LIRS
Lutheran Immigration and Refugee Service

WOMEN'S COMMISSION for refugee women & children

LOCKING UP FAMILY VALUES:

The Detention of Immigrant Families

Women's Commission for Refugee Women and Children
Lutheran Immigration and Refugee Service

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Mission Statements

Since 1939, **Lutheran Immigration and Refugee Service** has worked with service, advocacy and educational partners nationwide to bring new hope and new life to America's newcomers. LIRS resettles refugees, protects unaccompanied refugee and migrant children, including victims of trafficking, advocates for fair and just treatment of asylum seekers, seeks alternatives to detention for those who are incarcerated during their immigration proceedings and stands for unity for families fractured by unfair laws. LIRS is a cooperative agency of the Evangelical Lutheran Church of America, the Lutheran Church Missouri Synod and the Latvian Evangelical Lutheran Church in America. With initiative and stewardship, LIRS seeks creative solutions for uprooted people regardless of race, ethnicity or religious beliefs.

The **Women's Commission for Refugee Women and Children** works to improve the lives and defend the rights of refugee* women, youth and children. The Women's Commission works in consultation with refugee women, youth and children. Through our advocacy, we ensure that their voices are heard in the halls of power and taken into account in the decision-making process. Our work contributes to long-term solutions, thereby lessening the likelihood of continuing cycles of conflict and displacement. The Women's Commission is legally part of the International Rescue Committee (IRC), a non-profit 501(c)(3) organization. The Women's Commission receives no direct financial support from the IRC.

* The term refugee here includes refugees, internally displaced persons, returnees and asylum seekers.

Cover photos: Left, play area at Hutto. Right, note slipped to a member of our delegation at Hutto.

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Commonly Used Abbreviations

ACA	American Correctional Association
ALDF	Adult Local Detention Facilities
CBP	U.S. Customs and Border Protection
CIS	U.S. Citizenship and Immigration Service
CCA	Corrections Corporation of America
DHS	U.S. Department of Homeland Security
EOIR	Executive Office for Immigration Review
ICE	U.S. Immigration and Customs Enforcement
IGSA	Intergovernmental Service Agreement
IJ	Immigration Judge
INS	Immigration and Naturalization Service
LIRS	Lutheran Immigration and Refugee Service
NCCHC	National Commission on Correctional Health Care
NGO	Nongovernmental Organization
OIG	Office of Inspector General
ORR	Office of Refugee Resettlement
PHS	Public Health Service

Executive Summary

Dominica[1] is a Honduran asylum seeker detained with her two children at the T. Don Hutto Residential Center in Taylor, Texas. Nelly is nine years old and Alice is three. At night they all sleep together in the bottom bunk of their jail cell because they are afraid. Nelly says, "If you are not good, they will take you away from your mom."[2]

Dominica is almost seven months pregnant. The doctor has told her for months that her baby is underweight. He has told her she needs to eat more. But she says she can't. "The food doesn't work here. I cannot eat it." She explains that the food is "difficult to eat" and she doesn't get much time. "There are only a maximum of 20 minutes to eat and I have to feed my children first. They do not eat quickly. You are not allowed to take food out of the cafeteria, even if you haven't had time to finish. Something like bread or an apple…they take it away. It is so sad to throw something like that away because you could not eat fast enough."

Dominica requested parole over two months ago. Her mother is a legal permanent resident and she has passed a credible fear interview. She still has not a received a response to her request. She is afraid that she will have her baby in jail.[3]

Dominica's story is just one of countless tales from detained immigrant families. A small child's note, slipped into the hand of a member of our delegation, sums up their pleas:

"Help us and ask us questions."

On any given day the U.S. government has the capacity to detain over 600 men, women and children apprehended as family units along the U.S. border and within the interior of the country. The detention of families expanded dramatically in 2006 with the opening of the new 512-bed T. Don Hutto Residential Center. Although Hutto has become the centerpiece of a major expansion of immigration detention in America, it builds on and further institutionalizes many of the practices established at the smaller Berks Family Shelter Care Facility in Leesport, Pa., where U.S. Immigration and Customs Enforcement (ICE) has detained a small number of families since 2001.

Prior to the opening of Hutto, detained children were separated from their parents and placed in the custody of the ORR Division for Unaccompanied Children's Services.

The recent increase in family detention represents a major shift in the U.S. government's treatment of families in immigration proceedings. Prior to the opening of Hutto, the majority of families were either released together from detention or separated from each other and detained individually. Children were placed in the custody of the Office of Refugee Resettlement (ORR) Division for Unaccompanied Children's Services, and parents were detained in adult facilities.

Congress discovered this and took immediate action to rectify

[1] All names and some identifying characteristics of detainees and former detainees have been changed throughout this report.
[2] Nelly, interview by Michelle Brané, T. Don Hutto Residential Center, December 4, 2006.
[3] Dominica, interview by Michelle Brané, T. Don Hutto Residential Center, December 4, 2006.

it, in keeping with America's tradition of promoting family values. It directed ICE to stop separating families and either to place them in alternative programs or to detain them together in nonpenal, homelike settings. Such Congressional directives were intended to preserve and protect the role of the family as the fundamental unit in our society. However, ICE chose to develop a penal detention model that is fundamentally anti-family and un-American.

Lutheran Immigration and Refugee Service and the Women's Commission for Refugee Women and Children felt it vital to examine the implications of this expanding penal approach to family detention in order to inform the development of policy and practice that serves the best interests of children and families. To that end we visited both the T. Don Hutto Residential Center and the Berks Family Shelter Care Facility and talked with detained families as well as former detainees. What we found was disturbing:

- Hutto is a former criminal facility that still looks and feels like a prison, complete with razor wire and prison cells.
- Some families with young children have been detained in these facilities for up to two years.
- The majority of children detained in these facilities appeared to be under the age of 12.
- At night, children as young as six were separated from their parents.
- Separation and threats of separation were used as disciplinary tools.
- People in detention displayed widespread and obvious psychological trauma. Every woman we spoke with in a private setting cried.
- At Hutto pregnant women received inadequate prenatal care.
- Children detained at Hutto received one hour of schooling per day.
- Families in Hutto received no more than twenty minutes to go through the cafeteria line and feed their children and themselves. Children were frequently sick from the food and losing weight.
- Families in Hutto received extremely limited indoor and outdoor recreation time and children did not have any soft toys.

Yet not everything we saw reflected a failure of the system. At the Berks facility:

- The educational system was appropriate to children's developmental needs.
- Families were permitted to participate in field trips.
- Children were able to participate in arts and crafts activities.
- Families enjoyed ample outdoor recreation time in an open, grassy area.

But despite these few positives, the system of family detention is overwhelmingly inappropriate for families.

- Both settings strip parents of their role as arbiter and architect of the family unit.
- Both facilities place families in settings modeled on the criminal justice system.
- There are no licensing requirements for family detention facilities because there is no precedent for family detention in the United States.
- There are no standards for family detention, but both facilities violated various aspects of existing standards for the treatment of unaccompanied children and adults in immigration proceedings.

Neither facility provides an acceptable model for addressing the reality of the presence of families in our immigration system. Although there is precedent in the adult detention system for the use of alternatives to detention and other pre-hearing release systems,[4] ICE has unfortunately made no effort to expand these

[4] See Appendix D, "UNHCR Report on Alternatives to Detention of Asylum Seekers and Refugees."

programs to include families.

Based upon these findings, we recommend the following systemic changes to the U.S. government's treatment of families in immigration proceedings:

- Discontinue the detention of families in prison-like institutions.
- Parole asylum seekers in accordance with international standards and DHS's own policy guidelines
- Expand parole and release options for apprehended families.
- Implement alternatives to detention for families not eligible for parole or release.
- House families not eligible for parole or release in appropriate, nonpenal, homelike facilities.
- Expand public-private partnerships to provide legal information and *pro bono* legal access for all detained families, and to implement alternative programs.

For a full list of recommendations, see page 45.

I. Introduction

As of February 2007, the U.S. government has the capacity to detain over 600 men, women and children apprehended as family units along the U.S. border and within the interior of the country. Family detention space dramatically increased in 2006 with the opening of the T. Don Hutto Residential Center in Taylor, Texas. This facility, a key component in the Department of Homeland Security's (DHS) Secure Border Initiative Family Custody Implementation Plan,[5] represents a major shift in the U.S. government's treatment of families in immigration proceedings from a policy of releasing[6] or separately detaining family members to a policy of family detention.

Consistent with the role of the Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service in advocating for appropriate treatment of immigrant women, children and families, we found it vital to engage in field research and to take an active part in examining this new policy. This report and research builds on our agencies' ongoing work on behalf of children and families in detention. In particular we sought to examine issues of family unity and the provision of legal, medical and psychosocial services to families who are in the custody of DHS.

What follows is our effort to examine the utility and appropriateness of family detention, and to recommend systemic changes that will transform the U.S. government's response to the needs of families in immigration proceedings. We hope that this research will contribute to the development of policy and practice that serves the best interests of children and families and that this report will prove a useful educational resource for policy makers and the public.[7]

[5] U.S. Immigration and Customs Enforcement, letter to Judge John C. Doerfler, April 17, 2006.
[6] DHS refers to this practice as "catch and release."
[7] For information on methodology refer to Appendix A.

II. Background

Family Detention: Historical Context

The U.S. government has historically struggled with how to administratively handle migrating families apprehended both internally and at the borders. As recently as six years ago the family detention landscape looked very different from what it does today. In 2001 the Immigration and Naturalization Service (INS) began to detain some migrant families in the Berks Facility, a former nursing home. Because there were few detention beds available for family units, a single parent and child would occasionally be detained for short periods of time in hotels contracted for that purpose. However, the majority of families apprehended were released pending a hearing before an Immigration Judge (IJ).

In the wake of the attacks of September 11, 2001, Congress passed the Homeland Security Act, splitting the functions of the INS into three separate agencies, and placing all three agencies under the jurisdiction of the newly created DHS. The act also transferred responsibility for the care and custody of unaccompanied alien children from the INS to the Department of Health and Human Services' Office of Refugee Resettlement (ORR) Division of Unaccompanied Children's Services.

Other post-9/11 changes in immigration law have led to broader enforcement and more restrictive immigration policies, including the expansion of expedited removal.[8]

Past U.S. policy of releasing families apprehended together became problematic in the current climate of increased enforcement. According to DHS assessments, the practice of releasing families encouraged undocumented immigration because prospective migrants would "rent" children to accompany them on the border crossing, thereby ensuring that they would be released on their own recognizance should they be caught.[9] DHS sought to address this problem by detaining both the adults and the children with them. Because of a shortage of detention bed space, the agency began placing children in ORR shelters and holding parents in countless immigration detention centers and state and county jails.[10] In some cases this action protected children from what might have been dangerous smuggling situations, but in other instances it resulted in the forced separation of parents from their children, which unlawfully rendered the children unaccompanied.[11]

Congress discovered the problems and directed DHS to stop separating migrant families. In 2005, the House report accompanying the Department of Homeland Security appropriations bill, 2006, stated:

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[8] Expedited removal is a policy that requires immigration authorities to detain all individuals who enter the United States through international airports, land ports and seaports if they are without legal documentation, including many asylum seekers who are unable to obtain travel documents prior to fleeing their country of origin. The practice of expedited removal has been expanded to apply also to individuals arrested without proper documentation within 100 miles of U.S. international borders and within 14 days of their entry into the United States. This second expansion was first piloted in the Tucson, Ariz., and Laredo, Texas, border patrol sectors. Many families now in Hutto were arrested in the Laredo area. For more information see U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal*, (Washington, D.C., February 8, 2005). See also U.S. Department of Homeland Security, "DHS Expands Expedited Removal Authority Along Southwest Border," news release, September 14, 2005, http://www.dhs.gov/dhs.gov/dhspublic/display?content=4816, and U.S. Department of Homeland Security, "DHS Streamlines Removal Process Along Entire U.S. Border," news release, January 30, 2006, http://www.aila.org/content/default.aspx?docid=18404.

[9] Department of Homeland Security Immigration and Customs Enforcement, "DHS Closes Loopholes by Expanding Expedited Removal to Cover Illegal Alien Families," news release, May 15, 2006, http://www.ice.gov/pi/news/newsreleases/articles/060516dc.htm.

[10] Women's Commission for Refugee Women and Children, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center*, (New York: October 2000).

[11] Christopher Nugent, "Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children," *The Boston Public Interest Law Journal*, Spring 2006.
Chad C. Haddal, "Procedural Definition of 'Unaccompanied' for Unauthorized Alien Children," memorandum to House Judiciary Committee, November 1, 2006.

> The Committee is concerned about reports that children apprehended by DHS, even as young as nursing infants, are being separated from their parents and placed in shelters operated by the Office of Refugee Resettlement (ORR) while their parents are in separate adult facilities. Children who are apprehended by DHS while in the company of their parents are not in fact "unaccompanied;" and if their welfare is not at issue, they should not be placed in ORR custody. The Committee expects DHS to release families or use alternatives to detention such as the Intensive Supervised Appearance Program[12] whenever possible. When detention of family units is necessary, the Committee directs DHS to use appropriate detention space to house them together.[13]

In response to Congress's directive, and in keeping with its efforts to ensure court appearance and deter migration, the administration began expanding the practice of detaining families together. DHS opened the T. Don Hutto Residential Center in May 2006. The facility was originally intended to house families apprehended while attempting to cross the U.S.-Mexico border, but families apprehended in the interior are also detained there,[14] including some that are apprehended when parents come to collect children who have been released from ORR custody.

The practice of detaining families in jail-like, criminal settings is contrary to the explicit intent of Congress. Congress clearly reaffirmed its intent in the House report of the Department of Homeland Security appropriations bill, 2007: "The Committee encourages ICE to work with reputable non-profit organizations to consider allowing family units to participate in the Intensive Supervision Appearance Program, where appropriate, or, if detention is necessary, to house these families together in non-penal, homelike environments until the conclusion of their immigration proceedings."[15]

DHS's use of Hutto greatly expands family detention in a way that contravenes Congress's directives and is inconsistent with the United States' international obligation to protect the rights of the most vulnerable migrants. With the opening of Hutto, DHS has dramatically departed from its own less jail-like model, as embodied by the Berks facility. However while the environment at Berks is closer to a nonpenal, homelike model, it still fails to satisfy Congressional intent.

Standards of Care and Custody

Family Detention Standards

To date no family detention standards have been implemented. Since its inception six years ago family detention has been governed by *ad hoc* hybrid policies and procedures that DHS derives from a combination of DHS's *Detention Operations Manual*, described below, and *Flores v. Reno*,[16] a 1993 case that resulted in a settlement stipulating that children in immigration proceedings be placed in the "least restrictive setting."[17] The National Juvenile Coordinator reported that his office has drafted standards. ICE has also reached out to the NGO community to discuss the development of standards for family

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[12] The Intensive Supervised Appearance Program is an alternative to detention program under ICE that is currently in use at nine pilot locations. Aliens are equipped with electronic monitoring devices for the first 30 days, and must comply with curfews and regular appointments with a caseworker. The level of monitoring needed is reevaluated and adjusted accordingly every 30 days.

[13] House Committee on Appropriations, *Department of Homeland Security appropriations bill, 2006: report together with additional views (to accompany H.R. 2360)*, 109th Cong., 1st Session, 2005, H. Rep. 109-79.

[14] Robert Bernal, DHS supervisory detention and deportation officer, and Joe Cirulli, deputy director, Berks County Youth Center, interview by Michelle Brané and Emily Butera, Berks County Shelter Care Facility, October 27, 2006; Daniel Coronado, CCA public information officer, interview by Michelle Brané and Emily Butera, T. Don Hutto Residential Center, December 4, 2006; John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.

[15] House Committee on Appropriations, *Department of Homeland Security appropriations bill, 2007: report together with additional views (to accompany H.R. 5441)*, 109th Cong., 2d Session, 2006, H. Rep. 109-476.

[16] Stipulated Settlement Agreement, *Flores v. Reno*, Case No CV85-4544-RJK (C.D. Cal. 1996), http://web.centerforhumanrights.net:8080/centerforhumanrights/children/Document.2004-06-18.8124043749.

[17] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006. We asked each of these parties for copies of the rules governing the different facilities, but never received a copy.

detention.[18] We welcome such a development, and urge DHS to involve child and family welfare experts to help assure that any proposed standards are as appropriate as possible.

Were standards to be developed, key elements should include the following:

- Using the least restrictive setting appropriate with a preference for parole, release or alternatives to detention;
- Utilizing nonpenal, homelike settings in the rare instances when some form of detention is necessary;
- Utilizing assessment procedures for verifying family relationships;
- Ensuring that the maximum length of stay not exceed three weeks;
- Promoting and supporting parents' ability to function in their roles as parents through adult mental health, medical and legal services that ensure that emotionally or physically compromised parents can adequately care for children;
- Meeting children's basic needs for food, sleep, bathroom access and play on a flexible and child-friendly schedule;
- Providing developmentally appropriate autonomous activities for children, including field trips, recreation time, school and other activities that do not require the continuous presence of parents;
- Retaining pediatric as well as adult specialists to oversee nutrition, health and mental health services;
- Providing children with high levels of psychosocial, developmental and educational stimulation;
- Ensuring that parents, not facility staff, have responsibility for child discipline; and
- Prohibiting the use of coercive control techniques such as involuntary separation of family members and environmental manipulation (keeping rooms very cold).

Flores *Settlement*

A class action lawsuit challenging the constitutionality of policies and practices governing the detention of unaccompanied children resulted in the 1996 *Flores v. Reno* settlement agreement.[19] This agreement, "intended to protect the rights of unaccompanied illegal juveniles in INS custody as well as to ensure their well-being,"[20] was also meant to become the basis for regulations that would codify a range of standards relating to care and confinement in the least secure setting possible, and a preference for release.[21]

Key *Flores* requirements include the following:[22]

- Separation of minors from unrelated adults;
- Preference for release of unaccompanied minors to the care of parents, legal guardians, other relatives, or foster homes or other facilities whenever possible;
- Detention of minors in licensed programs that comply with all relevant child welfare laws and regulations;
- Provision of suitable accommodations, food service, clothing and personal care items;
- Affirmation of children's right to wear their own clothes;

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[18] The ICE national juvenile coordinator states that ICE Detention and Deportation has drafted a set of new family detention standards that incorporate all the relevant standards and requirements of the adult Detention Standards and the *Flores v. Reno* settlement. These standards are awaiting approval by legal counsel. John Pogash, telephone interview by Michelle Brané, Washington, D.C., January 31, 2007.

[19] Women's Commission for Refugee Women and Children, *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*, (New York: May 2002): p. 9.

[20] U.S. Department of Justice, *Unaccompanied Juveniles in INS Custody*, Report Number I-2001-009, September 28, 2001, http://www.usdoj.gov/oig/reports/INS/e0109/exec.htm.

[21] Women's Commission, *Prison Guard or Parent?* pp. 9-10.

