



**PennState Law**

Center for Immigrants' Rights Clinic

# **Inside Berks Family Detention: Observations by Penn State Law Center for Immigrants' Rights Clinic**

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## **Prologue**

Aldea People's Justice Center and Penn State Law Center for Immigrants' Rights Clinic are pleased to release this report to document the conditions inside Berks County Residential Center (Berks) and the lived experiences of families detained there in November 2019. Fifteen months later, we have witnessed a number of developments on immigration generally and family detention in particular. President Biden has committed to a humane immigration system and as of March 1, 2021, every family detained in Berks has been released to their family members or loved ones (see Appendix). The release of families detained at Berks is extraordinary news and comes on the heels of more than six years of legal representation by Aldea. Aldea is cautiously optimistic about the prospect of an empty facility but also attentive to how and if the facility will be used to detain or hold immigrants in the future.

The policy shift from detaining families at Berks to releasing them is also a reminder that detaining families was never a legal requirement. The Department of Homeland Security has always had the prosecutorial discretion to release families from detention and continues to hold the power to choose whether they should be detained in the first place (see Appendix).

The future of family detention at Berks is uncertain, but how the story of family detention is told to future generations matters. We hope this report provides a snapshot into how families experienced detention at the border and while at Berks and the degree to which the legal framework and governing standards for detention as well as shifting immigration policy interacted affected the outcomes in their legal cases, and their freedom.

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## **I. Introduction**

The Penn State Law Center for Immigrants' Rights Clinic ("CIRC") made its second annual trip to the Berks County Residential Center ("Berks") in November, 2019. The purpose of this report is to show the journeys undertaken by immigrant families seeking protection in the United States, including the conditions they face both in border detention facilities and in Berks in addition to the standards they have to meet in order to obtain release.

**CIRC** is a nationally recognized in-house clinic focused on immigration and directed by its founder, Professor Shoba Sivaprasad Wadhia. Founded in 2008, CIRC is one of nine law clinics at Penn State Law that allow students to learn through experience under the guidance of clinical faculty. Under Professor Wadhia's supervision, students in the CIRC work on a variety of immigration projects, including This report will refer to CFIs and RFIs collectively as "fear interviews." The legal standard applied during fear interviews is intentionally lower than what the asylum seeker must show before an IJ because they are supposed to operate as "screenings" as opposed to full -fledged adjudications.<sup>1</sup>

## **II. Legal Background and Terms**

In the immigration system, access to counsel is crucial because individuals in immigration proceedings are not entitled to court-appointed counsel. They have the right to an advocate during fear interviews and counsel during removal proceedings at no expense to the government.<sup>2</sup> Access

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<sup>1</sup> INA § 235(b)(1)(B)(v); 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. § 1003.42(d); 62 Fed. Reg. 10,312, 10,320 (Mar. 6, 1997) (describing the credible fear standard as a "low threshold of proof"); 8 C.F.R. § 1208.31(c), (g).

<sup>2</sup> INA § 235(b)(1)(B)(iv); 8 U.S.C. § 1225(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4) ("The alien may consult with a person or persons of the alien's choosing prior to the interview"); 8 C.F.R. § 208.31(c) (The alien may be represented by counsel or an accredited representative at the interview, at no expense to the Government); INA § 292; 8 U.S.C. § 1362.

to counsel issues are magnified when immigrants are detained because it is more difficult to call or find a lawyer, develop a case, obtain evidence, or talk to family members while in detention.<sup>3</sup> In a CFI, detained individuals have the right to consult with “a person or persons” of their choosing prior to the interview, and at no cost to the government.<sup>4</sup> These advocates, which can include law students, may be present during the interview and may, at the discretion of the asylum officer, read a closing statement at the end of the interview.<sup>5</sup> Individuals in reasonable fear proceedings may be fully represented during their interview, but only by an attorney or an accredited legal representative.<sup>6</sup> The attorney may read a closing statement at the end of the interview.<sup>7</sup>

If the asylum officer finds that an individual does not have a credible or reasonable fear of persecution or torture, the individual can seek review of that determination by an IJ in a process known as “**IJ Review**.”<sup>8</sup> If an IJ vacates or reverses the negative determination by an asylum officer, the individual is treated as having succeeded in their fear claim, and normally placed in removal proceedings in order to proceed to a full hearing before an IJ.<sup>9</sup> If an IJ “affirms” or agrees with the asylum officer’s negative fear finding, the asylum seeker can request that the asylum office reconsider the decision because of a factual change, procedural defect, or legal error.<sup>10</sup> It is a regular practice of Aldea to request reconsideration from the asylum office following a negative decision by the IJ.

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<sup>3</sup> Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council, Sept. 2016, at 15-20, [https://www.americanimmigrationcouncil.org/sites/default/files/research/access\\_to\\_counsel\\_in\\_immigration\\_court.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf). See also, *Detained Immigrants and Access to Counsel in Pennsylvania*, Penn State Law Center for Immigrants’ Rights Clinic, Oct. 2019, available at <https://pennstatelaw.psu.edu/sites/default/files/PAFIUP%20Report%20Final.pdf>

<sup>4</sup> INA § 235(b)(1)(B)(iv); 8 U.S.C. § 1225(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4).

<sup>5</sup> *Id.*

<sup>6</sup> 8 C.F.R. § 208.31(c).

<sup>7</sup> *Id.*

<sup>8</sup> INA § 235(b)(1)(B)(iii)(III); 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 208.30(g)(1)(i), 235.6(a)(2)(i), 1003.42(a), 1208.30(g)(2)(i).

<sup>9</sup> 8 C.F.R. §§ 235.6(a)(1)(iii), 1003.42(f), 1208.30(g)(2)(iv)(B).

<sup>10</sup> 8 C.F.R. § 1208.30(g)(2)(iv)(A).

The Trump administration issued new policies that affect families detained at Berks. First, through a policy known as “**metering**,” CBP limits entry by forcing some asylum seekers crossing through the southern border to put their names on a waiting list and wait indefinitely in Mexico before they can present themselves at a port of entry.<sup>11</sup> A second policy we observed in Berks was families sent to await court proceedings in Mexico, as part of the **Migrant Protection Protocols** (“**MPP**”) program, which authorizes immigration officials to return entering asylum seekers to Mexico during the pendency of their immigration proceedings.<sup>12</sup> When a family is placed into MPP, they have procedurally received a “Notice to Appear” for the purpose of a removal hearing before an IJ. For this reason, a person cannot be both in “expedited removal” and subject to MPP.

