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REPORT REGARDING GRAVE RIGHTS VIOLATIONS IMPLICATED IN FAMILY IMMIGRATION DETENTION AT THE KARNES COUNTY DETENTION CENTER

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Introduction

The Karnes County Residential Center (Karnes), located in Karnes City, Texas, is an immigration detention center, which currently holds 535 mothers and children, almost all of whom are asylum-seekers from Central American countries. Karnes is the newest of three immigration detention centers in the U.S. detaining women and their children—the other two are in Artesia, New Mexico, and Leesport, Pennsylvania. Both the Artesia and Karnes facilities opened during the summer of 2014. The government has plans to expand family detention further with the opening of a 2400-bed family detention center in Dilley, Texas in November 2014. These detention centers represent the first effort at widespread immigration detention of families since 2009 when the government shut down family detention at the problem-ridden T. Don Hutto Detention Center in Taylor, Texas.

The situation at the Karnes facility demonstrates that family detention is a colossal mistake, which implicates numerous human rights violations under international law and civil rights violations under domestic law. At Karnes, the government detains women and their children needlessly, even when they pose no danger or flight risk that cannot be addressed through measures such as release on bond. Families remain detained even after they pass an initial screening interview demonstrating that they have viable asylum claims. They can remain detained for months, pending their asylum proceedings in Immigration Court. Detention drastically reduces these families’ ability to obtain and access counsel and effectively present their asylum claims.

In addition, the Karnes detention center is a secure facility, meaning detained women and their children cannot leave. Moreover, the facility has many characteristics of criminal detention, such as regular body counts. Karnes detains children as young as three months old, and despite housing over 200 children, the facility is not licensed as a residential home for children. Facility staff is not trained in childcare or the special needs of asylum-seekers. Adequate mental and physical health services are not available.

International human rights bodies have already condemned the detention of asylum-seeking families in the United States. Yet, despite growing documentation of abuses and harsh conditions, and despite international and domestic laws that forbid or limit the detention of

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asylum-seekers and children, the government obstinately insists on expanding family detention. This report describes the process by which women and children came to be detained at the Karnes facility, and some of the challenges they face with respect to detention and the ability to pursue their asylum cases. The report then summarizes the relevant international and domestic protections that relate to the detention of asylum-seekers and immigrant children at Karnes. Finally, this report sets forth the numerous ways in which family detention at Karnes violates international and domestic human rights and civil rights protections for the women and children held behind bars.

I. Women and Children in Family Detention

A. Detention at the Border in CBP Holding Facilities

Almost all of the women and children detained at Karnes were apprehended by Customs and Border Patrol (CBP) near the Texas/Mexico land border and placed into expedited removal proceedings before transfer to Karnes. Expedited removal is a “fast-track” deportation process established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Expedited removal may be imposed on an immigrant who is arrested near a U.S. border within fourteen days of entry. Immigration officers also may impose expedited removal on noncitizens upon their attempted entry to the United States at a “port of entry,” such as a bridge or airport, in two instances: (1) if the immigrant declares an intent to seek asylum; or (2) if the immigrant does not possess valid entry documents. The women and children detained at Karnes fall into the first category of expedited removal in almost all cases. Under Immigration and Nationality Act (INA) § 235, immigrants subject to expedited removal are detained mandatorily and without the right to seek review of their detention by an immigration judge during the early stages of their proceedings.

Initially, after being taken into CBP custody, women and children encountered along the border are taken to a CBP station or holding facility. They remain at that holding facility for several days, typically in degrading conditions. Immigrants, including children, have reported

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3 INA § 235(b)(1)(A)(iii)(II); 8 U.S.C. § 1225(b)(1)(A)(ii)(II); In August 2004, the U.S. Department of Homeland Security announced in the Federal Register that expedited removal applies to inadmissible “aliens… who are present in the U.S. without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, who are encountered by an immigration officer within 100 air miles of the U.S. international land border, and who have not established to the satisfaction of an immigration officer that they have been physically present in the U.S. continuously for the fourteen-day (14-day) period immediately prior to the date of encounter.” See 69 FR 48877 (Aug. 2004).
4 8 U.S.C. § 1225(b)(1)(A); 8 U.S.C. § 1182(a)(7); 8 U.S.C § 1182(a)(6)(C); INA § 212(a)(6)(C); INA § 235(b)(1)(A); INA § 212(a)(7).
5 Immigrants may be eligible for release as a matter of discretion for a medical emergency or for reasons of law enforcement, but these circumstances are usually very limited. See 8 C.F.R. 1235.3(b)(2)(iii); 1235.3(b)(4)(ii).
being denied food and water in these holding facilities, sometimes for days on end. They complain that the facilities, which they call “hieleras” or freezers, are extremely cold. CBP agents have also been accused of using excessive force, even resulting in the death of at least one immigrant who was hog-tied, tased and beaten to death. This initial interaction with CBP is the first opportunity an immigrant may have to make a claim for asylum to a U.S. immigration official by stating that she has been persecuted in her home country, or has a fear of being persecuted in her home country. But immigrants have told advocates that they were either discouraged from seeking asylum at the border, or not informed of their right to do so, and in some instances, they were coerced out of making asylum claims because of threatening comments by CBP officials. CBO officers take initial statements from the women and children during these first days in CBP custody, under coercive conditions, and these statements often plague asylum cases throughout the process, even after the asylum-seekers have left the CBP holding facilities. After their initial detention with CBP, women and their children are sent into Immigration and Customs Enforcement (ICE) custody at one of the family detention centers, such as the facility in Karnes City, Texas.

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7 Americans for Immigrant Justice has reported that these “hieleras” are kept so cold that immigrants’ lips chap and split, their fingers and toes turn blue, and they shake uncontrollably, see Americans for Immigrant Justice, Border Patrol Continues to Abuse Immigrant Women (May 23, 2013), http://www.aijustice.org/news-release-border-patrol-continues-to-abuse-immigrant-women/.
10 See e.g. CBP Record of Deportable/Inadmissible Alien, Attached Exhibit.
11 Asylum applications are often scrutinized harshly by immigration officials (including judges) who view any denial of persecution made at any time or any inconsistency in an immigrant’s story as demonstrative of fraud or deception. If an asylum applicant fails to declare a fear of persecution on her initial apprehension by CBP, it makes it much more difficult for her to succeed on an asylum claim after leaving a CBP holding facility. Should she encounter threats or discouragement from CBP officials against making an asylum claim, or should fail to be advised about her right to an asylum claim, the potential damage to her application for asylum can be irreparable.
12 The women and children are generally not returned immediately to their home countries from the border even if they have not yet been able to articulate a claim to asylum, mainly because travel arrangements cannot be made for their return to Central America from the border in a prompt manner.
13 Since the end of family detention at the T. Don Hutto Residential Center (a family immigration detention facility located in Taylor, TX) in 2009, which effectively terminated family immigration detention until the summer of 2014, ICE’s general practice was not to detain women and children together in family facilities under expedited removal processes. Rather, the general practice was to place families automatically into full-fledged removal proceedings and to release families on the expectation that they would appear for future removal proceedings dates. See US Moves to Stop Surge in Illegal Immigration, NEW YORK TIMES, (June 20, 2014), http://www.nytimes.com/2014/06/21/us/us-plans-to-step-up-detention-and-deportation-of-migrants.html?_r=0.
B. Continued Detention At Karnes Under Expedited Removal

After transfer to Karnes, the family remains in expedited removal proceedings, and will therefore be deported summarily without further review of any kind, unless found to have a credible fear of persecution. If deported, the family will remain detained until the moment of departure.

Women detained at Karnes who assert their intention to seek asylum are interviewed by an immigration official to determine whether they have a “credible fear” of persecution in their home country.14 If they pass the credible fear interview (CFI), they will avoid immediate deportation and be permitted to pursue an asylum claim in full-fledged (non-expedited) removal proceedings before an immigration judge. The family must remain detained while the CFI determination is pending, which takes from several weeks to a month.15

At Karnes, immigration officials from the Department of Homeland Security (DHS) Asylum Office in Houston conduct CFIs by telephone with the detained mothers, and only rarely do they conduct CFIs in person at Karnes.16 The government fails to provide CFIs to children at Karnes, even though many children have independent asylum claims as a result of threats and persecution in their home countries, typically because of gang violence targeting children.

If an asylum officer concludes that a Karnes mother did not pass her CFI (meaning that she did not demonstrate a credible fear of persecution), the asylum-seeking mother may obtain strictly limited review of the CFI determination before an immigration judge.17 If the asylum-seeker does not succeed in persuading the judge, then there is no further review. She will remain in expedited removal and will stay detained until she is deported to her home country, which usually happens in a matter of weeks.18 Families have already been deported from Karnes since it opened in August 2014.19

If an asylum-seeker “passes” her CFI, either with the asylum officer or on review by the immigration judge, then her asylum case passes to the immigration court for full proceedings and hearings on the asylum claim. At this point, the asylum-seeker is no longer subject to expedited removal, and is placed in removal proceedings before the immigration court under INA §240.

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However, getting to the immigration judge has proven problematic for some immigrants who have not been afforded an adequate opportunity to assert a fear of persecution. Many mothers at Karnes have failed their CFIs either because they were not informed of the purpose or the format of the interview beforehand, or because they were unable to divulge details of their trauma so soon after arriving in the United States in the difficult context of detention with their children. Still others were not allowed to elaborate upon their answers to particular questions. Moreover, the DHS Asylum Office recently published a policy memorandum urging asylum officers to be stricter in making credible fear findings, which has led to lower grant rates.

These practices limit the due process rights of asylum-seekers to an extent that is unacceptable under international human rights law. Further, the U.S. policy of placing women and children in expedited removal and detaining women and children asylum-seekers during the credible fear process does not comport with international human rights laws. As described below, very brief detention for purposes of an initial interview to establish identity and the contours of an asylum claim may be permissible in limited individualized circumstances. However, at Karnes, detention during the expedited removal process is categorical rather than individualized, exceeds the brief period that might be permissible, and fails to recognize the special situation of women and children asylum-seekers.

C. Detention After Passing CFI and During Removal Proceedings

If a woman detained at Karnes passes her CFI, she is referred to removal proceedings in immigration court, where she will pursue her asylum claim. U.S. immigration law permits but does not mandate continued detention for asylum-seekers whose cases are being adjudicated in immigration court. When an asylum-seeker is referred to immigration court, ICE makes a written determination regarding her custody, either releasing her on her own recognizance, releasing her upon payment of a bond, or deciding on continued detention.

20 See LIRS, supra note 6, at 16; see also Human Rights First, supra note 9, at 4. A 2005 study of expedited removal conducted by the governmentally-appointed U.S. Commission on International Religious Freedom (USCIRF) found that immigration officers did not provide immigrants with required information about CFIs and the possibility of protection under U.S. law for those fearing persecution or torture in their home countries. Immigration officers were also found to have discouraged immigrants from seeking asylum claims. See USCIRF Report on Asylum Seekers in Expedited Removal (Feb. 8, 2005) http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal. Women and children detained at Karnes report similar problems, which have been exacerbated by their detention with their children.


