

September 25, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: NGOs united in opposition to family detention in Dilley, Karnes, and Artesia

Dear Mr. President:

We, the undersigned 168 immigrants' rights, faith-based, civil rights, human rights, anti-violence, and criminal justice reform organizations and legal service providers, are deeply dismayed to learn that your administration intends to open a new family detention facility in Dilley, Texas, dramatically expanding the warehousing of vulnerable mothers and children fleeing Central America to seek safety in the United States. This population includes young children forcibly displaced by the same chronic and acute violence described by the United Nations High Commissioner for Refugees in a 2014 report,¹ as well as their mothers, many of whom were victims of violence by intimate partners or criminal armed actors in their home countries. Many of these families experienced further violence, including kidnapping and rape, during their journey to find safety in the United States.

Family detention is wrong. In 2009, your administration wisely decided to stop detaining families at the T. Don Hutto Detention Center in Taylor, Texas, following years of litigation and other advocacy on the deplorable conditions of confinement and treatment of children at that facility. In summer 2014, unfortunately, you decided to return to the failed practice of family detention at facilities in Artesia, New Mexico, and Karnes County, Texas, together holding a total of more than 1,000 vulnerable mothers and children. On September 23, U.S. Immigration and Customs Enforcement announced plans to open a massive 2,400-bed family detention facility in Dilley to be run by a private prison company at substantial cost.² We urge you to reverse course immediately by closing Artesia and Karnes and cancelling plans to build in Dilley.

¹ U.N. High Commissioner for Refugees [UNHCR], *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (March 2014), available at http://www.unhcrwashington.org/sites/default/files/UAC_UNHCR_Children%20on%20the%20Run_Full%20Report.pdf.

² U.S. Immigration and Customs Enforcement, "ICE to open additional facility in South Texas to house adults with children," Sep. 22, 2014, available at <http://www.ice.gov/news/releases/1409/140922dilley.htm>. Forrest Wilder, *Feds Set to Open Massive New Family Detention Center in November*, Texas Observer, Sep. 23, 2014, available at <http://www.texasobserver.org/feds-set-open-massive-new-family-detention-center-november/>.

In the meantime, we also urge you to instruct DHS to eliminate its widely reported no-bond policy for families held in detention.³ There is no evidence that detention deters unauthorized migration. More importantly, imposing mandatory detention on women and children who have established a credible fear of persecution in order to deter other families from seeking asylum in the United States is an egregious misuse of the government's detention authority, and violates the essence of due process.

The problems with family detention are numerous.

1. Family detention inhibits access to fair hearings.

Immigration detention, particularly in remote locations, creates serious barriers to due process by making it very difficult to identify and work with legal counsel – especially for detained individuals with limited funds – and to build cases for asylum or other legal relief. Several studies have documented the impact of counsel on the outcome of cases for asylum seekers and other immigrants – including a shocking 3 percent success rate for detained, unrepresented immigrants.⁴ The Legal Orientation Program, while important to provide basic legal information to detained individuals, is not a substitute for legal counsel, and even these basic presentations were not made available for many weeks at Artesia and Karnes. Furthermore, court hearings by

³ John Stanton, *Government Declares Undocumented Immigration Child, Mother, A 'National Security Threat'*, BuzzFeed, Aug. 5, 2014, available at <http://www.buzzfeed.com/johnstanton/government-declares-undocumented-immigrant-child-mother-a-na#4bkg6uf>; Julia Preston, *In Remote Detention Center, a Battle on Fast Deportations*, New York Times, Sep. 5, 2014, available at <http://www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html?smid=tw-share&r=0>.

⁴ The New York Study Group on Immigrant Representation reported that only 3 percent of detained, unrepresented immigrants apprehended in New York or with cases heard in the New York immigration court reach a successful outcome in their cases (defined as legal relief or case termination). 13 percent of unrepresented non-detained immigrants reach a successful outcome in their cases. The number jumps to 74 percent when the non-detained immigrant is represented. See Steering Committee of the New York Immigrant Representation Study Report, "Accessing Justice I: The Availability and Adequacy of Counsel in Removal Proceedings," Cardozo Law Review, (2011) Vol. 33:2, p. 364 and seriatim, available at <http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf>; Steering Committee of the New York Immigrant Representation Study Report, "Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings," Cardozo Law Review, (Dec. 2012) pp. 1, 11, available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf ("people in the New York immigration courts with a lawyer are 500 percent as likely to win their cases as those without representation."); Government Accountability Office, *U.S. Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges*, GAO-8-940 (Washington, DC: GAO, 2008), p. 7, available at <http://www.gao.gov/new.items/d08940.pdf> (Representation generally doubled the likelihood that immigration judges would grant asylum to affirmative and defensive asylum applicants compared to those without representation, after statistical controls were applied.); Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stan. L. Rev. 295 (2007), p. 287 ("whether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case." Asylum seekers represented by a lawyer were roughly three times more likely to be granted relief than asylum seekers not represented by legal counsel.), available at <https://www.acslaw.org/files/RefugeeRoulette.pdf>.

