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# Family Detention Still Happening, Still Damaging

October 2015



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We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

*Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.*

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

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## Introduction

The U.S. government's policy of detaining asylum-seeking families, often the subject of intense political and legal debate, is harmful to children and their parents. Furthermore, it is unnecessary.

On June 24, 2015, nearly four months ago, the Secretary of the Department of Homeland Security (DHS) Jeh Johnson announced plans to reform the Obama Administration's family detention policies. Two months later, on August 21, 2015, the U.S. District Court for the Central District of California issued a final ruling in *Flores v. Lynch*, ordering the federal government to comply with a settlement agreement that sets standards for the detention and release of children in federal immigration custody. On September 18, 2015, as the government filed a notice of appeal in *Flores*, Secretary Johnson issued a public statement asserting that family detention is "becoming short-term in most cases" and that DHS was "transitioning" its family detention facilities into "processing centers" where individuals could be interviewed and screened "rather than detained for a prolonged period of time." The deadline for the government to comply with *Flores* is October 23, 2015.

This report identifies the continuing impact of detention on families held in such facilities since the June reform announcement and the August court ruling. Despite new DHS messaging labeling family detention facilities as "processing centers," they are still detention facilities and the families held there still suffer from the harmful effects of detention.

Since announcing its reforms in June, DHS has chosen to send many more families into detention and to put more families into "expedited removal" proceedings, rather than directly referring them

into the regular removal process that would include a hearing before an immigration judge. More families are being detained despite evidence that confinement even for short periods of time still damages children. Research confirms that detention of less than two weeks is associated with negative health outcomes and potential long-term health and developmental consequences. In a July 2015 letter, the American Academy of Pediatrics told DHS Secretary Johnson: "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."

When President Obama proclaimed October 2015 as National Domestic Violence Awareness Month, reaffirming the U.S. commitment to "uphold[ing] the basic human right to be free from violence and abuse," he failed to acknowledge an unfortunate hypocrisy. Many mothers and girls sent to immigration detention are fleeing domestic violence and abuse in their home countries. Yet the Obama Administration's policies put them at risk of re-traumatization.

Family detention is not necessary to ensure compliance with immigration reporting obligations. Other tools, such as community-based programs, legal representation initiatives, and legal information orientations are more humane and cost-effective. Data show that 98 percent of mothers who have legal representation appear for their immigration court hearings. If, after an individualized assessment, DHS determines some families need appearance support, community-based programs have proven effective at ensuring appearance for immigration proceedings, while also providing essential services, including

housing, mental health services, and referrals to pro bono legal counsel. The U.S. Conference of Catholic Bishops' Migration and Refugee Service and Lutheran Immigration and Refugee Service recently piloted two small programs that provided holistic social services. They showed initial compliance rates of 96 to 97 percent.

Not only is it unnecessary to send families to immigration detention, it is also impermissible under international law to send individual refugees and migrants into automatic detention in order to send a message to deter other individuals from coming to the United States.

Speaking before Congress and members of the cabinet last month, Pope Francis called on the United States to respond to refugees and migrants in a humane and just manner, treating them as individuals instead of merely reacting to their numbers. Moreover, as the American Bar Association pointed out in a July 2015 report, DHS must be able to anticipate and address fluctuations in migration patterns and to do so through fair implementation of plans that use tools other than detention, excessive supervision requirements, and expedited deportation proceedings that undermine due process.

Overall apprehensions of unaccompanied children and families are down by approximately 46 and 48 percent, respectively, compared to fiscal year 2014, according to statistics released by the Department of Homeland Security. Any increases or fluctuations in migrants and asylum seekers requesting protection at the southern border, whether the increases are characterized as a "surge" or uptick like that reported for the month of August, can be managed with the use of rights-respecting rather than rights-violating tools.

The bottom line is that the United States is more than capable of handling variances in refugee and migration patterns by engaging in proper planning rather than resorting to policies that undermine

U.S. human rights commitments, due process, and access to counsel.

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## Findings and Recommendations

Human Rights First has been on the ground at the detention facilities in Dilley, Texas and Berks County, Pennsylvania, and conducted research and interviews with asylum seekers, government officials and pro bono attorneys, including attorneys providing representation at the facility in Karnes, Texas, to examine the family detention system in the aftermath of the *Flores* ruling and Secretary Jeh Johnson's announced reforms. We found that:

- **DHS is sending more families to detention.**

Rather than ending family detention, the government is sending many more children and parents into detention centers. Previously, many families with children were referred directly to the immigration court removal process and simultaneously released after a brief period in Border Patrol detention. While the amount of time children and parents spend in detention is generally lower than what families experienced before the government implemented reforms, detained families continue to suffer harmful health effects and due process obstacles related to detention. It appears that, while decreasing detention times, DHS is simultaneously increasing the number of families it puts into expedited removal and detention rather than regular removal. If the pace of detention continues as it has over the past month, DHS may hold 45,000 children and parents in family detention this year, as compared to approximately 6,000 individuals who were detained last year. The financial costs of this

detention policy to taxpayers are high, likely exceeding \$400 million.

- **Children and survivors of abuse suffer negative health consequences within weeks of detention.** Research confirms that detention is harmful to children and families, even when detention lasts for less than two weeks rather than months. Leading pediatricians, physicians, and social workers have described the negative effects of immigration detention on children, which includes behavioral regressions, depression, anxiety, and suicidality. A Human Rights First social worker—as part of a professional legal team providing pro bono assistance to detained mothers in connection with the credible fear reasonable fear and other legal processes—met with 30 mothers and a number of children held in detention in early October. They reported a range of symptoms associated with trauma and depression, including high levels of hypervigilance, hopelessness, fatigue, and insomnia. They also related symptoms of Post-traumatic Stress Disorder (PTSD), Major Depressive Disorder, and Persistent Depressive Disorder (Dysthymia). Moreover, a significant number of mothers who have been detained with their children are survivors of domestic violence. Detention only exacerbates the trauma that these women have suffered.
- **Expedited removal compromises families' access to due process and wastes government resources.** DHS has emphasized that it aims to use expedited removal against families. Expedited removal is an extraordinary process that DHS is not required by law to use. This process authorizes immigration officers to deport individuals without a hearing before a judge, and triggers detention while an asylum seeker undergoes a protection screening process. At

an average cost of \$1,029 to detain a family of three for one day, the financial costs of invoking expedited removal are significant. In some cases, due to mistaken protection screening decisions, families are detained even longer while steps are taken to correct these determinations. The DHS decision to use expedited removal has also led to a sharp increase in the affirmative asylum backlog, as DHS has deployed officers who normally conduct affirmative asylum interviews to conduct credible fear interviews as part of the expedited removal process. Given the many flaws in the expedited removal process, families may face the risk of being returned to persecution. Due process concerns are also triggered by the government's use of the "reinstatement of removal" process, another summary process used on mothers and fathers who had prior expedited removal orders.