23 See Notice to Appear, Attached Exhibit.

24 8 C.F.R. 236.1(c)(8).
At Karnes, ICE has issued custody determinations that continue detention during removal proceedings for every single woman and child. These determinations are not individualized; instead, ICE insists that all of the women and children detained at Karnes must be categorically detained on the grounds that they all pose a danger to national security. ICE asserts that releasing any of these asylum-seeking families on bond would encourage mass illegal migration. This argument is contraindicated by evidence that the women and children came to the U.S. because of legitimate refugee protections needs, and further indicating that detention policy has little impact on the decisions that Central American women and children make when fleeing their home countries. ICE decisions to detain based on categorical assumptions of danger fail to take individual facts for each asylum-seeker into account in establishing whether detention is necessary based on flight risk or danger to public safety (the two main permissible justifications for detention without the possibility for release on bond or other alternatives to detention). This categorical policy eschews the obligation to engage in individualized determinations regarding the need for detention of asylum-seekers, in contravention of international human rights law.

Furthermore, ICE’s insistence on continuing detention explicitly invokes the need to use detention as a means of deterring future illegal migration. International human rights law specifically prohibits “detention policies aimed at deterrence,” because they are “not based on an individual assessment as to the necessity to detain.”

Detention of families at Karnes, who pose no flight risk or danger, also violates due process protections under international human rights law. Detention makes it harder to access counsel, gather evidence and prepare testimony. Therefore a result of being detained is that the women and children at Karnes have a more difficult time presenting and winning their asylum claims than non-detained applicants.

25 See e.g. Notice of Custody Determination, Attached Exhibit.

26 See Declaration of Philip T. Miller and Declaration of Traci A. Lembke, Attached Exhibit.


29 UNHCR Detention Guidelines, Introduction.

30 See The Honorable Robert A. Katzmann, Bench, Bar and Immigrant Representation, 15 Legislation and Public Policy 585, 593 (2012) (reporting comprehensive study results which show detention to be one of the two most important variables determining success in Immigration Court, with representation being the other variable).
An asylum seeker at Karnes who seeks review of ICE’s decision to continue detaining her may ask for a redetermination of ICE’s custody decision before an immigration judge. In a custody redetermination proceeding before the immigration judge, the asylum seeker must establish that she does not pose a danger or flight risk. The judge may then order her released on personal recognizance or on payment of a bond, the amount of which must be at least $1,500. If the immigration judge does not grant release on recognizance or bond, or if the asylum seeker disagrees with the bond amount set, she may appeal to the Board of Immigration Appeals; conversely, the government can also appeal the immigration judge’s decision.

The redetermination hearings before the immigration court on custody status are not automatic, as required by international human rights law, and so often are either not requested or are not effective without representation. In addition, until the custody hearing before the immigration judge, the families must remain detained. Thus the need to seek a hearing before the immigration judge in order to obtain review of ICE’s categorical decisions inherently makes the family’s detention lengthier than it would be if ICE made individual decisions in the first instance.

At Karnes, some women who have been fortunate enough to obtain pro bono or private counsel have sought redetermination of custody before immigration judges in San Antonio, Texas. In those cases, ICE has opposed release, including on reasonable bond, before the immigration judge. As a result, bond hearings have drastically changed. Previously, they were very brief proceedings requiring only basic evidence and argument on the issues of flight risk or danger to the community. Now, ICE attorneys arguing these bond cases are submitting lengthy evidentiary packets insisting that women must remain detained on “deterrence of mass illegal migration” grounds and that bond should be denied. ICE attorneys are also cross-examining the asylum-seekers on information they provided in their CFIs in a fishing expedition to find evidence of flight risk or some other justification for ongoing detention. This practice has

31 8 CFR 1236.1(d); Matter of X-K-, 23 I&N Dec. 731 (BIA 2005)(confirming that an asylum seeker may request release on bond with the immigration court after passing her CFI). Not all persons initially subjected to expedited removal are eligible to petition an immigration judge for release, even if they have passed a CFI. Individuals considered “arriving aliens” (meaning those who were apprehended before achieving entry to the US, such as in an airport or at a land border bridge) are not eligible to go before a judge for redetermination of custody at all. ICE may release such persons on “parole” in its discretion, but this decision is not reviewable by an immigration judge. 8 U.S.C. 1182(d)(5)(A); 8 CFR 1003.19(h). The women and children at Karnes do not fall into this category.

32 Some judges do not believe that they have the authority to release on personal recognizance, and so their inquiry does not consider the necessity of detention but only the bond amount to be assigned, if any. See EOIR, The Immigration Judge Benchbook, Bond Guide, available at: http://www.justice.gov/eoir/vll/benchbook/tools/Bond%20Guide.htm.

33 8 U.S.C. § 1226(a); INA § 236(a). Moreover, the immigrant must prove that she is not a threat to persons, property, or national security, and must ensure that she will appear at all future immigration proceedings in order to be released on bond. Matter of Guerra, 24 I&N Dec. 37, 38 (BIA 2006) (citing Matter of Adeniji, 22 I&N Dec. 1102 (BIA 1999)).

34 8 C.F.R. §§ 1003.19(f); 8 C.F.R. §§ 1003.19(i)(1).

lengthened bond hearings significantly and has made the role of legal counsel more important, even though the families do not receive government-funded counsel in the U.S. system.

In support of its arguments that immigration judges should order continued detention of women and children at Karnes, ICE has sought to justify its policy of detention as deterrence by invoking the decision in Matter of D-J-. In that case, the U.S. Attorney General held that national security interests, specifically related to preventing future mass illegal migration, constituted a valid justification for categorically denying release on bond to certain asylum seekers. The policy applied in Matter of D-J- is in stark contrast with domestic and international law, requiring individualized determinations of the need to detain based on flight risk or danger to the community. As explained above, international law specifically prohibits use of detention as a deterrent. In addition, as further described below, the UN Refugee Agency (UNHCR) guidelines on detention recognize national security as a legitimate government purpose for holding an asylum-seeker in detention, but only where an individual has presented an actual risk to national security, which has not occurred in the Karnes context.36

For the families in detention at Karnes, immigration judges have been ordering release on bond despite ICE’s attempts to keep them detained. However, since the amount of the bond an immigration judge can set is discretionary (though it may not be less than $1,500), judges in the same court have been wildly inconsistent in the amounts of the bonds they set for immigrants in similar circumstances and with similar asylum claims.37 These results put in doubt the likelihood that immigration judges are properly evaluating the permissible considerations of flight risk or danger in making custody decisions. In some cases, bonds are set so high that families are simply unable to pay and remain detained throughout their proceedings.

There also remains another possibility that a family will not be released even after bond is set. ICE can reserve the right to appeal the immigration judge’s decision, and within 24 hours may invoke a unilateral “automatic stay” power.38 Once invoked, ICE’s stay power means that the asylum seeker must remain detained while ICE appeals the immigration judge’s decision to grant release on bond; these appeals may take months to resolve. As a practical matter, ICE’s automatic stay power means that detained immigrants with asylum claims may end up remaining detained throughout the duration of their asylum cases in immigration court—despite the independent review of an immigration judge determining that such immigrants should be released on bond. This possibility effectively renders null the independent review of an immigration judge, and vests unreviewable authority in ICE to determine the length of detention.

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36 UNHCR Detention Guidelines, Guideline 4.1.3.
37 In the San Antonio Immigration Court, one judge has been generally setting $5,000 bonds for women detained at Karnes, while another has generally been setting $20,000 - $25,000 bonds.
38 Pursuant to 8 C.F.R. 1003.19(i)(2), ICE may halt release on bond during its appeal of the immigration judge decision where ICE originally declined to set bond, or where ICE set a bond of $10,000 or more. Because ICE has denied bond in all Karnes cases, this rule may be invoked in any case where the immigration court orders release.
of an asylum-seeker. As such, ICE’s automatic stay power directly conflicts with international standards that require independent review of detention decisions based on objective criteria. Thus far, ICE has not invoked the automatic stay power. Yet, the threat remains that ICE could deploy this tool at any point.

In recent weeks ICE has begun appealing bonds set for Karnes women and children, some of whom have already been released after paying their judge-set bonds. ICE argues that the immigration judges have abused discretion by ordering the release on bond of families who “present a threat to national security under the mass migration theory demonstrated in Matter of D-J.” These appeals will be heard by the Board of Immigration Appeals (BIA). If the BIA ultimately sides with ICE, the women and children who have been released on payment of bond may be re-detained.

D. Lack of Access to Counsel and Legal Information

Access to counsel for the families detained at Karnes is of utmost importance yet is severely lacking. The American Bar Association has found that “[a]ccess to legal services is critical to a fair and efficient immigration removal and detention system. Authorities should facilitate access to legal and consular services, legal materials and information, correspondence, and legal orientation presentations.” Without access to counsel and information about legal rights and processes, basic procedural protections required under international law are nonexistent or ineffective.

The families at Karnes have not had adequate information regarding the asylum process or their rights. When the facility was initially opened for families, no “Know Your Rights” presentations were given to the newly arrived mothers and children to inform them about the asylum process or the right to request bond from an immigration judge. Because of this, it is likely that many women underwent CFI’s without understanding why they were being questioned or that the interview was a pathway to either deportation or obtaining asylum. Some were likely deported as a result.

While non-profit service providers have now begun to provide legal presentations, the numbers of detainees are so great that it is difficult for these service providers to conduct “intakes” or “consultations” for immigration purposes to determine what immigration remedies exist for the more than 500 women and children. This shortcoming falls especially hard on children detained at Karnes, who are automatically assumed to be beneficiaries of their mothers’ asylum claims even if they might have their own independent claims.

Women and children detained at Karnes have an even more difficult time obtaining ongoing legal representation in their individual cases. Unlike criminal proceedings in the United States, asylum seekers do not have a right to publicly-funded appointed counsel in their removal proceedings. Instead, immigrants in removal proceedings have a “right to counsel” in that they may obtain representation by a private immigration attorney or by a pro bono immigration attorney if they can do so in time.\textsuperscript{40} If not, an immigrant in removal proceedings is forced to represent himself, without the aid of counsel, having no background in the complex realm of U.S. immigration law.