[22] *Flores v. Reno.*

- Provision of routine medical and dental care, family planning services and emergency medical care; administration of prescription medicine and accommodations for dietary restrictions; provision of mental health interventions as appropriate;
- One individual counseling session each week with a trained social worker and group counseling sessions at least twice each week;
- Provision of educational services appropriate to a child's level of development and communications skills;
- Recreation and leisure time including daily outdoor activity and one hour of large muscle activity each day;
- Prohibition of corporal punishment, humiliation, mental abuse and punitive interference with such daily functions as eating and sleeping; disciplinary actions may not adversely impact a child's health, physical or psychological well-being or deny a child regular meals, sufficient sleep, exercise, medical care, the right to correspondence or legal assistance;
- Expeditious processing of apprehended minors and timely provision of notice of their rights and the availability of free legal services; and
- Visitation privileges which encourage visitors and respect the child's privacy.

It is important to note that the *Flores* standards have not yet been codified into regulations. In addition, not only are provisions of the *Flores* settlement being violated in both family detention facilities, the preference for family reunification contained in the *Flores* settlement is being manipulated by DHS. When children are released from ORR custody, ORR notifies DHS of the child's release. In turn, DHS uses this information to apprehend and redetain children, this time with their parents.

Detention Standards

In its *Detention Operations Manual*, also known simply as the Detention Standards, DHS lays out 36 standards for ICE and ICE-contracted facilities. Standards cover visitation procedures, grievance policies, medical care, discipline, access to counsel, telephone access and food service, among other topics. In response to nongovernmental organization complaints about the detention of noncriminals in prisons, U.S. immigration authorities developed these standards to establish minimum requirements for care and custody and to afford detainees certain rights and protections. However, while these standards should obligate DHS to provide appropriate conditions of confinement, they are neither statutory nor incorporated into regulation,[23] creating a situation in which accountability is problematic and violations remain widespread.[24]

Aside from four standards related to legal access, the standards are largely derived from American Correctional Association standards, which are intended to regulate the custody of criminal inmates. Therefore, the standards reinforce the current culture of immigration detention in which harsh prison management practices are imposed on a noncriminal population.

Key Detention Standards requirements for adults in detention include the following:[25]

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[23] Women's Commission, *Behind Locked Doors*, p. 3.

[24] A report by the DHS Office of the Inspector General released in December 2006, found inappropriate conditions of confinement in all five adult facilities visited, including a failure to provide timely and responsive medical care and a safe and appropriate environment. Although the inspector general did not visit Hutto, the report is instructive as an illustration of common systemic problems that also occur in family detention. Department of Homeland Security Office of the Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, Report No. OIG-07-01, December 2006. p. 1-2.

[25] U.S. Immigration and Customs Enforcement, *Detention Operations Manual* http://www.ice.gov/partners/dro/opsmanual/index.htm.

- Access to healthcare, including initial medical and dental screening, primary medical and emergency medical and dental care, and regular sick call; arrangements, as needed, for specialized health care, mental health care and hospitalization; translation assistance to facilitate medical assistance where needed
- Access to outdoor recreation or a large recreation space with exercise equipment and access to sunlight for at least one hour daily, five days a week; in Contract Detention Facilities, access to outdoor recreation seven days per week
- Written notification of disciplinary practices, prohibited acts and sanctions; written notification of protections against personal abuse, corporal punishment, excessive use of force, retaliatory disciplinary actions and deprivation of food, clothing, bedding, hygiene products, exercise, access to visitation, telephone access, correspondence, or access to the law library
- Formal grievance procedures for detainees that guarantee protection from reprisals
- Right to visitation, including private visitation with legal representatives
- Access to telephones during waking hours, including privacy for legal calls, one working phone for every 25 detainees and access to phone calls
- Opportunity to participate in religious practice and access to personal religious property including prayer beads, rosaries, prayer rugs and other items appropriate to religious practice; accommodations for dietary restrictions as required by religious practices

Accountability and Oversight

In addition to a lack of enforceable standards, procedures for assessing applicability of correctional standards and inspecting family detention centers give ICE tremendous independence in dictating how detained families are treated. The draft Inter-Governmental Service Agreement[26] under which Williamson County, Texas, is contracted to operate the Hutto facility states:

> The Provider is required, in units housing ICE detainees, to perform in accordance with the most current editions of the Reviewers Guide which contains Standards of Performance, ICE Detention Standards to the extent applicable in a family detention facility and as reflected in Provider's policies and procedures, American Correctional Association (ACA) Standards for Adult Local Detention Facilities (ALDF) and Standards Supplement, Standards for Health Services in Jails, latest edition, National Commission on Correctional Health Care (NCCHC). Some ACA standards are augmented by ICE policy and/procedure. In cases where other standards conflict with DHS/ICE Policy or Standards, DHS/ICE Policy or Standards prevail.[27]

Such phrases as "to the extent applicable in a family detention facility," coupled with the lack of written standards for family facilities, underscore the lack of clear and adequate standards and accountability. In addition, under current ICE policy ICE employees conduct inspections of ICE facilities. Such an inspection policy means that no independent, impartial oversight authority inspects family detention facilities for compliance with either ACA/NCCHC or ICE standards. Perhaps even more disconcerting, all inspectors responsible for conducting inspections of family detention facilities are trained in investigation techniques by the ICE national juvenile coordinator, the same staff person responsible for devising and administering family detention.[28]

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[26] We were able to obtain only a draft copy of this agreement.

[27] "Inter-Governmental Service Agreement between the United States Department of Homeland Security U.S., Immigration and Customs Enforcement, Washington, DC, and Williamson County, Texas," Modification 0001, ICE/WC IGSAMOD1-1. Marked "Unofficial Document."

[28] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.

The recent DHS Office of the Inspector General report[29] raises concerns about the effectiveness of both oversight policy and existing standards in ensuring safe and humane conditions of confinement. Yet they remain the only relevant standards available for holding facilities accountable for the safety of detained families. While this indicates a fundamental flaw in the appropriateness of detention across the board, the absence of family-specific guidelines for care and custody provides further evidence that the entire system of family detention is without precedent and inappropriate.

III. Family Detention in the International Context

Many international conventions, including the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *Convention on the Rights of the Child* apply to children and families in detention. In particular, such conventions elevate the role of the family as the fundamental unit in society and restrict the use of detention for asylum seekers, particularly children.

Unfortunately, the United States is not alone among peer nations in the detention of families. The United Kingdom and Germany, for example, detain families under conditions quite similar to those in the United States, despite European guidelines that prescribe consideration for family unity as a central element of immigration policy. However, nations such as Australia and Sweden offer alternative approaches that might serve as models for improved detention practice in the United States.

For more information about applicable international law and family detention practices in other countries refer to Appendix B.[30]

[29] DHS OIG, *Treatment of Immigration Detainees*, p. 1-2.
[30] See Appendix B on page 49.

IV. Conditions of Confinement

Facilities

T. Don Hutto Residential Center

The T. Don Hutto Residential Center (Hutto), a 512-bed facility located about 30 miles outside Austin in Williamson County, Texas, is operated by the Corrections Corporation of America (CCA) under a contract with the county. DHS has contracted with Williamson County to pay a rate of $2,801,643 as a fixed monthly payment for up to 512 detainees and an additional $79 per day for each detainee over 512. This is equivalent to approximately $180 a day per individual detained.[31] Hutto opened as a family facility in May 2006. Prior to its use for family detention, the facility held people with pending criminal trials, adults in immigration detention and criminal inmates for the U.S. Marshals Service, DHS and the state of Texas, respectively.

On the day of our visit, there were 377 detainees in Hutto, however DHS staff noted that this number had recently dropped from approximately 400. Although the majority of the families are nationals of Central or South American countries, a review of the total population statistics indicated that there were also detainees from Djibouti, Ethiopia, Greece, Haiti, Indonesia, Iraq, Jordan, Kuwait, Romania and Somalia. Many of these families had been apprehended along the U.S.-Mexico border and are in expedited removal proceedings, however there were also families who were apprehended in the interior as well as many asylum seekers.[32]

Berks County Shelter Care Facility

The Berks County Shelter Care Facility (Berks), an 84-bed facility located about an hour outside Philadelphia in Leesport, Pa., began holding migrant families in March 2001. This site is part of the larger Berks County Youth Center complex that includes a juvenile facility housing U.S. citizens charged with or convicted of crimes, juveniles detained with the U.S. Marshals Service, and some detained juveniles whom DHS has deemed to be "other than unaccompanied."[33] Until 2002 the complex also included a shelter that housed minors in INS custody. It is owned and operated by Berks County under a contract from DHS.

Berks is a sprawling, dormlike facility located in rural Pennsylvania. Berks County receives $194 per person per day from DHS for the first 60 detainees, and a fixed rate of $5.20 per person per day beyond that. In addition, DHS pays for all medical and educational costs. On the day of our visit there were twenty-some families in residence.[34] The majority of the detained families were from Central America. The largest number of detainees in 2006 were nationals of Guatemala, but the facility also housed detainees from China, Colombia, El Salvador, Guyana, Iraq and Pakistan at the time we visited. Many of those detained were apprehended trying to cross the U.S.-Mexico border and are in expedited removal proceedings. However there are also families who were apprehended in the interior.

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31 Inter-Governmental Service Agreement between ICE, and Williamson County.

32 We requested information regarding the percentage of families in expedited removal versus other proceedings, but did not receive it.

33 John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.

34 Just under 84 individuals.

DHS detained Luz, a woman from Ecuador, with her 15-year-old son. *"I have been living in the United States for more than four years. I have a U.S. citizen daughter who is now almost two years old. I sent for my son who is 15. He came across the border from Mexico, but he was detained. I received a call to come and pick him up, so I left my daughter with my friend who lived next door, and took a bus to Arizona to get him. I picked up my son and we went straight to the bus. At the bus station, I was approached by some officers and they detained both of us. I have been here for nine months without seeing my baby girl. She was only one year old when I left her with my friend. I don't know what is happening with her."*[35]

Physical Setting

Hutto

The Hutto facility is a former prison. It is surrounded on three sides by fencing and several layers of concertina wire, although this wire has been removed from around the entrance and the front gate remains open. Regardless, facility security vehicles circle the building on a constant basis, and there is no buffer between the facility's recreation areas and the perimeter wire. An ICE enforcement agent who accompanied the tour indicated that the agency would like to remove the remaining concertina wire, but noted that the cost of such refurbishment is prohibitive.[36]

Left, the entrance of the T. Don Hutto Residential Center in Williamson County, Texas. Right, several layers of concertina wire and fencing surround the former prison.

Hutto's interior layout features a system in which 11 pods, or living units, each with two levels of cells, open into a common area.

In addition, the facility has a cafeteria, gymnasium, law library, general library, medical wing, visitation area and processing area, as well as several classrooms and overflow education trailers. The hallways are long, wide and windowless, and walls are painted an institutional green. Some colorful murals have been painted in the cafeteria and in the pods, and pod common areas have been carpeted. Other modifications include padding the edges of bunks, modifying stair railings and installing bedrails.

Each hallway is separated from the next by wrought iron gates. The hallway gates were open during our visit, and individual cell doors were unlocked; however, all doors in and out of the pods and control

[35] Luz, interview by Michelle Brané, Berks Family Shelter Care Facility, October 27, 2006.
[36] Stacy Guerin, ICE San Antonio Field Office, interview by Michelle Brané and Emily Butera, T. Don Hutto Residential Facility, December 4, 2006.

rooms were locked. Guards are stationed around the pod exit doors. Doors and gates are opened and closed by computers in a central control room, and do not have sensors that halt movement if a person or object is in the way. This feature poses a safety hazard for families in detention, particularly for small children. One member of our delegation was almost caught in one of these doors when she fell behind the group. Doors to the outdoor recreation area and overflow educational spaces are not locked; however, these outdoor spaces are surrounded by concertina wire. Any doors leading outside the perimeter fencing are locked at all times or secured by a guard.

From the central control room, facility staff members monitor and record all activity within the detention center using over 100 newly installed pan/tilt/zoom cameras. Cameras record 24 hours a day. Control room staff demonstrated their ability to zoom close enough to be able to read what a detained person is writing on a piece of paper. All videotapes are archived and can be recalled to investigate incidents.[37]

Top, the exterior of the Berks facility, a former nursing home. Above, a mural adorns a hallway in the facility.

Berks

Because it is situated in a former nursing home, the 84-bed Berks facility has a more residential atmosphere than Hutto. Hallways still have an institutional appearance, but because they are ringed by offices and common spaces with external windows, the building receives some natural light. The hallways contain murals and artwork made by children detained in the facility, and families moving through the facility interact with staff members.

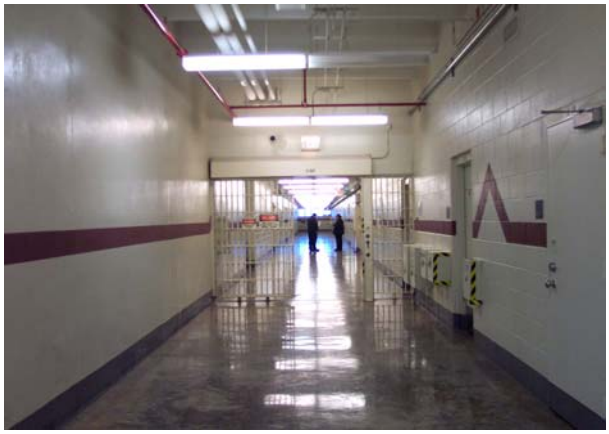
Although exterior doors are equipped with alarms, they are not locked from the inside. A sign instructs visitors to pass through a metal detector at the front entrance. A chain link fence surrounds a small outdoor area, but the Berks facility does not have any concertina wire or other perimeter fencing. All interior doors are unlocked and open, and when asked whether doors leading to the outside were kept locked, the ICE detention and deportation officer expressed surprise and asked why locked doors would be necessary in a facility that houses women and children.

The interior consists of two housing wings, each of which has common recreational space, in addition to a cafeteria that doubles as a multi-purpose room, a gymnasium, art room, classrooms, counseling rooms, courtroom, visitation spaces and medical clinic. Each wing has a control room, but unlike at Hutto, this is simply an office space with video monitors used by on-duty staff assigned to each wing.

[37] According to Daniel Coronado, public information officer, T. Don Hutto Residential Center, tapes have only been recalled to address complaints on the part of staff. He did not expand on what would constitute an incident warranting review.

Processing

Accounts of the time between apprehension and arrival at family detention facilities vary. Some families are separated for lengthy periods before being reunited, particularly at Hutto. Some separations are attributable to provisions of the *Orantes* injunction, which bars ICE from transferring Salvadoran nationals outside of the Customs and Border Protection (CBP) district in which they were apprehended for seven days. Because both Hutto and Berks are outside of this radius, Salvadoran families are separated at the border during this "waiting period." Children are either temporarily held at an ORR facility within the radius, held at juvenile facilities contracted by ICE or held at the border. Their parents are sent to adult facilities within this radius until they are reunited.[38]



At Hutto, each detainee is issued three sets of clothing—scrubs, underwear, socks and sweatshirts—and two pairs of shoes. They sleep in the same clothing.

Hutto

Families arrive at the facility and are brought into the processing area through a sally port. They are placed in cells where they can use the restroom and receive food and water. After they have had some time to rest they go through an intake interview with ICE staff. Each individual is fingerprinted and photographed and checked against the Automated Biometric Identification System (IDENT)[39] database for any pre-existing information. To verify identity and increase the likelihood that child victims of trafficking and smuggling can be identified, even the youngest of children are identified and entered into the system individually. Verification of family relationships generally occurs at the point of apprehension; however, ICE occasionally discovers children who are not in the company of their biological parents, and transfers them to ORR.

After being processed by ICE, detained families are processed by the Corrections Corporation of America (CCA). They turn over any personal effects and are issued clothing and toiletries. Each detainee receives three sets of clothing, including scrubs, underwear, socks and sweatshirts, and two pairs of soft-bottom shoes. In addition, each receives a blanket, sheets, a towel, a washcloth, soap, a toothbrush, a comb, toilet paper, toothpaste, deodorant and shampoo. Families with infants also receive diapers, bottles, sippy cups, a receiving blanket, a baby fork and spoon, baby hygiene products and a diaper bag. One former detainee, Rebecca, a Honduran woman detained with her three children, complained that people are not issued

[38] American Bar Association, letter to Walter LeRoy, acting chief, Detention Standards Compliance Unit, Office of Detention and Removal Operations, U.S. ICE, Re: Separation of Detained Salvadoran Families in South Texas, October 6, 2006.

[39] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.

enough clothing to accommodate the laundry schedule. Consequently, one day per week they are forced to wear dirty clothing, which is also the same clothing that they sleep in.[40]

Families who have been processed and integrated into the larger facility population are able to place requests with the commissary for additional hygiene items and snacks, provided that they have money in their account.

In addition to receiving personal items, all detainees who arrive at Hutto shower before leaving the processing area. Showers are located inside the processing area, so that while some new arrivals are showering, ICE and CCA staff members are processing other people. The shower areas are divided from the room and people in it by a wall along three sides and a curtain covering the entrance. There are two shower stalls, which include a dressing area inside the curtained partition, a baby bathtub and a changing table. Detained families interviewed by the University of Texas Immigration Law Clinic complained that the Hutto facility did not have hot water.[41]

After arrivals complete processing, they are transferred to the medical wing for a full medical assessment before being released into the general population. The Public Health Service (PHS) Division of Immigration Health Services officer told the delegation that pregnant women are given a lead screen to cover their abdomen for the X-ray taken for TB screening. Carmen, a pregnant women we spoke with who was detained at Hutto for three months, told us that she was X-rayed with no lead screen, even after she told the radiologist that she was five months pregnant.[42]

Within a few days of their arrival at Hutto, families also receive an orientation about the facility's rules and procedures and watch a "Know Your Rights" video.[43]

Berks

As families arrive at the Berks facility they are taken to a joint DHS and Berks County processing room. Both children and adults are fingerprinted and entered into the IDENT database. Family relationships are verified at the point of apprehension; however, DHS officers cross-check identity and relationships when they enter information into the database.[44] Detained individuals confirmed that they received a listing of attorneys at the time of this initial processing.

Unlike at Hutto, people detained at Berks are permitted to wear the clothing they had with them when they were apprehended, with the exception of shoes. Children seven and under receive soft-bottom sneakers, and children older than seven and adults are issued flip-flops. Those who did not have sufficient clothing with them when they arrived at Berks are issued clothing provided by the county. They can also purchase clothing during "field trips" to locations including Wal-Mart. During our visit we observed families sorting through and choosing from donated clothing on a rolling cart.

Families do their own laundry, using washers and dryers located in the bathroom areas. Gina, a Guyanan woman detained with her daughter, complained that the dryers frequently break and remain unrepaired for

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40 Rebecca, interview by Emily Butera, Austin, Texas, December 4, 2006.

41 CCA staff explained that there were initially problems with the water being so hot that children were getting scalded, so the facility installed regulators to prevent water temperature from exceeding 98 degrees. The officer in charge stated that she did not know whether or not there was hot water throughout the facility, but that she would check into the complaint.

42 Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006. Two other pregnant women also recounted having been x-rayed without a protective screen (Dominica, interview by Brané, T. Don Hutto Residential Center, February 1, 2007; Noreen, interview by Brané, T. Don Hutto Residential Center, February 1, 2007).

43 The "Know your Rights" video, produced by the Florence Immigrant Rights Project, Florence Arizona, provides a brief introduction to various forms of relief available to individuals in immigration proceedings.