Finally, we encountered asylum seeking families who were subject to the **Third Country Asylum** or “**transit rule**” policy, which added a bar to asylum for all individuals who enter or attempt to enter across the southern border, if they did not seek protection from a third country while en route to the United States during the time the transit rule was in effect.<sup>13</sup> This bar was added by the administration through an interim final rule, and operational for nearly one year because of a “shadow docket” ruling by the Supreme Court order issued in September 2019 allowing the rule to go into effect.<sup>14</sup>

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<sup>11</sup> For more information about the metering policy, see Lorelei Laird, *Strangers in a strange land: 'Metering' makes asylum rights meaningless, immigrant advocates say*, AM. BAR ASSN. J. (July 24, 2019, 6:00AM CDT), <http://www.abajournal.com/web/article/strangers-in-a-strange-land-human-rights-organizations-say-metering-of-asylum-seekers-makes-asylum-rights-meaningless>; Hillel R. Smith, *The Department of Homeland Security's Reported "Metering" Policy: Legal Issues*, CONGRESSIONAL RESEARCH SERVICE (Aug. 2019), <https://fas.org/sgp/crs/homsec/LSB10295.pdf>.

<sup>12</sup> For more information about the Migrant Protection Protocols policy, see *Migrant Protection Protocols ("Remain in Mexico Policy")*, PENN STATE L. CTR. FOR IMMIGRANTS' RTS. CLINIC (June 11, 2019), <https://pennstatelaw.psu.edu/sites/default/files/Remain%20in%20Mexico%20Fact%20Sheet%2062019.pdf>.

<sup>13</sup> For more information about the third country asylum rule, see *Third Country Asylum Rule: What You Need To Know*, PENN STATE L. CTR. FOR IMMIGRANTS' RTS. CLINIC (Sept. 19, 2019), <https://pennstatelaw.psu.edu/sites/default/files/Third%20Country%20Asylum%20Rule%20What%20You%20Need%20to%20Know.pdf>.

<sup>14</sup> *Barr v. East Bay Sanctuary Covenant*, 588 U.S. \_\_\_ (2019); See also, Shoba Wadhia, *Symposium: From the travel ban to the border wall, restrictive immigration policies thrive on the shadow docket*, SCOTUSblog (Oct. 27, 2020,

### **III. Methodology**

CIRC students and attorneys, in partnership with Aldea, met with twenty families detained at Berks over the course of four days. The CIRC team consisted of six students, including two fluent Spanish speakers who were able to serve as interpreters, one staff attorney, and one supervising attorney, an immigration attorney with twenty years of experience in the field. In groups of two or three, CIRC met with and prepared families for their upcoming CFIs, RFIs and IJ Reviews, and served as advocates during these proceedings. CIRC also asked families about the conditions at Berks and the conditions in CBP border detention facilities, where every family entering through the southern border was detained before arriving at Berks.

We have represented the story of every family we met with in this report; however, for confidentiality reasons, we have not assigned labels to each family.

### **IV. Demographics of Detained Families**

#### **Number of Detained Families**

During CIRC's visit to Berks, around twenty families in total were detained in the facility. CIRC met in depth with eighteen families and briefly with the other two families, of whose presence in the facility CIRC was not aware until the last day when they were scheduled for their fear interviews.

#### **Nationality**

During our visit, most of the families that we met with were nationals of Central American countries, including Guatemala, El Salvador, and Honduras. A substantial minority of families

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3:51 PM), <https://www.scotusblog.com/2020/10/symposium-from-the-travel-ban-to-the-border-wall-restrictive-immigration-policies-thrive-on-the-shadow-docket/>



were Mexican nationals. CIRC also interacted with families from Haiti and Brazil as well as from European countries.

## **Languages**

Most of the families that CIRC met with, including those from Central American countries, Mexico, and Spain spoke Spanish as a first language. Two Central American families also spoke indigenous languages, such as Mam and Q'eqchi, either as a first language or in addition to Spanish. The Brazilian families that we met spoke Portuguese, while the two Haitian families spoke Creole. Other families spoke various European languages.

Most of the families that we spoke with had either limited English proficiency or spoke no English at all. Some of the families reported difficulty communicating with guards and other staff members at the facility. These difficulties were reported most commonly by families that spoke rarer languages. Some guards and staff members speak limited Spanish, which appeared to facilitate easier communication and interactions with Spanish-speaking detainees.

## **Family Composition and Ages of Children in Detention**

Many of the detained families at the time of our visit consisted of two parents and their children. CIRC also met with about 10 families consisting of one parent and at least one child. In some of these families, the second parent had already been released, had never been detained, or had stayed behind in the family's home country.

CIRC met with two families who had children aged one year or under. The oldest child we met with was seventeen years old. CIRC worked with one pregnant mother who was released from the facility. Other detained fathers also had pregnant partners who had been released.

## **Manner of Entry**

Most families that CIRC met with had either entered the United States without inspection through Mexico or had presented themselves at a port of entry along the border or an airport. Many families from Central America and Haiti had walked or been driven through several Central American countries before arriving in Mexico. Two European families had flown to the United States and were detained in an airport. One Central American family was apprehended in a boat off the coast of Miami before being detained in a CBP facility and ultimately brought to Berks.

Many of the Central and South American, and Haitian families that CIRC met with were subject to the third country asylum rule, having passed through multiple other countries on their way to the United States without seeking asylum from those countries. One family from Brazil was also subject to the transit rule because they had flown to Mexico from Brazil before entering the United States.

Several of the families who were detained in Berks at the time of our visit were also subject to other new policies. CIRC met with at least three families who had been subject to “metering” and waited in Mexico for several months before entering through a port of entry. One metered Central American family recounted how they sat in a park with their newborn baby after being told that they had to wait in Mexico, having nowhere else to go, before finally being taken in by a sympathetic Mexican woman for a month. Another metered family waited for five months in Tijuana, Mexico, where they were attacked by people who scratched the father’s face and tried to take their infant son.

Two families fleeing Guatemala were subject to the MPP policy after entering without inspection and were sent to Mexico to await their immigration court dates. One family was kidnapped as soon as they arrived in Mexico and was unable to attend their first immigration court

date because they were being passed between two groups who used migrants to coerce ransoms from family members or to coerce migrants for forced labor and ultimately entered again without inspection after escaping. Another family, a father and daughter, lived in fear of the daughter being kidnapped in Tijuana, Mexico and were homeless until given temporary shelter by a Mexican woman. They reentered through a port of entry after spending two months in Mexico.

### **Length of Time Detained at Berks**

The family who had been detained for the longest period when we visited had been detained at Berks since June 28, 2019, or over 120 days at the time of our visit in early November 2019. Three other families had arrived at Berks in July or August 2019. Two families had been detained at Berks since September 2019. Most of the families that we met had arrived in either October or November 2019. Families who had been detained longer tended to report higher levels of dissatisfaction with the conditions at Berks than families who had arrived more recently.