The women must rely on non-profit legal services providers and volunteers to offer representation, except in the unusual case where the family can afford to pay a private attorney. Yet, the location of Karnes provides a barrier to women obtaining counsel, as it is located in a rural area far removed from pro bono immigration attorneys. The nearest large metropolitan cities with such attorneys are San Antonio, located more than an hour away from the facility, and Austin, located about two hours away from the facility. This makes it difficult not just to get a pro bono attorney, but also for attorneys to access their clients as they have to commute a considerable distance to interview the detainees in person. The facility’s remote location also violates the ABA civil immigration detention standards, which state that a detention center should be near “[a]dequate non-profit, pro bono, or low-cost legal services.”\textsuperscript{41}

Additionally, even where a family obtains counsel, immigration officials do not always inform attorneys of important dates relevant to their cases (like the date of a woman’s CFI). Furthermore, difficulties with women making outgoing phone calls from Karnes have made it hard for women to alert their attorneys of these dates. The result is that attorneys are not always able to adequately prepare a client’s case before the deadline, and sometimes are unaware that an important step in the case has transpired until after the fact.

In general, the ability to seek representation and to work effectively with an attorney once represented has been greatly hindered by the difficulties in phone access. It is not possible for an attorney to call a client at Karnes and speak to her directly. Rather, the detainee must call out to the attorney. However, women detained at Karnes are only allowed to place outgoing phone calls if they have enough money in their commissary account to buy a phone card from Karnes—no outside phone cards are allowed. The only free phone calls permitted are to pro bono immigration attorneys and organizations, but women have repeatedly reported having a difficult time getting through on this free phone system.

\textsuperscript{40} Immigrants have a right to counsel so long as it is provided at “no expense to the government.” 8 U.S.C. § 1362 (1996); See also 8 U.S.C. § 1229a(b)(4)(A) (2006).

\textsuperscript{41} ABA Civil Immigration Detention Standards at 11.
Additionally, attorneys and other legal staff have reported encountering accessibility problems at Karnes. Staff at the facility imposes strict access rules on legal representatives other than attorneys (such as paralegals and even law student attorneys), requiring them to fax a sheet of intended clients 24 hours before the visit with an estimated time of arrival for the next day. If the representative arrives more than 30 minutes after her stated time of arrival, she is denied access to her clients. This poses a particularly difficulty for representatives commuting from long distances who might encounter travel or traffic delays. In addition, all non-attorney representatives and support staff, such as interpreters, must receive security clearance before being allowed admittance to Karnes. Attorneys have also reported waiting for long stretches of time after arriving at the Karnes facility before being allowed to speak with clients, sometimes even up to two hours. Some attorneys have been informed that they may only see a limited number of clients in a particular day, requiring additional travel on another day. These are all typical prison policies that should not apply to civil detention, where access to outside visitors, especially legal visitors, should be freely given.

E. Conditions of Detention Not Civil

Immigration detention that is punitive in nature violates both domestic and international law. U.S. immigration officials have no authority to detain immigrants for purposes other than prevention, and outside a criminal process, punitive detention violates due process. Guiding principles for civil immigration detention have been addressed in a 2012 report published by the American Bar Association, which states that: “Residents should not be held in jails or jail-like settings…Civil detention facilities might be closely analogized to ‘secure’ nursing homes, residential treatment facilities, domestic violence shelters, or in-patient psychiatric treatment facilities.” The UNHCR guidelines on detention specifically state that: “Detention of asylum-seekers for immigration-related reasons should not be punitive in nature. The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided.” Yet despite both domestic and international law on the issue, Karnes is largely punitive in the nature of its structure and conditions of detention.

Though Karnes is designated as “residential facility,” its so-called “residents” are locked in, and attorneys and visitors are locked out unless they follow very specific rules to gain entry. As a secure facility, there is no right to come and go for the women and children detained there. Karnes also looks like a correctional facility. The interior walls are painted cinderblock, and both interior and exterior doors are heavy, loud when slammed closed, and are most of the time left locked until a button is pushed and access through them is granted by Karnes staff. The facility is owned by a private prison corporation, GEO Group, whose website touts the corporation as

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43 ABA Civil Immigration Detention Standards at 4.
44 UNHCR Detention Guidelines, Guideline 8.
being “the world’s leading provider of correctional, detention, and community reentry services.”

The staff is male-dominated and is not trained in proper interactions and care of women, children and asylum seekers. A September 30 report from the Mexican American Legal Defense and Education Fund (MALDEF) and the University of Texas Immigration and Civil Rights Clinics cites multiple complaints from families detained at Karnes alleging sexual abuse by guards and staff at the facility. The report states that numerous women detained at Karnes have complained about Karnes guards and/or personnel “removing female detainees from their cells late in the evening and during early morning hours for the purpose of engaging in sexual acts,” and also states that there have been complaints regarding “Karnes center guards kissing, fondling and/or groping female detainees in front of other detainees, including children.” As of the report’s publication, detained women had reported the abuse to Karnes personnel but no action had been taken by the facility to stop or prevent the abuse.

Only very limited mental health and medical services are available at Karnes. Nor is the childcare provided for young children appropriate. Children must be placed in “daycare” at Karnes while their mothers attend court hearings, yet the care providers appear to be prison personnel with little to no training in working with young children. The obligatory separation of families in this manner is very upsetting for mother and children who have often not been apart previously.

Guards give disciplinary write-ups to women and children alike, and multiple women have reported that children are written up for doing “children things,” like running or laughing loudly or playing too much. In addition, guards sometimes threaten separating a mother and her child if the child is sanctioned for “bad” behavior.

Women and children at Karnes are also required to participate in several daily body counts. During these times, all residents are required to remain in their designated indoor locations. If children cannot remain still during this time, they may be written up for a disciplinary infraction.

Children are also not allowed to bring toys into their rooms. Reportedly, infants and toddlers may not be placed on the ground to engage in developmentally-appropriate activities such as crawling.

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II. International Human Rights Law Protects Asylum-Seekers from Arbitrary Detention

A. The Right to be Free from Arbitrary Detention and the Rights of Asylum Seekers

International human rights law protects all people from state-imposed arbitrary detention. The right to be free from arbitrary detention means that detention must be based on grounds and procedures set forth in law, and it must be proportional—used only to the extent needed to meet an important governmental purpose, and ending when the need for it ends. Detention may not be discriminatory, based on race, gender, religion, or national origin. Treatment of detainees must be humane, with access to medical evaluation and treatment.

The Inter-American Commission on Human Rights (IACHR) has specifically indicated, including in the immigration context, “that pre-trial detention is an exceptional measure.” The IACHR has thus insisted that alternatives to detention should always be considered.

International human rights law further obligates states to respect the right of all people to seek and enjoy asylum.
seeker for this purpose. Among the rights that refugees, and asylum seekers, enjoy are the right to non-refoulement, the right to freedom of movement, the right to liberty and security of person, and the right to family life.

With respect to the use of detention on asylum-seekers, the United Nations High Commission on Refugees (UNHCR)—the human rights body charged with leading and coordinating international action to protect refugees—has developed Detention Guidelines which are considered authoritative. The IACHR regularly references standards by the United Nations when establishing human rights norms.

The UNHCR Guidelines confirm a strong presumption against detention of asylum seekers. Since detention deprives asylum seekers of fundamental liberty for asserting their right to seek protection and causes “well-known negative and at times serious physical and psychological consequences,” international human rights law imposes stringent restrictions on the detention of asylum-seekers.

Under the UNHCR standards, detention of asylum-seekers should be used only as a last resort or “exceptional measure,” and must be based on previously existing law. Even then, the government must first consider alternatives to detention, such as release or release on bond. The IACHR has found that similar limitations apply to the detention of asylum seekers and other migrants.


UNHCR, Detention Guidelines, Introduction at 10.


American Convention on Human Rights, at art. 22.

International Covenant on Civil and Political Rights, at art. 9(1).

See, e.g., American Convention on Human Rights, at art. 5 (recognizing the importance of a family).

UNHCR, Detention Guidelines, Introduction at 8.


UNHCR, Detention Guidelines, Guideline 2; See also Id. (indicating that the IACHR discourages detention); Denise Gilman, Realizing Liberty: The Use of International Human Rights Law to Realign Immigration Detention in the United States, 36 Fordham Int’l L.J. 243, 269-70 (stating the United Nations has voiced a strong presumption against detention).


IACHR, Report on Immigration in the United States: Detention and Due Process, at 12; UNHCR, Detention Guidelines, Guideline 4.1; see generally International Covenant on Civil and Political Rights (recognizing a right to be free from arbitrary detention).

The UNHCR standards further require that detention must be justified by a legitimate purpose and be proportional to that purpose. To determine if detention is proportional and reasonable, the UNHCR weighs its purpose against the asylum-seeker’s right to personal liberty, which must be given great weight. The only legitimate purposes that may justify detention are public order, public health, or national security. With respect to public order, which is the most commonly invoked reason for immigration detention in the United States, the UNHCR has stated that detention is only justified when “1. the asylum-seeker is likely to abscond or refuse to cooperate; 2. detention is associated with accelerated procedures in narrow circumstances; 3. brief detention is necessary to carry out initial identity and security checks; or 4. an initial brief period of detention is necessary to allow for a ‘preliminary interview’ on the asylum claim.”

Even in those cases, there must always be an individualized determination that detention is needed in a particular case. National security grounds also must be narrowly interpreted and detention for national security reasons must be “necessary” and “proportionate to the threat.” Finally, detention may not be discriminatory, based for example on gender or a particular national origin.

In addition, detaining asylum-seekers in the name of deterrence is unlawful under human rights standards because it would violate the requirement that detention must be individualized—necessary, proportional, and reasonable “in all the circumstances” of the individual case. This goes hand-in-hand with the principle, reiterated by UNHCR, that detention of asylum seekers should not be punitive. Since asylum seekers are exercising their rights under international law to seek asylum, they may not be punished for doing so.

In addition, when the extraordinary measure of detention is employed, international law imposes limits. Indefinite detention is arbitrary, and maximum limits on detention should be established. Decisions to detain or to extend detention must be subject to procedural safeguards such as notice of their rights, right to counsel and regular review of detention.

