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Statement of the American Immigration Lawyers Association

Submitted to the U.S. Commission on Civil Rights Briefing on "State of Civil Rights at Immigration Detention Facilities"

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On behalf the American Immigration Lawyers Association (AILA), I would like to thank the Commission for holding this briefing. We are grateful for the oversight and engagement of the Commission to ensure that our immigration detention system upholds the civil rights of detainees and adheres at least to basic standards of human decency. This Commission was constituted to advance civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public. That is precisely why the Obama Administration's massive expansion of family detention requires your immediate attention.

The mass detention of asylum-seeking mothers and their children – many still breastfeeding infants – is a humanitarian disaster that violates fundamental due process and the civil rights of hundreds of families who have fled violence and are seeking asylum. The U.S. government's dramatic expansion of family detention and its use of rapid deportation methods violate constitutional principles that prohibit arbitrary and inhumane conditions of detention and that guarantee fairness and due process, in particular access to counsel.

In June 2014, in the midst of a refugee crisis in Central America that has compelled tens of thousands of children and families to flee their home countries, the Department of Homeland Security (DHS) opened a hastily conceived, nearly 700-bed facility in the middle of the desert in Artesia, New Mexico to detain children and mothers seeking protection in the U.S. and rush them through the deportation process. It continued in August 2014 by repurposing (with plans to double) another roughly 500-bed detention facility in Karnes, Texas and, in December 2014, by opening what will become the largest immigration detention facility our country has ever seen at 2,400 beds in Dilley, Texas – all to detain not dangerous criminals, but children and mothers fleeing extreme violence and persecution in Central America.

Family detention is a system designed not to properly adjudicate protection claims or to make individualized determinations of whether detention is necessary and appropriate in a particular case. Rather, it is a system designed to deport as quickly as possible in order to send a message to future migrants: "[W]e will send you back," testified DHS Secretary Jeh Johnson in July.

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Since July 2014, AILA members responded to the urgent need for— indeed the complete lack of— legal representation at the Artesia facility by travelling at their own expense to this remote facility. Even working 18-20 hours a day, seven days a week, volunteers were barely able to meet the demand for legal help, serving as many detainees as humanly possible through the AILA-Immigration Council Artesia Pro Bono Project (Project).

The closure of Artesia in December 2014 as Dilley opened was a clear bait-and-switch. Dilley was built to replace Artesia and to continue its policies. DHS Secretary Johnson made this clear in his statement at the opening of Dilley:

This must be clear going forward: Our borders are not open to illegal migration. To enforce this policy, we are maintaining, and adding to, the border security resources we put in place to respond to the spike in illegal migration into south Texas last summer. That's the reason I'm here today. Here in Dilley, Texas I am announcing the opening of a new detention center here. This facility will begin operating in a few days. It is intended for adults who cross the border illegally with their children. It replaces the temporary facility we set up in Artesia, New Mexico for the same purpose, which is closing.¹

The Project continues to represent families who were transferred from Artesia to both Karnes and Dilley.

As relieved as we are that families will no longer be held at Artesia – a facility in the middle of the desert where repeated violations of human rights and due process occurred – the recent opening of Dilley signals a ramp up, not a reduction, in family detention. Family detention is no less a threat to the Constitution now than when Artesia was open. In fact, it is more of a threat, given its much larger scope and a potential increase in funding – the DHS appropriations bill recently passed by the House of Representatives includes an increase of \$362,155,000 for family detention.

This statement draws upon the unique knowledge and experience of AILA member volunteer attorneys, who have accumulated hundreds of hours directly interviewing and representing these asylum seekers jailed in Artesia, Karnes and Dilley.

AILA urges the Commission to recommend to President Obama that he reverse course on family detention and immediately close Dilley and Karnes. AILA further urges that the Commission recommend the following to Congress and to the Administration:

- **ICE must exercise its responsibility to make individualized custody and release determinations in all cases.** ICE should apply longstanding precedent on the factors to

¹ U.S. Department of Homeland Security, “Statement by Secretary Johnson Regarding Today’s Trip to Texas” (Dec. 15, 2014), available at <http://www.dhs.gov/news/2014/12/15/statement-secretary-johnson-regarding-today%E2%80%99s-trip-texas>.

be considered – public safety and flight risk – and make determinations that are appropriate to the age and special vulnerabilities of the individual and that comply with the law. In all cases, ICE should choose the least restrictive means necessary to achieve government's interest in ensuring compliance with immigration proceedings and removal orders.