- **Impediments to Counsel Remain.** While Immigration and Customs Enforcement (ICE) has taken some steps to support access to counsel, other barriers persist. All three family detention facilities are located far from urban areas with major pro bono hubs, exacerbating the difficulty of sustaining some of the extraordinary volunteer initiatives that have been launched over the past year. Most recently, lawyers filed a complaint with the DHS Office of Civil Rights and Civil Liberties alleging that ICE has prevented attorneys from accompanying their clients, who are detained at the Dilley detention facility, to compulsory meetings with ICE. At these compulsory meetings, ICE asks individuals, in the absence of their attorneys, to make a decision regarding their conditions of release, often forfeiting the right to pursue a bond hearing before an immigration judge. The complaint further alleges that ICE has used

coercive tactics during these meetings, including intimidation and misinformation regarding bond hearings, to convince mothers to sign documents agreeing to release on electronic ankle monitoring devices, which are often overly intrusive and stigmatizing. Finally, on at least two occasions, it has been reported that ICE has banned attorneys from entering and serving clients detained at the Dilley facility.

- **Family detention still violates international human rights standards.** The automatic detention of children and families seeking asylum, even for several weeks rather than months, still violates international human rights law, including U.S. obligations under the International Covenant on Civil and Political Rights, Refugee Convention and its Protocol. Depriving children of their liberty is not necessary and may constitute cruel, inhumane, and degrading treatment. The Committee on the Rights of the Child concluded that immigration detention of children “is never in their best interests and is not justifiable.” While the United States is the only country in the world that has not ratified the Convention on the Rights of the Child, it is bound—as a signatory—not to take actions that would defeat its object and purpose.

The Obama Administration needs to right its course and abandon the flawed policy of sending families into immigration detention. The American Academy of Pediatrics, the American Bar Association, 178 Members of Congress and 35 Senators, a wide array of faith groups, and many other voices have called for an end to family detention—not just the alterations that DHS has implemented, which now subject many more families to the harms of detention. As it prepares to embark on its last year, the Obama Administration has the opportunity to heed the call of Pope Francis and so many others to treat

refugees and migrants in a humane and just manner and to finally end its fatally flawed family detention experiment.

Human Rights First recommends that:

- **The Obama Administration should end family detention once and for all.** While DHS reforms have reduced the length of stay many families experience in detention, the negative health impacts and due process concerns remain. In recognition of the medical and mental health research, which confirms that even stays of less than two weeks in detention are harmful to children and families, as well as ongoing due process concerns resulting from DHS’s choice to use expedited removal and detain families, DHS should end this misguided and unnecessary policy altogether.
- **DHS should refer all families directly into removal proceedings before an immigration judge rather than invoking expedited removal.** Rather than subjecting children and their parents to expedited removal, DHS should refer children and their parents into normal removal proceedings before an immigration judge under section 240 of the Immigration and Nationality Act and refrain from detaining families. As the government stated in its briefing in the *Flores* litigation, the majority of families apprehended last year were referred to removal proceedings before an immigration judge, provided a Notice to Appear at a future hearing, and allowed to live with relatives who reside in the United States while awaiting the outcome of their immigration case. Allowing a hearing before a judge provides children and families the time to find an attorney and develop their case. It avoids the due process impediments associated with expedited removal. It will also save government resources that have been diverted from the

affirmative asylum system, triggering growing backlogs in the affirmative asylum process.

- **DHS and the Executive Office for Immigration Review (EOIR) should implement community-based alternative to detention programs and legal orientation presentations, and increase access to counsel.** Congress should support these prudent and cost-effective measures. Community-based alternative to detention programs, legal information, and legal counsel can all serve to ensure families appear for court hearings, as well as provide necessary social and legal support. The vast majority of families seeking protection in the United States have relatives in this country with whom they can live. Some may, after an individualized determination, need additional support to ensure their appearance. In these cases, ICE should utilize community-based programs like those operated by leading faith-based groups with expertise in supporting refugees and immigrants. Rather than automatically placing electronic monitoring devices on parents, ICE should avoid using these intrusive and stigmatizing devices except in rare cases when an individualized assessment using a validated instrument shows that less restrictive measures cannot ensure appearance. The use of such measures should be regularly reviewed, including by a court. In addition, EOIR and DHS should implement legal orientation programs at the border with the aim of providing information that will ensure appearance at hearings as well as inform families of their legal rights and obligations. DHS should ensure full access to counsel, and permit attorneys to participate in any discussions between ICE and represented individuals regarding their options and conditions for release from detention.

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## Background

On June 24, 2014, in response to the increasing number of children and families fleeing Honduras, Guatemala, and El Salvador to seek protection at the southern U.S. border, the Obama Administration announced plans to significantly increase capacity to detain children with their parents. In testimony before Congress, Secretary Johnson proposed “an aggressive deterrence strategy,” including the rapid expansion of family detention, which would send a message to adults who brought their children with them: “we will send you back.” 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 532 individuals, and erected the South Texas Family Residential Center in Dilley, Texas, which has a capacity of 2,400 individuals, making it the largest immigration detention center in the country. The Berks County Residential Center, located in Leesport, Pennsylvania, has capacity to detain 96 individuals. This family detention policy comes at a high cost to taxpayers. Over the course of a year, family detention could cost \$400 million.<sup>1</sup>

Over the past year, a wide array of groups have spoken out against the government’s policy of detaining families, including the American Bar Association; the Association of Pro Bono Counsel, which includes the pro bono leaders at many of the nation’s major law firms; 136 members of Congress and 35 Senators; the American Academy of Pediatrics; faith leaders including U.S. Catholic Bishops, the Evangelical Lutheran Church in America, and Jewish leaders; and a host of child welfare, children’s rights, immigrant rights, community-based, grassroots, and human rights organizations. Members of Congress, bar associations, refugee protection experts, child protection experts and others raised due process,

human rights, child health, and child protection concerns, and called for an end to the U.S. government's practice of detaining families.

On June 24, 2015, one year after the Obama Administration announced plans to significantly expand family detention, Secretary of Homeland Security Jeh Johnson announced a series of reforms, stating that once a family has established eligibility for humanitarian protection, "long-term detention is an inefficient use of our resources and should be discontinued." The reforms included a plan to offer release to families who had successfully stated a case of credible fear or reasonable fear subject to an "appropriate monetary bond or other condition of release." Secretary Johnson stated that the plan included criteria for establishing that bond is set at an amount that is affordable to the family.

DHS has not released statistics revealing detention times for families since its reform announcement. While detention times appear to be lower, some families have stayed in detention for six weeks or longer. In visits to family detention facilities in the four months since DHS announced its reforms, Human Rights First attorneys, social workers, and researchers have met families detained from two days to six weeks.