video teleconference, which to date are the practice at Artesia and Karnes, present significant due process concerns.⁵

2. Family detention is detrimental to physical and mental health, especially for asylum seekers and young children. It also damages the family structure by undermining parents' authority.

Detention harms children's health. Their physical and psychological development suffers during detention, and the harms can be long-lasting. Being held in a prison-like setting, even for a short period of time, can cause psychological trauma for children and increase their risk factor for future mental disorders.⁶ According to Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, detention can also exacerbate the trauma experienced by both children and adults who have fled violence in their home countries – precisely the population detained at Artesia and Karnes.⁷ Finally, detention damages the family structure in particular by stripping parents of their role as arbiter and decision-maker in the family unit, confusing children and undermining child-rearing.⁸ This adds to the already extreme stresses on detained children and erodes their trust in their parents at a time when they need it most.

3. Family detention is unnecessary. Alternatives to detention (ATD), including community-support programs, are humane, effective, and far less costly than detention.

DHS already spends about \$2 billion in taxpayer resources annually on immigration detention – the sole purpose of which is to make sure people show up at court hearings. Alternatives to detention are far less costly than institutional detention. In fact, family detention costs \$266 per person per day, whereas existing ATD programs cost 17 cents to \$17.78 per person per day.⁹ Alternatives are also effective. ICE's current ATD program has very high compliance rates – 99

⁵ Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review* (2011), p. 32, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>.

⁶ Janet Cleveland, Cecile Rousseau, and Rachel Kronick, Brief Submitted to the House of Commons Standing Committee on Citizenship and Immigration concerning Bill C-31, the *Protecting Canada's Immigration System Act*, "The harmful effects of detention and family separation on asylum seekers' mental health in the context of Bill C-31," (April 2012), pp. 3, 7, available at http://www.csssdelamontagne.qc.ca/fileadmin/csss_dlm/Publications/Publications_CRF/brief_c31_final.pdf.

⁷ Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (June 2003), available at <http://www.survivorsoftorture.org/files/pdf/perstoprison2003.pdf>.

⁸ Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families* (Feb. 2007), pp. 42, 43, available at <http://lirs.org/wp-content/uploads/2012/05/RPTLOCKINGUPFAMILYVALUES2007.pdf>; Cleveland, Rousseau, & Kronick, *supra* note 6, at 11.

⁹ Department of Homeland Security, Immigration and Customs Enforcement, Salaries and Expenses, FY2014 Cong. Budget Justification, at 6, available at <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>.

percent of enrollees appear at all court hearings and 84 percent comply with removal orders.¹⁰ Alternatives are widely used in the pre-trial criminal justice context.¹¹ They are recommended as cost-savers by the American Jail Association, American Probation and Parole Association, American Bar Association, Association of Prosecuting Attorneys, Heritage Foundation, International Association of Chiefs of Police, National Conference of Chief Justices, National Sheriffs' Association, Pretrial Justice Institute, Texas Public Policy Foundation, and the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy.¹²

4. Family detention undermines efforts to address the mass incarceration problem.

The United States is already the world's leading incarcerator, with over 2.3 million people held in prisons and jails. Under your leadership, Attorney General Holder has taken important steps toward reducing federal incarceration levels,¹³ but at the same time you are proposing to normalize the detention of families, even contracting with private prison companies to construct new facilities with thousands of beds. Expanding family detention is inconsistent with the work your administration has undertaken to address mass incarceration.

¹⁰ *S.744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?: Hearing Before the H. Comm. on the Judiciary* (May 22, 2013) (Oral testimony of Julie Myers Wood, Former Assistant Secretary of Homeland Security, Immigration and Customs Enforcement), available at http://judiciary.house.gov/files/hearings/113th/05222013_2/Wood%2005222013.pdf.

