats.¹⁷

Although after the court decision, DHS agreed to discontinue the use of deterrence as a factor in custody decisions, it has continued to insist that it could be entitled to use deterrence in the future. Moreover, its release policies are still neither consistent nor individualized. Simply said, the government has not adopted any process, such as a robust case management system, to ensure that children and their mothers are detained only if there is reason to believe that they will not appear for their proceedings to pursue their asylum claims. Initially after the court ruling, DHS set bonds ranging from \$7,500 to \$10,000 for all mothers and children at Karnes, but still failed to make individualized release decisions. Consequently, most women were forced to remain in detention awaiting a court hearing to seek reduction of bond. After Secretary Johnson's initial announcement that the length of detention for families would be reduced, some Karnes bonds were set at slightly lower amounts in the range of \$3,000 to \$7,500. However, in my experience at Karnes, the amount of bonds for similar cases varies dramatically and depends not on the family's individual circumstances, but rather on the ICE officer making the determination. Additionally, many women in family detention centers are unable to pay such high bond amounts.

Ankle Monitors

After Secretary Johnson's June 24, 2015 announcement that families who passed the credible fear interview would no longer be detained,¹⁸ ICE's policy changed again. Since then, scores of women have been released from Karnes and Dilley on ankle monitors. While ankle monitors may appear to be a facile solution to end family detention, the use of these devices raise important policy questions.

First, ICE's blanket use of ankle monitors still fails to provide an individualized custody determination. All women are placed on these devices, regardless of the need to detain or flight risk. In fact, most families have close relatives in the US who can provide support and shelter for them and strong incentives to appear for the hearings so that there is no need to impose onerous conditions on release at all. For those that do require some

¹⁷ Order and Memorandum, *RILR v. Johnson*, Civil Action No. 1:15-cv-00011 (Feb. 20, 2015), available at <https://www.aclu.org/cases/rilr-v-johnson>.

¹⁸ <http://www.dhs.gov/news/2015/06/24/statement-secretary-jeh-c-johnson-family-residential-centers>

additional level of monitoring after release, there are a myriad of more reasonable alternatives to ensure that women appear for their court hearings such as regular reporting dates.¹⁹ Furthermore, studies show that asylum seekers on supervised release have a high appearance rate and that legal representation is a very significant factor to ensure compliance.²⁰

Second, ICE has used coercive tactics to induce women to accept ankle monitors even if an immigration judge might release her on an order of recognizance or even a low bond. For example, in one recent case that I supervised through the RAICES/Karnes Pro Bono Project, the immigration judge ordered our client released on an order of recognizance and set no other conditions. However, ICE placed her on an ankle monitor when she was released from Karnes. We were forced to file an emergency motion before the immigration court in order to obtain a ruling ordering ICE to remove the monitor.²¹ Even after that, her father, with whom she reunited in another city, received numerous automated phone calls, stating that, according to GPS monitoring, his daughter was not in compliance. In another case, ICE set an exorbitantly high bond of \$10,000 for a Karnes mother in “withholding only” proceedings who had been detained for months.²² After the RAICES bond fund²³ assisted in posting her bond, ²⁴ ICE put her on an ankle monitor before releasing her. After extensive advocacy by her lawyer, ICE agreed to remove the device.

Third, ankle monitors are cumbersome, painful and stigmatize mothers and children. Another client, whose husband is a lawful permanent resident residing in the San Antonio area, was placed on an ankle monitor. Her ankle began to swell because the device had been too tightly secured. She was forced to endure this painful swelling until her first reporting appointment, when the contractor loosened the device. Her young daughter reports that she feels ashamed as she walks out of her home and perceives that people are staring at her mother. In another case, I counseled a woman at the bus station as she waited to depart from San Antonio. Her first question, as she began to cry, was when or how her ankle monitor could be removed. She told me that in her country, “grilletes” (shackles) are only used for criminals. She was also panicked about how she would be able charge the device on her bus trip across the country.

