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RAICES
Refugee and Immigrant Center for
Education and Legal Services

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León Rodríguez
Director, U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529

Sarah Saldaña
Director, Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

Dear Director Rodríguez and Director Saldaña:

The undersigned organizations provide legal assistance to parents and children detained in Dilley and Karnes City, Texas and Berks County, Pennsylvania.¹ We write to raise urgent concerns regarding egregious due process violations taking place inside family detention centers.

On August 21, 2015, Judge Dolly Gee ordered the Department of Homeland Security (DHS) to comply with the *Flores* Settlement Agreement by October 23, 2015.² Since that deadline, practitioners and advocates on the ground in all three family detention facilities have witnessed the implementation of a rapid deportation strategy that has short-circuited due process, rivaling the unlawful processes in place during the summer of 2014 at the Artesia, New Mexico family detention center.

The vast majority of mothers and children detained at the Dilley, Karnes, and Berks facilities have fled the regional refugee crisis caused by extreme violence in the Northern Triangle of Central America, which continues to escalate. The United States has both a legal and a moral obligation to give these families a meaningful opportunity to establish their claims for protection before taking steps to deport them. The danger of wrongfully returning someone — especially a child — to the very danger that prompted his or her family's flight, is very real. *The Guardian*

¹ Catholic Legal Immigration Network (CLINIC), the American Immigration Council, Refugee and Immigrant Center for Education and Legal Services (RAICES), and the American Immigration Lawyers Association (AILA) are partners in the CARA Family Detention Pro Bono Project, which provides legal services at the Dilley and Karnes detention facilities. Human Rights First (HRF) coordinates pro bono representation for some families detained at the Berks facility.

² *Flores, et al. v. Lynch, et al.*, No. 2:85-cv-04544, 2015 U.S. Dist. LEXIS 112911 (C.D.Ca. Aug. 21, 2015).

recently reported more than eighty confirmed cases since January 2014 in which Central Americans deported from the U.S. were killed upon return.³

Yet the U.S. government has deported many vulnerable, traumatized mothers and children with viable claims for protection based on a flawed credible and reasonable fear process. These problems have been compounded since October 23, because DHS has introduced practices that offend fundamental principles of due process and run rough-shod over key protections built into the expedited removal process. Specifically:

- USCIS' negative fear determinations are often flawed, with numerous substantive problems evident in the transcripts of initial fear interviews. Further, USCIS is adjudicating requests for reconsideration of negative fear determinations based on a heightened standard, which has led to the removal of families with viable claims for protection.
- USCIS and ICE have deprived parents and children of their statutory right to immigration judge review of a second negative fear determination.
- USCIS is effectively depriving certain children of the opportunity to assert their claims for asylum by refusing to fully consider children's claims independently of their parents' claims.
- ICE has deported represented parents and children while their cases are still in progress. In particular, ICE has disregarded pending and scheduled requests for reconsideration by a USCIS asylum officer, pending civil rights complaints, and pending petitions for review to the federal courts.
- DHS has transferred represented mothers and children away from counsel sometimes without any notice and more recently, without meaningful notice.

These changes, which are discussed in more detail below, have led to the unlawful deportation of many families who have legitimate claims for asylum or other protection under U.S. law. These problems also illustrate why expedited removal is simply the wrong approach for a traumatized population of families, many of whom have survived horrendous violence, rape or domestic violence.

I. Flawed fear interviews and use of a heightened standard to adjudicate requests for reconsideration of negative fear determinations

There are many reasons why an initial fear interview, which is often conducted within days of apprehension, can go awry. Asylum-seeking mothers, who are frequently sick from their journeys and from their time in Customs and Border Protection (CBP) short-term holding facilities prior to arriving at Dilley, Karnes, or Berks, are often far too traumatized to reveal personal details of rape or other abuse, especially in front of their children or if the asylum officer is male. Those who speak indigenous languages may not be able to communicate at all.

³ Sibylla Brodzinsky and Ed Pilkington, *U.S. Government deporting Central American migrants to their death*, THE GUARDIAN, Oct. 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america> (last visited Dec. 22, 2015).