Despite announcing and implementing reforms that would decrease detention stays, DHS appears to be standing by its original plan of sending families to immigration detention facilities to attempt to deter future migration. In its August 6, 2015 brief in *Flores v. Lynch*, a lawsuit to enforce compliance with a consent decree known as the Flores Settlement Agreement, the government stated that family detention "provides DHS with a critical tool for enforcing the immigration laws, which in turn disincentivizes future surges of families crossing the Southwest border." The brief further described decreasing numbers of families seeking protection at the U.S. southern border last fall, implying that the

government's family detention policy had an impact on families' decision to migrate or flee in search of protection.<sup>2</sup> However, research on regional migration trends shows that while the number of individuals from Central America attempting to enter the United States has decreased over the past year, the number of Central Americans deported by the Mexican migration authorities has increased significantly, and is likely the key factor behind the decrease.<sup>3</sup> The claim that family detention has succeeded as a deterrent to migration is further undermined by the fact that the numbers of U.S. apprehensions of unaccompanied children—who have not been subject to the administration's harsh detention policies over the past year—have for the most part increased and decreased according to similar patterns.

On August 21, 2015, the U.S. District Court for the Central District of California issued an order in *Flores v. Lynch*. The court found that accompanied children are protected under the settlement agreement and that DHS family detention policies are in violation of the settlement agreement. The court ordered the government to implement a series of remedies by October 23, 2015.<sup>4</sup>

The *Flores* plaintiffs viewed the California District Court's order as a success, interpreting the ruling as requiring the government to release children and their parents within three to five days of apprehension, as per the Flores Settlement Agreement. The media also widely reported the decision as a success for children and families. However, DHS interpreted the ruling as permitting it to detain families in what it described in its briefings as "short-term processing centers."

In a statement issued soon after the decision, DHS said: "While we continue to disagree with the court's ultimate conclusion, we note that the court has clarified its original order to permit the government to process families apprehended at

the border at family residential facilities consistent with congressionally provided authority.” DHS appears to be taking the position that the court has approved its detention of families for the roughly three weeks or twenty days that it estimates it will take to complete the expedited removal process in most cases.

Ongoing violence and persecution in Central America continues to terrorize many individuals and communities, with some experts in the region commenting that the number of children emigrating to seek safety has actually increased over the past year.<sup>5</sup> Though overall apprehensions have fallen steeply over the last year, U.S. authorities reported an uptick of apprehensions at the border during the month of August 2015. While a Border Patrol agent was cited in the media speculating that the August uptick was tied to the court’s order in *Flores*, this conjecture runs contrary to broader evidence relating to violence, migration, and enforcement trends south of the border, and the fact that there has also been an uptick in unaccompanied children who are not sent to immigration detention.

The Washington Office on Latin America pointed to increasing violence in the region—at least in El Salvador—and the possibility that smugglers may be adopting new routes that evade the increased enforcement mechanisms developed by Mexico over the past year.<sup>6</sup> While the U.S. government has spent millions of taxpayer dollars on a detention policy that harms families, the root causes of migration in Central America continue to drive people to flee their homes.

In September 2015, during his historic visit to the United States, Pope Francis called for more humane and just responses to the plight of the world’s refugees and migrants, stating in his remarks before Congress:

“Our world is facing a refugee crisis of a magnitude not seen since the Second World War. This presents us with great challenges and many hard decisions. On this continent, too, thousands of persons are led to travel north in search of a better life for themselves and for their loved ones, in search of greater opportunities. Is this not what we want for our own children? We must not be taken aback by their numbers, but rather view them as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation. To respond in a way which is always humane, just and fraternal. We need to avoid a common temptation nowadays: to discard whatever proves troublesome. Let us remember the Golden Rule: ‘Do unto others as you would have them do unto you.’”

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## DHS Will Detain Tens of Thousands of Children and Their Parents

Over the past few months, DHS has greatly increased the number of children and families it is sending to family detention centers. In 2014, approximately 6,000 individuals were placed in family detention centers.<sup>7</sup> If the pace of detention continues as it has recently, and assuming current family detention capacity levels remain the same, we predict that ICE may detain approximately 45,000 children and parents this year.<sup>8</sup>

On-the-ground pro bono legal service providers report that families are being placed in detention at such rapid rates that they struggle to keep up with providing some baseline services, including preparations for credible fear and reasonable fear screenings. The CARA Family Detention Pro Bono Project—a collaboration among the Catholic Legal Immigration Network, the American

Immigration Council, the Refugee and Immigrant Center for Education and Legal Services (RAICES), and the American Immigration Lawyers Association—reports that they have assisted more than 200 newly arrived mothers per week during September.<sup>9</sup> An on-the-ground representation project at Berks, which was recently launched by Human Rights First in collaboration with local legal groups and leading law firms, estimates that approximately ten to twelve families arrive at Berks weekly. Finally, at Karnes, local providers estimate that they see approximately 120 new families each week.<sup>10</sup> In all cases, these estimates reflect the number of individuals seen by legal service providers, a subset of the entire population of families detained at the facilities.

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## Weeks in Detention Harm the Health of Children and Families

DHS has suggested that it will aim to detain families for 20 days on average while it completes expedited removal processing, though DHS has not released statistics revealing detention times for families over the four month period since its reform announcements.

The American Academy of Pediatrics (AAP), in a July 2015 letter, told DHS Secretary Johnson that detention unnecessarily exposes families with high rates of previous trauma, exploitation, and physical and sexual abuse to additional psychological trauma, putting children at heightened risk of long-term health consequences.<sup>11</sup> A wide array of studies have concluded that the detention of immigrant families is damaging to children as well as their parents, including when the confinement is relatively brief.<sup>12</sup> A recent study of the family detention system in Canada, which interviewed families who had been held for a median of 13.5 days, found that the experience of detention is “acutely

stressful [for children] and, in some cases, traumatic—even when detention is brief.”

Researchers found that the detrimental effects on children 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>13</sup>

Pediatricians, physicians, and social workers that have met with children held in U.S. immigration detention in recent months have confirmed that it is harmful to their health. After visiting with families held in a detention facility in Pennsylvania in August, Dr. Benard Dreyer, President-elect of the American Academy of Pediatrics, and Dr. Alan Shapiro, Assistant Clinical Professor of Pediatrics at Montefiore Medical Center and the Albert Einstein College of Medicine, concluded that family detention cannot be implemented in a way that does not jeopardize the mental well-being of children and their parents. Dr. Shapiro explained that detention “leads to isolation, helplessness, hopelessness and serious long-term medical and mental health consequences—even if it lasts for only a few weeks.” Dr. Allen Keller, a physician with 25 years of experience working with survivors of trauma and torture, concluded after interviewing mothers who had been detained at the Dilley facility during the summer of 2015 that family detention exacerbates psychological distress and is a substantial public health concern.<sup>14</sup>

In late September to early October this year, a Human Rights First social worker, as part of a professional legal team providing pro bono assistance to families in their protection screening and other legal proceedings, met with 30 mothers and a number of their children at the South Texas Residential Facility in Dilley, Texas. These families had been detained for periods of time ranging from two days to six weeks. All of these mothers reported some combination of troubling

symptoms, including high levels of hypervigilance, sadness, hopelessness, fatigue, and insomnia. A majority presented with symptoms of Post-traumatic Stress Disorder (PTSD), Major Depressive Disorder, and Persistent Depressive Disorder (Dysthymia).