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71 UNHCR, *Detention Guidelines*, Guideline 4.1.3.
75 IACHR, *Report on Immigration in the United States: Detention and Due Process*, at 15. See also American Declaration the Rights and Duties of Man, art. 1; International Covenant on Civil and Political Rights, at art. 9.
The conditions of detention must be humane and dignified, for example with detainees provided adequate food, medical care, exercise, and regular contact with family.\textsuperscript{77} The conditions of detention must reflect its civil nature, and criminal-type detention is not appropriate.\textsuperscript{78} The special circumstances and needs of particular asylum-seekers, including those who have been traumatized or tortured, must be taken into account.\textsuperscript{79} Detention facilities must also provide for the particular needs of children and women.\textsuperscript{80}

B. Protections for Children

Drawing upon international human rights instruments protecting children, such as the United Nations Convention on Rights of the Child, the UNHCR Guidelines make clear that “detention of children [should] be used only as a measure of last resort and for the shortest appropriate period of time.”\textsuperscript{81} The IACHR has also enshrined similar principles in several decisions.\textsuperscript{82}

If detention is utilized, the facility must act in the child’s best interests and accommodate a child’s “fundamental right to life, survival, and development.”\textsuperscript{83} The facility must follow an “ethic of care” that respects the child’s rights to freedom of expression, to be in a family unit, and to be free from discrimination.\textsuperscript{84} Children have a right to an education and a right to play with other children of their age.\textsuperscript{85} The UNHCR standards recognize the “well-documented deleterious effects of detention on children’s well-being, including on children’s physical and mental development.”\textsuperscript{86}

Children should also be afforded all the same procedural rights as other detainees.\textsuperscript{87} Efforts should be made to aid the child in the legal process of asylum by prioritizing the child’s claim. Also, an independent guardian and legal adviser should be appointed to aid the child navigate the complex legal webs the child must go through.\textsuperscript{88}

\textsuperscript{77} UNHCR, \textit{Detention Guidelines}, Guideline 8.
\textsuperscript{78} UNHCR, \textit{Detention Guidelines}, Guideline 8.
\textsuperscript{79} UNHCR, \textit{Detention Guidelines}, Guideline 9.
\textsuperscript{80} UNHCR, \textit{Detention Guidelines}, Guideline 9.2-.3.
\textsuperscript{81} UNHCR, \textit{Detention Guidelines}, Guideline 9.2.
\textsuperscript{83} UNHCR, \textit{Detention Guideline}, guideline 9.2.
\textsuperscript{84} UNHCR, \textit{Detention Guideline}, guideline 9.2.
\textsuperscript{85} UNHCR, \textit{Detention Guideline}, guideline 9.2.
\textsuperscript{86} UNHCR, \textit{Detention Guideline}, guideline 9.2.
\textsuperscript{87} UNHCR, \textit{Detention Guideline}, Guideline 9.2.
\textsuperscript{88} UNHCR, \textit{Detention Guideline}, Guideline 9.2.
The IACHR has reached similar conclusions—namely, that families and pregnant women seeking asylum should not be detained, and if they are, the conditions must not be like prison; that facilities holding children should have less restrictive conditions than adult detention centers; and that “detention of children should be for the shortest appropriate period of time.”

C. Protections for Women

The UNHCR Guidelines also afford additional protections to women asylum-seekers in detention. Detention facilities should care for the women’s gender specific needs, and the use of female guards should be encouraged. Abused women should be given special counseling and attention. Women who report sexual abuse should be given appropriate medical care, counseling, and legal aid. Pregnant or nursing women should not be detained.

III. Domestic Law Protections Relating to Immigration Detention

International law requires that detention be consistent with pre-existing domestic law. In the case of Karnes, family detention violates basic precepts of domestic law that parallel the protections in international law.

Both the United States Constitution and domestic federal law impose certain restrictions on immigration detention, although these restrictions are not always respected in practice, including at the Karnes facility. Immigration detention is distinct from criminal detention within the United States. It is civil detention, because it pertains to non-citizens who have entered or have remained in the country unlawfully, which is a civil infraction under immigration law. Detention is related to immigration proceedings, to ensure appearance for proceedings or deportation, rather than to any criminal penalty imposed after a conviction.

The United States Supreme Court has held that detained non-citizens, including asylum-seekers, are entitled to certain substantive and procedural rights under the Due Process Clause of the United States Constitution. The Due Process Clause states, in relevant part, that no state shall “deprive any person of life, liberty, or property, without due process of law.”

Many Constitutional due process rights for detained immigrants mirror international human rights standards. First, detention of non-citizens cannot be arbitrary. Detention must be based on a legitimate governmental purpose, and the detention of a particular individual must

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90 UNHCR, Detention Guideline, Guideline 9.3.
91 UNHCR, Detention Guideline, Guideline 9.3.
92 UNHCR, Detention Guideline, Guideline 9.3.
93 UNHCR, Detention Guideline, Guideline 9.3.
have a reasonable relation to that purpose.\textsuperscript{95} Typically, in the immigration detention context, the Supreme Court has noted that prevention of flight risk and danger to the community are legitimate governmental purposes. To the extent that the government has determined that flight risk or danger justifies the need for detention, that justification must be individualized.\textsuperscript{96}

Second, detention of non-citizens may not be indefinite or unduly prolonged.\textsuperscript{97} Unduly prolonged detention results when the reason justifying detention no longer applies. At that point, the Due Process Clause prohibits further detention.\textsuperscript{98} Third, civil immigration detention, including detention of asylum-seekers, cannot be punitive. Since immigration detention is regulatory and not based on violations of criminal law, it cannot be for the purpose of punishment.\textsuperscript{99}

Fourth, the initial decision to detain, as well as subsequent decisions to extend detention, must be accompanied by procedural safeguards to ensure that the detention rests on a legitimate governmental purpose and that the detention bears a reasonable relation to that purpose.\textsuperscript{100} When the individual is no longer a risk for the reason she was detained, then review of detention should be available so that release can be secured.

IV. Domestic Law Establishes Special Protections for Children, including Those in Detention

A. Due Process for Children in State Custody

The U.S. Supreme Court has held that the United States Constitution affords children the same basic rights and guarantees that it provides adults.\textsuperscript{101} Non-citizens in this country, regardless of their status, are also guaranteed fundamental due process protections under the Constitution’s Due Process Clause.\textsuperscript{102} Therefore, non-citizen children detained and placed in removal proceedings benefit from the Constitution’s fundamental due process guarantees.

\begin{footnotes}
\footnotetext[96]{See Kim, 538 U.S. at 515 (2003).}
\footnotetext[97]{Zadvydas, 533 U.S. at 689 (2001).}
\footnotetext[98]{Zadvydas, 533 U.S. at 691–692 (2001).}
\footnotetext[99]{Zadvydas, 533 U.S.at 690(2001).}
\footnotetext[100]{See Kim, 538 U.S. at 527 (2003).}
\footnotetext[101]{See Breed v. Jones, 421 U.S. 529, 541 (1975) (stating juveniles are protected by the double jeopardy clause of the Fifth Amendment); In re Winship, 397 U.S. 358, 368 (1970) (requiring proof beyond a reasonable doubt in juvenile proceedings); In re Gault, 387 U.S. 1, 13 (1967) (Holding that the protections derived from the Fourth Amendment and Bill of Rights do not apply solely to adults and thus are extended to children).}
\footnotetext[102]{See Landon v. Plasencia, 459 U.S. 21, 32 (1982); see also Plyler v. Doe, 457 U.S. 202, 210 (1981) (holding that “even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments”).}
\end{footnotes}
Further affirming the strict limits on detention applicable to all children, the U.S. Supreme Court has held that pre-trial detention is restricted in the juvenile delinquency context. The state must have a compelling interest, detention must be necessary to prevent pre-trial crime by the child, the detention must not be punitive and must have short, strict time limits, and conditions of confinement must not be unduly severe.\textsuperscript{103} Even then, the decision to detain must be individualized, and the state must provide procedural safeguards, such as notice of charges, assistance of counsel, and an adversarial hearing on the record.\textsuperscript{104}

Likewise, with respect to medical confinement of children, the Supreme Court has held that when parents or guardians voluntarily commit their children to psychiatric institutions, procedural due process protections apply.\textsuperscript{105} Like adults, children have a substantial liberty interest in not being confined unnecessarily for medical treatment.\textsuperscript{106} To protect that interest and prevent erroneous confinement, the Court requires procedural due process protections such as a full factual inquiry made by a neutral fact-finder.\textsuperscript{107}

Regardless of the purpose for the confinement, the detention of a child triggers the Due Process Clause.\textsuperscript{108} Only a very important government interest particularized to the child, can justify deprivations of physical liberty, and strong procedural safeguards must exist to reduce the risk of error in decisions to detain.\textsuperscript{109}

B. Children Are Uniquely Vulnerable

Children have different needs and capacities than adults and care must be given to ensure those needs are met.\textsuperscript{110} Childhood is a particularly vulnerable time of life, and children erroneously institutionalized may bear scars for the rest of their lives.\textsuperscript{111} For these reasons, the Supreme Court has pointed out that children may require more legal protection than adults and that Constitutional principles must be applied with sensitivity and flexibility to the special needs of children.\textsuperscript{112} The Court has also recognized three reasons why courts must be sensitive and flexible in determining the constitutional rights of children, rather than automatically equating

\textsuperscript{104} Id. at 275–77.
\textsuperscript{105} Parham v. JR, 442 U.S. 584, 600 (1979).
\textsuperscript{106} Id.
\textsuperscript{107} Id. at 606.
\textsuperscript{108} See In re Winship, 397 U.S at 367 (holding that regardless of the purpose of the incarceration, that fact remains that the children are incarcerated and thus a deprivation of a child’s liberty occurs.).
\textsuperscript{109} Martin, 467 U.S. at 288 (Marshall, J., Dissenting).
\textsuperscript{110} McKeiver v Pennsylvania, 403 U.S. 528, 550 (1971).
\textsuperscript{112} Bellotti v. Baird, 443 U.S. 622, 634-35 (1979) (stating that children generally are protected by the same guarantees against government deprivation as are adults and the State is entitled to adjust its legal system to account for the vulnerability of children).
them with those of adults: the peculiar vulnerability of children; their inability to make critical
decisions in an informed, mature manner; and the importance of the parental role in child
rearing.\footnote{Bellotti, 443 U.S. at 634-35.} Care must be taken when making the decision to detain a child as the consequences of
erroneous commitment decisions may be more severe where children are involved.\footnote{Reno v. Flores, 507 U.S. 292 at 318 (O’Connor, J., Concurring).}

Particular care should also be given when detention affects family relationships. The
Supreme Court has recognized the unique role in our society of family, the institution by which
“we inculcate and pass down many of our most cherished values, moral and cultural.”\footnote{Moore v. City of East Cleveland, 431 U. S. 494, 503-504 (1977).}

\footnote{Moore, 431 U.S. at 537-38.} When state action impairs family unity and family decision-making, the state’s interests must be
important, and state action cannot be arbitrary.\footnote{Santosky v Kramer, 455 U.S. 745, 766 (1982).}

C. The State’s Duty to Protect Children and Parens Patriae

The State has both the power and the responsibility to protect the interests of children
within its jurisdiction under the legal concept \textit{Parens Patriae}.\footnote{Flores, 507 U.S. at 302.}

\footnote{DeShaney v.Winnebago County Dept. of Social Services, 489 U.S. 189, 196 (1989).}

Where the custody of the parent
or legal guardian fails, the government must exercise custody or appoint someone else to do
so.\footnote{Id.} However, the state must respect the parents’ primary right and duty to care for their
children, and courts must assume – in the absence of evidence of abuse or neglect – that parents
act in the best interests of their children.\footnote{Parham, 442 U.S. at 602.}

\footnote{See e.g., 42 U.S.C. § 5101–07 (2014) (The Child Abuse and Protection Act provides that the government is
allowed to step in for the mistreatment of children due to parens patriae, a legal term meaning that the government
has a role in protecting the interests of children); 125 Stat. 369 (2011) (listing the requirements for states receiving
welfare including that each State must plan for health care services and monitor and treat emotional trauma
associated with a child's maltreatment and removal from home and requiring each State to address the
developmental needs of such children who receive benefits or services.) Childrensrights.org,
http://www.childrensrights.org/issues-resources/now-your-rights/ (last visited Sep. 9, 2014).} Without evidence of abuse or neglect, the state should
not negate parental decision-making to exert control over the child.