These hurdles are compounded in the case of a child. It often takes experienced asylum attorneys many hours or even days to build a relationship of trust with a client before she is ready to reveal the circumstances that prompted her to flee to the United States.⁴

Immigration judge review, while very important in the asylum pre-screening process, does not replace the need for reconsideration. Immigration judge review does not always involve testimony and seldom involves attorney participation. At Dilley, CARA Project attorneys receive the next day's immigration court docket in the late afternoon, usually around 3:30 or 4:00 pm. With hearings beginning at 8:00 am the next morning, our clients have little to no time to prepare for their immigration judge reviews. At Karnes, RAICES pro bono attorneys do not even receive the docket from the San Antonio immigration court, which poses obvious challenges to representation and preparation for negative fear reviews before immigration judges. Consequently, families at Karnes often do not access legal representation until after an immigration judge has affirmed a negative fear determination. The reconsideration process provides a critical opportunity to correct factual errors, provide additional explanation, and ensure that individuals with meritorious cases can meaningfully access the protections our law affords. The CARA Project typically spends at least twenty hours per family for those who request reconsideration.

USCIS' new approach to reconsideration requests has undermined its regulatory charge to prevent the erroneous deportation of bona fide asylum seekers. USCIS has the regulatory authority to reconsider a negative credible fear determination. 8 C.F.R. § 1208.30(g)(2)(iv)(A) (“the Service ... may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge.”). Under longstanding agency policy, the government has previously exercised its discretion to reconsider an asylum seeker's negative credible fear determination when she “has made a reasonable claim that compelling new information” in her case exists and should be considered. *See* Michael A Benson, Executive Assoc. Commissioner for Field Operations, Immigration & Naturalization Service, Memorandum, *Expedited Removal: Additional Policy Guidance* (Dec. 30, 1997).

However, on or around October 23, 2015, USCIS changed its approach and now will only reconsider a negative fear determination under egregious circumstances. Under 8 C.F.R. § 208.30(e), USCIS should find a credible fear where the facts and law give rise to a “significant possibility” that an individual will prove a claim for asylum. Given the life and death consequences of an erroneous fear determination, any type of error by USCIS — whether egregious or not — indicating that an applicant may in fact meet this standard, should prompt reconsideration.

Data collected by the CARA Project at Dilley demonstrate the consequences of USCIS' new standard, which coincided with a substantial increase in denials of requests for reconsideration. Notably, the denial rate jumped from 23% to 66% in the weeks following October 23. During

⁴ *See, e.g.,* Jane Herlihy, et al., *Asylum Claims and Memory of Trauma: Sharing Our Knowledge*, THE BRITISH JOURNAL OF PSYCHIATRY, June 2007, 191 (1) 3-4, <http://bjp.rcpsych.org/content/191/1/3> (last visited Dec. 22, 2015); Dr. Julian Gojer et al., *Post-Traumatic Stress Disorder and the Refugee Determination Process in Canada: Starting a Discourse*, UNHCR POLICY DEVELOPMENT AND EVALUATION SERVICE, March 2014, <http://www.unhcr.org/53356b349.pdf> (last visited Dec. 22, 2015).

the same period, the length of time USCIS takes to adjudicate a request for reconsideration was sharply reduced. Whereas USCIS previously took a week or more, the Houston Asylum Office now issues a decision on a request for reconsideration within twenty-four to forty-eight hours, and sometimes on the same day that the request was submitted.

The data strongly suggest that USCIS has shifted its approach to the reconsideration process to match its twenty-day representation to Judge Gee about processing times — notwithstanding the grave risk to bona fide asylum seekers who will be unlawfully deported as a result. A substantive comparison of recent denials with pre-October 23 approvals does not reveal any distinguishable characteristics. Specifically, CARA Project staff have observed that requests for reconsideration by families articulating the same type of fear, very similar past persecution, and a comparable fear of future persecution, which were frequently granted in the past, are now denied.

The impact of USCIS's new approach on bona fide asylum seekers is plain. Neither its heightened standard for reconsideration nor the pace of its adjudications aligns with a desire for accuracy. For example:

- During “Sofia’s”⁵ credible fear interview at the Dilley facility on November 25, 2015, she had trouble understanding the interpreter, was extremely nervous, and felt sick. She and her twelve-year-old daughter “Carolina” felt paralyzed by fear during their interview. These difficulties prevented Sofia from explaining the threats her daughter faces from a known sexual predator and gang member in Honduras, as well as her fears that any attempt to protect her daughter could provoke lethal retaliation from the gang. On December 3, without allowing any attorney participation, the immigration judge affirmed Sofia’s negative credible fear finding. On December 6, CARA Project attorneys submitted a request for reconsideration detailing the significant threats that Sofia and her daughter would face if forced to return to Honduras. These new facts demonstrate that Sofia and Carolina have faced past persecution and have a well-founded fear of future persecution on account of Sofia’s political opinion against the gang preying on her child, as well as her membership in the particular social group of young women without male protection in Honduras. The trauma that Sofia and Carolina have suffered, coupled with Sofia’s severe anxiety during her initial fear interview, prevented her from fully presenting the facts of her case and warrant reconsideration. Nonetheless, the Asylum Office denied her request for reconsideration on December 8. On December 15, the CARA Project submitted a request for reconsideration for Sofia’s daughter, which the Asylum Office denied the very next day. The family is at risk of imminent deportation while Sofia’s attorneys try to persuade USCIS to reconsider her case.
- An asylum officer interviewed “Martiza” at the Karnes facility on November 24, 2015. Although she had suffered severe domestic violence at the hands of her husband, who started abusing her while she was pregnant with their second son and repeatedly threatened to kill her, Martiza only discussed the threats she received from MS-13 gang members during her credible fear interview. For Martiza, who comes from El Salvador, a country where domestic violence is common, the threats from the MS-13 gang members,

⁵ For confidentiality reasons, pseudonyms are used in all case summaries.

who had threatened to kill her in an effort to extort money, seemed more important.⁶ Moreover, the asylum officer never inquired about her experience of domestic violence. Martiza received a negative fear determination, which was affirmed by the immigration judge. On December 7, her counsel filed a request for reconsideration outlining new information that had not been covered in her initial interview. On December 9, the Asylum Office denied the request. On December 10, Martiza filed a new request for reconsideration, including additional evidence. On December 14, the Asylum Office denied the new request. Martiza, who was deported on December 15, never had an opportunity to explain the domestic violence she endured to an asylum officer.

- “Adriana” fled El Salvador with her daughter due to threats from gangs and sexual harassment of her daughter at school. On October 17, 2015, while detained at the Karnes facility, Adriana had her initial credible fear interview. On October 23, she received a negative determination, which an immigration judge affirmed on November 2. That same day, her attorneys submitted a request for reconsideration, citing interpretation problems, the fact that the asylum officer had repeatedly cut Adriana off, and additional information regarding her daughter’s case that had not been elicited in the initial interview. The Asylum Office denied this request. Adriana’s attorneys placed multiple phone calls with asylum officers and eventually secured a second interview for her daughter on the basis that the child’s first interview did not meet the USCIS child asylum guidelines. In the course of this process, Adriana and her daughter were placed in medical isolation after refusing to sign their removal orders because they were still trying to fight their case. The family was finally released more than a month after their initial detention.
- When “Kezia” was ten years old, her uncle raped her. Now in her early twenties, she has a three-year-old daughter and remains unmarried. Before leaving her home country, Kezia and her daughter lived in a small village without male protection. Shortly before they fled to the United States, Kezia received an anonymous letter making it clear that local gang members had targeted Kezia and her daughter for sexual assault. Convinced that the police could not protect them, Kezia and her daughter fled the country. Following their arrival in the United States, they were detained at Dilley.

During Kezia’s initial fear interview, she did not have an opportunity to explain all the problems that had led to flee her home country and why she was afraid to return. As Kezia explained to CARA staff, “The officer only allowed me to make very short answers, or to answer ‘yes’ or ‘no’ to her questions.” She received a negative fear determination, which an immigration judge affirmed two days later without allowing any attorney participation in the process. Kezia subsequently requested reconsideration, but the Asylum Office denied her request.

⁶ While persecution based on threats of extortion is an evolving area of asylum law, a recent decision from the Fourth Circuit Court of Appeals held that nexus to a protected ground exists between gang extortion threats and the proposed particular social groups in that case. *See Ortega Oliva v. Lynch*, Slip Op. No. 14-1780, ___ F.3d ___, 2015 WL 7568245 (4th Cir. Nov. 25, 2015).

II. Refusing to afford immigration judge review of negative fear determinations.

DHS has interfered with our clients' statutory right to administrative review by an immigration judge. The Immigration and Nationality Act (INA) and the applicable regulations require that all individuals who receive negative credible fear determinations have access to administrative review by an immigration judge. INA § 235(b)(1)(B)(iii)(III) ("The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution."); 8 C.F.R. 1208.30(g)(2)(i) (unless an applicant specifically declines immigration judge review, "[t]he asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge[.]"). The immigration judge's decision "is final and may not be appealed." 8 C.F.R. § 1208.30(g)(2)(i).