### **Length of Time Detained in Total**

Many of the families CIRC met with had been detained in CBP facilities prior to their arrival at Berks. The family who had been detained the longest overall had been in immigration detention since April 23, 2019 for over 180 days. Two other families had been in immigration detention since July. Another family had been detained for about 90 days total, since August 2019. Two other families that CIRC met with had been in immigration detention since September 2019. The remaining families that CIRC met with first entered immigration detention in either October or November of 2019.

## **V. Conditions in CBP Detention**

Every family CIRC met with was held in CBP detention for a time period ranging from one day to one week. They reported significantly worse conditions in CBP facilities than at Berks. One family described CBP detention as “hell” and Berks detention as a “mini hell.”

### **Staff and Administrative Interactions**

Families reported that the guards in CBP detention facilities were hostile and rude. One father said the guard seemed racist and would throw food at him, pretend not to understand him and ignore him. Another family reported that guards would slam the door in their face if they tried to speak to them. Families trying to access medical care also had hostile interactions with guards and some feared even asking for medical care in case the guards retaliated by detaining them for longer.

### **Access to Medical Care**

Families reported that they had difficulty accessing medical care. One family had a 2-year-old child who bumped her head while detained in the CBP facility. When the family asked for medical attention, the guard shut the door in their face and said that it wasn't a hospital. Another family had a 10-year-old daughter who threw up after her third day in CBP detention because of what she believed to be the food. The family never asked for medical care out of fear of retaliation from the guards.

### **Meals and Food Safety**

Families reported not having enough food to eat. One family reported not receiving any food except canned food. On their last day in CBP detention, a guard felt sorry for the inmates and brought them chicken, rice, juice and some clothes and allowed them outside for a few hours. Multiple families said they received very cold, stale sandwiches and burritos for every meal that

were very difficult to chew. One Haitian family said that this food was very spicy for them. For drinks, they only received water and sometimes children received juice or powdered milk, if needed.

### **Beds and Sleep**

Families reported difficulty sleeping in CBP detention because of the extremely cold air, thin foil-like blankets, uncomfortable or nonexistent beds and lights that stayed on all night. One Haitian family also reported not getting pillows. While some families were detained in small cell-like rooms by themselves, others were forced to sleep in a room with 20 to 30 other people, including children. One family said there was a television in the room that repeatedly played the same movie and played music at night, which made it impossible to fall asleep.

### **Segregation**

While one father and his 9-year-old daughter were detained in the same tiny room, most families were separated with the fathers in one room, or even in a separate building, and the mothers and children in another. In most cases, families were not able to see each other while they were detained and did not even know where the other members of the family were. One family who was separated into separate buildings within the same CBP detention facility were able to see one another once a day if they asked the guards. One father was separated from his teenage daughter, who was locked up all day and night in her cell. Her door was only opened for meals, which she was given only a few minutes to eat. Her father was in a room with several other people and was able to have normal mealtimes.

### **Hygiene and Personal Care**

Several families reported issues with hygiene. Many families said that their clothes were taken away and replaced by dirty clothes. The rules for showers appeared to vary among different

detention facilities; however, no one was able to shower every day at any of the CBP detention facilities. One family said that women were only able to shower at 3 a.m., while men could shower during any point in the day. Other families said that they were summoned to shower once every two days or once every three days. One mother found that there was no point in showering because her family would just have to dress themselves in the same dirty clothes they were wearing before. One facility only gave inmates ten minutes to shower and no privacy when they entered or exited the shower facilities. Families did receive toothbrushes and soap, but one family did not get any toothpaste. One family reported a big lice infection that spread throughout the facility.

Two families who experienced sharing a single room with twenty to thirty people reported that there was also a toilet in the shared room with no curtain or door offering privacy.

## **VI. Conditions in Berks Detention**

### **Access to Counsel**

CIRC's visit constituted a legal visit. Many of the families CIRC spoke to had been able to meet with Aldea and had a phone number or email address that they could use to contact Aldea. Families generally felt that they were able to call Aldea when needed. A few families had been given a more extensive list of free legal services providers, which was also taped outside the attorney rooms. Only one family who was detained at the time of our visit had outside counsel.

ICE Family Residential Standards, which are guidelines but not mandatory rules governing family detention, require that detainees be able to correspond confidentially with their legal representatives, make free phone calls to legal representatives, and receive visits from their legal representatives.<sup>15</sup> Detainees should also have access to a law library, legal materials, and

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<sup>15</sup> *Id.* at § 6.2.

equipment to facilitate the preparation of documents.<sup>16</sup> ICE standards state that detainees who are illiterate, do not speak English, or are indigent should receive special accommodations to ensure adequate access to legal materials.<sup>17</sup>

### **Staff and Administrative Interactions**

Generally, families who were recent arrivals reported respectful treatment by guards and other staff members at the facility. One family reported that two female guards treated them in a hostile manner. They reported that the first guard shines a flashlight on the family about every ten minutes during the night. They reported that the second guard became agitated when the family's young daughter took her shirt off. The father reported that the guard roughly put his daughter's clothes back on, and that he was later chastised by someone that he believed to work in an administrative capacity at the facility for allowing his daughter to walk around without a shirt on. Another family reported that some guards appear annoyed when young children are being loud or causing a ruckus.

ICE Family Residential Standards, state that staff should interact with children in a “proactive, not reactive” manner.<sup>18</sup> Non-restraining disciplinary measures should be employed with minors wherever possible.<sup>19</sup> Specifically, ICE Standards prohibit staff from employing any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment against minors, including corporal punishment, confinement, seclusion, yelling or abusive language, or withholding food.<sup>20</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *ICE Family Residential Standards*, U.S. IMMIGR. & CUSTOMS ENF'T (Mar. 25, 2011), <https://www.ice.gov/detention-standards/family-residential>.

<sup>19</sup> *Id.* at § 3.1.

<sup>20</sup> *Id.*

## Access to Medical Care

In general, the families that CIRC met with reported that they had adequate access to medical care in Berks. Most individuals who needed medicine or medical treatment stated that they were receiving it. However, a few families reported that they had initially seen the doctor in the facility for a health problem but did not return because their concerns were ignored. For example, CIRC spoke with one teenage girl who had not had a menstrual cycle in the 90 days since she had arrived at Berks. She had had an appointment with the doctor in the facility about it but did not return even though the problem persisted because the doctor had told her that the loss of her menstrual cycle was likely stress-related and normal. Another family's young daughter has a chronic condition. They were advised by the doctor at Berks that she would likely need surgery, but the doctor never followed up on this recommendation. A third family reported that their young son has a severe tooth infection and that all his teeth are falling out. The child had seen a dentist in the facility, but was never treated, and only given pain medication. One family reported having consistent stomachaches for the past 15 days with no medical relief provided and described a night shift nurse who had a reputation among detained families for never providing medical care "unless you were dying."