¹¹ Julie Myers Wood and Steve J. Martin, *WOOD AND MARTIN: Smart Alternatives to Immigrant Detention*, Washington Times, Mar. 28, 2013, available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/>.

¹² See American Jail Association, Resolution on Pretrial Justice (Oct. 24, 2010), available at <http://www.pretrial.org/download/policy-statements/AJA%20Resolution%20on%20Pretrial%20Justice%202011.pdf>; American Probation and Parole Association, APPA Supports Pretrial Supervision Services (June 15, 2010), available at http://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IE_NewsRelease&wps_key=4ce5b0cc-e5d6-4407-bcab-096640386f02; American Bar Association, ABA Criminal Justice Standards on Pretrial Release – Third Edition (Oct. 28, 2002), available at <http://www.pretrial.org/wpfb-file/aba-standards-on-pretrial-release-2002-pdf/>; Association of Prosecuting Attorneys, Policy Statement on Pretrial Justice, available at <http://www.pretrial.org/wp-content/uploads/2013/02/APA-Pretrial-Policy-Statement.pdf>; Matt Mayer, The Heritage Foundation, Heritage Web Memo 3455: Administrative Reforms Insufficient to Address Flawed White House Immigration and Border Security Policies (Jan. 10, 2012), available at <http://www.heritage.org/research/reports/2012/01/administrative-reforms-in-immigration-and-border-security-policies>; International Association of Chiefs of Police, “Law Enforcement’s Leadership Role in the Pretrial Release and Detention Process (Feb. 2011), available at <http://www.pretrial.org/wp-content/uploads/2013/02/IACP-LE-Leadership-Role-in-Pretrial-20111.pdf>; National Conference of Chief Justices, Resolution 3, Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release (Jan. 13, 2013), available at <http://www.pretrial.org/wp-content/uploads/2013/02/CCJ-Resolution-on-Pretrial-1.pdf>; National Sheriffs’ Association, National Sheriffs’ Association Supports and Recognizes the Contribution of Pretrial Services Agencies to Enhance Public Safety (June 18, 2012), available at <http://www.pretrial.org/wp-content/uploads/filebase/policy-statements/NSA%20Pretrial%20Resolution.pdf>; Pretrial Justice Institute, The Solution, available at <http://www.pretrial.org/solutions/>; Marc Levin, Texas Public Policy Foundation, “Public Safety and Cost Control Solutions for Texas County Jails (Mar. 6, 2012), available at <http://www.texaspolicy.com/center/effective-justice/reports/public-safety-and-cost-control-solutions-texas-county-jails>; and Council on Foreign Relations’ Independent Task Force, Task Force Report: U.S. Immigration Policy (July 2009), available at <http://www.cfr.org/immigration/us-immigration-policy/p20030>.

¹³ U.S. Department of Justice, “The Attorney General’s Smart on Crime Initiative,” available at <http://www.justice.gov/ag/smart-on-crime/> (accessed Sep. 17, 2014).

5. International human rights law strongly disfavors the use of administrative immigration detention, and rejects it completely for children.

The UN Working Group on Arbitrary Detention, the UN Committee on the Rights of the Child (CRC), and the UN High Commissioner for Refugees have all made this opposition to immigration detention clear.¹⁴ Indeed, the CRC stated in 2012 that detaining children “constitutes a child rights violation and always contravenes the principle of the best interests of the child.”

The federal government already faces litigation highlighting many of the problems listed above at the new family detention facility in Artesia.¹⁵ There is no evidence that the warehousing of vulnerable mothers and children fleeing persecution and violence in their home countries will decrease border crossings. Family detention will certainly not ensure access to protection to those who qualify. The expansion of this shameful practice will, however, forever alter your legacy. We urge you to uphold the values of fairness, compassion, and human rights, as well as the best interests of children. Please close Artesia and Karnes immediately, cancel the contract for Dilley, and roll back all further plans to expand family detention.