Likewise, an asylum officer may reconsider a negative determination. 8 C.F.R. § 1208.30(g)(2)(iv)(A). Upon reconsideration, the Asylum Office may grant a positive finding or may re-interview the noncitizen. The process for credible fear interviews, whether initial or subsequent, is laid out in INA § 235(b)(1)(B), which contains mandatory procedural protections that apply to all such interviews. Thus, a written record is required in the event of a negative determination, INA § 235(b)(1)(B)(iii)(II), and the applicant has a right to administrative review by an immigration judge, INA § 235(b)(1)(B)(iii)(III).

Longstanding agency policy makes clear that when a noncitizen requests and receives a re-interview, the procedural protections set forth by statute and regulation, including the right to seek administrative review of any negative credible fear determination, attach. *See* Michael A. Benson, Executive Assoc. Commissioner for Field Operations, Immigration & Naturalization Service, Memorandum, *Expedited Removal: Additional Policy Guidance* (Dec. 30, 1997) ("Re-interviews will occur when the Office of International Affairs determines that the alien has made a reasonable claim that compelling new information concerning the case exists and should be considered. Districts should cooperate by continuing to detain the alien until the second adjudication, and potentially also a second review by the immigration judge, is completed.").

Notwithstanding these procedural protections, sometime after November 5, 2015, USCIS and ICE began refusing to file necessary paperwork with the immigration courts to allow parents and children to avail themselves of their statutory right to immigration judge review of a negative credible fear determination following a re-interview by USCIS.⁷ In several cases where parents and children independently filed motions with the immigration courts to obtain such review, immigration judges denied these motions.

⁷ Recently, USCIS appears to have adopted another new practice. After an immigration judge has reviewed certain cases and affirmed negative determinations, instead of granting a new interview, USCIS has purported to conduct follow-up questioning to the initial § 235(b)(1)(B) interview. But that practice seems statutorily problematic. The statute authorizes asylum officers to undertake particular duties, and the regulations further delineate and constrain those duties. INA § 235(b)(1)(B) provides the only authority for interviewing a noncitizen for purposes of making a fear determination, and that section requires a written negative finding at the conclusion of the interview – not in the middle. Moreover, every negative finding requires immigration judge review.

- “Juliza” and her three children were apprehended on October 7, 2015. Fearing that gang members would target her family if they were forced to return to El Salvador, Juliza expressed her intent to seek asylum in the United States. On October 14, while detained at the Dilley facility, Juliza was interviewed by an asylum officer, who rendered a negative decision. Juliza explained during that interview that she only understood “a little, not much” of what the officer was asking her. On October 20, without allowing any attorney participation in the review, an immigration judge affirmed the negative determination. On November 5, Juliza requested reconsideration by the Asylum Office. Her request was granted, but her second interview was interrupted because one of her children was very sick. At the conclusion of the interview, Juliza was told that if “the asylum officer determines that you do not have a credible fear of persecution or torture, you may ask an Immigration Judge to review the decision. If you are found not to have a credible fear of persecution or torture and you do not request review, you may be removed from the United States as soon as travel arrangements can be made.” The asylum officer subsequently issued a negative determination in writing.

Despite Juliza’s statutory and regulatory right to have an immigration judge review that decision, DHS refused to facilitate that process. On or about November 9, immigration officials refused to refer Juliza’s case to the immigration judge for review of the negative determination. On or about November 12, immigration officials from USCIS and ICE informed Juliza’s representatives that ICE had refused to refer her case to EOIR because she was not entitled to administrative review and would be scheduled for deportation.

On or about November 13, Juliza filed a motion with EOIR requesting review under INA § 235(b)(1)(B)(iii)(III). On November 16, DHS filed an opposition brief stating that Juliza is not entitled to administrative review and erroneously relied upon 8 C.F.R. § 235.3(b)(7), which applies solely to review of expedited removal orders rather than immigration judge review of adverse fear determinations. DHS also erroneously stated that Juliza is a Mexican national. On November 17, EOIR refused to undertake an administrative review and denied Juliza a hearing. Recognizing that USCIS had granted Juliza a new credible fear interview pursuant to 8 C.F.R. § 1208.30(g)(2)(iv)(A), EOIR declined to review that determination because she “does not have the opportunity for any further review by statute or regulation.”