- **Individuals who speak indigenous languages or dialects should be released from detention.** Because of challenges with obtaining translation services, these individuals are isolated in detention, often unable to communicate with guards or even with the attorneys serving that detention facility. They cannot access the medical, social and legal services they need from detention and cannot meaningfully prepare an asylum case.
- **DHS and EOIR must improve the credible fear process to ensure that those who fear persecution can exercise their right to seek asylum in the U.S.** This includes ensuring meaningful access to and participation by counsel at every stage of the proceedings. It also includes ensuring that every individual has participated in person in a Legal Orientation Presentation (LOP) and has been given sufficient opportunity and time to speak with an attorney before a credible fear interview.
- **DHS must ensure that all detention settings ensure full and meaningful access to representation by legal counsel.** This must include unlimited free telephone communication (including voicemail) to and from attorneys.
- **ICE must ensure that the conditions of immigration detention comply with existing policies and the Constitution.** This should be accompanied by engaged and robust oversight by Congress, a timely and effective complaint mechanism, and meaningful consequences for officers and for facilities (including contract facilities).
- **Congress should not fund family detention and should reduce its funding for immigration detention generally.** Instead, Congress should increase funding for alternatives to detention (ATDs), including community based support and case management, for individuals who cannot otherwise be released. These ATDs are less costly and more humane than institutional detention.

Detained Children and Mothers Are Asylum Seekers

Based on our Project attorneys' experience screening and representing hundreds of mothers and children detained at Artesia, it is clear that most of them would likely qualify as refugees under U.S. law. Many are survivors of gender-based violence, including domestic violence. Of the 15 Project cases that have gotten all the way to the final hearing stage, 14 were granted asylum or related humanitarian relief by an immigration judge. Here are the mothers and children who have been protected:

- **Heidy**² is a 23-year-old from Honduras. For 6 years, she endured mental and physical abuse from her husband, a drug-trafficker from a powerful family. She was a prisoner in her own home, unable to leave without her husband's permission. Even when her husband was in prison for taking part in a murder, she couldn't escape as his friends and family were watching her. She tried filing for divorce, but government officials wouldn't take the case. She tried to leave him and she and her two children's lives were threatened at gunpoint. She fled to the United States on the advice of Honduran police who told her that they couldn't protect her. She was granted asylum on in what the judge called a "textbook case" on September 4.
- **M-C-**, 36 years old, fled El Salvador with her 15-year-old daughter to escape her violent partner. In 2003, her husband beat her face until the purple welts glowed. From 2004 and for the next ten years, he beat and serially raped her, about twice a week she remembers. She was not allowed to leave the house; she couldn't even go to the market alone. He threatened her life and the lives of her family if she attempted to leave him. To prove his point, he beat their daughter in front of her. After a beating and still bloody, M-C- called the police, but the police said it wasn't their problem since they didn't catch him in the act. She was granted humanitarian asylum by an immigration judge on September 5.
- **D.M.L.** fled Honduras with her 17-year-old and 8-month-old daughters. She had been beaten, threatened and raped at gunpoint by her husband. D.M.L., 33 years old, met her husband at 15 and married him at 16. The abuse escalated in the past two years, with her husband beating and threatening to kill her and pointing a gun to her head several times. She tried to leave, but her husband found her and their children. D.M.L. didn't go to the police because she knew they wouldn't help and she was unaware of other resources. She fled to the U.S. and was detained in Artesia. She was given a bond of \$9,000 which she couldn't pay. DHS appealed her bond. Still in detention, but with the help of attorneys and expert witness testifying to the high rates of impunity in female-victim crimes in Honduras, D.M.L. was granted asylum by an immigration judge on September 25.
- **Laura** fled Honduras with her two young children. She was beaten severely by her partner requiring her weeks to heal. After one beating, the police didn't come when she called and didn't take a report when she went to the station. When she tried to escape, her partner's friend found her and threatened her. Another time after a beating, she went to the police to get a restraining order, but the police didn't do anything to stop her partner and his friends from continuing to stalking and threatening her. With the help of attorneys and evidence including court documents and a letter from a hospital summarizing injuries, she was granted asylum by an immigration judge on October 14.

² All detainee names in this statement are pseudonyms, to protect their confidentiality.

