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## Family Detention in Berks County, Pennsylvania

August 2015



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**This report is available online at [humanrightsfirst.org](http://humanrightsfirst.org)**

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*“We are not delinquents who should be imprisoned.”*

- Eleven-year-old girl on her detention at Berks County Residential Center

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## Summary and Recommendations

The Berks County Residential Center is a facility in Pennsylvania where U.S. Immigration and Customs Enforcement detains immigrant and asylum-seeking families. The Berks facility is currently one of three family detention centers in the United States along with the South Texas Family Residential Center in Dilley, Texas and the Karnes County Residential Center in Karnes City, Texas. The Berks County Residential Center is operated by the County of Berks.

Since June 2014, when the Obama Administration announced its plans to send large numbers of families from Central America seeking asylum into immigration detention, families detained at the three detention facilities—Dilley, Karnes, and Berks—have suffered the detrimental effects on their physical and mental health associated with being detained, lengthy detention stays, and lack of access to legal counsel. Some have even suffered abuse, including a 19-year-old mother who reported being sexually assaulted by a staff member and an eight-year-old girl who witnessed the assault at the Berks facility earlier this year.

Detention is not only harmful to children and families, but also expensive to taxpayers at an average daily cost of \$343 per person. The American Academy of Pediatrics, the American Bar Association, Catholic and Lutheran Bishops, Members of Congress, and an array of other voices have called on the administration to end the practice of family detention.

On June 24, 2015, Secretary of Homeland Security Jeh Johnson announced a series of reforms, including measures aimed at reducing the length of family detention stays for families who had passed a protection screening (credible fear or reasonable fear) interview.<sup>1</sup> On July 24,

2015, the U.S. District Court for the Central District of California issued an order instructing the government to show why it should not be ordered to comply with the *Flores* Settlement Agreement, which articulates the legal standards for the detention, release, and treatment of children by immigration authorities. That ruling was preceded by a February 2015 ruling of a federal court in Washington D.C., which also called into question the administration's policy of holding families in immigration detention facilities.

Over the last few months, including just last week, Human Rights First staff visited the Berks family detention facility and met with asylum seekers—parents and children—held at the facility, some for many months. Despite the reforms announced by the U.S. Department of Homeland Security (DHS) this summer and even in the wake of the federal court's July 24 ruling, Human Rights First found that:

- **Detention damages children's health and well-being.** Consistent with medical and mental health research, parents detained at the Berks facility—including those who have been detained for two or three weeks—related symptoms of their children's behavioral regressions, depression, anxiety, and increased aggression toward both parents and other children. Many families are coming from situations in which they have experienced trauma, abuse, or exploitation. Detention worsens the situation for already vulnerable children and parents. Parents held in family detention also appear to be suffering from depression, including feelings of helplessness with regard to the care and health of their children.

- **Obstacles to release and counsel remain.** Six weeks after the DHS reform announcement, detained families continue to face obstacles to release such as unaffordable bonds, delays in interview processes, and/or lack of counsel. While many of the families who had been held for months on end were released in the weeks following the reform announcement, other families, who were detained more recently, have already been held at the Berks detention facility for two to six weeks. At least one family has been detained there for four months. Some families are asked to pay bonds of \$5000 or more—far too high for indigent asylum seekers to afford—blocking or delaying their release from detention. Moreover, many families detained at the Berks facility do not have legal representation.
- **Advocates oppose licensing Berks as a “child residential facility.”** Advocates have called upon the Pennsylvania authorities to revoke the license it granted to the Berks County Residential Center as a child residential facility for dependent and delinquent youth. Notwithstanding the Pennsylvania Department of Public Welfare’s belief that Berks is “not operating as a secure facility,” children and parents who are detained at Berks have expressed distress over being “incarcerated” or “imprisoned.”
- **Frequent room checks disrupt sleep, cause fear and anxiety.** The practice of entering and shining flashlights into the rooms of sleeping families every 15 minutes throughout the night causes insomnia, fear, and anxiety in children and parents held at the Berks facility.
- **Lack of Spanish-speaking mental health staff undermines ability to assist children and families.** Berks does not have Spanish-speaking mental health providers, even

though the majority of families sent to family detention in the United States are Spanish-speaking and many have suffered high rates of trauma, physical and sexual violence, and exploitation. Additionally, only 23 of the total staff at Berks (or less than 40 percent) reportedly speak some Spanish (with the level of fluency ranging from conversational to bilingual), making it difficult for many staff members to effectively communicate with children and their parents. It appears that many facility staff must rely heavily on telephonic interpreters, for everything from essential services, such as mental health, to daily interactions with children and their parents.

The federal district court in the *Flores* case recently denied the government’s request for oral argument and it is expected that the court will issue its final order in the coming weeks. That ruling may prevent U.S. immigration authorities from detaining immigrant children with their parents for more than three to five days. Regardless of the court’s decision, the Obama Administration and DHS should stop sending families into immigration detention. As the American Academy of Pediatrics told DHS Secretary Jeh Johnson in its July 24, 2015 letter: “The act of detention or incarceration itself is associated with poorer health outcomes, higher rates of psychological distress, and suicidality making the situation for already vulnerable women and children even worse.”