Many of these asylum seekers are survivors of domestic violence and have experienced a number of severe, life threatening traumas during their lives, including early childhood physical, sexual, and emotional abuse. Detention often exacerbates the symptoms of post-traumatic stress and depression experienced by victims of gender-based violence.

DHS has been criticized for its failure to provide appropriate medical and mental health care to the survivors of abuse it holds in detention facilities.<sup>15</sup> In a 2009 report, the Tahirih Justice Center outlined concerns related to the detention of survivors of domestic violence, including that detention exacerbates symptoms of trauma by stripping women of their privacy and control, and leaves survivors with limited access to needed medical and mental health care.<sup>16</sup>

Parents at all three facilities reported distress in witnessing the behavioral and emotional effects of detention on their children, such as aggression, disobedience, separation anxiety, loss of appetite, and insomnia.<sup>17</sup> In August 2015, a Human Rights First social worker, as part of a professional legal team providing pro bono assistance to families, met with 15 mothers detained at the Dilley facility. The mothers reported depressive and anxiety symptoms in their children, including bed wetting, lack of appetite, weight loss, nightmares, crying nightly, clinginess, headaches, and gastrointestinal symptoms such as diarrhea.<sup>18</sup> These symptoms were present even in children who had been detained for just a few weeks. A mother detained at the Karnes facility, who waited nearly one month to have her credible fear interview, described to her attorney the emotional

pain she felt as her three year old son watched other families leave the detention facility. Her attorney reported that when asked how she felt about being in detention with her child, the mother's eyes filled with tears and she said she did not know how to describe how she felt.

In an interview with medical researchers associated with the NYU Center for Health and Human Rights, a mother who had been detained with her daughter reported behavioral regressions and anxiety relating to their detention.

“Alexia” is a woman in her late 20's who fled her home country due to persistent threats of violence from a local gang. She and her daughter were apprehended by U.S. immigration enforcement authorities and sent to the Dilley facility. Alexia reported that on one occasion, after waiting for six hours for medical staff to see her daughter, who was suffering from a high fever and vomiting, she decided it would be best for her daughter to return to her dormitory where she could rest, rather than waiting indefinitely. “The clinic staff made me sign a form saying if anything happened to my daughter it was my fault not theirs.” Alexia further reported that her daughter lost weight and suffered from diarrhea and stomach aches. “She also started needing to wear diapers again as she was bed wetting. She also would throw fits and lost her temper a lot.” Alexia noted, “I felt helpless like there was nothing I could do.”<sup>19</sup>

Despite the fact that detention can lead to negative health consequences for children, including long-term developmental impacts, the medical and mental health care that children receive while in detention has frequently been criticized as inadequate.<sup>20</sup> After visiting the Berks facility on August 11, 2015, Dr. Alan J. Shapiro, a pediatrician with over 20 years of experience directing community-based health programs in New York, stated in a declaration that the lack of

formal, validated tools for screening and monitoring the population in detention raised “serious concerns about the care that detained families with compounded histories of trauma receive.”<sup>21</sup> On October 6, 2015, the CARA Family Detention Pro Bono Project filed a complaint with DHS’s Office of Civil Rights and Civil Liberties and Office of Inspector General documenting the circumstances of twenty-two families who received inadequate medical care at Dilley. The CARA Project had filed a similar complaint on July 30, 2015, documenting the cases of 10 families who experienced medical access problems at Dilley and report that the problems remain very much the same over two months later.

While pediatricians have offered their expertise to DHS to improve medical and mental healthcare, they have made clear that detention facilities are not capable of providing adequate care to children and families. The American Academy of Pediatrics stated in its letter to Secretary Johnson: “We question whether the existing family detention facilities are capable of providing generally recognized standards of medical and mental health care for children.” Dr. Benard Dreyer, the incoming president-elect of the American Academy of Pediatrics explained: “Children and families should not be detained. Yes, we want improvements in the care they are getting while they are detained. But in fact, a lot of their symptoms are due to being detained. So, what really needs to be done is not detain them.”<sup>22</sup>

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## DHS Unnecessarily Places Families in Expedited Removal, Compromising Due Process

A critical component of DHS’s practice of detaining families is its decision to use “expedited

removal” under INA § 235(b) rather than the regular removal process. Created by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, expedited removal allows immigration enforcement officers—rather than judges—to order the deportation of certain individuals who have been charged with inadmissibility under section 212(a)(6)(c) and/or section 212(a)(7) of the Immigration and Nationality Act (INA). If an individual placed in expedited removal proceedings expresses an intention to apply for asylum or a fear of return to his or her country of origin, the immigration officer must refer that individual for a screening interview by an asylum officer, known as a “credible fear interview.”

The Board of Immigration Appeals and DHS agree that section 235(b) of the INA does not limit the discretion of DHS to place arriving aliens in regular removal proceedings before an immigration judge.<sup>23</sup> Thus, while DHS may apply expedited removal as a matter of policy depending on the manner or place of entry, it always retains discretion with respect to how it files formal charges against a particular individual or family.

Given its summary nature and potentially devastating impact, expedited removal was for many years used only at “ports of entry”—airports or official land border entry points. It was not used within the United States for individuals apprehended by the Border Patrol.<sup>24</sup> Moreover, even after U.S. immigration authorities began to permit the use of expedited removal by the Border Patrol, that potential use was limited to individuals encountered within 100 miles of the border within 14 days of entering the United States.<sup>25</sup>

Moreover, expedited removal is not used in a range of cases including for unaccompanied children and for individuals who are formally charged as inadmissible under other provisions of the immigration law. While DHS has significantly

increased its use of expedited removal in recent years,<sup>26</sup> for many years, including throughout the last year, DHS has routinely declined to send families with children into expedited removal proceedings and instead referred them into the regular immigration court removal process.

In its August 6, 2015 brief in response to the U.S. District Court for the Central District of California's order to show cause in *Flores*, the government stated that "the remedies in the Court's Order would effectively exempt families from the expedited removal process and thwart Congress's clear intent to provide expedited removal, including detention, as a tool for DHS to deal with the ever-changing trends in immigrant populations crossing the border and to ensure compliance with immigration proceedings." However, the government also acknowledged that it generally referred children and families who had been apprehended by DHS to regular removal proceedings before an immigration judge in the past, including during the past year.<sup>27</sup> Contrary to the implication in its brief, DHS does not need to put individuals into expedited removal in order to use the "tool" of detention, including to hold individuals in ICE facilities for several days.

Expedited removal raises a number of due process concerns. Congress included protections in the statute aimed at preventing the expedited removal of *bona fide* asylum seekers.<sup>28</sup> However, compliance with these safeguards often falls short.<sup>29</sup> An in-depth study completed by the bipartisan U.S. Commission on International Religious Freedom (USCIRF), where researchers were permitted to directly observe interviews conducted by immigration officers at ports of entry, found that individuals were not always referred to a protection screening, despite having expressed fear to an immigration officer. "Roughly one-sixth of cases in which an alien expressed a fear of returning to his or her native country [to an immigration officer], no referral for a Credible Fear

interview was made and the alien was either ordered removed or allowed to withdraw his or her application for entry [and return to the home country]."<sup>30</sup> Moreover, the expedited nature of these proceedings leaves individuals with very limited time to find counsel, which can be a significant factor in whether or not they receive a positive result after a fear interview.<sup>31</sup> Inconsistent application of protections for asylum seekers undermines their access to due process and can lead to deportation of individuals who are in fact not deportable or who would be eligible for a form of relief, such as asylum, in the United States.