- **Rosslyn** and her 3-year-old daughter fled Central America because Rosslyn feared for her life as a lesbian living in a country that wouldn't or couldn't protect her from abuse because of her sexual orientation. From an early age, Rosslyn was harassed and intimidated because of her sexual orientation. People would stare at her, throw rocks at her, and threaten her harm. She was pressured by family members to engage in sexual activities with men in order to "make her straight" and was raped on several occasions. Rosslyn was eventually forced into a relationship with a man who raped and abused her, but was able to escape when she was 3-months pregnant. She couldn't risk filing a police report out of fear that the police would also hurt her. Rosslyn fled to the U.S. where she was detained in Artesia. She and her daughter were given a \$10,000 bond which they couldn't pay. On October 22, Rosslyn was granted asylum by an immigration judge who commended her for being "very brave" to testify to her circumstances.
- **Olivia**, 23 years old, and her 3-year-old son fled Honduras to escape the violence of her son's father, Hector. On several occasions, he held her at gun point and threatened to take her life. He also raped her and insulted her in front of her son. Olivia attempted about ten times to escape her partner. Each time, Hector would send members of his gang to look for her and force her to return home threatening death. Olivia attempted to call the police, but with one exception, the police did not answer her call. The one time they answered, they never came to her home. Towards the end, Hector was beating and raping her twice a day. During the last incident, Hector beat and raped her and beat their 3-year-old son with a belt when he tried to intervene. He held a gun to her son's head before forcing the gun into her mouth. Olivia fled with hopes of finding refuge with her sister in New York. They were apprehended and detained in Artesia for over 3 months. Both Olivia and her son have been diagnosed with post-traumatic stress. Their bond was set at \$15,000 for posing a danger to national security which became a \$30,000 bond. Still in detention, she was granted asylum on October 23 by a judge who found the assaults rising to the level of persecution.
- **Christina** and her 5-year-old son fled Guatemala and the violence of her husband. When he first beat her, she left with her two sons to live with her parents. She also called the police who said that it wasn't a serious problem and didn't help her. For months, she was threatened by phone and in person to return. She returned out of fear when the lives of her parents were threatened. The violence escalated and she was beaten several times a week. Her husband also started hitting their children. She left again with her children. Once, he met her and beat her on the street with a gun. Her mom witnessed the beating and got the police. Christina filed a complaint. Two days later, she found out that the police released her husband after taking a bribe. She returned out of fear for her family and the violence continued to escalate. He started to rape her. He would also shoot at her in the house. He also beat their young son so he was hospitalized for broken bones. Christina took her son and ran to the police. She went to a judge who told her to reconcile with her husband. She went to another judge who just told her to go to a doctor for her injuries. Neither did anything against her husband. After 3+ months of detention, Christina was granted asylum by a judge on October 24.

- **Sofia** and her three children – 14, 7, and 4 years old – fled Central America after a persistent campaign of violence and terror at the hands of a powerful gang which resulted in the death of her brother, shooting of her husband, and kidnapping and rape of her 14-year-old stepdaughter. The family was targeted for their political affiliation. After the gangs attempted to kill her husband and to recruit her stepson on threat of death, the family reported to the police, got a protection order, and fled to another part of the country. But the gang found them after a few days and made threatening phone calls and visits. Her husband and stepson fled. But, the gang didn't stop. Her 14-year-old stepdaughter was then kidnapped and returned 3 days later after being repeatedly raped. Sofia and the three children fled. At the border, her stepdaughter was separated from her as she wasn't her biological child and Sofia and her two youngest children were detained in Artesia. DHS claimed that the mother, 7-year-old and 4-year-old were national security risks, denied bond, and opposed their release from custody. On November 5, Sofia was granted asylum by a judge.
- **Lucia** and her one-year-old daughter fled El Salvador and the violence of her common law husband, Max. After they had moved to his village and away from her family support structure, her husband became abusive. He verbally and physically abused her, choking her and threatening her with a gun. He also beat her son from a previous relationship. Lucia tried to go to the police, but she was told that she was Max's woman and there was nothing she or anyone could do. Max's father worked in the Mayor's office and the police were unwilling to take any action. She tried to leave but was dragged back. Lucia eventually escaped again through an unlocked window. But Max soon found her and threatened her. He was also connected to a gang and gang members began to threaten her as "his woman." Lucia knew she had to flee, but only had enough money to take her youngest child, leaving her older son in the care of her sister. After 4 months of detention in Artesia with her one-year-old, Lucia was granted asylum by a judge on November 6.
- **Maribel** is a mother of two children from Honduras. She was a political activist and community organizer who began to work within her community to improve living conditions—working to ensure families had access to electricity and potable drinking water, and cleaning and repairing the streets. Unfortunately, her activities brought her to the attention of a local MS gang. By cleaning up her community, Maribel made it harder for the MS gang to act freely. Effectively, she made the gang, and their local front man, look weak, and so the gang decided to take action against Maribel. She was the victim of a continuously escalating barrage of threats and violence. When her close friend was killed by the gang for similar reasons, she made the decision to flee. Telling only close family members, Maribel took her two sons, and left Honduras. The family has been detained in Artesia, New Mexico since mid-July because they were given an impossibly high bond by a Judge in Arlington, VA. On November 25 an Immigration Judge granted the mother asylum based on past persecution because of political opinion.