Detaining families is also expensive. The DHS Congressional Budget Justification for fiscal year 2016 indicates an average daily cost of \$343 per person (or \$1,029 for a family of three), whereas alternative measures cost as little as 17 cents per day, and even intensive community-based programs are a fraction of the cost of detention.<sup>2</sup>

Instead of holding children and their families in detention, U.S. immigration authorities should

refer families' immigration cases to removal proceedings before the U.S. Department of Justice's Executive Office for Immigration Review and release them to the care of family members living in this country. In fact, as the government states in its reply to the *Flores* order to show cause, this is what happens in the majority of cases involving families apprehended at the southern border. In cases where additional appearance support is determined necessary, Immigration and Customs Enforcement (ICE) can refer families to cost-effective alternative measures, and families who may lack housing options can be referred to social service providers. The administration has the tools it needs to manage the arrival of families seeking asylum without resorting to policies that harm children and undermine American ideals, due process, and human rights commitments.

## Recommendations

- **End family detention.** The Obama Administration and DHS should comply with the recent ruling in the U.S. District Court for the Central District of California, which found that family detention violates the *Flores* Settlement Agreement and effectively prohibits the detention of families for more than a few days. Moreover, medical experts confirm that detention damages the physical and mental health of asylum seekers and can be especially traumatizing to children and families. Even a few days of detention can be damaging to children. Detention also impedes access to counsel and due process. As many members of Congress have urged, the Obama Administration should end family detention.
- **Implement community-based alternatives to detention programs.** The vast majority of families seeking protection in the United States have relatives living in this country with whom they can live. ICE can refer their cases to the immigration court nearest that location. In cases where additional support is needed—such as housing, mental health services, or appearance support—ICE should refer families to community-based programs, which provide an array of holistic social services and case management services and have proven successful in ensuring immigrants' appearance for immigration proceedings and other monitoring obligations. Lutheran Immigration and Refugee Service and the U.S. Conference of Catholic Bishops' Migration and Refugee Service recently piloted community-based models showing initial results with program compliance rates of 96 to 97 percent. Alternative to detention programs are also much less expensive than detention, which costs \$1,029 per day for a family of three. Past studies show that even intensive community-based programs come at only 20 percent of the cost of detention. ICE should only use ankle devices in select cases when an individualized assessment using a validated instrument has shown that other less intrusive and stigmatizing measures cannot assure appearance, and the use of such measures must be regularly reviewed, including by a court.
- **Implement release reforms and improve access to counsel.** While DHS should stop sending families into immigration detention, it should more effectively implement the reforms it announced in June 2015 for as long as it continues to detain families. Indigent asylum-seeking families should not be blocked from release by bonds that are too high for them to afford. Many asylum-seeking families can and should be released without the need to pay bond. Any conditions of release should be reasonable, and bond—to the extent ICE requires it in an individual case rather than

allowing release on parole or recognizance—should be affordable. In addition, the government should fund legal counsel for families, as well as ensure access to legal information through the EOIR-funded Legal Orientation Program before families are scheduled for protection screening interviews. Berks should also ensure that lawyers are permitted to bring in laptops and other devices that enhance effective representation for meetings with clients.

- **Review and consider revoking the Berks facility license issued pursuant to child care regulations.** Given the evidence of detrimental effects of any period of detention on already vulnerable children and parents, as well as allegations by advocates that the facility does not comply with licensing requirements, the Pennsylvania Department of Human Services should deny ICE's request to expand its license and consider revoking the license entirely, leading to a closure of Berks as a family detention center. In cases of families who do not have relatives or friends in the United States with whom they can live, ICE can refer these families to community-based social service programs. Where ICE has determined that families require additional support to ensure appearance for court hearings or otherwise, community-based appearance support models, which have been proven effective, should be used instead of detention.

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## Background

On June 24, 2014, in response to the increasing number of children and families seeking protection at the southern U.S. border (and, ironically, falling exactly on World Refugee Day), the Obama Administration announced plans to significantly

increase capacity to detain children fleeing to the United States with their parents from Honduras, Guatemala, and El Salvador. DHS quickly erected a 700-bed detention facility in Artesia, New Mexico, which was later closed. It repurposed and expanded a detention facility in Karnes County, Texas, which holds up to 500 individuals, and erected the South Texas Family Residential Center in Dilley, Texas, which recently expanded to a capacity of 2,400 individuals, making it the largest immigration detention center in the country. In June 2015, DHS announced that it would expand from a capacity of 96 beds to nearly 200 beds at the Berks County Residential Center in Leesport, Pennsylvania.

Over the past year, a wide array of groups has spoken out against the government's policy of detaining families. In a March 26, 2015 letter to President Obama, faith leaders from across the country called for an end to family detention and the use of detention to deter families from seeking asylum: "As faith leaders representing churches, synagogues, and faith-based organizations in the United States who are deeply committed to upholding this country's moral leadership to protect children and the sanctity of the family, we call on you to end the harsh policy of family detention and employ alternatives to detention where deemed necessary. We believe this practice to be inhumane and harmful to the physical, emotional, and mental well-being of this vulnerable population." Human Rights First and other organizations focused on refugee protection wrote in a November 2014 letter to President Obama, "These policies of detention and attempts at deterrence violate U.S. human rights and refugee protection commitments." Instead, "U.S. border policies should respect basic human rights standards and set an example for other countries faced with much greater challenges."

