Megan Mack
Office of Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC 20528

John Roth
Office of Inspector General
Department of Homeland Security
Washington, DC 20528

September 30, 2015

**Re: Complaint Regarding Coercion and Violations of the Right to Counsel at the South Texas Family Residential Center in Dilley, Texas**

Dear Ms. Mack and Mr. Roth:

We write to express serious concerns regarding tactics employed by Immigration and Customs Enforcement (ICE) at the South Texas Family Residential Center (STFRC) in Dilley, Texas to coerce detained mothers into accepting electronic ankle monitors as a condition of release and forfeiting their right to pursue bond hearings before immigration judges.[1]

As evidenced by the cases discussed below, ICE is substantially misinforming the mothers about the possibility of release on bond. Furthermore, ICE is repeatedly meeting with and obtaining signatures from detained mothers – including those the government knows to be represented by counsel – without informing counsel or allowing counsel to be present. ICE has also employed other unlawful tactics to intimidate detained mothers and thereby prevent them from asserting their rights. These tactics include threatening to withhold medical care for children if mothers choose to seek bond hearings instead of accepting ankle monitors, and threatening mothers with

[1] After an individual who is initially placed into expedited removal proceedings under INA § 235 establishes a "credible fear" of persecution or torture, she is placed into removal proceedings before an immigration judge under INA § 240. She is also eligible for a custody redetermination hearing before an immigration judge, except in certain specifically designated cases. *See* INA § 236(a); 8 C.F.R. §§ 1236.1(c)(11); 1003.19(h)(2)(i); *see also In re X-K-*, 23 I&N Dec. 731 (BIA 2005).

Recent judicial decisions similarly establish that noncitizens subject to reinstatement of removal under INA § 241(a)(5) who have received positive reasonable fear determinations are also detained under INA §236(a), and thus eligible for custody reviews prior to the completion of their withholding proceedings. *See, e.g., Guerra v. Shanahan*, 2014 U.S. Dist. LEXIS 176850, *11-12 (S.D.N.Y. Dec. 23, 2014) ("The majority of federal courts that have assessed the administrative finality of reinstated removal orders have agreed that such orders cannot be final while withholding applications are pending.") (collecting cases).



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deportation if they raise concerns about how long the process is taking or inquire about the status of their cases.

These practices are designed to intimidate vulnerable and traumatized asylum seekers who are detained with their young children. In the words of one mother, **Olga**,[2] "[i]t gives me fear, sometimes, the way the ICE officers respond to our questions and constantly telling us that they can deport us immediately if they want."

These practices also directly interfere with a detained mother's right to counsel under the Administrative Procedure Act (APA)[3] and applicable federal regulations.[4] Detained children and their mothers who are seeking asylum and other protection under U.S. law are among the most vulnerable individuals in our immigration system. Accordingly, we request that CRCL and OIG immediately investigate ICE's custody determination and release practices at STFRC to ensure that they are free from coercion and are based on individualized assessments rather than categorical or arbitrary determinations. We further request that CRCL investigate systemic interference at STFRC with the mothers' right to counsel and to fair process.

A. Misinforming Detainees Regarding Bond and the Judicial Process

The cases contained in this Complaint demonstrate that mothers are led to believe that ankle monitors are the only viable option for release. To this end, ICE misinforms mothers both about the length of time they would have to remain in detention in order to seek bond as well as the likely amount of any bond to be set. Further, the officers actively dissuade mothers from asserting their right to a bond hearing.

[2] Declarations from each of the highlighted individuals are attached to this Complaint. All names of detained mothers have been changed to pseudonyms to protect confidentiality.

[3] *See* 5 U.S.C. § 555(b) ("A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative."). Detained mothers whom ICE summons to discuss the terms of their release are undoubtedly "compelled" to appear. As discussed below, mothers receive very little, if any, notice of these meetings, and ICE or CCA guards typically instruct the mothers to go to the courtroom trailer either verbally or by using post-it notes. The mothers have no option to decline to attend these meetings.