When a state acts to take custody of a child, the Constitution imposes upon the State
affirmative duties of care and protection for the child.\footnote{See e.g., 42 U.S.C. § 5101–07 (2014) (The Child Abuse and Protection Act provides that the government is
allowed to step in for the mistreatment of children due to parens patriae, a legal term meaning that the government
has a role in protecting the interests of children); 125 Stat. 369 (2011) (listing the requirements for states receiving
welfare including that each State must plan for health care services and monitor and treat emotional trauma
associated with a child's maltreatment and removal from home and requiring each State to address the
developmental needs of such children who receive benefits or services.) Childrensrights.org,
http://www.childrensrights.org/issues-resources/now-your-rights/ (last visited Sep. 9, 2014).}

The duty to protect arises from the
limitation that is imposed on the child’s freedom to act on one’s own behalf.\footnote{Parham, 442 U.S. at 602.} Federal statutes
also elaborate on the governmental duty to protect the rights of children in the government’s care
or custody.\footnote{Id.}
D. State of Texas Protections for Children in State Custody

In Texas, where the Karnes Detention Center is located, the Texas Family Code provides for the protection of children from abuse and neglect. The Code defines abuse as causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning. The Code defines neglect as placing a child in a situation a reasonable person would realize requires judgment beyond the child's maturity, physical condition, or mental abilities, as well as failing to seek, obtain, or follow through with medical care resulting in a substantial risk of death, disfigurement, or bodily injury or observable and material impairment to the growth, development, or functioning of the child. The Code applies to persons responsible for a child's care, custody, or welfare. This includes personnel at a public or private child-care facility that provides services for the child or at a residential institution or facility where the child resides.

E. The *Flores* Settlement Agreement Relating to Detained Children and Immigration Regulations on Detained Children

All children in DHS custody are entitled to certain procedural protections guaranteed to them by virtue of a federal court settlement agreement in a case entitled *Flores v. Reno.* *Flores* involved a challenge on behalf of unaccompanied undocumented children to the Immigration and Naturalization Service’s (“INS”) policies governing children’s release, and the conditions of confinement of children who were not released. In 1997, the government entered into a settlement agreement in the case, which requires the government to: (1) ensure the prompt release of children from immigration detention; (2) place children for whom release is pending, or for whom no release option is available, in the “least restrictive” setting appropriate to the age and special needs of minors; and (3) implement standards relating to improved care and treatment of children in U.S. immigration detention.

The *Flores* settlement requires facilities where the children are detained to be “licensed” by the state as a residential facility for children, which the Karnes facility is not. The settlement also requires facilities housing children to provide education, counseling, and other services. Finally, an immigration regulation regarding minors in DHS custody requires DHS to consider whether to release a detained child along with a detained parent, on a case-by-case basis.
CONCLUSION

The government’s detention of women and children at the Karnes detention center violates international human rights standards, as well as parallel domestic law protections, in numerous ways:

1. The government’s categorical determinations to continue detention of women and children at Karnes lack any individualized basis and therefore violate the human rights norm prohibiting arbitrary detention. ICE’s decision to keep families in detention even if they pose no individual danger or flight risk, based on purported deterrence of “mass illegal migration” is not a legitimate basis for family detention. Moreover, there is no relation at all between the detention of families at Karnes and mass illegal migration patterns.

2. The government’s decision to impose categorical family detention on asylum-seekers violates the international norms that detention of asylum-seekers and of children should be an exceptional measure, a last resort, and one that is imposed after consideration of alternatives. Here, the government uses family detention as a first resort, without consideration of non-detention alternatives such as community-based supervision and payment of bond.

3. The conditions at the Karnes detention center, as described herein, are punitive, disproportionate to the purpose, and are not the least restrictive, and therefore violate international norms. From inadequate food and medical services to harsh restrictions on children’s movement to threats and discipline, the detention conditions resemble prisons far too closely.

Under these circumstances, family detention at Karnes violates the rights of the detained mothers and children, and the practice of family detention should end. Family detention is an excessive and disproportionate response to a purported influx of children crossing the border.

Finally, the harms to children from detention in a secure facility are significant. Children need, among other things, abundant food, education appropriate to their age, ability, and language skills, unrestricted play, flexible schedules, and activities supervised by their parents. At Karnes, children lack each of these important necessities, and their parents lose virtually all control over their care and upbringing.

Given the virtually nonexistent security benefits from detaining children and their mothers, and the serious harms resulting from such detention, the government should end the practice of family detention at Karnes, and desist from building more family detention centers.
Exhibit 1
IMMIGRATION DETENTION AND RELEASE
ONCE REMOVAL PROCEEDINGS INITIATED

Removal proceedings on merits of case proceed simultaneously with review of detention

Custody Decisions

ICE decides custody – no release at Karnes

Review by immigration court

Released on bond or recognizance

Ordered released, but ICE appeals and places mandatory stay

No release – no bond or bond too high to pay

Final – released during merits

Appeal – released during merits and bond appeal

Appeal – not released during bond appeal

Appeal – not released

Final – No appeal and no release

Asylum or other relief granted

Final order of removal entered

Released if still detained

Detained until removal if still detained

Board of Immigration Appeals decision on custody

Merits of Case

Hearings in immigration court

(Possible appeal to Board of Immigration Appeals, US Circuit Court)

Final order on merits in deportation proceedings
Exhibit 2
Record of Deportable/Inadmissible Alien

U.S. Department of Homeland Security  Subject ID: [redacted]

Record of Deportable/Inadmissible Alien

Sex: F  Height: 69  Weight: 162  Complexion: RED
Marital Status: MARRIED

Passport Number and Country of Issue: [redacted]
Country of Citizenship: EL SALVADOR
Non-Citizenship: [redacted]

KARNES COUNTY DETENTION CENTER 409 FM 1114 KARNES CITY, TX 78116.

Date and Time of Arrest: 07/10/2014, 1400. 1 mile(s) from Hidalgo, TX.
Method of Arrest: N/E

Number, State, City, Province, Nation, and Country of Permanent Residence:
SONSONATE, SONSONATE, EL SALVADOR

Direct Issue:

City, Province, Nation, and Country of Birth:
SONSONATE, SONSONATE, EL SALVADOR

Country of Birth:
SONSONATE, SONSONATE, EL SALVADOR

Social Security Number:

Date and Time of Arrest:
09/30/2014

Locality Code: TX/SHC

IMMIGRATION RECORD

NAME: EL SALVADOR

Date of Admission:
09/30/2014

Entry/Exit:
TRAVEL/SEEKING

At Entry:

INFORMATION

Address:
SONSONATE, SONSONATE, EL SALVADOR

Social Security Number:

Date of Birth:
Ago 26

Son or Stepson:

Son or Stepdaughter:

Son or Stepchild:

Son or Stepgrandchild:

Son or Stepnephew:

Son or Stepniece:

Son or Stepbrother:

Son or Stepsister:

Other Relative:

CONTACTS

Phone Number:

Date of Arrest:
07/10/2014

Date of Birth:
09/30/2014

Location:
KARNES CITY, TX

Imagery:

Fingerprint:

Left Index fingerprint

Right Index fingerprint

ADDRESS:

SAME FOREIGN ADDRESS
SONSONATE, SONSONATE, EL SALVADOR

(Continued on I-331)

Distribution:

To File: MCA/SHC

Distribution:

Receiver:

Officer:

Date:
July 30, 2014 at 1512

Expedited Removal with Credible Fear

FERNANDO CORTEZ

BORDER PATROL AGENT

Signature and Title of Immigration Officer:

ERIC SANCHEZ

Form I-213 (Rev. 08/01/07)
Record of Deportable/Excludable Alien:
OTH ER - No Prosecution
IMMIGRATION HISTORY: See records
CRIMINAL HISTORY: See records

ENCOUNTER:
A Border Patrol Agent encountered the subject in the Rio Grande Valley, Texas Border Patrol Sector. A Border Patrol Agent determined the subject had unlawfully entered the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States. After determining that the subject was an alien whom illegally entered the United States, the subject was arrested and transported to the McAllen Border Patrol Station for further processing.

IMMIGRATION/CRIMINAL VIOLATION:
At the McAllen Border Patrol Station, the subject was asked if they wanted to make a Sworn Statement as part of the Expedited Removal Proceedings. Service Form I-857 A/B was read and explained to the subject. The subject understood and was willing to answer questions and give a statement. The subject again stated they are a citizen and national of El Salvador without the necessary legal documents to enter, pass through, or remain in the United States. The subject also admitted to illegally crossing the international boundary without being inspected by an Immigration Officer at a designated Port of Entry.

CONSULAR NOTIFICATION:
The subject was notified of the right to communicate with a consular officer from their country as per Article 36(a) (b) of the Vienna Convention of Consular Relations. The subject acknowledged understanding the right and declined to speak with someone at this time. The subject further stated they do fear persecution or torture if returned to their country of citizenship.

DISPOSITION:
The subject is being processed for Expedited Removal. The subject was apprehended within fourteen days of their last entry into the United States and within 100 air miles from the United... (CONTINUED ON NEXT PAGE)
States/Mexico international boundary.

(FOR SALVADORANS): Subject was provided a modified Orantes Advisal. Subject indicated he did want an interview before an asylum officer and requested that they not be returned to El Salvador.

The processing of this Expedited Removal was conducted via video conference by Border Patrol Agent Manuel Payan at San Diego Sector, Murrieta, California. The subject and witness Border Patrol Agent Fernando Cortez was present at the McAllen Border Patrol Station.

NOTE: 
Subject is traveling with her 2 year old daughter. 

