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May 26, 2015

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

The Honorable Jeh Johnson
Secretary of Homeland Security
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Avenue NW
Washington, DC 20528

Re: **End Detention of Mothers and Children Seeking Protection as Refugees**

Dear President Obama and Secretary Johnson:

The New York City Bar Association (the "City Bar") and its Committee on Immigration and Nationality Law write to express our serious concern about the large-scale detention of immigrant mothers and children. The detention of these families, many of whom have fled extreme violence in their home countries, compounds existing trauma and distress for many mothers and children and raises serious due process concerns. The City Bar strongly urges that the Administration stop detaining vulnerable immigrant mothers and children except in exceptional circumstances.

The City Bar has a longstanding commitment to promoting the fair and effective administration of justice, including in the immigration system. Our Committee has deep knowledge of issues affecting women, children, and other asylum seekers in removal proceedings. Collectively, our members have many years of experience in providing pro bono representation to immigrant adults and children and in representing asylum seekers and survivors of domestic violence. Our members include private counsel who practice in this field and scholars and attorneys who have served in prominent non-governmental organizations dedicated to protecting human and civil rights. In addition, our City Bar Justice Center has long provided direct assistance to those

seeking asylum, and also addresses immigration issues affecting immigrant women and children, including victims of human trafficking and domestic violence.

Detention Harms Children and their Parents. Detention profoundly impacts the emotional and physical health of children and their mothers. Many of the Central American families coming to the United States are seeking safe haven and refuge from persecution and other violence, and they are re-traumatized by the experience of detention. The physical and mental deterioration of young children in the family detention facilities has been documented by the media and observers.[1] Most of these families have valid asylum claims, and have sponsors in the United States willing to house and support them during their removal proceedings. They need protection and should not be in detention.

Since 1997, the federal government has explicitly recognized the particular vulnerability of immigrant children and the need for heightened protections and safeguards in caring for them. The *Flores* Settlement Agreement ("*Flores* Settlement"), to which the government is a party, established a policy of release and set minimum standards of treatment for all children in immigration custody.[2] The *Flores* Settlement states that "INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs…" Thus, the Office of Refugee Resettlement, which takes custody of all minors under 18 who enter the United States without an adult caretaker, reports that children in its custody are released in an average of 29 days to family members or other caretakers.[3]

DHS incorrectly has refused to apply the terms of the Flores Settlement to all immigrant children. On April 24, 2015, in a class action lawsuit brought by the Center for Human Rights and Constitutional Law and others, a District Court in California disagreed with DHS's position, stating that: (1) the Flores Settlement applies to all minors in custody, including those accompanied by a parent; (2) the preference to release a child to a parent requires that DHS release a child's accompanying parent except where doing so would create a flight or safety risk; (3) DHS cannot be in compliance with the Flores Settlement because it is detaining families in secure, unlicensed facilities, and the settlement gives children the right to be housed in non-secure facilities that are licensed to care for children.[4]

Family Detention Raises Due Process Concerns. The City Bar is deeply concerned about continuing due process violations in detention facilities, which effectively result in a denial of the right to counsel for many women and children.

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[1] *See, e.g.*,Wil S. Hylton, *The Shame of America's Family Detention Camps*, New York Times, Feb. 4, 2015, available at http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html.

[2] Flores v. Reno, No. CV 85-4544- RJK(Px), Stipulated Settlement Agreement (C.D. Cal. Jan. 17, 1997), available at https://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf.

[3] *ACF Fact Sheet,Subject: U.S. Department of Human Services, Administration for Children and Families*, Office of Refugee Resettlement,Unaccompanied Alien Children Program, November 2014, available at https://www.acf.hhs.gov/sites/default/files/orr/fact_sheet.pdf.

[4] See, e.g.,Franco Ordonez, 'The *beginning of the end' for Obama's migrant family detention?,* McClatchyDC, April 28, 2015, available at http://www.mcclatchydc.com/2015/04/28/264801/court-could-force-obama-administration.html.

As first detailed in our letter of August 20, 2014, the City Bar remains concerned about practices in family residential centers that are inconsistent with due process.[5] For example, the widespread use of detention in remote areas significantly impedes access to legal representation for women and children. The family detention facilities are located far from urban areas where legal services providers and pro bono attorneys can be found. The lawyers who have volunteered to assist detained families in the family residential centers travel from all over the country to do so, often at significant personal expense. Most of the volunteer attorneys and cannot afford to stay for more than a week or two, resulting in a revolving door of legal service providers and fractured legal representation for the families.

Additionally, families have been afforded very limited access to telephones to contact lawyers, family members, or other individuals who can help them document their cases. The immigration courts hearing these families' cases have relied exclusively on videoconference hearings, which make it extremely difficult for judges to assess credibility and understand the asylum claims, and which create an atmosphere of isolation and fear for the women and children who are testifying about traumatic experiences. Videoconference hearings also mean that an attorney cannot simultaneously appear in the courtroom and confer with her client, which restricts the lawyer's ability to provide effective representation. Finally, the extremely rapid pace at which removal proceedings are conducted frequently affords insufficient time to amass evidence critical to support the families' claims for asylum or other protections.

Detention of Mothers and Children Does Not Achieve its Stated Goals and Should Not be Used to Deter Future Migration. Detention is neither effective nor justified as a deterrent to the migration of families and individuals into the United States. A District Court in the District of Columbia ruled in February against DHS policy of locking up asylum-seeking mothers and children as a way to deter others from coming to the United States, and held that the government must make an individualized determination that a family poses a danger or flight risk before detaining the family.[6] Moreover, recent reports show that detention of families does not effectively deter migration, particularly when families are fleeing persecution abroad.[7]

On May 13, 2015, DHS announced that conditions and oversight would be improved at its family residential centers. This acknowledgement of the importance of the well-being of families is welcome, as is the additional oversight that the family centers will receive. However, improving conditions at detention facilities does not address the core problems with DHS's detention practice, including the length of time that families are held in detention facilities, the difficulties in accessing counsel, the lack of reasonable justification for prolonged detention of families, and the government's recognition, as reflected in ORR practices of reunifying children

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[5] New York City Bar, Letter to President Obama, Re: Denial of Access to Counsel and Fair Hearings for Immigrant Mothers and Children Detained in Artesia, New Mexico, August 20, 2014, available at http://www2.nycbar.org/pdf/report/uploads/1_20072779-LetteronDenialofCounselandFairHearingsforDetainedImmigrantMothersChildren.pdf.

[6] *RILR v. Johnson*, No. 1:2015cv00011 (D.D.C. Feb. 20, 2015).

[7] Catalina Restrepo, *Reports: Detention Doesn't Deter Migrants and Refugees from Coming to United States*, American Immigration Council Immigration Impact, May 8, 2015, http://immigrationimpact.com/2015/05/08/reports-detention-doesnt-deter-migrants-and-refugees-from-coming-to-united-states/.

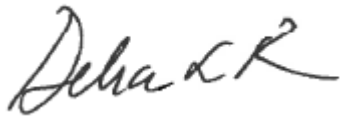
with adult relatives or other caretakers when safely possible, that any detention is harmful to children.

The Administration Should Keep Families Together. In complying with the *Flores* settlement, the Administration should not separate parents and children except in extreme circumstances. The *Flores* settlement recognizes that children must be reunified with parents or legal guardians with very narrow exceptions. In light of this provision, and concerns for the well-being of the children currently detained with their parents, the City Bar believes that parent and child immigrants should be released together.

CONCLUSION.
The City Bar believes that the United States can and must stop family detention, in accordance with due process and domestic and international law on the treatment of children and asylum seekers. Due process requires a strong presumption against civil detention, and detention raises particularly severe concerns for vulnerable individuals such as asylum-seekers, domestic violence survivors, and children.

We urge the administration to end the detention of families with children, and to release families on recognizance, bond, or supervision unless required by exceptional individual circumstances. In addition, as we have written elsewhere, we urge the Administration and Congress to provide appointed counsel to all children and families in removal proceedings, including those detained in remote locations.

Respectfully,



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