[4] *See* 8 C.F.R. § 292.5(b); *see also* 60 Fed. Reg. 6647-48 (Feb. 3, 1995) (stating that attorneys may engage in "full representation" during examinations before immigration officers). When an ICE officer interviews a detained mother for purposes of making a custody determination, the officer must assess whether she poses a risk to public safety or a flight risk. If the mother is deemed eligible for release on an ankle monitor, the ICE officer must obtain her consent to this restriction on her liberty and a waiver of her right to a bond hearing before proceeding with her release. Given the gravity of these decisions, the opportunity to consult with counsel is critical to ensure that the mother's rights are protected.

For example, Olga reports that on September 9, 2015, ICE summoned about thirty mothers into a meeting about ankle monitors. According to Olga, at the beginning of the meeting the officer told the women that they were leaving with ankle monitors. Then, Olga recounts, "a neighbor of mine asked about the bond, and [the officer] said that that option exists but it is too expensive and not worth it for our families." The officer further "told us that he did not recommend leaving with a bond, because it was going to be too expensive, around ten thousand dollars,[5] and that it was too long of a process, perhaps 6 months." Similarly, another mother, **Juliana**, states in her sworn declaration that on the television in her room at Dilley – during a "Know Your Rights" program on Channel 60 – it was announced that bond was $10,000 or more.

When ICE summoned yet another mother, **Yesenia**, to the court trailer after she had received a positive credible fear determination, she inquired about the possibility of bond. An ICE officer made clear that all the detained mothers would leave with ankle monitors, and that "it would take another four weeks of being detained with [their] children to receive bond."

**Lidia** states that ICE officials told her that she and her child would have to remain detained for an additional four *months* before she could see a judge if she did not accept the ankle monitor. Likewise, **Beatriz** states that the ICE officer "told [her] that it would be weeks or months before a judge could see [her] to set a bond because they have so many files."

Complicating this situation further, ICE and its contractor, Corrections Corporation of America (CCA), use the apparent authority of the immigration court to influence the mothers' decisions to accept ankle monitors. ICE and/or CCA summon mothers to these meetings by instructing them to go "to court."[6] ICE and/or CCA then hold the meetings regarding terms of release in the court trailer and sometimes in an actual courtroom. Using the courtroom manipulates the situation and leaves mothers confused as to whether the information provided and decisions made in that setting come from the judge or from ICE.

B. Blocking Attorneys' Access to Their Clients

ICE continues to refuse to allow attorneys to be present when its officers summon the mothers to discuss the terms of their release. During these interactions with ICE, mothers are asked to sign documents "voluntarily" accepting ankle monitors in lieu of asserting their rights to bond

[5] *See* Declaration of Attorney Stephen Manning dated August 13, 2015 (attached to this Complaint), in which he states that from June 24, 2015 to August 11, 2015, of 188 cases in which CARA represented detained mothers at bond hearings at Dilley, the average bond amount issued by an Immigration Judge was just $1,901.

[6] In a complaint submitted to ICE Director Sarah Saldaña on July 27, 2015, the four organizations comprising the CARA Family Detention Pro Bono Project highlighted ICE's coercive practice of holding discussions regarding alternatives to detention in immigration courtrooms, including at least one occasion where the video monitor was left on and an immigration judge, working remotely in Miami, appeared to be endorsing the meetings.

hearings – again, without counsel present to ensure that accurate information is conveyed and all available options are considered.

The case of **Juliza** is illustrative of the problems caused by a lack of access to counsel when an ICE officer summons a detained mother to discuss the terms of her release. On Friday, September 4, while she was meeting with a CARA Family Detention Pro Bono Project (CARA) volunteer in the legal visitation trailer, a uniformed CCA officer interrupted their conversation and ordered her to go to the court trailer. Initially, the officer would not reveal the purpose of the meeting. As indicated in Juliza's attached sworn declaration, she felt nervous because she "had no idea what was about to happen."