44 Robert Bernal, DHS supervisory detention and deportation officer, interview by Michelle Brané and Emily Butera, Berks County Shelter Care Facility, October 27, 2006.

weeks at a time. She also noted that there are not enough washers and dryers for the size of the population, and not enough times during the day when laundry could be done, making it difficult to wash clothing on a regular basis.[45]

Accommodations

Hutto

Family members are housed in old inmate cells located within housing pods. Within each pod there are approximately 20–30 cells on two levels with a communal area and showers in the center. Each cell has a single twin bed or a twin bunk bed, a pair of high-tension hooks to hang towels, a porcelain or stainless steel sink and toilet, and storage bins under the bed for storing extra clothing. The walls and floor are bare except for an unbreakable acrylic mirror. There were no personal items or toys visible. There is no divider separating the sleeping area from the toilet area, so families are not afforded any privacy when using the toilet. Cell doors must remain open except during count and after "lights out." Residents who need to use the toilet at other times can enter their cell and close the door.

Outside of sleeping hours, one hour of education, one hour of recreation time and 20 minutes for each meal, families are confined to the common area of their pod.[46] Men, women and children are commingled. Each common area has plastic couches, two televisions and some video games. There is also a refrigerator used for the evening snacks of milk and an apple that children bring back from dinner.[47] We observed groups of individuals playing cards, but no other toys were available. Individuals are able to use the phones located in the pods during this "free time."

During morning and evening free time, adults and children, respectively, are given five minutes to shower. The shower area is located within the common space, but has been covered from above as a modification for families. A curtain separates the shower area from the main room. Inside the shower area are three showerheads extending from the wall, divided by waist-high privacy barriers. The dressing area consists of a long bench with no privacy barriers. Within the shower area there is a baby bathtub.

Left, the communal area of a pod. Each pod contains 20 to 30 cells on two levels. Right, a cell with a single twin bed. There is no divider between the sleeping area and the toilet area in the cell, so families are not afforded any privacy when using the toilet.

[45] Gina, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006.
[46] Approximately 13 hours a day, which includes time spent in cell during count.
[47] Daniel Coronado, public information officer, T. Don Hutto Residential Center, comments during tour of center, December 4, 2006.

Before each meal and several times during the night, facility staff conduct counts of the detainee population. During these counts, people are confined to their cells and cell doors are closed. These counts can take up to one hour.

Because each cell has only one twin bed or bunk bed, and possibly a crib, family units are not necessarily housed in the same cell. Staff try to assign parents with young children to the first floor. If a parent has more than one child, some children may be assigned to a different cell. If a father is detained along with an older daughter, they will be assigned to different cells.[48] Efforts are made to house family units in adjacent cells; however, the fluctuating population does not always allow this, and at times children are held on the second floor of the pod.[49] Infants sleep in cribs that can be brought into the cells at night. When we visited, there were no cribs in the cells, but there were several in the common area.

Some parents decide to keep all of their children with them, in which case multiple family members may share one twin bed. Dominica is a pregnant asylum seeker detained at Hutto with her two daughters, ages 3 and 9. She told us that all three of them sleep together on the bottom bunk of their cell because they are afraid.[50]

At night cell doors are closed, but not locked. Instead CCA has installed laser sensors that are tripped when a cell door opens more than four inches. Consequently, if children wake up in the night and want their parents, they set off an alarm. CCA staff, who monitor the residents all night, respond to such disturbances. Rebecca complained that her son suffered from anxiety and woke frequently during the night. She explained that she asked facility staff if they could share a room, and that when her request was rejected, "they told me that my son was experiencing anxiety because I am a bad parent, and that they would not contribute to this by housing my son with me."[51]

All adults are assigned daily chores from a rotating list, and complete their chores during either a morning or afternoon rotation. As such, they are responsible for cleaning and upkeep of the pods and their cells, including bathroom areas.

Berks

The layout of Berks also requires that members of the same family are sometimes placed in separate rooms; however, the housing areas have a more dormlike feel compared to the cells at Hutto. Berks families are housed in one of two residential wings, which consist of multiple dorm style rooms, common areas and men's and women's bathrooms. Families are housed in the same wing, but do not necessarily share a room. Instead, the population is divided into three groups: parents with children under six, juveniles and adults.

A parent with children under six typically shares a room with his or her young children and parents of the same sex who also have children under six. Children six and older are housed in same-sex juvenile rooms. Adults who have only older children share same-sex rooms with other such adults. For example, a family consisting of a mother, father, 4-year-old girl and 7-year-old boy would be divided as follows: the mother and 5-year-old girl would be in one room, possibly together with other women and their young children; the 7-year-old boy would be in a room with other children over five; and the father would be in a room with other adult men. Whenever possible, children over five share a room with their same-sex siblings. In other cases, facility staff try to arrange the room assignments so that parents and children are close together. Outside each door is a list with the names of the individuals assigned there.

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[48] Ibid.
[49] Ibid.
[50] Dominica, interview by Brané, T. Don Hutto Residential Center, February 1, 2007.
[51] Rebecca, interview by Emily Butera, Austin, Texas, December 4, 2006.

Rooms range from just a few beds to rooms with seven or eight beds. Some rooms have bunk beds and others have standard beds, but all are twin size. Each room also has multiple armoires for clothing storage, and families are allowed to keep personal effects such as books and toys in their rooms.

It was difficult to ascertain the degree to which parents have access to their children at night. According to former detainee Sophia, a Colombian asylum seeker who was detained at Berks with her three young daughters, if children wake up in the middle of the night, they are able to get to their parents, and the night staff help them do so.[52] However, some currently in detention said that their children cry at night and they are not allowed to go to them. The Berks facility deputy director told us that the night staff would intervene to see what the children needed and to help ensure that they did not disturb others.

Each housing wing has common space with televisions and couches. The wing we toured had three such rooms, two of which had televisions in them. Families spend time in these common areas when they are not in school or involved in other activities,[53] and although the Berks deputy director told us that once families leave their rooms for the day they are not allowed back in until "lights out," we observed school books on children's beds during the morning break, which suggests that they are at least allowed into their rooms to drop off and pick up items.

The bathroom facilities provide more privacy than at Hutto, but the layout and procedures are still quite institutional. Parents and children have to share space, and detainees have to shower and dress in front of many other people. Each housing wing has bathrooms divided by sex. The bathrooms consist of several toilets, three showers, a dressing area, a row of sinks and washers and dryers. Showers are only permitted at night. The showers are in individual stalls, but they appeared very run-down and were located at the top of a small set of stairs. Parents complained that the water temperature was too hot and scalded the children. Consequently, when we were there many had taken to using their personal hygiene containers (in which they store their toiletries) to give children sponge baths in the sink. We raised this issue with the detention and deportation officer and the deputy director, and on our second visit detainees told us that the problem had been resolved. In addition, the toilet areas had privacy curtains instead of doors, and the dressing area was not separated from the rest of the room by a privacy barrier.

All adults in detention are assigned daily chores from a rotating list, and complete their chores during either a morning or afternoon rotation. As such, detainees are responsible for cleaning and upkeep of the bathroom areas.

Gina complained about the toilet area, stating that in her housing wing two toilets had been broken for several weeks, and one of the two sinks in the ladies bathroom was also broken. She also noted that when maintenance fixed the broken toilets they failed to replace the curtains that serve as stall doors. As a result, women in her housing area were not using these toilets.[54] Because of broken facilities and limited hours for bathroom usage, she told us that there were not enough toilets and sinks, and some people were not afforded a turn. Another detainee, Hasan, a Pakistani man detained with his brother, complained that he was not permitted to comply with his religious obligations. In particular, he noted that women are allowed to shave their legs and armpits and men are permitted to shave their faces, but no other body parts, although such practices are prescribed by his religion.[55]

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[52] Sophia, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.
[53] Approximately 8 hours a day, or less if additional recreation time is given or a coordinated or organized activity is scheduled.
[54] Gina, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006.
[55] Hasan, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006.

Food Service

Hutto

Families detained at Hutto eat breakfast, lunch and dinner in the cafeteria, and children carry an apple and milk back to their pods after dinner for an evening snack. No other food may be taken out of the cafeteria. The menu repeats every week. Families are cycled through the cafeteria by pod. To get their food, detainees proceed through a line, and cafeteria workers pass them trays of food through a long narrow slot. This slot was widened from the slide-through prison model as an accommodation for family detention, but it is not wide enough to permit those detained to easily see who is distributing food or to observe the kitchen area. Detained individuals are not permitted to select their food.[56]

There were bins containing baby food and high chairs available for use. A menu was posted alongside the food service area. The CCA public information officer told us that each detainee received 3,500 calories per day. He added that pregnant women and children receive extra calories as needed. However, several pregnant women we spoke with told us that they did not receive any special diets even after making requests. [57] Detained individuals wear wristbands that list their allergies or any special dietary needs.

Each pod is given 20–25 minutes to eat.[58] However many of the detained individuals we spoke with told us that they have only 5–15 minutes, and that sometimes staff members yell at them to get up and leave before they have finished eating or feeding their children. This discrepancy was explained as the result of detainees' placement in line. The clock starts running when the first families arrive in the cafeteria. Those in the middle or end of the line have only 10–15 minutes by the time they get their food. Families eat together, and staff facilitators are available in the cafeteria. When asked about the role these facilitators play at meal times, the public information officer told us that they help the parents with small children get their trays and set up high chairs. The tables are bolted to the floor and can accommodate four adults.

The menu was heavily based on American food, including such items as hamburgers and cereal. All of the families we interviewed complained about the food, and most said that their children were often unable to eat it, frequently had upset stomachs, and were losing weight. Lily was five months old when she entered the Hutto facility and weighed 18 pounds. According to her mother, three months later she weighed 14 pounds.[59] In addition, detainees expressed frustration that they were not given enough time to feed themselves and their children. It is difficult to ascertain whether the food is making children sick because it is unsafe, because it is not culturally appropriate, or because of stress or depression. However, it bears noting that a CCA staff member pulled one member of our delegation aside and in confidence urged her to take a close look into the food situation because it is poor and children are hungry. The staff member also noted that when the children are hungry in the evenings, staff can give them milk, but no food.

A recent report of the Office of the Inspector General for Homeland Security on ICE's lack of compliance with the Detention Standards at five adult facilities found instances of undercooked food, dirty food trays and improper food temperature at two of the five facilities they investigated.[60] Given the wider context of ICE noncompliance with standards, as found in the Office of the Inspector General report, complaints from those in detention and staff at Hutto raise deep concerns regarding food at this facility.

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[56] Lisa Berkman, County Commissioner, Williamson County, Texas, telephone interview by Michelle Brané, January 23, 2007. Commissioner Lisa Berkman toured the facility shortly after we were given access. She states that since that visit she has been working with CCA to make some improvements to the food, including offering a choice of entrée and vegetable.

[57] Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006; Dominica, interview by her attorneys at the T. Don Hutto Residential Center, January 2007.

[58] Daniel Coronado, public information officer, comments during Hutto tour, December 4, 2006.

[59] Carmen (mother of Lily), affidavit obtained by the University of Texas Law School, October 23, 2006.

[60] DHS OIG, *Treatment of Immigration Detainees*, p. 10.

Since our visit in December 2006, attempts have reportedly been made to address complaints with the food. A Williamson County Commissioner was told that those in detention are now receiving a choice of entrée and vegetable instead of having no choices at all.[61] A questionnaire was distributed to those in detention asking them what kinds of food they would like to be served. Detained individuals confirm receiving and completing the questionnaire, but also say that there have been no menu changes so far.

Berks

In general, those detained in Berks did not have the volume of complaints about food service and quality that people detained in Hutto had, although some remarked that there was a shortage of culturally appropriate food and options for vegetarians. Gina noted that the food is only tolerable, but that detainees have no choice so they take what they get.[62] Detainees take all three daily meals in a cafeteria-style setting, where they go through a line and salad bar and select their food. According to the Berks deputy director, detained individuals have 45 minutes for each meal and because of the small size of the facility, all housing wings can be accommodated simultaneously. Since we did not receive a tour of the food service area and were not in the facility during mealtimes, we were not able to observe the quality of food or the menu. The detention and deportation officer and the deputy director said that there is always a vegetarian option. We did not receive any feedback from the facility or DHS on the availability of kosher or halal food.

Medical Care

Hutto

As of August 1, 2006, health care has been provided by the Public Health Service (PHS) Division of Immigration Health Services,[63] a service that provides health care for ICE detainees. We received conflicting information about the composition of the medical staff and are therefore unable to say with certainty the degree to which the facility has full-time staffing. The CCA public information officer told us that there are PHS nurses, one nurse practitioner and one dentist on site Monday through Friday. In addition, he told us, the facility has a contract with one pediatrician and one doctor, who come to Hutto once a week and on emergency calls. In contrast the PHS representative in charge of the medical clinic told us that there is only one contracted doctor—a family practitioner. The PHS representative also told us that there will ultimately be a pharmacist on staff and in the meantime the facility handles prescriptions though a mail service and an emergency contract with a local pharmacy. In addition to examination rooms, the facility has a negative pressure room for the treatment of suspected tuberculosis cases.

In addition to medical screening upon entry, the public information officer informed us that families in detention receive ongoing medical care as needed. In particular he informed us that they provide pregnant women with gynecological services. However, women we spoke with said they did not receive adequate prenatal care.[64]

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61 Lisa Berkman, County Commissioner, Williamson County, Pa., telephone interview by Michelle Brané, January 23, 2007.

62 Gina, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006.

63 Refer to http://www.inshealth.org/Provider/CustodialFacilityResponsibilities.htm.

64 Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006; Carmen, affidavit; Noreen, telephone interview by Michelle Brané, February 1, 2007; Dominica, interview by Brané, T. Don Hutto Residential Center, February 1, 2007.

Carmen told us that she did not receive adequate prenatal care. Her pregnancy was confirmed on August 18, 2006. No further exam or treatment was given. On September 23 she fainted and was taken to the hospital. She was told that she had a kidney infection and that she should drink lots of water. She was not given any antibiotics. Carmen received her first prenatal exam on October 20, 2006. On this occasion she and several other pregnant women were transported by van to a clinic together. At this time she estimated that she was seven months pregnant, but no medical estimate was given to her. She reported that she was not given any vitamins or special diet during this time, and that no milk was available. "It is only available to the children," she said. [65]

Since our visit, and in response to complaints regarding prenatal care, Hutto has made a contractual agreement with a local clinic. Pregnant women are now taken to the clinic for regular prenatal screenings and care.[66] Despite this improvement in prenatal care we remain concerned. Women are shackled when traveling to and from the clinic. In addition, we continue to question the appropriateness of these conditions of confinement for pregnant women. As noted above, Dominica, an asylum seeker who was seven months pregnant at the time we interviewed her, has been taken to see the doctor on several occasions because of difficulties with her pregnancy. She tells her attorney that the doctors say she is not receiving enough nutrition and has to eat more, but she finds the food difficult to eat. She is now receiving extra fruit at mealtimes, but reports that despite the doctor's directive that she drink more milk, milk continues to be available only for the children.[67]

When detainees require medical attention, they place a medical call slip in a box in the hallway or give it to facility staff. According to the PHS representative, these slips are checked twice a day and people are called to the clinic for care. However, families complained about delays of several days between submitting a request and receiving treatment. If a parent or child requests sick call, the entire family is required to go to the medical clinic as facility licensing requirements prevent families from being separated for more than a short period of time. This rule extends to the need for quarantine or treatment in the negative pressure room. If one member of the family requires such observation or care, the entire family will be quarantined in the medical clinic. According to the CCA public information officer, if a parent has to go to the hospital, the facility can provide supervisory care for their children for up to 72 hours. In such cases facility staff members are assigned to care for the children.

Information gathered from current and former detainees raises substantial concerns about the availability of medical care. Many mothers complained about their children getting rashes. All said that they were told by the medical staff that it was an allergy and to give the child more water.[68] During our interviews with families we observed a one-year-old child who had a rash on his cheeks and chest. These parents also told us that the doctor said it was an allergy and to give him lots of water. In addition, they told us that he would not eat anything and would only drink milk.[69]

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65 Ibid.

66 Lisa Berkman, County Commissioner, Williamson County, Texas, telephone interview with Michelle Brané, January 23, 2007. According to Commissioner Berkman, the facility has contracted with the Lonestar Circle of Care, a federally qualified health care clinic.

67 Griselda Ponce, attorney at law, telephone interview by Michelle Brané, January 23, 2007.

68 Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006; Carmen, affidavit; Dominica, interview by Brané, T. Don Hutto Residential Center, February 1, 2007; Juan and Luisa (child's parents), interview by Michelle Brané, T. Don Hutto Residential Center, December 4, 2006.

69 Juan and Luisa, interview by Michelle Brané, T. Don Hutto Residential Center, December 4, 2006.

Rebecca complained that her child suffered from repeated vomiting, but when "I asked for medical attention the staff told me that they would need to see vomit to believe that he was sick." In addition, she reported that guards frequently tell people not to bother them with sick requests. She also told us that her son had a toothache and she put in a request to see the dentist. After three weeks, "he was finally taken to see the dentist, who pulled his tooth without Novocain or anesthesia. My son was in terrible pain." When Rebecca experienced uterine pain, she went to see the nurse. The nurse told her that she was not permitted to prescribe medicine and put Rebecca on the list of detainees who needed to see the doctor. She waited some time for the doctor to come, as her condition was not deemed an emergency. She had to wait for the doctor to be called in on an emergency. Finally, more than a week later, the doctor came for a call in the middle of the night, and Rebecca and her children were awoken at 3:00 a.m. and taken to see the doctor. On another occasion, Rebecca raised concerns about her children having skin infections, a complaint that was corroborated by another detainee. Her children did not receive medicine until they began to bleed from the rash.[70]

Lily was five months old when she arrived at the Hutto facility. She developed a rash while in detention. She also had no appetite. The medical personnel told her mother that Lily's condition was caused by an allergy to an antibiotic that emergency room doctors had prescribed to treat pneumonia prior to her transfer to Hutto. Hutto took the antibiotic away and told her to give the baby lots of water. After the rash became worse, she was given a cream, but the cream did not help. After her release Lily's mother took the baby to a pediatrician who told her that the rash was not related to an allergy. He prescribed another cream and the rash has improved. The rash was still visible when we met with her several months after release.[71]

Another child, Julian, also had problems with the food. His mother, Alicia, told us that the food makes him vomit almost every day. The only medicine they have given him is acetaminophen. Alicia noted that even she knows that acetaminophen isn't appropriate to deal with stomach problems. She reports that whenever children have problems sleeping or have been anxious, they are told to drink water. She also reported that all of her children have lost weight. Her 15-year-old daughter weighed 100 pounds when she first arrived in Hutto and at the time of the interview weighed 85 pounds.[72]

Berks

Medical care at the Berks facility appears more comprehensive than at Hutto. Care at this site is administered through a contract with a local family practice clinic, and the doctors are family practitioners who rotate coming to the facility. All people receive an initial medical screening upon entry, just as at Hutto. There is a nurse on site daily and a doctor on site four days a week. Unlike at Hutto, sick call is held seven days a week, and a nurse is on call during hours when no medical staff members are on site.

