

October 13, 2015

The Hon. Greg Abbott
Governor
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

The Hon. John J. Specia, Jr.
Commissioner
Texas Department of Family and Protective Services
701 West 51st Street
Austin, Texas 78751

Dear Governor Abbott and Commissioner Specia,

We write to you today to share our concerns about the possibility that the Department of Family and Protective Services (DFPS) may license family immigration detention centers, specifically the Karnes County Residential Center in Karnes City and the South Texas Family Residential Center in Dilley. As you know, the Obama Administration began utilizing these centers in 2014 to allow Immigration and Customs Enforcement (“ICE”) to detain mothers and children during immigration proceedings.

Recent rule-making by DFPS that allows for licensing of family immigration detention centers is fundamentally at odds with the agency’s mission of ensuring safe and healthy childcare services as part of its overall mandate to protect children from abuse, neglect, and exploitation. The rule-making puts DFPS in the position of potentially licensing detention centers, which are not established to care for or provide services to children for their welfare but rather are designed to hold children in secure custody in order to execute federal immigration law enforcement purposes.¹ It is simply not possible for DFPS to regulate or license family immigration detention centers without skirting the rules that it normally requires facilities to follow, in order to ensure the health and safety of children. Numerous independent individuals and organizations have documented the fact that children at the Karnes and Dilley detention centers are exposed to conditions that in any other setting child care professionals would deem at best neglectful and at worst abusive.

To the extent that DFPS seeks to hold the family detention centers accountable for the safety and well-being of its child residents, we applaud its laudable goal. We urge the State of Texas to ex-

¹ The detention centers are unlike any daycare, foster home, domestic violence shelter, residential treatment center or U.S. Office of Refugee Resettlement-contracted shelter for unaccompanied minors, which are regulated by this agency as part of its mandate to ensure the welfare of children. See https://www.dfps.state.tx.us/About_DFPS/Data_Books_and_Annual_Reports/2014/2014AR-ccl.asp.

ercise its full authority to investigate the troubling conditions documented at the Karnes and Dilley facilities. The licensing approach, however, is unnecessary and unwise.

- These facilities, by their nature, do not foster child welfare

Since 2014, the federal government has elected to detain mothers and children, the overwhelming majority of whom have fled their countries of origin to seek legal protection from violence and abuse. Almost all of the families detained at the Karnes and Dilley detention centers are eligible for asylum and may one day become U.S. citizens. Most of the families have relatives in the United States with whom they can reside while their deportation cases proceed before the immigration courts and they make their asylum claims. However, the Obama Administration routinely holds families for indefinite periods of time in prison-like conditions of confinement. These conditions have exacerbated trauma symptoms and caused additional harm to children. To this end, we share with you concerns expressed by the American Academy of Pediatrics and Luis Zayas, Dean of the University of Texas School of Social Work, as well as complaints documenting abuse and neglect of children at these facilities. Class action litigation and the reports of multiple organizations have documented systemic violations of basic human rights and dignity in the detention centers. These violations have irreparably harmed the children held there.²

The size of these detention centers alone—2,400 capacity at Dilley and 1,100 planned for Karnes—contradicts evidence-based child welfare practices of avoiding large, congregate care facilities for children.³ Research shows children do better with their families in their communities. Furthermore, current conditions in the facilities run afoul of some of the most basic DFPS requirements for licensees that are not exempted by the emergency rule – including standards requiring access to basic medical care. *See* 40 Tex. Admin. Code §748.1531 et seq. Numerous reports have documented the failure to provide appropriate medical treatment to the mothers and children detained at the Karnes and Dilley facilities.

The detention of children in these facilities does not facilitate, but rather compromises, the health and well-being of children. Given the law enforcement purpose of these detention centers, regu-

² *See, e.g.*, Pleadings and Declarations filed in *Flores v. Lynch*, available at: <http://www.aila.org/infonet/flores-plaintiffs-response-to-order-show-cause> and http://immigrantchildren.org/Flores_Case.html; Pleadings and Declarations filed in *R.I.L.R. v. Johnson*, available at: <https://www.aclu.org/cases/rilr-v-johnson>; American Bar Association, Family Immigration Detention: Why the Past Cannot be Prologue (July 2015), available at: <http://www.americanbar.org/content/dam/aba/administrative/immigration/FamilyDetentionReport2015.authcheckdam.pdf>; American Immigration Lawyers Association, Women’s Refugee Commission, American Immigration Council, Complaint to DHS Office of Civil Rights and Civil Liberties: The Psychological Impact of Family Detention on Mothers and Children Seeking Asylum (June 30, 2015), available at: <http://www.aila.org/advo-media/press-releases/2015/impact-family-detention-mental-health/complaint-crcl>. Complaint: ICE’s Continued Failure to Provide Adequate Medical Care to Mothers and Children Detained at the South Texas Family Residential Center available at <http://www.aila.org/advo-media/press-releases/2015/crcl-complaint-family-detention/cara-jointly-filed-a-complaint>.

³ *See, e.g.*, *A National Look at the Use of Congregate Care in Child Welfare* (U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, May 13, 2015); *Rightsizing Congregate Care A Powerful First Step in Transforming Child Welfare Systems* (Annie E. Casey Foundation, January 1, 2009).

lating and licensing the centers is inappropriate and would not improve the welfare of the children held in custody.