- **Marisol** is a 38 year old mother from Honduras currently detained in Artesia, New Mexico. She arrived in the United States with her three year-old twin children on June 25, 2014, and the family has been detained at the Artesia family detention center for the past five months. In December 2011, when the children were less than a year old, gang members brutally murdered her partner—the father of the twins—and then threatened her and her children. One gang member told Marisol that her son would be killed in the same way as they had killed his father. The police were not able to help the family, and did nothing to hold the gang members accountable for their actions. As the threats from the gang continued, and worsened, Marisol decided—against the counseling of her family members already living in the United States—that her only option was to take her young children and flee Honduras. On September 20, 2014 the family’s bond was set at an unimaginably high \$15,000 by an Arlington, Virginia Immigration Judge—the family was unable to pay. On December 2 the family was granted asylum by a Denver Immigration Judge.
- **Dani** is a 31 year old mother from a Northern Triangle country in Central America. Dani’s father was an abusive alcoholic who regularly assaulted Dani, her siblings and raped and assaulted her mother. Although Dani did report her father to the police once she was an adult, they were unable to take any action and the abuse became worse. When Dani was older she had three children with her first partner; however, she was forced to leave him after he tried to choke her to death. Subsequently, Dani became involved with another man, Andre, but she soon found out that he was high-up in the human smuggling operations of a cartel. While Dani was pregnant Andre often abused her, threatened her, and even shot her when he became angry. Eventually Dani and her son were able to flee from Andre to Mexico. Unfortunately, Andre eventually found her in Mexico and continued to threaten and assault both her and her son, and so eventually they fled again, this time to the United States. Dani and her son have been detained in Artesia since mid-July. On December 3 Dani and her son were granted asylum by an Denver Immigration Judge.
- **Kira** is a 23-year-old indigenous Guatemalan Mayan woman who has a four-year-old son. They fled Guatemala after suffering four years of horrific violence and constant threats at the hands of a prominent gang, the de facto government in Guatemala. The gang had previously targeted Kira’s husband, Andre, a deacon in the local church, for preaching his religious message of non-violence—in their eyes, a message of disloyalty and dissidence. Kira and Andre decided that he should flee in an attempt to save the family and protect their unborn son. They believed and hoped that Andre was their target; they were wrong.

Immediately following Andre’s escape, the gang began its relentless pursuit and persecution of Kira and their son because the gang believes that families breed disloyalty. They threatened her with rape and murder, restrained her and beat her face bloody on multiple occasions, threatened to cut her unborn child out of her belly, threatened to kidnap her son after he was born, and grabbed and held her son at knifepoint on multiple occasions. Kira

went to the police twice, begging for help, but they turned her away, refusing to provide meaningful protection. After first escaping to her sister's home, the gang pursued and found Kira there, held her four-year-old son at knifepoint, and threatened them again. She and her son then fled to the United States in search of protection. On December 12 Kira was granted asylum by a Denver Immigration Judge.

- **Juliza** is an indigenous Guatemalan woman who suffered persecution throughout her whole life due to her indigenous ethnicity. Beginning at the age of 13, Juliza was raped by her father's family members, who referred to her as a "dirty indian" while they assaulted her. When she finally gained the courage to go to the police, she was sexually propositioned by the officers. After a family member continued to threaten her with death and more sexual violence, Juliza fled to the United States. When she told the Border Patrol officer that she feared returning, he said she was lying and deported her without a credible fear interview. Within a month of being back in her country of origin, Juliza was drugged, raped, and thrown into a river by the ladino family member who had been threatening her. Juliza fled to the United States again. She told the CBP officer again that she was scared, but was deported anyway. Back in Guatemala and caring for her 8 year old son, gang members attempted to kidnap him. Juliza fled again, this time taking her son on the perilous journey with her. On January 5, 2015, Juliza was granted a form of humanitarian relief related to asylum ("Withholding of Removal") by an Immigration Judge – but her 8 year old son remains in removal proceedings.