In May 2015, the New York City Bar Association called for an end to family detention, stating that

detention harms children and their parents, raises due process concerns, and does not achieve its stated goals. Pro bono leaders have decried the many obstacles to legal representation, and medical and mental health experts, including the American Academy of Pediatrics, have cited the known detrimental health effects on children. The overwhelming majority of Democratic congressional leaders have opposed family detention, with 178 House Democrats recently calling on DHS to end its “controversial” family detention program.<sup>3</sup>

The escalation of family detention has also sparked litigation in the federal courts. In December 2014, in *RILR v. Johnson*, mothers and children filed a class action lawsuit in the U.S. District Court for the District of Columbia alleging that the government’s “no-release policy” caused them irreparable harm. On February 20, 2015, the court ordered a preliminary injunction, preventing the government from considering deterrence as a factor in individual custody determinations.

Also in February 2015, lawyers for children detained in family detention centers filed a motion with the U.S. District Court for the Central District of California to enforce the *Flores* settlement agreement, which was reached in 1997 and governs the detention, release, and treatment of children in immigration custody. On July 24, 2015, the court ruled that the federal government’s family detention policy violated the terms of the settlement agreement by failing to release children promptly and by holding children in secure, unlicensed facilities.<sup>4</sup>

The court ordered the government to implement a series of remedies, which include releasing children within three to five days with the accompanying parent. In cases where release is not possible due to a significant flight risk or safety risk that cannot be mitigated by conditions of release, the government must place children in licensed programs in accordance with the

settlement agreement. The court noted, referencing the government’s own argument, “there is no state licensing process available now—nor was there in 1997—for facilities that hold children in custody along with their parents or guardians.”

Despite the public outcry, the government’s so-far failed efforts to defend its policy in the courts, and the high cost of detaining families, the administration has continued to send children and their parents into immigration detention. In its Congressional Budget Justification for fiscal year 2016, DHS requested substantial additional funding to expand family detention at an average daily cost of \$343 per person, or \$1,029 for a family of three.

In June, when Secretary of Homeland Security Jeh Johnson announced reforms to DHS family detention policy, including measures to reduce detention times for families, the announcements made clear that despite re-evaluating some of the harsher policies enacted last year, the government would continue to send families into detention. In the *Flores* case, rather than accepting the judge’s order requiring the government to remedy its breaches of the settlement agreement, the government filed a brief requesting that the judge reconsider her order, claiming that family detention was needed to “dis-incentivize future surges of families crossing the Southwest border,” essentially confirming plans to continue to use detention to deter or discourage families from seeking asylum in the United States. As Members of Congress have emphasized in their statements to the government recommending an end to family detention, it is perfectly legal to seek asylum.

Over the last year, Human Rights First attorneys have visited the four family detention facilities in Artesia, New Mexico, Berks County, Pennsylvania, Karnes County, Texas, and Dilley, Texas, meeting with scores of families detained at

these facilities. Our staff has also interviewed many nonprofit, pro bono, and other attorneys who provide legal counsel to families held at these facilities, and met with government officials and contractors overseeing the facilities, both locally and nationally. Human Rights First has visited the Berks facility twice, interviewed or met with 23 families who were or had been detained there, interviewed attorneys who provide legal services to families at Berks as well as the EOIR-funded Legal Orientation Program provider, and spoken with ICE and Berks County representatives.

Unlike the two detention centers in Texas and the now-closed facility in Artesia, which all became operational since Secretary Johnson's June 24, 2014 announcement, the Berks County Residential Center has been detaining families for nearly fifteen years. According to the *Reading Eagle*, "Berks County was selected as the site in 2000 because of its excellent working relationship with the federal government when it was housing illegal aliens in the county jail."<sup>5</sup> Financial considerations and the economic impact were cited by media as benefits to the county.<sup>6</sup> Initially, the program was a "money maker" for Berks County, according to a statement by Berks County Commissioner Chairman Mark C. Scott reported in the *Reading Eagle*, but this changed in 2004 when federal regulations prohibited governmental agencies from profiting by providing service programs.<sup>7</sup>

Berks is located at a former nursing home in a picturesque part of central Pennsylvania, and children and families detained at the facility have some degree of limited free movement within the facility and its outdoor grounds during set hours, giving it a less severe appearance than other immigration detention centers. However, while the scenic landscape and availability of limited activities for children might be positive, children and families are still deprived of their liberty and these features do not appear to have lessened the

detrimental effects of detention on children and families, as described in the following section.

*The New York Times* reported in 2009 that although Berks had been "eclipsed by the criticism of Hutto"—a highly controversial family detention center in Texas—it too had "a history of problems."<sup>8</sup> In 2007, Lutheran Immigration and Refugee Services (LIRS) and the Women's Refugee Commission (Women's Commission) reported a range of problems, including prohibiting children from speaking as a form of punishment and reportedly sending some children to the juvenile detention facility without a court order.<sup>9</sup> LIRS and the Women's Commission also reported that at that time, some families were being held at Berks for years. This particular problem of long-term detention at Berks has persisted—when Human Rights First visited Berks in late June, several families had been held there for over a year.

