

# Locking Up Family Values, Again

**A REPORT ON THE RENEWED PRACTICE** of family immigration detention by Lutheran Immigration & Refugee Service and the Women's Refugee Commission



Lutheran Immigration  
and Refugee Service



WOMEN'S  
REFUGEE  
COMMISSION





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FAMILY DETENTION REPORT OCTOBER 2014

# *Locking Up Family Values, Again*

The Continued Failure of Immigration Family Detention



Entrance to Artesia. The nearly 700-bed facility detains mothers and children. Photo credit: Dree Collopy.

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*“Karnes was quite the visit for me. There’s nothing like walking into a prison and the first thing you hear is a crying baby. Two things that should never go together. Never ever.”*

—ANTONIO GINATTA, ADVOCACY DIRECTOR, US PROGRAM, HUMAN RIGHTS WATCH<sup>1</sup>

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## PREFACE

### *Special Report*

This report is an update to *Locking Up Family Values: the Detention of Immigrant Families*, published February 2007. In 2007, the Women’s Refugee Commission<sup>2</sup> and Lutheran Immigration and Refugee Service published a groundbreaking report based on our tours and interviews at the Berks Family Residential Center and the T. Don Hutto Family Residential Facility, the first facilities in the United States to ever detain immigrant families on a large scale. Conditions and due process concerns at Hutto, which began housing families in May of 2006, underscored that no amount of attempts to improve the facility could result in humane and fair family detention. After nearly three years of media exposure, advocacy, and a lawsuit, the Obama Administration ceased detaining families at Hutto. The transition largely ended the irreversible damage created by large-scale family detention in the United States. The Berks Family Residential Center remained open as a small, short-term detention facility used for the temporary detention of families who could not be released while they awaited asylum screening interviews. All this changed in summer 2014, when, in response to an increase in the arrivals of mothers and children fleeing violence in Central America, the Administration began a sudden and enormous scaling up of prolonged and arbitrary family detention.

*“Why is America locking up immigrant families? There is no sensible, just, or compassionate answer. The only answer is to end this cruel practice.”*

—LINDA HARTKE, PRESIDENT AND CEO OF LUTHERAN IMMIGRATION AND REFUGEE SERVICE

*“The damage done to the families who were held at Hutto can never be reversed. But we can honor their suffering by learning from the mistake of family detention and ensuring that we never repeat it.”*

—MICHELLE BRANÉ, DIRECTOR OF MIGRANT RIGHTS AND JUSTICE, WOMEN’S REFUGEE COMMISSION<sup>3</sup>

*“The [detained] woman...speaks up to tell me that she has a four-year-old daughter detained with her [who asked,] ‘why are we “presos” [prisoners]?’*

*“As a lawyer, there are lots of answers that I can give people in detention...But as I looked around the faces of these women, I had no answer to that four-year-old’s question. What explanation do we have for detaining breastfeeding babies, two- and four-year-olds? What explanation do we have for putting 532 women and children—98% of whom seek protection from persecution—into a newly converted detention center?”*

—LIZ SWEET, DIRECTOR FOR ACCESS TO JUSTICE, LUTHERAN IMMIGRATION AND REFUGEE SERVICE<sup>4</sup>

## EXECUTIVE SUMMARY

In 2009, the Obama Administration closed what then was the United States' largest family immigration detention facility after years of controversy, media exposure, and a lawsuit. Conditions at the T. Don Hutto Family Detention Facility, and the impact of detention on families and children, proved that family detention could not be carried out humanely.

In the summer of 2014, with an increase in the number of mothers and children fleeing violence and persecution in Central America, the Administration has returned to this widely discredited and costly practice. Part of a strategy to "stem the flow" through detention and expedited removal and send a clear message of deterrence, the expansion of family detention continues even with a high percentage of families seeking protection and posing no flight or security risks. With the conversion of existing detention facilities and plans for an additional facility, the United States will soon have roughly 40 times as many family detention beds as there were in spring 2014.

Lutheran Immigration and Refugee Service (LIRS) and the Women's Refugee Commission (WRC), leading experts on the intersection of families and immigration, have collaborated to show the harm family detention causes and outline sensible alternatives. The findings in *Locking Up Family Values, Again* are informed by our tours of the Artesia and Karnes facilities as well as interviews with facility and government officials, detained families, and legal and social service providers. Much like in our 2007 report, our findings again illustrate that large-scale family detention results in egregious violations of our country's obligations under international law, undercuts individual due process rights, and sets a poor example for the rest of the world.

*Locking Up Family Values, Again* documents that most of the families detained – such as 98% at the Karnes facility based on September 2014 statistics – are seeking protection in the United States. The average age of children in the government's Artesia facility as of October 2014 was six years old, and more than half of all children who entered family detention in Fiscal Year 2014 were six years or younger. Infants, pregnant women, and toddlers are detained at both locations. Families

are detained on a "no bond, no release" policy. Thousands of women and children fleeing violence are at risk of permanent psychological trauma and return to persecution if these policies continue.

In addition to inadequate access to child care, medical and mental health care, and legal assistance, we find that family detention remains as ripe for abuse – especially given the vulnerability of this population – as we observed with Hutto. In October 2014, the Karnes facility was at the center of allegations of sexual assault by guards threatening or bribing detained women. In another example, a detained young mother at a family facility was suddenly accused of abuse, torn apart from her two small children, and transferred to an adult facility without explanation or information on her children's welfare or whereabouts.

Our conclusion is simple: there is no way to humanely detain families. This report recommends that the government close Artesia and Karnes and halt plans for opening a new facility, improve its screening procedures, and revise its policy of no or high bonds for families. The report calls on the government to implement the vast array of cost-effective alternatives to detention that are successful in ensuring participants appear for scheduled court hearings.

### KEY FINDINGS

- **Family detention cannot be carried out humanely.** Conditions at the Artesia and Karnes facilities are entirely inappropriate for mothers and children. Detention traumatizes families, undermines the basic family structure, and has a devastating psycho-social impact.
- **Families are detained arbitrarily**, without an individualized assessment of flight or security risk, and without due consideration for placement into alternatives to detention.
- **Family detention inherently denies due process** and impedes migrants' ability to access the immigration legal system.
- **The majority of mothers and children in detention have expressed fear of return to their home countries**, but the government often fails to properly conduct required credible fear assessments and screen mothers and children for protection concerns.

**KEY RECOMMENDATIONS**

- **End the expansion of family detention:** Close the Artesia, New Mexico, and Karnes, Texas, family detention centers and halt plans for a massive new detention facility in Dilley, Texas.
- The Department of Homeland Security should **institutionalize a preference for release or community support programs** for all families who can establish identity and community ties and who do not pose a security risk.
- **Fully implement and expand alternatives to detention:**



Outside of Karnes County Residential Center. Karnes has a 532-bed capacity. As of September 2014, 98% of the families at Karnes were seeking protection in the United States.

Photo credit: Liz Sweet.

A vast array of alternatives to detention exist that are not only cost-effective, but also succeed in ensuring participants appear for scheduled court hearings. Alternatives to detention should be available nationally and should include community-based support programs and meaningful case management. Enrollment in alternatives to detention should be based on an individualized assessment of flight and security risk.

- **Improve screening procedures** for families seeking protection. Families should have opportunity at all stages of the apprehension and detention process to express a fear, and they should have full and fair access to the appropriate screening processes and legal information.

- **Revise policies of no or high bonds for families:** To ensure detention is not excessively used, detained families should be considered eligible for parole or released on individually determined and reasonable bond.

**INTRODUCTION**

Since 2011, the number of migrant adults, unaccompanied children, and families from Central America crossing the southern border into the United States has increased steadily. In spring 2014, the numbers increased sharply, attracting a great deal of media focus and creating a backlog of unaccompanied children at border facilities. Many of these migrants are fleeing violence, domestic abuse, and dangerous gang-related activity from which their governments are unable to offer protection. They form part of a regional trend of increased requests for protection in Central America and Mexico.<sup>5</sup> At the same time, between October of 2013 and September of 2014, the U.S. government apprehended 68,334 family members at the southwest border, representing a 361% increase in the number of family apprehensions over the previous fiscal year.<sup>6</sup>

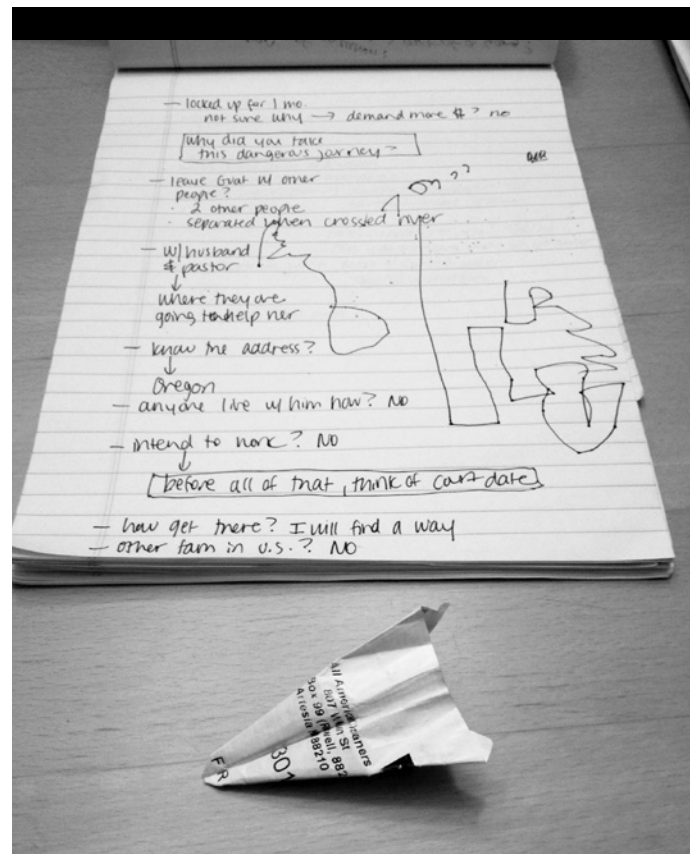
The U.S. government's response to the increased arrivals at the border was a campaign to "stem the flow" and send a clear message of deterrence through expedited detention and removal without recognition of the refugee nature of the children and families. The government began detaining these families at unprecedented levels, increasing capacity for family detention beds from fewer than 100 to over 1,200 within two months, with plans to reach nearly 4,000 beds within the next few months. Critically, these new family detention practices have been combined with unprecedented policies that oppose any form of release, placement on alternatives to detention, and bond regardless of eligibility factors for detained families.

Lutheran Immigration and Refugee Service and the Women's Refugee Commission, leading experts on the intersection of families and immigration, are alarmed that this surge in migrants seeking refuge in the United States is leading to the resurgence and exacerbation of practices contrary to international protection principles, and believe it is harmful to migrants, including young children and families in particular. Having previously collaborated to create a groundbreaking report on conditions in family detention facilities in 2007, *Locking Up Family Values: the Detention of Immigrant Families*,<sup>7</sup> the two organizations have now joined to address the unacceptable conditions of family detention and the impact of the government's treatment of these families on their human rights and ability to access due process and legal protections.

In June and August of 2014, Immigration and Customs Enforcement (ICE), part of the Department of Homeland Security (DHS), began using detention facilities in Artesia, New Mexico, and Karnes County, Texas, to detain some of these mothers and their children from Central America arriving at the southern border of the United States. In July, September, and October 2014, staff from LIRS and the WRC (in addition to several other concerned non-governmental organizations (NGOs)) toured both the Karnes and Artesia facilities. Observations made during the tour confirm the LIRS and WRC position that there is no appropriate and humane method of detaining families. It further revealed that DHS opened the Artesia facility quickly and prematurely, which only exacerbated the harm caused to the detained families. After the tour of Artesia, DHS made several adjustments to its policies and procedures based on discussions with the NGOs. Their corrective action highlights the need for transparent and effective cooperation between government and civil society. Despite the government's response, conditions and due process concerns overwhelmingly remain at Artesia, and in August 2014 several organizations sued<sup>8</sup> the government for detaining women in – and deporting them from – this remote facility that precludes meaningful access to counsel and protection.