ICE Family Residential Standards state that detained families must have access to adequate health care, including prevention, diagnosis, and treatment of medical, dental, and mental health conditions.<sup>21</sup> Residents with chronic health problems should receive care and treatment that includes monitoring of medications, laboratory testing, and chronic care clinics.<sup>22</sup> ICE Standards require individuals to have access to emergency and routine dental care.<sup>23</sup>

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<sup>21</sup> *Id.* at § 4.3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*



## **Meals and Food Safety**

None of the families that CIRC met with reported any specific food safety concerns. However, two families reported that they had experienced severe stomach cramps or vomited after eating the food at the facility. Most families reported getting enough food to eat.

Some of the families we spoke with described the meals they are served as “very good” and “healthy.” Many families reported that chicken, fish, and vegetables are common meals, but one family said that the vegetables are often cold, sometimes still frozen. Many families were served beans and rice every day. Others felt that they were given too many bread items and pancakes. One Central American family reported that the food they are served all tastes overly sweet, while a Mexican family complained about the food being too dry. Both Central American and European families told CIRC that the type of food they are given at Berks is not the type of food they are used to eating.

Two families reported having serious difficulties eating the food that is served at Berks. One teenage girl from Central America told CIRC that she did not want to eat breakfast because she was served the same pancakes every single day. She recounted an incident that had happened the week prior to our visit where she skipped eating breakfast and then vomited when she tried to eat lunch. She suspected that she is having stomach problems because she is not eating enough, and the food does not settle well.

A second Central American family also reported having difficulty eating the food they are served. The father of the family stated that the food tasted so bad that the family could not eat it. A relative had visited and brought the family a package of food, but the parents tried to avoid eating it in order to make sure that their children got enough to eat. The mother of the family had

not eaten anything substantial in eight days at the time of our visit and complained of headaches caused by hunger.

ICE Family Residential Standards provide that detained families must be provided “nutritionally balanced diets that are reviewed at least quarterly by food service personnel, and at least annually by a certified dietician.”<sup>24</sup> Good sanitation and food safety practices must be applied during all aspects of food service.<sup>25</sup> Families should be allowed to eat meals in a relaxed environment, and be given sufficient time to eat.<sup>26</sup>

### **Beds and Sleep**

Most families that CIRC met with thought that their beds were comfortable. Many said that they and their children slept well. Guards check on the sleeping families with a flashlight every 10-15 minutes, but most guards try to avoid shining the light directly into their faces. One family also said that they had been given eye masks to help prevent them from being disturbed by the light.

Several parents reported having trouble sleeping at night or have nightmares, but many said this was because they are worried about their cases or having to return to their home countries. A few individuals mentioned having trouble sleeping because the general atmosphere in the facility was tense or unpleasant. One young family reported being awoken by screams in the night.

### **Segregation**

Most of the parents that CIRC spoke with reported being able to stay in the same room with their children in the Berks facility. Two different married fathers told CIRC that they slept in a different room than their spouse and children. One couple said that they were not allowed to kiss

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<sup>24</sup> *Id.* at § 4.1.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

and hug one another in the facility. One Central American mother reported that her young daughter had been ill with high fevers and wanted to sleep in bed with her but was not allowed to by the guards. ICE Family Residential Standards state that detainees assigned to residential facilities may not be placed in segregation.<sup>27</sup>

### **Hygiene and Personal Care**

Many of the families that CIRC interacted with reported being provided adequate personal care items, like toothbrushes, toothpaste, shampoo, and soap at Berks. All the families we spoke with also had adequate clothing provided to them, with one family specifying that each family member is allowed seven changes of clothes. Some families who had arrived with luggage or belongings were able to keep and wear their own clothing.

Most families reported that they were able to use bathroom facilities and showers any time they wanted to. Individuals generally thought that the bathroom and shower facilities were kept clean. One teenage girl reported having difficulty getting into the shower facilities because teenage children are only allowed to shower from 7-9pm in the evening. Families reported that adults, and small children can shower at any time, up to twice a day.

One Central American father reported that he had been getting a rash every time he took a shower. He suspected that the soap or shampoo he had been given was the cause. He was given some cream by the doctor, and the rash had begun to clear up. No other families reported rashes or allergic reactions being caused by personal care products.

According to ICE Family Residential Standards, detained families must be provided sufficient clean bedding, blankets, and towels.<sup>28</sup> Each individual must be provided clothing that is

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at § 4.4.

clean, fits well, and is suited to the climate.<sup>29</sup> ICE Standards state that individuals must receive basic personal hygiene items, including at minimum: soap, shampoo, a comb, a toothbrush and toothpaste, and skin lotion.<sup>30</sup> Feminine hygiene products must be available to detainees.<sup>31</sup> Facilities must have an adequate number of toilets that can be used without staff supervision, washbasins, and showers.<sup>32</sup>

## **Childcare**

The families reported that most school-aged children go to school during on weekdays. School is in session from 9am until 2:50pm in the afternoon. Children have a lunch break and can eat lunch with their families. Many children enjoyed going to school and preferred to go back to school rather than interview with the asylum officer. Some children stated that they enjoyed being able to go outside and play. Most children said that lessons are only in English. One teenage girl reported that her teacher speaks some Spanish and can explain the lessons to her in Spanish also.

Parents appear to have primary responsibility for watching and caring for their children, even while they are in fear interviews. Guards brought children into and out of rooms as needed but did not appear to have much interaction with children otherwise. During CIRC's visit, members of CIRC entertained children while their parents were in fear interviews. Otherwise, parents kept their children with them during the interviews.

ICE Family Residential Standards state that school-age children should have an Initial Educational Assessment within three days of their arrival to the facility.<sup>33</sup> Afterwards, children will receive at least one hour of instruction in core subjects Monday through Friday, year round.<sup>34</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at § 5.2.

<sup>34</sup> *Id.*

Core subjects are Science, Social Studies, Math, Language Arts (Reading/Writing), and Physical Education.<sup>35</sup> English as a Second Language (ESL) instruction should be a primary focus of the facility's educational program.<sup>36</sup> ICE Standards state that educational materials should be available in different languages. Educational staff must be ESL certified, or currently enrolled in an ESL course.<sup>37</sup>

### **Routine and Recreation**

School-aged children spent most weekdays at school. Adults reported spending their days writing letters, sending emails, surfing on the computer, watching television, exercising, or caring for children who are too young to go to school. One teenage girl said that she spent her free time playing games with her father and playing on the computer in order to deal with the stress of being detained. Children and adults alike complained about being bored and not having enough to do. One Central American man expressed that he was used to working and did not know how to deal with being inside all the time and not having work to do.