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## Detention Harms Children's Health and Well-Being

There is clear evidence that detention for immigration purposes is harmful to the health and well-being of children and families.<sup>10</sup> Studies have indicated that children in immigration detention can have high rates of psychiatric symptoms, including self-harm, suicidal ideation, depression, developmental regressions, and post-traumatic stress disorder, and may suffer physical health problems, such as weight loss and frequent infections.<sup>11</sup>

The American Academy of Pediatrics wrote in a July 2015 letter to Secretary Johnson that the detention of families unnecessarily exposes families with high rates of previous trauma, physical and sexual abuse, and exploitation to additional psychological trauma, putting children

and their parents “at greater risk for physical and mental health problems.”<sup>12</sup> Professional medical associations in the United Kingdom and Australia have drawn similar conclusions on family detention.<sup>13</sup> The Royal Academy of Paediatrics and Child Health, together with the Royal College of General Practitioners, Royal College of Psychiatrists, and the UK Faculty of Public Health, concluded that “almost all detained children suffer injury to their mental and physical health as a result of their detention, sometimes seriously.”<sup>14</sup>

Even brief periods in immigration detention are harmful for children. A recent study of the family detention system in Canada found that the experience of detention is “acutely stressful [for children] and, in some cases, traumatic—even when detention is brief.” The families who participated in the study had a median length of detention of 13.5 days (the average length was 56 days, due to a few particularly long stays) and were detained at facilities that provide education for children and permitted some amount of free movement. Despite the fact that most families were detained for less than two weeks, the researchers found that the detrimental effects mirrored those of children detained for much longer periods of time, noting that their findings suggest “that any incarceration, even under relatively safe conditions, is damaging for immigrant children, especially those with high levels of previous trauma exposure.”<sup>15</sup>

Human Rights First has met with or interviewed 23 families who have been detained at the Berks facility, including families that were held at the facility for a few weeks as well as families who had been detained over a year. Families who were detained for a few weeks reported symptoms of depression, behavioral regression, and anxiety in their children, as confirmed by two highly experienced pediatricians who accompanied Human Rights First on a visit to the facility on August 11, 2015. After speaking with

families who had been detained at Berks for periods ranging from two to six weeks, Dr. Alan Shapiro, Senior Medical Director for Community Pediatric Programs at the Children’s Hospital at Montefiore, described his conclusion: “Notwithstanding this range [of time spent in detention], we observed significant stress and symptoms of mental health conditions in the group with whom we met.”

Families who have been detained at the Berks facility have described numerous ways in which their children were suffering. For example:

- One mother, who had been detained with her child for less than one month, told Human Rights First that her child’s mental health and behavior had deteriorated since their detention, and that her child had expressed suicidal thoughts.
- Several parents who had been detained with their children for several weeks indicated that their children had lost their appetites, lost weight, started acting out, and/or behaved aggressively toward other children.
- An eleven-year-old girl told Human Rights First, choked-up in tears, “I knew a few days after I arrived here and I realized that this was going to be very hard. I try to go outside, distract myself with some activities. We are not delinquents who should be imprisoned.”
- When Human Rights First visited Berks in June, some of the children and parents made t-shirts with slogans. Mothers wore t-shirts saying, “I need my liberty.” One child, who looked about ten years old, wrote in broken English: “We get out of here.” Other children painted tears on their faces.

Certain practices imposed by the facility may cause additional stress, beyond that associated with the deprivation of liberty and the process of seeking asylum. Many families have complained

that Berks staff perform constant checks throughout the night by entering their rooms and shining a flashlight onto each person. This led to disruptions in sleep, fear, and nightmares. One mother, who had been detained at Berks for four months, told Human Rights First that this practice caused her daughter to be afraid of the staff who would enter their room. Her daughter had recurring nightmares about the facility, even two months after having been released.<sup>16</sup> ICE officials told Human Rights First that they are required by the state of Pennsylvania to engage in these room checks every 15 minutes.

Detention can also leave children and their parents vulnerable to other harms associated with incarceration. In January 2015, a staff member from Berks was arrested and charged with seven counts of sexual assault in response to allegations he had sexually assaulted a 19-year-old mother who was detained there. An eight-year-old girl, who was also detained at the facility, told police she had walked in on the guard and the detainee in the bathroom stall. After that incident, the little girl was afraid to leave her mother's side. According to three mothers who were detained at Berks at the time of the assaults and during the aftermath, the facility did not take measures to provide coping therapies or alleviate fear and anxiety among women or children who would have felt particularly vulnerable. In an interview with MSNBC, the victim described being made feel that she was "the guilty one." She stated: "Nobody approached me to help or ask me how I was."<sup>17</sup> Instead, according to three local attorneys who represented families during the time of the incident and its aftermath, the facility began to monitor women's choice of clothing more closely.<sup>18</sup>

Some families reported problems with the medical care available at Berks. One mother, whose six-year-old daughter lost eight kilograms (approximately 18 pounds), explained an instance

in which her daughter was sent to the emergency room and the medical provider at the hospital prescribed acetaminophen to lower her fever and another medication. When they returned to Berks, the healthcare staff refused to fill the prescriptions, saying they had done their own assessment and determined it was not necessary. Other mothers spoke of bringing their children to medical staff with high fevers and being told only to "drink more water," and denied any sort of fever reducer, such as acetaminophen.