Detainees who require immediate medical attention due to illness or injury are taken to a local hospital. A dentist is on site on Thursdays. However, Mirsa, who was detained with her young child, had a visibly swollen jaw when we spoke with her. She told us that when she asked to see the dentist, county staff told her that dental care was only available for the children.[73]

[70] Rebecca, interview by Emily Butera, Austin, Texas, December 4, 2006.
[71] Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006.
[72] Alicia, affidavit obtained by University of Texas Law School Clinic, November 2006.
[73] We mentioned her condition to Joe Cirulli, deputy director, Berks County Youth Center, and Robert Bernal, DHS supervisory detention and deportation officer, who indicated that they would look into the situation.

The nurse provides as much treatment as possible during sick call, and will call a doctor if medical care is required outside scheduled physician's hours. If children cannot provide proof of vaccination they are revaccinated. Specialist visits or tests must be pre-approved by the Division of Immigration Health Services,[74] which is responsible for health care for individuals in ICE custody. Both DHS and Berks County staff expressed frustration with the delays in the approval of medical care caused by DHS bureaucracy; however, they acknowledged that services are generally better for families than for individuals.

Detained families with whom we spoke confirmed that it is relatively easy for Berks detainees to obtain medical care. Requests for medical attention are submitted to county staff, and individuals are able to see the nurse that same day. However, some individuals expressed frustration that placing a sick call is the only way to get nonprescription painkillers such as aspirin, and that if you have a headache in the morning it can take all day to get medicine. They also complained that because people are not permitted to be in their rooms during the day, they are not allowed to lay down if they do not feel well. A woman we spoke with complained that she was placed in medical isolation for a month and not told why.[75] During this time other mothers in detention had to provide care for her children. [76]

Mental Health Care

Hutto

Hutto's PHS representative advised our delegation that Hutto officials are seeing less need for mental health services than they had originally anticipated. They speculated that this is because family units are together. Yet they also advised us that depression is the most common disciplinary problem, and that many detainees do not want to participate in activities because they are depressed. In the course of interviews with people currently and formerly detained, all exhibited symptoms of psychological distress that have been previously linked to the trauma of detention, including visible fear, crying and expressing a desire for medication to alleviate their depression and anxiety.[77]

There are two mental health providers on site—a PHS mental health counselor and a mental health coordinator. The PHS representative told us that they were both licensed, but the mental health coordinator later he told us that he was working toward licensing but has not yet been licensed. He also told us that in an ideal situation people would be scheduled for weekly counseling visits and that the mental health counselor is considering developing counseling groups, but that conducting such therapeutic treatment in a short-term setting is difficult. Individuals with behavioral problems and their family members are assigned to counseling. Information gathered in the course of providing mental health services is kept confidential, but there is a duty to warn DHS and CCA if individuals present a danger to their own or others' safety.

Detainees indicate that mental health services are not regularly provided, and that they are discouraged from accessing them through a combination of factors. Rebecca told us that there is not regular counseling, and that when someone asks to speak with a counselor staff members tell them that they are crazy and that DHS will take their children away. In addition, she told us that she met with a counselor on

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74 Refer to http://www.inshealth.org/Provider/CustodialFacilityResponsibilities.htm.

75 Mirsa, interview by Michelle Brané, Berks Family Shelter Care Facility, October 27, 2006.

76 Joe Cirulli, deputy director, Berks County Youth Center, told us that the woman had tested positive for tuberculosis and that they had explained to her that this was the reason they had put her into isolation. Her lack of understanding may have been due to a language barrier and lack of interpretation.

77 Heaven Crawley and Trine Lester, *No Place for a Child: Children in UK Immigration Detention: Impacts, Alternatives and Safeguards*, (London: Save the Children UK, 2005), p. 29; see also Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: the Health Consequences of Detention on Asylum Seekers*, (Boston and New York City, June 2003), p. 38.

one occasion, but was not able to communicate with him because he did not speak Spanish.[78] Carmen also confirmed the lack of translation services when she told us about being sent to counseling on one occasion. She stated that the counselor seemed nice, but that she did not find the session helpful because he did not speak Spanish.[79] If one member of a family is referred to counseling or asks to speak with a counselor, the entire family must attend the session. This rule extends to children, who must have a parent in the room during any conversations with a counselor. Susanna, an asylum seeker detained with her young daughter began to see a counselor when she became very distressed and anxious that she and her daughter would be separated. She was given a regular appointment with a social worker, which she found helpful. Her daughter was in the room during all sessions. She sat in a corner and colored.[80]

Berks

There are no licensed clinical social workers on staff at Berks; however, the county provides caseworkers to staff the detention center and families detained at Berks appear to receive regular and ongoing case management services. In addition, two licensed social workers are available to the families every Thursday to provide therapeutic care.

During our visit we observed families meeting with caseworkers. These caseworkers provide services as specified by Pennsylvania Department of Public Welfare guidelines, which include developing a family service plan for each family. Case managers are available to assist individuals in areas of need. Several weeks after our second visit, we received a letter via fax from a teenager that we interviewed. This letter indicated that she had been speaking to the caseworker about her frustrations with being detained. This caseworker, knowing that we had developed a rapport with the young woman, had suggested that she reach out to us, and assisted her in sending a fax.[81]

Christina, a 14-year-old girl who was detained at the Berks family facility for over two years, sent us a letter:

"My problem is that this man [who works at the facility] is always looking for ways to bother me by making fun of me to his co-workers. This happens all the time. He calls us 'dirty undocumented' or 'ignorant people.' This really hurts me…. Today he asked me where I got my socks, they are yellow and on the edges it says 'Livestrong.' He made fun of me and asked me if I knew what that meant. I said 'No.' He laughed and said something I didn't understand. I tried to just walk away but he made me feel so bad that I couldn't stand it and started to cry. One of the workers here saw me crying and asked me if I was okay. They told me I didn't have to be quiet and that I should tell someone. She told me to write to you and tell you. Please don't tell anyone I am complaining, I don't want to get in more trouble here." Note: Christina has since been released and has given us permission to print this letter.

Caseworkers play a role in detainees' submission of grievances. Hasan told us that he had filed three grievances during the time he was at Berks. Each time, he sent these grievances to the resident director, who suggested that he raise his concerns with the caseworker. Hasan reported that the caseworker's response was to caution him that people have been thrown out of the center, and their families separated, because they complained.[82] The detention and deportation officer informed us that all complaints about treatment and conditions are directed to the county.

[78] Rebecca, interview by Emily Butera, Austin, Texas, December 4, 2006.
[79] Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006.
[80] Susanna, interview by Michelle Brané, T. Don Hutto Residential Center, December 4, 2006.
[81] Christina, letter via fax to Michelle Brané, December 5, 2006.
[82] Hasan, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006.

Education

Hutto

On the day we visited, the high school class at Hutto was learning about child development, specifically at what age a child can be toilet trained. At the time of our visit, children and adults received one hour of education daily.

At the time of our visit to Hutto, children and adults received one hour of education daily, Monday through Friday. This abbreviated educational schedule was the result of licensing requirements that limited the number of hours per day parents and children could be apart. According to ICE, educational programming has since been expanded to four hours per day, and the curriculum complies with Texas state standards.[83] In response to her queries about the educational situation, a county commissioner was told that the center would now be following Texas education requirements.[84] We have received reports from people in detention that they now receive more hours of education per day, but we have not been able to confirm the total number of hours or the substance of educational hours claimed. The Hutto school has a principal and teachers who are either state-certified or eligible for certification. ICE reports that a different subject is taught each day, including science, social studies, language arts and math. There are 10 teachers and three teacher's aides, and students are separated into classes by age group. The older students, ages 13–18, are in one class. Younger students between approximately four and 12 attend the same class, and the youngest children either sit in the adult classes or go to the elementary classrooms. At the time of our visit, parents attended English language classes and sessions on parenting skills. Classes were taught in English, and guards were posted in all classrooms.

On the day we visited, the high school class was learning about child development, specifically at what age a child can be toilet trained. In the elementary classroom, the children were coloring. Only the adult education class seemed appropriate for the students' needs, focusing on basic English words and phrases for expressing illness. Detainees complained that in the elementary classes children just sing and color. Alicia told us that at first the older children were only taught math, but then they told the teachers that they wanted to learn English, so an English class was added to their curriculum. They are also now taught U.S. history and the names of body parts.[85]

The principal told us that because they were finding that more and more of the students had been living in the United States for years before being apprehended, and had attended U.S. schools, the facility was considering offering advanced placement courses so that students would not be behind when they return to mainstream school. However, it posed a challenge to integrate an advanced placement class into an environment where students only have one hour of education a day. In addition, our tour included a visit to the computer lab, which was being set up at the time of the tour but was not yet in use. Staff members told us that when computers were operational they would have basic parenting and English instruction programs installed.

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[83] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.
[84] Lisa Berkman, County Commissioner, Williamson County, Texas, telephone interview with Michelle Brané, January 23, 2007.
[85] Alicia, affidavit obtained by the University of Texas Law School Clinic, November 2006.

Berks

Children's educational services at the Berks facility are administered by the Berks County Intermediate Unit, with funding from DHS. Classes are governed by the Pennsylvania Alternative Curriculum Standards, a set of guidelines for alternative and special needs schools. The children are divided into elementary and middle/high school classes and attend school for four hours a day. All children's classes are taught in English, and students study English, social studies, math and science. In addition, each classroom is equipped with computers that utilize the PLATO computer-assisted instruction program to create lessons tailored to individual students' abilities and needs.

In addition to children's education, adults at Berks attend English as a second language classes four days a week. We encountered adults in the English program during our tour. These classes are conducted in the cafeteria, and appeared to consist mainly of workbook study, given that the space was not equipped with a blackboard or appropriate seating for lecture-style education. While the adults and older children are in class, the youngest children accompany their parents, play in a small cordoned-off area in the cafeteria, or participate in activities led by staff members in a small gymnasium inside the facility.

Children and parents with whom we spoke indicated that they had no significant complaints about the quality of education provided at Berks. One family was released during the time that we were researching this report, and the children now attend public schools in the area. Although they had only been in mainstream school for about a week when we spoke with them, they seemed to be doing well in their classes and performing at grade level. In addition, all three of the children learned to speak English quite well during the time they were at Berks.

The outdoor play area at Hutto is fenced in by concertina wire. Children said that they had not been outside on the playground in several months.

Recreation

Hutto

Families in detention receive one hour of recreation and large motor exercise per day, Monday through Friday. There is a large gymnasium inside the facility, and people rotate through recreation time by housing unit. In the gymnasium we observed several basketball nets and basketballs, and for toddlers and younger children a play area cordoned off with furniture. There did not seem to be much opportunity for indoor large muscle activity for the younger children or adults, but during our visit most of the older children were playing basketball. There were a few toys in the cordoned off area, most notably plastic trucks and kitchenettes. We observed no stuffed animals and no dolls. This is the only time that the younger children have access to age-appropriate toys. The pods have couches and games, TVs and video games appropriate for older children. Children are not permitted to have their own toys or to receive toys from outside the facility.[86] On our tour we were told that children are allowed to hang pictures in their cells, but we did not observe anything on the walls of any of the cells during our visit. Families told us that no toys are allowed in the pods and that nothing can be hung or taped to the walls.[87] Despite the fact that computer paper and

[86] Margarita, affidavit obtained by the University of Texas Law School Clinic, November 2006.
[87] Leila, telephone interview by Michelle Brané, February 1, 2007.

crayons seemed to be available in many parts of the facility, families told us that children are not allowed to keep the pictures they draw or color.[88]

In addition to the indoor gymnasium, Hutto has an outdoor recreation area with a large soccer field, two jungle gyms, slides and three covered tables. This area is surrounded by perimeter fencing with concertina wire. The public information officer told us that families are allowed to go outside for at least one hour per day, Monday through Friday, weather permitting, and that they try to give families more time whenever possible. We received conflicting reports from families in detention on this issue. Some people told us that they rarely go outside because staff members tell them it is either too hot or too cold. At least one detainee, Margarita, said that they go outside for one hour a day rain or shine, hot or cold. She said that the children are given sweaters when it is very cold, but the adults are not.[89] On the weekends detainees are not allowed outside at all.

Families in Hutto do not participate in any off-site recreational activities. The public information officer reported that they try to organize activities on-site, including cultural activities, whenever possible. There are no programs coordinated with outside volunteer groups, and there have been several reports in the media indicating that local groups who have offered to conduct activities for detained families have been denied permission to do so. Each pod has two facilitators; staff members accompany families to all activities to make sure that each family unit is engaged in an activity and interacting with each other. We observed facilitators playing basketball with the older children, but otherwise not interacting with the parents and younger children. For the most part, the parents seemed to spend their recreation time sitting on the furniture that separates the young children's area from the large gymnasium.

Families receive one hour of recreation per day, Monday through Friday. Recreation is the only time that younger children have access to age-appropriate toys.

In addition to the gymnasium Hutto has a general library and a law library; however, people are only allowed in the library during their orientation to the facility. Library carts circulate to the pods every five days, and detainees are permitted to take one book at a time. According to the public information officer, detainees can request that a particular book be placed on the cart, and there are books in languages other than English. But a cursory review of the library revealed few foreign language or children's books, and the collection is minimal given the size of the facility.

88 Ibid.

89 Margarita, affidavit obtained by the University of Texas Law School Clinic, November 2006.

Berks

Recreational programming at the Berks facility surpasses that at Hutto, perhaps because of its smaller size.

When children and adults are not in classes, and adults are not assigned to the chore rotation, the families have free time. Although families and individuals cannot move freely within the facility and are escorted in lines from one activity to another by county staff, they spend their free time in a more homelike space. Each housing wing has at least two recreational spaces with carpeting, couches and televisions. At the time of our tour, cartoons were playing in one room and a news program in the other. They seemed to be able to move freely between the two rooms, although they were not permitted outside the housing wings during this time. Each recreational room had some toys available. These were common toys including trucks, teddy bears and dolls. Children were allowed to take one toy with them to their room. One of the recreation rooms had an armoire filled with board games and puzzles. There was also a game table in the room.

Families are afforded outdoor recreation time whenever the weather permits. Detainees confirmed that they often had more than the standard one hour, and that on weekends in particular they could spend all morning outside if the weather was moderate. However they also reported that recreation time could be taken away for as long as two weeks for "bad behavior." It was very cold on the day of our first visit, but on our second visit we observed people outdoors playing soccer and relaxing on a grassy area outside the facility. Facility staff members guard families during this outdoor recreation time, but there is no fencing cordoning off the recreation space from the road.

In addition to outdoor recreation time, there is a small gymnasium in which the younger children were playing on the day of our first visit. They were engaged in activities including playing with balls and riding scooters. The facility also features a well-equipped larger gymnasium with fitness equipment and free weights, but this area is strictly limited to staff use.

In addition to athletic recreation time, the facility offers other activities for families in detention. The law library has computers available for use, a bookmobile delivers reading materials and there is an art room where crafts are organized. On the day our delegation visited, the children had painted pumpkins. Staff members also told us that local church groups come and lead activities at the facility, including art projects and holiday parties. Individuals are permitted to participate in facility-run field trips to places such as McDonald's, Wal-Mart and the local farmer's market. However, no one with a final order of removal is allowed to go on a field trip, and the facility does not permit an entire family unit to go on the same field trip.

Discipline

It has proven difficult to ascertain institutional disciplinary practices in family detention facilities, and the absence of any clear standards for family detention compounds this problem. ICE has no policy guidelines for family detention facility staff regarding disciplining children. Discipline is seen as the parents' responsibility, and guards and staff members are to exercise common sense when handling a situation in which the parent is unable or unwilling to control a child.[90] Local and headquarters officials repeatedly stated that the only problems they encounter are parents who want to use corporal punishment, which is not allowed in the facilities.

[90] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.

Hutto

The public information officer repeatedly told us that disciplinary problems are handled by sending the entire family to the counselor. "Time-out" is a commonly used form of discipline. In addition, families informed us that threats of separation are frequently used as a means of discipline. In particular, staff members encourage parents to keep their children quiet and get children to behave by telling children and their parents that if the child does not do what they are told to do by staff they will be taken away. Nelly, a 9-year-old girl detained with her 3-year-old sister and her mother, who is applying for asylum, told us that if she misbehaved she would be separated from her mother. When asked why she believed this she said, "Everyone knows that; that's what they say."[91] All those we interviewed expressed frustration that children are punished for what is normal behavior for young children like running around, making noise and climbing on the couches. One detainee that we interviewed experienced this in the context of children getting out of line while walking through the hallways. Another said that these threats are made even when children are crying and cannot be consoled.[92] Susanna, a mother detained with her 6-year-old daughter, complained that the guards were unnecessarily strict with rules and regulations. She gave the example of her daughter's needing to use the bathroom during an attorney visit. The guards refused to let her use the bathroom because they were about to have a "count." They made the girl wait for more than 15 minutes while she cried. When the attorney complained to staff, the mother became worried that she and her daughter would be separated.[93] Parents confirmed, "It is the parents' job to keep their kids under control."[94] They also said that staff members tell them that if their children are loud or misbehave they will be written up, and that this information will go into their record and could affect their court case.[95] Another form of disciplinary action is to put children in the corner for 30 minutes and not allow them to talk or move.[96]

Noreen, an asylum seeker who has been released from Hutto, recounted an incident in which a 6-year-old child cried when he was not allowed to take a picture he had colored into his room. When the guard shouted at the child for crying, the child's father intervened. Noreen does not know exactly what happened next, but says that the family—child, mother and father—were separated into different pods for three days after the incident.[97]

Carmen confirmed that if children misbehaved, either the child or the parent would be "written up." A write-up could result in loss of television privileges or recreation time, or in children being sent to their cells. She told us that when the children in the pods were too loud or active, guards would turn up the air conditioning so that the room became very cold. She also stated that when detainees were angry, guards turned off the hot water so that only cold water was available.[98]

Berks

Disciplinary practices at Berks also raise concerns. We interviewed several detainees and some former detainees who said that their physical needs were being met, but suggested that they were psychologically and verbally abused by staff.

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91 Nelly, interview by Michelle Brané, T. Don Hutto Residential Center, December 4, 2006.
92 Susanna, interview by Michelle Brané, T. Don Hutto Residential Center, December 4, 2006.
93 Ibid.
94 Alicia, affidavit obtained by University of Texas Law School Clinic, November 2006.
95 Ibid.
96 Rebecca, interview by Emily Butera, Austin, Texas, December 4, 2006.
97 Noreen, interview by Michelle Brané, T. Don Hutto Residential Center, February 1, 2007.
98 Carmen, interview by Michelle Brané and Emily Butera, Brownsville, Texas, December 6, 2006.

As at Hutto, parents reported that children were often disproportionately punished for small incidents that are normal child behavior. Detainees and DHS officials both stated that time-outs are a common disciplinary tactic, and detainees reported that a prohibition against talking is another form of discipline at Berks. All families interviewed express a general sense that they were disrespected by staff members, frequently yelled at and issued unnecessarily harsh punishments for behavior as simple as not being able to do homework for lack of a pencil.[99] One family told us that a child spoke back to a member of the staff, telling him that he was not her mother and that she did not have to do what he said. The staff member became angry with the child and pushed her.[100] In another instance, a girl got caught passing a note in class. Passing notes of any kind is a violation of the facility rules.[101] She received the punishment of not being allowed to talk to anyone of the opposite sex for two weeks. When she violated the prohibition, she was prohibited from speaking with anyone other than immediate family members for two weeks. The family was told that if they did not comply, the girl would be sent to the juvenile facility.[102] This incident caused extreme stress to the child and the entire family.

Threat of separation is another frequently used disciplinary tactic. Several families told us that facility staff would threaten them with separation if they misbehaved, and on several occasions it seems that children were sent to the secure juvenile detention facility without an opportunity to defend themselves in court.[103] When we asked the detention and deportation officer and the deputy director how they handle disciplinary problems, they told us that since Berks is not a criminal facility, adults exhibiting criminal behavior would be placed in an appropriate adult facility and their now unaccompanied children would be turned over to the custody of ORR. If children exhibited severe behavioral issues, staff might need to transfer them to a secure facility. Unless their accompanying parents had other children with them at Berks, they would be sent to an adult facility. We pressed for an explanation of what constitutes severe behavioral issues, but did not receive any concrete examples. We heard several second-hand stories of separation. One case appeared to be the result of a child fighting with a staff member. In another instance a minor had gotten into a fight in the cafeteria and hit another minor. Families told us that sometimes juveniles were sent to the Berks County Youth Center Juvenile facility, which is not an ORR facility, for a few days as punishment for misbehaving.[104] Sophia and her daughter, Christina, recounted an incident in which some new arrivals had resisted when treated badly by guards and had been "sent away." The prevailing belief among families in detention is that they will be separated if anyone misbehaves, which creates an environment of extreme psychological stress.

In the course of our interviews there emerged some confusion about whether or not parents are allowed to discipline their children. One parent indicated that she could, but another parent said that it could be quite difficult to discipline children because the facility's rules strip the parents of any authority in their children's eyes. Her daughter told us, in a separate conversation, that she saw how much it bothered her mother to not be able to parent them.[105] Parents told us that many children lost respect for their parents because of the parents' lack of control at the facility. "Parents are not the ones who decide what their child is or isn't allowed to do. It is the guards who decide and have the ultimate control to punish or discipline the children and the adults."[106] Many children expressed anger or frustration with their parents

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99 Sabrina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

100 Sophia, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007; Christina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007; Sabrina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

101 "Berks county INS Family Shelter, Adult Program Rules," supplied by Berks County Youth Center, on file with the Women's Commission for Refugee Women and Children.

102 Christina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007. Confirmed by José**,** interview by Michelle Brané, Berks County Shelter Care Facility, November 29, 2006.

103 Sophia, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007; Christina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

104 Christina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007; Sabrina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

105 Christina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

106 Sophia, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

for leading them into detention and for being powerless or unwilling to help. Some children asked or cried for their parents to sign for deportation so that they could go home.[107]

In addition, adults and children both complained to us of verbal disrespect, including suggestions that the families should just give up and go home because they would never get out of detention. They also recounted instances in which detainees were told that they were worthless, stupid or dirty immigrants. This type of verbal abuse seemed to cause particular distress to children who often cried or became depressed. Hasan told us that staff members made jokes about Ramadan and Muslims. He also complained that female staff members look into male residences.[108] Both he and another woman complained that staff members sit outside the bathroom doors while children are showering. He and Gina complained that staff members wake them up by shouting at them and turning the lights in their rooms on and off.[109]

When asked in separate interviews what one thing they would change about the facility one child said, "Replace all the staff." Her mother said, "Hire only people with child care experience or expertise."[110]

Access to Counsel

Hutto

According to the CCA public information officer, families in detention are provided with a list of legal services providers during their orientation. Detainees told us that they receive the list the first time they go to court. The facility has a law library with three computers, two typewriters and access to LexisNexis and numerous other legal resources. Those detained can reportedly use the law library at any time if they make an appointment to do so.

Hutto has two televideo courtrooms, which are used for master calendar hearings and credible fear hearings. Masters are done every day with judges from San Antonio and Houston, and people are taken to court for all merits hearings.[111] Per DHS staff, one or two families bond out each day, and the number of individuals granted bond seems higher overall than at Berks. The director of the DHS San Antonio Field Office governs parole of asylum seekers in the office's jurisdiction. According to DHS staff accompanying us on the tour, very few asylum seekers are granted parole in the San Antonio district. Dominica is a pregnant asylum seeker with two children. She is having complications with her pregnancy. Her mother is a legal permanent resident of the United States. She has requested parole and has waited more than two months without a response.[112] We requested more detailed information from DHS on grant rates for parole, but did not receive this information in time for publication.

A listing of legal services providers was posted next to each phone in the pod we visited, and the phones were set up to direct dial frequently called providers and consulates. A list of free legal service providers was also posted. We tested the direct dial system and we were able to get a call through to the University of Texas Immigration Law Clinic. However, we reached an answering machine. These phones cannot

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[107] Sophia, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007; Christina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

[108] Hasan, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006.

[109] Hasan, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006; Gina, interview by Emily Butera, Berks Family Shelter Care Facility, October 27, 2006.

[110] Sophia, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007; Christina, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

[111] A master hearing is an initial hearing before an immigration judge. Credible fear hearings allow arriving aliens to establish whether or not they meet a minimum legal threshold for fear of return to their home countries. Satisfaction of this minimum threshold is a necessary step towards applying for asylum before an immigration judge. Merit hearings take place before an immigration judge and give aliens an opportunity to substantively present their applications for relief.

[112] Griselda Ponce, attorney at law, telephone interview by Michelle Brané, January 23, 2007. Ponce is Dominica's attorney of record.

receive incoming calls, so leaving messages on a machine is of limited use to people in detention. Detainees told us that they did not receive a listing of legal service providers, and Rebecca told us that staff members sometimes took the phone out of her hands and hung it up when she was talking to attorneys.[113] One formerly detained person told us that according to DHS there are no free lawyers and she would be sent back to her country unless she could pay a lawyer to represent her. She found the phone number for the Political Asylum Project of Austin on the posted list of service providers, and has now been released pending adjudication of her application for asylum.

Attorneys are able to access the facility, but since the Legal Orientation Program[114] does not exist in family detention centers, they only come when contacted by a detainee. Attorneys reported that many of their clients are domestic violence-based asylum applicants. They report that the U.S. Customs and Immigration Services (CIS) office in Houston routinely denies credible fear rulings to applicants whose claims are based on domestic violence. Detained asylum seekers reported that guards at the Hutto facility tell them that domestic violence is not a basis for asylum and that if they request asylum they will be detained for eight months.[115]

Attorney-client meetings are conducted in a private room, but parents must keep their children with them during the meetings. This has posed problems in ensuring adequate representation, particularly in asylum cases and cases involving rape and domestic violence. Because parents do not want to discuss the facts of their case in front of their children, attorneys do not get the information they need to effectively represent their client. Recently, attorneys have been informed that they are limited to speaking with 10 people per visit, and that children are included in the total. Attorneys have complained that this severely limits their ability to meet with their clients. Because of family size, and because children must always accompany the parent regardless of whether the attorney wants to meet with the child, this rule effectively limits visits to three clients or fewer.[116]

Removals are effected every other week, and are dependent on the cooperation of individual consulates. Because of the high volume of Central American expedited removal cases, removals to these countries take place fairly frequently. However, nationals of other countries may wait longer before removal is effected. Because the facility has not yet been open a year, data on length of stay is insufficient to allow any clear conclusions. ICE informed us on December 20, 2006, that the average length of stay at Hutto was 18.5 days.[117] Most recently, ICE reported that the average length of stay for families not seeking asylum is 40 days.[118] These averages can be misleading. Many are only detained for very short periods of time because they are immediately returned to their country or accept voluntary departure or return. Others, such as asylum seekers, might have cases that go on for months while they remain in custody. Many of those with whom we spoke had been detained for three or four months. It is likely that the average length of stay at Hutto will increase as its length of operation increases. Since the facility had only been open for approximately six months at the time of our visit, it would have been impossible for anyone to be detained for longer than that time period, which contributed to a low average length of stay.[119]

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[113] Rebecca, interview by Emily Butera, Austin, Texas, December 4, 2006.

[114] The Legal Orientation Program is run by the Board of Immigration Appeals within the Executive Office for Immigration Review. Through the program attorneys conduct "Know Your Rights" presentations in detention centers, allowing them to explain to detainees what their legal options are. The program also assists detainees with finding *pro bono* attorneys if they want to pursue asylum claims. The program has been very effective in protecting the rights of detainees as well as saving government time and expense. Many detainees, particularly those in expedited removal, realize that they have no claim for relief and accept voluntary removal or deportation rather than remaining in detention. See http://www.usdoj.gov/eoir/probono/probono.htm.

[115] Barbara Hines, University of Texas Law School, telephone interview by Michelle Brané, November, 2006; Frances Valdez, University of Texas Law School, telephone interview by Michelle Brané, November 2006; Carmen, interview.

[116] Griselda Ponce, attorney at law, telephone interview by Michelle Brané, January 23, 2007.

[117] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.

[118] Gary Meade, press tour of T. Don Hutto Residential Center, February 9, 2007.

[119] At Berks, which has been in operation since 2001, we encountered families that had been detained for as long as two years.

Berks

The Berks facility's distance from a major metropolitan area makes it difficult for families to locate counsel and limits the availability of *pro bono* attorneys.

The facility has accommodations for legal matters. Within the facility asylum officers use an attorney-client visitation room to conduct orientation and interviews for detainees who express credible fear. Immigration judges from York, Pa., conduct hearings both in person and by video conferencing in a courtroom at Berks. The facility also has a law library. Although ICE staff told us that detainees never used this space, we observed someone using the computer on our second visit. In general, local policy is that master calendar hearings are conducted by video conferencing every Thursday, and merit hearings are done in person at the York courthouse. Because York was short one immigration judge in recent months, the Executive Office for Immigration Review has resorted to conducting merits hearings by video at times.

Families report receiving a list of legal services providers upon arrival. No Legal Orientation Program is offered at Berks. Both the deputy director and the detention and deportation officer expressed an interest in having local immigration service providers conduct rights presentations at the Berks facility, noting that such sessions would ease anxiety and help unclog the system, which they explain becomes burdened by people who have no form of relief. However, conversations with potential service providers confirm that limited funding and staff resources make this unlikely in the short term.

Per the detention and removal officer, parole is only available in instances of significant public benefit or urgent humanitarian need.[120] In his analysis, most detainees are in expedited removal proceedings and are subject to mandatory detention. Consequently, parole rates are quite low at Berks, and officials could not recall anyone who had been paroled recently. While the parole option may be limited for non-asylum seekers in expedited removal it is contrary to policy statements with respect to asylum seekers. Per an INS Policy Guidance issued in 1997, "parole is a viable option and should be considered for aliens who meet the credible fear standards, can establish identity and community ties, and are not subject to any possible bars to asylum involving violence or misconduct…."[121] Although ICE did not respond to our request for statistics about parole rates in the York district, we met several families at Berks with pending asylum claims who were eligible for parole but had not been released.

Bond rates are set by the immigration judge, and are often prohibitively high, as was the case for a woman and her son whose bond was set at $15,000 even though she had a U.S. citizen child who was being cared for by friends during her detention.

ICE headquarters informed us that on December 20, 2006, the average length of stay at the Berks facility was 58 days. In the course of interviewing, we found that most families seem to have been at Berks between five and six months. However, we encountered several families who had been detained at Berks for much longer periods of time, including one who had been there for over two years, another just under two years and another almost a year.

[120] He acknowledged that parole is almost never granted. When asked for an example of who might qualify, he said, "someone who is about to discover cancer."

[121] "Expedited Removal: Additional Policy Guidance," memorandum from Michael Pearson, Executive Associate Commissioner for Field Operations, to INS Regional Directors, District Directors and Asylum Office Directors, December 30, 1997.

Telephone Access

Hutto

Telephone access at Hutto is compromised by the cost of phone cards and the location of phones. Detainees are able to purchase $10, $15 and $20 phone cards. The $10 cards allow for 20 minutes at 50¢ a minute. A bank of four phones is located in the center of each pod, and neither individual phones nor the phone bank have privacy screens. The phones located in the pods worked at the time of our visit. Information about attorney access by phone is documented above.

Berks

Telephone access is similar at Berks. The facility has two telephones, which are located in a hallway. Detainees are able to purchase calling cards with rates of $1 or more per minute. A $30 card allows for 20-25 minutes of talk time. Indigent individuals are issued calling cards at government expense. In addition, one detainee with whom we spoke noted that individuals are sometimes permitted to use a phone belonging to facility staff. Another detainee told us that the telephone had been broken the previous week, which prevented anyone from being able to contact relatives or attorneys.

Visitation and Spiritual Support

Hutto

Non-attorney visitation is permitted at Hutto on weekends between 8:00 a.m. and 5:00 p.m., and attorney visits are permitted seven days per week. However all non-attorney visits are non-contact. A Plexiglas wall separates detainees from their visitors, and they must communicate through a telephone handset attached to the wall, allowing a visitor to talk to only one member of a family at a time. Children are required to be with their parent for the visit and guards are present on the detainee side of the visitation space. Detainees are permitted to use the restroom only one time during a visit.

The public information officer explained that visits are non-contact to eliminate the need for strip searches following visitation. Dominica, a pregnant asylum seeker detained with her two daughters, summed up the tremendous strain that non-contact visits pose on people who have not seen each other in many years. She explained that while she is happy to finally see her mother again, it is difficult to be forbidden to touch her.[122] In some cases, visitors are U.S. citizens, whose parents, spouse or children were apprehended and detained.

A Plexiglas wall separates detainees from their visitors. Visits are non-contact to eliminate the need for strip searches following a visitation.

Spiritual counseling and services are provided as needed. Most available services are Christian but the public information officer told us that accommodations are made for Muslims.

[122] Dominica, interview by Brané, T. Don Hutto Residential Center, February 1, 2007.

Berks

Families are permitted to have visitors seven days per week. All visitors pass through a metal detector as they enter facility. Contact visits are permitted, but actual contact is limited. The husband of one detained woman complained to us that when he went to visit his wife, staff would yell at him when he would try to hug her. Although he is a U.S. citizen by birth, staff members told him to go back to his country.[123]

Availability of spiritual counseling and services is intermittent and varies among different faiths. Berks used to take families to churches located in the surrounding community, but this practice has been discontinued.

[123] Paul, interview by Michelle Brané and Emily Butera, Reading, Pa., January 16, 2007.

V. Conclusions

The penal setting at Hutto is clearly an inappropriate and disturbing setting in which to hold families. Although the previous sections have revealed significant differences in the conditions of confinement at Berks versus Hutto, these discrepancies do not negate the central argument that conditions at both facilities are inappropriate. Both settings strip parents of their role as arbiters and architects of the family unit; both place noncriminals in facilities modeled on the criminal justice system, with little regard to national and international standards for the care and protection of children and families; and neither provides an acceptable model for addressing the reality of the presence of families in our immigration system. Furthermore the current models do not meet the standards dictated by Congress, including alternatives to detention and nonpenal, homelike environments.[124] In fact, ICE has made no effort to develop release alternatives to family detention.

Our concerns include the following:

Licensing

The concept of family detention is not one that has any precedent in the United States, therefore no appropriate licensing requirements exist.

- *Flores* requires that minors be placed in licensed programs that comply with all relevant child welfare laws and regulations. Yet family detention facilities that house a significant number of young children as well as vulnerable adults are not yet required to obtain a license, because no licensing category exists for this type of facility.

- Lack of licensing requirements for family detention facilities presents a logistical problem for entities charged with operating such facilities. Berks County asked the licensing board to create a category or "box to check" even though none officially existed, because they refused to open without some form of license.[125] This demonstrates their belief that appropriate licensing should be required when operating such a facility.

- The Texas Department of Family and Protective Services exempted Hutto from child care licensing requirements because the children detained there are considered accompanied since their parents are detained with them.[126] The repercussion of this exemption is that it effectively requires children to be in the company of their parents at all times. The requirement that parents not be separated from their children means that adults detained at Hutto cannot speak with their attorneys, medical personnel, visitors or counselors without their children in the room. As individuals such as asylum seekers or victims of domestic violence may feel uncomfortable relaying sensitive or disturbing information in front of their children, their medical care and legal representation may be compromised. If they cannot give medically or legally vital information to medical workers or attorneys, they will likely not receive the services they need or relief for which they qualify. In addition, children are not being interviewed separately from adults to assess whether they may have independent claims to legal relief. Furthermore, this exemption has led to a system in which children were only receiving one hour of education a day.

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[124] *Department of Homeland Security appropriations bill, 2007: report together with additional views*.

[125] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.

[126] Hutto contacted the department about child care licensing. It was determined that they were exempt from CCL (Child Care Licensing) by 40 Texas Administrative Code, Chapter 745, Subchapter C. Specifically, Section 745.117 provides that a "program of limited duration" with "parents on the premises" can be exempt from licensing. For more information see http://www.dfps.state.tx.us/child_care/child_care_standards_and_regulations/.

- If ICE claims that family detention facilities are following licensing standards laid out in the *Flores* settlement, appropriate authorities should license facilities in which children are held.

Standards

The lack of family detention standards means that no consideration has been made for the particular needs or situations that arise from detaining families.

- The only guidelines that exist to provide oversight of family detention are the ICE Detention Standards and the *Flores* settlement. ICE told us that the facilities operate on a hybrid of the Detention Standards and *Flores* standards that has yet to be finalized. These guidelines do not take into account the unique needs of families.

- Because *Flores* and the Detention Standards are not statutory or codified in regulations, and because inspections are conducted by its own staff, ICE is not held accountable for compliance. This lack of independent accountability contributes to a system in which vulnerable children and families are not provided with appropriate and humane conditions of confinement.

- There is a fundamental clash of cultures emerging from efforts to apply a criminal justice model to a noncriminal family population. The underlying system is flawed, and cosmetic adjustments will not resolve this conflict.

Physical Setting

The current facilities being used for family detention are modeled on a penal system and are not the least restrictive settings appropriate to children's age and special needs or to the preservation of the family unit.

- *Flores* presumes release for unaccompanied minors, and indicates that minors who are not released should be placed in the least restrictive setting possible.[127] While ICE has carried out modifications to make Hutto and Berks more family-friendly, the use of a jail-like structure and the imposition of policies and procedures borrowed from the criminal justice system place families in a fundamentally inappropriate setting. While CCA and ICE staff at Hutto noted during our December 2006 tour that the facility is still undergoing "softening," it will remain a jail-like environment. Consequently, it is concerning to note that DHS views the Hutto facility as a prototype for future expansion of family detention.[128] Given what we learned and observed during our visit, a Hutto-like facility is not an acceptable setting for even the short-term detention of migrant families.

- *Flores* specifies that facilities maintain adequate temperature control and ventilation,[129] but a central complaint of detainees in both facilities was that staff would set the air conditioning very high, a complaint that we concurred with on our visits.

- The *Flores* settlement states that children should be afforded the right to wear their own clothing when possible.[130] In addition, in keeping with recommendations by Physicians for Human Rights, detained migrants should be able to wear their own clothing as a simple yet important way "to

[127] *Flores v. Reno*, Exhibit 2(b), Instructions to Service Officers re: Processing, Treatment and Placement of Minors.
[128] John Pogash, ICE national juvenile coordinator, interview by Emily Butera and Michelle Brané, Washington, D.C., December 20, 2006.
[129] *Flores v. Reno*, section on Temporary Custody.
[130] Ibid., Minimum Standards for Licensed Programs, #12, p. 16.

identify themselves as individuals and not criminals."[131] However, at the Hutto facility, children and their parents wear prison uniforms. In addition, at both Hutto and Berks, older children and their parents are required to wear flip-flops or slippers, a policy adopted from criminal correctional practice. This encourages deeper institutionalization of an already inappropriate environment.

- According to accounts from families detained at Hutto, they are not afforded sufficient clothing or laundering services so that they are forced to wear a dirty or used set of undergarments at least one day a week.[132]

- Families do not have freedom of movement within the facilities, being able to move only for prescribed activities and when escorted by facility staff.

- Parents and children are separated during sleeping hours. At Hutto laser control systems that effectively serve as locks on cell doors prevent parents from attending to their children's needs after "lights-out." In addition, at Berks children over five years of age sleep separately from their parents. This policy prevents parents from carrying out traditional parenting roles, breaks down the bond between parent and child, and undermines children's trust that parents will take care of them. This policy also causes psychological distress for both children and parents**.**

- Those detained at Hutto are not afforded any privacy in the use of toilets and showers, and facilities fail to regulate water temperature appropriately for children.

Food Service

Food service is rushed and is not culturally appropriate. It does not sufficiently meet the nutritional needs of children and pregnant women, and it does not permit parents to make basic decisions about their children's health.

- The *Flores* settlement stipulates that facilities holding children should provide for their dietary needs in keeping with all applicable state child welfare laws and state and local health and safety codes.[133] In addition, the Detention Standards state that facilities must provide quality food service and nutritious meals. Neither children nor adults at Hutto are receiving appropriate or sufficient food to ensure ongoing physical development. In fact, many children and pregnant women claim to be losing weight due to insufficient caloric intake, unsafe or unfamiliar food or depression.

- Many detained at Hutto indicate that they only receive 5–10 minutes to eat, and that sometimes staff members yell at them to get up and leave before they have finished eating or feeding their children.

Medical Care

Health care in family detention facilities is inadequate to meet the needs of detained families, particularly the special needs of vulnerable children and expectant mothers.

[131] Physicians for Human Rights and Bellevue/NYU, *From Persecution to Prison*, p. 191.
[132] In violation of standards set in the U.S. ICE *Detention Operations Manual.*
[133] *Flores v. Reno*, Exhibit 1(a).

- The ICE Detention Standards state that all in detention "shall have access to medical services that promote detainee health and general well-being," and that facilities should provide both primary and emergency medical care and emergency dental care.[134] In addition, as specified in the *Flores* settlement, these detention facilities should be providing appropriate, routine medical and dental care and emergency health care services.[135] Those detained at both Hutto and Berks complained about inadequate medical and dental care.

- Detainees at both Berks and Hutto did not receive medical treatment in a timely manner despite following procedures to request medical attention.

- Detainees are sometimes provided medicines that are inappropriate for their medical needs.

- Pregnant mothers reported that they were not provided with prenatal care.

- At Berks adults reported being denied dental care, and at Hutto detainees reported receiving dental care without the use of Novocain or anesthesia.

- Physical symptoms and complaints by detainees may be manifestations of psychological stress that is not being adequately addressed and in fact is exacerbated by the conditions of detention.[136]

Mental Health Care

Detained families do not receive sufficient or culturally appropriate therapeutic mental health care services necessary to address the unique psychological stresses implicit in the migration and detention experience.

- Our observations about the psychosocial health of those detained in both facilities stand in stark contrast to comments from CCA staff and the ICE national juvenile coordinator that there was less need for mental health care than previously anticipated. Every interview subject cried during interviews conducted inside Hutto, as did many of the families interviewed at Berks.

- Many current and former detainees expressed a desire for counseling services and, in some cases, for anti-depressant or anti-anxiety medications. This contrast between what we were told and what we observed reflects staff members' and administrators' lack of expertise in identifying signs of mental and emotional stress and lack of awareness of how existing policies and procedures exacerbate the psychological stresses for families.[137]

- Hutto employs facilitators who travel with families from each housing pod. The facilitators are responsible for keeping families engaged in activities and with each other. The need for staff to compel engagement suggests that detained individuals in this facility suffer from depression that manifests itself through physical inactivity and disengagement.[138]

- The *Flores* settlement stipulates that children will receive "at least one (1) individual counseling session per week conducted by trained social work staff. In addition, the settlement prescribes group counseling sessions at least twice per week.[139] There are no regularly scheduled individual

[134] U.S. ICE *Detention Operations Manual*, Medical Care.
[135] *Flores v. Reno*, Minimum Standards for Licensed Programs, # 2; pg. 15.
[136] Physicians for Human Rights and Bellevue/NYU, *From Persecution to Prison*, p. 88.
[137] Ibid., Pg. 1.
[138] Ibid., pp. 7 and 38.
[139] *Flores v. Reno*, Minimum Standards for Licensed Care, #6 and 7.

or group counseling sessions at either facility, other than family meetings with county caseworkers at Berks and family disciplinary counseling at Hutto. The lack of regular counseling at Hutto is reinforced by the mental health coordinator's statements that in an ideal situation detained individuals would be scheduled for weekly counseling sessions, and that his colleague was uncertain how to develop group sessions in a short-term setting.

- Detainees indicate that they are discouraged from accessing mental health services through a combination of factors, including threats of family separation in response to mental health problems, language barriers and the requirement at Hutto that all members of the family attend any session with a mental health staff member.

- Women and children migrants frequently become the victims of sexual violence in the course of making their way to the United States.[140] These populations have a need for specialized and frequent therapeutic counseling services that are not accommodated in either the Berks or Hutto facilities.

Education

Educational services at the Hutto facility are not appropriate to the children's level of development and do not meet educational standards.

- The *Flores* settlement stipulates that children in custody should receive "educational services appropriate to [their] level of development…in a structured classroom setting…which concentrates primarily on the development of basic academic competencies…[including] science, social studies, math, reading, writing and physical education."[141] However, at Hutto we observed middle and high school students being taught child development and elementary students coloring. We did not observe any classroom activity that would suggest that the educational services are appropriate to students' level of academic competency or that the curriculum included a focus on the subjects prescribed above.

- The *Flores* settlement also stipulates that children receive educational services appropriate to their communication skills,[142] which suggests that provisions should be made for accommodating various levels of English proficiency. At Hutto, parents complained that their children are not learning in the classes because they do not speak English and teachers are not able to speak Spanish.

- Until recently, children detained at Hutto received only one hour of schooling per day, Monday through Friday. Recent media reports and an affidavit from a detainee state that this has recently been increased to four hours per day, but we have not been able to confirm length or changes in quality of the new program.

- Teachers at the Hutto facility are required to be only "license-eligible" in the State of Texas. They do not have to hold a license from the state or school district to obtain employment at this facility.

[140] Women's Commission, *Behind Locked Doors*, p. 3.
[141] *Flores v. Reno*, Minimum Standards for Licensed Programs, # 4, p. 15.
[142] Ibid.

Recreation

Recreational activities provided are insufficient for the physical and mental well-being of children and families in detention, and prevent the natural development of parent-child relationships.

- The *Flores* settlement specifies that children should receive one hour per day of outdoor activity, seven days per week, and at least one hour of large muscle and one hour of structured recreational activity per day. This recreation allotment should be increased to three hours per day on days when school is not in session.[143] However, children do not consistently receive this required level of recreation at either facility. At Berks, children do not get to go outside for fresh air every day. At Hutto, there was a discrepancy about outdoor recreation, with some in detention telling us that outside recreation was provided when the weather was moderate, and others telling us that they had to go outside for one hour every day regardless of weather conditions. Those detained at Hutto do not receive any recreation time on the weekends. However, the Detention Standards stipulate that people at contract detention facilities such as Hutto be provided with access to outdoor recreation seven days per week.

- Both Hutto and Berks had few toys or sports equipment available for children or adults. The few toys that we did see were trucks and kitchenettes, as well as video games at Hutto and some games and a game table at Berks. The absence of toys that encourage fine motor skills, muscle control, physical strength and imaginary play can compromise natural child development and psychological well-being.

- Children at Hutto were not allowed to have their own toys, so whatever toys they could find to play with during their one hour of recreation time had to be left behind in the gymnasium. No toys are permitted in the cells at Hutto.

- The ICE Detention Standards state that volunteer groups may provide recreational or educational programming for people in detention.[144] However, the Hutto facility does not permit outside groups to provide activities for people in detention.

Discipline

Both children and adults are subject to inappropriate disciplinary practices. Disciplinary policies are unclear, and are not formulated with consideration for parental roles or the range of ages and maturity in the program. In addition, staff members are not culturally sensitive to the needs of alien minors.

- The *Flores* settlement prohibits the use of corporal punishment, humiliation, mental abuse and punitive interference with such daily functions as eating and sleeping. In addition, under *Flores* disciplinary actions may not adversely impact a child's health or physical or psychological well-being. Nor may they deny a child regular meals, sufficient sleep, exercise, medical care, the right to correspondence or legal assistance.[145] The disciplinary practices at both facilities violate these standards.

- The Detention Standards stipulate that written notification of disciplinary practices, prohibited acts and sanctions must be provided to detainees. In addition, the standards prohibit corporal punishment; excessive use of force; retaliatory disciplinary actions; or deprivation of food,

[143] Ibid., # 5, p. 15.
[144] U.S. ICE *Detention Operations Manual*, Recreation.
[145] *Flores v. Reno*, Exhibit 1, Section C.

clothing, bedding, hygiene products, exercise, access to visitation, telephone access, correspondence or access to the law library. The disciplinary practices at both facilities violate these standards.

- Both Berks and Hutto have standard disciplinary policies in place, but neither has guidelines or written policies regarding the disciplining of children. Minors are subject to humiliation, mental abuse and punitive interference with the daily functions of living, particularly exercise.

- Because there are no staff guidelines or ICE policies on disciplining children, neither parents nor guards are clear about what to do in a situation where a parent is unwilling or unable to control his or her child. In our interviews with families and through personal observations we found that discipline issues played a large role in undermining family unity, health and stability. On the one hand parents have no control and feel powerless to discipline or influence their children's behavior. On the other hand the fear of being separated from their children due to disciplinary issues creates enormous pressure to control their children. This results in extremely stressful parent-child relationships. Additionally, children feel anger and resentment toward their parents for leading them into the detention setting and for not being able to protect them, while the parents feel guilt, stress, helplessness and frustration.

- The absence of disciplinary guidelines also leads to situations in which staff members apply punishments that are disproportionate to actual incidents.

- Recreation is inappropriately withheld as punishment, in violation of both *Flores* and Detention Standards.[146]

- Climate control—particularly extremely cold temperatures—is used for discipline or for controlling loud or active children, in violation of the *Flores* settlement.[147]

- Threats of separation are used as discipline, and children and parents alike are very afraid that they will be separated, which creates a climate of extreme stress.

- Actual separation, in which one or more family members are sent to a prison or juvenile center, does occur. It is not always clear whether the actions that led to the separation rose to the level that would necessitate such a transfer.

- Separation of days or months has reportedly been employed as a disciplinary tactic.

- Verbal abuse is used as a form of discipline, in contravention of both the *Flores* settlement and the Detention Standards.[148] Abuse includes such tactics as telling detainees, particularly children or adolescents, that they are worthless.

Access to Counsel

<u>We observed or received reports of instances in which access to counsel or the use of telephones was compromised.</u>

[146] *Flores v. Reno*, Exhibit 1, Section C; U.S. ICE *Detention Operations Manual*, Disciplinary Policy.
[147] *Flores v. Reno*, V (12).
[148] *Flores v. Reno*, Exhibit 1, Section C; U.S. ICE *Detention Operations Manual*, Disciplinary Policy.

- Both the *Flores* settlement and the Detention Standards require that children and adults in detention be afforded access to legal counsel.[149] Access to counsel is a key element in a detainee's likelihood of obtaining relief. However, policies and procedures at both Hutto and Berks limit the ability of families in detention to communicate with counsel and to make informed decisions about their cases.

- People detained in Hutto reported that they are routinely told that applying for asylum will result in being detained for eight months or longer, which discourages them from seeking political asylum.

- ICE is failing to implement its own parole criteria (credible fear, community ties, establishment of identity and not a suspected security risk) for asylum seekers and failing to release them.[150]

- At Hutto there were four phones in each pod, none surrounded by a privacy screen, although both the *Flores* settlement and the Detention Standards require that detainees must be provided with privacy during legal calls.[151]

Visitation

Restrictions on contact and privacy exacerbate emotional stress on families in detention.

- The *Flores* settlement affords detained children visitation rights, stipulating that visitation be structured to encourage privacy for visitors and children during visitation to the extent practicable.[152] However, at Hutto all visits with friends and relatives are non-contact and take place by telephone through a Plexiglas wall. In addition, at both Hutto and Berks guards are present in the visitation rooms, undermining families' sense of comfort and ability to communicate openly with visitors.

- At Hutto if any member of a family wishes to receive a visitor, all members of the family must participate in the visit, a policy that prevents adults from speaking openly with friends and family without exposing children to traumatic information.

- At Hutto detainees are only permitted to use the bathroom one time during a visit. For families with small or several children, this can be difficult and may discourage visits.

Clash of Cultures

The use of family detention has created a clash of cultures. A correctional model is being improperly imposed upon noncriminal families.

- The penal model of family detention leads to babies in uniforms with name tags, cribs inside prison cells, parents losing the ability to discipline their children, and families unable to live as a normal family unit. Yet there is no means by which traditional correctional practices can be successfully applied to this noncriminal population without severely compromising the physical and psychological well-being of families.

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149 *Flores v. Reno*, Exhibit 1, A(14); U.S. ICE *Detention Operations Manual*, Visitation.
150 "Expedited Removal: Additional Policy Guidance."
151 *Flores v. Reno*, Exhibit 1, A(12); U.S. ICE *Detention Operations Manual*, Telephone Access.
152 *Flores v. Reno*, Exhibit 1, A(11).

- The lack of precedent and standards for family detention suggests that a penal model cannot be reconciled with child and family welfare practice.

- When children are released from ORR into the custody of their undocumented parents, ICE sometimes redetains them along with their parents. This discourages parents from coming forward to reunify with their children, creates a conflict with the *Flores* settlement's preference for release, and places additional burdens on ORR. Finally, this practice causes severe emotional distress for both children and parents.

VI. Recommendations

Recommendation One

Discontinue the detention of families in penal institutions.

- Close the T. Don Hutto Residential Center. **(ICE)**

- Begin transitioning to the use of nonpenal, homelike facilities for families not eligible for release on parole or bond or to alternatives to detention. **(ICE)**

Recommendation Two

Institutionalize a preference for release for all families who can establish identity and community ties and who do not pose a security risk.

- Complete release as soon as possible but no later than three weeks after apprehension. **(ICE or ORR)**

- Codify parole criteria to ensure that asylum seekers who do not present a flight risk or pose a threat to the community are released from detention.[153] **(ICE)**

- Authority to parole asylum seekers should be shifted to an objective decision-making body, such as the asylum corps or the Executive Office for Immigration Review. **(ICE, CIS and EOIR)**

- Where at least one member of the family has established credible fear or is applying for a valid form of relief, release the family or transfer them into an alternatives program or a nonpenal, homelike environment. **(ICE)**

- Grant temporary work authorization to asylum seekers whose cases are pending and who have been released into the community. **(CIS and ICE)**

- Liberalize parole criteria for families in expedited removal proceedings. **(ICE and Congress)**

- Make bonds for families accessible and not excessive. Children detained as part of a family unit should not be assigned an individual bond. **(EOIR)**

Recommendation Three

Implement alternatives to detention for families not eligible for parole or release.[154]

- Implement alternatives to detention as soon as possible but not later than three weeks after apprehension. **(ICE or ORR)**

[153] U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal*, Volume I: Findings and Recommendations, p. 55.

[154] For additional information on alternatives to detention see Appendix D.

- Expeditiously develop pre-hearing release programs or alternatives to detention for families nationwide, such as supervised release and shelter care under the auspices of nonprofit social service agencies with expertise in meeting the needs of refugee families. **(ICE and NGOs)**

- Individuals in expedited removal proceedings should be eligible for alternatives to detention such as the Intensive Supervised Appearance Program. Such programs should be considered to be a form of custody. **(ICE)**

- Grant temporary work authorization to asylum seekers whose cases are pending and who have been released into alternative programs. **(CIS and ICE)**

Recommendation Four

Families not eligible for parole or release into the community or alternative programs should be housed in appropriate nonpenal, homelike facilities.

- Transfer responsibility for custody of families in immigration proceedings to ORR, which is better equipped to address the special needs of refugee families. **(Congress)**

- Homelike facilities should permit families to share the same living space and enable parents to prepare food for and care for their children. **(ICE or ORR)**

- Separation of families who remain in homelike detention should never be used as a form of punishment. However, short-term voluntary separation within the facility should be permitted for purposes such as educational activities, recreation activities, medical examinations, counseling sessions and meetings with legal counsel. **(ICE or ORR)**

- Homelike facilities should employ a daily release model of family detention similar to that reportedly used in Australia, where parents and children are permitted to leave the facility during the day.[155] Pending asylum applicants detained in homelike facilities should be granted temporary work authorization to enable them to work in the surrounding community. **(CIS and ICE or ORR)**

- All facilities used for the detention of families should be licensed by appropriate regulatory bodies. Local, state and national governments that do not yet have standards should develop standards to ensure safety and dignity of children and families in detention and to prevent situations where services and safety are compromised by licensing requirements. In addition, because parents do not have control over conditions of confinement, regulatory bodies should err on the side of mandating facility compliance with all relevant standards for housing children. Internal procedures should provide adequate protection for children and meet their ongoing educational, physical and psychosocial development needs. **(ICE or ORR, local government)**

- Develop and codify family detention standards that take into account the needs of families, parental roles and the particular needs of children. Standards should ensure protection and continued educational, physical and psychosocial development of children throughout the period of detention. **(ICE or ORR)**

[155] See Appendix C.

- Homelike family detention facilities should be subject to oversight and inspection by an independent authority. **(ICE or ORR)**

- Homelike detention facilities should take care in hiring staff who have employment experience and expertise with child welfare, family protection or family preservation, and not only with the criminal or juvenile justice systems. In addition staff should receive continued specialized training in the unique physical and psychological needs of immigrant families. All staff training should be based upon a child and family welfare model and not a criminal or juvenile justice model. **(ICE or ORR)**

- Visitation policies in homelike facilities should permit contact visits. Noncriminal families should not be subject to strip searches after visits. **(ICE or ORR)**

- Any pending asylum applicant who cannot be released from detention should be permitted to participate in a work release program. **(CIS and ICE)**

Recommendation Five

Children released from ORR custody should not be redetained with their parents upon family reunification.

- This practice creates a conflict with the predisposition for release of unaccompanied minors under the *Flores* settlement by discouraging parents from reuniting with their children. **(ICE)**

Recommendation Six

Enhanced public-private partnerships should be employed to provide Legal Orientation Programs, including legal information and *pro bono* legal access, for all detained families, including those in expedited removal proceedings.

- Assure access to legal orientation as soon as possible and no later than one week after being detained. **(ICE or ORR, and EOIR)**

- Expand the Legal Orientation Program or a similar model to all family detention sites. Presentations should include information on claims involving domestic violence, sexual violence, gang membership and other issues of unique importance to children and families' eligibility for relief. **(ICE or ORR, EOIR and NGOs)**

- Children whose families are in immigration proceedings should be treated as individuals who may be eligible for forms of relief separate from those available to their parents. Public-private partnerships should include the development of information and representation models that facilitate an exploration and pursuit of children's individual claims. **(ICE and NGOs)**

- Public-private partnerships such as the CAIR Coalition model should be expanded to provide legal representation for families and individual family members at credible fear interviews. **(CIS and NGOs)**

- Staff members charged with conducting credible fear interviews should receive appropriate training regarding minimal threshold requirements, particularly regarding domestic violence-based asylum claims. **(CIS)**

Appendix A: Methodology

This report is based on an assessment of the conditions of detention at the Berks Family Shelter Care Facility in Leesport, Pa., and the T. Don Hutto Residential Center in Taylor, Texas. The Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service carried out all research between October 2006 and February 2007. Research consisted of tours of these facilities and interviews of individuals currently and formerly detained. In addition, we engaged in formal and informal conversations with facility staff; local and national DHS staff; staff of Williamson County, Texas, and Berks County, Pa.; and attorneys representing detainees at Hutto.

We followed up our visits with ongoing conversations with ICE National Juvenile Coordinator John Pogash. Since these discussions, a considerable amount of public and press attention has been directed toward family detention in general and the Hutto facility in particular. As a result of this attention some modifications have been made.

Ease of access to the facilities differed between the sites. We were afforded easy access to the Berks facility. DHS and Berks County Youth Center staff responded quickly to initial and follow-up requests. During the course of our tour, we asked permission and were allowed to sit and talk with detained families in the cafeteria for some time. During these conversations, ICE and facility staff remained out of earshot. We were also allowed follow-up visits with detainees of our choosing.

LIRS and the Women's Commission were the first NGOs permitted to tour Hutto. It took several months to gain access. Ultimately we were given access and were able to speak with three families detained in the facility. With the exception of the first interview, a member of the Hutto staff was present in the room during these interviews. We were not able to gather all relevant information during our brief facility visits, and some questions about policies, statistics and physical plant remain. We have requested statistics and other clarifying documentation from the ICE national juvenile coordinator in an effort to resolve these outstanding questions. ICE has responded unofficially by stating that they have been deluged with requests for information regarding Hutto and family detention in general, and are unable to process our requests at this time. They requested that all inquires be processed through the quarterly DHS/ICE liaison meetings.[156] Consequently, where there is a lack of additional information available, we have made note of this in the text.

[156] John Pogash, telephone interview by Michelle Brané, Washington, D.C., January 31, 2007

Appendix B: Family Detention and International Law

Both treaty law and customary international law prohibit prolonged arbitrary detentions and provide a directive for the humane treatment of detainees. Article 3 of the Universal Declaration of Human Rights, the basis for most human rights law, states, "everyone has the right to life, liberty and security of person."[157] Article 16(3) specifies that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."[158] More specifically, Article 25 asserts that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." Additionally, Article 9 states, "No one shall be subjected to arbitrary arrest, detention, or exile."[159] These articles support the notion that all human beings, regardless of their political status, deserve a basic, decent level of treatment.

The International Covenant on Civil and Political Rights, to which the United States is a party, corroborates the above principles. Article 9(1) states that "no one shall be subjected to arbitrary arrest or detention."[160] Article 9(4) elaborates, "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."[161] The convention outlines specific guarantees for families. Article 23 states, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."[162] Moreover, Article 17 states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."[163]

Although the United States has not ratified the *Convention on the Rights of the Child*, it is widely accepted by the international community as international law. Various provisions in the convention apply to the current problems in U.S detention facilities. Article 10 speaks specifically about the obligation of states toward children separated from their families. "Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family."[164]

Article 16 states "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation and the child has the right to the protection of the law against such interference or attacks."[165]

Specific articles target the requirement of states to provide certain basic services to children regardless of their political status. Article 25 asserts, "States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances

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157 *Universal Declaration of Human Rights*, 71 U.N. Doc A/810 (1948), Article 3.
158 Ibid, article,16(3).
159 Ibid, article 9.
160 *International Covenant on Civil and Political Rights*, U.N. General Assembly Resolution 2200 A (XXI) (December 16, 1966) (entered into force March 23, 1976), article 9(1).
161 Ibid., article 9(4).
162 Ibid., article 23.
163 Ibid., article17.
164 *United Nations Convention on the Rights of the Child*, U.N. General Assembly Resolution 44/25 (November 20, 1989) (entered into force September 2,1990), Article 10.
165 Ibid., article 16.

relevant to his or her placement."[166] Article 27 affirms, "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."[167] Lastly, Article 31 maintains that "States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity." [168]

In February 1999 the Office of the United Nations High Commissioner for Refugees issued the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*. In it, UNHCR proclaims that the detention of asylum seekers is inherently undesirable, and that it should be avoided as a general principle. It recommends that there be a presumption against detention, but that if used, detention should be limited to a minimal period of time. Guidelines 6–10 require states to provide certain basic levels of treatment of detainees including education, health care and counseling, and outlines specific conditions for detention. The Guidelines also call for special protection of populations at risk, including women and children. This means that, according to Guideline 2 and the UNHCR guidelines on protection and care of refugee children, minors who are asylum seekers should not be detained. [169] These guidelines are predicated on the 1951 *United Nations Convention Relating to the Status of Refugees* and its 1967 Protocol, both of which the United States ratified in 1968. It mandates that countries not impose penalties on asylum seekers on account of their illegal entrance or presence as long as they present themselves without delay to the authorities and show good cause for the illegal entrance or presence.

UNHCR directly addressed concerns about U.S. detention policies in 1993, before the extreme growth of detention sites in 1996 and again at present:

> The UNHCR Executive Committee has expressed deep concern about the detention of refugees and asylum seekers merely on account of their undocumented entrance or presence in search of asylum, Executive Conclusions, No. 44 recommended that 'in view of the hardships which is involves, detention should be normally avoided.' Detention of refugees and asylum seekers should be normally limited to the shortest time necessary to establish the applicant's identity and the elements of the asylum claim.[170]

[166] Ibid., article 25.
[167] Ibid., article 27.
[168] Ibid., article 31.
[169] Office of the U.N. High Commissioner for Refugees, *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, February 1999, http://www.unhcr.org/protect/PROTECTION/3bd036a74.pdf.
[170] Rene Van Rooyan, representative, UNHCR Branch Office to the United States, letter to Doris Meissner, Commissioner, Immigration and Naturalization Service, March 4, 1993.

Appendix C: Family Detention Practice in the International Context

The European Union adopted a directive in 2003, binding on all member states, that declares that asylum seekers within the European Union "may move freely" within the territory of the host member state, but that when necessary for "legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law."[171] The directive also mandates that "Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants [asylum seekers] are provided with housing by the Member State concerned."[172]

In 2005, the Council of Europe's Committee of Ministers adopted a set of guidelines that address the "forced return" process. One of those guidelines states that people in immigration detention in Europe "pending their removal from the territory should not normally be held together with ordinary prisoners," and that "the principle of the unity of the family should be respected and families should therefore be accommodated accordingly."[173] The guidelines also state that member states should only detain immigrant children as a last resort, that detained children have a right to education and leisure, that detained families should have separate and private accommodation, and that the "best interest of the child shall be a primary consideration in the context of the detention of children pending removal."[174] However, the guidelines are not binding on member states; rather, member states are "encouraged" to adopt them, but they do not "imply any new obligations for Council of Europe member states."[175]

Britain: Detention of Families and Children

Rules for immigration detention centers in the United Kingdom were promulgated in 2001 in accordance with the Immigration and Asylum Act 1999.[176] The rules state that families in detention are "entitled to enjoy family life at the detention centre save to the extent necessary in the interests of security and safety."[177] They also are to be provided with "accommodation suitable to their needs," and with everything "reasonably necessary" for the care and well-being of infants and children.[178]

The British government has claimed that it seeks to detain families only for as short a time as possible.[179] However, some "NGOs working with detained families argue that there is a gap between stated policy and what happens in practice to families, citing prolonged periods of detention in some cases."[180] In other cases, British immigration officials have engaged in questionable apprehension and detention tactics. One family of asylum seekers in Glasgow, Scotland, after being told by officials that "everything was fine" with their claim, was forcibly taken into detention at 6:00 a.m. one morning. The husband was separated from his wife and son, and they were taken to a detention center in separate cars. Before leaving, they were told that they were "being sent back to their own country," not a detention center. After being

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171 European Union, "Council directive of 27 January 2003 laying down minimum standards for the reception of asylum seekers," Article 7.
172 Ibid., article 8.
173 Committee of Ministers of the Council of Europe, *Guidelines on all stages of the 'forced return' process.* [CM (2005) 40], Guidelines 10 and 11, quoted in Amnesty International, *Italy: Temporary Stay—Permanent Rights: The Treatment of Foreign Nationals Held in 'Temporary Stay and Assistance Centres,'* AI Index: EUR 30/004/2005. (London: June 2005), pp. 61-62.
174 Ibid., guideline 11, p. 62.
175 Ibid., p. 57.
176 D. Stevens, "The Immigration and Asylum Act 1999: A Missed Opportunity?" *The Modern Law Review*, 64(3): 413-438, (2001): p. 431.
177 Detention Centre Rules 2001 SI 2001/238 pt 2 r 11.
178 Ibid.
179 Amnesty International, *Seeking Asylum Is Not a Crime: Detention of People Who Have Sought Asylum*, AI Index: EUR 45/015/2005. (London: June, 20 2005), p. 14.
180 Ibid.

detained for 17 days, they were released on bail; at the time of their interview with Amnesty International their asylum claim still had not been decided.[181]

Germany: Immigration Detention

Much like the United States, anyone without authorization to be in Germany may be detained, including those whose "asylum claim has been rejected and who are subject to…deportation."[182] In terms of families of asylum seekers, anyone over the age of 16 may be detained, and "pregnant women are also detained (as they are in Britain and France), but are sent to hospital six weeks before the due date and allowed to remain for six weeks after the birth."[183] Conditions in German immigration detention facilities can vary from state to state,[184] but in one detention center the conditions appear similar to many American detention centers. It is difficult to move around, and detainees must ask permission for even the smallest privilege, e.g., "to open a window…or fetch hot water for tea."[185] Furthermore, "[t]here are no work or training possibilities in Köpernick and detainees are only allowed one hour's exercise in the yard."[186] Pro bono attorneys visit to dispense legal advice once a week, but detainees are responsible for retaining and paying for their own attorneys.[187]

Australia: Community Detention

Australia maintains several immigration detention centers, called "immigration reception and processing centres."[188] In a review of publicly available documents on the experiences of children in Australian immigration detention, the Australian advocacy group Children Out of Detention found that "[t]wenty five documents allege that detention itself is the cause of significant mental health problems in children, additional to the trauma and persecution already experienced by them in their home country and during their journey to 'freedom.' "[189]

Furthermore, the same review found that "[t]wenty five documents allege that detention itself is a damaging environment for children."[190] In a 2002 submission to a government inquiry on children in detention the Professional Alliance for the Health of Asylum Seekers and Their Children, of which the Royal Australasian College of Physicians is a main sponsor, said that they had learned of a family that had been detained for 10 months without a decision on their refugee status.[191]

Since the publication of the 2002 Children Out of Detention report the Australian Parliament adopted a new law that ends the practice of detaining children and families. With this 2005 law, Parliament gave the minister for immigration and multicultural and indigenous affairs the "non-compellable power" to "specify alternative arrangements for a person's detention," so that the minister can "allow families with children to reside in the community at a specified place (instead of at a detention centre or residential

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181 Ibid., p. 15.
182 Michael Welch and Liza Schuster, "Detention of Asylum Seekers in the US, UK, France, Germany, and Italy: A Critical View of the Globalizing Culture of Control," *Criminology and Criminal Justice*. 5(4): 331-355. (2005), p. 341.
183 Ibid.
184 Ibid.
185 Ibid.
186 Ibid., p. 342.
187 Ibid.
188 International Detention Coalition, *The Heart of the Nation's Existence: A Review of Reports on the Treatment of Children in Australian Detention Centres*, January 2007, p. 2, http://idcoalition.org/portal/component/option,com_remository/Itemid,105/func,fileinfo/id,16/.
189 Ibid.
190 Ibid.
191 Professional Alliance for the Health of Asylum Seekers and Their Children, *Submission to Human Rights and Equal Opportunity Commission Inquiry into Children in Immigration Detention*, (May 2002), p. 27, http://www.racp.edu.au/hpu/policy/asylumseekers/alliance_inquiry.pdf.

housing project) in accordance with conditions that address their individual circumstances."[192] The new law also specified that minors should only be detained as a last resort.[193]

This program was developed in response to the failure of a program to detain all asylum seekers arriving by boat or without valid entry documents in remote detention facilities.[194] Now, all families with children under 18 are released into "community detention" programs in which NGOs provide care and accommodations for families who are still deemed to be in custody of the Australian government. In this program, the "Minister [of the Department of Immigration and Multicultural Affairs] can stipulate different conditions for each family, such as when they need to be at the residence and when they need to report to DIMIA officers. However, within these conditions families can go out shopping, go to school and so on, without being accompanied by a guard."[195]

Sweden: A Model for Others?

Sweden is known for the generosity of its immigration laws as compared to the laws of its peer countries. This reputation extends to its detention policies as well. The Australian study sponsored by the Royal Australasian College of Physicians discussed above also describes several positive aspects of the Swedish system of receiving, housing and sometimes detaining asylum seekers.

- According to Swedish law, someone under the age of eighteen can only be detained for three days or less.[196]
- Unaccompanied minors who arrive in Sweden are taken to government-run group homes.[197]
- Families that arrive without documentation are given family accommodation and must report daily to the Department of Immigration.[198]
- If the Swedish government is uncertain about possible risks to national security, only the husband is detained while other members of the family are released to group homes outside of the detention center. The family members can visit the husband often.[199]
- Asylum seekers can either choose to reside with a relative or friend, or can rent an apartment from the Swedish Migration Board.[200]
- Families of asylum seekers are offered a daily allowance from the Swedish government, and children are "not obliged to attend school although the municipal authority is responsible for ensuring that those who wish to attend school are offered a place" on the same terms as other Swedish citizens and residents."[201]

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192 House of Representatives, Parliament of the Commonwealth of Australia, *Migration Amendment (Detention Arrangements) Bill 2005: Explanatory Memorandum*, http://www.ajustaustralia.com/resource.php?act=attache&id=78.

193 Ibid.

194 Mina Fazel, "Detention of Refugees," *BMJ*, 332:251-252, February 4, 2006, http://bmj.bmjjournals.com/cgi/content/full/332/7536/251.

195 Children Out of Detention, "Community Detention for Families in Australia," http://www.chilout.org/information/community_detention.html.

196 Professional Alliance, *Submission to Human Rights and Equal Opportunity Commission*, p. 51.

197 Ibid.

198 Ibid.

199 Ibid.

200 Swedish Migration Board, *Reception of Asylum Seekers in Sweden*, March 2006, http://www.migrationsverket.se/infomaterial/asyl/allmant/mottagandet_en.pdf.

201 Ibid.

Appendix D: Alternatives to Detention

Executive Summary of the UNHCR Report on Alternatives to Detention of Asylum Seekers and Refugees[202]

In 2002, UNHCR's Agenda for Protection urged 'States more concertedly to explore alternative approaches to the detention of asylum seekers and refugees …'[203] in response to the increasing use of detention of asylum seekers and/or refugees by host governments. This study is a contribution towards that objective. This study undertook research into the practices regarding the use of *alternatives* to detention for asylum seekers and/or refugees of thirty-four States. The information presented herein is valid up to 31 March 2004 and takes no account of changes in law or practice between that date and the date of publication. This study has two main parts. First, it presents a concise overview of the legal standards under international law applicable to both detention as well as alternatives to detention that may give rise to some restrictions on the freedom of movement of asylum seekers and/or refugees. Second, and forming the main part of this study, it presents a range of alternatives to detention used by many receiving countries and attempts to evaluate those measures, specifically in relation to rates of absconding.

This study found that there is a significant difference in the level of effectiveness of a particular alternative depending on whether it is applied in a primarily 'destination', as opposed to a primarily 'transit', State. The statistical data available suggests that restrictive alternatives involving close supervision or monitoring, for the purpose of ensuring compliance with asylum procedures, are seldom if ever required in destination States where most asylum seekers wish to remain. In such States, the rate at which asylum seekers abscond, prior to a final rejection of their claim and/or the real prospect of removal from the territory, seems to be low. Projects established to provide alternatives to detention throughout the duration of refugee status determination procedures in such countries are therefore all highly effective, but this appears to be due less to their design than by happenstance, that is, asylum seekers who reach their 'destination' country are unlikely to abscond because they have a vested interest in remaining in the territory and in complying with the asylum procedure. With this context in mind, there is a real risk of certain alternatives, such as electronic tagging, being misapplied to asylum seekers who would not and should not otherwise be detained, thereby becoming an unnecessary restriction on their freedom of movement and other rights.

In some countries with well-articulated national legislation in which consideration of alternatives is required prior to the issuing of any detention order, official information was unavailable with regard to the implementation of the relevant articles. Available figures and anecdotal evidence from asylum lawyers in those countries suggest, however, that alternative measures were rarely if ever applied to their clients. Although detention of asylum seekers prior to a decision on a claim is, to date, a relatively exceptional measure in those contexts, the non-implementation of the available alternative measures is of concern. In transit States, where the rate of absconding is usually higher, this study found several examples of reception policies and programmes which successfully reduced this rate, without recourse to detention. In some southern European countries, for example, the partial or recently introduced provision of State accommodation and support to asylum seekers is making a marked reduction in the rate at which such persons abscond and move on irregularly to other countries.

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[202] United Nations High Commissioner for Refugees, *Alternatives to Detention of Asylum Seekers and Refugees*, prepared by Ophelia Field and Alice Edwards, Division of International Protection Services, POLAS/2006/03, April 2006.

[203] UNHCR Agenda for Protection, June 2002, A/AC.96/965/Add.1, p.8.

Even in primarily destination States, certain factors were found to further reduce the low rate at which asylum seekers there abscond. The provision of competent legal advice and concerned case management, for example – which serve as non-intrusive forms of monitoring and which ensure that asylum seekers fully comprehend the consequences of non-compliance – were found to raise rates of appearance and compliance. Similarly, legal support, guardianship and specialised group homes run by nongovernmental agencies were found to successfully reduce the rate at which separated asylum-seeking children disappeared from several European countries. Early, detailed interviewing of such children at the border, to fully establish the nature of their situation, was also found to be an effective alternative to placing 'protective' restrictions upon their freedom of movement after admission.