From outward appearances, conditions at the Karnes facility, which is operated by the private prison company, GEO Group, Inc. and began holding adults in 2012 as ICE's first detention center with more civil conditions, were somewhat better than at Artesia. However, the facility presented similar grave concerns around the psycho-social impact of detention and access to justice. At the writing of this report, allegations had recently been made public of inhumane conditions and policies at Karnes, and of facility staff there sexually abusing and harassing women.<sup>9</sup> Additionally, ICE may be expanding capacity at existing facilities in the future. In September 2014, ICE announced its plans to construct a new family detention facility with a capacity of 2,400 detainees approximately 1.5 hours outside of San Antonio in Dilley, Texas.<sup>10</sup> The Dilley facility, which will be operated by the private prison company Corrections Corporation of America (CCA) will open as soon as November 2014, and will be the largest immigration detention center in the country when it reaches full capacity. This expansion adds serious concerns around access to legal information and counsel in an area where immigration legal services are already overwhelmed and under-resourced.

This report addresses the inherently inappropriate conditions of these family detention facilities for mothers and children as well as the failure to screen detained families properly for protection concerns and conduct credible fear assessments. It also explains how the current use of family detention denies due process and impedes migrants' ability to access the immigration legal system. While we focus on the newest facilities at Artesia and Karnes, our concerns extend to any additional facilities such as Dilley, and to pre-existing facilities such as Berks, where restricted release and bond practices, as well as lack of appropriate screening, significantly affect conditions and access to protection. The report recommends that the government close Artesia and



**A four-year-old's doodles on an attorney's notes and a paper plane he made to entertain himself throughout the three-hour bond hearing. Photo credit: Dree Collopy.**

Karnes and halt any plans for Dilley, improve its screening procedures, and revise its policy of no or high bonds for families, and calls for utilization of the vast array of alternatives to detention that have been proven to be cost-effective and successful in ensuring participants appear for scheduled



court hearings. Although it acknowledges that in some areas there have been government attempts to respond to concerns over conditions, we ultimately conclude that—as we found with Hutto eight years ago—family detention cannot be carried out humanely.

## METHODOLOGY

**This report is based on WRC’s and LIRS’s visits** (together with other NGOs) to the Artesia and Karnes facilities in July, September, and October 2014. The information in this report comes from our observations from these tours, our conversations with facility staff members and ICE officials, and our interviews with detained families in both facilities. Additionally, some of the information in this report comes from follow-up interviews and correspondence with government officials, attorneys, and representatives of organizations serving detained families at Karnes and Artesia, and other advocates who have toured the facilities.

Our interviews were conducted in open settings in the detention facilities. Our questions were meant to get a better understanding of the conditions of detained families’ apprehension and confinement, including access to services and ICE practices at each facility. Respondents gave consent for their stories to be used, were not compensated for their time, and understood that we were not service providers and could not provide legal services.

## SECTION I. BACKGROUND<sup>11</sup>

Family detention forms part of ICE’s network of roughly 250 immigration detention facilities that annually detain roughly 34,000 individuals apprehended on immigration-related violations in the United States.<sup>12</sup> As of early 2014, only one of these was a family detention center, the 96-bed Berks County Residential Center (Berks) in Leesport, Pennsylvania, opened in 2001. From 2006-2009, ICE had also operated the 512-bed T. Don Hutto Family Residential Facility (Hutto) in Taylor, Texas, as a family detention center. The Hutto facility stopped being used as a family facility in 2009 after a firestorm of opposition, including a lawsuit, a human rights investigation, and multiple national and international media reports.<sup>13</sup>

In June 2014, in direct response to the increase in families entering the United States as part of a larger regional refugee crisis in Central America, ICE rushed to open a nearly 700-bed facility in Artesia, New Mexico, to detain families and send a message of deterrence.<sup>14</sup> A second family detention facility with a 532-bed capacity opened in Karnes County, Texas, in early August 2014.<sup>15</sup> These facilities are part of a larger plan to detain newly arriving families; in July 2014, the president submitted a \$3.7 billion emergency supplemental appropriations request to Congress to address the refugee crisis. The request included \$879 million for the Department of Homeland Security to develop approximately 6,300 new detention beds for families.<sup>16</sup> Congress ultimately never appropriated additional funds, but the Administration continued with its conversion of the Karnes facility and with contract plans for the new Dilley facility in the absence of new funds. This will result, at minimum, in the daily detention of roughly 40 times as many immigrant mothers and children than in May of 2014. No funds have been directed toward an increase in more cost-effective alternatives to detention.

In addition to expanding the capacity for detention, ICE has modified its policies and methods for determining who is detained and for how long. Prior to May of 2014, ICE screened arriving families and held at Berks primarily families who had no sponsor or community ties, or who were waiting for interviews to ascertain a fear of return to their home country. Detention at Berks varied in length, but families who passed an interview to screen for a credible fear of persecution and could establish community ties through the identification of a sponsor were usually released pending the continuation of their immigration court proceedings.<sup>17</sup> By summer of 2014, it became clear ICE was implementing a “no bond, no release” policy precluding the release of arriving families who have established credible fear.

There is no legal government definition for family, but for purposes of family detention, ICE defines a family as an adult parent or legal guardian accompanied by a person under 18 years of age.<sup>18</sup> All must be without lawful immigration status (or in the process of losing lawful immigration status). ICE currently detains only women heads of households and her children at Artesia and Karnes; the facilities do not detain fathers even when a father may have been apprehended by immigration agents with the mother and their children. Fathers may be detained or released with their children at Berks, or may be detained separately in one of ICE’s adult detention centers.

Many migrants in these new family detention facilities are survivors of violence and trauma experienced in their home country or during their journey to the United States.<sup>19</sup> While recent statistics for Artesia are unavailable, as of September 2014, 98% of those at Karnes were identified by DHS as having expressed a fear of return to their country of origin.<sup>20</sup> More than 50% of the 1,050 children under the age of 18 who were booked into family detention in all three family detention facilities in FY 2014 were aged six years or younger.<sup>21</sup> Numerous infants and toddlers are known to be detained at Artesia and Karnes.

Various reports by independent NGOs and government oversight agencies have found that DHS has not maintained safe or humane conditions in immigration detention facilities.<sup>22</sup> Documented problems include substandard medical care; abusive treatment and neglect by personnel; inadequate opportunities for visitation and outdoor recreation; inap-

***“Multiple mothers reported concerns about weight loss in their small children. It is critical that the issue of weight loss be addressed and understood...”***

propriate conditions and treatment for women, children, the mentally disabled, and those with medical issues; lack of access to telephones; and sexual assault. Particularly relevant to this report is the effect detention has on children, and NGOs’ repeated documentation of the government’s failure to provide access to legal materials and legal service providers in its immigration facilities.

DHS officials have stated that there is no set standard or policy to determine which families are detained and which families are released except for the availability of bed space.<sup>23</sup> Government officials are left to make arbitrary decisions that send families down one of two clear paths. After apprehension by Customs and Border Protection (CBP),<sup>24</sup> either (1) the family is released into the United States with instructions

to return for a future appointment with ICE or a court date but without further services or support other than possibly a list of local attorney contacts, or (2) the family is transferred to ICE custody and held in a family detention facility. Interviews at Karnes also revealed women and children whose partners/fathers had been separated and moved to an adult male facility in other states.<sup>25</sup> This practice was confirmed by ICE<sup>26</sup> and runs counter to ICE’s claims that family detention is a way to keep families together.<sup>27</sup>

## SECTION II. PROBLEMS ENDEMIC TO FAMILY DETENTION

### MARIBEL

*Maribel arrived at a family detention center in September 2014. Traumatized after having suffered abuse at the hands of her husband and his family, she fled her home country with her two-year-old child and six-month-old baby. She and her children struggled to cope with the conditions of confinement, which were exacerbated by tension with the family detained in the same room and trouble communicating in her native language. As she awaited release on bond, it was reported to facility guards that Maribel had abused her children. With no notice or explanation, and with no apparent follow up by a social worker or child welfare professionals, Maribel’s children—including the baby that she was breastfeeding—were suddenly taken away from her and transferred out of ICE custody. Maribel was transferred to another detention facility for adults, where she was detained in medical isolation. No one notified her attorneys of the allegations or transfer. To this day, Maribel remains detained, awaiting yet another transfer, and is desperate to understand what has happened to her two small children.<sup>28</sup>*

Conditions at ICE’s family facilities vary greatly and represent serious concerns for both the psycho-social welfare

and access to protection of the women and children detained there. Particularly striking to us after our experience with family detention at Hutto is how similar our findings are regarding conditions at Artesia and Karnes. Among many concerns, in *Locking Up Family Values*, LIRS and WRC reported that children exhibited signs of severe depression, could not take toys into their rooms, were subjected to highly restricted movement, and were threatened with alarming disciplinary tactics, including threats of separation from their parents. Medical treatment was inadequate and many children, some as young as one year old, lost weight. A case of sexual misconduct involving a guard engaging in sexual activity with a female resident was discovered after the release of the report when a guard was documented on videotape crawling out of a detainee's cell during the night.<sup>29</sup>

Today, many conditions at Karnes and Artesia parallel these findings and run directly counter to ICE's family detention standards. This section illustrates a subset of concerns over conditions based on tours and reports from Artesia and Karnes. Despite attempts to create a more appropriate environment by using a CBP training compound and a "civil" facility built by ICE as a model for non-penal detention, the ultimate result is still entirely inappropriate and misguided, with children's physical and mental health suffering the consequences. Although ICE has improved facility conditions and attempted to address concerns in some cases, the recurring nature of problematic conditions and policies that threaten child welfare strongly indicates that no amount of modifications will be sufficient to create acceptable conditions of confinement and care for children and their parents.

**IN INTERVIEWS**, the chaplain stationed at the Artesia facility informed numerous members touring the facility on July 22, 2014, that he was concerned that many of the children with whom he interacted were depressed, and that some reported having suicidal thoughts. Interviews with children by advocates also indicated that children were lethargic and depressed.<sup>30</sup>

#### CHILDREN'S WELL-BEING

According to a complaint filed by practitioners representing clients at Karnes, women reported that their children were not allowed to crawl at all in the facility and that mothers are

required to carry their infants. The complaint also notes that children were not allowed playthings and toys in their living quarters.<sup>31</sup> This was also an issue at Hutto in 2007.<sup>32</sup> In the one dorm that WRC and LIRS toured on September 16, 2014 one staff member observed a single toy in the room, together with a small rug of colorful squares.<sup>33</sup> Some of these rules may be in response to safety and sanitation requirements, but given the importance of access to toys and other items to children's development,<sup>34</sup> such misguided policies only underscore that family detention simply cannot be carried out appropriately and humanely. As an additional example of the lack of child-appropriate programming, during our tour of Artesia, stakeholder observers saw children picking up trash, with officials reporting that even though they were-

#### ROSA

*Twenty-eight-year-old Rosa and her seven-year-old daughter, Ana, fled Honduras in July 2014 after gangs violently threatened the family with kidnapping, the destruction of their home, and death. Rosa and Ana were detained at Artesia shortly after entering the United States, and are seeking asylum. Ana, who had been traumatized by the violence in Honduras, suffered severe emotional distress from being in confinement and was unable to keep down any food.*

*She lost over ten pounds as Rosa desperately tried to get her daughter to eat. Her weight loss was so extreme that facility medical staff told Rosa that if she did not force Ana to eat and gain weight, the facility would force feed her daughter through a catheter. Out of despair, Rosa asked for bottles with milk to be provided instead. Because Ana could still not keep any other food down, Rosa had to hold her seven-year-old daughter in her arms like a baby at meal times to feed her by bottle. Finally, after over three months in detention, Rosa and Ana were able to be released on bond with the help of an attorney and are now staying with relatives. Since being released, Ana has begun to attend school and is finally beginning to gain weight again.<sup>43</sup>*

not supposed to, children were likely just bored and in need of more activity.<sup>35</sup>

#### FOOD AND WEIGHT LOSS

Interviews at both Karnes and Artesia revealed concerns that many children were not eating. Some mothers reported that children only drank milk; others reported that the food was overly spicy, sweet, or otherwise culturally inappropriate. According to the complaint filed about the Karnes facility, detained women reported not being able to warm up milk at night, a basic need for those feeding infants and babies.<sup>36</sup> Like at Hutto, we believe that even with modifications to food, children may simply not eat given the impact of detention on mental health.<sup>37</sup> Multiple mothers reported concerns about weight loss in their small children. It is critical that the issue of weight loss be addressed and understood by ICE, not as a consequence of lack of food, but more broadly as a symptom of the psychological trauma detention presents to children. Weight loss in detention has been noted in various contexts of child and family detention around the world.<sup>38</sup>