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| Event No. | |
|-----------||

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<td>BORDER PATROL AGENT</td>
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3 of 3 Pages
Exhibit 3
Record of Determination/Credible Fear Worksheet

Department of Homeland Security
U.S. Citizenship and Immigration Services

<table>
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<th>David</th>
<th>El Salvador</th>
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<th>Alien’s Nationality</th>
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</table>

All statements in italics must be read to the applicant

INTERVIEW PREPARATION

1.1  8/1/2014
Date of arrival [MM/DD/YY]

1.3  8/2/2014
Date of detention [MM/DD/YY]

1.5  8/2/2014
Date of AO orientation [MM/DD/YY]

1.7  8/11/2014
Date of interview [MM/DD/YY]

1.8  Karnes City, TX
Interview site.

1.9  ☒  Applicant received and signed Form M-444 and relevant pro bono list on

1.10 Does applicant have consultant(s)?
☒ Yes  ☐ No

1.11 If yes, consultant(s) name, address, telephone number and relationship to applicant

No one other than applicant and asylum officer

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list:

1.15 ☐ No one other than applicant and asylum officer

1.16 Language used by applicant in interview:

1.17 Lionbridge# 7285100
Interpreter Service, Interpreter ID Number.

1.18 Interpreter Service, Interpreter ID Number.

1.19 Interpreter Service, Interpreter ID Number.

1.20 ☒ Interpreter was not changed during the interview

1.21 ☐ Interpreter was changed during the interview for the following reason(s):

1.22 ☐ Applicant requested a female interpreter replace a male interpreter, or vice versa

1.23 ☐ Applicant found interpreter was not competent

1.25 ☐ Officer found interpreter was not competent

1.26 ☒ Bad telephone connection

1.27 ☒ Bad telephone connection

The purpose of this interview is to determine whether you may be eligible for asylum or protection from removal to a country where you fear persecution or torture. I am going to ask you questions about why you fear returning to your country or any other country you may be removed to. It is important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons why you fear harm. The information you tell me about the reasons for your fear will not be disclosed to your government, except in exceptional circumstances. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain.
SECTION II:

2.1 Last Name/ Family Name [ALL CAPS]

2.2 First Name

2.4 Date of birth [MM/DD/YY]

2.6 None

2.7 El Salvador

2.9 Address prior to coming to the U.S. (List Address, City/Town, Province, State, Department and Country).

2.10 Latina

2.11 Christian

2.12 Spanish

2.13 Marital status: □ Single  ❑ Married  □ Legally separated  □ Divorced  □ Widowed

2.14 Did spouse arrive with applicant? □ Yes  ❑ No

2.15 Is spouse included in applicant's claim? □ Yes  ❑ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location (if with applicant, please A-Number):

Citizen Of El Salvador and currently living in El Salvador.

2.17 Children: ❑ Yes  □ No

2.18 List any children (Use the continuation section to list any additional children):

<table>
<thead>
<tr>
<th>Date of birth (MM/DD/YY)</th>
<th>Name</th>
<th>Citizenship</th>
<th>Present location (If w/PA, list A-Numbers)</th>
<th>Did child arrive with PA?</th>
<th>Is child included in PA’s claim?</th>
</tr>
</thead>
</table>
2.19 Does applicant claim to have a medical condition (physical or mental), or has the officer observed any indication(s) that a medical condition exists? If YES, answer questions 2.20 and 2.21 and explain below.  
☐ Yes ☑ No

2.20 Has applicant notified the facility of medical condition?  
☐ Yes ☐ No  
☐ Yes ☐ No  
☐ Yes ☐ No

2.21 Does applicant claim that the medical condition relates to torture?  
☐ Yes ☐ No  
☐ Yes ☐ No  
☐ Yes ☐ No

2.22 Does the applicant have a relative, sponsor or other community ties, including spouse or child already listed above?  
☐ Yes ☐ No  
☐ Yes ☐ No  
☐ Yes ☐ No

2.23 If YES, provide information on relative or sponsor (use continuation section, if necessary):  

Name

Maryland, U.S.A. (complete address)  

unknown)

Address  

☐ Citizen ☐ Legal Permanent Resident ☑ Other

Telephone Number

SECTION III:

CREDIBLE FEAR INTERVIEW

THE FOLLOWING NOTES ARE NOT A VERBATIM TRANSCRIPT OF THIS INTERVIEW. THESE NOTES ARE RECORDED TO ASSIST THE INDIVIDUAL OFFICER IN MAKING A CREDIBLE FEAR DETERMINATION AND THE SUPERVISORY ASYLUM OFFICER IN REVIEWING THE DETERMINATION. THERE MAY BE AREAS OF THE INDIVIDUAL’S CLAIM THAT WERE NOT EXPLORED OR DOCUMENTED FOR PURPOSES OF THIS THRESHOLD SCREENING.

The asylum officer must elicit sufficient information related to both credible fear of persecution and credible fear of torture to determine whether the applicant meets the threshold screening. Even if the asylum officer determines in the course of the interview that the applicant has a credible fear of persecution, the asylum officer must still elicit any additional information relevant to a fear of torture. Asylum officers are to ask the following questions and may use the continuation sheet if additional space is required. If the applicant replies YES to any question, the asylum officer must ask follow-up questions to elicit sufficient details about the claim in order to make a credible fear determination.

3.1 a. Have you or any member of your family ever been mistreated or threatened by anyone in any country to which you may be returned?  
☐ Yes ☑ No

See Q & A and checklist

b. Do you have any reason to fear harm from anyone in any country to which you may be returned?  
☐ Yes ☑ No

See Q & A and checklist

c. If YES to questions a and/or b, was it or is it because of any of the following reasons? (Check each of the following boxes that apply).  
☐ Race ☐ Religion ☐ Nationality ☑ Membership in a particular social group ☐ Political Opinion

Family (Wife of [redacted]), See Q&A and Checklist

3.2 ☑ At the conclusion of the interview, the asylum officer must read the following to applicant:
If the Department of Homeland Security determines you have a credible fear of persecution or torture, your case will be referred to an immigration court, where you will be allowed to seek asylum or withholding of removal based on fear of persecution or withholding of removal under the Convention Against Torture. The Field Office Director in charge of this detention facility will also consider whether you may be released from detention while you are preparing for your hearing. 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. Do you have any questions? □ YES □ NO

3.3 At the conclusion of the interview, the asylum officer must read a summary of the claim, consisting of the responses to Questions 3.1 a-c and information recorded in the Additional Information/Continuation section, to applicant.

***Typewritten Question and Answer (Q&A) interview notes and a summary and analysis of the claim must be attached to this form for all negative credible fear decisions. These Q&A notes must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues and that the applicant was given every opportunity to establish a credible fear.

SECTION IV:

A. Credible Fear Determination:

Credibility

4.1 □ There is a significant possibility that the assertions underlying the applicant’s claim could be found credible in a full asylum or withholding of removal hearing.

4.2 □ Applicant found not credible because (check boxes 4.3-4.5, which apply):

4.3 □ Testimony was internally inconsistent on material issues.

4.4 □ Testimony lacked sufficient detail on material issues.

4.5 □ Testimony was not consistent with country conditions on material issues.

Nexus

4.6 □ Race 4.7 □ Religion 4.8 □ Nationality 4.9 □ Membership in a Particular Social Group

(Define the social group): Family [Wife of [redacted]].

4.10 □ Political Opinion 4.11 □ Coercive Family Planning (CFP) 4.12 □ No Nexus

Credible Fear Finding

4.13 □ Credible fear of persecution established.

OR

4.14 □ Credible fear of torture established.

OR

4.15 □ Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention Against Torture.

B. Possible Bars:

4.16 □ Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 □ Particularly Serious Crime 4.18 □ Security Risk 4.19 □ Aggravated Felon

4.20 □ Persecutor 4.21 □ Terrorist 4.22 □ Firmly Resettled

4.23 □ Serious Non-Political Crime Outside the United States

4.24 □ Applicant does not appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 □ Applicant’s identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 □ Applicant’s own credible statements. (If testimony is credible overall, this will suffice to establish the applicant’s identity with a reasonable degree of certainty).

4.27 □ Passport which appears to be authentic.

4.28 □ Other evidence presented by applicant or in applicant’s file (List): 

4.29 □ Applicant’s identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)
### SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>David Jung ZHN262</td>
<td>5.2</td>
<td>Asylum Officer's Signature</td>
</tr>
<tr>
<td>5.2</td>
<td>Asylum officer name and ID CODE (print)</td>
<td>5.3</td>
<td>8/11/2014</td>
</tr>
<tr>
<td>5.3</td>
<td>Audrey McDonnell</td>
<td>5.4</td>
<td>Supervisory Asylum Officer</td>
</tr>
<tr>
<td>5.4</td>
<td>Supervisory asylum officer name</td>
<td>5.5</td>
<td>Supervisor's Signature</td>
</tr>
<tr>
<td>5.5</td>
<td></td>
<td>5.6</td>
<td>AUG 12 2014</td>
</tr>
<tr>
<td>5.6</td>
<td></td>
<td>5.6</td>
<td>Date Supervisor Approved decision</td>
</tr>
</tbody>
</table>

### ADDITIONAL INFORMATION/CONTINUATION

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U.S. Department of Justice

---

202 004 596
SNA
## CREDIBLE FEAR DETERMINATION CHECKLIST

**FILE #:** [Redacted]  
**OFFICER:** DAVID JUNG (ZHN 262)  
**DATE:** AUGUST 11, 2014

- The factual summary (required by 8 CFR § 208.30) must be included at the end of the Q/A notes for each interview.
- Torture: If there is a significant possibility of torture, complete Part A and Part C.
- Credibility: If there is no significant possibility assertions could be found credible, complete Part A and Part D.

### A. Harm

1. Has the applicant testified to past harm or mistreatment in his or her country?
   - **If yes, identify Persecutor / Torturer / Other Individual:** The 18th gang.
     - Past Harm: The 18th gang threatened to kill the applicant and her child, tried to extort money from her, hit her with their hands, and kicked her. A member of the 18th gang also hit the applicant’s child.  
     - **Yes ☑ No □**

2. Has the applicant testified that he or she fears future harm if returned to his or her country?
   - **If yes, identify Persecutor / Torturer / Other Individual:** The 18th gang.
     - Feared Future Harm: The applicant fears being killed.  
     - **Yes ☑ No □**

3. If no to A.1 and A.2, STOP HERE and complete Form I-870. If yes, continue.

### B. Persecution

1. Is there a significant possibility that the applicant could establish in a full hearing that the claimed past or future harm is on account of one of the five protected grounds?
   - Race ☐ Religion ☐ Nationality ☐ Political Opinion ☑ Membership in a Particular Social Group
   - **If yes, check applicable ground(s) above and specify:**
     - Family (Family member or [Redacted] — The applicant stated that the 18th gang targeted her because she is the wife of her husband, [Redacted]).  
     - **Yes ☑ No □**

   **If no, specify motive of alleged persecutor, explain why a protected ground does not apply, and move to Part C:**

2. Is there a significant possibility that the applicant could establish in a full hearing that the claimed past or future harm did or would rise to the level of persecution?
   - **Yes ☑ No □**

   **If no, explain, and move to Part C:**

3. Is there a significant possibility that the applicant could establish in a full hearing that the entity that harmed or would harm the applicant is either an agent of the government or an entity that the government is unable or unwilling to control?
   - **Yes ☑ No □**

   **If no, explain, and move to Part C:**

(Version 3.0 April 11, 2013)
4. Is there a significant possibility that the applicant could establish in a full hearing that the applicant was persecuted or that his or her fear of future persecution is well-founded?