ICE Family Residential Standards require that detainees have a daily opportunity to participate in leisure activities outside their housing area.<sup>38</sup> Detainees should also have access to exercise equipment and be given opportunities for physical exercise.<sup>39</sup> ICE Standards require that recreational activities, such as sports, arts and crafts, and music, be organized for children outside of school hours.<sup>40</sup> Facilities should also offer board games, television, and other sedentary recreational equipment.<sup>41</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at § 5.5.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

Only one woman who CIRC met with, a young Central American mother, talked about having a job at Berks. She worked in the kitchen, washing and putting away dishes and other cooking equipment. She had started her job recently and had not yet been paid, but she thought that she would be paid \$2 a day. She told CIRC that kitchen workers also get ice cream, soda, cookies, and nachos. A father from another family reported being offered a job at Berks but had turned it down because the pay was so low.

ICE Family Residential Standards state that adult detainees must be given an opportunity to work and earn money and forbid forcing detainees to work, or allowing minors to work.<sup>42</sup> Working conditions must comply with federal, state, and local safety laws.<sup>43</sup> Workdays in excess of 8 hours are prohibited.<sup>44</sup> ICE Family Residential Standards prohibit discrimination in the selection of detainees for work details.<sup>45</sup> Workers must not be accorded special privileges.<sup>46</sup>

### **Visitation and Telephone Calls**

Many individuals told us that their family members and friends lived too far away to visit them. Many families believed that they would be allowed to have visitors, however. At least one family had had a relative visit and bring them a package of food.

Many families could make at least a few free phone calls. Other calls are allowed, but families must purchase a phone card in order to make additional calls. Phone cards cost at least \$10, but families may purchase more expensive cards if they want to more talk time.

ICE Family Residential Standards require that detainees be allowed to receive contact visits from “their families, associates, legal representatives, consular officials, and others in the

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<sup>42</sup> *Id.* at § 1.4.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

community.”<sup>47</sup> The number of visitors a resident may receive and the length of visits “will be limited only by reasonable constraints of space, scheduling, staff availability, safety, security, and good order.”<sup>48</sup> ICE Family Residential Standards also require that detainees be given “reasonable and equitable access to reasonably-priced telephone services.”<sup>49</sup> Generally, detainees will be responsible for the cost of their own telephone services.<sup>50</sup> However, detainees should be allowed to make free phone calls to certain individuals, including the local immigration court and the Board of Immigration Appeals, the Office of the Inspector General of the U.S. Department of Homeland Security, certain other government offices, legal representatives, and immediate family members in the case of emergencies.<sup>51</sup>

## **VII. CFIs and RFIs: Logistics and Preparation**

### **Advocates in Fear Interviews and Interview Preparation**

On the first day CIRC arrived at Berks, CIRC was told that only six advocates can enter the facility at one time by a Berks guard. This total appears to be applied irrespective of the role that the advocates will serve, such as attorney, law student, supervisor, or interpreter. Up to three advocates serving any role can meet with a family at a time. CIRC’s supervisor, Professor Wadhia, could remain outside of the fear interviews and interview preparation, but her presence inside the facility still counted towards the six-person limit.

CIRC received little information about newly arrived families from the guards. In order to meet with a family, advocates must know the full name of at least one of the parents, which is

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<sup>47</sup> *Id.* at § 5.8.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

difficult to find out if the family has arrived in the facility only the night before. CIRC asked families who had been detained longer for information about new arrivals. On the last day of our visit, two families had been scheduled for fear interviews, unbeknownst to CIRC. We had not even been aware of these families' presence in the facility and were not able to meet with them in depth to prepare them for their interviews.

### **Room Allocation and Setup for Fear Interviews/Client Meetings**

At the time of our visit, the two attorney rooms were being used for both client meetings and fear interviews. Fear interviews were conducted in the attorney rooms via telephone with an asylum officer and an interpreter. If no advocate was present, the family would be alone in the room with just a telephone.

CIRC was instructed that only two families can be present in the attorney rooms at a time, including for fear interviews. In practice, this meant that CIRC was generally not allowed to meet with families for interview preparation when other fear interviews were ongoing, which meant that advocates sometimes had to choose between being present as advocates at fear interviews or meeting with families for the first time. Professor Wadhia could remain at a table outside of the main attorney rooms to oversee the fear interviews or interview preparation in both rooms and prepare families scheduled for RFIs. The courtroom in the facility, located near the attorney rooms, was used for cases involving IJ review. Every hearing before the IJ was conducted via televideo. In one instance, one IJ review and two fear interviews took place simultaneously, with advocates being allowed to be present for all three. In another instance, RFIs for one adult and one child was conducted in the courtroom in the facility. The room was more cramped because of the audio-visual equipment in the room. This interview lasted almost seven hours.



The rooms were small and, while they were able to accommodate a small family of three, they did not have enough room for a family of five.

### **Duration of Fear Interviews**

CIRC observed fear interviews lasting between an hour and a half to about six hours. Most fear interviews that we observed were around three to four hours in length. If multiple family members are interviewed, the fear interviews appeared to last longer. CIRC observed families receiving more than one fear interview. In one instance, a Central American family had been called for five separate fear interviews to again recount their stories over the course of a month. This family grew increasingly frustrated in later interviews, asking the asylum officer why they had been interviewed so many times. Several family members were interviewed more than once and were asked substantially the same questions in each interview. With each passing interview, the family's responses to questions grew increasingly scattered and devoid of detail. Later fear interviews were generally shorter in duration than first interviews, both for this family and others who were scheduled for more than one fear interview.

### **Presence of Guards**

Guards were generally not present during fear interviews or interview preparation. However, a guard had to check advocates in, and required advocates to sign for every family with whom they wanted to meet. A guard would generally bring families into the attorney rooms for their fear interviews, as well as assist in setting up the phone call with the asylum officer.

As necessary, guards would bring children in from school when their presence was needed in fear interviews and interview preparation. Guards' interaction with children during fear interviews appeared minimal. In one instance, a guard brought a baby girl with an extremely wet diaper into her parents' fear interview.

## **Interviewing of Children**

According to CIRC's observations, asylum officers generally wanted to speak directly to children in fear interviews. In one instance, an asylum officer requested to interview children as young as one and four years old. In another instance, the asylum officer interviewed the parent to speak on behalf of the child, and then asked a separate set of questions to the child only. Generally, parents could be present in the room when young children were interviewed. If the children were too young to speak to an asylum officer, or reluctant to do so, a parent was generally allowed to answer questions on behalf of their children.