On November 17, ICE initiated the removal of Juliza and her three children and advised that they would be deported without any administrative review. Immigration officials took Juliza and her children to the airport to put them on a flight to El Salvador. However, due to a health concern Juliza had for one of her children, she and her family were taken back to the Dilley facility at the last minute. Three days later, Juliza and her children were deported. Since they arrived in El Salvador, Juliza and her children have received threats from members of the same gang who had targeted them before they fled. Juliza’s husband, who lives in the United States, remains terrified that they will be harmed.

III. Failing to consider a child’s asylum claim independently from the parent’s claim.

INA § 235(b)(1) sets forth the scheme through which foreign nationals subject to expedited removal shall be referred to the Asylum Office for a fear determination if they indicate an intention to apply for asylum or a fear of persecution, which may be expressed any time prior to deportation. This rule does not exclude minors who have been placed in expedited removal from being referred for a fear determination.⁸

Recognizing children’s unique vulnerabilities, USCIS created a special set of guidelines for analyzing children’s asylum claims.⁹ These guidelines require asylum officers to view events from the child’s perspective, taking into account the unique physical and psychological capacity of a child who is developing.¹⁰ Thus, children may have claims distinct from their parents or stronger claims based on the same facts.¹¹

Notwithstanding the USCIS guidelines, asylum officers have often failed — in the name of expeditiously processing families — to carry out their duty to conduct comprehensive, individualized screenings of children. In recent weeks, attorneys have observed that many requests for independent, initial interviews or re-interviews for children have been denied. Further, many initial credible fear “interviews” of children have lasted only a few minutes and have involved only brief, perfunctory questioning in the middle of, or immediately after, the mother’s interview. Immigration judges often affirm the resultant negative findings without even speaking with the affected children. Given ICE’s refusal to refer negative fear determinations issued after reconsideration to immigration judges for review, these children will receive *less* process than other asylum seekers – although they are among the most vulnerable asylum seekers the government encounters. The children’s lack of review safeguards available to other asylum seekers prejudices them in establishing eligibility for asylum.

- Nine-year-old “Danny” was never given the chance to speak to an asylum officer or an immigration judge before being deported with his five-year-old brother, two-year-old sister, and mother (see Juliza’s story in section II, above). Danny was terrorized by a Mara 18 gang member who accosted him outside the grounds of his school. The gang member threatened to take Danny away if he did not deliver a certain amount of money. On October 16, 2015, without speaking to Danny, the Asylum Office issued him a

⁸ The regulations specifically note that a noncitizen may be – but does have to be – included in the principal’s credible fear determination. See 8 C.F.R. § 208.30(b) Treatment of dependents (providing that a spouse or child who arrived in the United States concurrently with the principal “may have his or her credible fear evaluation and determination made separately, if he or she expresses such a desire”).

⁹ Memorandum from Jeff Weiss, Acting Director, Office of International Affairs, to Asylum Officers, Immigration Officers and Headquarters Coordinators (Refugees and Asylees), “Guidelines for Children’s Asylum Claims” (December 10, 1998), <http://www.aila.org/infonet/ins-guidelines-for-childrens-asylum-claims>.

¹⁰ Asylum Officer Basic Training Course Lesson Plan, “Guidelines for Children’s Asylum Claims,” at 37 (Sept. 1, 2009), <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBT%20Lesson%20Plans/Guidelines-for-Childrens-Asylum-Claims-31aug10.pdf>.

¹¹ The practice of subjecting *any* minor to the expedited removal process is questionable for reasons beyond the scope of this letter. One question that bears mention is whether there could ever be a jurisdictional basis for lodging the necessary predicate charge under INA § 212(a)(6) or (a)(7) against a minor – especially an infant – who plainly lacks the capacity to form the intent required under either provision.

negative credible fear determination, solely on the basis of his mother's interview. On October 20, an immigration judge, who also did not speak to Danny, affirmed this determination. As previously discussed, Danny's mother requested reconsideration of the fear finding by USCIS because, as she clearly stated during her initial interview, she understood only "a little, not much" of what the officer was asking her. Danny's mother's reconsideration interview had to be interrupted because her daughter was sick. When the interview was completed, the Asylum Office again issued a negative determination. Danny's mother sought immigration judge review of that decision, which was denied on or around November 9. On November 17, the CARA Project requested that the Asylum Office conduct an independent interview of Danny; that request was denied on November 18. In the early morning hours of November 20, Danny and his family were deported.

