

UNITED NATIONS HUMAN RIGHTS COUNCIL

**Working Group on the use of mercenaries as a means of violating human rights and
impeding the exercise of rights of peoples to self-determination**

**RESPONSE OF THE REFUGEE AND IMMIGRANT CENTER FOR EDUCATION AND
LEGAL SERVICES TO THE WORKING GROUP'S CALL FOR SUBMISSIONS ON
THE ROLE OF PRIVATE MILITARY AND SECURITY COMPANIES (PMSCS) IN
IMMIGRATION AND BORDER MANAGEMENT AND THE IMPACT ON THE
PROTECTION OF THE RIGHTS OF ALL MIGRANTS**

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INTRODUCTION	3
CoreCivic	3
The GEO Group, Inc.	4
RAICES	5
Historical Context	5
Standards for Immigration Detention	7
Standards for Family and Child Detention	7
Standards of International Law Applying to the Detention of Noncitizens in the United States	9
Treaties	9
Customary International Law	9
ALLEGED VIOLATIONS	12
Respect for the Family Unit	12
Evidence of Violations	12
Right to Work and Fair Remuneration	14
Evidence of Violations	14
Right to Seek Asylum	15
Evidence of Violations	15
Right to Liberty and Security of Person	15
Evidence of Violations	16
Right to a Fair Trial	19
Evidence of Violations	19
Right to Health	21
Evidence of Violations	21
Translation	22
Nonresponsiveness	22
Inadequate Treatment	23
Mistreatment by Officials and Medical Practitioners	24
Children’s Medical Care	25
COVID-19 Preparedness	26
Right to Freedom of Expression	26
Evidence of Violations	26
Reitering Unheeded Past Recommendations	27
General Recommendations	28

INTRODUCTION

The Refugee and Immigrant Center for Education and Legal Services (“RAICES”) respectfully submits these comments to the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of rights of peoples to self-determination, in response to its call for information relevant to its thematic report on the role of private military and security companies in immigration and border management and the impact on protection of the human rights of migrants.

The information in this submission comes from RAICES client and staff testimonies, U.S. media reports, and legal documents from active or concluded cases in the U.S. courts. These materials are available to the Working Group upon request. This submission uses initials to protect noncitizens’ identities and safety.¹ If the Working Group requests the client declarations, RAICES will gladly provide a redacted version.

CoreCivic

CoreCivic, formerly the Corrections Corporation of America, is a “publicly-traded real estate investment trust (REIT)” that owns, manages, and/or operates approximately 122 private prisons and immigrant detention centers - “partnership correctional, detention and residential reentry facilities” - throughout the United States.² CoreCivic’s subsidiary Transcor America also provides detainee transportation services.³ Although CoreCivic highlights basic differences between the correctional facilities and detention services it offers, it states that “[d]etention services *often* differ from those found at traditional correctional facilities,” but not always (emphasis added).⁴ CoreCivic operates the South Texas Family Residential Center (“Dilley”) in Dilley, Texas, which detains noncitizen mothers and children, and Adams County Correctional Center (“ACCC”), in Natchez, Mississippi, which occasionally detains noncitizens who have been transferred from the Karnes County Family Residential Center (“Karnes”), formerly the Karnes County Residential Center, in Karnes City, Texas.⁵

¹ Although the Working Group defines the term “migrant,” we prefer to refer to this vulnerable class as simply “noncitizens.” All references to “noncitizen” in this comment submission references “any person who is not a citizen or national of the United States.” See 8 U.S.C. §1101(a)(3). See also *Pereira v. Sessions*, 138 S. Ct. 2105, 2110, 201 L. Ed. 2d 433 n.1 (2018).

²CoreCivic, *About CoreCivic*, CoreCivic Better the Public Good, 2020, <https://www.corecivic.com/about>

³ *Id.*

⁴ CoreCivic, *Detention Services*, CoreCivic Better the Public Good, 2020, <https://www.corecivic.com/safety/detention-services>

⁵ CoreCivic, *Find a Facility*, CoreCivic Better the Public Good, 2020, https://www.corecivic.com/facilities?state=All&hs_name=

The GEO Group, Inc.