In a recent case, an indigenous language-speaking family who fled persecution due to their business and religious views was deported without receiving a credible fear interview. This episode highlights the dangers of using expedited removal. An attorney based in Reading, Pennsylvania reported to Human Rights First that she met with the father, a member of an indigenous ethnic group, who was detained at the Berks facility with his son in September 2015, as the father sought pro bono counsel:

The father was very distressed because he had recently been contacted by his country's consulate to arrange travel documents for his repatriation. He said he had not been questioned by any authorities since arriving at the Berks facility about his reasons for coming to the United States. He had been detained and questioned by U.S. Customs and Border Protection in early September 2015, but was not referred for a credible fear interview. The family was placed into expedited removal proceedings and transferred to Berks. During the attorney's initial interview with this father, she discovered that he had fled his home country after receiving death threats from a powerful gang due to his job at a bread business and his membership in a church that preached against the gang. The father and son

had difficulty conveying this information because they spoke a rare indigenous language. The father stated to the attorney that he had told caseworkers at Berks that he had a fear of return to his country. When the attorney attempted to follow up on his case with the ICE deportation officer at Berks, she received no response to her queries. Soon after, she learned that the father and son had been deported in the middle of the night.<sup>32</sup>

DHS's decisions to use accelerated processes like expedited removal not only present due process concerns for families, but also raise efficiency and cost concerns. Statistics released earlier this year by the U.S. Citizenship and Immigration Services Asylum Division indicate that nearly 90 percent of families detained at the three family detention facilities were determined to have a credible fear of return.<sup>33</sup> Simply referring families to removal proceedings before an immigration judge would avoid these additional processes, which cause distress to families, trigger longer detention times, and have also led to an increased backlog of affirmative asylum cases. The USCIS Ombudsman has reported that the backlog and long processing delays in the USCIS asylum office are largely due to "spikes in requests for reasonable and credible fear determinations, which have required the agency to redirect resources away from affirmative asylum adjudications, along with an uptick in new affirmative filings." In some districts, affirmative asylum applicants must now wait up to four years to have their claims heard.<sup>34</sup>

Despite the due process concerns, which include imposing "mandatory detention" of children and families and the strain that expedited removal has placed on government agencies, DHS appears to have increased its use of expedited removal against families seeking protection over the last year, and further increased its use since announcing its June 2015 reform plans.

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## ICE Continues to Impose Impediments to Access to Counsel

While ICE has taken some steps to support immigrants' access to legal counsel and recently agreed to regular meetings with legal providers at the family facilities in Texas, significant impediments remain. As detailed in a report issued by the American Bar Association (ABA) Commission on Immigration on July 31, 2015, families in detention face numerous challenges accessing counsel. The size and remote location of the facilities create the first barrier. The ABA report, which was drafted with the assistance of the law firm of O'Melveny & Myers, explains: "Despite very serious efforts, it is simply impossible for the legal community to provide representation to all detained families who require legal assistance to present their claims effectively in rapidly-moving, complicated proceedings. As a result, many families are forced to face immigration proceedings without legal assistance."

While some innovative pro bono projects have been launched at family detention facilities, these representation programs do not receive government funding and do not have long-term private funding that would ensure their sustainability. Moreover, with more families now being put into expedited removal, these projects are struggling to provide legal representation through these fast-paced and complex proceedings.

Legal counsel is critical to ensuring families' due process rights. It's proven to be the number one factor in predicting one's success in immigration proceedings.<sup>35</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>36</sup>

In addition to the impediments of detention center location, volume, nature of processing, and lack of representation resources, pro bono attorneys face other challenges in representing these families. On September 30, 2015, partners in the CARA Family Detention Pro Bono Project, including the Catholic Legal Immigration Network (CLINIC), the American Immigration Council, Refugee and Immigrant Center for Education and Legal Services (RAICES), and the American Immigration Lawyers Association (AILA), submitted a complaint to the Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) and the Office of Inspector General. The complaint documents cases in which ICE prevented attorneys from accompanying their clients at the Dilley facility, to compulsory meetings with ICE. At these meetings, ICE discussed release options and asked individuals—in the absence of their legal representatives—to sign documents to “voluntarily” agree to wear an intrusive electronic monitoring device, effectively foregoing an immigration court custody hearing that could order release without imposing ankle monitors. Attorneys representing families at the Berks facility report similar concerns, in which ICE does not notify the attorneys of meetings where they present release options to the clients and ask them to sign documents agreeing to electronic monitoring.

The complaint further alleges that during these meetings ICE officers have threatened mothers with deportation if they raised concerns or inquired about the status of their cases and, on at least one occasion threatened to withhold medical care for children if mothers choose to seek bond hearings instead of accepting ankle monitors.

Pro bono attorneys have also been prevented from bringing cell phones with them into detention facilities, even though cell phones are critical tools for facilitating legal representation, including for example to copy client documents, call potential witnesses, and access interpretation services. A September 2015 report by the U.S. Commission on Civil Rights noted that while ICE often prohibits immigration attorneys from bringing basic office equipment into detention facilities, government attorneys are allowed that privilege.<sup>37</sup>

In addition, reports note that, on at least two occasions, ICE has banned attorneys from entering and serving clients detained at the Dilley facility.<sup>38</sup>

Finally, the CARA Project recently reported that staff employed by Corrections Corporation of America, the private prison contractor operating the Dilley detention center, have failed to inform all of the CARA Project’s clients of their legal appointments. As a result, some mothers missed the opportunity to receive critical legal advice and representation.

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## Detention of Families (Still) Violates International Law

The International Covenant for Civil and Political Rights and the Refugee Convention (ICCPR) and its Protocol call for an individualized determination, subject to judicial review, before a government may deprive an individual of his or her liberty. Article 9 of the ICCPR, which the U.S. has signed and ratified, provides that “Everyone has the right to liberty and security of person,” and, “No one shall be subjected to arbitrary arrest or detention.” Detention is arbitrary when it is not reasonable or necessary in the circumstances of a particular individual’s case, or not proportional to the end sought.<sup>39</sup> Detention that is automatic or

“mandatory,” or imposed as part of a plan to deter others from migrating, runs afoul of U.S. human rights commitments.

Article 31(1) of the U.N. Convention Relating to the Status of Refugees prohibits states from penalizing refugees for their illegal entry or presence, and Article 31(2) prohibits states from applying restrictions to the movement of refugees other than those that are “necessary.” The Executive Committee of the U.N. Refugee Agency (UNHCR), of which the United States is a member, concluded that detention should “normally be avoided.” The UNHCR, in its guidelines on the detention of asylum seekers, stresses that “the use of detention is, in many instances, contrary to the norms and principles of international law.” The guidelines—noting the right to seek asylum under Article 14 of the Universal Declaration of Human Rights—specifically confirm the general principle that “asylum seekers should not be detained.”