#### ACCESS TO MEDICAL AND MENTAL HEALTH CARE

Like at Hutto, mothers reported several incidents of inadequate access to medical and mental health care, ranging from an inability to access any services to lack of adequate treatment. Reports include responding to diarrhea and other stomach issues with only an instruction to drink more water, lack of treatment for fevers and similar conditions, and more. Mental health care is limited at both facilities despite the high prevalence of a history of trauma and sexual violence in detainees' home countries. Moreover, both Karnes and Artesia primarily rely upon male mental health care providers, which may leave women who have been sexually assaulted by men unwilling or unable to share their stories. Studies show that detention has a negative impact on the mental health of asylum-seekers, particularly children and families.<sup>39</sup> Children interviewed at Hutto in 2006 and at Artesia and Karnes in 2014 exhibited signs of extreme depression.<sup>40</sup> One mother explained that her daughter, who had been threatened with sexual assault by gangs in her home country, had quickly grown depressed in detention. Her repeated requests to see the psychologist over the course of weeks had all been denied.<sup>41</sup>

#### TELEPHONE ACCESS

Again, as we observed at Hutto in 2006, women detained at Artesia and Karnes reported concerns over access to

telephones. According to the complaint filed on conditions at Karnes, outgoing calls can be extremely expensive and sometimes the free pro bono hotline does not work.<sup>42</sup> The complaint also stated a lack of facilitation of messages from attorneys to clients, something also reported by attorneys working at Artesia. A voicemail left by an attorney through ICE's phone system at Artesia costs \$1.20 to receive, and one attorney reports that the only way she can speak to a



Photo credit: ©iStock.com

detained mother is when the attorney deposits funds into the client's account for her to use when she is allowed to access the telephones.<sup>43</sup> Access to telephones, and to free calls to attorneys are crucial, not only to reaching non-detained family members, but also to developing a legal case for protection, particularly when so many attorneys are representing clients remotely from other states. Telephones are also a critical mechanism for reporting abuse to government oversight entities and other support systems.

#### ABUSIVE TREATMENT

Women at Karnes and Artesia reported that while some staff and guards were respectful and polite, others were rude, mean, and inappropriately threatened them. At Artesia, where the only phones initially available were cell phones carried by ICE officials, detained women reported being allowed to use phones for only a few minutes each day, being

denied access to phones to call attorneys, or being denied access to phones altogether. By October 2014, detained women still reported that accessing working phones at Artesia required “going through hell.”<sup>44</sup> At Karnes, women reported to NGO tour participants that if they resisted signing certain documents (which they did not fully understand and believed to be deportation consent forms) they were threatened with separation from their children and criminal prosecution. We heard more than one report of detained families being injured by slammed doors.<sup>45</sup> In early October 2014, allegations of gross sexual misconduct and assault emerged at Karnes, with reports that women were being singled out for abuse by facility staff with promises of assistance with immigration proceedings. These concerns echo everything our organizations found in our 2007 report on Hutto. The ensuing discovery of a guard engaged in sexual relations with a detainee<sup>46</sup> underscores the particular vulnerabilities of detaining mothers who are fleeing traumatic violence and desperate to ensure protection for their children. In light of the disturbing history of sexual assaults and abuse in immigration detention, detaining mothers and young children should be recognized as a high-risk endeavor and avoided.<sup>47</sup>

#### **INADEQUATE CHILDCARE**

As discussed below, appropriate childcare is crucial in order for detained women to speak privately and openly with legal service providers and asylum officers, and before an immigration judge. While Karnes at minimum had some childcare and school in place, the Artesia facility lacked any childcare and had no school for children for months after opening, and concerns remain over appropriateness of childcare at both facilities.<sup>48</sup> For example, childcare at Artesia is managed by an ICE officer who is empowered only to watch children, not to respond to their needs; children are reunited with their mothers if they require a diaper change, food, etc.<sup>49</sup> In addition, school at Artesia only commenced in October 2014.<sup>50</sup> This meant mothers had no options for childcare if they wished to sleep, needed a break, and, critically, when sharing their traumatic histories in making their cases for protection in the United States. For example, lawyers reported that several children detained at Artesia were the result of rape—something the mothers refused to disclose in front of these children, but which was crucial to their case histories.<sup>51</sup> Again, it is worth noting, that these were all issues at Hutto.<sup>52</sup>

#### **A NOTE ON BERKS**

While detention is not optimal for any family, it is important to note that the Berks Family Residential Center in Leesport, Pennsylvania, is distinct from these new facilities. This report does not address conditions at Berks, which is unique given its very small capacity and generally non-penal setting. Since changes made after our 2007 report, and until the changed policies instituted in the summer of 2014, many families at Berks had no existing ties to the community, and until recent policy changes, many were appropriately considered for release after a finding of credible fear. Recent arbitrariness in who is referred for detention, and the imposition of a no-bond policy at Berks raise serious due process concerns, along with questions regarding appropriateness of conditions given new, longer durations of detention.

#### **RECOMMENDATIONS FOR PROBLEMS ENDEMIC TO FAMILY DETENTION**

Based on the alarming similarities in our findings regarding conditions at new family facilities and previous facilities such as Hutto, LIRS and the WRC continue to conclude that the detention of families cannot be implemented in a humane manner that is consistent with children’s welfare, human rights, and due process considerations. We believe:

- ICE should close the Artesia and Karnes family facilities, end plans to build Dilley and any other facilities to detain families, and implement appropriate individualized screening and alternatives to detention where necessary.
- ICE should return to previous practices of using only Berks as a short-term facility for those families determined—after individualized screening—to require detention pending adjudication of fear-based protection screening interviews and identification of sponsors for release.
- Although we continue to oppose the practice, where ICE persists in using family detention facilities, they should be small scale, used only as a last resort, for short-term and limited durations (transition to release, parole, or alternatives to detention must always be considered), fully licensed, staffed by trained child welfare professionals, and in the least restrictive setting. Policies and procedures must be transparent and must consider child-welfare and development needs. All facilities must be independently monitored frequently. Facilities must facilitate meaningful access to legal information and counsel and to family. No punitive measures or threats of separation should be used at any time.

### **SECTION III. ACCESS TO PROTECTION UNDER UNITED STATES LAW: EXPEDITED REMOVAL AND CREDIBLE FEAR<sup>53</sup>**

The number of individuals crossing the southern U.S. border and expressing a fear of return has grown significantly in recent years, even prior to 2014, and is part of a regional increase in protection requests.<sup>54</sup> Potential legal claims include a fear of return to their countries which would qualify the individual for asylum and withholding of removal under U.S. law; relief from deportation or removal based on being survivors of torture, human trafficking, or abuse and neglect in their country of origin; and visas for survivors of human trafficking or survivors of crime committed on U.S. territory.<sup>55</sup>

The government has the discretion to place those apprehended at the southern border into immigration removal proceedings,<sup>56</sup> which would allow them to make a case for relief or protection before an immigration judge. However, many of the families attempting to enter the United States at the Mexican border are instead subject to a provision in immigration law called expedited removal. Expedited removal allows the government to summarily remove noncitizens who have not been admitted or paroled into the U.S. and who are inadmissible because they presented fraudulent documents or have no valid permission to enter the U.S.<sup>57</sup> Unless they express a fear of persecution or torture upon return to their home countries, or indicate an intention to apply for asylum, such individuals may be removed immediately without going before an asylum officer or immigration judge and will be barred from returning to the U.S. for at least five years (but often much longer).

#### **BRIEF EXPLANATION OF THE CREDIBLE FEAR PROCESS**

If an individual apprehended at the border or by ICE expresses an intention to apply for asylum or expresses a fear of persecution or torture upon returning to his or her home country, the immigration or Customs and Border Protection (CBP) officer must refer the individual to a U.S. Citizenship and Immigration Service (USCIS) asylum officer for an interview to assess the stated claim for protection. Individuals placed into expedited removal who wish to apply for asylum are subject by law to “mandatory detention,” with limited exceptions, during the credible fear process.<sup>58</sup> Individuals

may express a fear of return at any stage of their immigration processing, not only upon initial apprehension at the border. For example, a recent border crosser in detention awaiting removal may express a fear of return to an ICE official and trigger the same referral and screening mechanism.

If an individual is found to have a credible fear by an asylum officer, he or she will be referred to an immigration judge to seek asylum. This procedure involves a full hearing before the immigration judge in an immigration courtroom. An individual who has been found to have a credible fear of persecution or torture is no longer considered in expedited removal and is eligible for release from detention.<sup>59</sup>

*“Detainees’ fragile mental state greatly impedes their ability to access protection as survivors of violence, successfully present difficult cases, and advocate for themselves through the complex immigration legal system.”*

If the asylum officer does not find that the individual has a credible fear of persecution or torture, the applicant may request that an immigration judge review that determination. If the individual does not request review by the immigration judge or the immigration judge agrees with the asylum officer’s negative determination, ICE may remove the individual from the United States.

In 2005, the U.S. Committee on International Freedom (USCIRF) conducted the first extensive study of the credible fear process and found deep flaws in, among other things, CBP’s initial screening of immigrants for eligibility for a credible fear interview.<sup>60</sup> At the time, expedited removal was limited

to immigrants entering the United States at official ports of entry (POE), such as airports. Beginning in 2004, expedited removal was greatly expanded to areas between ports of entry and to within 14 days of entry; in the years since, the vast majority of credible fear referrals come from between the ports, including families presenting themselves today. Unfortunately, both the initial failures of the credible fear sys-

tem first reported by the USCIRF and additional abuses have been consistently documented through the present day.<sup>61</sup>



**Road to Karnes County Residential Center. Karnes is an hour from the closest city, making it difficult for lawyers to provide legal service to detainees. Photo credit: Katharina Obser.**

### INITIAL PROTECTION SCREENINGS

Families have traditionally been very likely to seek asylum when they arrive in the United States without documentation. At Hutto, ICE reported that at least 80% of the families detained there in 2006 and 2007 were asylum-seekers.<sup>62</sup> At the Berks facility, ICE has reported that between 75% and 100% (in certain periods) have been asylum-seekers.<sup>63</sup> At both the Karnes and Artesia facilities, individuals were deported prior to any legal rights presentation being conducted at the facility, which provides the initial opportunity to

speak with visiting legal service providers. There is no clear indication of how these families were selected, what their understanding of the legal process was, and what assurances existed that they did not have a fear of harm upon return. Initial credible fear pass rates were low at Artesia, although more recent statistics on credible referrals and grant rates may be significantly higher, given that access to counsel and legal information has increased since the opening of Artesia.

As of September 16, 2014, officials at Karnes reported that 70% of the population was referred for a credible fear interview either prior to or at the point of entering the facility. Ultimately, 98% of the population in total was referred for credible fear (suggesting some were referred only after entering Karnes). Recent statistics for Artesia were unavailable, but as of July 2014 over 50% of the population expressed a fear of return.<sup>64</sup> Despite these seemingly high numbers, there is strong evidence that some families are not being properly screened. First, the fact that more than one in four detainees at Karnes was recorded to express fear only after arriving at the facility suggests that they may have been inappropriately screened upon arrival at the border. Second, while families are supposed to be asked about fear of persecution while in the CBP border stations, it does not appear that they are formally screened again upon arriving at an ICE facility. While ICE may refer someone who expresses fear, individuals are not explicitly asked, and reports suggest that referrals based on expression of fear of return from inside Artesia are inconsistent.