Already at Dilley, 80 percent of detained mothers have expressed a fear of returning to their home countries.

Detention as Deterrence

From the beginning, the decision to detain families was a political one. It became the central component of a border enforcement "surge" strategy by the Administration in response to an unfolding refugee crisis in the Northern Triangle region of Central America in the summer of 2014. Tens of thousands of unaccompanied minors and families were fleeing the violence, many seeking safety in the United States. After making the arduous and dangerous journey from their home countries to the U.S., these women and children were flagging down and turning themselves in to Border Patrol agents in the desert. But instead of seeing these women and children as victims in need of protection, the Administration saw them as a problem.

The Administration responded to the humanitarian crisis by adopting "an aggressive deterrence strategy" that included a massive expansion of the family detention system.³ DHS Secretary Jeh Johnson testified in July 2014 before the Senate Appropriations Committee that, regarding these

³ Letter from the President Obama, "Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation's Southwest Border" (June 30, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>.

families crossing the border, “our message to this group is simple: we will send you back Last week we opened a detention facility in Artesia, New Mexico for this purpose.”⁴

Thus, the purpose of detention, according Secretary Johnson, was to deter other mothers and children in the violence-torn region of the Northern Triangle – El Salvador, Guatemala and Honduras – from making the journey to the U.S.

Detaining one person to deter another is wrong. The restraint of an individual’s liberty is one of the most consequential government powers. No one should be deprived of their liberty except as a last resort. Everyone should be placed in the least restrictive setting necessary to serve the government’s legitimate interest. DHS, like every law enforcement agency, should make an individualized determination of risk before confining someone to a detention facility.

These principles are not the basis for detention decisions in family facilities. In contravention of U.S. and international law, DHS has a policy of denying bond or requiring an extremely high bond for detained families. The detention and bond scheme is unprecedented and nothing short of unlawful.

Once an individual is found to have a “credible fear” of persecution, Immigration and Customs Enforcement (ICE) is required by the Immigration and Nationality Act §236(a) to assess her individually for release. But in Karnes and Dilley, as in Artesia, ICE is abdicating this responsibility and detaining across the board, with rare exceptions. ICE is refusing to consider bond, release on recognizance, supervised release, or any form of ATD, regardless of individual circumstances. Moreover, when that individual is then able to go before an immigration judge for a bond hearing, ICE uniformly opposes bond or demands an extremely high bond, submitting the same boiler plate legal brief in every case and arguing that every Central American family is a national security risk – ignoring years of legal precedent on the appropriate factors for release and instead relying on a single, factually inapposite case, *Matter of D-J*. At Artesia, this resulted in widely divergent bond amounts from Immigration Judges that could go as high as \$20,000 and \$30,000 – well above the national average of \$5,200 and well out of the reach of most detainees.

This means that children and mothers who pose no risk to anyone, who have family members to support them in the U.S., and even who had already been found to be bona fide asylum seekers remained detained for months. The family detention and deportation policy has made it uniquely difficult for these mothers and children to obtain a fair and reasonable release on bond, even where they are facing severe medical and psychological difficulties in detention. Families represented by the Project at Artesia were detained an average of [five weeks](#) between their positive credible fear finding/ICE custody determination and their custody redetermination hearing before the IJ.

⁴Statement of DHS Secretary Jeh Johnson before the United States Senate Committee on Appropriations (July 10, 2014), *available at* <http://www.appropriations.senate.gov/sites/default/files/hearings/SAC%20Hearing%20S1%20Testimony%207-10-14.pdf>.

The Administration should make appropriate individualized release decisions and use ATDs for families who cannot otherwise be released. Community support programs and case management are very effective in ensuring compliance with removal proceedings, are far less expensive than detention, and are much more humane.⁵

The Administration's detention decisions must also comply with the 1997 [Flores v. Reno settlement agreement](#). That settlement applies to all children in ICE custody and requires, among other things, that ICE place children in the least restrictive setting appropriate to the minor's age and special needs. It also requires that ICE treat children in their custody with dignity, respect and special concern for their particular vulnerability as children.⁶ The Administration's family detention practices are running headlong into *Flores* as well as into existing ICE policies disfavoring the detention of vulnerable populations including nursing mothers,⁷ single caregivers⁸ and asylum seekers.⁹

Mental and Physical Effects of Detention

Detention is mentally and physically damaging, especially for children, and especially for those – like most of the mothers and children in these family facilities – who have suffered persecution and are seeking refuge. The average age of a child held at Artesia was just 6 ½ years old. The youngest child currently held at Dilley is just 18 months.