The effectiveness of alternatives used to ensure the availability for removal or compliance with removal proceedings of persons found not to be in need of international protection is less certain, though there were several successful examples to be cited even here. Several countries report successful results from projects for counselling persons not in need of international protection about consenting to mandatory return, and both Australian and British nongovernmental organizations report high rates of success in monitoring sample groups of people released while awaiting removal. Return-oriented centres established in some European States for persons who refuse to cooperate with their forced return (or for asylum seekers with manifestly unfounded claims or, in one case, for separated children), have not so far produced similar evidence of success. For persons found not to be in need of international protection who cannot be returned to their home country, reporting requirements are successfully used in a number of States as an alternative to the inhumane and unlawful prospect of indefinite detention.

This study further found that, where comparative costs of detention vis-à-vis alternatives to detention are available, alternatives are universally more cost-effective than detention. Finally, this study advocates for further empirical research, transparency and public education at the national and international level in relation to all these issues.

ICE Intensive Supervision Appearance Program (ISAP)[204]

See pages 56 to 59.

Legal Orientation Program[205]

See pages 60 to 62.

[204] Handouts, meeting with ICE, June 21, 2004.

[205] Steven Lang, *Pro Bono* Coordinator of the U.S. Department of Justice, Executive Office for Immigration Review, "*Pro Bono* Program Update – January 2005," memorandum to all immigration judges and court administrators, January 2005.

U.S. Immigration and Customs Enforcement

Alternatives to Detention

Intensive Supervision Appearance Program (ISAP):

- Contract awarded to Behavioral Interventions, Inc. (BI) April 2004.
- Eight pilot sites initially: Baltimore, Philadelphia, Miami, St. Paul, Denver, Kansas City, San Francisco, and Portland, OR.
- Up to 200 alien participants at each site.
- Purpose of program is to intensely supervise aliens released into the community to ensure their appearance at their immigration hearings and compliance with the immigration judge's order.
- Congress specifically allocated base funding for this type of alternative to detention program.

Alternatives to Detention

Intensive Supervision Appearance Program (ISAP):

- ISAP includes utilization of supervision tools such as curfews, electronic monitoring, decreasing levels of restrictions as participants demonstrate compliance, and community collaborations to support the participant.
- The target groups for this program are detained adults (over 18) and meet the eligibility criteria that includes:
  - - Aliens who are not mandatory detention cases
  - - Identity of alien has been established and verified
  - - Alien will maintain a local address within jurisdiction of the ISAP field office site
  - - Alien is non-violent and not a threat to public safety
  - - Aliens must volunteer to participate in the program

Office of Public Affairs
U.S. Department of Homeland Security

U.S. Immigration and Customs Enforcement

June 17, 2004

Contact: ICE OPA
202-514-2648

News Release

ICE UNVEILS NEW ALTERNATIVE TO DETENTION

Pilot project to be introduced in eight cities

Washington, D.C. – U.S. Immigration and Customs Enforcement (ICE) today announced a new pilot program providing a less restrictive alternative to detention. The Intensive Supervision Appearance Program (ISAP) will be introduced on June 21, 2004, at eight ICE locations across the United States. The cities where this new program will be introduced are Baltimore; Philadelphia; Miami; St. Paul; Denver; Kansas City; San Francisco; and Portland, Oregon.

"ISAP is an alternative to detention that further enables ICE to prioritize detaining criminals and other public safety and security risks;" said Acting Director of Detention and Removal Operations Victor Cerda. "ISAP aims to promote integrity in the immigration system by helping to ensure compliance with court appearances and orders, and will likely relieve pressure on detention space in pilot cities by providing this alternative to aliens who might otherwise be detained."

ICE's Office of Detention and Removal Operations (DRO) manages ISAP in partnership with Behavioral Interventions, Inc. (BI) of Boulder, Colorado. ISAP, one of several alternatives to detention pilot projects currently being tested, is a supervision program in which case specialists are assigned to a limited caseload of participants and are responsible for monitoring those participants in the community by using tools such as electronic monitoring (bracelets), home visits, work visits and reporting by telephone. Case specialists will also assist participants in obtaining pro-bono counsel for their hearings and help them to receive other types of assistance to which they may be entitled.

In order to be eligible for participation in ISAP, an alien must be an adult with a confirmed identity who does not pose a threat to the community or national security. Additionally, ISAP will be available only to aliens who are not subject to mandatory detention; who are pending immigration court proceedings or are awaiting removal from the United States; and who will be residing within the managed area. ISAP is a voluntary program; all participants must agree to participate and comply with the conditions of their release. Aliens who violate the conditions of their release may face detention or increased supervisory restrictions. ICE will evaluate the program at the end of the pilot and based on the results determine any possibilities for future implementation.

- ICE -

U.S. Immigration and Customs Enforcement (ICE) is the largest investigative arm of the Department of Homeland Security, responsible for the enforcement of border, economic, infrastructure and transportation security laws. ICE seeks to prevent acts of terrorism by targeting the people, money and materials that support terror and criminal networks.

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Pro Bono Program Update - January 2005

To: **All Immigration Judges and Court Administrators**

From: **Steven Lang, Pro Bono Coordinator**

I am pleased to send all of you this update on the Pro Bono Program. Since April of 2000, the Pro Bono Program has worked to improve the level and quality of *pro bono* representation. This has been carried out primarily through initiatives which facilitate access to information and create new incentives for attorneys and law students to take on *pro bono* cases before the immigration courts and Board of Immigration Appeals (BIA). The Program has also continued to perform an important community relations role, with the Coordinator often serving as liaison between our agency and the non-profit legal community on issues related to legal assistance for indigent aliens.

Many of the Program's accomplishments owe their success to the numerous Immigration Judges, Court Administrators and Headquarters' staff whose interest and active involvement in the Program have helped to shape its approach and direction. Our agency has long recognized the mutual benefits derived from strong *pro bono* participation in the immigration hearing process. Working together, the Program continues to look forward to your comments, suggestions, and enthusiasm as we contend with current and future challenges.

In these difficult budget times, the Pro Bono Program has limited its focus over the past year to three major initiatives - the Legal Orientation Program, the BIA Pro Bono Project, and interagency initiatives aimed at improving access to *pro bono* legal services for Unaccompanied Alien Children. The Program also continues to promote and develop two earlier initiatives - the Pro Bono Program webpage, and the Model Hearing Program (MHP).

I. Legal Orientation Programs

In FY'02, Congress appropriated $1 million to the INS for "Legal Orientation Programs." The Pro Bono Program lead efforts to transfer these funds to EOIR, as well as to determine the best available means of funding such programs across the country. These funds have recently been renewed. We are currently in the process of evaluating program performance and reviewing proposals for continued, as well as new funding.

EOIR's past experience with Legal Orientation Programs (also known as "Rights Presentations") demonstrated that they are beneficial to all parties involved. These programs result in greater judicial efficiency for EOIR, less time for aliens in DHS detention, and greater access for detained aliens to legal information, counseling, and *pro bono* representation.

Through such orientations, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained

individuals. The orientations are normally comprised of three components: 1) the interactive group orientation, which is open to general questions; 2) the individual orientation, wherein non-represented individuals can briefly discuss their cases with experienced counselors; and 3) the self-help component, wherein those detainees who wish to pursue claims for relief are provided with self-help legal materials and assistance through group workshops, where appropriate.

EOIR currently maintains a contract (Blanket Purchase Agreement - BPA) with Norwich University to carry out a comprehensive Legal Orientation Presentation Training Program at six detention sites across the country. Serving as the Contracting Officer's Technical Representative (COTR), the Pro Bono Coordinator has worked with Norwich University, six non-profit agency subcontractors, EOIR components, DHS and local detention facility representatives to implement the programs at the following sites:

	Detention/Immigration Court	Subcontractor
1.	Port Isabel, Texas	American Bar Association (through ProBAR)
2.	Eloy, Arizona	Florence Immigrant & Refugee Rights Project (FIRRP)
3.	Batavia, New York	Erie County Bar Association VLP
4.	Seattle, Washington	Northwest Immigrant Rights Project (NWIRP)
5.	Lancaster, California	Catholic Legal Immigration Network, Inc. (CLINIC)
6.	Aurora, Colorado	Lutheran Immigrant & Refugee Services (LIRS), together with the Rocky Mountain Immigrant Advocacy Network (RMIAN)

More than 23,000 detainees are expected to benefit from the program in the first 12 months of full operation, or roughly 20 percent of all DHS detainees who appear before the Immigration Courts each year. As of the end of August 2003, preliminary results have shown an **average decrease in detained proceeding completion times of 1.5 days per detainee** (from receipt to proceeding completion date), with three of the **newest sites averaging 2.2 days** (from first Master Calendar hearing to proceeding completion date) as compared to the 12-month period preceding each sites' start date.

II. **The BIA Pro Bono Project**.

Since its implementation in January of 2001, the Project has succeeded in recruiting over 350 attorneys, law students and Accredited Representatives to write appeal briefs for over 250 DHS detainees who would have otherwise appeared without representation before the BIA. The Project was recently expanded to include certain non-detained case appeals, as well.

Under the Project, the Catholic Legal Immigration Network (CLINIC), Capital Area Immigrant Rights (CAIR) Coalition, American Immigration Law Foundation (AILF) and National Lawyers Guild send experienced volunteer attorney "screeners" to the BIA Clerk's Office every week to review selected case appeal transcripts. After review, the screeners write redacted summaries for cases they believe to be most suitable for *pro bono* representation. These summaries are e-mailed to participating *pro bono* representatives throughout the country who may select cases in which to enter as counsel. Those representatives who accept a case under the Project receive a copy of the file, as well as additional time to file the appeal brief.

Legal representation in many of these cases has already had a meaningful impact. Since attorneys or accredited representatives usually identify and argue the issues better on appeal, immigrants with meritorious cases have a greater chance of success. Representation also reduces procedural errors and enables the BIA to provide a more effective and timely case review.

III. Unaccompanied Alien Children in DHS/ORR Custody

Since early 2003, the Pro Bono Program, together with OCIJ, has been working with the newly-created Division for Unaccompanied Children's Services at the Office of Refugee Resettlement (ORR) to discuss, among other matters, new initiatives aimed at improving legal assistance for this special population.

EOIR's involvement with ORR was anticipated by Section 462 of the Homeland Security Act in "developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child," and in "compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children."

Efforts are currently underway to develop and implement a pilot program in Chicago which would combine greater pro bono attorney involvement with a new volunteer 'Guardian Ad Litem' (GAL) component. The GAL would function *in loco parentis* in the context of any immigration court proceedings to encourage the child to participate to the fullest extent possible. The GAL would also make a determination as to the best interests of the child which may be offered to the attorney and/or immigration court as a recommendation.

Together with ORR, the Pro Bono Program is also forming an interagency pro bono committee to better coordinate national and local pro bono efforts to assist these children.

IV. Pro Bono Program Webpage

The Pro Bono Program has steadily expanded its heavily-visited internet webpage (#1 beyond Homepage). The webpage currently includes an online version of the "List of Free Legal Service Providers," and a variety of links to governmental and non-governmental sites, including bar associations, law school immigration clinics, human rights groups and *pro bono* organizations providing access to asylum documentation and self-help legal materials (http://www.usdoj.gov/eoir/probono/probono.htm).

Also found on the Pro Bono Program webpage are the recently-posted "Immigration Court Representation Summaries." These concise reports provide detailed information regarding the number of case completions, as well as custody status, nationality, language, and forms of relief requested by individuals in removal proceedings. The reports are designed to assist *pro bono* groups in their efforts to assess the needs of their local communities in order to better direct their services.

V. Model Hearing Program

The Model Hearing Program is an educational program developed by the Pro Bono Program to improve the quality of advocacy before the court, as well as increase levels of *pro bono* representation. Model Hearings consist of small-scale 'mock' trial training sessions held in the immigration court and presented by volunteer immigration judges. The training sessions, carried out in cooperation with partnering bar associations and/or *pro bono* agencies, provide practical and relevant 'hands-on' immigration court training to small groups of attorneys/law students with an emphasis on practice, procedure and advocacy skills. Participants receive training materials and CLE credit, and agree to perform a minimal level of *pro bono* representation throughout the year. Since June of 2001, over 13 Model Hearing training sessions were held in the following court locations: San Diego, Dallas, York, Cleveland, Newark and New York City. Special thanks to the immigration court judges and staff in York, Pennsylvania, New York City, and Dallas for their help in facilitating Model Hearings this past year.

Appendix E: Facility Comparison Chart

	Hutto	Berks
Physical Setting	• 512-bed facility • Brownsville, Texas (30 miles outside Austin) • Former prison • Pod system • 100 pan/tilt/zoom cameras • @ $180 a day per detainee at full capacity	• 84-bed facility • Leesport, Pa. (1 hour outside Philadelphia) • Former nursing home • @ $195 a day per detainee
Processing	• Detainees wear prison uniforms • Detainees not issued enough clothing to accommodate the laundry schedule	• Detainees permitted to wear own clothing except shoes
Accommodations	• Detainees sleep in prison cells • Limit of two beds and a crib in each cell, so larger families are separated at night • Cell doors closed at night but not locked, laser beam prevents entry/exit • If not sleeping in same room, parents cannot access children at night • Residents confined to pod common area when other activities not scheduled • Common area in pod equipped with TVs, video games, playing cards • Adults and children given five minutes to shower • Head counts several times a day • No toys allowed in cells; nothing may be attached to walls • At time of visit, no stuffed animal or dolls	• Detainees sleep in dorm-style rooms • Parents separated from children over five at night • Guards stationed at dorm room doors at night • Mixed reports regarding parental access to children at night • Detainees confined to two common areas when other activities not scheduled • Common areas equipped with sofas, TV, plastic toys, games, game table • One toy, doll or stuffed animal allowed in room at night
Food Services	• Menu repeats every week • Detainees not permitted to select food • No food besides children's snacks may be taken out of cafeteria • 10-20 minutes to eat • 3,500 calories per day • Many complaints about food; children and pregnant women claim to be losing weight	• Cafeteria style – detainees select their own food • Shortage of culturally appropriate food and choice for vegetarians • 45 minutes for each meal
Medical Care	• Medical screening at arrival • Health care provided by PHS • One nurse practitioner, one dentist, 5 days/week; doctor once/week • Detainees submit medical call slip to request medical attention • Medical care not received in a timely manner • Medicines provided not appropriate • Pregnant mothers reported not being provided with prenatal care • Detainees reportedly receive dental care without the use of Novocain or anesthesia	• Medical screening at arrival • Care administered through contract with family practice clinic • Sick call seven days/week; nurse on call when physician not on site • Medical services not always provided in timely fashion • Medicines provided not appropriate • No major complaints regarding medical service • Dental care reportedly available only for children
Education	• At time of visit, one hour of education per day (later increased to four) • Teachers either state certified or eligible for certification • Subjects include science, social studies, language arts, math and ESL • Elementary classes just sing and color	• Education administered by Berks County Intermediate Unit – four to five hours per day • Classes governed by the Pennsylvania Alternative Curriculum Standards • Students study English, social studies, math, science • Each classroom equipped with computers that utilizes PLATO program
Recreation	• One hour of recreation Monday–Friday; none on weekends	• Recreation for minimum of one hour/day, seven days/week, often more

	• Recreation held in large gym equipped with basketball hoops and balls, kitchenettes, plastic trucks • Children not permitted to have their own toys or to receive toys from outside the facility • Families report never going outside, not being allowed to go outside on weekends • Detainees not permitted to leave facility for recreational outings • Library carts circulate to pods every five days	• Outdoor recreation when weather permits • Gym available for recreation; basketballs, nets, small scooters available • Detainees participate in facility-run field trips • Organized activities for detainees • Library cart rotates regularly
Discipline	• Time-outs • Verbal and psychological abuse by staff • Recreation withheld as punishment • Disproportionate punishment for small incidents and normal child behavior • Threats of family separation frequently used as means of discipline • Actual separation of days or months reportedly used as disciplinary measure • Write-up of child or parent for child's misbehavior • Disciplinary problems handled by sending entire family to counseling • Climate control used for discipline	• Time-outs (sometimes as long as 30 minutes) • Verbal and psychological abuse by staff • Recreation withheld as punishment • Disproportionate punishment for small incidents and normal child behavior • Enforced silence of a week or more used as disciplinary measure • Threats of family separation frequently used as means of discipline • Actual separation of days or months reportedly used as disciplinary measure • Many children lose respect for parents because of parents' lack of control at the facility
Access to Counsel	• Detainees provided with list of legal services; list also posted at phones • Law library available • Two televideo courtrooms • Attorney-client meetings conducted in private room, but parents must keep their children with them • Attorneys limited to speaking with 10 people per visit • No Legal Orientation Program	• Detainees provided with list of legal services • Law library available • Some televideo courtrooms; actual courtroom for masters • Attorney-client visitation room (also used for asylum officer to conduct credible fear interviews) • No Legal Orientation Program • Distance from major metropolitan area limits availability of *pro bono* counsel
Telephone Access	• Four phones in common area • Detainees able to purchase $10, $15 and $20 phone cards	• Two phones located in hallway • Vending machine sells phone cards @ $1/minute
Visitation and Spiritual Support	• All non-attorney visits are non-contact • Communication occurs through telephone handset attached to wall, meaning that visitor can talk to only one member of family at a time • Visitation hours limited to 8 a.m.–5 p.m. on weekends; detainees permitted only one trip to restroom during visitation • All detained family members must participate in any visitation • Guards present in visitation rooms • Spiritual counseling and services provided as needed; most services Christian; accommodations made for Muslims	• Detainees permitted visitors 7 days/week, actual contact limited • Guards present in visitation rooms • Service and spiritual counseling available intermittently and depending on religion • Transport to local churches discontinued

Appendix F: Acknowledgements

This report was written by Michelle Brané, director, detention and asylum program, Women's Commission for Refugee Women and Children, and Emily Butera, policy advocate for Lutheran Immigration and Refugee Service (LIRS). Content review was conducted by Andrea Black, network coordinator for Detention Watch Network; Susan Krehbiel, LIRS vice president for protection; Joan Timoney, Women's Commission director of advocacy and external relations; Matt Wilch, LIRS senior counsel for policy and advocacy; and Liana Del Papa, Women's Commission program specialist, advocacy and detention and asylum program. Additional content support was provided by Scott Kuhagen, LIRS assistant for access to justice; Clare Berke, LIRS legislative assistant; and Women's Commission interns. We would like to thank Ralston Deffenbaugh, LIRS president; Carolyn Makinson, Women's Commission executive director; and Annie Wilson, LIRS executive vice president, for their support and guidance. Style and copyediting performed by Valerie Anne Bost, LIRS publication specialist and Cassandra Champion, LIRS director for communications. Megan McKenna, Women's Commission senior coordinator, media and communications, provided content review and editing. Diana Quick, Women's Commission director of communications, provided editorial support. Grace Cheung**,** Women's Commission program manager, communications, designed the report.

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Finally, the Women's Commission and LIRS wish to thank the legal service providers and academics who provided both logistical support and their expertise to the delegation. Above all, we would also like to express a special thanks to the courageous families who shared with us their testimonies of experiences in family detention.

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