The GEO Group, Inc., (“GEO”), formerly Wackenhut Corrections, is a REIT that provides detention center management and operation, post-release monitoring and supervision, and detainee transportation services.⁶ GEO owns and/or manages approximately 129 “secure facilities and processing centers” throughout the United States, United Kingdom, Australia, and South Africa, including Karnes.⁷ Through its subsidiary BI Incorporated, GEO also administers and oversees the electronic monitoring of noncitizens who are released from detention with electronic ankle monitors.⁸ GEO also has a significant lobbying arm, spending approximately \$1,520,000 in 2019.⁹ GEO states that it “does not lobby for or against immigration enforcement policies or any policies or legislation that would determine the basis for an individual’s incarceration or detention, the length of sentences or the criminalization of behavior.”¹⁰ However, researchers at Temple University did not disclose that a 2013 study “that alleged financial savings through prison privatization and equal or better performance by private prison companies” was funded by private prison companies, including GEO and CoreCivic (Corrections Corporation of America at the time).¹¹ CoreCivic then cited that study in an investor presentation, and further violated research ethics when it failed to disclose its funding and that of GEO and the subsequent potential conflict of interest.¹² The findings of the 2013 study funded by GEO and CoreCivic directly contradict a 2010 report from Arizona’s Office of the Auditor General that “determined that privately-managed prisons housing both minimum- and medium-security prisoners were more expensive to operate than state prisons, after adjusting for comparable costs.”¹³ This is only one of several instances where private prison companies - specifically GEO and CoreCivic - have funded research that produced findings that benefit the

⁶ The GEO Group, *Who We Are*, GEO. The GEO Group Inc., 2020, https://www.geogroup.com/who_we_are

⁷ The GEO Group, *Our Secure Services Locations*, GEO. The GEO Group Inc., 2020, <https://www.geogroup.com/LOCATIONS>

⁸ The GEO Group, *Electronic Monitoring*, GEO. The GEO Group Inc., 2020, https://www.geogroup.com/Electronic_Monitoring

⁹ OpenSecrets, *GEO Group Lobbying Profile*, 2020, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000022003>

¹⁰ The GEO Group, Inc., *Political Activity and Lobbying Report, 2018*, https://www.geogroup.com/Portals/0/SR/Political%20Engagement/Political_Activity_and_Lobbying_Report_2018.pdf

¹¹ Prison Legal News, *Research Study Finding Benefits from Prison Privatization Funded by Private Prison Companies*, June 15, 2013, <https://www.prisonlegalnews.org/news/2013/jun/15/research-study-finding-benefits-from-prison-privatization-funded-by-private-prison-companies/>

¹² *Id.*

¹³ *Id.*

prison companies. Additionally, Senator Elizabeth Warren has raised concerns about GEO's violations of federal securities laws.¹⁴

RAICES

RAICES envisions a compassionate society where all people have the right to migrate and human rights are guaranteed; it defends the rights of immigrants and refugees, empowers individuals, families and communities, and advocates for liberty and justice. As a 501(c)(3) legal services agency based in San Antonio, Texas, in the United States of America, RAICES serves tens of thousands of noncitizens per year in direct immigration legal services, social services, advocacy, community engagement, and refugee resettlement. In 2019 RAICES closed over 28,000 immigration cases free of charge. With ten offices throughout Texas, more than 200 staff members and thousands of active volunteers, RAICES is one of the largest legal service providers for low-income immigrants, asylum seekers, and refugees in the United States.

For many years, RAICES has provided legal services to adults and children detained by U.S. Immigration and Customs Enforcement ("ICE") in Texas. Most of these adults were apprehended by and/or held in the custody of U.S. Customs and Border Patrol ("CBP").

In response to concerns about lack of access to legal counsel, and community interest in providing pro bono legal services to detained families, the Karnes Pro Bono and CARA Projects were developed in 2014 to service Karnes and Dilley, respectively. The Karnes Pro Bono Project, now run primarily by RAICES, provides legal services to individuals and families held in Karnes in ICE custody. Pro bono work at Karnes involves various forms of legal assistance, including legal research in support of positive findings of fear for clients, Credible Fear Interview ("CFI") or Reasonable Fear Interview ("RFI") preparation and representation, declaration drafting, and representation of clients in immigration hearings. The Karnes Pro Bono Project works with Lawyers for Good Government, a group of volunteer attorneys, to coordinate telephonic representation at CFIs and RFIs.

Historical Context

The United States has practiced family detention and separation throughout its history. Notable examples include slavery, forced assimilation of Native Americans, and forced incarceration of Japanese Americans in internment camps. The mass detention of noncitizen families, however, is

¹⁴ Letter from Elizabeth Warren, U.S. Senator, to Warren Clayton, Chairman, Securities and Exchange Commission. (Jul. 24, 2019). Available at <https://www.warren.senate.gov/imo/media/doc/2019.07.24%20Letter%20to%20SEC%20on%20GEO%20Group's%20Misleading%20Statements.pdf>

a relatively recent practice.¹⁵ The now-defunct Immigration and Nationalization Service (“INS”) opened the Berks Family Residential Center (“Berks”), a former nursing home in Leesport, Pennsylvania, in March 2001 to detain noncitizen families.¹⁶ In 2003, following the passage of the Homeland Security Act, ICE replaced the INS and assumed responsibility for detaining noncitizens.

ICE opened the nation’s second large-scale family detention facility, the T. Don Hutto Residential Center (“Hutto”) in Tyler, Texas, in 2006.¹⁷ The Hutto Center’s jail-like setting failed to meet the minimum standards of detention for children as defined by the 1997 Flores Settlement, prompting a lawsuit in 2007.¹⁸ Following widespread public opposition, ICE transitioned Hutto into an adult detention center in 2009. This left Berks the nation’s only permanent family detention center from 2009 to 2014.¹⁹

Spring 2014 brought a purported surge in unaccompanied minors and families arriving at the southern U.S. border, creating a humanitarian crisis. In response, the U.S. Department of Homeland Security (“DHS”) opened a temporary facility in Artesia, New Mexico to house and process families already in expedited removal proceedings.²⁰ In expedited removal proceedings, asylum-seekers undergo a Credible Fear Interview (“CFI”) or Reasonable Fear Interview (“RFI”) with an Asylum Officer to determine if the individual can move forward with their asylum application. The remote location of the temporary facility, however, raised concerns about lack of access to counsel.²¹ On August 1, 2014, ICE began using Karnes, a former adult men’s prison, to detain noncitizen families.²² In November 2014 ICE announced the closure of its Artesia facility and the opening of Dilley, a permanent family detention center with a maximum capacity of 2,400 beds.²³

¹⁵ Bunikyte, ex rel. Bunikiene v. Chertoff, No. A-07-CA-164-SS, 2007 WL 1074070, at *3 (W.D. Tex. Apr. 9, 2007); In Re Hutto Family Detention Center, A-07-CA-164-SS (W.D. Tex. 2007)

¹⁶ OFFICE OF INSPECTOR GENERAL, *OIG-17-65, RESULTS OF OFFICE OF INSPECTOR GENERAL FY 2016 SPOT INSPECTIONS OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT FAMILY DETENTION FACILITIES, 2017*, <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf>.

¹⁷ Bunikyte, 2007 WL 1074070, at *1; In Re Hutto Family Detention Center, A-07-CA-164-SS (2007).

¹⁸ LUTHERAN IMMIGRATION & REFUGEE SERV. & WOMEN’S REFUGEE COMM’N, *LOCKING UP FAMILY VALUES, AGAIN: A REPORT ON THE RENEWED PRACTICE OF FAMILY IMMIGRATION DETENTION*, October 2019, https://www.speakcdn.com/assets/2474/lirswrc_lockingupfamilyvaluesagain_report_141114.pdf.

