

July 27, 2015

Sarah Saldaña
Director
Immigration and Customs Enforcement
Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536

Dear Director Saldaña:

The undersigned organizations, which jointly provide legal services to mothers and children detained in Dilley and Karnes, Texas, through the CARA Family Detention Pro Bono Project (“CARA”), write to raise urgent concerns regarding recent release practices at the South Texas Family Residential Facility in Dilley, Texas, and at the Karnes County Residential Center in Karnes City, Texas. We welcome your [agency’s recent announcement](#) that Immigration and Customs Enforcement (ICE) “will generally not detain mothers with children, absent a threat to public safety or national security, if they have received a positive finding for credible or reasonable fear and the individual has provided a verifiable residential address.” We note that the recent order with respect to the *Flores* settlement will impact most other cases and mandate their release, making the need for resolution of these issues all the more profound.

We are dismayed by the lack of transparency, and the coercion, disorganization, and confusion surrounding recent releases, as well as with the lack of support and information provided to families before they leave the facility. We also are deeply disturbed by recent ICE actions that undermine the right to counsel. Our organizations continue to urge the Administration to end family detention altogether. Until such time, however, it is critical that the following troubling practices be remedied.

The following are practices that CARA volunteers have observed over the past weeks:

- **Coercive Tactics Surrounding Use of Ankle Monitors/Deprivation of Access to Counsel:** Over the past week at Dilley, ICE has used coercive tactics to persuade women to accept ankle monitors. Specifically, ICE has summoned women to “court” appointments using post-it notes instructing them, “Ir a Corte” (Go to Court) within thirty minutes (see post-it note attached). The women have no idea why they are being summoned. Once inside the Executive Office for Immigration Review (EOIR) courtroom trailer, ICE officers told the women ankle monitors were a condition for release. For the women who had their bond reviewed and lowered by immigration judges, ICE officers proclaimed that the immigration judges’ word has no value. We do not understand the authority that ICE has to issue ankle monitors after an immigration judge has reviewed and set the bond. The Miami Immigration Judges have been similarly perplexed, as authority to change the terms of the bond lies with the court via a motion for re-determination based on changed circumstances or with the Board of Immigration Appeals via an appeal. While ICE can offer terms less restrictive than the immigration judge’s order, anything more restrictive is firmly within the purview of the courts.

One woman represented by CARA reported that ICE gave her a choice between wearing an ankle monitor without paying any bond and wearing a monitor after paying a \$1,500 bond. Although she asked to speak with her lawyer, ICE specifically denied her request. CARA is aware of at least one other woman who signed an ankle monitor agreement under duress after being denied access to counsel under nearly identical circumstances. In a third case, a CARA client's uncle attempted to pay her bond in New York, in accordance with an immigration judge's order, but ICE refused to accept payment because she had not yet received an ankle monitor.

- **Intimidation.** Mothers at Dilley also have experienced intimidation as a result of speaking with counsel about their ankle monitors. One terrified CARA client reported that, on the night of July 23, 2015, at about 9:00 pm CST, officials went room-to-room wanting to know the names of the mothers who told CARA about the problems with the ankle monitors. These officials emphasized that they wanted the mothers' names. The client reported that the angry officials told the mothers that lawyers have nothing to do with this matter.
- **Clarity of Instructions:** The Refugee and Immigrant Center for Education and Legal Services ("RAICES") sends volunteers to the San Antonio bus station to conduct exit interviews with families following their release from detention. These interviews have revealed that many of the mothers do not understand the terms of their release. Although most of the women speak Spanish or indigenous languages, the documents that they receive upon release primarily are in English; reporting requirements and other conditions of release are buried in these documents. Consequently, the mothers have many questions about how their ankle monitors function, including how to charge them on a long bus ride and what will happen if they are unable to charge them for reasons outside of their control. Some mothers have indicated that they tried to ask their deportation officers these questions, but did not receive satisfactory answers.
- **Pre-Release Orientations:** ICE has not yet responded to CARA's request at Dilley to provide daily, brief presentations to groups of women shortly prior to their release. The purpose of such presentations would be to explain reporting obligations, the importance of appearing for all scheduled appearances, the need to file an asylum application in advance of the one-year filing deadline, the individuals' rights and obligations, and how to connect with pro bono attorneys in their cities of destination. We believe these presentations will be an effective means of providing this information, especially given that CARA has established itself as a source trusted by the detainees. ICE's failure to allow this service, particularly combined with the poor information provided to those being released, decreases the likelihood that mothers will understand the next steps with EOIR and ICE Enforcement and Removal Operations (ERO), thus rendering them unable to comply with their reporting requirements and appear for their hearings. In short, ICE's refusal for CARA to offer pre-release orientations sets up the women for failure.
- **Timing and Other Circumstances of Release:** Mothers (and/or their sponsors) have routinely been given inaccurate information about how and when they would be released. One mother detained at Dilley, who is a native Caqchiquel speaker, has now had to

