

Congress of the United States
Washington, DC 20515

October 27, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20502

Dear President Obama:

In recent months, the Department of Homeland Security (DHS) has implemented an expansive immigrant family detention policy in response to this summer's spike in Central American migrants apprehended along our southwest border. As a result of this policy, there are now over 1,000 women and children in the custody of Immigration and Customs Enforcement (ICE), many of whom are asylum seekers from Central America with very young children. While we have serious reservations regarding the detention of mothers and children as a policy matter, our immediate concerns pertain to the manner in which families are presently being detained and plans to significantly expand family detention in the months ahead. We believe it is critical that no detained families be removed until we can ensure that we are not returning such families to face persecution and torture abroad. We also believe that family detention must not be expanded further until serious problems have been resolved.

DHS currently houses families in three facilities across the country: the Artesia Family Detention Center, the Karnes County Residential Center and the Berks County Residential Center. The Artesia Family Detention Center began detaining families in June 2014 and the Karnes County Residential Center began detaining families in August 2014. A fourth facility, the South Texas Family Residential Center in Dilley, Texas, may be opening in the coming weeks. The Dilley facility will initially hold approximately 680 women and children, but is expected to expand to 2,400 beds in 2015. At full capacity, the Dilley facility will be the largest immigrant detention center in the country.

We have identified three principal concerns with the rapid, mass expansion of family detention: (1) the "no-bond/high-bond" policy for families; (2) the disparity in credible fear rates for families in detention; and (3) the lack of appropriate child care within facilities.

ICE's "No-Bond/High-Bond" Policy for Families

ICE appears to be pursuing a "no-bond/high-bond" policy for families in detention based upon the argument that denying bond is necessary to deter additional migration. As a result, families with minor children who may be eligible for relief and have outstanding equities are being detained for extended periods of time. For example, a mother and her child with brain cancer were detained at the Karnes facility without bond even after the mother received a

positive credible fear determination from an asylum officer.¹ The family was released only after a pro bono attorney obtained further documentation from a medical expert confirming that the child's condition was life-threatening. In another case, a House staff member attended a bond hearing involving a mother and her five-year-old child who had passed credible fear screenings at Artesia. At the hearing, ICE opposed the granting of bond to the family notwithstanding the fact that the child was a victim of sexual assault at the age of four and had a fear of persecution in her home country. During her detention, the child suffered additional psychological damage.

The "no-bond/high-bond" policy is unnecessary and should be rescinded. This policy does not serve as a deterrent to families who are fleeing because of a well-founded fear of persecution or torture in their home country. Moreover, there is no legal authority for using detention as political tool. The legal authority regarding bond determination requires immigration judges to make an individualized determination of flight risk and danger to the community when considering release. In defending the policy, ICE argues that the national security interest in deterring mass migration from Central America outweighs individualized bond assessment factors. This ignores the reality that because women who pass credible fear interviews have established a threshold level of eligibility for asylum relief, they have an incentive to appear in immigration court and are less of a flight risk. Recent data from the Executive Office of Immigration Review (EOIR) indicates that roughly 66% of families have appeared for their initial immigration court hearing and families with strong asylum cases are more likely to appear for their court hearings.²

The assessment of whether someone is a flight risk or a danger to the community should be conducted on an individual basis, and not with regards to an entire class. This individualized assessment is particularly crucial in cases of women and children, many of whom have special needs (such as medical, psychological, child developmental concerns) which require a particularized assessment and consideration. It is what the law requires.

Disparate Credible Fear Rates

We are concerned about the disparity between the national credible fear rate and the credible fear rate for families in detention. According to data provided by U.S. Citizenship and Immigration Services (USCIS), as of September 3, 2014, 48% of the credible fear determinations made at the Artesia facility and 39% of the credible fear determinations made at the Karnes facility resulted in a positive credible fear determination by an asylum officer. Over roughly the same period, the national rate was 77.64% and the rate for individuals from Honduras, El Salvador, and Guatemala was 77%, 75.9%, and 67.1%, respectively. Although USCIS has since stated that the rate of positive credible fear determinations at these facilities has risen, the agency has not yet provided data to support this assertion.³ Moreover, any such increase is largely due to

¹ Guillermo Contreras, *Feds release 7-year-old immigrant girl with cancer for treatment*, WASH. POST, Sept. 3, 2014, at <http://www.houstonchronicle.com/news/article/Feds-release-7-year-old-immigrant-girl-with-5732146.php>.

² Miriam Jordan, *Most Migrants Make Their Court Date*, THE WALL STREET JOURNAL, Oct. 7, 2014, at <http://online.wsj.com/articles/most-migrants-make-their-court-date-1412715818>.

³ It is worth noting that a number of negative credible fear determinations by USCIS asylum officers at the Artesia and Karnes facilities have been reversed after attorneys for the women requested reconsideration of the determinations. Although such reversals have the effect of increasing the positive credible fear rates at the facilities, they also suggest that the initial negative credible fear findings may have been made in error. In light of the fact that the credible fear screening is intended to prevent the United States government from returning *bona fide* asylum

the extraordinary efforts of attorneys who are volunteering their time and energy to represent families at no cost. If such efforts cannot be sustained we may see positive credible fear rates fall once more.

Even without updated USCIS data, there is strong evidence that the asylum officer credible fear interview process for family detainees is not working. According to EOIR, immigration judges handling family detention cases are reversing negative credible fear determinations made by asylum officers at a high rate. Although immigration judges nationally reverse between 10-15% of negative credible fear determinations,⁴ more than half of such determinations that have been reviewed by immigration judges hearing cases from the Artesia facility have been reversed and more than 30% of such determinations that have been reviewed by immigration judges at Karnes have been reversed.⁵ These facts suggest that either the manner in which the credible fear review process is taking place at Artesia and Karnes is out of kilter or that the statutorily-defined standard by which credible fear claims are being adjudicated is higher than what is applied elsewhere in the country.

The rate of positive credible fear determinations is of concern because many families in detention appear to have strong claims for asylum relief. In one case, the Immigration Judge granted relief and explained the applicant had a “text book” asylum case.⁶ We are concerned that the current application of the credible fear screening process in family detention facilities may be flawed, thus resulting in removal of families to home countries where they face persecution and torture. It is for this reason that we urge you to refrain from removing detained families until problems in the credible fear process can be addressed.

Lack of Appropriate Child Care at Facilities

We are concerned by reports that mothers at the facilities have little choice but to speak about their asylum claims, many of which involve accounts of sexual assault and domestic violence, in front of their children. Mothers who have been victims of sexual assault are unlikely to discuss those assaults in the presence of their minor children. This could prevent a *bona fide* asylum seeker from establishing the requisite burden of proof.

According to DHS and ICE, both the Artesia and Karnes facilities now have “play areas” where mothers can leave their children while they attend immigration court or credible fear interviews. These areas are staffed by guards and ICE officers who may lack child care expertise and who are not tasked with attending to the hygienic needs of small children. Mothers are reluctant to leave their children with such guards. ICE officers are trained law enforcement

seekers to face persecution and death and that deportations continue to take place from the facilities, any flaws in the credible fear screening process must be examined with the utmost care in order to ensure that we are not failing to meet our obligations under domestic and international law.

⁴ EOIR staff provided this reversal rate to staff during a briefing on the topic.

⁵ According to data provided to House Judiciary Committee Minority Staff by EOIR in an email dated September 26, 2014, from July 18, 2014-September 18, 2014, the Immigration Court in Artesia affirmed 78 negative credible fear determinations and reversed 138 negative credible fear determinations for a 64% reversal rate. The Immigration Court in Karnes affirmed 100 negative credible fear determinations and reversed 48 negative credible fear determinations for a 32% reversal rate.

⁶ Julia Preston, *In Remote Detention Center, a Battle on Fast Deportations*, N.Y. TIMES, Sept. 5, 2014, at: <http://www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html>.

personnel and should be utilized for work requiring their training. Individuals trained in child care should attend to little children. ICE agents do not want to be assigned child care duties and it is obvious that ICE personnel are not adequately trained to perform those duties.

In light of these and other concerns, we were concerned to learn that ICE recently finalized plans to open a 2,400-bed family detention facility in Dilley, Texas. This facility, known as the South Texas Residential Family Center, will be operated by the Corrections Corporation of America (CCA) as a contract modification to an existing Intergovernmental Service Agreement with the city of Eloy, Arizona. In your first year of office, your administration removed immigrant families from the CCA-operated T. Don Hutto Family Residential Center that faced litigation and enormous public scrutiny. We have questions and concerns about the decision and the process by which CCA was once more selected to operate a family detention facility. If CCA could not operate the much smaller Hutto facility, safely and in accordance with legal standards, what factors led to the belief that CCA could safely and legally operate a new, larger facility in Dilley? Further, the Intergovernmental Service Agreement under which the Dilley facility is to be operated fails to require that child care experts be hired at the facility, which is a necessity as described earlier.

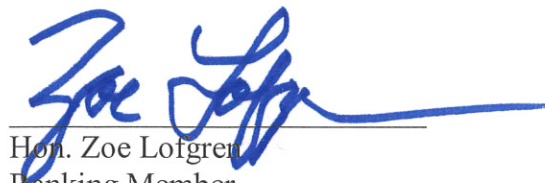
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We are concerned that the rapid expansion of family detention is being done in a manner that fails to meet the unique needs of parents and children. Family units have needs that are separate and apart from those of a traditional adult detained population. These needs are not limited solely to medical care and nutrition, but also include complex socio-emotional and psychological concerns that are further impaired by the detention process.

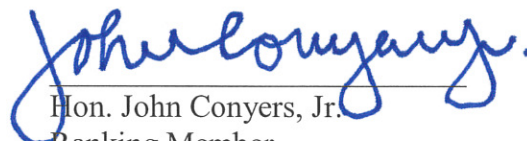
In an effort to send a strong message of deterrence to future migrants, the rapid expansion of family detention poses a danger to women and children fleeing persecution and torture in their home countries. It is necessary to rescind the "no-bond/high-bond" policy for families in detention and we believe you should cease removals from family detention until problems in the credible fear process are addressed. Child care centers staffed by trained child care workers must be established so that mothers can participate fully in their legal proceedings without concern for the safety and well-being of their children. Family detention should not be further expanded until these and other problems can be fixed.

We trust that you will attend to our concerns with the utmost urgency given the gravity of the situation.

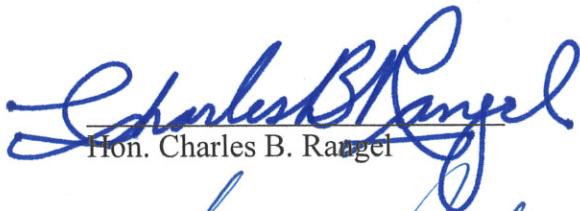
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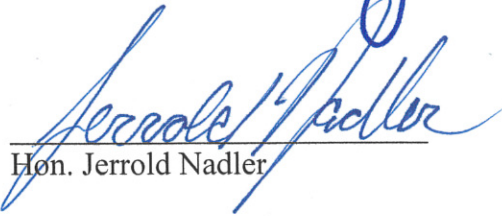
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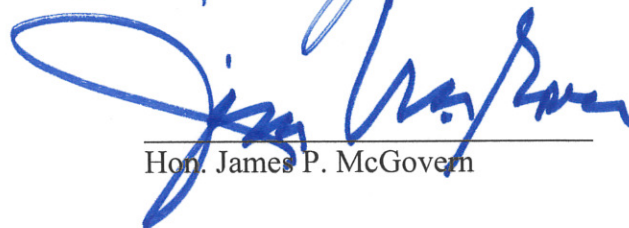

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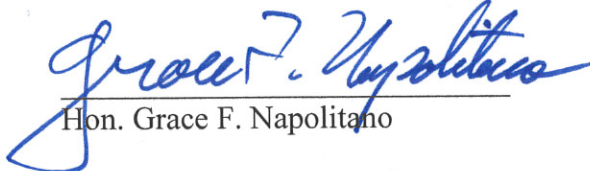

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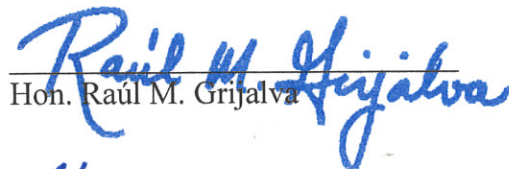

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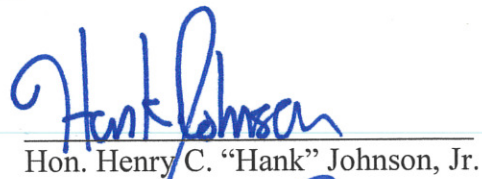

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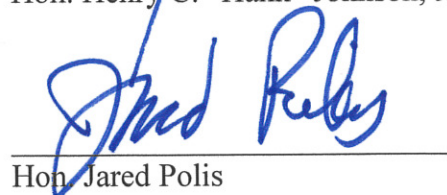

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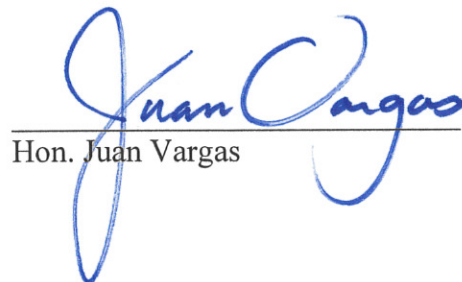

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