¹⁹ <http://immigrationpolicy.org/special-reports/humane-approach-can-work-effectiveness-alternatives-detention-asylum-seekers>

²⁰ *Id.*

²¹ <http://www.lexisnexis.com/legalnewsroom/immigration/b/newsheadlines/archive/2015/07/03/celebrating-freedom-from-ankle-bracelets-detention-from-karnes.aspx>

²² Women who have been previously deported are not eligible for asylum and may only apply for withholding of removal. INA §241(b)(3)(B).

²³ The RAICES bond fund solicits donations to pay bonds of women at Karnes and Dilley whose families cannot afford the bond amount. It is an example of the extraordinary community response to the unjust detention of mothers and children. <http://www.raicestexas.org/pages/bondfund>

²⁴ <http://immigrationpolicy.org/special-reports/humane-approach-can-work-effectiveness-alternatives-detention-asylum-seekers>

Impediments to Access to Counsel and Pro Bono Legal Services

Most women at Karnes and Dilley cannot afford to hire private counsel and instead, depend on pro bono counsel.²⁵ The RAICES/Karnes pro bono project provides legal services at Karnes while the CARA project (CLINIC, RAICES, and AILA/AIC) provides legal services at Dilley. Lawyers for this vulnerable population of asylum seekers are essential and outcome determinative. According to a recent study by Syracuse University's Transactional Records Access Clearinghouse (TRAC), women and their children requesting asylum are seventeen times more likely to win their asylum cases if they have legal representation.²⁶ Another study concluded that legal representation is "the single most important factor affecting the outcome of an asylum-seeker's case."²⁷

The location of these facilities in rural Texas and the sheer number of detained women and children makes pro bono representation extremely challenging, despite the extraordinary efforts of volunteer lawyers at Karnes and Dilley. Unfortunately, based on my experience at Karnes, the task of pro bono lawyering has been made more difficult because of ICE's and GEO's unreasonable barriers to access to counsel and their ever-changing policies. Attorneys, students, and legal assistants cannot adequately prepare for visitation when the "rules" for such visitation are subject to frequent and unexplained modifications. Volunteer lawyers and the RAICES/Karnes coordinating team have spent inordinate amounts of effort and time navigating issues relating to access, clearances and the use of electronic devices. All of these obstacles impede the provision of pro bono legal assistance and waste valuable attorney time.²⁸

Unnecessary Clearance Procedures and Interference with the Attorney-Client Relationship

ICE has insisted on clearances for paralegals, legal assistants and law students to enter Karnes, although the Family Residential Standards do not require such clearances. According to these standards, legal assistants may enter a family detention center upon presentation of a letter from a legal representative under whom she is working.²⁹ Similarly, law students, practicing under the regulations of the Executive Office of Immigration Review (EOIR), are considered "attorneys" and like legal assistants, require no prior clearance to enter a family detention center.³⁰

²⁵ Because I work at the Texas detention centers, my direct knowledge of access to counsel and conditions at Berks is more limited.

²⁶ <http://trac.syr.edu/immigration/reports/377/>

²⁷ Jaya Ramji-Nogales, Andrew I. Schoenholtz, & Phillip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 340 (2007), available at <https://www.acslaw.org/files/RefugeeRoulette.pdf>.

²⁸ See generally, Letter from S. Schulman to S. Saldana, "Re: Access for Pro Bono Volunteers at Karnes, Dilley and Berks Family Detention Centers," Apr. 20, 2015, on file with author.

²⁹ Family Residential Standards, Visitation, Sec. V, ¶10(c)(2).

In addition, ICE's rules are not clearly communicated to staff. For example, on one occasion GEO officials told University of Texas law students that they could not enter Karnes without a supervising attorney, even though they had already been cleared for admittance to the facility and had visited without a supervisor on multiple previous occasions.

ICE officials have also improperly inquired as to the specific nature of legal visits, another violation of the Family Residential Standards. In seeking clearance for University of Texas law students and law students from another immigration clinic, an ICE official requested information regarding the purpose of the legal visit. Shortly after the hunger strike at Karnes, ICE officials entered the attorney visitation area and demanded that a RAICES attorney disclose to them the purpose of his legal visit. These practices contravene the Family Residential Standards which state that "legal representatives and legal assistants may not be required to state the legal subject matter of the visit."³¹ In April and May, 2015, I sent a series of emails to ICE officials at Karnes and at the San Antonio field office, questioning the need for clearances under the Family Residential Standards and challenging ICE's queries about the nature of legal visits as a condition of clearance. I received no response whatsoever to multiple emails.

Obtaining timely clearances has been an on-going and time-consuming obstacle at Karnes. After months of complaints going all the way up to the White House staff, clearances are now being approved more expeditiously.³² Nevertheless, the requirement of such clearances clearly contravenes the Family Residential Standards and compliance with the process diverts needed pro bono resources away from families who need legal representation.

GEO staff have also imposed arbitrary rules regarding ingress and egress to the facility. For example, law students and their supervising attorneys from Elon University on an alternative spring break trip to Karnes were prohibited from bringing any food or water into the visitation area. GEO informed them that if they left the facility, they would not be able to re-enter that day. The team spent eleven hours without food or water in order to finish their legal work. In a similar situation, University of Texas law students were effectively denied the option to get lunch when they were told they would be unable to return the same day if they left the facility even briefly. While this situation has since been remedied through DHS headquarters, it is yet one more example of the problems of detaining families in correctional type facilities.

In addition, since the hunger strike, one ICE official in San Antonio, has made numerous derogatory comments to other lawyers regarding RAICES, which impedes our project's ability to recruit pro bono lawyers.

³⁰ *Id.*, Sec. V, ¶10(c)(1).

³¹ *Id.*, Sec. V, ¶10(d).

³² Letter from S. Schulman to S. Saldana, "Re: Access for Pro Bono Volunteers at Karnes, Dilley and Berks Family Detention Centers," Apr. 20, 2015, on file with author.

Banning of Legal Assistants

In August, 2014, Virginia Raymond, an active volunteer attorney, requested clearance for her paralegal, Victoria Rossi. ICE mistakenly cleared Ms. Rossi as an interpreter, but neither ICE nor Ms. Raymond noticed the error. Ms. Rossi visited Karnes as Ms. Raymond's legal assistant for many months. On February 2, 2015, the Texas Observer published an article by Ms. Rossi that was highly critical of Karnes and family detention.³³ After publication of the article, ICE denied her further access into the facility, claiming that she was entering Karnes as an interpreter but was working as a paralegal. Ms. Raymond submitted a new request for a clearance for Ms. Rossi as a paralegal, but ICE denied the request without providing reasons for the denial nor any appeal mechanism.³⁴

Johana De Leon, a legal assistant at RAICES, is actively involved in the coordination and legal work of the RAICES/Karnes Pro Bono Project. Until March, 2015, she spent several days a week at Karnes conducting intakes, preparing women for credible fear interviews, and obtaining documents and signatures for volunteer lawyers who were unable to travel to Karnes. Because Ms. De Leon was at Karnes so frequently, she developed a relationship of trust with many of the women who had been locked up for many months. When 78 women signed a letter protesting their lengthy detention and conditions at Karnes, RAICES made the letter available to the media. After a smaller number of women began a hunger strike, Deborah Achim, the San Antonio Field Office Director for Enforcement and Removal Operations, contacted the director of RAICES to accuse Ms. De Leon of being responsible for both the letter and the hunger strike and to prohibit her from entering the facility. Ms. Achim has never substantiated these allegations, which Ms. De Leon denies, and has not provided anything in writing regarding the banning of Ms. De Leon nor an appeal mechanism. Ms. De Leon has not been allowed back into Karnes since that time and recently, ICE denied her new request for clearance. Her inability to counsel women at Karnes has significantly impeded the work of the Pro Bono Project.³⁵

Prohibition of Laptops, Cellphone and Other Devices

³³ <http://www.texasobserver.org/seeking-asylum-karnes-city/>

³⁴ *Flores v. Holder*, 2:85-cv-04544 (C.D. Cal.), Doc. 140, Declaration of Victoria Rossi, dated Apr. 22, 2015. See also Brad Tyer, *Paralegal Blocked from Karnes Detention Center After Observer Story*, TEXAS OBSERVER, March 27, 2015, available at <http://www.texasobserver.org/paralegal-denied-access-to-karnes/>

³⁵ *Flores v. Holder*, 2:85-cv-04544 (C.D. Cal.), Doc. 140, Declaration of Johana G. De Leon-Amendarez, Apr. 21, 2015. See also, Letter from Michael W. Macleod-Ball, Acting Director, ACLU Washington Legislative Office, to Sarah R. Saldana, Director, U.S. Immigration and Customs Enforcement (Apr. 17, 2015), available at <http://endfamilydetention.com/aclu-letter-to-ice-director-sarah-saldana/>

Since the opening of Karnes in August, 2014, the RAICES/Karnes Pro Bono Project has attempted to negotiate the use of electronic devices at the facility. Despite agreements with the San Antonio Field Office, bringing in a laptop, hot spot or cell phone has been a consistent challenge, depending on which ICE or GEO staff person is on duty on a particular day. Frequently, pro bono volunteers were denied the ability to take their devices into Karnes, causing significant delays and inefficiency in legal representation and counseling. Through constant pressure and negotiations with DHS headquarters, finally in late spring, 2015, after more than nine months of varying rules, ICE adopted a standard procedure that allows pro bono volunteers to use laptops and hot spots at Karnes. However, cell phones are still not permitted, which makes access to language lines for interpreters of indigenous languages extremely difficult. If Karnes is truly a civil, family friendly residential center, there is no justification for such arbitrary policies that thwart the delivery of pro bono services.

Conditions of Detention

It is important to note from the outset that cosmetic and superficial changes to detention facilities do not diminish the profound impact of detention on families. While mothers and children no longer wear prison garb and toys are available at the Dilley and Karnes detention centers, the underlying tragedy is the fact that these asylum seekers are locked up. While other speakers at this forum will focus on negatives effects of detention on the mental and physical health of mothers and children, I would like to highlight a few examples and cases in which I have been involved.

Medical Conditions and Isolation

Much has been written about the dire medical conditions at both the Karnes and Dilley detention centers.³⁶ The vaccination of 250 children with adult dosages of hepatitis A is an unfortunate and dangerous example. On the day of the vaccination incident, I met with a mother at Dilley, whose abusive, gang-member domestic partner had kidnapped her and broken her fingers. She removed the cast from her fingers during her flight from her home country because the cast impeded her ability to carry her son on the journey to the U.S. When she sought medical care at Dilley for the pain in her hand, she was forced to wait for hours to see medical personnel, received no treatment and was repeatedly told to drink water for the pain. This mother, visibly upset, reported to me that her son had been vaccinated that morning and that he was feverish, had no appetite, and was in pain when he walked. As she instructed her young son to show me the injection marks on his legs, his eyes welled up with tears. The next day I learned that he was one of the 250 children who were forcibly over-vaccinated.³⁷

³⁶ <http://www.expressnews.com/news/local/article/Activists-complain-about-conditions-in-Dilley-6016044.php>; <https://womensrefugeecommission.org/images/zdocs/CRCL-Complaint-Psych-Impact-of-Family-Detention.pdf>

This perilous incident is not an isolated one. In fact, substandard medical care has been a recurrent theme since family detention began again last summer. One of the first cases, handled by a volunteer attorney with the RAICES/Karnes Pro Bono project in August, 2014, involved seven year old Nayeli Bermudez Beltran, who suffered from a brain tumor. During her stay at Karnes, she received absolutely no medical care and was only released from detention because of advocacy and media pressure.³⁸ Unfortunately, almost one year later, ICE, CCA and GEO have not improved their medical care system. Inadequate medical care for children and mothers is yet one more reason why family detention is not sustainable.

Medical Isolation

I am also gravely concerned about the use of medical facilities for punishment and isolation at Karnes. In March, 2015, 78 women signed a letter protesting conditions of detention and a smaller number initiated a hunger fast. ICE retaliated against three women and their children, whom agency believed were the instigators of peaceful, constitutionally protected activities and placed them in isolation in the medical facilities at Karnes.³⁹

Likewise, two women at Karnes, who, in desperation, attempted suicide or self-harm, were improperly isolated from both their attorneys and their children in the medical area. In the first case, in early June, 2015, a nineteen year old mother, who had been detained for more than seven months, attempted suicide. She was placed in medical isolation, threatened and separated from her four year old son. During the five days that she was isolated, guards at Karnes “cared” for her child. Attorneys who had agreed to take over her case on a pro bono basis were prohibited from speaking to her directly and she was removed before her attorneys could file a motion to reopen her removal proceedings.⁴⁰ Again, in late June, 2015, another young mother cut herself with a razor after she learned that ICE had raised her bond to \$8,500. She too was separated for four days from her five year old daughter who was left with GEO guards until her release back into the general population. Lawyers from the RAICES/Karnes Pro Bono Project were denied access to the client and could only speak with her via telephone, which severely impeded their ability to adequately represent her. The client complained of mistreatment by GEO and

³⁷ <http://grassrootsleadership.org/releases/2015/07/attorney-describes-effects-vaccine-overdose-refugee-child-dilley-detention-camp>; http://www.upi.com/Top_News/US/2015/07/09/250-detained-immigrant-children-given-overdose-of-vaccine-in-Texas/9681436478936/;

<http://fusion.net/story/165837/dilley-detention-center-horror-stories-from-the-medical-ward/>
³⁸ <http://www.houstonchronicle.com/news/article/Feds-release-7-year-old-immigrant-girl-with-5732146.php>

³⁹ <http://www.colorlines.com/articles/why-mothers-are-strike-karnes-immigrant-detention-center>;
<http://www.texasobserver.org/family-detention-freedom-of-speech/>; *Pineda Cruz, et.al. v. Thompson, et. al.*, C.N. A-15-CV-326 (W.D.Tex 2015).

⁴⁰ <http://www.mcclatchydc.com/news/immigration/article25186393.html>

medical staff and the stress and anxiety of separation from her child while in isolation.⁴¹

The Flores Decision

On July, 24, 2015, Judge Dolly Gee ruled in the *Flores* enforcement suit that DHS's family detention policy is ill-conceived, illegal, and a violation of the *Flores* settlement.⁴² The court held that the *Flores* agreement encompasses accompanied as well as unaccompanied children, as did the judge in the Hutto litigation in 2007. According to her decision, children may not be housed in secure, unlicensed facilities. Like the court in *R-I-L-R*, Judge Gee found that the no-bond, deterrence rationale is impermissible because it contravenes the *Flores* settlement's preference for the release of children. Finally, parents should be released with their children, unless after an individualized determination, they present a significant flight risk or threat to others or to national security and such risk or threat cannot be mitigated by bond or other conditions of release. The decision gives the government until August 3, 2015, to show cause why the order should not be entered and implemented within 90 days. The court's decision is a vindication of arguments that have been made by lawyers, advocates and members of Congress who have voiced their consistent opposition to family detention.

Conclusion

More than one year after the unprecedented escalation of family detention, the evidence overwhelmingly demonstrates that locking up mothers and children is unworkable, inhumane and illegal. The millions of dollars spent on family detention should be used to develop community based case management systems, to facilitate access to pro bono counsel and to welcome asylum seekers into our communities. As Judge Gee clearly stated in her recent order, keeping children and their mothers detained at Karnes, Berks and Dilley violates the law.

⁴¹ Before her bond was raised, this client met with the Democratic Congressional members who visited Karnes on June 22, 2015. Prior to the visit, she had been assured by ICE that she would be released on her own recognizance. Affidavit of client on file with RAICES/Karnes Pro Bono Project.

⁴² <http://graphics8.nytimes.com/packages/pdf/us/FloresRuling.pdf>;
<http://www.nytimes.com/2015/07/26/us/detained-immigrant-children-judge-dolly-gee-ruling.html>