Children, especially younger children who did not understand the import of the interview, became restless, bored, and frustrated during the long interviews. CIRC assisted by carrying the babies, sometimes outside the room. One 9-year-old boy asked if he could go back to school after a five-hour interview and the asylum officer said no.

## **Items Allowed to Be Brought Inside, Given to Families**

During CIRC's legal visit, no food could be brought inside Berks, regardless of whether it was intended for advocates or the detained families. Advocates were generally allowed to bring water bottles and drink cups inside the facility. Advocates were not allowed to bring cell phones inside the facility. Advocates had to be scanned with a hand-held metal detector before entering the facility. Any bags or purses were searched before advocates could bring them inside the facility. One guard informed CIRC that any unnecessary items should be removed from our bags and not taken inside the facility. That guard asked one advocate to leave a small cosmetic bag in a locker and was hesitant to allow advocates to bring their wallets inside the facility.

Initially, CIRC could bring paper, coloring books, markers, and stickers inside the facility to help entertain young children while we spoke with their parents. However, one guard informed

the team towards the end of our trip that we were no longer allowed to bring stickers for the children. In another instance, a guard confiscated some markers. Stickers and coloring supplies aided greatly in calming and occupying young children, especially during lengthy fear interviews.

### **VIII. Substantive Observations and Outcomes: IJ Reviews, CFIs and RFIs**

#### **CFIs and RFIs**

During our visit, members of CIRC sat in on several CFIs and RFIs. In general, asylum officers appeared to apply the normal standard for CFIs, which is a significant possibility that the individual being interviewed could establish eligibility for asylum.<sup>52</sup> In some RFIs, the asylum officer similarly applied the usual reasonable fear standard, which is a reasonable possibility that the individual being interviewed could establish eligibility for withholding of removal or protection under the CAT.<sup>53</sup>

However, many of the families CIRC met with were subject to the third country asylum rule, which somewhat changed the direction of their interviews. CIRC sat in on fear interviews for three families, two from Central America and one from Haiti who were subject to the transit rule. In some of these interviews, asylum officers asked the families transit-related questions, and in others they did not. Some officers explicitly told the families being interviewed that they were barred from asylum because of the third country asylum rule and transformed the interview to the higher “reasonable fear” standard. Other asylum officers did not explicitly explain how they were

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<sup>52</sup> INA § 235(b)(1); 8 U.S.C. § 1225(b)(1); Questions and Answers: Credible Fear Screening, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 15, 2015), <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening>.

<sup>53</sup> 8 C.F.R. § 208.31; Questions and Answers: Reasonable Fear Screenings, U.S. CITIZENSHIP AND IMMIGR. SERVS. (July 15, 2015), <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-reasonable-fear-screenings>.

applying the third country asylum rule, or what standard they were applying to interviews where the third country asylum rule was implicated.

### **IJ Reviews**

Members of CIRC sat in on two IJ Reviews, which occur when an IJ reviews a previous negative fear determination by an asylum officer. Both IJ Reviews took place in a room near the attorney rooms with a television for the purpose of video conferencing with the immigration court in York, Pennsylvania. The families' Aldea attorney, Bridget Cambria, was present in the courtroom in York, but families were only able to communicate with their attorney via video conference and were not able to confer privately. If CIRC were not present, families would have been in the room intended for video conferencing alone with the television.

The IJ and an interpreter were also present in the courtroom. The IJ summarized the families' reasons for fear of return to their home country, as he had learned from the record, and applied the standard of whether there was a significant possibility that the family could establish eligibility for asylum, withholding of removal or CAT. He gave families the opportunity to correct any mistakes and asked them if they had anything to add. He also gave Ms. Cambria a chance to make a closing statement before issuing his decision. In both cases, the interpreter did not translate the closing statement. Sometimes, particularly when the interpreter was translating the judge's final decision, it was very difficult for the families to hear the interpretation via video conference. Each IJ Review lasted less than half an hour.

### **Outcomes of CFIs, RFIs, and IJ Reviews**

In general, CIRC had to wait longer than expected to get results for the fear interviews we sat in on. As of November 27, 2019, several families with whom CIRC worked to prepare for fear interviews had received decisions. One family received a positive credible fear determination and

was released. Three other families received negative fear determinations. After returning to Penn State Law, the CIRC team was present for remaining CFIs or IJ reviews remotely, and prepared statements or briefs in partnership with Aldea. One family's negative determination was based on their perceived ability to relocate safely within their home country. This family's negative determination was reversed upon review by an IJ, however, and they were released. A second family's negative determination was based on a lack of nexus, meaning a lack of connection between the family's social group and their fear of persecution and torture, and lack of government involvement in torture. This negative determination was affirmed by an IJ. On November 25, 2019, a request for review was filed on behalf of this family.<sup>54</sup> The third family received a negative determination also based on lack of nexus and government acquiescence to torture and was scheduled for an IJ review on November 26, 2019, at which the IJ affirmed the asylum officer's decision.

CIRC also helped to prepare two families for IJ reviews. In both cases, the judge issued a decision during the hearing. The IJ did not find that either family was part of a social group subject to persecution and, for that reason, ruled that neither family had a credible fear of persecution. The IJ found that only one of the two families established a credible fear of torture and that family was released.

### **IX. Conclusion and Recommendations**

The observations from our visit made clear that detention, especially prolonged detention is harmful to families and children. The families who had been detained the longest reported boredom, depression, and, in the most extreme cases, thoughts of self-harm. Young children

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<sup>54</sup> 8 C.F.R. § 1208.30(g)(2)(iv)(A).

appear especially susceptible to psychological harm and trauma resulting from detention and separation from family members.

While families are detained in the Berks facility, several recommendations could make their stay less traumatic. First, the interaction of guards with families should be examined to ensure that guards are interacting appropriately with families, including young children and trauma sufferers. Second, access to appropriate medical care should be prioritized for detainees with chronic and ongoing medical problems. Finally, nutritional guidelines should be revisited to ensure that families are being served varied and nutritionally complete meals.

Ultimately, however, families should be released to their U.S. sponsors whenever possible. CIRC regularly meets with families who have suffered similar harm and are in procedurally similar situations to the families detained at Berks, yet these families have been released and are not living with their sponsors in the United States. Detaining fewer families for shorter periods of time is not only cost-effective and an efficient use of resources, but it minimizes the amount of trauma that families suffer.