Earlier this year, following a ruling by a federal district court in Washington D.C., U.S. immigration authorities committed to cease considering deterrence as a factor in individual custody determinations.<sup>40</sup> While this commitment was welcome, the very detention facilities that were launched—and touted—as a tool to send a message to would-be migrants and asylum seekers remain open.<sup>41</sup> Families continue to be sent there.

A detention policy based on deterrence—by definition—precludes the fair review of the individual circumstances of the case, as called for under the ICCPR as well as the Refugee Convention and its Protocol. UNHCR’s guidelines on the detention of asylum seekers also make clear that “detention that is imposed in order to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms.” Setting aside the legal prohibition, researchers

have also concluded that there is significant evidence that detention is ineffective as a deterrent.<sup>42</sup>

After its visit to the United States in October 2014, the Inter-American Commission on Human Rights concluded that “[t]aking into consideration the government’s decision to impose generalized and automatic family detention, the Commission reiterates that the detention of migrants in an irregular situation, asylum seekers, and other persons in need of international protection is an intrinsically undesirable measure. Hence, it must be used only as an exceptional measure, and then only as a last resort and for the shortest period of time possible. In the case of vulnerable persons like children and families with children, the United States should adopt legislative measures to ensure that these persons are not placed in immigration detention.”

Moreover, the detention of children for immigration purposes is a clear violation of the rights enshrined in the U.N. Convention on the Rights of the Child (CRC). The Committee on the Rights of the Child stated in 2012 that “regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children’s rights, is never in their best interests and is not justifiable.”<sup>43</sup> The Committee further stressed the child’s right to family unity and emphasized that “family unity was not a justification for detaining children and alternative measures should be found for the whole family.” Both Somalia and South Sudan ratified the CRC in 2015, making the United States the only country that has not ratified the preeminent legal instrument on child rights. However, as a signatory, the U.S. is bound to not take actions that would “defeat the object and purpose” of the CRC.<sup>44</sup>

In a March 2015 report, Juan E. Mendez, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,

called on states to “expeditiously and completely, cease the detention of children, with or without their parents, on the basis of immigration status,” concluding, “The deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity,” and “becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children.” The May 2015 report of the U.N. Human Rights Council, following its review of U.S. human rights practices in connection with the Universal Periodic Review, adopted a recommendation to “halt the detention of immigrant families and children, seek alternatives to detention and end use of detention for reason of deterrence.”

The United States undermines its own global leadership, and its ability to persuade other states to comply with their human rights obligations, when it does not respect human rights commitments at home.

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## Alternatives to Detention

### **Community-Based Alternatives and Legal Information Can Ensure Appearance, Provide Support, and are Less Expensive**

The government has many tools at its disposal to manage the migration of families through a more humane and fiscally-responsible course of action than detention. Many groups have recommended that DHS implement community-based alternatives to detention programs, which provide services to individuals who require support to ensure appearance for immigration proceedings. Additionally, providing individuals with legal information related to their immigration proceedings will support appearance for immigration court and appointments, while also improving individuals’ understanding of their legal

case and options for securing legal counsel or accessing other services.

In contrast to the high cost of family detention, community-based support programs that incorporate a case management model are proven to secure appearance for immigration hearings and deportation—and are much more fiscally prudent. The Vera Institute of Justice piloted a program funded by the former Immigration Naturalization Service, providing services to over 500 noncitizens, and found that 93 percent of asylum seekers who received intensive supervision services fully complied with all of their hearings. This past year, Lutheran Immigration and Refugee Service (LIRS) and the U.S. Conference of Catholic Bishops’ Migration and Refugee Services (MRS) piloted small, privately-funded community-based models, showing promising initial results with program compliance rates of 96 to 97 percent. Alternatives are also 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.<sup>45</sup>

The main alternative to detention model currently available is the ICE-funded Intensive Supervision Appearance Program (ISAP), which is run by BI Incorporated, a wholly owned subsidiary of The Geo Group, Inc., which is the second largest U.S. company providing correctional, detention, and residential treatment services to government agencies. ISAP includes several forms of supervised release. The “full service” program, which achieved over a 99 percent appearance rate for individuals enrolled between fiscal years 2011 and 2013, involves both case management and monitoring through the use of technology and visitation, while “technology assisted” programs use only monitoring by technology—including electronic ankle monitors.<sup>46</sup>

Critics of electronic ankle monitors for immigration detainees point out that these devices can be stigmatizing and effectively criminalize individuals for administrative migration management purposes. The use of such devices can also impact parents' ability to care for their children.<sup>47</sup> In many cases, electronic ankle monitors appear to have been imposed automatically by ICE, without effective assessments of the need to impose such an extraordinary and intrusive measure in each case. The use of electronic ankle monitors should be limited to cases where case management supervision is deemed insufficient—based on an individualized assessment—to ensure appearance at hearings.<sup>48</sup>

An attorney from Human Rights First interviewed two mothers at the end of July 2015 after they were released from the Dilley facility with electronic ankle monitors. One mother, an indigenous woman from Guatemala, had relatives in Miami that the family were going to live with. While sitting next to a power outlet charging the device, she told the attorney that she had been charging it for two hours already that afternoon and she was worried about how she would be able to look after her young daughter when she had to stay attached to a wall outlet for several hours a day. Another mother from Honduras was very upset about the electronic ankle monitor, as she had pleaded to be released without the device which she found humiliating. She was moving with her young daughter to Houston, Texas and said that she could not wear long pants to cover the device because of the heat and was anxious people would assume she was a criminal because of the device.

In September 2015, ICE awarded an \$11 million-a-year contract to Geo Care LLC, a subsidiary of The Geo Group, to provide case management services to families released from detention in major cities such as Los Angeles, New York, and Miami. The aim of the program, according to ICE,

is to help ensure families meet the conditions of their release, which in addition to appearing for court hearings may also include check-in meetings with ICE.<sup>49</sup>

Immigrant rights groups have expressed concern that an entity wholly owned by a private prison company has been tasked with operating an alternative to the very programs that have come under intense criticism and led to the push for community-based alternatives.<sup>50</sup> Representative Raúl Grijalva (D-AZ) wrote a letter to the DHS Inspector General on September 22, 2015, "I am pleased that the Department of Homeland Security will pilot an Alternative To Detention (ATD) initiative that uses case managers... but I am dismayed that this contract was awarded to one of the same for-profit prison companies that has been detaining women and children in horrific conditions for financial gain."<sup>51</sup>

Furthermore, many are concerned that the program may not provide the level of services normally associated with a holistic or community-based model, although the program appears to include a plan to partner with experienced, community-based organizations.<sup>52</sup> (The pilot program run by the U.S. Conference of Catholic Bishops, mentioned above, provided a full array of social services, including housing, to all participants.) Andrew Lorenzen-Strait, ICE deputy assistant director for custody programs, seemed to validate this concern, stating to the San Antonio Express: "ICE is not a health and human services organization. Our mission is to ensure compliance with the law."