- Licensing under reduced standards will not ensure child protection but condone neglect and abuse

The DFPS rulemaking and possible licensing will not improve conditions for children in family immigration detention centers to a level that ensures adequate protection of child welfare but instead will put the agency's seal of approval on existing conditions that are deeply problematic. The emergency rules modify the standards to meet the practices at the facilities rather than requiring the facilities to ensure practices that meet minimum standards for child welfare.

In its rulemaking, DFPS acknowledges the impossibility of licensing family detention centers in keeping with the agency's minimum standards for other child-serving facilities. It specifically exempts the facilities from standards on maximum number of room occupants, sharing bedrooms with unrelated adults, and sharing bedrooms with the opposite gender. The rule also permits the facilities to seek additional waivers or variance from the minimum standards.

The specific promulgated exemptions seriously compromise children's safety by expressly permitting current dangerous practices at the detention centers, which house unrelated families in single rooms, requiring unrelated children of different genders and ages to sleep in the same enclosed space with unrelated adults. As documented in the attached reports, at least two instances of sexual abuse of children have already occurred at the detention centers, likely as a result of the housing arrangements, and others may well have gone unreported.

DFPS developed its minimum standards considering basic, well-established measures necessary to keep children safe from abuse or neglect. The exemptions from several core requirements, as well as the possible compromise of other standards suggests that the agency is authorizing the ICE facilities to operate at impermissible levels of risk of harm to children.

- DFPS and local law enforcement already have tools to respond to reported abuse and neglect

Regulation and licensing is not necessary to respond to incidents of abuse or neglect at the family immigration detention centers. Currently, DFPS is obligated to investigate reports of abuse and neglect by "a person responsible for a child's care, custody, or welfare," including "personnel or a volunteer ... at a public or private residential institution or facility where the child resides." See Texas Family Code §§261.301, 261.001. The law does not impose this obligation only for licensed facilities. The agency can also partner with relevant law enforcement entities in the investigation of abuse and neglect. DFPS does not need to have the family immigration detention centers licensed in order to provide regular and comprehensive oversight. Because it is not possible for DFPS to license family immigration detention centers without lowering critical minimum standards, licensing would only serve to weaken the agency's ability to ensure child well-

being by permitting the detention centers to operate with lowered safety protections, placing the state at risk of liability should harm come to children or mothers as a result of the weakened standards. Rather than licensing the Karnes and Dilley detention centers, we urge DFPS and law enforcement to utilize its existing authority to investigate any and all reports of abuse and neglect of mothers and children detained at the detention centers, including by the personnel employed at the facilities.

- DFPS should not use its limited resources to cover federal responsibilities or ensure profits to private prison companies

Finally, we are concerned that the federal immigration agency is essentially coopting DFPS's limited resources to further federal detention policy decisions that have been found to be unlawful. As noted in the order adopting the emergency rule, the sole purpose of the emergency DFPS regulation is to assist the federal government in complying with the federal district court's order in *Flores v. Lynch*, Order, Case 2:85-cv-04544-DMG-AGR (C.D.Cal. Aug. 21, 2015), which confirmed that children arriving to the United States with their mothers should not be held in unlicensed secure detention centers. Licensing facilities by exempting them from the Texas minimum care standards does not meet the child welfare concerns raised by the federal court and the 1997 *Flores* settlement agreement that it is enforcing. The licenses would serve two purposes that have nothing to do with child protection: 1) supporting the federal government's litigation position in defense of the facilities, and 2) ensuring continued profit to The Geo Group, Inc. and the Corrections Corporation of America, the private prison companies that own and administer the Karnes and Dilley detention centers. Investing taxpayer dollars to license detention centers that are currently subject to ongoing lawsuits is reckless and is inconsistent with a conservative use of limited public resources.

While we continue to urge frequent investigation of the conditions at these facilities, given the significant concerns expressed in this letter, we ask DFPS to rescind emergency rule §748.7 and decline to promulgate a final rule. We urge DFPS not to license the Karnes and Dilley detention centers. We ask that the State of Texas take all steps to protect the safety and well-being of the children detained at the Karnes and Dilley detention centers through current investigative capabilities and law enforcement authority.

Sincerely,

Texas-based Organizations:

Adjunct Justice

American Civil Liberties Union of Texas

American Gateways

Asociacion de Servicios Para el Inmigrante

Bernardo Kohler Center

CARA Family Detention Pro Bono Project

Children's Defense Fund — Texas
Grassroots Leadership
Immigrant Services Network of Austin
Interfaith Welcome Coalition
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Texas Appleseed
Texas Civil Rights Project
Texas Jail Project
Walker Gates Vela PLLC

National and Regional Organizations:

American Immigration Council
American Immigration Lawyers Association (AILA)
AMIGA, Association of Mother Immigration Attorneys
Catholic Legal Immigration Network, Inc. (CLINIC)
Centro Legal de la Raza
Conversations With Friends (MN)
Detention Watch Network
End Family Detention
ENLACE
First Focus
Florida Immigrant Coalition, Inc. (FLIC)
Friends of Broward Detainees
Human Rights Defense Center
Immigrant Justice Corps
Juntos
La Puerta Abierta/the Open Door
MALDEF
Missouri/Kansas AILA chapter
National Immigrant Justice Center
No More Deaths
Philadelphia Japanese American Citizens League (JACL)
Tahirih Justice Center
Young Center for Immigrant Children's Rights
Women's Refugee Commission

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