



UNITED STATES COMMISSION ON CIVIL RIGHTS

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January 22, 2016

The Honorable Barack Obama
President of the United States
The White House
Washington, D.C. 20500

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

RE: ICE Raids Involving Central American Refugees

Dear Mr. President and Mr. Secretary:

The undersigned Commissioners of the United States Commission on Civil Rights (“Commission”), representing a majority of the Commission, respectfully urge you to cease immediately the raids currently being carried out by the Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) against Central American refugees.

The raids being conducted are in stark contrast to our laws and values. Mr. President, as you said in 2008 when addressing the National Council of La Raza, “The system isn’t working...when communities are terrorized by ICE immigration raids...when people are detained without access to counsel.”¹ That is exactly what is happening today.

The Commission has a long-standing history of examining the civil rights concerns surrounding the U.S. immigration system. Most recently, on September 17, 2015, the Commission issued to the President and Congress its Statutory Enforcement Report entitled, “With Liberty and Justice for All, The State of Civil Rights at Immigration Detention Facilities.”²

¹ <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/15/AR2008071501138.html>

² http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf



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The Commission has examined the issue of access to counsel for families in detention and found that the lack of, or obstruction to access to legal counsel afforded to these refugees in their initial, underlying proceedings brings into question the enforceability of the orders of deportation upon which the present ICE raids are based.

Furthermore, it was reported to the Commission that detained immigrants who obtain legal counsel are six times more likely to succeed in removal proceedings.³ Only a little more than a quarter of immigrant Central American women and children under consideration have been able to obtain counsel. Without legal representation these refugees are very unlikely to prevail in their cases, even when they can demonstrate a “credible fear” of returning to their home country. Indeed, only 1.5% of unrepresented women and children have prevailed in their asylum cases.⁴ Therefore, given the information gathered by the Commission outlined below, the failure to have legal counsel in the first instance and thus, to have adequate due process, many of the orders of deportation that DHS is now seeking to enforce by way of these ICE raids are tainted. Clearly, the system still is not working, and therefore, these ICE raids and deportations of these Central American women and children must stop.

As part of the investigation that resulted in the Report, the Commission conducted a hearing, gathered facts and data to analyze whether DHS, its component agencies, and private detention corporations with whom the federal government contracts to detain immigrants were complying with the U.S. Constitution, the Performance Based National Detention Standards⁵, Prison Rape Elimination Act Standards⁶, the Flores Settlement Agreement, and other related immigrant child detention policies. In May 2015, the Commission visited Karnes Family Detention Center and Port Isabel Detention Centers – both located in Texas – to corroborate the written and oral evidence the Commission gathered. Based upon an analysis of data gathered from the Commission’s fact-gathering visit, evidence collected during panelists’ briefing presentations and additional research, the Commission made numerous findings and recommendations concerning the state of civil rights and due process afforded to the persons who are now targeted by the ICE raids.

³ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 108)

⁴ <http://trac.syr.edu/immigration/reports/377/>

⁵ See What We Do, 2011 Operations Manual ICE Performance-Based National Detention Standards, U.S. Immigration and Customs Enforcement, *available at* <http://www.ice.gov/detention-standards/2011>.

⁶ Prison Rape Elimination Act of 2003, PUB. L. No. 108-79, 117 Stat. 972 (2003) (codified at 42 U.S.C) § 15601- 15609).



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Specifically, and relevant to the appropriateness of the current ICE raids, the Commission received testimony at our hearing, as it relates to detention, that:

- The actual procedures ICE uses to process detained immigrants is not conducive to affording them adequate opportunity to obtain counsel;⁷
- DHS employees and contract facilities may be proactively and intentionally discouraging and interfering with detained immigrants' ability to access and obtain legal services;⁸
- Many detained women are not aware of their ability to obtain pro bono legal services and as a result appear pro se during immigration proceedings;⁹
- Phone services were arbitrarily cut when detained immigrants attempted to dial a number to contact outside legal services;¹⁰
- Many DHS practices affect detained immigrants' ability to secure and obtain legal counsel at their own expense, despite immigrants' rights under the Fifth Amendment and the Immigration and Nationality Act to do so;¹¹
- Reports that ICE hinders detained immigrants' ability to communicate with legal counsel;¹²
- ICE and detention officials arbitrarily create rules that interfere with an attorney's ability to meet with their client;¹³ and
- Federal detention employees actively deny that detained immigrants have a right to counsel or stonewall attorneys from being present during detainee interviews with immigration officials.¹⁴

Furthermore, pro bono counsel who have intervened in the deportation of persons detained in the ICE raids which recently began have succeeded in winning stays of deportation. The CARA Family Detention Pro Bono Project was able to determine that the families in question had bona fide asylum claims but had been "deprived of a

⁷ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 109)

⁸ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (pages 110-112)

⁹ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 111)

¹⁰ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 111)

¹¹ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 112)

¹² http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 113)

¹³ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 113)

¹⁴ http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf (page 114)



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meaningful opportunity to present them at their hearing in immigration court.”¹⁵ CARA volunteer lawyers filed appeals in 12 cases and won stays of removal from the Board of Immigration Appeals in all 12 cases, representing 33 of the 121 mothers and children apprehended by ICE in its recent raids.¹⁶ This brings into serious question whether these refugees had an ample opportunity to present their asylum claims in the first instance. Furthermore, volunteer attorneys met with several families picked up in the recent ICE raids and found many of the concerns that the Commission documented in its Report continue to exist, further tainting the deportation of these Central American families. According to CARA volunteer attorneys, the following are some of the trends they see among the families rounded up for deportation who are being held currently at the South Texas Family Detention Center in Dilley, Texas:

- “Families have fled El Salvador and Honduras, two of the most violent areas in the Western Hemisphere.
- Many mothers did not understand the legal process or their right to appeal a negative determination by the immigration judge.
- Traumatized families have been incarcerated, with inconsolable children and mothers terrified of deportation who have limited access to legal assistance.
- Project attorneys are scrambling to file legal motions for these families, including, for example, one mother who is a survivor of extreme domestic violence but never had the opportunity to present her claim for asylum before an immigration judge.
- ICE is blocking access to counsel by refusing to let certain women meet with CARA to discuss their cases.
- None of the family members saw a warrant before ICE entered their homes.¹⁷”

Furthermore, it is well documented that over 7,000 Central American children were ordered deported without appearing in immigration court.¹⁸ Many of those children were never notified of their hearing dates or were victims of notification errors committed by immigration authorities. Many of these children were deprived of their due process rights may now be subject to deportation. Clearly, the system is not working. If any of these 7,000 children are among those on ICE’s raid target list, they should first be allowed new

¹⁵ <http://www.aila.org/infonet/cara-pro-bono-project-winning-stays-of-deportation>

¹⁶ <http://www.americanimmigrationcouncil.org/newsroom/release/cara-33-mothers-and-children-protected-immediate-deportation>

¹⁷ <http://www.aila.org/infonet/cara-pro-bono-project-winning-stays-of-deportation>

¹⁸ <http://www.latimes.com/local/california/la-me-children-deported-20150306-story.html>



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hearings to determine if they have grounds for asylum. They should be allowed 90 days to obtain counsel and a hearing scheduled no less than 90 days after obtaining counsel.

According to media accounts, ICE is apprehending parents and children in their homes, some in predawn raids and with questionable or no warrants.¹⁹ In Georgia it was reported that ICE officers lied to enter immigrants' homes without a warrant²⁰ in apparent violation of the 4th Amendment. There are also concerns about the focus of the raids including persons who should not be included, even by DHS's own stated priority focus. For example, ICE agents inappropriately sought to apprehend a teen already in the legalization process.²¹ Clearly, the system is not working.

We are also concerned that many of the Central American women and children subject to the present raids and deportation proceedings are considered "disabled" pursuant to the Rehabilitation Act of 1973, due to suffering from post traumatic stress disorder, depression and anxiety, as outlined in a "Notification of disabilities of persons targeted in Central American refugee raids and request for immediate modifications," dated January 4, 2016 and addressed to Secretary Johnson and Attorney General Lynch.²² Because of the trauma that many of these refugees have endured, and likely have not had an adequate opportunity to raise in appropriate proceedings, these disabled parents and children must be afforded the opportunity to seek accommodations in order to meaningfully participate in their immigration removal proceedings and asylum seeking processes, as those federal programs are subject to the Rehabilitation Act.

A further concern with the current policy on the ICE raids is that they will ultimately result in the return of these women and children to countries where their lives are in danger. For example, El Salvador saw a nearly 70% increase in homicides related to the gang violence which many of these refugees have fled.²³ El Salvador is now considered

¹⁹ <https://www.rt.com/usa/327899-deportations-immigrant-families-ice/>;
http://www.salon.com/2016/01/05/how_americas_anti_immigrant_hysteria_just_hit_an_unprecedented_new_low/

²⁰ http://www.huffingtonpost.com/entry/ice-lied-to-get-inside-immigrants-homes-during-raids-lawyers-say_56942592e4b086bc1cd4e03f

²¹ <http://thescoopblog.dallasnews.com/2016/01/ice-raids-on-sunday-in-dallas-attempted-to-detain-a-teen-in-the-process-of-legalization.html/>

²² https://www.law.yale.edu/system/files/area/clinics/letter_to_dhs_and_doj_-_2015_01_04.pdf

²³ <http://latino.foxnews.com/latino/politics/2016/01/04/immigration-raids-sparking-outcry-on-both-sides-issue/>



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the world's new murder capital.²⁴ The Overseas Security Advisory Council continues to list the 2015 crime rating for El Salvador, Honduras and Guatemala as "critical."²⁵ In fact, the Peace Corps recently announced that it was suspending sending its volunteers to El Salvador because of "the ongoing security environment."²⁶ If it is not safe enough to send our Peace Corps volunteers, it should not be safe enough to return the women and children who fled these conditions in the first place. Indeed, Congress remains concerned enough about the safety conditions in those countries that it recently approved \$750 million for El Salvador, Honduras and Guatemala to fight organized crime. We cannot turn a blind eye to the conditions that these refugees have fled and to which we are returning them. To do so would be to repeat mistakes of the past which we have committed as a nation, and mistakes other nations are currently making which we have rightly condemned.

Mr. Secretary, you have stated, "if you come here illegally, we will send you back consistent with our laws and values."²⁷ We fail to see how deporting women and children, to whom we have failed to provide required due process, many of whom likely have valid asylum claims, many of whom may be disabled and subject to the protections of our laws, are rounded up and returned to countries where violence and instability will further endanger their lives, is "consistent with our laws and values." Indeed, the manner in which we are handling this refugee crisis on our own doorstep is the antithesis of American values.

Mr. President, we respectfully request that you immediately direct the DHS to cease these ICE raids of Central American women and children, and that each such person scheduled for deportation who is seeking asylum have their cases reviewed for violations of their due process rights, and have the opportunity to have pro bono counsel to ensure that they have had an adequate opportunity to present any basis for asylum status if they did not

²⁴ <http://www.theguardian.com/world/2015/aug/22/el-salvador-worlds-most-homicidal-place>

²⁵ <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17494>;
<https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17691>; and
<https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17785>

²⁶ http://www.huffingtonpost.com/entry/el-salvador-peace-corps-deportation-raids_56951d56e4b09dbb4bac94ab

²⁷ <http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>



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have an adequate opportunity to do so in the first instance. Unless we do this, the system will not be working in accordance with our values and laws as a nation.

Respectfully,

Handwritten signature of Martin Castro in black ink.

Martin Castro
Chair, USCCR

Handwritten signature of David Kladney in blue ink.

David Kladney
Commissioner, USCCR

Handwritten signature of Patricia Timmons Goodson in black ink.

Patricia Timmons Goodson
Vice-Chair, USCCR

Handwritten signature of Karen Narasaki in black ink.

Karen Narasaki
Commissioner, USCCR

Handwritten signature of Roberta Achtenberg in black ink.

Roberta Achtenberg
Commissioner, USCCR

Handwritten signature of Michael Yaki in black ink.

Michael Yaki
Commissioner, USCCR