Proper notice, legal information, and providing legal counsel can impact an individual's compliance with immigration court proceedings as well. Human Rights First and other groups have documented systemic failures in providing individuals with adequate, accessible information (in the immigrant's best language) related to appearance and supervision requirements, as well

as clerical errors that can have serious consequences. For example, in its research at the southern border in 2014, Human Rights First found that asylum seekers were sometimes given hearing notices for a court located in a different state—apparently a mistake by the authority issuing the notice—with no explanation of the process for correcting such errors.<sup>53</sup> Others have also documented recent instances in which mothers were not provided information about their appearance obligations.<sup>54</sup>

The Executive Office for Immigration Review has recognized the importance of providing legal information to ensure appearance in court when it launched the Legal Orientation Program for Custodians (LOPC), a program designed to inform the custodians of unaccompanied children of their responsibilities in ensuring the child's appearance at court hearings, while also supporting the custodians in their responsibility to protect the child from mistreatment, exploitation, and human trafficking. Legal information and legal counsel in particular are important factors in ensuring appearance, while also protecting due process rights. In fact, 98 percent of families whose removal proceedings initiated in fiscal year 2014 and who had obtained counsel were in compliance with their immigration court hearings over a year later.<sup>55</sup> Greater access to counsel and legal information, such as that provided by the LOPC program, coupled with the alternatives to detention programs will ensure high rates of appearance while allowing the families to live outside detention and to care for their children and live with dignity.

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## Conclusion

Detention—even for less than two weeks—is harmful to children. The medical and mental health research confirms that children who have been detained display symptoms of depression, behavioral regression, and anxiety. Detention is also unnecessary. The Department of Homeland Security can revert to its previous policy of referring families to a removal proceeding before an immigration judge and allowing release to the community pending the outcome of those proceedings, rather than invoking expedited removal. For families who are deemed to need additional support, community-based alternative programs are less expensive and have proven effective in securing appearance at court hearings, and can also provide families with the social service supports they need. Finally, detention is costly to taxpayers, with family detention costing an average of \$343 per day per person. The Obama Administration should end its policy of sending families to immigration detention centers, once and for all. ■

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## Appendix

### **Health Impact of Family Immigration Detention: A Case Study**

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Immigrant Family Detention, or more aptly incarceration of immigrant women and children, can have harmful consequences for both the parent and the child on an individual level as well as for the family as a whole. Given that husbands/fathers are not allowed in two out of the three facilities and are often separated and jailed in adult immigration detention facilities- including at county jails, makes the term “Family Detention” even more of a misnomer.

Family Immigration Detention is a substantial public health concern for the United States (U.S.) given the unprecedented increase in the number of immigrant families detained by U.S. immigration authorities during the past year. Confinement in overcrowded quarters poses significant risk for spreading respiratory and gastroenterological infections. Profound psychological distress, including symptoms of depression and PTSD, can be caused or exacerbated by the prison environment of family detention, which is characterized by substantial limitations on movement and close monitoring.

Evidence shows that immigration detention has serious and potentially long-term physical and psychological consequences (Newman, 2013; Green & Eager, 2010; Coffey et al., 2010). Data on family detention finds that both the individual family members as well as the family unit as a whole suffer physically and mentally from being held in immigrant family detention centers (Mares & Jureidini, 2004; Mares et al., 2002).

Children and families have been shown to be particularly vulnerable to the traumatizing, unpredictable environment of immigration detention. Through psychiatric assessments with 16 adults and 20 children, Mares & Jureidini (2004) found that all children aged 5 years and younger displayed a cognitive delay, and all children aged 7 to 17 met criteria for PTSD and major depression with suicidal ideation.

Immigration detention not only impacts individual functioning, but also family functioning. Mares et al. (2002) observed during a series of visits in 2002 to two of Australia’s immigration detention that immigration detention severely undermines the parental role, which combined with a lack of education and access to safe play exposes children to potential emotional and physical neglect. Given the violence and parental distress in immigration detention, children in immigration detention are at risk for developmental psychopathology (Mares et al., 2002).

Dr. Allen Keller, a physician with 25 years of experience working with survivors of trauma and torture, concluded after interviewing over 50 mothers who had been detained at the Dilley facility during the summer of 2015 that detention re-traumatizes victims of violence and abuse. To cite just one example, in an interview with Dr. Keller and his team of medical researchers, a mother who was detained with her daughter reported behavioral regressions and anxiety upon their apprehension and detention at the Dilley facility.

“Alexia” is a woman in her late 20’s who fled her home country due to persistent threats of violence from a local gang. She and her daughter were apprehended by U.S. immigration enforcement authorities and sent to the Dilley facility. Alexia reported that on one occasion, after waiting for six hours for medical staff to see her daughter, who was suffering from a high fever and vomiting, she decided it would be best for her daughter to return to her dormitory where she could rest, rather than waiting indefinitely. “The clinic staff made me sign a form saying if anything happened to my daughter it was my fault not theirs.” Alexia further reported that her daughter lost weight and suffered from diarrhea and stomach aches. “She also started needing to wear diapers again as she was bed wetting. She also would throw fits and lost her temper a lot.” Alexia noted, “I felt helpless like there was nothing I could do.”

In summary, the imprisonment of children and their parents is harmful to their health and well-being.