purchase her third bus ticket because her family did not receive accurate information on when she would be released and what kind of ticket to buy. Several other mothers have missed, or are concerned about missing, flights and buses for which they already purchased tickets, adding considerable stress. Additionally, mothers and children have been dropped off at desolate bus stations in the middle of the night; a context reminiscent of situations where many of them were previously the victims of violence in their home countries.

We also have heard reports that ICE plans to maintain a presence at the bus station. Last week, an ICE agent attempted to force a mother and her children to return to Karnes after missing their bus, resulting in much confusion for volunteers, the mother, and her crying children. If ICE does indeed plan to have a presence at the bus station, ICE should coordinate with volunteers to ensure access to counsel, proper interpretation for families, and the ability for families who may miss their buses to stay with community based organizations rather than return to the detention facilities at unnecessary tax-payer expense.

- **Delays in Referring, Serving, and Filing Triggering Documents in Credible and Reasonable Fear Proceedings:** CARA has notified both ERO and the asylum office of several mothers who have been waiting more than two weeks for their initial fear interviews or to hear what decision the asylum office has rendered in their case. The asylum office reports that the problem appears to be delays in ERO's referral of fear claimants to the asylum office for an interview and service to detainees of the asylum office's decisions. In addition, CARA also has seen mothers who, after passing their credible or reasonable fear interviews, have then had to wait an additional two to three weeks to learn the date of their first scheduled master/bond hearing. The immigration court cannot schedule a hearing for an individual until ERO files the Notice to Appear (NTA) with the court to start the process, and we are concerned that this is not happening in a timely manner in these cases.
- **Access to Counsel in Bond Hearings:** CARA volunteers report troubling instances of interference with access to counsel prior to bond hearings. Each morning bond hearings commence at 8 am CST. Previously, Corrections Corporation of America (CCA) guards called all the women scheduled on the docket to court by 7:15 am, and CARA attorneys were able to meet with their clients in the court waiting room to prepare for their hearings. On the morning of July 24, 2015, however, CCA and ICE locked the attorneys out of the courtroom, informing them that they could not enter until the hearings began. At 7:55 am CCA finally permitted the attorneys to meet with their clients. When a CARA attorney informed the presiding immigration judge that she had been denied access to her clients and needed time to prepare, the immigration judge pushed all of the hearings back by an hour. This type of interference with the attorney-counsel relationship wastes both judicial and pro bono resources.
- **Other Access to Counsel Concerns:** CCA has further restricted access to counsel by prohibiting attorneys and other legal volunteers from using lockers in the security area of the facility to store their cell phones. Instead, legal staff must return to their cars in the

parking lot to make calls and then undergo an additional security check upon re-entering the facility. There is no reasonable basis for this restriction, and it is a waste of time and resources that undermines the pro-bono efforts to provide representation. In addition, given the summer and overall heat in South Texas, leaving phones in a car means that that they may malfunction or be destroyed.

We have also witnessed troubling instances where legal personnel were denied to the facility without valid explanation. On July 24, 2015, psychologists who were previously pre-cleared for entry into the facility and whose examinations of the women are essential to establishing claims for protection were abruptly and without notice refused entry into the facility. That same day, in the afternoon, an attorney who has been zealous in his representation of his clients was removed from the facility while in the midst of a client interview and without explanation, and denied further admittance. This is not the first time we have confronted such an issue. In May of 2015, support personnel who had been cleared to enter other facilities, including Karnes and the west wing of the White House, were denied admission to Dilley for a time, again without reasonable explanation.

- **Release Criteria:** Secretary Johnson's directive, issued on July 13, 2015, indicates that women who have received a positive credible or reasonable fear determination and have a willing sponsor in the United States will be eligible for release. However, we are concerned with the false requirement that women have a U.S. citizen or lawful permanent resident sponsor. No specific immigration status should be required for a sponsor. Not allowing women to provide the name and address of the most appropriate sponsor undermines ICE's interest in tracking where women will actually live upon release and ensuring court appearances and may undermine the safety of women and their children.