According to an attorney who represents several families at Berks, one mother had to obtain a prescription in order to give yogurt to her daughter—who had lost considerable weight and was persistently ill. However, while many concerns about the medical care were expressed by families who had spent several months or longer at Berks, families that met with Human Rights First in August 2015, and who had spent between two and six weeks at the facility, generally did not have complaints about the medical care.

Despite some efforts by DHS to improve conditions at family detention centers, certain essential services appear to fall short. As noted by Dr. Shapiro, the mental health program at the facility did not appear to use "any formal, evidence-based validated tools for screening or monitoring" children and families, raising "serious concerns about the care that detained families with compounded histories of trauma receive." Moreover, the facility did not employ Spanish-speaking mental health staff, despite the population being overwhelmingly Spanish speaking.

Medical professionals have questioned whether ICE can provide appropriate care for children, particularly given the degree of past trauma suffered by asylum-seeking families. As noted in their letter urging Secretary Johnson to "do what's best for [children's] health and well-being," the

American Academy of Pediatrics stated: “we question whether the existing family detention facilities are capable of providing generally recognized standards of medical and mental health care for children.”<sup>19</sup>

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## Implementation of June Reforms: Progress and Short-Comings

Earlier this year, among the many concerns raised by human rights advocates, lawyers, health professionals, faith leaders, children’s and women’s groups, members of Congress, and others, was the fact that many families were in indefinite and highly prolonged detention. On June 24, 2015, Secretary of Homeland Security Jeh Johnson announced a series of reforms to family detention, which included measures to reduce detention times for families. Prior to this, some families were held in detention for many months and even over a year. When Human Rights First visited Berks on June 22, just two days before the announcement, several families had been detained at Berks for close to or over a year.

ICE did release the families who had been detained long-term at Berks within about a month of Secretary Johnson’s announcement. In its brief responding to the U.S. District Court for the Central District of California where it argued why the court’s July 24, 2015 order should not be implemented, DHS stated: “ICE anticipates that, in the future, families who assert a claim of fear at the time of their encounter by DHS will be processed, screened for reasonable or credible fear, and released under appropriate conditions within an average of 20 days of making that assertion.” DHS officials told the *Washington Post* Editorial Board that most families are released in about two weeks,<sup>20</sup> but pro bono attorneys

working at these facilities report that many families are held much longer. Attorneys have noted various practices by ICE that have caused families to be delayed and blocked from release.<sup>21</sup> The June announcement specified criteria had been developed and approved “for establishing a family’s bond amount at a level that is reasonable and realistic, taking into account ability to pay, while also encompassing risk of flight and public safety.”

Yet, when Human Rights First visited the Berks facility in August 2015, it was clear that some families had already been detained for about one month or six weeks, and the longest length of stay at Berks was 120 days. Moreover, in some cases, ICE continues to set bond amounts at Berks too high for families to pay, effectively blocking or delaying release from detention. Human Rights First met families detained at Berks who expressed anxiety over the bond amounts they had either received or anticipated receiving based on what they had heard from others. Several families expressed concerns that they could not afford to pay a \$5,000 bond, and some stated they were poor or indigent. One father said that \$1,500 (the statutory minimum in cases where monetary bond is the condition of release) would be more than he could afford.<sup>22</sup> ICE representatives told Human Rights First that \$5,000 was a typical amount for bond to be set at Berks.

In addition to developing measures to reduce detention times, the June announcement included “additional measures to ensure access to counsel, attorney-client meeting rooms, social workers, educational services, comprehensive medical care, and continuous monitoring of the overall conditions at these centers.” In general, immigrants in detention face much greater difficulties securing legal counsel. Studies have shown that approximately 80 percent of immigrants held in detention do not have legal

representation.<sup>23</sup> Legal counsel can vastly improve an individual's chances of obtaining relief from removal, and those who are represented appear for their hearings at high rates.<sup>24</sup> Recent data released by EOIR reveal that families with legal representation are fourteen times more likely to be successful in their cases than families without a lawyer.<sup>25</sup>

Of the 16 families Human Rights First met with on August 11, 2015 who had been detained for periods ranging from two to six weeks, only three of those families had secured, or potentially secured, legal representation. The local non-profit legal provider is overstretched and under-staffed, and does not have the legal staff necessary to provide legal representation or individualized legal counseling to families in connection with their screening interviews, release requests, custody hearings in immigration court, or in preparation for any immigration court merits hearings. The legal provider has limited funding for conducting legal orientation presentations (LOPs), but that funding is not permitted to be used for legal representation, and it does not have other funding sources that would allow it to hire additional attorneys to provide direct representation for families held at the Berks facility. The extraordinary volunteer models that have been set up at the larger Dilley and Karnes facilities in Texas have not been launched at the Berks facility. But those initiatives are also unable to meet the massive legal needs of the families in the U.S. immigration, asylum, and detention systems.