- Twelve-year-old "Carolina" was asked only nine questions in the middle of her mother's credible fear interview (see Sofia's story in section I, above). None of these questions addressed whether she was afraid to return to Honduras or, if so, why. The asylum officer, who was male, spoke to Carolina for only a few minutes before resuming her mother's interview and then issued a negative determination for both Carolina and her mother. But Carolina has a strong asylum claim of her own, separate and apart from her mother's. Carolina was repeatedly and directly targeted for predatory sexual acts and has been aggressively stalked, at times with knives and machetes, by a gang member who raped her friend. Carolina fears not only that this man will rape or kill her, but also the consequences of having reported her friend's rape to her mother and community members and of having defied the wishes of a gang member. The questioning Carolina received during her mother's credible fear interview was brief, perfunctory, and wholly insufficient to elicit information from a terrified preteen girl. She states in the declaration accompanying her own request for reconsideration that she had not even shared with her mother many of the harrowing details of the sexual harassment to which she was subjected. Despite Carolina's inability to explain the persecution she faces during the original credible fear interview, the Asylum Office denied her request for reconsideration. Carolina and her mother are now in danger of imminent deportation. Meanwhile, her attorneys are continuing to try to persuade USCIS to reconsider her case.
- "Eliana," a Guatemalan Mam-speaking mother, and her four children, ages four, five, nine, and thirteen, were detained at Dilley for more than a month. An asylum officer interviewed Eliana on November 18, 2015. But the transcript of the interview revealed clear communication difficulties because Eliana could not understand the particular dialect spoken by the Mam interpreter, who in turn spoke to a telephonic Spanish interpreter, who then communicated with the asylum officer. On multiple occasions, Eliana asked for a different interpreter and stated she did not understand the language being used, but the asylum officer responded that this was "probably [sic] as good as it gets" and forged ahead with the interview. At two points of the interview, the interpreter service was disconnected, first for twenty minutes and then for five minutes. The only child to whom the asylum officer spoke was "Jorge," Eliana's eldest child. The officer asked Jorge only six questions, not one of which was meaningfully designed or intended to elicit evidence regarding a credible fear for a child; like his mother, Jorge understood little of what was said. Yet on the basis of that flawed interview, the asylum officer

concluded that neither Eliana nor any of her children had a fear of return. Without allowing any attorney participation, an immigration judge affirmed that decision for the entire family. Eliana requested reconsideration, but the Asylum Office denied that request. The family's attorneys then requested an initial interview for Eliana's daughter as well as a re-interview for Jorge, who had never been meaningfully interviewed in the first place. The Asylum Office denied those requests, too, and the family was scheduled for deportation. The family's return to danger was only stayed at the last minute after Eliana's attorneys filed a complaint with the DHS Office for Civil Rights and Civil Liberties.

- As an eleven-year-old boy, "Ricardo" found the fear determination process very intimidating. He was so nervous during his initial fear interview that his hands were sweaty and shaking and he "was crying a little bit." Since the age of five, Ricardo has suffered from memory retention problems, which prevented him from fully explaining his fear of return to the asylum officer. Throughout his childhood, Ricardo endured severe trauma. His grandfather physically abused his mother and murdered his grandmother. On one occasion, Ricardo's grandfather locked him in the house with his mother, walked around with a machete, and threatened to kill both of them. Despite significant case law establishing that domestic violence constitutes persecution and that gangs specifically target boys Ricardo's age without male protection, the asylum officer only questioned Ricardo briefly during his mother's interview. His subsequent request for an independent interview was denied, and Ricardo and his mother were deported the next day.

IV. Disregarding pending and scheduled requests for reconsideration and other ongoing legal processes.

Since early November 2015, ICE has disregarded pending requests for reconsideration and other ongoing legal processes in deporting families. Previously, when attorneys informed the Asylum Office that they were preparing requests for reconsideration on behalf of particular families, the Asylum Office would request stays of removal for those families with their ICE counterparts. This practice changed around early November, when ICE's Office of Chief Counsel informed CARA Project staff on the ground at the Dilley facility that this "gentleman's agreement" would no longer be honored. As a result of this change in practice, several families with valid claims for protection have been deported, sometimes even after a request for reconsideration has been granted and a re-interview has been scheduled. In addition, CARA Project staff have also observed that ICE effectuates deportations regardless of other pending legal processes, including in certain instances stay requests with federal courts of appeals, of which CARA staff routinely notify ICE upon filing.