Many mothers and children served by the Project were suffering from physical and psychological difficulties in detention at Artesia. Some detained infants had fevers and had even gone to the hospital two and three times – but ICE still opposed release. Volunteers described children who were dehydrated, listless, cold and losing weight. Mothers also reported degrading treatment by some of the guards – including being called “piggies” at mealtimes. One woman suffering from diarrhea had no choice but to defecate on herself in front of her son because the guard ignored her pleas to be allowed to go to the bathroom. AILA's [Leadership Blog](#) documented many such examples by volunteer attorneys. Media pieces, like those by AILA's [Annalisa Padilla](#) on September 23, 2014 in *Fox News Latino* and Tahirih's [Archi Pyati](#) on November 13, 2014 in the *Huffington Post* also spoke to the medical and mental health of detainees at Karnes.

⁵ See AILA Letter to Conference Committee for DHS Appropriations (December 4, 2014), available at <http://www.aila.org/content/default.aspx?docid=50891>.

⁶ Lutheran Immigration and Refugee Services (LIRS) et al., “Flores Settlement and DHS Custody,” available at <http://lirs.org/wp-content/uploads/2014/12/Flores-Family-Detention-Background-LIRS-WRC-KIND-FINAL1.pdf>.

⁷ DHS Secretary Jeh Johnson, memorandum dated November 20, 2014, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” available at <http://www.aila.org/content/default.aspx?docid=50779> (“Absent extraordinary circumstances or the requirement of mandatory detention, field office directors should not expend detention resources on aliens ... who are disabled, elderly, pregnant, or nursing, or who demonstrate that they are primary caretakers of children or an infirm person ... or whose detention is otherwise not in the public interest.”)

⁸ ICE Directive 11064.1, “Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities” (Aug. 23, 2013), available at <http://www.aila.org/content/default.aspx?docid=45545>.

⁹ ICE Directive 11002.1, “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture” (Dec. 8, 2009), available at <http://www.aila.org/content/default.aspx?docid=30814>.

We are encouraged by signals that DHS has accepted some of our recommendations for conditions at Dilley. For example, we are told that there will be more mental health professionals and that medical staff will be weighing children on a monthly basis.

But the fact of the matter is that there is no humane way to detain children and families. Detention scars children's physical and psychological development, exacerbates trauma experienced by those fleeing violence and persecution, and damages the family structure by stripping parents of their decision-making role, causing confusion and adding to the already extreme stresses of detention.¹⁰ Detention also re-traumatizes survivors of gender-based violence and inhibits their ability to obtain both legal counsel and the medical and social services they and their children need.¹¹ Many of the guards are male; unfortunately, this situation has the potential to lead to sexual abuse against detainees, as has been alleged at Karnes.¹²

Here are just two of the children who [spent the holidays in detention](#):

- **Manuel** is from Honduras, and he spent his fourth birthday in jail at Artesia. He entered the U.S. with his mother in July and has been imprisoned ever since. Manuel suffers from regular vomiting and diarrhea, is refusing food, and has begun acting out toward others in custody.
- **Hector** is from El Salvador. Also four years old, he entered the U.S. with his mother in July. On the long journey across Mexico, little Hector kept careful track of the prescription glasses he needs for a chronic eye condition. Once he entered the United States, those glasses were lost or destroyed by the Border Patrol. As of last month he still had not received replacements.

Severe Challenges to Access to Legal Representation

The immigration attorneys who continue to volunteer from across the country to provide free representation to detained children and mothers are making a tremendous difference in the lives of these families and the outcomes of their cases. Legal counsel is critically important to detained immigrants, isolated and with little funds, and often with limited education, who are trying to express their fears and navigate our complex immigration system. Several studies have documented the impact of counsel on the outcome of cases for asylum seekers and other

¹⁰ Lutheran Immigration and Refugee Services (LIRS) and Women's Refugee Commission, "Locking Up Family Values, Again: The Continued Failure of Immigration Detention" (October 2014), *available at* <http://lirs.org/familyvalues/>.