## X. Appendix

### A. Policy Recommendation from ALDEA and Penn State Law Center for Immigrants' Rights Clinic on Family Detention



**PennState Law**

Center for Immigrants' Rights Clinic

### **Biden Transition Team – Policy Recommendation on Family Detention**

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The “Biden Commitment to a Fair and Humane Immigration”<sup>i</sup> requires a policy that keeps families together and out of detention. Detention should never be a first resort where when successful alternatives exist or and families have relatives, friends, and other members of the community willing to sponsor them. This policy brief centers on the harms and costs that flow from detaining families and recommends that the Biden administration issue a policy on family detention. Specifically, the Department of Homeland Security (DHS) must use its prosecutorial discretion to avoid detaining families in the absence of extraordinary circumstances. This solution is cost saving to the government, legally sound, and serves the best interest of families and the best interests of children.

The United States government currently confines immigrants in detention facilities or prisons operated or contracted by Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Immigrants who travel to the United States as a family unit may be apprehended and detained together at the border, in the interior of the United States, or at an airport and, thereafter, placed into ICE custody at one of three family detention centers in the United States.<sup>ii</sup> The three operational family detention centers include: South Texas Family Residential Center in Dilley, TX; Karnes County Residential Center in Karnes, TX; and Berks County Residential Center in Leesport, PA.

Tied to family detention is the Trump administration’s family separation policy. In Spring 2018, then-Attorney General Jeff Sessions announced the “zero-tolerance” policy directed towards immigrant families attempting to enter the country without authorization.<sup>iii</sup> The “zero-tolerance” policy included the separation of children from their families, as well as the arrest, holding, and prosecution of all unauthorized border crossers, including those without serious criminal

histories.<sup>iv</sup> Under this policy, families were forcibly separated, which led to children being detained by the U.S. Department of Health and Human Services, while their parents were separately detained by the U.S. Bureau of Prisons and very shortly thereafter, ICE in adult detention centers. The “zero-tolerance” policy led to the prosecution of asylum-seekers in federal court for immigration violations, as well as the prolonged detention of persons in immigration proceedings.<sup>v</sup>

Due to public outcry, the Trump administration retracted its formal policy on family separation and replaced it with a practice of detaining parents and children. According to Human Rights First, more than 45,000 parents and children were held in family detention facilities in fiscal year 2019.<sup>vi</sup> In June 2019, the U.S. government reported that almost 5,000 members of “family units” were being detained by CBP in poor conditions.<sup>vii</sup> Several months into a global pandemic, families continue to be detained in the three family detention centers.<sup>viii</sup>

### *Ending Family Detention: Why It Matters.*

*Family detention harms children.* Family detention undermines the priority of ensuring children are healthy, safe, and placed where their best interests are served. For example, children in family detention fail to receive the necessary medical attention they need and parents are “turned away from onsite clinic staff when they try to seek medical care for their children.”<sup>ix</sup> According to Human Rights First, incarcerated children face multiple types of serious health concerns when in detention, including psychological trauma and long-term mental health risks.<sup>x</sup> As articulated by **Dr. Kyle Yasuda, MD, FAAP, President, American Academy of Pediatrics** “No amount of time in detention is safe for a child. When children are detained, they experience physical and emotional stress, placing them at risk for serious short- and long-term health problems, such as developmental delays, poor psychological adjustment, anxiety, depression and suicidal ideation.”<sup>xi</sup> When detention becomes prolonged, children face even greater mental and physical health risks including suicidality, withdrawal, and significant psychological distress.<sup>xii</sup> While the Trump administration characterized family separation and family detention as an “either or” choice, a third option exists in reality: release family units to a sponsor or family member and where necessary, employ community based alternatives to detention.

*Family detention is costly.* Releasing families on their own recognizance, parole, or community-based alternatives programs such as holistic services in the form of robust case management and basic needs from non-profit organizations, will reduce costs for the federal government.<sup>xiii</sup> According to the American Immigration Council, the per day cost for adult detention is \$139.07 and for family detention is \$319.37.<sup>xiv</sup> To share the math of family detention in a different way, take the example of one facility. The South Texas Family Residential Center is owned and operated by the Corrections Corporation of America, a private corporation, and is estimated to cost \$260 million annually.<sup>xv</sup> By contrast, alternative programs are significantly cheaper. The federal government is incurring unnecessary expenses and liabilities through family detention and could realistically spend less by ending the practice or utilizing community-based alternatives. As described by President-Elect Biden’s platform “[Evidence shows](#) that these programs are highly effective and are far less expensive and punitive than detaining families.”<sup>xvi</sup>

*Family detention does not advance the goal it purports to serve.* The policy of family detention was deterrence—that is to stop the flow of unauthorized migration, including asylum-seeking



families. However, the data on family apprehensions and social scientists cast doubt on the use of detention as a deterrence.<sup>xvii</sup> One court has also found general deterrence to be an unlawful basis for detaining immigrants.<sup>xviii</sup> Family detention also has no correlation with higher appearance for families or lower risk rates for the community. According to an empirical study by Ingrid Eagly, Esq., Steven Shafer, Esq. and Jana Whalley, Esq., 96 percent of asylum-seeking families who were released from immigration detention attended all immigration court hearings.<sup>xix</sup> Additionally, nearly 100 percent of families in detention have sponsors waiting for them to provide housing, financial support and access to legal services and community organizations willing to receive them. Detention further limits access to community based legal services, which assist children and families in presenting their case, supported by evidence, in a removal proceeding. According to the Immigration and Customs Enforcement Advisory Committee on Family Residential Centers, “detention is generally neither appropriate nor necessary for families.”<sup>xx</sup>

**Recommendation.** The United States must end the practice of family detention. The position of the incoming administration should be the implementation of a humane immigration system that takes into account the best interests of children and the assurance of family unity and well-being. Families currently detained should be released to sponsors, and in the future, families should be allowed to immediately settle with sponsors while they await immigration proceedings. Only in exceptional and unusual cases—when there is evidence a family is a flight risk—community-based alternatives should be utilized rather than the use of detention. DHS should employ the assistance of child-welfare specialists and licensed social work professionals, rather than law enforcement personnel. The use of restrictive ankle monitoring devices with parents should be limited to the greatest extent possible so as not to interfere with their daily ability to provide care for their children.

To pivot away from family detention, the Secretary of Homeland Security should issue a policy memorandum that as a general policy discourages the detention of families and encourages release of families who are already detained. This DHS-wide guidance should apply to the activities of U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services. The policy should be grounded in the Department’s prosecutorial discretion.<sup>xxi</sup> Pursuant to the Homeland Security Act and Immigration and Nationality Act, DHS sets immigration priorities and determines how to enforce and administer immigration laws.<sup>xxii</sup> The decision not to detain families falls squarely within the scope of DHS’s prosecutorial discretion.<sup>xxiii</sup>

The following is draft language of the policy to be included in the memo:

*Absent extraordinary circumstances, it is against DHS policy to detain families. DHS must exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions for families. Families should normally be released from government custody to or placed with a sponsor. In special circumstances, community-based alternatives should be utilized. Detention is permissible only if extraordinary factors are present.*

*Conclusion*

The very first step in establishing a more humane immigration system and demonstrating the government's commitment to the safety of children and the value of reunification, is to adopt a policy that moves away from family detention. The way forward is to quickly and boldly end harmful government practices towards immigrant children and their families.