- In May 2014, three M-18 gang members attacked "Iliana" and her sisters and held them hostage for ransom in their home country of Honduras. In August 2015, the same gang members began threatening Iliana again and, on one occasion, grabbed her, held a knife to her neck, and demanded money. The gang members later appeared at her home and again threatened her if she refused to pay. Once the gang members realized that Iliana lived alone with her twelve-year-old son, they repeatedly returned to her home, threatening to kill her and her son if she did not pay. In early September 2015, Iliana fled

to the United States with her son. They were detained at the Karnes facility, and Iliana did not receive any legal advice prior to her initial credible fear interview on October 10, 2015. After the Asylum Office issued a negative decision on October 12, Iliana's attorneys filed a request for reconsideration, which was granted on October 29. The Asylum Office scheduled Iliana's new credible fear interview for November 3 at 8 am. However, when an attorney arrived at the Karnes facility and attempted to attend the re-interview, Iliana could not be found. Shortly thereafter, the Asylum Office confirmed that Iliana had been deported on the evening of November 2, despite having a re-interview scheduled for the following morning.

- “Yatzil” an indigenous K’iche-speaking woman, fled her home country of Guatemala after non-indigenous men from a neighboring community repeatedly targeted and threatened her. The threats began around August 2015 when a masked man came into Yatzil’s store, grabbed her daughter, and threatened to kidnap her if Yatzil did not give him money. After fleeing to the United States, Yatzil and her daughter were detained at Karnes on September 28, 2015. Yatzil underwent a credible fear interview, which was conducted in Spanish, on October 8 and received a negative determination. On October 26, CARA attorneys submitted a request for reconsideration, explaining that Yatzil’s credible fear interview had been conducted in Spanish even though she is a K’iche speaker. The request explained further that Yatzil had received new information from her mother that members of the gangs who had previously threatened her had returned to their home.

Yatzil’s request for reconsideration was submitted by e-mail with attachments in excess of 10 MB. Given that the e-mail did not bounce back, her attorneys presumed it had been delivered. Having received no acknowledgement from the Asylum Office, they resubmitted the request on October 27, and copied a specific asylum officer. The attorneys also directly contacted ICE to alert them that the request was pending. The ICE officer who responded advised that Yatzil’s deportation was imminent, and that he would continue moving forward until he heard otherwise. On October 28, the attorneys again contacted the Asylum Office to confirm that Yatzil’s request had been received. That day, for the first time, the Asylum Office advised the attorneys that their servers could not accept attachments in excess of 10 MB. Accordingly, the attorneys re-submitted the request for reconsideration for the third time in as many days, in three separate emails. Later that day, the Asylum Office advised Yatzil’s attorneys that they could not adjudicate the request because Yatzil had been deported that morning. Since her return to Guatemala, Yatzil has lived in hiding, afraid to leave her house because she knows that the men who were threatening her before she left still want to kill her and her daughter.

- As a single mother, “Lillian” was targeted and repeatedly raped over a period of seven months by her former employer. She and her thirteen-year-old daughter “Maribel” fled Guatemala after known rapists and drug traffickers began targeting Maribel. Armed men known for raping young girls chased Maribel on two separate occasions. Lillian and Maribel's decision to seek protection in the United States was driven in part by the nearly identical recent experiences of two other girls around Maribel’s age, who had been

pursued and raped. Additionally, the same men went to Lillian's home and threatened to harm her if she refused to work for their drug trafficking ring.

On November 10, 2015, an Asylum Officer interviewed Lillian and issued a negative fear determination. The asylum officer never interviewed Maribel, even though Lillian's claims focused on protecting her daughter. On November 20, the immigration judge affirmed the negative determination. On November 24, CARA attorneys filed a request for reconsideration, which the Asylum Office denied the following day. On December 2, CARA attorneys filed another request for reconsideration based on additional information, including a declaration detailing the danger that Maribel faced. The Asylum Office denied that request the same day.

When Lillian arrived in the United States, she was suffering from an infection that required surgery, but she did not receive adequate medical attention while detained. Instead, after going to the medical clinic and complaining of her pain on three separate occasions, she was given pain medication. When ICE attempted to deport Lillian and Maribel, they were removed from the airplane due to concern that Lillian would be traveling under dangerous conditions because she did not have an adequate supply of her medication.

Despite pending claims under the Federal Torts Claim Act on behalf of Lillian and Maribel, ICE deported them on December 14, in direct violation of the agency's policy not to deport any individual with a pending civil rights claim against the government.¹² Lillian and Maribel are currently living in hiding in Guatemala. Already, in the weeks since their return, Lillian has received two letters under her door threatening to kidnap Maribel if Lillian refuses to cooperate in drug trafficking.