The lack of robust screening for fear-based protection claims is especially concerning because migrants held at Artesia reported to NGOs that they were held in border stations for over three weeks before CBP transferred them to ICE custody. Many migrants crossing the border throughout the summer—including adults, unaccompanied children, and families—reported lengthy stays at border stations with inappropriate conditions. Reports included conditions of freezing temperatures, crowded cells, lack of privacy for bathrooms, no access to legal counsel or friends and family who were looking for them, and limited health care. A family held under these conditions that has already experienced abuse in their home country and traveled through treacherous conditions with children would have a difficult time expressing their fear of persecution with a government official and understanding the implications of not expressing it at that

time. In addition to obstacles to expressing fear, reports have documented that even when an asylum-seeker expresses fear, border officials sometimes fail to record, or incorrectly record, expressions of fear that do occur.<sup>65</sup> Women at Artesia also stated that it is unclear to them which official in the facility is the appropriate person to whom they should express a fear of return.<sup>66</sup>

### MARTA

*We interviewed Marta as part of our tour of Karnes, where she had been detained for over a month with her two-year-old daughter.<sup>71</sup> Marta had escaped an abusive situation in her home country, and expressed terror at the thought of returning to her country where she knew her abuser might find her. As she shared her story, in tears, she held her daughter in her arms, trying to distract her from her own trauma. Marta's daughter was not yet old enough to understand what had happened to them, but many mothers detained at Karnes and Artesia have older children who listen to their mothers' stories of sexual abuse, rape, violence, and threats over and over again.<sup>72</sup>*

There have been reports that during consular processing—in which an individual coordinates travel documents for return to her home country—immediately prior to boarding a plane for deportation, some families at Artesia expressed a fear of return such that the consular officials had them removed from the line and referred for credible fear interview.<sup>67</sup> Given that an expression of fear of return indicates either that the government or its agents are the persecuting actor, or are unable to protect the individual from non-state persecution, the fact that women have been referred for a credible fear interview only at such a late stage and by officials from their own country is deeply concerning.

### CREDIBLE FEAR INTERVIEWS

There are due process deficiencies for those credible fear interviews that do take place at the Artesia and, to some extent, the Karnes facilities. Artesia had either no or limited childcare options for the first several months and continues to provide childcare only with a single ICE officer in a small room watching children.<sup>68</sup> Consequently, many mothers are interviewed in front of their children about the facts and circumstances surrounding their need for protection. As a result, some mothers do not share the full story of the harm they endured. This puts them at risk of not establishing a credible fear and not being referred for asylum consideration. For those who may pass, they risk being found to be untruthful because they may share more details or an entirely different story when testifying in front of the immigration judge without their children present. Those who choose to share more details about the harm they suffered may re-traumatize their children through their hearing the stories or seeing their parent in a vulnerable posture.<sup>69</sup>

During our tours, we observed no childcare facilities at Artesia, and reports of no or insufficient childcare continue. We were later informed that for some time, in order to accommodate mothers' needs, USCIS asylum officers would watch children while another asylum officer interviewed the mother. A small childcare space guarded by an ICE officer now exists, but some mothers are uncomfortable leaving their children.<sup>70</sup> At Karnes we observed a better childcare space, managed by two GEO Group staff, but we were unable to confirm whether women feel comfortable keeping their children there.

Children in these families may have a claim separate from the parent's claim for protection. Current USCIS Asylum Division practice is that if the mother does not pass her credible fear interview, then the asylum officer will, with the mother's permission, interview her children to assess whether there may be other claims. At Karnes, USCIS reported that mothers and children were asked whether they would like to be interviewed together or separately. Even where the practice has changed now, for many weeks the child was interviewed in front of his or her parent and in some cases still may be. This default policy of not separating parent and child is problematic. Both mothers and their children may be embarrassed or deeply uncomfortable to recount what happened to them or may fear upsetting their parent and may choose not to tell the



full story of their persecution. These concerns are exacerbated given the little to no access to counsel prior to the credible fear process for families at Artesia and Karnes. Furthermore, the practice also appears to discount the large number of unaccompanied children under 14 who have received relief from deportation based solely on their own experiences.<sup>73</sup> In both cases, officers may be establishing a record that is inaccurate or incomplete given that women or children may be unwilling to share their full stories, discrepancies that can have a significant impact during later legal proceedings. At the same time, mothers and children have expressed distress at the thought of separation within detention. The difficulty of managing a safe environment in detention where children and mothers can be separated without inducing additional trauma cannot be ignored. Family detention inherently interferes with the ability to fully access protection.

#### RECOMMENDATIONS ABOUT CREDIBLE FEAR

All individuals subject to expedited removal should have ample opportunity at all stages of the apprehension and detention process to express a fear, in their native language, of returning to their home countries. Those who express such a fear should have access to the credible fear interview process and information regarding their legal rights.

- CBP should **implement procedural safeguards to ensure that officials are properly conducting screening interviews.**
  - This includes reading the required credible fear advisory script to all migrants in a language they understand; allowing migrants an opportunity to review, understand, and sign any sworn statements; and referring all asylum-seekers who express a fear of return.<sup>74</sup>
- CIS should **improve oversight and safeguards to ensure that officials are properly executing the credible fear/reasonable fear process.**
  - CIS should revise the new Asylum Division Officer Training Course Lesson Plan, *Credible Fear of Persecution and Torture Determinations*, to make it consistent with the statutory standard and the “screening” purpose of these interviews.
  - CIS should document in the credible fear transcript whether a child was present during the credible fear interview.
- CIS and EOIR should create procedures that recognize that children whose families are in immigration proceedings should be treated as individuals who may be eligible for forms of relief separate from those available to their parents.
- ICE should **ensure access to protection screenings** for anyone expressing a fear of return.

- ICE should create a clear procedure to recognize and refer asylum-seekers to CIS for credible fear interviews upon arrival at family detention facilities.
- ICE should ensure that appropriate childcare options are available for children while mothers are participating in credible fear interviews.
- ICE should **cease using detention for families who have been found to meet the credible fear standard.** All families in which one member has been found to have a credible fear should be re-screened for release or for placement in appropriate alternatives to detention.

*“Detained families would derive enormous benefits from being released from detention, including improved mental health for all family members...”*

#### SECTION IV. ACCESSING DUE PROCESS IN DETENTION

While Artesia and Karnes differ in some respects, there are serious due process concerns at both facilities. Recent changes at Berks have led to similar concerns. Thus, all currently operating family detention facilities operate with severe due process restrictions, such as substantial obstacles to accessing counsel and legal information, inability to navigate the U.S. immigration process, and blanket government policies opposing release.

#### IMPACT OF DETENTION ON MENTAL HEALTH AND CORRESPONDING IMPACT ON DUE PROCESS

Detention has been documented as psychologically damaging and, as described earlier, completely inappropriate for toddlers and children.<sup>75</sup> Moreover, vulnerable individuals, such as women and children, held in jails or jail-like settings risk damage to their psychological health.<sup>76</sup> The stress on a family unit caused by detention has been well documented and recent observations reflect similar stressors on the fam-

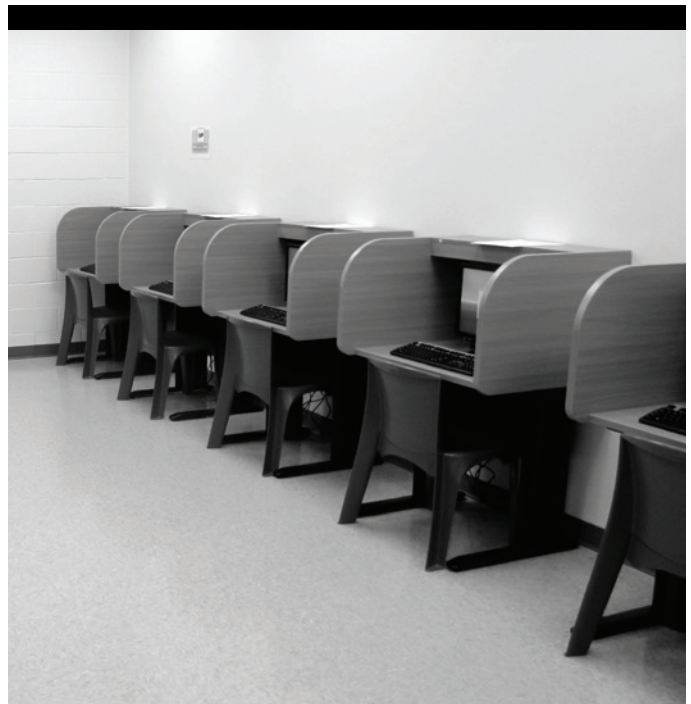
ilies detained in Artesia.<sup>77</sup> There are reports of babies losing weight, young children with suicidal thoughts, and mothers who are decompensating due to lack of hope. These findings are all consistent with documented consequences of family detention internationally.<sup>78</sup> Most immigration detention facilities, including Artesia, have limited mental health resources for detainees. For example, at Artesia the only psychiatrist available to detainees was available only through video-teleconferencing for months.<sup>79</sup> At both Artesia and Karnes, much of the mental health care was provided by male service providers, which may make it more difficult for a population of women to discuss traumatic violence and sexual assault. Detainees' fragile mental state greatly impedes their ability to access protection as survivors of violence, successfully present difficult cases, and advocate for themselves through the complex immigration legal system.

#### LACK OF COUNSEL

Immigration law is a particularly complex area of law often likened to the United States' tax code. It is an adversarial system where the government is represented by well-trained and specialized trial attorneys. Migrants have a legal right to an attorney but not at government expense. Men, women, and children must arrange for representation at their own expense, resulting in roughly 80% of detainees lacking representation.<sup>80</sup> Studies demonstrate that the likelihood of success in immigration proceedings dramatically increases when an individual is represented by counsel. One study

found that representation is the "single most important factor affecting the outcome" of an asylum-seeker's case.<sup>81</sup> Children who are represented are ten times more likely to be granted relief than a child who is not represented by an attorney.<sup>82</sup>

Detainees at the Artesia facility face several obstacles in securing legal representation. The facility, like the majority of immigration detention facilities, is located in a rural area. It is a three- to four-hour drive from El Paso and Albuquer-



**Law library at Karnes. All legal information at Karnes is electronic, effectively precluding women who are not computer literate. Photo credit: Eric Sigmon. All photos taken by Eric Sigmon in this report were taken in 2012, before Karnes detained families.**



que, the two closest urban areas. There are no qualified legal representatives located near Artesia. It is difficult for detainees to make phone calls to reach even the limited number of pro bono representatives available or for attorneys to reach their clients or to leave messages for them. According to interviews, detainees were often limited to very short phone calls with attorneys or were not allowed to call attorneys at all.<sup>83</sup> Some dorms did not have phone numbers for pro bono representatives posted, and ongoing efforts to add pro bono representatives to phone lists were complicated because these attorneys could only provide temporary, short-term services.<sup>84</sup> Attorneys also reported detainees being told they had to pay to receive a voicemail from their attorney.<sup>85</sup> Other

detainees assumed they had to pay for an attorney whom they could not afford and therefore did not try to contact one.<sup>86</sup>

These obstacles are similar at Karnes. Although the Karnes facility is approximately an hour from San Antonio, many mothers and children at the facility lacked representation, and despite its closer proximity to a metropolitan area than Artesia, the facility remains underserved by an under-resourced legal services community. Women detained at Karnes reported feeling overwhelmed at having received only a video “know your rights” presentation. In September, more than six weeks after the facility opened, many had yet to speak with an attorney about their rights and options. Given that the Administration has announced plans to open a 2,400-bed family detention facility in Dilley, Texas, the San Antonio area legal service providers—already unable to meet the legal needs of migrants in the area—will soon face a nearly five-fold increase in the local detained family population. The shortage of legal assistance is not unique to the family detention system, but is endemic within immigration detention in the U.S. The Berks facility also suffers from a shortage of available legal service providers for families held in detention. The Pennsylvania Immigrant Rights Center (PIRC) conducts Legal Orientation Presentations (LOP), but they are unable to represent all the families that need assistance. In the past this gap in legal services at Berks was somewhat mitigated because many families were released after passing a credible fear interview. With the planned doubling of the facility’s capacity to 200 detained men, women, and children, and new policies preventing release, parole, or bond, access to legal services will be grossly insufficient.

#### **LEGAL ORIENTATION AND KNOW-YOUR-RIGHTS PRESENTATIONS**

The government-funded Legal Orientation Program (LOP) at the Department of Justice (DOJ) and privately funded “know your rights” presentations were created to inform immigrant detainees about their rights, immigration court, and the detention process. These public-private partnerships offer detained people basic information about forms of relief from removal, how to represent themselves in immigration courts, and how to get legal representation. They include a general overview of available immigration relief and individual orientation for each participant. Research shows that program participants move through immigration court more

quickly and, therefore, likely spend less time in detention than people who do not have access to legal help.<sup>87</sup> A 2012 DOJ evaluation also revealed significant cost savings from LOPs, with the program creating a net savings of \$18 million to the government based on reduced court processing and detention times.<sup>88</sup>

These programs are now available on a limited basis in the Artesia and Karnes facilities, but were not provided in the first several weeks of either facility’s operation. No legal service provider arrived at Artesia until July 18, 2014. Although one legal service provider offered basic “know your rights” presentations at their own expense at Karnes, these did not start until two weeks after the facility began holding families, and a formal LOP to help fund these staff was not implemented until mid-September 2014.

Legal service providers delivering these rights presentations face several obstacles. First, Artesia service providers face a three-hour drive each way to the facility; at Karnes, the drive ranges from one to two hours. This is a great burden both time-wise and financially to the LOP provider and limits the level of legal services. Second, when Artesia opened, there was no dedicated or private space for several weeks, and there was extremely limited time for the presenters to conduct the program. This resulted in limited time to conduct presentations and insufficient time for individual counseling sessions. Although space was better at Karnes, the coordination of legal presentations remained chaotic, resulting in overflowing presentations that some individuals attended more than once, whereas other detainees could not attend at all. In both facilities, service providers struggle in obtaining necessary lists of new arrivals to coordinate who should attend the LOP and to reach all detainees in a timely manner prior to their credible fear interviews or redeterminations.

The existing LOP services were developed to meet the needs of adult learners and are presented to the mothers only at both facilities and to adults only at Berks. Children are not included in the group “know your rights” presentations, nor are the presentations adapted to children’s particular needs, as occurs in presentations to unaccompanied children held in shelters operated by the Office of Refugee Resettlement. A child in a family detention facility with an independent claim to asylum would be at even greater disadvantage to understand his or her rights or access an attorney to present a case.

Children with independent, viable claims for protection have been identified by legal service providers.

#### PREPARING AND PRESENTING A CASE

Despite asserting that no new written or other directives apply to detainees detained in family detention facilities, it is clear that the government is dedicating resources and applying uniform policies to effectuate removal of family detainees as quickly as possible. This further diminishes a detained family's ability to find a lawyer or adequately prepare a case prior to appearing before an immigration judge.

If a detainee is fortunate enough to participate in an LOP, she must still prepare her case on her own in detention. Asylum cases are complicated to prepare and require extensive proof in the form of research, affidavits, official documents, and other materials to establish past persecution or a fear of future persecution. In addition, given the additional scrutiny asylum officers are applying to credible fear interviews based on new, February 2014 training guidance, detained asylum-seekers may now require more extensive evidence than before simply for this initial screening.

Generally, law libraries in detention facilities do not contain sufficient legal materials, and often what is available is through a Lexis/NEXIS CD, which requires legal research skills and computer literacy to navigate, is generally in English and is often out of date.<sup>89</sup> In Karnes, all legal materials are available only in electronic format, effectively precluding women who are not computer literate from even basic legal research. In addition to challenges stemming from language and educational impediments, women detained at Artesia, Karnes, and Berks face a logistical challenge of accessing evidence, experts, and doctors for forensic evaluations to support their claim.<sup>90</sup> Moreover, without childcare, it is difficult for an individual to find the time and attention required to research her court case sufficiently to represent herself.

Finally, all immigration court cases at Artesia are held though a video-teleconference where an immigration judge on camera questions the detainee about her experiences. This situation is not unique to family detention and results in the judge, opposing government counsel, and often a translator or others appearing remotely by video and/or telephone to a respondent in a detention facility. Reported difficulties in immigration court proceedings from Artesia include inability

of judges to hear a detainee and see a detainee's facial expressions during testimony.<sup>91</sup> Immigration court cases at Berks are also conducted via video-teleconference. When most detention at the facility was short-term and did not continue throughout a detainee's court proceedings this was less problematic since the hearings consisted primarily of bond or master calendar hearings. With ICE's new policy of detaining families at Berks throughout their proceedings, the continued reliance on video-conference capabilities is more troubling.

Due to the lack of appropriate childcare options available to women at Artesia, mothers detained there must present their cases with their children in the room, often small babies who sit in their laps or are held in their arms while they are

***“Mothers detained there must present their case with their children in the room, often small babies who sit in their laps or are held in their arms while they are testifying.”***

testifying. At Karnes, somewhat more appropriate childcare options exist to facilitate a mother testifying without her child present. However, even with the current availability of some childcare in both facilities, many detainees went for weeks without any meaningful possibility to testify without their child present, and without any acknowledgment or accommodation from the immigration court over the impact that this might have on their case.

At Artesia, pro bono attorneys working with the American Immigration Lawyers Association (AILA) have reported dozens of serious obstacles to meaningful representation of detained clients. These include not being able to access clients; inability to file required court documents due to the remoteness of Artesia or refusal by an immigration judge to accept fax filings; incorrect notification of hearing times due to time zone differences; enormous interpreter concerns

where interpreters for indigenous languages are unavailable or underutilized; and myriad other concerns. As with court cases, the absence of appropriate childcare means that children may be present during attorney-client sessions, making it difficult for parents to provide all the details of their case.<sup>92</sup> Although DHS has addressed some of these issues once raised by advocates or counsel, these obstacles nonetheless created real barriers to protection for the dozens of women who experienced them, and obstacles continue to arise today.

Ultimately, detention of families serves to impede their ability to access available protections. If families were not detained, they would have better opportunities to access legal information and counsel, prepare their case, and be less traumatized and better able to present testimony in court.

#### **RECOMMENDATIONS TO ENSURE ACCESS TO JUSTICE**

As we concluded in 2007, meaningful access to justice is most effectively facilitated by not detaining families. However, if detained, all families in government custody should have sufficient resources and information to ensure a fair adjudication of their legal claims.

• ICE should **take all steps necessary to facilitate access to legal information, counsel, and protection.** ICE should cease use of any facility where this is not feasible.

This includes:

- Fair and timely access for attorneys to detention facilities and adequate confidential meeting space.
- Functional and accessible telephones that allow for attorney-detainee communication, including the ability to receive messages from attorneys.
- Appropriate access for detainees to childcare and to legal self-help materials.
- Access to a legal information presentation within a few days of arrival at a facility.
- USCIS and the Executive Office for Immigrant Review (EOIR) should **ensure that credible fear interviews and immigration court proceedings are conducted in a timely, but not rushed, manner,** and should be conducted in person rather than through video-conferencing.
- EOIR should **request, and Congress should appropriate, funding for enhanced public private partnerships,** such as the Legal Orientation Program (LOP), to ensure families have access to a “know your rights” presentation in advance of credible fear interviews, and for families to be represented at credible fear interviews.

## **SECTION V. RELEASE FROM DETENTION**

Release from detention is critical for a family’s psycho-social well-being as well as the ability to access justice. Depending on a family’s situation, any decisions about their release will be decided by either an immigration judge or by an ICE officer.



**Bunk beds at Karnes. Photo credit: Eric Sigmon.**

#### **ICE’S RELEASE AUTHORITY**

The majority of the families currently in detention are apprehended when they approach CBP Border Patrol officials along the border between official ports of entry (POE), such as airports or official entrance points on the border. Families arriving in this manner can be placed in expedited removal proceedings (though the government retains the discretion not to apply expedited removal) and may be subjected to mandatory detention provisions of immigration law until they have passed a credible fear interview, as described in Section III. If families are seeking protection in the United States,

they may remain in expedited removal pending a determination of their credible fear by an asylum officer. Immigrants in expedited removal proceedings are not eligible to go before an immigration judge for any reason prior to removal, including to request release from detention.

However, detainees may be eligible for release on parole as determined by an ICE officer.<sup>95</sup> The regulations governing these parole procedures allow consideration for parole in special circumstances and on a case-by-case basis for certain individuals such as pregnant women, juveniles, witnesses, and where it is not in the public interest to continue to detain the individual. In addition, the individual must demonstrate that his or her release is for “urgent humanitarian reasons” or when there will be a “significant public benefit.”<sup>96</sup> Such release may occur prior to an individual determination of credible fear.

In addition to the regulations governing parole, there are also specific parole guidelines, such as “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture,” also known as “Parole Guidance,” that encourage ICE officials to release arriving asylum-seekers who have been found to have a credible fear, assuming they do not pose a flight risk or danger to the community. Unfortunately, this guidance is limited to “arriving aliens,” which are defined as those who enter the United States at a POE. Those immigrant families who voluntarily approached Border Patrol at locations between the ports of entry do not qualify under ICE’s current interpretation of its parole policy.

Unlike arriving aliens, those individuals who are apprehend-

ed between official ports of entry and placed into expedited removal, such as the families currently detained at Artesia and Karnes, are only considered for bond once they have passed a credible fear interview and been placed into formal removal proceedings. Typically, an ICE officer sets an initial bond amount (or no bond), and a detainee can ask an immigration judge to reconsider.

In all cases, ICE should instead individually assess whether an individual could be released on bond, alternatives to detention, or any other necessary measure. Despite clear authority to choose whether to detain families in the first instance, and clear authority to release families from detention after a credible fear has been established, in September 2014, ICE had released only a handful of families. This closely resembles the policy that was in place at the time that we wrote our 2007 report, when families were almost never released on parole and bonds were set at very high rates, averaging \$15,000 per family member. First, prior to ICE detention, families placed in expedited removal can also be released on parole within the “urgent humanitarian reason” as well as the “significant public benefit” criteria for release. For families who have also been found to have a credible fear of persecution, the Parole Guidance offers further support for their release. While most of the detained families arrived between the ports of entry and do not technically qualify for consideration for release pursuant to this guidance, this is a technicality based on the location of apprehension that is unrelated to the spirit of the Parole Guidance, which indicates that continued detention of an asylum-seeker should be an exception. For those who have passed credible fear, ICE is also not choosing to release the families on their own recognizance

## THE IMPACT OF MATTER OF A-R-C-G-

*Many women and children currently detained in family detention facilities are asylum-seekers escaping domestic violence. Recently, the Board of Immigration Appeals (BIA) issued an important decision that recognizes that women who are victims of domestic violence may be deemed a “member of a particular social group,” which could be the basis of a successful asylum claim. The case, Matter of A-R-C-G-, could potentially help those detained in family detention. However, with little access to the legal information and legal counsel necessary to navigate complex U.S. asylum law, and with inadequate fear screenings, these women are often denied credible fear or rushed through the legal process without the opportunity to access the protection to which they are entitled. Despite finding that women fleeing domestic violence may be eligible for asylum, the government’s family detention policies severely undermine these women’s ability to seek refuge in the United States.<sup>93</sup> The practice of arbitrarily detaining women who have experienced domestic and sexual violence for immigration violations runs counter to trauma informed practices and services promoted by the Obama Administration in other contexts.<sup>94</sup>*

or even set a reasonable bond to mitigate flight risk. Instead, ICE has instituted a blanket policy finding these families “not bond eligible.”<sup>97</sup>

#### IMMIGRATION JUDGE RELEASE AUTHORITY

As mentioned above, individuals who pass a credible fear interview can seek a custody redetermination hearing before an immigration judge if they are not found eligible for bond

*“The government already has at its disposal numerous options that should and could be expanded to accommodate increased arrivals, and families in particular.”*

by ICE.<sup>98</sup> Unfortunately, many asylum-seekers cannot afford to pay the amount set for them and therefore remain detained. The government continues to uniformly oppose any bond or request only very high bond, relying on misplaced immigration case law<sup>99</sup> in which authorities consider these mothers and children to pose “national security concerns” tied to mass migration. In addition, DHS argues that detention is the only way to deter future mass migration. This argument is inconsistent with current policies with respect to single adults and, notably, is inconsistent with U.S. obligations under domestic and international law.<sup>100</sup> Furthermore, there is no evidence to substantiate it.<sup>101</sup>

In the early weeks of detention at the Artesia facility, immigration judges had failed to release any families on bond. Eventually, there was one bond set at \$25,000, which is an unreasonable amount for a family fleeing Central America, since many of these families have few to no funds or resources themselves or in the community. As representation levels increased, a few slightly more reasonable bond amounts were set depending on the immigration judge presiding over the case. Reports suggest that overall bond amounts are still significantly higher than the average \$5,200 bond nationally.<sup>102</sup> In fact, at least one bond hearing focused not on the merits of the individual woman and

her children’s release, but rather was an hour-long discussion of whether all the families in the Artesia facility should be denied bond as national security risks.<sup>103</sup> In cases where an immigration judge did grant bond, American Immigration Lawyers Association attorneys recently began to report that DHS is appealing grants of bond to the Board of Immigration Appeals (BIA) arguing that they should be overturned.<sup>104</sup>

Detained families would derive enormous benefits from being released from detention, including improved mental health for all family members and a chance to secure legal representation and prepare for an immigration court hearing. Releasing families, rather than detaining them, would also significantly reduce litigation liability for harm to children and direct costs associated with detention for the U.S. government and taxpayer.