   *If no, explain, and move to Part C.*
   
   *If yes, STOP HERE and complete Form I-870*

<table>
<thead>
<tr>
<th>C. Torture</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Is there a significant possibility that the applicant could establish in a full hearing that s/he was or would be intentionally subject to serious physical or mental harm in a country of intended removal?</td>
</tr>
</tbody>
</table>

   *If no, STOP HERE, explain, and complete Form I-870:*

<table>
<thead>
<tr>
<th>D. Credibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Explain each credibility issue in detail:</td>
</tr>
<tr>
<td>2. Explain materiality of each issue:</td>
</tr>
<tr>
<td>3. Provide the applicant's response for each material credibility issue:</td>
</tr>
<tr>
<td>4. Assess the reasonableness of applicant's response as to each material credibility issue:</td>
</tr>
</tbody>
</table>

(Version 3.0 April 11, 2013)
Exhibit 4
Notice of Custody Determination

KARNES COUNTY RESIDENTIAL CENTER
409 FM 1144
KARNES CITY, TEXAS 78118

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that pending a final determination by the immigration judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be:

☐ released under bond in the amount of $_________
☐ released on your own recognizance.

☑ You may request a review of this determination by an immigration judge.
☐ You may not request a review of this determination by an immigration judge because the Immigration and Nationality Act prohibits your release from custody.

HILARIO DE LA CRUZ
(Signature of authorized officer)

Supervisory Det. & Dep. Officer
(Title of authorized officer)

Karnes City, TX
(Office location)

☐ I do ☐ do not request a redetermination of this custody decision by an immigration judge.
☐ I acknowledge receipt of this notification.

(Signature of respondent) (Date)

RESULT OF CUSTODY REDETERMINATION

On ____________, custody status/conditions for release were reconsidered by:

☐ Immigration Judge ☐ DHS Official ☐ Board of Immigration Appeals

The results of the redetermination/reconsideration are:

☐ No change - Original determination upheld.
☐ Detain in custody of this Service.
☐ Bond amount reset to ________________

☐ Release - Order of Recognizance
☐ Release - Personal Recognizance
☐ Other: ________________

(Signature of officer)
Exhibit 5
DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No: [redacted]

In the Matter of:

Respondent: [redacted] currently residing at:

Karnes County Civil Detention Center, 409 FM 1144, Karnes City, TX 78118
(Number, street, city and ZIP code) (Area code and phone number)

☐ You are an arriving alien.
☒ You are an alien present in the United States who has not been admitted or paroled.
☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1) You are not a citizen or national of the United States.
2) You are a native of El Salvador and a citizen of El Salvador.
3) You entered the United States at or near Hidalgo, TX on 8/1/2014.
4) You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document.
5) You were not then admitted or paroled after inspection by an immigration officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

☒ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

SNA Immigration Court 800 Dolorosa St, Suite 300, San Antonio, TX 78207
(Complete Address of Immigration Court, including Room Number, if any)

on To Be Determined at To Be Determined to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: AUG 12 2014

Audrey McDonnell
Supervisory Asylum Officer
(Signature and Title of Issuing Officer)

Houston, TX
(City and State)

DHS Form I-862 (5/11) See reverse for important information
Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.10. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in this Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the Immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the Department of Homeland Security immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. You may fail to attend the hearing at the time and place designated in this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act (the Act).

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office of Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: ____________________________

(Signature of Respondent)

(Signature and Title of Immigration Officer)

Date: ____________________________

Certificate of Service

This Notice To Appear was served on the respondent by me on 8/14/14 in the following manner and in compliance with section 239(a)(1) of the Act.

☐ in person  ☐ by certified mail, returned receipt # requested  ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the Spanish language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(DHS Form I-862 (5/11))

Page 2 of 2
Exhibit 6
IN THE MATTER OF

RESPONDENT

A# __________

IN REMOVAL PROCEEDINGS
DOCKET: KARNES CITY, TEXAS

CUSTODY ORDER OF THE IMMIGRATION JUDGE

Requests having been made for a change in the custody status of the respondent pursuant to 8 C.F.R. Part 1236 and having considered the representations of the Immigration and Naturalization Service and the respondent, IT IS HEREBY ORDERED that:

The request for a change in the custody status of the respondent is

X DENIED.

The request for a change in the custody status of the respondent be

GRANTED and respondent be:

1. X Released from custody on respondent's own recognizance; or
   Released from custody upon posting a bond of $__________;
   (not less than $1,500).
   By agreement of both parties and:

2. X The conditions of the bond:
   remain unchanged; or
   X are changed as follows: SEE BELOW

Other: RESPONDENT MAY ONLY BE RELEASED WITH HER CHILD

__________________________
GLENN P. MCPHAUL
IMMIGRATION JUDGE
Date: SEPT. 15, 2014

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ( ) ALIEN ( ) ALIEN c/o Custodial Officer ( ) Alien(s) AT/REP ( ) INS
DATE: 9/15/14 By: COURT STAFF
Attachments: ( ) EOIR-33 ( ) EOIR-28 ( ) Legal Services List ( ) Other

0198C
9/97
Exhibit 7
Order of Release on Recognizance

File No: [Redacted]
Date: September 16, 2014
Event No: [Redacted]

Name: [Redacted]

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Department of Homeland Security or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

☒ You must report in (writing) (person) to

ICE Duty Officer

(Name and Title of Case Officer)

at

8940 Fourwinds Drive San Antonio, TX 78239

(Location of DHS Office)

on

03/16/2015

(Day of each week or month)

at

1000

(Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the immigration officer listed above.

☒ You must not violate any local, State, or Federal laws or ordinances.

☒ You must assist the Department of Homeland Security in obtaining any necessary travel documents.

☒ Other: You must appear at all scheduled Immigration Court Hearings.

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security.

[Signature of DHS Official]

Hilario Leal
Supervisory Detention Deportation Officer
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

[Signature of Immigration Officer Signing Order] [Signature of Alien] 9/14/19

(Date)

Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the conditions of release.

☐ The alien was taken into custody for removal.

[Signature of Immigration Officer Canceling Order] [Date]

Form I-220A (Rev. 08/01/07)
<table>
<thead>
<tr>
<th>Alien's Name</th>
</tr>
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<table>
<thead>
<tr>
<th>File Number</th>
</tr>
</thead>
</table>

<table>
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<tr>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 16, 2014</td>
</tr>
</tbody>
</table>

**X**

**Alien's Signature**

**Alien's Address**

**Alien's Telephone Number (if any)**

### PERSONAL REPORT RECORD

<table>
<thead>
<tr>
<th>DATE</th>
<th>OFFICER</th>
</tr>
</thead>
</table>

Signature | Title
---|---
☑ That you do not associate with criminals or members of a gang that are known to be involved in criminal activity.

☐ That you register in a substance abuse program within 14 days and provide Immigration and Customs Enforcement (ICE) with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.

☐ That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, the duration and objectives of the program, and the name of a program counselor.

☐ That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency/agencies and provide ICE with written proof of such registration within 10 days.

☑ That you do not commit any crimes or be associated with any criminal activity while on this Order of Release on Recognizance.

☑ That you report to a parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.

☐ You must follow all reporting and supervision requirements as mandated by the parole or probation officer.

☐ That you continue to follow any prescribed doctor's orders whether medical or psychological, including taking prescribed medications.

☐ That you make good faith and timely efforts to obtain a travel document and assist ICE in obtaining a travel document.

☑ That you submit a complete application for a travel document to all appropriate Embassies or Consulates, including those representing the countries of El Salvador. You must present ICE with evidence that each Embassy or Consulate to which you apply has received your request and all required documents. This may be done, for example, by mailing your application(s) with a request for return receipt and providing the signed return receipt to ICE, by obtaining a tracking number when you mail your application(s) and providing the number to ICE, or by submitting written confirmation of receipt issued by the Embassy or Consulate.

☐ That you submit your application(s) for a travel document to all appropriate Embassies or Consulates and provide proof of receipt to ICE on or before [date].

☑ That you provide ICE a copy of your application(s) for a travel document that you submit to any Embassy or Consulate, including all supporting documents, photos, and other items provided to the Embassy or Consulate to support your application(s).

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE).
That you provide ICE a copy of all correspondence related to your travel document application(s) that you send to, or receive from, an Embassy or Consulate.

☐ That you contact the Embassy or Consulate within 21 calendar days of making your application(s) to confirm that the information you provided is sufficient.

☐ That you comply with any requests from an Embassy or Consulate for an interview and make good faith efforts to submit further documentation if required by the Embassy or Consulate.

☐ Every time you report in person under this order of Release on Recognizance, you must inform the local ICE office of all actions you have taken to obtain a travel document. You must provide any available written documentation to ICE regarding these actions and the status of your travel document application(s).

☐ That you provide ICE, upon request, with any and all information relevant to application(s) for a travel document. This may include, but is not limited to, information regarding your family history, including dates of birth, nationalities, addresses, and phone numbers as requested for such persons, whether in your country of nationality and/or citizenship or elsewhere, and your past residences, schools attended, etc.

You will participate in a supervised release program, as described in the attached document. You will comply with the rules and requirements of this program, and cooperate with its administrators.

I agree to comply with the rules, requirements, and administrators in the supervised release program described in the attached document.

Alien's signature: [Signature] Date: 9/16/14

Other:

Your release is contingent upon your enrollment and successful participation in Alternatives to Detention (ATD) program as designated by the Department of Homeland Security. Electronic monitoring is a requirement and curfew may be imposed. Failure to comply with the conditions of your release or the requirements of the ATD program may result in redetermination of your release conditions or your arrest and detention.

Any violation of any of the above conditions may result in a fine, more restrictive release conditions, return to detention, criminal prosecution, and/or revocation of your employment authorization document.

Alien's Acknowledgement of Conditions of Release under an Order of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language), the contents of this order and addendum, a copy of which has been given to me. I understand that failure to comply with the terms of this order and addendum may subject me to a fine, more restrictive release conditions, detention, criminal prosecution, and/or revocation of my employment authorization document.

(Signature of ICE official serving order) [Signature] (Signature of alien) 9/16/14 (Date)

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE).

Updated 4/25/2005
Exhibit 8
September 25, 2014

Via Email and Regular Mail

Enrique Lucero, Field Office Director
Sylvester Ortega, Assistant Field Office Director
San Antonio Field Office
U.S. Immigration and Customs Enforcement
1777 NE Loop 410, Suite 1500
San Antonio, TX 78217

Kevin Landy
Assistant Director
Office of Detention Policy and Planning
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington D.C. 20536

Re: Complaints Regarding Conditions at Karnes County Residential Center

Dear Mr. Lucero and Mr. Landy:

We are writing on behalf of women and children who are currently detained at ICE’s Karnes County Residential Center in Karnes City, Texas whom we represent or with whom we have consulted. Through our legal work and consultations at Karnes, we have received many complaints regarding the conditions at the Karnes facility, the most serious of which we have listed below. We urge you to take immediate steps to correct these issues, since the health and well-being of mothers and young children are at stake.