V. Transferring Represented Families Without Notice to Counsel

Shortly after October 23, the CARA Project and Human Rights First became aware that DHS was transferring families from Dilley and Karnes to Berks after they had been detained in the Texas facilities for around seventeen days. Very often, the families who were transferred had either a pending request for reconsideration or a scheduled re-interview.

On November 2, 2015, the CARA Project sent DHS and ICE Headquarters a list of nineteen client families who had been transferred from Dilley to Berks, along with six client families who had been transferred from Karnes to Berks, without any prior notice to their counsel. Prior to these transfers, the lawyers for each of the clients had a G-28 (Notice of Appearance as Attorney or Representative) on file with the local ICE office. On November 16, the CARA Project advised ICE that the *Flores* Settlement Agreement requires *advance* notice to counsel of any transfer of a child in DHS custody.¹³ Since then, the advance notice provided has often not been meaningful

¹² Memorandum of Understanding, Director John Morton, *Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs* (June 17, 2011).

¹³ *Flores* Settlement Agreement, No. CV-85-4544 (C.D.Cal. 1997), at para. 27, https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf (last visited Dec. 22, 2015).

because ICE does not tell counsel when a family is scheduled for transfer — only that the family will at some indeterminate time in the future be transferred, making it nearly impossible for attorneys to take steps to prepare their clients.

The transfer of represented families has interfered with representation efforts by the CARA Project and caused our clients a great deal of stress. For example:

- The CARA Project notified ICE on October 28, 2015 that one client, “Jenny,” had been transferred from the Dilley facility to the Berks facility with no notice to counsel. CARA staff explained that Jenny was a particularly vulnerable client whose mental state was very fragile. In fact, on October 25, a licensed clinical social worker at Dilley had found that Jenny was suffering from Post-traumatic Stress Disorder (PTSD) with anxiety features and depression. When Jenny learned that she had received a negative credible fear determination, she ran to the bathroom, vomited, and then had a panic attack — after which she was rushed out of the legal visitation trailer on a stretcher. After an immigration judge affirmed the asylum officer’s negative fear determination, Jenny had another panic attack outside the court trailer. By that point, Jenny and her children, ages six and three, had been detained for more than five weeks. Despite Jenny’s submission of a request for reconsideration on October 27, she and her children were transferred to the Berks facility the following day with no warning to her or her counsel.

Transferring Jenny away from her attorneys, with whom she had built trust through numerous meetings to prepare her case, worsened her fragile psychological state. On November 7, following her transfer to the Berks facility, a licensed clinical social worker who met with Jenny reported that she appeared highly fearful and distraught during most of the interview and had again displayed symptoms consistent with PTSD. As CARA staff have observed with many other transfers, ICE officials did not tell Jenny where she was going when they took her to the airport. Jenny and her children were transported on a flight with a number of men and women shackled at the back of the plane. Jenny was so afraid that she refused to allow her six-year-old daughter to use the bathroom at the rear of the plane and instead diapered her for the duration of the flight. Following her arrival at the Berks facility, her attorneys had to refile Jenny’s request for reconsideration with the Newark Asylum Office and secure local counsel at the Berks facility. Jenny’s request for reconsideration was ultimately granted, and her re-interview resulted in a positive determination.

- “Alejandra’s” husband was killed by local MS-13 gang members in her home country of El Salvador on June 20, 2015. After her husband’s murder, Alejandra had contact with the police in the course of getting papers signed for her husband’s life insurance policy. Because she was seen in a police car, certain gang members assumed she was cooperating with the police and began threatening her and her children. After two months in hiding, Alejandra and her children fled to the United States. While detained at the Karnes facility, Alejandra received a negative reasonable fear determination and her children received negative credible fear determinations. CARA attorneys filed G-28s for Alejandra and her children before their cases were reviewed by an immigration judge, who subsequently affirmed the negative determinations. On October 26, 2015,

Alejandra's attorney called her deportation officer to alert him that a request for reconsideration was being prepared. However, only after filing the request on October 28 did Alejandra's attorney learn that she and her children had been transferred to the Berks facility. Her attorneys received no prior notice of the transfer.

Conclusion

The shifts in USCIS and ICE practices detailed in this letter undermine due process protections for the vulnerable population of families fleeing violence in Central America and seeking protection in the United States. These shifts underscore the reality that this Administration's experiment with family detention has failed. We hope that this letter will prompt your agencies to reconsider the implications of these practices and to immediately end the misguided policy of detaining children and their parents in Texas and Pennsylvania.

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