¹¹ See letter from 126 national, regional, state, and local organizations that assist and advocate on behalf of women survivors of violence, including immigrant survivors of domestic violence, sexual assault, and human trafficking in the United States, expressing their concerns with the Administration's massive expansion of family detention (Sept. 18, 2014), *available at* http://www.immigrantjustice.org/sites/immigrantjustice.org/files/DV%20Family%20Detention%20Letter%20FINAL%202014_09_18.pdf.

¹² See MALDEF et al., CRCL Complaint re: Sexual Abuse, Extortion, and Harassment of Women at Karnes (Sept. 30, 2014), *available at* http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf.

immigrants.¹³ As the American Bar Association has shown, in 2008, of immigrants in detention, 84 percent were forced to proceed without lawyers. “Not only are many people unable to afford counsel, but remote detention facilities, short visiting hours, restrictive phone access, and transfers all have a devastating effect on a noncitizens ability to retain counsel and maintain an attorney-client relationship.”¹⁴ For example, in the experience of the Project, restrictive phone access, including a mandatory cost to retrieve voicemail messages left by counsel \$1.25 per message, as well as technological and other interference that often cut calls off after just a few minutes, interfered with meaningful access to legal representation. Furthermore, court hearings by video teleconference – which was the practice at Artesia and is currently the practice at Karnes and Dilley – present significant due process concerns.

Deprivation of Due Process

These severe challenges to meaningful access to counsel in normal immigration detention settings are compounded in family detention by the speed with which families are rushed through proceedings. Detained families are subjected to “expedited removal” – the fastest removal procedure at our government’s disposal, with little chance to raise an asylum claim.

Every day at Artesia, AILA member attorneys saw that the pressure to rush women and children through the deportation process was resulting in the denial of many legitimate asylum claims – both by asylum officers and by judges – without legal foundation. Officers interviewed families

¹³ The New York Study Group on Immigrant Representation reported that only 3 percent of detained, unrepresented immigrants apprehended in New York or with cases heard in the New York immigration court reach a successful outcome in their cases (defined as legal relief or case termination). 13 percent of unrepresented non-detained immigrants reach a successful outcome in their cases. The number jumps to 74 percent when the non-detained immigrant is represented. See Steering Committee of the New York Immigrant Representation Study Report, “Accessing Justice I: The Availability and Adequacy of Counsel in Removal Proceedings,” *Cardozo Law Review*, (2011) Vol. 33:2, p. 364 and seriatim, available at <http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf>; Steering Committee of the New York Immigrant Representation Study Report, “Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings,” *Cardozo Law Review*, (Dec. 2012) pp. 1, 11, available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf (“people in the New York immigration courts with a lawyer are 500 percent as likely to win their cases as those without representation.”); Government Accountability Office, U.S. Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges, GAO-8-940 (Washington, DC: GAO, 2008), p. 7, available at <http://www.gao.gov/new.items/d08940.pdf> (Representation generally doubled the likelihood that immigration judges would grant asylum to affirmative and defensive asylum applicants compared to those without representation, after statistical controls were applied.”); Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 *Stan. L. Rev.* 295 (2007), p. 287 (“whether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case.” Asylum seekers represented by a lawyer were roughly three times more likely to be granted relief than asylum seekers not represented by legal counsel.), available at <https://www.acslaw.org/files/RefugeeRoulette.pdf>.

¹⁴ American Bar Association, “Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency and Professionalism in the Adjudication of Removal Cases” (2010), available at http://www.americanbar.org/content/dam/aba/migrated/media/nosearch/immigration_reform_executive_summary_012510.authcheckdam.pdf

for their credible fear claims less than three days after their arrival. The speed with which asylum officers were making credible fear decisions was also very fast: 6.4 days on average. Moreover, some asylum officers would ask questions during the credible fear interviews using legal and statutory language that the detainees could not understand. Notice to attorneys of their clients' credible fear interviews was often inadequate, and some clients were even encouraged to go forward with their interviews without their attorneys. According to statistics compiled by the Executive Office for Immigration Review (EOIR), between July 18, 2014 and October 21, 2014, more than half (53 percent) of negative credible fear determinations were reversed by Immigration Judges.¹⁵ This was true despite the fact that some Immigration Judges improperly hindered counsel's ability to speak and advocate for their clients during these credible fear reviews.¹⁶

On August 22, 2014, AIC, NILC, ACLU and others filed a [lawsuit](#) challenging the policies and practices at Artesia that denied due process. As the lawsuit pointed out, “[u]nder the Immigration and Nationality Act (“INA”) and its implementing regulations—as well as under the Due Process Clause—Plaintiffs [detainees] have an indisputable right to seek asylum and related relief, and to a fair hearing to present their claims. But that process at Artesia has been anything but fair, and falls far short of the government’s obligations under existing law.”