#### RECOMMENDATIONS ON RELEASE

DHS should institutionalize a preference for release or community support programs for all families who can establish identity and community ties and who do not pose a security risk. Given the particular needs of families, the government should resort to confinement only when specifically indicated and individualized assessment and release is not possible and cannot be mitigated. Utilize the full range of ATD options as discussed in Section VI.

- ICE should **meaningfully screen, including through its own risk classification assessment (RCA) tool, all family units for security and flight risk at the point of apprehension.** ICE should use this assessment to inform custody decisions prior to making decisions to detain.
  - ICE and CBP should complete release or parole as soon as possible following apprehension, including through using its discretion to place apprehended families into full removal proceedings under INA §240 instead of expedited removal. ICE should liaise with CBP to develop clear policy guidance regarding how release decisions are made.
  - For both family safety and to protect the integrity of the process, ICE should ensure there are case management services available to detainees at the point of release and throughout the adjudicatory process to ensure that families understand their legal obligations.
- Where ICE continues to detain, ICE should **regularly reassess security and flight risk as individual circumstances change and institutionalize a preference for release for those who pose no flight or security risk.** At minimum, risk

classification should be re-run upon receiving a positive credible fear finding.

- Detained families who have passed credible fear should be considered eligible for release on parole (including through expanding existing parole guidelines to apply to those apprehended between ports of entry) or on individually determined reasonable bonds.
- ICE should cease denying or opposing bonds on the grounds of “national security concerns” based on concerns regarding mass migration, as it is inconsistent with U.S. obligations under domestic and international law.

## SECTION VI. THE SOLUTION: ALTERNATIVES TO DETENTION

The current options exercised by DHS officials for families arriving at the border—detention until removal or releasing families pending a court date—are unwisely narrow. The combination of two extremes fails to function as a deterrent and does not take into account the high percentage of asylum-seekers among family arrivals. Rather than limit itself to these two options, it would be sound policy for ICE to employ the whole range of available alternatives to detention (ATD) based on individualized assessment of each family to serve the government’s interest in ensuring that families attend court hearings. The government already has at its disposal numerous options that should and could be expanded to accommodate increased arrivals, and families in particular. Furthermore, the U.S. government already has in place an extensive network to resettle refugees that could also be used as a model to serve and process asylum-seekers and other arriving immigrants.

Currently available forms of ATDs include any or a combination of the following:

- Release individuals on their own recognizance.
- Release on parole.
- Release to a sponsor or family member.
- Require periodic check-ins with a detention officer or case worker.
- Release with a bond.
- Telephonic monitoring.
- House arrest or GPS tracking programs for those who may present a higher risk of flight.
- Community support programs.

Individualized assessments should determine which release options would achieve the government’s goals while placing the minimum restrictions on a family. The risk classification assessment tool, currently used in processing detainees into detention facilities, is an ideal starting point as a tool for also assessing the need for detention and the appropriate level



Photo credit: ©iStock.com/Bonerok

of alternatives. Ideally, a family should receive either case management support or similar comprehensive social and legal services immediately upon release. These services have been found to be effective means of supporting migrants in immigration proceedings and increasing the likelihood of compliance with government requirements and appearance for proceedings. While some ATD options have these services built in, they can be provided in addition to any ATD.

For example, community support programs balance the government’s need for compliance with court hearings and removal orders with access to justice and integration. In current community support programs operated by LIRS and the United States Conference of Catholic Bishops (USCCB), local service partners provide legal services, case management, and housing.<sup>105</sup> These community-based models have demonstrated higher rates of compliance and appearance, greater fairness for immigration hearings and improved health, well-being, and integration outcomes for clients—all at a reduced cost to the government.<sup>106</sup>



Where a full community support model is not available, the ATD selected by the government for an individual family should include the use of case managers or social workers to manage families' cases. Such services could include instruction on the importance of appearing for all court proceedings and other required appointments while ensuring access to education, food, housing, and legal support. For families without housing available upon release, the Administration should partner with non-profit shelter or child welfare organizations experienced in supporting asylum-seeking and immigrant families to resolve any issues preventing the direct release of families. Social workers with experience providing family and child-welfare services are preferable to ensure that children are accessing needed services and to support the family unit through civil immigration proceedings. By ensuring access to legal support, families who may have a fear of return to their countries will have a chance to express this fear and access the U.S. asylum system or other protections.

In cases where risk of flight or other concerns arise, more restrictive or secure forms of ATDs are available.

Currently, ICE manages three formal ATD programs:

- **Intensive Supervision Appearance Program (ISAP II)**, which employs contractors who monitor participating immigrants using electronic ankle monitors; installation of biometric voice recognition software; unannounced home visits; employer verification; and in-person reporting to supervise participants.<sup>107</sup>
- **Enhanced Supervision/Reporting (ESR)**, a contractor-operated program that uses the same monitoring methods as ISAP.
- **Electronic Monitoring (EM)**, which is operated by ICE and is available to immigrants residing in locations not covered by the ISAP or ESR contracts. EM monitors immigrants using telephonic reporting, radio frequency, and global positioning technologies.

Expert studies consistently find ATDs yield high compliance rates and are therefore an effective solution to the costs of detention without sacrificing compliance. In Contract Year 2013, 96.2% of those enrolled in ISAP II with case management appeared for their final hearings. Of those enrolled in the full service version of ISAP II, where individuals received case management, 79.4% complied with removal orders.<sup>108</sup> While

traditional immigration detention can cost up to \$164 per person, per day,<sup>109</sup> DHS estimates have shown current alternatives can range in cost from 30 cents to \$8.04 per person, per day.<sup>110</sup> In contrast, media reports indicate the forthcoming Dilley facility will cost \$298 per person, per day<sup>111</sup> and the U.S. Senate estimates that the cost of family detention is \$266 per person, per day.<sup>112</sup>

To maximize ATDs, the government should allocate not only resources and dedicated staff but also political will to implementing a nationalized system of ATDs. Use of ATDs is currently constrained due to the inability of an ICE officer in one field office to place a family that plans to relocate to another destination on an ATD.<sup>113</sup>

#### **RECOMMENDATIONS ON ALTERNATIVES TO DETENTION**

Rather than turn to costly family detention facilities, it is crucial that the Administration, DHS, and ICE prioritize leadership and political will to invest in comprehensive, nationalized cost-effective ATDs. Enrollment in ATDs should be based on an individualized assessment of flight and security risk.

- Rather than arbitrarily detaining families based on detention bed availability, **DHS should conduct a screening or intake procedure such as the RCA for all apprehended families and make individualized placement into the least restrictive setting appropriate**, including release on recognizance, parole, and a range of alternatives to detention.

- ICE should conduct these individual assessments for families at the point of apprehension. If an ATD is necessary, the screening should determine what level of ATD is most appropriate to mitigate any flight risk and existing vulnerabilities. DHS should maximize ATDs that give the department a range of release options that can be used in place of detention.

- The Administration should request and Congress should appropriate **increased funding for full implementation of a range of ATDs**, including funding for adequate staffing within ICE so that the agency can utilize all available ATD slots. Congress should direct ICE to dedicate staff specifically to the implementation of ATDs on a nationwide level.

- In the absence of additional funding, the Administration should reprogram funding as necessary. At a minimum, the Administration should redirect funds used to expand family detention towards alternatives.

- DHS should invest in community-based ATDs. The Administration should request and Congress should

appropriate expanded pilots for community-based ATDs, including wraparound case management services adapted to families. These could be done through public-private partnerships.

• ICE should implement the expanded range of ATDs nationally, and not by field office, so that families with a different destination than their point of apprehension can still be immediately placed into a cost-effective ATD without having to first self-report to further ICE offices.

## SECTION VII. CONCLUSION

Seven years ago, LIRS and WRC first exposed and documented the inappropriateness of family detention in the United States. Our findings illustrated the devastating psycho-social impact of family detention on parents and their children, as well as the grave impact on due process rights and access to justice for detained asylum-seeking families. Our conclusion was simple: there is no way to humanely detain families.

The decision to stop detaining families at Hutto more than two years later was a long-overdue recognition that this vulnerable population, often with community ties and with strong incentives to appear in court for their asylum case,

*“Despite having gone through this process before and making adjustments, the Administration has repeated many of the same mistakes as in previous attempts at detaining families...”*

should not be arbitrarily detained, and that more appropriate options existed. Sadly, we find ourselves making the same conclusions today that we did seven years ago. The Administration’s choice not only to return to, but to dramatically expand family detention, in order to send a signal of deterrence to others fleeing violence and persecution, is fundamentally inconsistent with our country’s values. Our findings again illustrate that large-scale family detention results in egregious violations of our country’s obligations under international

law, undercuts individual due process rights, and sets a poor example for the rest of the world. Thousands of women and children fleeing violence are at risk of permanent psychological trauma and return to persecution if these policies continue. All immigrant families should receive individualized screenings with a preference toward release or use of alternatives to detention and be ensured procedures that facilitate access to protection and justice.

Despite having gone through this process before and making adjustments, the Administration has repeated many of the same mistakes as in previous attempts at detaining families, including opening facilities without appropriate child welfare protections, failing to provide adequate mental health and physical health care, and failing to provide adequate due process. Despite previous experience and the failures at Hutto, current conditions continue to be detrimental to children’s mental and physical health and dangerously impede due process and access to protection. We conclude that no amount of modifications to the existing conditions allow for appropriate care of mothers and children in a detention setting. The government should reverse course on family detention and close Artesia and Karnes while stopping plans to move forward with Dilley.