Many families were in need not only of legal counseling about their cases, but actual legal representation to assist them with their protection screening interviews, release requests, and bond hearings. Several families in the group had been detained for approximately one month and indicated that they had not yet had their protection (credible fear or reasonable fear) screening

interview, meaning that they may have several more weeks in detention, if not longer, to have the interview, wait for the result, and move forward with some potential option for release.

With respect to education, while Berks follows the public school system standards and calendar, Human Rights First noted that the summer reading program, which ICE stated was not required, was not conducted by a teacher who could explain the assignment to the children in Spanish. Two girls who participated in the program told Human Rights First that their assignments were given to them in English, which they could not yet understand. As a result, the reading session was not very meaningful to the children as they did not understand the instructions. ICE stated that while they hire bilingual teachers during the school year, during the summer months they had only engaged English-speaking teachers.

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## Advocates Object to the Licensing of Berks by the State of Pennsylvania

Unlike the detention facilities in Dilley and Karnes, which are not licensed by any state authority to hold children in custody, the Pennsylvania Department of Human Services has licensed the Berks County Residential Center as a child residential facility for dependent and delinquent children.<sup>26</sup> The current license allows Berks to operate with 96 beds as a child residential facility. ICE is seeking an expansion of that license to hold up to 192 individuals and has completed renovations at the facility to allow for the immediate placement of new families.

Lawyers who represent children and their parents at the facility have written to the Pennsylvania authorities, arguing that the facility should not be

licensed by the state as there are no dependent or delinquent children in custody.<sup>27</sup> In general, the licensing regulations that apply to the Berks County Residential Center have been applied to facilities providing care to children who are under the jurisdiction of Pennsylvania courts, such as children who have been deemed dependent or who have been alleged or adjudicated delinquent.<sup>28</sup> However, none of the children at Berks are dependent, by definition, since they are with at least one of their parents, and they have not been alleged or adjudicated delinquent.

Attorneys have also argued that Berks operates as a secure care facility, in violation of Pennsylvania law.<sup>29</sup> ICE consistently refers to its “family residential centers” as “detention” and Judge Gee defined “secure” as “a detention facility where individuals are held in custody and are not free to leave.”<sup>30</sup> Under Pennsylvania law, secure care calls for particular requirements—most importantly, children cannot be admitted to a secure facility unless they have been committed to such a facility by an order from a court with jurisdiction over the child.<sup>31</sup> Secure care is defined in the code as care in a 24-hour living setting where voluntary egress is prohibited through either internal locks within the building, exterior locks, or secure fencing around the perimeter of the building. Families, as well as lawyers who represent families at Berks, have stated that internal locks and guards prevent families from moving around within or out of the facility, except at certain limited times of the day. Finally, the nightly 15-minute observations, described above, are required only for secure detention under the Pennsylvania code. When asked during the Human Rights First tour on August 11, 2015 whether this practice was followed at Berks, the ICE representative stated that she was specifically required by the State of Pennsylvania to conduct the 15-minute checks.

Children and parents have expressed feelings of stress and anxiety over their detention and lack of ability to leave. When Human Rights First met with parents and children who had been detained for periods ranging from two to six weeks, it was clear that despite most not having legal representation and many stating they had received little information related to the nature or progress of their cases, they expressed a feeling of injustice over not being able to leave the facility. A number of the parents and children detained at Berks told Human Rights First: “We want our liberty.” One young girl stated, “We are not delinquents who should be imprisoned.” Another mother, detained along with her children at the Berks facility, asked, “We have not robbed or killed; why are we imprisoned?”

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## Conclusion

Detention—even for relatively short periods of time—is harmful to children. The medical and mental health research, as well as interviews with families detained at the Berks County Residential Center, makes clear that children who have been detained for a few weeks display symptoms of depression, behavioral regression, and anxiety. Even if DHS can succeed in implementing its reforms to limit detention times, children will suffer during the weeks they are detained, and some children will be detained for much longer than the proposed average of 20 days. In addition, detention is costly to taxpayers, with family detention costing an average of \$343 per day per person. Community-based alternative programs are less expensive and have been proven effective in securing appearance at court hearings, and can also provide families with the social service supports they need. The Obama Administration should end its policy once and for all of sending families seeking asylum to immigration detention centers. ■