**B. Press Release From ALDEA Reacting to the Release of Remaining Families in Berks,  
March 1, 2021**



## **There Is No Safe Way to Imprison Children**

*Aldea reacts to the release of remaining detained families from the Berks immigration jail.*

**FOR IMMEDIATE RELEASE**

**CONTACT: [media@aldeapjc.org](mailto:media@aldeapjc.org)**

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**For Spanish Language Inquiries: (786) 587-5160**

Last week ICE advised immigrant services organizations that they will no longer engage in the long-term detention of families. Friday morning, we received the news that we had been hoping to hear for years: that every single family was being released from the Berks County Residential Center. Even though ICE used its discretion to release families from Berks, it is their official statement that all family detention centers remain fully operational. For now - we will remain watchful and continue to hold authorities accountable for what is to come.

We hope, with caution, that this is a first step towards removing federal law enforcement from the great responsibility of caring for children. We hope this is the beginning of the realization of the administration's promise to end the catastrophic mistake of family detention. We question the administration's lack of consistency in maintaining facilities that promote a carceral state and their stated efforts for a more fair and humane immigration system. This vision requires the permanent closure of Dilley, Karnes and Berks and the end of family detention.

We further reject the administration's decision to reopen a make-shift tent facility to hold migrant children in Carrizo Springs, TX as well as any plans to reopen the Homestead facility to detain children. We repeat that experts, lawyers, and advocates have unilaterally agreed that there is no safe way to imprison children. A fair and humane immigration system cannot coexist with any type of family or child detention. Humanitarian alternatives are always possible.

All three facilities, Karnes and Dilley, in Texas, and Berks, are secure, unlicensed, punitive jails where families are not allowed to leave. The families detained in these facilities are parents and children seeking protection, families who are victims of trafficking, and families who are the victims of immigration raids. Family detention, in any form and for any duration of time, is never acceptable.

Family detention centers are operated by persons contracted by ICE to detain parents and children. This means that the same people responsible for deporting children are also in charge of the care of children in family detention centers. For years, ICE has used family detention facilities to hold families unlawfully, to violate long-standing rules governing the care of children and to forcibly compel their removal to persecution and physical harm. The government does this knowing that the detention of children is harmful to them physically, psychologically, socially and emotionally. They also know that the detention of children – for even short periods of time – permanently harms them and affects their mental and physical development. The Berks facility has held children in custody for periods of time as long as more than 700 days.

All families released from the Berks facility have arrived safely to the care of their loved ones here in the United States and will proceed in their legal matters from the safety of their homes. We welcome the release of families subject to the incredible trauma of detention and emphasize that no family or child is required by law to be detained. Detention is unnecessary in every way. As such it should be the official policy of the Biden Administration to end the detention of families permanently and to make real, serious, efforts to end the detention of children altogether.

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Aldea - The People's Justice Center provides quality pro bono legal and social services to vulnerable detained and free immigrant populations throughout Pennsylvania, and offers universal pro bono representation to every family detained by ICE in the state. Aldea also participates in important and impactful litigation nationwide to protect immigrant children and their families. Aldea is working to free every person currently in ICE detention.

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<sup>i</sup> <https://joebiden.com/immigration/>

<sup>ii</sup> <https://www.detentionwatchnetwork.org/issues/family-detention>; <https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/family-detention/>.

<sup>iii</sup> <https://www.justice.gov/opa/press-release/file/1049751/download>.

<sup>iv</sup> <https://www.hrw.org/news/2018/08/16/qa-trump-administrations-zero-tolerance-immigration-policy#q1>.

<sup>v</sup> <https://www.hrw.org/news/2018/08/16/qa-trump-administrations-zero-tolerance-immigration-policy#q1>.

<sup>vi</sup> [https://www.humanrightsfirst.org/sites/default/files/Short\\_Detention\\_Report\\_March\\_2019.pdf](https://www.humanrightsfirst.org/sites/default/files/Short_Detention_Report_March_2019.pdf)

<sup>vii</sup> <https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration>

<sup>viii</sup> <https://www.raicetexas.org/2020/09/03/families-remain-unjustifiably-detained-in-the-midst-of-a-pandemic/>

<sup>ix</sup> [https://www.humanrightsfirst.org/sites/default/files/Short\\_Detention\\_Report\\_March\\_2019.pdf](https://www.humanrightsfirst.org/sites/default/files/Short_Detention_Report_March_2019.pdf);

<https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf>.

<sup>x</sup> [https://www.humanrightsfirst.org/sites/default/files/Short\\_Detention\\_Report\\_March\\_2019.pdf](https://www.humanrightsfirst.org/sites/default/files/Short_Detention_Report_March_2019.pdf)

<sup>xi</sup> <https://www.psychiatry.org/newsroom/news-releases/nation-s-top-child-focused-organizations-strongly-urge-california-federal-court-to-oppose-trump-administration-s-move-to-end-flores-settlement>

<sup>xii</sup> [https://www.humanrightsfirst.org/sites/default/files/Short\\_Detention\\_Report\\_March\\_2019.pdf](https://www.humanrightsfirst.org/sites/default/files/Short_Detention_Report_March_2019.pdf)

<sup>xiii</sup> <https://immigrantjustice.org/research-items>

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- xv <https://www.themarshallproject.org/2015/05/21/the-south-texas-family-residential-center-is-no-haven>
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- xvii <https://www.stanfordlawreview.org/online/detention-as-deterrence/>;  
<https://www.migrationpolicy.org/article/trump-administration-new-indefinite-family-detention-policy>
- xviii R.I.L.-R v. Johnson, 80 F. Supp. 3d 164 (D.D.C. 2015).
- xix <https://www.americanimmigrationcouncil.org/research/detaining-families-a-study-of-asylum-adjudication-in-family-detention>
- xx <https://www.ice.gov/sites/default/files/documents/Report/2016/acfr-report-final-102016.pdf>
- xxi See 8 U.S.C. § 1103 (2012) (INA § 103). See also, Wadhia, *Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases* (NYU Press 2015)
- xxii See *id.*
- xxiii See *e.g.*, [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf);  
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[https://www.ice.gov/doclib/detention-reform/pdf/civil\\_enforcement\\_priorities.pdf](https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf).