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*Via email c/o Leonard Joseph, Chief of Staff
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Sarah Saldaña, Esq.
Director, Immigration and Customs
Enforcement
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20016

Re: Access for Pro Bono Volunteers at Karnes, Dilley and Berks
Family Detention Centers

Dear Director Saldaña:

The undersigned organizations are involved in coordinating and providing pro bono representation to women and children detained at the ICE family detention centers at Karnes City and Dilley, TX and Berks, PA. We write to request your help in establishing uniform pro bono volunteer access policies in all three facilities. As you may know, Vice President Biden asked private lawyers in August 2014 to respond to the influx of Central Americans seeking protection in the United States by providing pro bono representation. We have answered that call, but have unfortunately encountered unnecessary obstacles that diminish the effectiveness and efficiency of pro bono representation and, ultimately, threaten to discourage pro bono volunteerism to assist these families.

Since September 2014, we have been discussing pro bono access issues for Karnes and Dilley with Deborah Achim, the Field Office Director in San Antonio. Separate negotiations (with separate results) were had at Berks. Unfortunately, these discussions have not resulted in a set of written policies that is consistent across all facilities to enable pro bono volunteers – lawyers, as well as law students, paralegals, interpreters and medical professionals working under the supervision of counsel – to provide efficient and effective representation to the women and children detained by ICE. The obstacles placed before pro bono volunteers in these facilities – and the arbitrary and inconsistent application of helpful policies – are making law firms and law schools reluctant to send additional volunteers to assist these women and children. Moreover, even where we have reached agreement on access issues, the refusal by ICE to put any of our agreements in writing has resulted in contractors refusing to acknowledge these agreements.

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Accordingly, we set forth below proposed policies to be applied uniformly at all ICE detention facilities housing women and children. These policies will facilitate pro bono representation by a wide variety of volunteers. These proposed policies also recognize that “residential” ICE detainees present no risk of harm, and should be accorded the respect and trust that one would extend to a non-detained client in a law office. Standards used in the criminal incarceration setting are entirely inappropriate for this population.

- These policies, unless otherwise noted, should apply to all pro bono volunteers, including lawyers, law students, paralegals, interpreters and medical professionals (collectively, “volunteers”).
 - *Lawyers are not the only critical members of the pro bono teams trying to assist detained women and children. In order to provide representation to as many of these families as possible, attorneys require the help of other volunteer professionals working under their supervision.*
- Pre-clearance should not be required for lawyers or non-lawyers working under the supervision of counsel. To the extent pre-visit clearance is needed for other non-lawyers, such clearance should be performed within 48 hours of the submission of relevant information to ICE.
 - *Dilley has apparently been requiring pre-clearance for lawyers, as well as non-lawyers, delaying visits by several days in some cases. Recently, volunteer attorneys who had arrived from out of state were prevented from meeting clients for 24 hours, resulting in immigration court hearings being delayed. There is no authority for requiring attorney pre-clearance; the ICE Family Residential Standards do not contemplate a “pre-clearance” process for any legal visitation.*
 - *The clearance process for non-attorney volunteers has taken several weeks in some cases, particularly at Dilley, delaying the work of law students who travel from out of state, and in some cases also leading to hearings being continued. Pre-clearance also severely limits the ability to find volunteer interpreters to accompany lawyers to the facilities.*
- Volunteers should not be prevented from visiting detained clients if they have been unable to provide advance notice of the visit.
 - *Karnes and Dilley have, at times, implemented a rule requiring 24-hour notice via a faxed list of A-numbers to meet with detainees. This requirement presents an undue obstacle to representation, and given that these detention centers sometimes do not demand such notice, it is clear that it is unnecessary as well. Indeed, given the fact that many volunteers travel from around the country to these remote locations and meet clients only once they have arrived, advance notice is often not feasible. The ICE Family Residential Standards do not contemplate any such advance notice for legal visits, in*

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- contrast to visits by “Community Service Organizations,” which are required to provide names in advance.*
- Volunteers should be allowed to bring into the facilities the technology necessary to provide efficient and effective representation, just as they would do in any non-detained setting. This includes laptops, desktop printers, scanners, wifi “hotspots,” cell phones and video-conferencing technology.
 - *While we have reached some agreements with ICE on the ability to bring technology into the facilities, the implementation of these agreements has been inconsistent. At Karnes, law students were told that they could have only one laptop for the entire group, without regard to the number of clients they were meeting at the same time. They were also not allowed to bring in wifi hotspots. Cell phones were allowed into the former family detention center in Artesia, NM, as ICE recognized their utility; in Karnes, cell phones were allowed for a time but are now generally prohibited. Berks and Dilley have also prohibited the use of cell phones by volunteers.*
 - *Access to this technology is critical, particularly given the remote locations of these detention centers and the lack of pro bono attorneys in the area to represent these families. If volunteers are prohibited from using a computer to type up notes, it doubles the time for each case, and means they can represent fewer women. For instance, using cell phones allows volunteers who are not fluent in Spanish or other indigenous languages (such as Mam, K’iche, and Canjobal) from accessing interpretation services, or limits their ability to visit to the interpreters’ schedules. Cell phones also allow volunteers to contact witnesses, family members and other individuals outside the facility who might provide useful information during a meeting with a detainee (including, for example, information relevant to a request for bond).*
 - Additional accommodations should be made for volunteers representing non-Spanish speaking detainees, including release of the detainee when translation services cannot be located.
 - *In all three facilities, volunteers face particular challenges when representing non-Spanish speakers, as even phone translation can be difficult to find-- for the volunteers, for the Asylum Office, and for EOIR, resulting in delayed proceedings. In addition, detained non-Spanish speakers suffer from their inability to communicate with the vast majority of other detainees and staff, including medical staff. In many cases, release is the only way to secure adequate representation and due process.*

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- Volunteers should be given ready access to the visitation areas of the facilities, without unnecessary delay and without limiting their ability to bring in reasonable amounts of water and snacks and store them in a refrigerator. Volunteers should also have the ability to leave and return without penalty, as long as space permits.
 - *Volunteers have reported inordinate delays in admittance to all three facilities – for example waiting up to an hour to be admitted without explanation. Particularly in Texas, volunteers often travel great distances to visit the families detained in these facilities. In order to use their time efficiently, they often work through meals, and thus need some food and water during the day. To the extent volunteers need to leave and return – for instance, to address other work issues not related to their volunteering – they should not be penalized for the departure. Moreover, limiting visitation unnecessarily results in delays in court proceedings, prolonging expensive detention.*
 - *At Karnes in particular, volunteers were told that if they left the facility, they could not return that day, leading to some going more than nine hours without food and with water only at the facility's water fountain. While the reason given was that other attorneys needed to be accommodated, there was no demand for the visitation areas at that time. To the extent the demand for visitation exceeds the available space, reasonable schedules should be created that allow volunteers to take short breaks from the room without losing the right to return.*
 - *To the extent the problem is the lack of space for legal visitation for the detained population, either ICE should provide more space or reduce the population at these facilities.*
- Each facility (currently Karnes, Dilley and Berks) should endeavor to create a secure, permanent office space for pro bono service provision, as was allowed at Artesia.
 - *A permanent space allows volunteers to work most efficiently while representing these families, alleviating the need to bring equipment in and out of the facility each day and allowing volunteers to meet and collaborate without leaving the facility during the day.*
- Women detained in these facilities should be given their identity documents that are held by ICE, and be able to share those documents with their attorneys.
 - *In many cases, neither the detained women nor their attorneys have been able to access identity documents that were confiscated by DHS upon apprehension. The lack of identity documents has in some cases led to increased bond amounts, precluding or delaying release, and has also limited the women's ability to travel once released. In addition, the proper procedure for requesting these documents should be clarified and consistent across facilities.*

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- To the extent that ICE or a facility operator seeks to limit the access by a volunteer, such as suspending visitation privileges, such a decision should be made at ICE headquarters with a clear process for the volunteer and the responsible pro bono legal services provider to appeal any such decision.
 - *Two paralegals working at Karnes have been barred from entering the facility in the past month. This is not the proper forum to debate the merits of these suspensions, but we note that banning these individuals has hampered our ability to provide pro bono representation to the women and children detained in Karnes, and was done without any apparent process.*
- As long as a HIPAA-compliant waiver is signed by the detainee (or in the case of a child, the guardian), any and all medical records maintained at the facilities or by DHS or the facility's operator should be released to volunteers within 48 hours.
 - *Health care providers in Karnes have refused to release medical records, demanding multiple forms and questioning the right of residents' counsel to make such requests.*
- ICE officials and contractors should be prohibited from suggesting to detainees that disciplinary infractions will affect their immigration cases, be shared with immigration judges, or go into their immigration case files. ICE officials and contractors should further be prohibited from suggesting appropriate forms of legal relief. All such behavior directly interferes with the right to counsel and due process in immigration proceedings.
 - At Berks, clients regularly report that guards threaten to "write them up" for any infraction and that they are told those reports go in their immigration file and will affect their cases.
 - At Karnes, one ICE official told a detainee that her attorney had really messed up by seeking parole because she does not qualify for parole – when it was the attorney's contention that she does in fact qualify. The officer suggested to the client that she might have been released if it had not been for the error of the attorney.

Establishing uniform policies for access for pro bono volunteers will not only result in more effective representation of detained women and children, and ensure that private lawyers and other professionals continue to volunteer, but will also make the entire immigration detention and adjudication system more fair and efficient. We hope that you will consider these proposals and look forward to hearing from you soon to discuss these important issues.

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Should you wish to discuss these issues, please contact Steven Schulman via email at ssschulman@akingump.com or by phone at 202-887-4071.

Respectfully,

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cc: Julie Rodriguez, White House Deputy Director of Public Engagement