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## Endnotes

- <sup>1</sup> Secretary of Homeland Security Jeh Johnson stated in his June 24, 2015 announcement that he had accepted and approved a plan “to offer release with an appropriate monetary bond or other condition of release to families at residential centers who are successful in stating a case of credible or reasonable fear of persecution in their home countries.” As part of that plan, Director of Immigration and Customs Enforcement (ICE) Sarah Saldaña presented “criteria for establishing a family’s bond amount at a level that is reasonable and realistic, taking into account ability to pay, while also encompassing risk of flight and public safety.”
- <sup>2</sup> U.S. Department of Homeland Security Congressional Budget Justification FY 2016, stating that the proposed increase in funding would fund 2,760 family beds at an average rate of \$342.73. Even intensive community-based programs may cost only 20 percent the cost of detention. See Oren Root, The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Removal Proceedings, *available at* [http://www.vera.org/sites/default/files/resources/downloads/aap\\_speech.pdf](http://www.vera.org/sites/default/files/resources/downloads/aap_speech.pdf). The contractor for the government-funded Intensive Supervision Appearance Program (ISAP) charges \$0.17 per day per participant for telephonic only monitoring; \$4.41 per day for GPS monitoring; and an average of \$8.37 per day per participant for full-service supervision, which includes case management as well. U.S. Department of Homeland Security Office of Inspector General, “U.S. Immigration and Customs Enforcement’s Alternatives to Detention,” February 4, 2015, OIG-15-22. The Government Accountability Office found, in February 2015, that in fiscal year 2013, ICE-funded ATD programs cost, on average, \$10.55 per person per day. The GAO’s estimate included the cost of ICE personnel, whereas previous DHS estimates have only included the cost billed by the contractor operating the program. U.S. Government Accountability Office, Report to Congressional Committees, Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness, November 2014.
- <sup>3</sup> Letter to Vice President Joseph R. Biden Jr. from the Association of Pro Bono Counsel, September 19, 2014; Letter to the Honorable Jeh Johnson, Secretary of Homeland Security from the American Academy of Pediatrics, July 24, 2015; Press Release: 178 House Democrats to DHS: End Family Detention Now, July 31, 2015, *available at* <https://lofgren.house.gov/news/documentsingle.aspx?DocumentID=397976>.
- <sup>4</sup> In addition, the California district court found that the conditions at Border Patrol facilities—where immigrants have complained of the notorious *hieleras* (“ice boxes”), mylar blanket coverings, sleeping standing up due to overcrowding, the absence of trash cans, and 24-hour fluorescent lighting—did not meet *Flores’* standard that temporary initial custody be “safe and sanitary.”
- <sup>5</sup> Holly Herman, “Berks County might stop housing illegal aliens,” Reading Eagle, August 21, 2009.
- <sup>6</sup> Mary E. Young, “ICE Facility to stay in Berks, saving 60 jobs,” Reading Eagle, February 1, 2012.
- <sup>7</sup> Holly Herman, 2009.
- <sup>8</sup> Nina Bernstein, “U.S. to Reform Policy on Detention of Immigrants,” August 5, 2009.
- <sup>9</sup> Lutheran Immigration and Refugee Service and the Women’s Commission for Refugee Women and Children, “Locking Up Family Values: The Detention of Immigrant Families,” February 2007.
- <sup>10</sup> See Sarah Mares, Louise Newman, Michael Dudley, and Fran Gale, Seeking refuge, loosing hope: parents and children in immigration detention, 10 *Australasian Psychiatry* 2, June 2002; Z. Steel and S. Momartin, et al., Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia, 28 *Australian and New Zealand Journal of Public Health* 527 (2004); Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2014); Intercollegiate Briefing Paper, citing Lorek et al, The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study. *Child Abuse and Neglect*: 33: 573-585 (2009); Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (June 2003); see also A. S. Keller, et al, The Mental Health of Detained Asylum Seekers, 362 *The Lancet* 1721 (2003); United States Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal: Volume 1: Findings and Recommendations* (February 2005), p. 197-198.
- <sup>11</sup> Royal College of Paediatrics and Child Health, et al., “Intercollegiate Briefing Paper: Significant Harm—the effects of administrative detention on the health of children, young people and their families,” December 2009, *available at* <https://www.rcpsych.ac.uk/pdf/Significant%20Harm%20intercollegiate%20statement%20Dec09.pdf>; Rachel Kronick and Cecile Rousseau, “Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study,” *American Journal of Orthopsychiatry*, Vol. 85, No. 3, 287-294 (2015).
- <sup>12</sup> Letter from Sandra G. Hassink, MD, FAAP, to Secretary of Homeland Security Jeh Johnson, dated July 24, 2015.
- <sup>13</sup> The Royal Australasian College of Physicians, *Leading paediatricians call for the immediate end to children in detention*, 2 May 2013; Royal College of Paediatrics and Child Health, 2009.

