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August 20, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Denial of Access to Counsel and Fair Hearings for Immigrant Mothers and Children Detained in Artesia, New Mexico

Dear President Obama:

The New York City Bar Association (the “City Bar”) and its Committee on Immigration and Nationality Law write to express our serious concern about reported denials of due process and access to counsel for immigrant mothers and children detained at the Federal Law Enforcement Training Center in Artesia, New Mexico. We urge the Administration to take immediate action to ensure that these families, many of whom have fled persecution and extreme violence in their home countries, are afforded fundamentally fair hearings that comply with U.S. and international law, rather than being detained and processed rapidly for deportation without the fair procedures necessary to determine whether they are entitled to protection in the United States.

The City Bar has a longstanding commitment to promoting the fair and effective administration of justice, including in the immigration system. Our Committee has deep knowledge of issues affecting women, children, and asylum seekers in removal proceedings. Our Chair, Professor Lenni Benson, is the Director of New York Law School’s Safe Passage Project, which works with volunteer attorneys to provide pro bono representation to unaccompanied immigrant children and has worked in immigration law for more than thirty years. Collectively, our members have many years of experience in providing pro bono representation to immigrant children and in representing asylum seekers and survivors of domestic violence. Our members include private counsel who practice in this field, and scholars and attorneys who have served in prominent non-governmental organizations dedicated to protecting human and civil rights. In addition, our City Bar Justice Center has long provided direct assistance to those seeking asylum, and also addresses immigration issues affecting immigrant women and children, including victims of human trafficking and domestic violence.

In light of the experiences of families currently detained at Artesia and the well-documented history of inhumane treatment of families detained at the T. Don Hutto Residential Center¹, the City Bar strongly believes that DHS should reconsider its decision to categorically detain arriving immigrant mothers and children. The City Bar is particularly concerned by repeated and credible reports of the following problems described by non-profit providers, *pro bono* volunteers from the American Immigration Lawyers Association (AILA), other attorneys who have been volunteering at the site, and members of the media:

Phone access. At the most basic level, lawyers have reported that the women and children detained at Artesia have extremely limited access to the cell phones used to call outside the facility and contact their lawyers, family members, or other individuals who can help them document their cases. Women have reported that they are allowed only very short calls with minimal privacy and are denied phone access if their children misbehave. Without access to telephones, these women and children are denied their right to be represented by counsel at no cost to the government,² and are unable to gather critical evidence to support their claims of justifiable fear of returning to their home countries.

Presence of counsel. On a large number of occasions, lawyers have reported being present at Artesia and trying diligently to see their clients while DHS or EOIR held interviews or court hearings without those lawyers. This is a serious violation of clients' statutory and regulatory right to be represented by counsel at no expense to the government.³ This deprivation of counsel is particularly concerning given reports that DHS officers are (1) conducting unusually short credible fear interviews and asking traumatized, unrepresented immigrants with no legal training inappropriately technical questions such as "Are you a member of a particular social group, and if so which one?" and (2) conducting credible fear interviews and hearings in the presence of young children, a practice that causes mothers to be afraid or ashamed to fully disclose past violence, sexual assault, or death threats they or their children experienced. At a minimum, the court or asylum office should facilitate the availability of appropriate volunteers who would assist with childcare at the request of the mothers. Lawyers also reported that DHS no longer allows immigrants to wait for hearings with their lawyers, thereby cutting off important time for counsel to consult on their cases.

Attorney access to the facility is also critical to permit lawyers to identify those women and children who may be entitled to protection (for example, as asylees, as survivors of trafficking or domestic violence, or due to a risk of torture, abuse, neglect, or abandonment). EOIR and ICE must allow *pro bono* attorneys a means to identify and assist unrepresented

¹ The American Civil Liberties Union, the ACLU of Texas, and the University of Texas School of Law Immigration Clinic brought ten lawsuits challenging inhumane conditions of family detention at the T. Don Hutto Residential Center ("Hutto"). In 2007, the parties reached a detailed settlement requiring humane detention conditions. American Civil Liberties Union, ACLU Challenges Prison-Like Conditions at Hutto Detention Center, Mar. 6, 2007, available at www.aclu.org/hutto. In 2009, as a result of this lawsuit, DHS stopped detaining families with children at Hutto and announced an end to its plans to create new family detention facilities. Nina Bernstein, U.S. to Reform Policy on Detention for Immigrants, N.Y. Times, Aug. 5, 2009, available at www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all&r=0.

² 8 U.S.C. § 1229a(4)(a); 8 C.F.R. § 1240.10(a)(1).

³ *Id.*

women and children in advance of their credible fear interviews and hearings. As they have done in other settings, EOIR and DHS should provide *pro bono* counsel with advance copies of the court docket and credible fear interview schedules, with names and Alien numbers.