The CARA volunteer, a law student named **Katherine Shattuck**, insisted that the CCA officer inform them of the purpose of the meeting, as Juliza did not have a court hearing scheduled for that day. The CCA officer then clarified that ICE was waiting for Juliza in the court trailer. Ms. Shattuck showed the officer a signed G-28 for CARA Project Lead Attorney Brian Hoffman and asked to accompany Juliza to court. When Ms. Shattuck arrived at the court trailer, she showed ICE the signed G-28 authorizing the CARA Project to represent Juliza and asked to join the meeting. As Ms. Shattuck notes in her sworn declaration, "The officer said that was not possible. He said that ICE and the CARA Project had agreed that counsel could only be present at 'legal proceedings.'"[7]

When Juliza reached the court trailer, she was told "that [she] was so late for [her] meeting that [she] had missed it, and would be called back again later." Based on a subsequent conversation with Ms. Shattuck, Juliza "was confused about the nature of the meeting, and fearful of meeting with ICE without a legal representative. She reiterated several times that she had not been notified in advance of the meeting. [She] was tearful, and appeared intimidated and humiliated."

The next day, when ICE called Juliza back into courtroom (which she describes as a room with "long wooden benches"), she "still did not know why [she] was there or what was going on." The officer simply asked Juliza for her family's contact information. Upon receiving it, he immediately called the family and, in front of Juliza, told them to buy her a bus ticket. Juliza recalls, "I was excited because I thought that soon I would get to leave … I thought I could leave without having to pay bond or wear an ankle monitor." However, when Juliza left that meeting, she still had no idea about the terms of her release.

Over the next few days, Juliza was called back into "court" several times to arrange the purchase of a bus ticket, which one ICE officer told her must be open for ten days. When she mentioned this to another ICE officer, "he said that [she] must be lying because [she] shouldn't be able to buy bus tickets before [her] credible fear interview."

[7] This statement is in no way accurate. ICE and the CARA Project have not come to such an agreement. Moreover, as noted above, the mothers detained at Dilley – like all noncitizens – have a right to be represented whenever they are compelled to appear before DHS. *See* 5 U.S.C. § 555(b).

By September 15 – almost two weeks after Juliza was first called into "court," she still did not have any clarity from ICE about when her release would actually take place or what the terms would be. According to Juliza:

> I do not think that what they did to me is fair. They should not have told me that I was getting out soon. My son was also excited that we were getting out. Now my family and I are all disappointed that we have to wait in detention. I wish that my attorney had been allowed to come with me when I was asked to come to court.[8]

In addition to prohibiting attorney access to the meetings to which represented mothers are summoned to discuss alternatives to detention and terms of release, ICE also undermines the attorney-client relationship and impugns the reputation of CARA Project staff and volunteers during those meetings. At the September 9, 2015 meeting to which Olga was summoned, an ICE officer said that the "lawyers from that place [CARA]" were "lying" to the mothers.

**David Kolko**, an immigration attorney who has practiced for nearly thirty years, was personally denied entry when ICE examined one of his clients who had been instructed to appear "in court" on September 3, 2015. Even after Mr. Kolko filed a G-28 Entry of Appearance, ICE communicated with his client about the terms of her release, without informing or notifying him. ICE also visited Mr. Kolko's client in her residential unit to question her, and served her with documents, including a positive credible fear determination and a Notice to Appear, without serving copies on counsel.

In sum, ICE violates the rights of detained asylum seekers by prohibiting access to counsel during compulsory meetings at which the timing and conditions of their release are determined. These practices prevent the mothers from obtaining full and accurate information and make them even more vulnerable to coercion.