- <sup>14</sup> Royal College of Paediatrics and Child Health, et al., “Intercollegiate Briefing Paper: Significant Harm—the effects of administrative detention on the health of children, young people and their families,” December 2009, *available at* <https://www.rcpsych.ac.uk/pdf/Significant%20Harm%20intercollegiate%20statement%20Dec09.pdf>.
- <sup>15</sup> Rachel Kronick and Cecile Rousseau, “Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study,” *American Journal of Orthopsychiatry*, Vol. 85, No. 3, 287-294 (2015). The authors noted that “any incarceration, even under relatively safe conditions, is damaging for immigrant children, especially those with high levels of previous trauma exposure.”
- <sup>16</sup> Researchers have also found that the effects of detention on children’s mental health do not necessarily end upon release. See, e.g., Rachel Kronick, *et al.*, finding that “Most families reported ongoing emotional distress, such as separation anxiety, selective mutism, sleep difficulties, and posttraumatic symptoms in their children after detention, though some noted their children’s symptoms improved on release.”
- <sup>17</sup> Amanda Sakuma, “Assaulted and shamed in family detention,” MSNBC, August 4, 2015.
- <sup>18</sup> Berks Family Residential Center, Resident Handbook. The Resident Handbook includes a dress code, which applies to residents age five years and older, and forbids certain types of clothing, including “form fitting pants” as well as dresses and skirts, unless dresses or skirts are approved for religious purposes.
- <sup>19</sup> Letter from Sandra G. Hassink, MD, FAAP, to Secretary of Homeland Security Jeh Johnson, dated July 24, 2015. Healthcare in immigration detention centers is provided by the ICE Health Service Corps.
- <sup>20</sup> The Washington Post Editorial Board, “Confining asylum-seeking children,” August 4, 2015.
- <sup>21</sup> See Human Rights First, “A One-Week Snapshot: Human Rights First at Dilley Family Detention Facility Post-*Flores* Ruling,” August 2015.
- <sup>22</sup> Many criminal justice experts have said that lowering bail amounts is not enough and that the use of monetary bail should be abolished altogether. In New York City in 2013, 31 percent of non-felony defendants remained locked up because they couldn’t pay \$500 or less. Vera Institute of Justice, “Incarceration’s Front Door: The Misuse of Jails in America,” February 2015. In Washington, D.C., which has been cited as a model jurisdiction, monetary bail has been nearly eliminated (and private bail bondsmen are illegal). Monetary bail is only used as a last resort and when defendants can actually afford to pay it—only 5 percent of cases. The vast majority, 80 percent, of people charged with an offense are released on nonfinancial options, such as release on recognizance or community supervision. Justice Policy Institute, “Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail,” September 2012.
- <sup>23</sup> One study that reviewed nationwide data found that 86 percent of immigrants in detention had not had legal representation at any point during their immigration proceedings. Nina Siulc, et al, *Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II*, Vera Institute of Justice, May 2008. More recent studies have shown higher rates of representation. For example, a study conducted in New York in 2011 revealed that immigrants detained in New York are represented in 40 percent of cases, immigrants detained in Newark, New Jersey, are represented in 22 percent of cases, and immigrants who are apprehended in New York but later transferred to detention facilities in locations outside of New York are represented in only 19 percent of cases. *New York Immigrant Representation Study, Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, December 2011.
- <sup>24</sup> *New York Immigrant Representation Study Report: Part II, Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings*, December 2012; Philip Schrag, Andrew Schoenholtz, and Jaya Ramji-Nogales, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, NYU Press, 2011.
- <sup>25</sup> Transactional Records Access Clearinghouse, “Representation Makes Fourteen-Fold Difference in Outcome: Immigration Court ‘Women with Children’ Cases,” July 15, 2015.
- <sup>26</sup> Berks County Residential Center is licensed under title 55, chapter 3800 of the Pennsylvania Code, license number 224580. The certificate of compliance, which was effective February 21, 2014 to February 21, 2015, states that the BCRC is licensed to provide “Residential Services—community-based, dependent & delinquent.” The purpose of the 3800 regulations that govern the licensing of child residential and treatment facilities “is to protect the health, safety and well-being of children receiving care in a child residential facility through the formulation, application and enforcement of minimum licensing requirements.”
- <sup>27</sup> Letter to Attorney General Kathleen Kane, Esq., Pennsylvania Office of Attorney General, from Matthew J. Archambeault, Esq., March 23, 2015; Letter to Roseann Perry, Director, Bureau of Child and Family Services, Pennsylvania Department of Human Services from Bryan S. Johnson, March 23, 2015; Letter to Jay Bausch, Deputy Secretary for Administration, Commonwealth of Pennsylvania, Department of Public Welfare from Bryan S. Johnson, Esq., April 24, 2015; Letter to Jay Bausch, Deputy Secretary for Administration, Commonwealth of Pennsylvania, Department of Public Welfare from Bryan S. Johnson, Esq., April 30, 2015; Letter to Doris M. Leisch, Chief Counsel, Office of General Counsel, Pennsylvania Department of Human Services, July 28, 2015 from David Bennion, Esq., et al.

<sup>28</sup> See, e.g., Bureau of Planning and Preparedness Pennsylvania Emergency Management Agency and Office of Children, Youth, and Families Pennsylvania Department of Public Welfare, “Child Residential or Day Treatment Facilities Emergency Planning Guide, October 12, 2011, referencing the 3800 regulations, “There are a variety of facilities that provide care for juveniles under the jurisdiction of courts, ranging from facilities for children/youth with special needs to juvenile detention centers.”

<sup>29</sup> See letters to Pennsylvania authorities cited in endnote 27. The Pennsylvania Department of Public Welfare stated, in a letter dated April 20, 2015 from Jay Bausch, Deputy Secretary for Administration of the Department of Public Welfare to Bryan S. Johnson, Esq. The letter states that the Pennsylvania Bureau of Human Services’ regulators conducted an inspection and “confirmed that BCRC is not operating as a secure care facility and has no locks preventing resident children or their families from gaining egress from the building.”

<sup>30</sup> See, e.g., U.S. Department of Homeland Security Congressional Budget Justification FY 2016; Defendants’ Response to the Court’s Order to Show Cause Why the Remedies Set Forth in the Court’s July 24, 2015 Order Should Not Be Implemented, *Flores v. Lynch*, U.S. District Court for the Central District of California, Case No. CV 85-4544-DMG, August 6, 2015.

<sup>31</sup> Section 3800.271 states that “Secure care is permitted only for children who are alleged delinquent, or adjudicated delinquent and court ordered to a secure facility.”





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