1. Inadequate Access to Food. Detainees have complained that the two refrigerators with snacks are not regularly restocked, or that their children do not have access to a variety of nutritious snacks during non-meal hours. Several families reported that the refrigerators are only fully stocked during facility tours or visits, and that families are not allowed to take food from the refrigerators on those days to ensure that the refrigerators remain visibly full. Finally, mothers are not allowed to warm milk at night for their children. Adequate and nourishing food is imperative to ensure the growth, development, and well-being of the children at Karnes. Children commonly eat more food, and at irregular times,
during growth spurts, whether as toddlers or adolescents. In addition, nursing mothers are held at Karnes; they also require access to healthy foods at irregular times and calories beyond those required by other adults.

2. Problems with Telephone Calls and Messages. Several women have complained that the cost of outgoing phone calls, including domestic calls within the United States, is exorbitantly high. One client reported that her domestic call cost her approximately five dollars for two minutes. Women at Karnes cannot afford these prices. In addition, women have stated that they have difficulties making free calls to pro bono legal services providers. Outgoing phone calls are essential in order for detained women to communicate with their attorneys, their consulates, and their family members. In addition, messages from attorneys and family members are not given to women in a timely manner. Because attorneys and family members cannot call women directly, it is essential that a messaging system function properly to ensure effective communication between women and their attorneys and family members.

3. Toys and Playthings Not Allowed in Living Quarters. Women have complained that their children are not allowed to keep a set of toys or playthings, even paper and crayons, in their living quarters. Children of all ages require such items to promote their cognitive and psychosocial development, engage in imaginative play, and develop executive function. Moreover, many of these children have endured trauma in their home countries or on their journeys, and need additional care and attention.

4. Developmental and Educational Aids for Children under the Age of Four. Women have stated that children age three and under do not attend school or receive any educational or developmental programming. Because these are formative years for crucial cognitive and emotional development, children must have opportunities for social interaction, play, and education, including in a structured setting with licensed child-care providers.

5. Unduly Restrictive Treatment of Infants. Women have stated that guards have required mothers to carry their infants at all times, and that infants are not allowed to crawl and move about freely. Infants must be able to crawl and move freely to develop their balance and mobility, and aid in their cognitive development.

6. Gender of Guards. Karnes has a high number of male guards who interact with the women and children. Given that this is a facility that detains only women and children, in which many women have suffered gender-based violence in their home countries, and where DHS has an obligation to prevent sexual abuse of any kind, the presence of male guards is intimidating and potentially harmful.
7. Inappropriate Child Care Arrangements During the Mother’s Absence. Women report that when they appear via televideo for their court hearings, facility guards are caring for their children in an open area. It is our understanding that the guards are not licensed child care providers, and they are not required to have coursework or certification in child development. Women have told us that guards are not able to properly attend to the large number of young children left in their care and do not make efforts to calm children who are crying or uncomfortable. This is particularly problematic because many of the children are suffering deteriorating mental health because of trauma in the home country and from the deleterious effects of detention. They may face emotional crises when separated from their mothers. Women also have complained that guards do not help young children to use the restroom, thereby increasing the risk of infection, and that guards do not timely feed children, so that children are ravenous when their mothers return.

8. Threats and Punishment against Detained Mothers and their Children. Women have reported that guards have told them that they will get “written up” if they have a messy room, if their child is being too loud, if the child wanders away out of line in the cafeteria, or if the child is separated from the mother too long. Guards have also told them that if they keep getting written up, the mothers will be separated from their children. Other guards have threatened to report disciplinary issues to the immigration judge hearing the families’ asylum case.

9. Separation of Children from their Mothers. Some children over the age of thirteen have been separated from their mothers and are in separate living/ sleeping quarters, presumably in order to accommodate the maximum number of detainees. This family separation is harmful to children and their mothers, resulting in psychological harm that could be severe and long-lasting.

10. Inadequate Medical and Mental Health Services. Women have reported that although they are able to see the facility nurse, there is no doctor on staff to handle larger medical issues, such as persistent coughs, possible respiratory infections, and chronic ailments. Likewise, some women and children have reported feeling depressed or having nightmares, and they have not been able to see the therapist on staff, either because of scheduling issues or because they have not been informed of the mental health resources.

We urge you to take immediate measures to correct these conditions, and we trust that there will be no retaliation against any of the women and children at Karnes for sharing this information with us. We look forward to your prompt response. Please contact me at 512-232-7222 if you would like to discuss these issues further.
Sincerely yours,

R. Natarajan

Ranjana Natarajan
Director, Civil Rights Clinic
The University of Texas School of Law

Along with:

Barbara Hines, Co-Director, Immigration Clinic, The University of Texas School of Law
Denise Gilman, Co-Director, Immigration Clinic, The University of Texas School of Law
Javier Maldonado, Law Office of Javier N. Maldonado, P.C.
Marisa Bono, Staff Attorney, MALDEF (Mexican American Legal Defense and Education Fund)

Cc: DHS Office of Civil Liberties and Civil Rights (via email:
    CRCLCompliance@hq.dhs.gov)
Exhibit 9
September 30, 2014

Via Email and Regular Mail

The Honorable Jeh Johnson
Secretary of Homeland Security
Washington, D.C. 20528

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PREA Coordinator
Sexual Abuse and Assault Prevention and Intervention Program Coordinator
Karnes County Residential Center
409 FM 1144
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Advancing Latino Civil Rights for over 40 Years
www.maldef.org
RE: Complaints Regarding Sexual Abuse of Women in DHS Custody at Karnes County Residential Center

Dear Secretary Johnson, Ms. Shlanger, Mr. Lucero, and Mr. Landy:

We, the undersigned, are attorneys who have met with and represent women and children who are in DHS custody at the Karnes County Residential Center (the “Karnes Center”). We have become aware of serious allegations of substantial, ongoing sexual abuse in the Karnes Center, in violation of the Prison Rape Elimination Act (PREA) of 2003, 42 U.S.C. § 15601 et seq.; the Department of Homeland Security’s (DHS) Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 6 C.F.R. Part 115; and U.S. Immigration and Customs Enforcement (ICE) Performance Based National Detention Standards (PBNDS), and Family Residential Standards. We ask that federal officials immediately investigate these allegations and implement protective measures for the women and children detained at the Karnes Center.

Numerous women detained at the Karnes Center have alleged that sexual abuse has been ongoing since August 2014, including:

1. Karnes Center guards and/or personnel removing female detainees from their cells late in the evening and during early morning hours for the purpose of engaging in sexual acts in various parts of the facility;

2. Karnes Center guards and/or personnel calling detainees their “novias,” or “girlfriends,” and using their respective position and power over the highly vulnerable detained women within the detention facility by requesting sexual favors from female detainees in exchange for money, promises of assistance with their pending immigration cases, and shelter when and if the women are released; and

3. Karnes Center guards kissing, fondling and/or groping female detainees in front of other detainees, including children.

On information and belief, at least three Karnes Center employees are suspected as having engaged in this conduct. Although detained women have reported the unlawful conduct to Karnes Center personnel, to date, no action has
been taken to stop or prevent this abuse, or to prevent its escalation. In fact, the Karnes Center provides an environment that facilitates the abuse. For example, Karnes Center guards, who are predominantly male, have free access to the cells and the detained women and children at any time, day or night. Moreover, some children over the age of thirteen have been separated from their mothers in separate living/sleeping quarters without explanation.

These incidents of sexual abuse and harassment and the hostile and unsafe environment for the women and children not only likely violate federal laws and regulations as noted below, they also likely subject the detained families to conditions that are punitive and unconstitutional under the Due Process Clause of the Fifth Amendment.¹

PREA establishes a “zero-tolerance standard for rape in prisons in the United States.” 42 U.S.C. § 15601–02. Under 28 C.F.R. § 115.6, “sexual abuse” of a detainee by a staff member at the facility includes any sexual contact with a detainee or resident, regardless of whether such contact is consensual. It also includes any “attempt, threat, or request” by a staff member to engage in sexual acts with detainees. 28 C.F.R. § 115.6.

Under 28 C.F.R. § 115.111, DHS and ICE must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency’s approach to preventing, detecting, and responding to such conduct. DHS’s Family Residential Standard for Prevention of Sexual Abuse mandates that all facilities must have protocols for responding to sexual abuse reported by detainees, and ensure proper follow up on such reports, including discipline and prosecution of assailants. It is clear from both the alleged continuing conduct and the failure to respond to reports of abuse that either there is no prevention plan in place for the Karnes Center, or the Karnes Center policy is not being properly implemented, overseen or enforced.

We call for an immediate investigation into these serious allegations of sexual abuse and the immediate protection of all women and children forced to reside in the facility, including but not limited to an investigation by the Office of Civil Rights and Civil Liberties (CRCL), pursuant to its authority under 6 U.S.C. § 345. Swift action must be taken to investigate the allegations and promptly implement protective and punitive measures, including disciplinary action, contract termination and staff dismissal as appropriate. Given the seriousness of the allegations and the poor management of the facility, DHS must provide direct oversight to ensure the complete safety and well-being of the detained families, including the immediate provision of appropriate medical and psychological services for victims.

We also demand that ICE bring the Karnes Center into compliance with PREA, its implementing regulations, and the Family Residential Standards by

developing, supervising, and enforcing a written policy to prevent, detect, and respond to unlawful sexual abuse by Karnes Center staff and ICE personnel. This includes an accessible and transparent complaint process for detained families, and proper training for all staff and management. All case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling should be maintained in appropriate files in accordance with the Family Residential Standards. Pursuant to 28 C.F.R. § 115.116, the Karnes Center must take appropriate steps to ensure that all detainees, including those who are not proficient in English, have an equal opportunity to benefit from all aspects of efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include providing access to interpreters.

Finally, we request a written response detailing what ICE and the Karnes Center has done and will do in order to address the grave concerns we have described here. We trust that women who have or will come forward with complaints will not suffer retaliation, and that proper steps will be taken to prevent possible reprisal from staff or other detained women.

As you are well aware, the detainees at Karnes Center are predominantly women and children who have fled horrific violence and conditions in their home countries, including sexual violence and extortion. It is deeply disturbing that their experience in the custody of the U.S. government is subjecting them to further exploitation. DHS simply cannot continue to detain vulnerable individuals whom they are unable or unwilling to protect.

Thank you for your prompt attention to these matters. If you have any questions, please contact Marisa Bono at (210) 224-5476 ext. 204.

Sincerely,

[Signature]

Marisa Bono
Staff Attorney
Mexican American Legal Defense and Educational Fund (MALDEF)

Along with:

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