Sincerely,

National and International Organizations

AFL-CIO
Alliance for a Just Society
Alliance for Children and Families
American Civil Liberties Union
American Immigration Council
American Immigration Lawyers Association

¹⁴ The United Nations Working Group on Arbitrary Detention has stated that immigration detention should be abolished and until then only used as a last resort (U.N. Office of the High Commissioner on Human Rights [OHCHR], Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, A/HRC/13/30 (Jan. 18, 2010), para. 58 and 59, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/102/94/PDF/G1010294.pdf?OpenElement>). The Convention on the Rights of the Child, to which the United States is a signatory, requires that the detention of a child be used only as a last resort. (Convention on the Rights of the Child, article 37(b).) The UN Committee on the Rights of the Child clarifies further that “States should expeditiously and completely cease the detention of children on the basis of their immigration status” (2012 Day of General Discussion, Geneva, Switz., Sep. 28, 2012, U.N. Committee on the Rights of the Child [CRC], *Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration* (2012), para. 78, available at <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>). The UNHCR Executive Committee has stated that “States should refrain from detaining children, and do so only as a measure of last resort and for the shortest appropriate period of time, while considering the best interests of the child” (U.N. High Commissioner for Refugees [UNHCR], *Conclusion on Children at Risk* (Oct. 5 2007), No. 107 (LVIII) - 2007, available at: <http://www.refworld.org/docid/471897232.html>).

¹⁵ Press Release, American Civil Liberties Union, *Groups Sue U.S. Government over Life-Threatening Deportation Process against Mothers and Children Escaping Extreme Violence in Central America* (Aug. 22, 2014), available at <https://www.aclu.org/immigrants-rights/groups-sue-us-government-over-life-threatening-deportation-process-against-mothers>.

American Jewish Committee (AJC)
American Psychological Association
Americans for Immigrant Justice
America's Voice Education Fund
Amnesty International USA
Asian Americans Advancing Justice-AAJC
ASISTA Immigration Assistance
Black Alliance for Just Immigration
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Center for Community Change
Center for Employment Training
Center for Gender & Refugee Studies, UC Hastings College of Law
Conference of Major Superiors of Men
Detention Watch Network
Enlace
Families for Freedom
Farmworker Justice
First Focus
Friends Committee on National Legislation
Global Campaign to End Child Detention
Grassroots Leadership
HIAS
Hispanic Federation
Human Rights Advocates International
Human Rights Defense Center
Human Rights First
Human Rights Watch
Immigrant Legal Resource Center
In the Public Interest
International CURE
International Detention Coalition
Japanese American Citizens League
Jesuit Conference of the United States
Justice Strategies
Kids in Need of Defense (KIND)
LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens
The Leadership Conference on Civil and Human Rights
Lutheran Immigration and Refugee Service
Mennonite Central Committee U.S. Washington Office
Mexican American Legal Defense and Educational Fund
National Advocacy Center of the Sisters of the Good Shepherd
National Asian American Pacific Islander Mental Health Association
National Association of Social Workers
National Center for Transgender Equality

National Council of Jewish Women
National Council of La Raza
National Immigrant Justice Center
National Immigration Forum
National Immigration Law Center
National Immigration Project of the NLG
National Korean American Services and Educational Consortium
National Latina Institute for Reproductive Health
National Network for Immigrant and Refugee Rights
National Organization for Women
National Partnership for New Americans
Peoples' Action for Rights and Community
Permanent Peoples' Tribunal, Commission on Migration, Refuge, and Forced Displacement, Mexico Chapter
Prison Policy Initiative
Private Corrections Working Group
Religious of the Assumption
Responsible Endowments Coalition
Rights Working Group
Service Employees International Union (SEIU)
Sisters of Mercy of the Americas
South Asian Americans Leading Together
Southeast Asia Resource Action Center
Southern Border Communities Coalition
The Advocates for Human Rights
The Episcopal Church
Torture Abolition and Survivors Support Coalition (TASSC) International
Unitarian Universalist Service Committee
United We Dream
U.S. Committee for Refugees and Immigrants
We Belong Together
Women's Refugee Commission
Young Center for Immigrant Children's Rights

State and Local Organizations

ACCESS
Alliance San Diego
Amoachi and Johnson, PLLC
Asian Americans Advancing Justice - Asian Law Caucus
Asian Law Alliance
Brooklyn Defender Services
Capital Area Immigrants' Rights (CAIR) Coalition
CASA de Maryland
Catholic Charities Legal Services - Las Cruces, NM
Coalicion De Derechos Humanos