## ENDNOTES

- [1] - Antonio Ginatta, Advocacy Director, US Program, Human Rights Watch.
- [2] At the time, the Women's Refugee Commission was known as the Women's Commission for Refugee Women and Children. The organization's name was officially changed in 2009.
- [3] Brané, Michelle. "Losing Sleep Over Families in Immigration Detention." *Huffington Post*. June 23, 2014. [http://www.huffingtonpost.com/michelle-bran/immigration-detention\\_b\\_5509348.html](http://www.huffingtonpost.com/michelle-bran/immigration-detention_b_5509348.html).
- [4] Sweet, Liz. "Mama, Why Are We Prisoners?" - Reflections from the Karnes Family Detention Facility." *Redefining Welcome Blog*, Lutheran Immigration and Refugee Service. September 22, 2014. <http://blog.lirs.org/reflections-from-the-karnes-family-detention-facility/>.
- [5] United Nations High Commissioner for Refugees (UNHCR), *Children on the Run* (2014), [http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf) ("UNHCR *Children on the Run*"); see also Refugee and Immigrant Center for Education and Legal Services (RAICES). RAICES Letter to President Barack Obama, July 18, 2014, <http://immigrationimpact.com/wp-content/uploads/2014/07/Letter-to-President-Obama-from-RAICES.pdf> (RAICES Letter).
- [6] U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.
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- [9] School of Law, the University of Texas at Austin. The University of Texas at Austin School of Law letter to ICE officials, September 25, 2014, [http://www.maldef.org/assets/pdf/2014-09-25\\_ICE\\_Letter\\_re\\_Karnes\\_Conditions.pdf](http://www.maldef.org/assets/pdf/2014-09-25_ICE_Letter_re_Karnes_Conditions.pdf) ("Letter to ICE Officials"); see also Mexican American Legal Defense and Educational Fund (MALDEF), "MALDEF and Other Groups File Complaint Detailing Sexual Abuse, Extortion, and Harassment of Women at ICE Family Detention Center in Karnes City," press release, October 2, 2014, <http://www.maldef.org/news/releases/maldef-other-groups-file-complaint-ice-family-detention-center-karnes-city/>.
- [10] U.S. Immigration and Customs Enforcement, "ICE to Open Additional Facility in South Texas to House Adults with Children," press release, September 22, 2014, <http://www.ice.dhs.gov/news/releases/1409/140922dilley.htm>; see also Edwards, Julia. "New U.S. Migrant Detention Center to be Run by Firm Criticized by Advocates," *Reuters*, September 23, 2014, <http://www.reuters.com/article/2014/09/23/us-usa-immigration-detention-idUSKCN0H12AB20140923> (*New U.S. Migrant Detention Center to be Run by Firm Criticized by Advocates*).
- [11] For a detailed history of family detention in the United States, see *Locking up Family Values*, at pp. 5-10. For more information on immigrant family detention in the international context, see [http://wrc.ms/fam\\_det\\_appC](http://wrc.ms/fam_det_appC).
- [12] Detention Watch Network, "Immigration Detention Background." [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/immigration\\_detention\\_background.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/immigration_detention_background.pdf).
- [13] Bernstein, Nina. "U.S. to Reform Policy on Detention for Immigrants." *New York Times*. August 5, 2009, [http://www.nytimes.com/2009/08/06/us/politics/06detain.html?\\_r=2&hpw&](http://www.nytimes.com/2009/08/06/us/politics/06detain.html?_r=2&hpw&). Although DHS ceased using Hutto for family detention, DHS continues to contract the facility to house low-risk immigrant women detainees, many of whom are asylum-seekers in the United States.
- [14] Ortiz Uribe, Mónica. "New Detention Center to Begin Deporting Immigrant Families," *Fronteras Desk*. July 11, 2014. <http://www.fronterasdesk.org/content/9708/new-detention-center-begin-deporting-immigrant-families>.
- [15] Karnes first opened as an adult male facility in April 2012 as part of ICE's civil detention reforms. The facility was built with civil conditions in mind.
- [16] Deese, Brian. White House Letter to Congress Requesting Emergency Supplemental Funding, July 8, 2014, [http://www.whitehouse.gov/sites/default/files/omb/assets/budget\\_amendments/emergency-supplemental-request-to-congress-07082014.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf).
- [17] Prior to 2007 families at Berks were rarely paroled or released on bond, and were detained for long periods in problematic conditions. This policy was reversed in 2008 after the release of Locking Up Family Values and the ACLU lawsuit. 2014 saw the return of failed pre-existing policies.
- [18] This definition arises from the definition of "unaccompanied child" as a child without lawful immigration status in the United States, under the age of 18, who does not have a parent or legal guardian in the United States or for whom there is no parent or guardian in the United States available to provide care and physical custody. Homeland Security Act of 2002, 6 U.S.C.A. Section 462 (2008).
- [19] The UNHCR report found that 48 percent of the 404 children UNHCR interviewed "shared experiences of how they had been personally affected by the... violence in the region by organized armed criminal actors, including drug cartels and gangs or by State actors." See UNCHR *Children on the Run*.
- [20] Notes from a September 2014 tour of Karnes, on file with WRC staff. We were unable to obtain more recent statistics than from August 2014 of credible fear pass rates at Artesia.
- [21] Correspondence between ICE and WRC, October 2014. Notes on file.
- [22] Human Rights First, *Jails and Jumpsuits* (2011) <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>; see also Detention Watch Network, *Expose & Close* (2012) [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose\\_and\\_close\\_one\\_year\\_later.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose_and_close_one_year_later.pdf). For an extensive listing of reports describing concerns with conditions of immigration detention, see the National Immigration Forum's compilation at <http://www.immigrationforum.org/images/uploads/2010/detentionreportssummaries.pdf>.
- [23] LIRS staff conversation with Artesia ICE official, July 22, 2014 (notes on file), confirmed in conversation of ICE official with WRC staff at Artesia July 22, 2014. Also, confirmed in meeting between WRC staff and ICE officials, and in answer by ICE official at Karnes tour on September 16, 2014.
- [24] U.S. Customs and Border Protection (CBP) is a component of the Department of Homeland Security (DHS) charged with securing our borders and facilitating trade. U.S. Border Patrol (BP) is a component of CBP. Its agents work along borders between ports of entry.
- [25] WRC staff interview with detained mother at Karnes, September 16, 2014. Notes on file.
- [26] Meeting between WRC staff with ICE officials, September 2014. Notes on file.
- [27] According to ICE's July 31, 2014 press release on Karnes, "ICE's family detention facilities are an effective and humane alternative to maintain family unity as families await the outcome of immigration hearings or return to their home countries." See Department of Homeland Security, "South Texas ICE Detention Facility to House Adults with Children," press release, July 31, 2014, <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.
- [28] Correspondence with pro bono attorney representing individuals at Artesia, October 2014, on file with author.
- [29] Moll, Tessa. "Crime without punishment: Sexual assault at T. Don Hutto falls through cracks of justice system." *Taylor Daily Press*. January 21, 2008. <http://www.detentionwatchnetwork.org/node/526> (accessed July 15, 2010) ("*Sexual Assault at T. Don Hutto*").
- [30] Conversation of Chaplain at Artesia with LIRS and WRC employees, July 22, 2014 (notes on file); personal interviews WRC staff with families at Artesia, July 22, 2014 (notes on file).
- [31] School of Law, the University of Texas at Austin letter to ICE officials, September 25, 2014, [http://www.maldef.org/assets/pdf/2014-09-25\\_ICE\\_Letter\\_re\\_Karnes\\_Conditions.pdf](http://www.maldef.org/assets/pdf/2014-09-25_ICE_Letter_re_Karnes_Conditions.pdf).
- [32] *Locking Up Family Values*.
- [33] Notes from September 16, 2014 tour of Karnes, on file with WRC staff.
- [34] Haring, Heather, What's So Important about Crawling? (April 1, 2009) <http://www.medcentral.org/main/Whatssoimportantaboutcrawling.aspx>.
- [35] Conversation between ICE official and stakeholder group representatives, Artesia tour, July 22, 2014. Notes on file.
- [36] School of Law, the University of Texas at Austin letter to ICE officials, September 25, 2014, [http://www.maldef.org/assets/pdf/2014-09-25\\_ICE\\_Letter\\_re\\_Karnes\\_Conditions.pdf](http://www.maldef.org/assets/pdf/2014-09-25_ICE_Letter_re_Karnes_Conditions.pdf).
- [37] *Locking Up Family Values*.
- [38] Wales, Joshua. "No Longer a Refugee; Health Consequences of Mandatory Detention for Refugees." *The Official Journal of the College of Family Physicians of Canada*, 2013. <http://www.cfp.ca/content/59/6/609.full>; Steel, Momartin, Bateman, Hafshejani, Silove, Everson, et al. "Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia." *Australian and New Zealand Journal of Public Health* 28, 2004, 527-36; Lorek, Ehntholt, Nesbitt, Wey, Githinji, Rosser, et al. "The mental and physical health difficulties of children held within a British immigration detention center: a pilot study." *Child Abuse and Neglect, The International Journal* 33, October 6, 2009, 573-85.
- [39] Cleveland, Janet, PhD, Rousseau, Cecile, MD, and Kronick, Rachel, MD. Bill C-4: The Impact of Detention and Temporary Status on Asylum Seekers' Mental

Health, Brief for submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada's Immigration System Act, January 2012, [http://www.globaldetentionproject.org/fileadmin/Canada\\_cleveland.pdf](http://www.globaldetentionproject.org/fileadmin/Canada_cleveland.pdf).

[40] See *Locking up Family Values*.

[41] Interview with WRC staff at Karnes. Notes on file.

[42] School of Law, the University of Texas at Austin letter to ICE officials, September 25, 2014, [http://www.maldef.org/assets/pdf/2014-09-25\\_ICE\\_Letter\\_re\\_Karnes\\_Conditions.pdf](http://www.maldef.org/assets/pdf/2014-09-25_ICE_Letter_re_Karnes_Conditions.pdf).

[43] Correspondence with pro bono attorney representing individuals at Artesia. October 2014. On file with author.

[44] LIRS staff personal interviews with families at Artesia, October 9, 2014 (notes on file).

[45] WRC correspondence with attorneys representing individuals in Texas and Artesia, October 2014. Notes on file.

[46] See *Sexual Assault at T. Don Hutto*.

[47] Brané, Michelle. The Tragic Cost of Family Detention: Sexual Abuse and Assault. *The Huffington Post*. October 8, 2014. [http://www.huffingtonpost.com/michelle-brane/the-tragic-cost-of-family\\_b\\_5942432.html](http://www.huffingtonpost.com/michelle-brane/the-tragic-cost-of-family_b_5942432.html).

[48] For concerns over child care at Karnes, see *Letter to ICE Officials*. For more on child care at Artesia, see Henneberger, Melinda. "When an Immigration Detention Center Comes to a Small Town." *The Washington Post*. October 1, 2014. <http://www.washingtonpost.com/news/storyline/wp/2014/10/01/when-an-immigration-detention-center-comes-to-a-small-town/> ("When an Immigration Detention Center Comes to a Small Town").

[49] Conversation of ICE and USCIS officials with LIRS staff, October 9, 2014 (notes on file); Childcare in family detention facilities is complicated by licensing requirements which govern who is allowed to care for a child. It is unlikely that such a license exists. In fact, there are no state licenses for family detention in the United States as there is no parallel demand for it.

[50] For more on school at the Karnes and Artesia facilities, see Weissert, Will. "Back to school – even in Texas immigration prison." *Associated Press*. September 15, 2014. <http://bigstory.ap.org/article/back-school-even-texas-immigration-prison-and-uribe>, Mónica Ortiz. "Immigrant Children Begin School in New Mexico Detention Center." *Frontiers Desk*. October 14, 2014. <http://www.frontiersdesk.org/content/9811/immigrant-children-begin-school-new-mexico-detention-center>.

[51] American Immigration Lawyers Association, *Case Examples of Families in Detention and Subject to Rapid Deportation*, AILA InfoNet Doc. No. 14092256. (Posted 9/22/14), <http://www.aila.org/content/default.aspx?docid=50170>.

[52] *Locking Up Family Values*.

[53] For more information on the credible fear process, please see Immigration Policy Center: *Mexican and Central American Asylum and Credible Fear Claims: Background and Context*, American Immigration Council (May 21, 2014) <http://www.immigrationpolicy.org/special-reports/mexican-and-central-american-asylum-and-credible-fear-claims-background-and-context> ("AIC Credible Fear Claims"); see also Human Rights First Blueprint, *How to Protect Refugees and Prevent Abuse at the Border* (June 2014) <http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border> (*HRF Blueprint*).

[54] According to UNHCR report, there has been a 712% increase in numbers. See UNHCR *Children on the Run*; see also *HRF Blueprint*.

[55] RAICES found that 63% of children would qualify for relief from deportation under U.S. immigration law. In addition, the UNHCR found that 58% of children interviewed raised international protection needs. See RAICES *Letter* and UNHCR *Children on the Run*.

[56] Matter of E-R-M-, 25 I&N Dec. 520, 522 (BIA 2011). <http://www.justice.gov/eoir/vll/intdec/vol25/3716.pdf>.

[57] Expedited removal began in 1996 at ports of entry and was expanded in 2004-2005 to individuals apprehended within 14 days and 100 miles of the border. See *HRF Blueprint*.

[58] "Mandatory detention" is generally interpreted by the government as requiring institutional detention, though could also arguably be satisfied through alternate forms of custody, including various forms of alternatives to detention. See also American Immigration Lawyers Association (AILA), Statement to the Subcommittee on Immigration and Border Security of the Committee on the Judiciary of the United States House of Representatives, *Asylum Fraud: Abusing America's Compassion?* Hearing, February 11, 2014 (AILA InfoNet Doc. No. 14021140) available at <http://www.aila.org/content/default.aspx?docid=47415>; See also Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* (2012) <http://lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>.

[59] See section 5 for more discussion.

[60] Among other concerns, the study found that officers failed to read the required script advising individuals of their right to ask for protection in 50% of observed cases. Other deficiencies included CBP agents dissuading people from requesting asylum; not recording their expressed fears of persecution; and not referring them for credible fear interviews.

[61] No More Deaths, *A Culture of Cruelty, Abuse and Impunity in Short-Term U.S. Border Patrol Custody*, 2011, <http://www.nomoredeathsvolunteers.org/Print%20Resources/Abuse%20Doc%20Reports/Culture%20of%20Cruelty/Cultureof-CrueltyFinal.pdf>; see also The Women's Refugee Commission, *Forced From Home, the Lost Boys and Girls of Central America*, October 2012, <https://womensrefugeecommission.org/forced-from-home-press-kit>; see also AIC *Credible Fear Claims*; see also *HRF Blueprint*.

