



NEW YORK
CITY BAR

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November 21, 2014

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: New York City Bar Association's Opposition to Expansion of Detention for Immigrant Mothers and Children

Dear President Obama:

The New York City Bar Association (the "City Bar") and its Committee on Immigration and Nationality Law are concerned by reports that the federal government has approved plans to open a new 2,400-bed detention center for immigrant mothers and children in Dilley, Texas. Along with facilities opened this year in Artesia, New Mexico and Karnes, Texas, the Dilley center represents a sudden and troubling return to the use of detention for mothers, children, and infants, many of whom have fled persecution and violence in their home countries. The City Bar joins the many organizations nationwide that have raised concerns about the conditions of confinement and inadequate access to counsel and other due process denials for families in these facilities.

The City Bar has a longstanding commitment to promoting the fair and effective administration of justice, including in the immigration system, and has a particular interest in promoting due process for noncitizens seeking the protection of the U.S. legal system and fair access to counsel to protect those rights. This summer, the City Bar sent a letter to you and top Administration officials expressing serious concern about denials of due process and access to counsel for mothers and children at the Artesia, New Mexico center.¹ Two recent developments at Artesia reinforce our concern that the government is prioritizing mass detention and deportation over fundamentally fair bond and asylum hearings for women who may have fled persecution, serious violence, rape, and threats to their lives and the lives of their children.

¹ Available at http://www2.nycbar.org/pdf/report/uploads/1_20072779-LetteronDenialofCounselandFairHearingsforDetainedImmigrantMothersChildren.pdf.

1. Evidence of Strong Asylum Claims at Artesia

First, the first nine asylum cases in Artesia to reach full court hearings on the merits all ended in immigration judges granting asylum to the women and children involved.² The judges found that each of these women had experienced repeated beatings, rapes, imminent death threats, and other severe domestic violence or gang violence in their home countries, with no government protection. In some of these cases, their abusers had also carried out horrific violence against their children.

These early results make clear that the women and children in family detention centers have serious humanitarian claims that need development by counsel and careful consideration by asylum officers and judges, not perfunctory processes and rapid deportation. These women were able to tell their stories and win protection thanks to *pro bono* counsel recruited from across the country by the American Immigration Lawyers Association. The strong initial results at Artesia were possible only due to intensive and unusually coordinated efforts of *pro bono* counsel across the country – an effort that would require many more resources at a facility as large as that in Dilley. The detained families worked with *pro bono* counsel on the ground in New Mexico as well as remote *pro bono* counsel who prepared motions and organized supporting evidence for applications for bond and asylum.

As the experience at Artesia illustrates, the policy of detaining families with children in remote locations creates many barriers to access to the counsel that these families need to explain and support their asylum claims.

Individuals fleeing persecution must pass through several procedural steps to make an application. First, they must pass a credible fear interview before an asylum officer. Once an asylum-seeker passes a credible fear screening, he or she must complete a written application for asylum, collect supporting evidence, and prepare testimony for an immigration court hearing. Immigration judges often hold hearings by videoconference, complicating attempts to communicate with the family seeking asylum. Requests for release on bond also typically require custody redetermination hearings in immigration court. Critically, asylum seekers who are traumatized by their experiences, especially those who have experienced sexual assault, are often unable to articulate key elements of their claims without the support of counsel. It is all the more difficult for such victims to focus on the immense challenge of reliving these experiences in an asylum hearing when they are also preoccupied with the needs of their children in detention. Detainees need counsel to represent them at each step of these proceedings.

The daunting procedural barriers faced by families at Artesia will likely be magnified for families at the Dilley facility due to its size. In contrast to the families that have been represented *pro bono* at Artesia, most women and children at remote detention facilities have no access to counsel, let alone *pro bono* counsel of such high quality. They have very limited communication with family members and face expedited procedures that prevent them from obtaining critical evidence to support their cases. These factors weigh strongly against the opening of the Dilley facility or other expansion of family detention.

² American Immigration Lawyers Association, Case Examples of Refugees in Family Detention (2014), www.aila.org/content/default.aspx?bc=25667|50484.

2. Categorical Denials of Bond

Second, after immigration judges began to set bonds for a few of the women at Artesia that allowed them to be released to family and continue their asylum cases outside detention, ICE has begun to appeal those bond decisions. ICE is arguing that even the extremely high, atypical bond levels in Artesia were set in error and that mothers and young children must be held behind locked doors in order to deter future migrants and protect “national security.” This argument raises serious due process concerns because it does not consider flight risk or danger to the community on an individual basis.³ This lack of individualized decision-making is particularly alarming because it results in the blanket detention of women and young children who are legitimate asylum seekers, protected under international law.

The new Dilley center will more than double the capacity of the federal government to detain vulnerable mothers and children, raising particular concerns that the problems in Artesia will become “the new normal” for immigrants in family detention centers. All three centers are located away from large cities, in places where counsel is hard to access and immigration judges are patched in by videoconference to hear complex, often traumatic testimony on asylum claims where assessments of credibility often determine entire cases. Studies have documented that asylum seekers and other immigrants without counsel fare far worse in their cases than those who are represented, with research conducted in New York’s courts showing that detained, unrepresented immigrants lost their cases and were ordered deported 97% of the time.⁴ As we previously noted, the Supreme Court has observed that detained immigrants have little ability to collect evidence or witnesses that may decide their cases.⁵ Visiting these challenges on thousands of detained mothers, who are caring for small children while trying to seek release and present asylum claims, is simply incompatible with basic notions of fairness and our obligations to asylum seekers under U.S. and international law.

The expansion of family detention also comes with huge financial cost. Family detention costs about \$266 per person per day, compared with just 70 cents to \$17 per day for alternatives to detention. With the new 2,400-bed detention center at Dilley, the annual cost of family detention is expected to reach \$356 million, more than 42 times as high as family detention spending on June 1, 2014.⁶

In sum, the Administration’s plan to jail unprecedented numbers of families and young children while expediting their removal proceedings will lead to large-scale due process violations and the erroneous removals of legitimate refugees and others entitled to international protection. This plan ignores the national outcry over due process violations at Artesia and the

³ See *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (describing bond factors).

⁴ New York Immigration Representation Study I, available at <http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf>

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

⁶ National Immigrant Justice Center, *Costly Family Detention Denies Justice to Mothers and Children* (Oct. 2014), http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Family%20Detention%20Factsheet%202014_10_23_0.pdf.

myriad abuses that led the government to stop detaining families at the T. Don Hutto Detention Center in 2009. The plan also imposes unnecessary costs on taxpayers.

We ask the Administration to slow its rush to detain families and to undertake a rigorous and thoughtful review of its family detention policies. The City Bar urges the Administration instead to ensure appearance at removal proceedings through supervision programs and other alternatives to detention. It further urges the Administration to provide appointed counsel and fair procedures to ensure that all removal proceedings respect due process of law.

Respectfully submitted,



Debra L. Raskin

Cc.: Attorney General Eric H. Holder, U.S. Department of Justice
Secretary Jeh Johnson, U.S. Department of Homeland Security
Principal Deputy Assistant Secretary Thomas S. Winkowski, U.S. Immigration and Customs Enforcement
Director Leon Rodriguez, U.S. Citizenship and Immigration Services
Director Juan P. Osuna, Executive Office for Immigration Review
Commissioner R. Gil Kerlikowske, U.S. Customs and Border Protection
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
Public Advocate Andrew Lorenzen Strait, U.S. Immigration and Customs Enforcement
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