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## Endnotes

- <sup>1</sup> This figure was calculated based on a daily cost of family detention of \$343 per person. If DHS maintains 3,000 beds, the total cost for a year will be \$375 million. If DHS maintains 3,700 beds, as it has aimed to do with its planned increase of the Karnes facility 1,158 beds and its planned increase of the Berks facility to 200 beds, the total cost for a year will be \$463 million. (Note that the DHS budget request for FY2016 was \$345.3 million. At that time, the Administration planned to expand detention capacity to 2,760 beds; it later increased planned capacity to 3,700 family beds.)
- <sup>2</sup> 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>3</sup> Rodrigo Dominguez Villegas and Victoria Rietig, Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile, Migration Policy Institute September 2015 (noting that "While falling apprehensions at the U.S. border are seen as a success linked to the implementation of Mexico's 2014 Southern Border Program, both the U.S. and Mexico enforcement systems raise concerns about the protection of vulnerable children").
- <sup>4</sup> The government filed a notice of intent to appeal on September 17, 2015. The deadline to file the appeal with the Ninth Circuit Court of Appeals is February 29, 2016.
- <sup>5</sup> La Prensa, "UNICEF alerta a Honduras por aumento de niños deportados," 1 June 2015, *available at* <http://www.laprensa.hn/honduras/845301-410/unicef-alerta-a-honduras-por-aumento-de-ni%C3%B1os-deportados>.
- <sup>6</sup> Adam Isaacson, "Surprising August Increase in Unaccompanied Migrant Children at the Border," Washington Office on Latin America, 30 September 2015, *available at* [http://www.wola.org/commentary/surprising\\_august\\_increase\\_unaccompanied\\_migrant\\_children](http://www.wola.org/commentary/surprising_august_increase_unaccompanied_migrant_children).
- <sup>7</sup> United We Dream, "DHS Begins Releasing Families From Detention Who Pass Credible Fear: UWD Welcomes Development, But Demands DHS End All Family Detention Now," July 14, 2015; *see also* Molly Hennessy-Fiske and Nigel Duara, "Pressure builds to release mothers and children from immigrant detention centers," Los Angeles Times, June 7, 2015 (reporting that more than 4,500 individuals were held in family detention centers during the period July 2014 to April 2015).
- <sup>8</sup> DHS has not released recent statistics related to the number of individuals it has detained in family detention centers, nor the average length of stay. If we assume that ICE detains an average of 2,500 individuals in family detention centers at any given time, and assuming ICE meets the 20-day average time in detention, as stated in its August 6, 2015 brief in *Flores v. Lynch*, over 45,000 individuals may be held in family detention over the course of one year. The calculation is as follows:  $(365 / 20 * 2500 = 45,625)$ .
- <sup>9</sup> Email communication with Ian Philabaum, Project Coordinator, CARA Family Detention Pro Bono Project, October 6, 2015.
- <sup>10</sup> Email communication with Amy Fisher, Policy Director, RAICES, October 6, 2015.
- <sup>11</sup> Pediatric associations in the United Kingdom and Australia have issued similar statements, citing the negative health impacts of immigration detention on children and families. *See* 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, II December 2009; The Royal Australasian College of Physicians, Leading paediatricians call for the immediate end to children in detention, 2 May 2013.
- <sup>12</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>13</sup> Rachel Kronick and Cecile Rousseau, —Asylum-Seeking Children's Experiences of Detention in Canada: A Qualitative Study, II American Journal of Orthopsychiatry, Vol. 85, No. 3, 287-294 (2015).
- <sup>14</sup> Allen S. Keller, M.D. and Amanda K. Winchester, M.P.H., "Health Impact of Family Immigration Detention: A Case Study," NYU Center for Health and Human Rights, October 2015.

- <sup>15</sup> See University of Arizona, “Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona,” January 2009; The Lawyers Committee for Human Rights, “Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers,” 2002; see also Women’s Refugee Commission, Migrant Rights and Justice, <https://womensrefugeecommission.org/programs/migrant-rights/55-detention/803-congressional-briefing-on-june-24-to-reveal-impact-of-immigration-enforcement-on-women-and-families>, website last accessed on October 7, 2015 (noting, “While current standards allow for emergency medical care and treatment for detained immigrants, they do not adequately cover the unique physical, social, emotional and healthcare needs of women, including gynecological exams, pre- and post-natal care, and treatment for those who have been victims of sexual assault and domestic violence.”).
- <sup>16</sup> Tahiri Justice Center, *Precarious Protection: How Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*, October 2009.
- <sup>17</sup> Human Rights First interviews with mothers detained at Dilley, September 28 – October 2, 2015; see also Declaration of Alan Shapiro, M.D., Ex. 97, Plaintiff’s Response to Order to Show Cause, *Flores v. Johnson* (August 12, 2015).
- <sup>18</sup> Human Rights First, “A One-Week Snapshot: Human Rights First at Dilley Family Detention Facility Post-Flores Ruling,” August 6, 2015.
- <sup>19</sup> See Allen S. Keller, M.D. and Amanda K. Winchester, M.P.H., “Health Impact of Family Immigration Detention: A Case Study,” NYU Center for Health and Human Rights, October 2015.
- <sup>20</sup> In early July 2015, medical providers at the Dilley facility injected adult dosages of the Hepatitis A vaccine to 250 children. Declaration of Lindsay M. Harris, *Flores vs. Johnson*, Ex. 105, (Aug. 13, 2015) (describing the 250 children who were given adult doses of the Hepatitis A vaccine at the South Texas Family Residential Center in Dilley, TX in early July 2015); July 30, 2015 letter from AILA, CLINIC, RAICES, and Immigration Justice Corps to the CRCL and OIG, *Flores vs. Johnson*, Ex. 105.1.
- <sup>21</sup> Declaration of Alan Shapiro, M.D., Ex. 97, Plaintiff’s Response to Order to Show Cause, *Flores v. Johnson* (August 12, 2015).
- <sup>22</sup> Human Rights First, Media Telebriefing: Family Immigration Detention in Berks, Pennsylvania, August 20, 2015, available at <http://www.humanrightsfirst.org/blog/media-telebriefing-family-immigration-detention-berks-pennsylvania>.
- <sup>23</sup> Matter of E-R-M- & L-R-M-, U.S. Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, June 3, 2011.
- <sup>24</sup> See Alison Siskin and Ruth Ellen Wasem, CRS Report for Congress: Immigration Policy on Expedited Removal of Aliens, September 30, 2015.
- <sup>25</sup> Department of Homeland Security, “Designating Aliens for Expedited Removal,” 69 *Federal Register* 48877, Aug. 11, 2004.
- <sup>26</sup> American Immigration Council, Immigration Policy Center, ‘Removal Without Recourse: The Growth of Summary Deportations from the United States,’ (May 2014); see also Human Rights First, *How to Protect Refugees and Prevent Abuse at the Border: Blueprint for U.S. Government Policy*, June 2014.
- <sup>27</sup> 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>28</sup> Illegal Immigration and Immigrant Responsibility Act (ILLRA) 1996.
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- <sup>50</sup> See Statements from heads of Catholic Legal Immigration Network (CLINIC), the American Immigration Council, Refugee and Immigrant Center for Education and Legal Services (RAICES), and the American Immigration Lawyers Association (AILA) about the award of the ATD contract to Geo Care LLC “Obama Administration Again Hands Families Over to Private Prison Company,” (Sept. 18, 2015), available at <http://www.aila.org/advo-media/press-releases/2015/administration-hands-families-over-private-prison>; Michelle Brané, director of the migrant rights and justice program at the Women’s Refugee Commission <http://www.expressnews.com/news/local/article/ICE-announces-caseworker-program-for-immigrant-6512150.php>; Grassroots Leadership statement <http://yubanet.com/usa/Obama-Administration-should-rescind-award-for-family-case-management-from-private-prisons.php#.Vh0pSflViko>.
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- <sup>55</sup> Human Rights First, *Myth vs. Fact: Immigrant Families' Appearance Rates in Immigration Court* (July 2015), <http://www.humanrightsfirst.org/resource/myth-vs-fact-immigrant-families-appearance-rates-immigration-court>. The website of Syracuse University's Transactional Records Access Clearinghouse (TRAC) was last visited on October 14, 2015. As of that date, TRAC data showed that of the 11,075 cases initiated in fiscal year 2014 that had representation (40 percent of the total 27,603 cases initiated in fiscal year 2014), only 222 had been issued an in absentia order. After subtracting the 299 cases that were coded as still in detention, the data show that over 98 percent of adults with children were in compliance as of June 2015:  $(11,075-299)-222 / (11,075-299) = 97.9$  percent.



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