We are encouraged to hear from the Asylum Office that, going forward at Dilley, everyone will receive a Legal Orientation Program (LOP) presentation before their credible fear interview. This did not happen at Artesia. However, an unknown number of women detained at Dilley in its first few weeks did not received an LOP before their credible fear interviews. Furthermore, we remain concerned that legal counsel cannot possibly serve the 2,400 children and women planned to be detained at that facility. LOP is critical, but it is not enough. Moreover, a “detention for deterrence” message threatens to prejudice asylum claims from the start.

Language access was a significant problem at Artesia and remains so at Karnes and Dilley. Many families speak indigenous dialects and cannot adequately communicate in Spanish or in English. ICE faces significant challenges in obtaining telephonic interpretation for these languages. Meanwhile, if the Asylum Office cannot find an interpreter within 48 hours (which is often the case), the individual is given a Notices to Appear. She thereby skips the credible fear process and may eventually present her asylum claim to an Immigration Judge. Yet these families then languish in detention because the Project is often unable to adequately interview or prepare them for court proceedings, including bond hearings. Without a positive credible fear determination,

¹⁵ This statistic covers negative credible fear reviews in all “priority” cases, which DHS defines to include unaccompanied children, families who are detained, families who are released into DHS’s ATD program, and other detained recent border crossers.

¹⁶ PBS NewsHour, “Immigration lawyer helps detainees in New Mexico know their rights” (August 25, 2014), available at <http://www.pbs.org/newshour/bb/immigration-lawyer-helps-detainees-new-mexico-know-rights/>; PBS NewsHour, “Life in a New Mexico detention center a challenge for mothers and children” (August 25, 2014), available at <http://www.pbs.org/newshour/rundown/life-new-mexico-detention-center-challenge-mothers-children/>.

moreover, Immigration Judges are more reluctant to grant bond, further prolonging detention. Additionally, these families are completely isolated in detention as they are unable to regularly communicate with guards and medical officials, other detained families or the Project attorneys. They cannot properly access the services they need, nor can they reasonably prepare their asylum claim. AILA urges the Commission to request that these indigenous families be released as detention in these circumstances denies their civil rights as well as their right to apply for asylum.

The massive outpouring of pro bono efforts that has resulted in so many asylum victories for families thus far is neither sustainable nor easily replicable, especially for a facility the size of Dilley. We fear that many of the women and children detained in Dilley will go without representation. Many legitimate asylum claims will not have a chance to be heard. Without counsel, women are less likely to be found having a credible fear of persecution. Credible fear grant rates will fall. And children and mothers who need protection will be returned to danger.

Conclusion

The detention of children and mothers is wrong. Until June 2014, the Administration detained families only in extremely rare circumstances. The Obama Administration stopped detaining families at the T. Don Hutto Detention Center, which was operated by the for-profit Corrections Corporation of America (CCA), following years of litigation and other advocacy on the deplorable conditions of confinement and treatment of children at the facility. The family detention experiment had become a national embarrassment. At the time, the Administration recognized this and withdrew plans for three new family detention centers. The detention of families was strictly limited to less than 90 beds in Berks, Pennsylvania, a short-term detention facility used for the temporary detention of families who could not yet find a family or community member to sponsor them while they awaited asylum screening interviews.

Moreover, prior to June 2014, ICE had generally released asylum seekers from detention after they were found to have a “credible fear of persecution, so long as they did not pose a public safety threat or risk of flight, because such detention was “not in the public interest.”¹⁷

But by the middle of next year, the Administration will be detaining nearly 4,000 mothers and children, a forty-fold increase in the use of detention on immigrant families.

These families are not a border security problem. They are among the most vulnerable immigrants, seeking safety and the opportunity to tell their story to a judge. They should not be the centerpiece of a continued “surge” of border enforcement strength. We urge the Administration to reverse course on family detention.

¹⁷ ICE Directive 11002.1, “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture” (Dec. 8, 2009), available at <http://www.aila.org/content/default.aspx?docid=30814>.