### C. Discouraging Mothers From Exercising Their Rights By Threatening to Deport or Withhold Medical Care from Detained Families

Several detained mothers have experienced direct intimidation and threats when they sought to exercise their rights to bond hearings or to inquire about the progress of their cases. On September 4 – after an immigration judge had already ordered her release on a $1,500 bond that her family was pulling together – ICE called **Renita** and about thirteen other mothers into Chapel #2, where they faced pressure to accept ankle monitors in lieu of bond. According to Renita's sworn declaration, the meeting was led by a woman, whose name she did not remember, and a male ICE officer. These representatives told the mothers that there was nothing wrong with ankle monitors, which are neither heavy nor painful, and that they should just accept them. Under these circumstances, every mother except Renita accepted an ankle monitor. Although some of these women were represented, their attorneys were not notified about or allowed to attend this meeting. Renita says, "I wish that I had lawyers with me when ICE pressured me, on

[8] As of September 30, 2015, Juliza was still detained at Dilley. Her credible fear interview took place on September 15, 2015.

four separate occasions, to accept the ankle monitor. I found the process confusing and frightening."

Another mother, Beatriz, faced even more serious threats. ICE called Beatriz and some forty other mothers into a meeting about release terms, where an officer informed them that ankle monitors were their best option. Beatriz was the only mother in the group who insisted that she wanted to seek bond. According to Beatriz, the ICE officer told her, in front of the group, that "they were offering our freedom with the shackle, and if we refuse the shackle, we are refusing [our] freedom, and wouldn't get any further help from ICE because we are choosing to stay here." The officer also informed Beatriz that it would be "weeks or months before a judge could see [her] to set a bond because they have so many files." The officer even went so far as to warn that if her child got sick, she "might not get help from them" because she was "choosing" to stay detained.

Similarly, on September 9, 2015, ICE summoned Olga to a meeting with around thirty other mothers. During that meeting, an ICE officer directly discouraged the mothers from making inquiries about the progress of their cases and threatened deportation if they did. As Olga explains, the officer "told us at the meeting that if we thought that process was taking too long, we should let him know and he, himself, would start the process of deporting us back to our countries the next day."

D. Forcing Mothers to Sign Documents that They Do Not Understand and Pre-Checking Boxes Waiving the Right to Review by an Immigration Judge

Mothers report that when ICE summons them to discuss conditions of release, they are asked to sign documents, sometimes in English, that they do not understand. Further, mothers report that ICE officers pre-check a box on the Notice of Custody determination to indicate that the mother does not request immigration judge review of her custody determination.

In her sworn declaration, **Lillian** shares that on September 18, ICE summoned her along with about forty other mothers to a meeting, where an ICE officer informed them that "getting a bond would take about 35 or more days and that the quickest option out of the detention center is the ankle monitor...." In addition, an ICE officer made her sign the "Notice of Custody Determination" "without explaining … what [she] was signing." She states further that he – not she – checked the "I do not request an immigration judge review of this custody determination" box "without explaining to [her] why he checked it." According to Lillian, "I was not given the opportunity to check this box myself, and consequently not allowed to make this decision myself." She states that had the ICE officer provided accurate information, she would have opted for a bond hearing before an immigration judge. In Lillian's words, "[t]he officer made it difficult for me to say no to the ankle monitor."

Similarly, the first time ICE summoned Yesenia to discuss the conditions of her release, she remembers signing a document that she did not understand. Two days later, ICE summoned her to a second meeting, where several ICE officers reiterated that the mothers "would have to wait for four weeks if [they] wanted … a bond hearing." At this meeting, Yesenia signed the ankle monitor agreement because she felt she had no other choice: "The agreement was in English and

no one translated or interpreted it for me, the officer just told me to sign. I didn't really understand what I was signing, but I thought that if I didn't sign, my children and I would be deported." Reflecting on this experience, Yesenia states, "I wish that an attorney had been with me during these meetings. I would have felt better, understood more what was going on, and been more comfortable asking questions."

E. Conclusion

The cases cited in this Complaint strongly suggest that ICE has used misinformation and, in some cases, direct threats and intimidation to discourage detained mothers from inquiring about their cases, persuade them to shortcut the judicial process available to them, and coerce them into accepting ankle monitors. The cases also demonstrate that ICE has repeatedly undermined the detained mothers' right to counsel. We urge your offices to immediately investigate the attached examples of the coercion around ankle monitors and interference with statutorily mandated access to counsel.

Sincerely,

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