Moreover, CARA is aware of at least three cases at Dilley where women passed either a credible or reasonable fear interview, but remain in detention while the Board of Immigration Appeals reviews their cases. To date, these women have been detained for between five and seven months. Psychiatrists have found that two of these women and their children are suffering from Post-Traumatic Stress Disorder.

- **Terms of Release:** There is no transparency or consistency regarding how ICE sets bond amounts, why certain individuals are required to pay a bond in addition to an ankle monitor, and why restrictive forms of supervision like ankle monitors are necessary to mitigate a particular flight risk. Based on information we have obtained from DHS officials at liaison meetings, we understand that ICE generally will be releasing families on alternatives to detention and that bonds are not appropriate—yet, as discussed more below, this does not seem to be the practice on the ground. Further, officials have indicated that the conditions will be eased over time (e.g., that ankle monitors may be removed at some point in the process). In advising clients before release from the facilities, it is important to know how long women released on ankle monitors must comply with reporting requirements before ICE will consider using alternative forms of supervision. We urge ICE to clarify the policy and to consider removal of the ankle monitor once a woman has demonstrated her compliance with reporting by appearing at the ERO office of relocation for the first time.

At a minimum, we urge ICE to take the following steps immediately to remedy the problems described above:

- Ensure that anyone who is eligible for release (either under the Secretary's directive or in accordance with *Flores*) indeed is released, and in an orderly and timely manner.
- Ensure that ICE make immediate referrals to the asylum office in each case where a mother expresses fear or indicates a desire to apply for asylum. Ensure that ICE promptly issues Notices to Appear after a credible or reasonable fear finding, and works in conjunction with the Executive Office of Immigration Review to file in the appropriate venue to facilitate the timely filing of the I-589 and efficient processing of the case.
- Respect that right to counsel, which is of paramount importance. ICE and CCA personnel must not interfere with this right and requests by individuals to talk to a lawyer should be facilitated immediately. Likewise, and deriving from the right to counsel, zealous representation is a professional obligation to which attorneys must adhere and such representation should not be negatively interpreted by ICE or CCA.
- Inform legal services providers about the agency's release plan, including the specific criteria being used to determine eligibility for release and appropriate conditions of release, as well as the logistics, including time of day, by which women and their children will be released. Women and children should be dropped off at the bus station only during daylight hours, and ICE should consider bus and airline schedules to prevent women from unnecessarily missing buses and flights for which they have purchased tickets.
- Permit CARA staff and volunteers to provide pre-release group presentations at the facility chapel, with indigenous language interpretation services.
- Provide accurate, clear, and complete information on applicable conditions of release to each woman in a language that she understands. This should include an E-33 Change of Address Form, instructions on how to both lodge and formally file an I-589 asylum application, information on exactly when and where a woman must report to ICE, as well as information, if applicable, on the operation and obligations associated with ankle monitors. Where necessary, ICE should provide Spanish and/or indigenous language interpretation and translation of any written materials that are distributed.
- Refrain from opposing motions to reopen any *in absentia* orders that result from the circumstances of the releases that have taken place before the release practices outlined above are instituted.
- Stipulate that asylum applications not filed within the one-year filing deadline are timely filed for those mothers who did not benefit from a CARA project Pre-Release Orientation and specific, clear instructions from ICE as to how and when the asylum application must be filed to preserve the filing deadline.

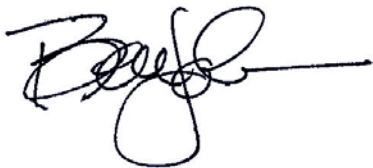
While improvements to release procedures will certainly mitigate the harm resulting from the problems described above, we reiterate our call for an end to family detention. The chaos that currently surrounds the release of women and children from Dilley exemplifies the reasons that the government is not equipped to detain families.

We would welcome the opportunity to meet with you to implement these recommendations.

Sincerely,



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American Immigration Lawyers Association



Ben Johnson
American Immigration Council



Jeanne Atkinson
Catholic Legal Immigration Network, Inc.



Jonathan Ryan
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cc: Leon Rodriguez
Megan Mack
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Iris Canales

Ir a Corte
a las 12:30

→ Official Diaz