[62] WRC interviews and email exchange with ICE, 2006 and 2007 (notes on file).

[63] Conversations and email exchanges with ICE, legal service providers and WRC, 2006 – 2014 (notes on file).

[64] Notes from July 22, 2014 tour of Artesia. On file with WRC.

[65] UNHCR *Children on the Run*; see also Campos, Sara and Friedland, Joan. *Mexican and Central American Asylum and Credible Fear Claims*. American Immigration Council, May 2014. [http://www.immigrationpolicy.org/sites/default/files/docs/asylum\\_and\\_credible\\_fear\\_claims\\_final.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/asylum_and_credible_fear_claims_final.pdf); see also *HRF Blueprint*.

[66] This information was gathered from notes of observations taken during the Artesia tour.

[67] Notes from July 22, 2014 tour of Artesia. On file with WRC.

[68] Conversation of ICE and USCIS officials with LIRS staff, October 9, 2014 (notes on file); Childcare in family detention facilities is complicated by licensing requirements which govern who is allowed to care for a child. It is unlikely that such a license exists. In fact, there are no state licenses for family detention in the United States as there is no parallel demand for it.

[69] No Child in Detention, a coalition of Amnesty International, *Daddy Have We Done Something Wrong?: Children and Parents in Immigration Detention* (January 2014), <http://idcoalition.org/detentiondatabase/daddy-done-something-wrong-child-detention-netherlands/>. ("No Child in Detention Daddy Have We Done Something Wrong").

[70] For more on childcare at Artesia, see *When an Immigration Detention Center Comes to a Small Town*.

[71] Interview with WRC staff, September 16, 2014. Notes on file.

[72] See AILA *Case Examples* at 3. Several women encountered by AILA attorneys at Artesia "had children who were born as a result of a rape. While evidence of rape may be critical to a woman's asylum, withholding or Convention Against Torture claim, these women would not state this important fact during their credible fear interviews because their children were with them during the interviews."

[73] While not ideal to attend immigration proceedings without counsel, age should not preclude a child from receiving an appropriately conducted Credible Fear interview. See Kids in Need of Defense (KIND) blog at <http://www.support-kind.org/en/blog>.

[74] See U.S. Commission on International Religious Freedom, *Report on Asylum-Seekers in Expedited Removal*, (2005), Vols. I & II. The findings and recommendations are in Vol. I, pp. 50-62 and 63-76, respectively. The experts' reports are in vol. II, pp. 1-443. <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal> (*Report on Asylum-Seekers in Expedited Removal*).

[75] International Detention Coalition, *Impacts of Detention on Children* (2013), <http://idcoalition.org/wp-content/uploads/2012/03/IDC-Captured-Childhood-Report-Chap-5.pdf>; No Child in Detention, *Daddy Have We Done Something Wrong?: The Royal New Zealand and Australian College of Psychiatrists, Children in Immigration Detention* (2011), [https://www.ranzcp.org/Files/Resources/College\\_Statements/Position\\_Statements/ps52-pdf.aspx](https://www.ranzcp.org/Files/Resources/College_Statements/Position_Statements/ps52-pdf.aspx).

[76] Physicians for Human Rights, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (June 2003) <http://physiciansforhumanrights.org/library/reports/from-persecution-to-prison.html#sthash.fc3UcqvP.dpuf>.

[77] See *Locking up Family Values*.

[78] *Locking Up Family Values*; see also Australian Human Rights Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* (May 13, 2004) <https://www.humanrights.gov.au/publications/last-resort-national-inquiry-children-immigration-detention> <https://www.humanrights.gov.au/publications/last-resort-national-inquiry-children-immigration-detention>; see also articles in Footnote 20.

[79] Information gathered from a medical presentation as well as interviews and conversations between representatives from LIRS and WRC with ICE and Artesia facility staff in Artesia, New Mexico, July 22, 2014. Notes from this visit are on file.

[80] Arnold & Porter LLP, *Reforming the Immigration System – Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, American Bar Association Commission on Immigration (2010). [http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf) (“*Reforming the Immigration System*”).

[81] With regards to asylum-seekers, one study found that asylum-seekers without a lawyer had a 2% chance of being granted asylum as compared to 25% for those with an attorney. A *Stanford Law Review* study concluded that “whether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case.” Ramji-Nogales, Jaya, Schoenholtz, Andrew L., and Schrag, Phillip G. “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Review* 60, November 2007. <https://www.acslaw.org/files/RefugeeRoulette.pdf>. Also see New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* (December 2011) [http://www.cardozoalawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozoalawreview.com/content/denovo/NYIRS_Report.pdf) at 3, finding that immigrants with counsel in New York were 500% more likely to have a successful outcome in their case than immigrants without counsel.

[82] For more information on how representation increases a child’s likelihood of being granted relief, see Meckler, Laura. “Children Fare Better in U.S. Immigrant Courts if they have an Attorney.” *The Wall Street Journal*, July 16, 2014. <http://online.wsj.com/articles/children-fare-better-in-u-s-immigrant-courts-if-they-have-an-attorney-1405531581>.

[83] This information was gathered from interviews taken during the July 22, 2014 Artesia tour.

[84] *Ibid*.

[85] This information was gathered from interviews taken during the July 22, 2014 Artesia tour, and again confirmed by another pro bono attorney working in Artesia in September 2014.

[86] This information was gathered from interviews taken during the July 22, 2014 Artesia tour.

[87] For more information on LOP, please refer to the Legal Orientation Program website at <http://www.vera.org/project/legal-orientation-program>; also refer to [www.vera.org/lopevaluation](http://www.vera.org/lopevaluation) for Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II.

[88] U.S. Department of Justice, *Cost Savings Analysis – The EOIR Legal Orientation Program*, April 4, 2012. [http://www.justice.gov/eoir/reports/LOP\\_Cost\\_Savings\\_Analysis\\_4-04-12.pdf](http://www.justice.gov/eoir/reports/LOP_Cost_Savings_Analysis_4-04-12.pdf); see also Vera Institute of Justice, *Legal Orientation Program Evaluation and Performance Outcome Measurement Report, Phase II*, <http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf>.

[89] Sharpless, Rebecca, Ahmad, Muneer I., Benson, Lenny, Curran, Ericka, Mayeaux, Kenneth A., Rabin, Nina, Srikanthiah, Jayashri, Wadhia, Shoba Sivaprasad. Letter to ICE concerning Lexis Research Software for Immigration Detainees, May 28, 2013. Letter on file with authors.

[90] *Reforming the Immigration System*; see also *Report on Asylum-Seekers in Expedited Removal*; see also *Locking up Family Values*.

[91] This information was reported by an AILA attorney after returning from a week of providing pro bono representation at Artesia and shared at a briefing on September 22, 2014. Report is on file with author.

[92] See “Declaration of Kimberly Hunter.” August 18, 2014. [http://www.americanimmigrationcouncil.org/sites/default/files/Declaration%20of%20Kim%20Hunter\\_FINAL.pdf](http://www.americanimmigrationcouncil.org/sites/default/files/Declaration%20of%20Kim%20Hunter_FINAL.pdf); see also “Expose & Close: Artesia Family Residential Center,” *Detention Watch Network*, September 2014. [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose\\_close\\_-\\_artesia\\_family\\_residential\\_center\\_nm\\_2014.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose_close_-_artesia_family_residential_center_nm_2014.pdf)

[93] Women’s Refugee Commission. “Domestic Violence and Gender-Based Asylum Claims after the Board of Immigration Appeals (BIA) Decision in *Matter of A-R-C-G-*,” September 2014. <http://www.womensrefugeecommission.org/resources/document/1080-domestic-violence-and-gender-based-asylum-claims-after-the-board-of-immigration-appeals-decision-in-matter-of-a-r-c-g>.

[94] The White House, 1 is 2 Many, *About Vice President Biden’s Efforts to End Violence Against Women* (January 22, 2014) <http://www.whitehouse.gov/lis-2many/about>; U.S. Department of Justice, *The Importance of Trauma Informed Care and Self-Care 1 for Victim Service Providers* (2014) <http://www.justice.gov/justice-blogs?component=366&topic=All>; “Trauma-Informed Legal Advocacy (TILA) Project.” National Center on Domestic Violence, Trauma, and Mental Health. <http://www.nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/>.

[95] Section 212(d)(5)(A) of the Immigration and Nationality Act. A person who has been “paroled” into the United States is allowed to physically enter the country; however, they have not been “admitted” to the U.S., nor have they made an “admission” under the immigration law. A grant of parole provides for a one-

time entry for a specific purpose. There are no travel rights pursuant to a grant of humanitarian parole, which means that an inadmissible non-citizen can make only one entry pursuant to their grant of parole.

[96] *Id*.

[97] Stanton, John. “Government Declares Undocumented Immigrant Child, Mother a “National Security Threat.” *Buzzfeed*. August 5, 2014. <http://www.buzzfeed.com/johnstanton/government-declares-undocumented-immigrant-child-mother-a-na#3zz4zt7>; see also AILA *Denying Bond*.

[98] For those who request a custody redetermination, the Immigration Judge will consider the bond request in a separate “bond hearing” where he or she will consider evidence that demonstrates the individual is not a danger to the community and not a flight risk. If the Immigration Judge believes the asylum seeker is not a danger to the community, the Immigration Judge will then set an amount for bond which the Immigration Judge believes will ensure the asylum-seeker will appear at future immigration hearings.

[99] *Matter of D-J-*, 23 I. & N. Dec. 572 (AG 2003), <http://www.justice.gov/eoir/vl/intdec/vol23/3488.pdf>.

[100] UNHCR guidelines provide that arbitrary detention may not be used to deter asylum-seekers. United Nations High Commission for Refugees (UNHCR), *Detention Guidelines*, <http://www.unhcr.org/505b10ee9.html>, at 7, 19.

[101] The International Detention Coalition (IDC) has reports finding that detention does not deter. International Detention Coalition, *Ten Things IDC Research Found About Immigration Detention* (2014) <http://idcoalition.org/cap/handbook/capfindings/>.

[102] American Immigration Lawyers Association, *Stop the Obama Administration from Denying Bond to All Mothers and Children from Central America*, AILA InfoNet Doc. No. 14092254. (Posted 9/22/14), <http://www.aila.org/content/default.aspx?docid=50168> (“*AILA Denying Bond*”).

[103] Sterlock, Eileen, AILA member, Oregon Chapter. “Leaving Artesia.” *AILA Leadership Blog*. August 13, 2014. <http://ailaleadershipblog.org/2014/08/13/leaving-artesia/>.

[104] American Immigration Lawyers Association, “U.S. Shamefully Detaining Families Seeking Asylum with ‘Bond’ Rule,” press release, July 31, 2014, <http://www.aila.org/content/default.aspx?docid=49638>.

[105] For examples of other community programs, see LIRS, *Alternatives to Detention (ATD): History and Recommendations*, <http://lirs.org/wp-content/uploads/2014/01/LIRS-Backgrounder-on-Alternatives-to-Detention-12-6-13.pdf>.

[106] LIRS, *Community Support: A Model National Project Proving the Effectiveness of Alternatives to Immigration Detention*, <http://lirs.org/wp-content/uploads/2014/05/ISSUE-BRIEF-LIRS-Alternatives-to-Detention-Project-Overview.pdf>.

[107] Currently ISAP II is operated by Behavioral Interventions Incorporated (BI), a for-profit firm owned by the GEO Group, a major player in the private prison industry.

[108] *Intensive Supervision Appearance Program II: Contract Year 2013 Annual Report* (BI Incorp. 2013).

[109] National Immigration Forum, *Detention Costs Still Don’t Add up to Good Policy* (September 14, 2014) <http://immigrationforum.org/blog/display/detention-costs-still-dont-add-up-to-good-policy>.

[110] Department of Homeland Security, *FY2015 Budget Overview*, <http://www.dhs.gov/sites/default/files/publications/DHS-Congressional-Budget-Justification-FY2015.pdf>.

[111] See *New U.S. Migrant Detention Center to be Run by Firm Criticized by Advocates*.

[112] United States Senate Committee on Appropriations, “Chairwoman Mikulski Releases Summary of Emergency Supplemental Funding Bill,” July 23, 2014, <http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill>.

[113] See *HRF Blueprint*.



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