Coalition for Humane Immigrant Rights Los Angeles
Cobb Immigrant Alliance
Coloradans for Immigrant Rights
Colorado Immigrant Rights Coalition
Community Legal Services in East Palo Alto
Community to Community Development (C2C)
Conversations with Friends, Minnesota
Dakotas-Minnesota Area of the United Methodist Church
DREAM Activist Virginia
El CENTRO de Igualdad y Derechos
Encuentro
Esperanza Immigrant Rights Project
First Friends of NJ & NY
Florida Immigrant Coalition, Inc.
Fuerza del Valle Workers' Center
Georgia Detention Watch
Green Valley/Sahuarita Samaritans
Grupo Comunitario de Hatch
Gulf Coast Jewish Family & Community Services
Illinois Coalition for Immigrant and Refugee Rights
Illinois Collaboration on Youth
Immigrant Law Center of Minnesota
Immigration Center for Women and Children
Immigration Team of UCC MN Conference
Interfaith Center for Worker Justice of San Diego County
Interfaith Coalition on Immigration
Jewish Community Action
Korean American Resource and Cultural Center
Korean Resource Center
La Union Del Pueblo Entero
Las Cruces Friends Meeting (Quaker)
Latin American Coalition, North Carolina
Latinos United for a New America (LUNA)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Make the Road New York
Massachusetts Immigrant and Refugees Advocacy Coalition
Michigan United
Mountain View Dreamers
New Mexico Voices for Children
New Orleans Workers' Center for Racial Justice
New York Immigration Coalition
NM CAFé
Northern Manhattan Coalition for Immigrant Rights
Northwest Immigrant Rights Project
OneAmerica, Washington
PALABRA

Pangea Legal Services
 Paso del Norte Civil Rights Project
 Pennsylvania Immigration and Citizenship Coalition, PICC
 People Acting in Community Together
 Pineros y Campesinos Unidos del Noreste, PCUN/CAUSA
 Promise Arizona, PAZ
 Public Counsel
 RAICES
 Ranch Hope
 Reformed Church of Highland Park, NJ
 Resist the Raids
 Rights for All People (RAP)
 Services, Immigrant Rights, and Education Network (SIREN)
 Seton Hall University School of Law Center for Social Justice
 Shirlington Employment and Education Center
 Social Justice Guild of the First Existentialist Congregation
 Somos un Pueblo Unido
 St. Matthew Immigration/Detention Ministries
 Stop the Checkpoints
 Strong Families New Mexico
 Student Advocates for Higher Education
 Tacoma Community House
 Tennessee Immigrant and Refugee Rights Coalition
 The Door
 United Families
 Virginia Coalition of Latino Organizations (VACOLAO)
 Voces de la Frontera
 Wilco Justice Alliance

Cc: Denis R. McDonough, Assistant to the President and Chief of Staff, Office of the Chief of Staff, Executive Office of the President
 Lisa O. Monaco, Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor, Office of the Homeland Security Advisor, National Security Council Staff, Executive Office of the President
 Cecilia Munoz, Assistant to the President and Director, Domestic Policy Council, Executive Office of the President
 Amy E. Pope, Special Assistant to the President and Senior Director for Transborder Security, Transborder Security Policy, National Security Council Staff, Executive Office of the President

Cc: The Honorable Jeh C. Johnson, Secretary, Department of Homeland Security
 Thomas Winkowski, Principal Deputy Assistant Secretary, Immigration and Customs Enforcement, Department of Homeland Security

Cc: The Honorable Harry Reid, Majority Leader, U.S. Senate
The Honorable Mitch McConnell, Minority Leader, U.S. Senate
The Honorable John A. Boehner, Speaker, U.S. House of Representatives
The Honorable Nancy Pelosi, Minority Leader, U.S. House of Representatives

The Honorable Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate
The Honorable Chuck Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate
The Honorable Thomas R. Carper, Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate
The Honorable Tom Coburn, Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate

The Honorable Bob Goodlatte, Chairman, Committee on the Judiciary, U.S. House of Representatives
The Honorable John Conyers, Jr., Ranking Member, Committee on the Judiciary, U.S. House of Representatives
The Honorable Michael McCaul, Chairman, Committee on Homeland Security, U.S. House of Representatives
The Honorable Bennie G. Thompson, Ranking Member, Committee on Homeland Security, U.S. House of Representatives

Cc: T. Alexander Aleinikoff, Deputy High Commissioner, Office of the United Nations High Commissioner for Refugees
Shelly Pitterman, Regional Representative, Washington, D.C., Office of the United Nations High Commissioner for Refugees