At the White House briefing on August 6, 2014, the government encouraged the private bar, nonprofits and corporations to step forward to aid in the representation of these individuals. In order for volunteer lawyers to provide this assistance, the government must afford them full access to families detained at Artesia, and full access to immigration proceedings at that location.

Conduct of interviews and hearings, and ability of counsel to participate. Lawyers report that the immigration court and asylum officers deciding cases at Artesia often fail to provide prior notice of hearings or interviews. They also report that the few individuals who have legal counsel are often brought to credible fear interviews or hearings without notice to their counsel, violating their right to be represented.⁴ Given the long delays faced by attorneys trying to enter the facility, counsel must be notified well in advance of any scheduled interviews or court dates.

Moreover, even when attorneys are allowed into a credible fear hearing or court hearing, sometimes they are not allowed to represent their clients fully. For example, at times counsel have been sometimes barred from speaking on the record about certain topics. Such conduct would constitute another troubling violation of clients' right to be represented by counsel.

Time to research and prepare cases with life-and-death stakes. Lawyers report judges are allowing only about four to six weeks for complete preparation of asylum cases, even where more time is needed to obtain critical evidence. Asylum cases regularly require thorough documentation of country conditions, legal briefing on the theory of the case, and consultation with country and/or medical experts. The Supreme Court has explicitly noted how difficult it is for detained immigrants to collect evidence for their cases,⁵ and the Board of Immigration Appeals has held that compliance with EOIR "case completion goals" is not a proper ground for denying continuances.⁶ Since asylum seekers have the burden to prove a well-founded fear of persecution, it is essential that courts allow immigrants and their lawyers time to meet that burden through adequate preparation. Adequate preparation time is especially important given reports that immigrants have struggled to access the "law library," which contains limited computer resources but no books; to complete English asylum forms when they are native Spanish speakers; and to access their own property, which may contain essential documents for their cases.

Reliance on videoconference hearings in sensitive asylum cases. All court hearings at Artesia are being conducted by videoconference with judges from out of state. Video hearings make it extremely difficult for judges to assess credibility and understand the claims of the very stressed and often traumatized women seeking bond and asylum before the court. Video hearings also create an atmosphere of fear for the women and children who must testify about

⁴ *Id.*

⁵ See *Moncrieffe v. Holder*, 133 S.Ct. 1678, 1690 (2013).

⁶ *Matter of Hashmi*, 24 I&N Dec. 785, 793-94 (BIA 2009).

traumatic experiences. If the government insists on holding these mothers and children in a remote detention center, fully staffed by ICE agents, judges should be detailed there to conduct these important hearings in person.

ICE categorically opposing release on bond regardless of whether a person poses any danger or flight risk. Finally, we are deeply concerned that ICE counsel and immigration judges are categorically denying and opposing bond based upon the contention that the mothers and children at Artesia pose a national security threat. That assertion derives from former Attorney General Ashcroft's post-9/11 decision in *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). Denying bond to women and children seeking asylum on this categorical basis, rather than looking at whether each individual poses a danger or a flight risk, violates due process. The City Bar urges ICE to discontinue application of this unfair position and urges EOIR to ensure judges have true independence to apply bond criteria fairly.

CONCLUSION

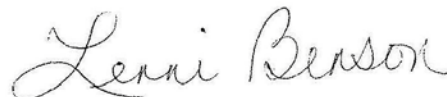
We believe that the United States can and must treat the families at Artesia humanely and fairly, in accordance with due process, the ICE 2011 Performance-Based National Detention Standards, and domestic and international law on the treatment of children and asylum seekers. The above reports raise serious concerns that we are falling short of our legal and moral obligations to these families.

Indeed, all of these due process concerns are separate and apart from reports that the mothers and children at Artesia are cold, under-nourished, and often sick, without meaningful access to mental health treatment, and that some mothers with valid asylum claims are so worried about the immediate health of their children that they are giving up and accepting deportation orders just to take their children out of detention. We respectfully and strongly urge the Administration to pause deportations of families, and to conduct individualized custody determinations for all women and children detained at Artesia or other family detention facilities. For all families, the Administration must ensure true access to justice, including access to counsel and fundamentally fair opportunities to seek release and safety in the United States.

Respectfully submitted,



Debra L. Raskin
President



Professor Lenni B. Benson
Chair, Immigration & Nationality Law Committee

Cc: Attorney General Eric H. Holder, U.S. Department of Justice
Secretary Jeh Johnson, U.S. Department of Homeland Security
Director Juan P. Osuna, Executive Office for Immigration Review
Commissioner R. Gil Kerlikowske, U.S. Customs and Border Protection
Principal Deputy Assistant Secretary Thomas S. Winkowski, U.S. Immigration and Customs Enforcement
Director Leon Rodriguez, U.S. Citizenship and Immigration Services
Associate Director Joseph Langlois, Refugee, Asylum and International Operations, U.S. Citizenship and Immigration Services
Chief John Lafferty, Asylum Division, U.S. Citizenship and Immigration Services
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