¹⁹ *Id.*

²⁰ Readout of Secretary Johnson's Visit to Texas, 2014 WL 2795455

²¹ Letter from the New York City Bar to Barack Obama, President of the United States, RE: NEW YORK CITY BAR ASSOCIATION’S OPPOSITION TO EXPANSION OF DETENTION FOR IMMIGRANT MOTHERS AND CHILDREN, Nov. 21, 2014, <https://grassrootsleadership.org/sites/default/files/uploads/City%20Bar%20Letter%20Opposing%20Expansion%20of%20Family%20Detention%20-%20Dilley.pdf>.

²² Press Release, Department of Homeland Security, *SOUTH TEXAS ICE DETENTION FACILITY TO HOUSE ADULTS WITH CHILDREN*, July 31, 2014, <https://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.

²³ Press Release, U.S. Immigration & Customs Enf’t, ICE’S NEW FAMILY DETENTION CENTER IN DILLEY, TEXAS TO OPEN IN DECEMBER, Nov. 17, 2014, <https://www.ice.gov/news/releases/ices-new-family-detention-center-dilley-texas-open-december>

In December 2014 ICE closed the temporary facility in Artesia.²⁴ At that end of 2014, the U.S. had three permanent family detention centers: Berks in Pennsylvania, and Karnes and Dilley in Texas. In April 2019 Karnes was transitioned from a family detention center to a women’s detention center.²⁵ At the time of this submission, it remains a family detention center; but as evidenced by the changes outlined here, that may change in the future.

Standards for Immigration Detention

When ICE was founded in 2003 it used the pre-existing 2000 National Detention Standards to govern the standards of detention for noncitizens.²⁶ Working with various stakeholders, ICE created and promulgated the Performance-Based National Detention Standards (“PBNDS 2008”) in 2008.²⁷ However, the standards were not enforced by an independent third party or governmental investigative authority.²⁸ With ICE left to police its adherence to its own detention standards, complaints around the conditions at Berks and Hutto continued.²⁹ In 2011 the framework was revised with the intent of improving overall detention conditions. Specifically, the 2011 PBNDS updated medical and mental health. complaint processes and responses, prevention of and protection from sexual assault and abuse, and improvement of communication with detainees who speak languages other than English.³⁰ The standards were revised again in 2016 to “ensure consistency with federal legal and regulatory requirements as well as prior ICE policies and policy statements.”³¹

Standards for Family and Child Detention

Although Berks began housing detained noncitizen families in 2001, ICE’s Family Residential Standards (“FRS”) were not put into place until late 2007.³² The ICE FRS factsheet states:

After analyzing the family detention operations in conjunction with applicable state statutes that specifically affect children, ERO began formulating standards to address the

²⁴ *Id.*

²⁵ Nomaan Merchant, *FAMILY DETENTION SPACES GOES UNUSED AS TRUMP WARNS OF CRISIS*, AP, APRIL 19, 2019, <https://www.apnews.com/ad5ff0b5fd564b5c9182a56ed8af5e3e>.

²⁶ U.S. Immigration and Customs Enforcement, *2000 Detention Operations Manual*, Department of Homeland Security, 2019, <https://www.ice.gov/detention-standards/2000>

²⁷ U.S. Immigration and Customs Enforcement, *2008 Operations Manual ICE Performance-Based National Detention Standards*, Department of Homeland Security, 2019, <https://www.ice.gov/detention-standards/2008>

²⁸ LOCKING UP FAMILY VALUES, AGAIN: A REPORT ON THE RENEWED PRACTICE OF FAMILY IMMIGRATION DETENTION, *supra* note 4.

²⁹ *Id.*

³⁰ U.S. Immigration and Customs Enforcement, *2011 Operations Manual ICE Performance-Based National Detention Standards*, Department of Homeland Security, 2019, <https://www.ice.gov/detention-standards/2011>

³¹ *Id.*

³² U.S. Immigration and Customs Enforcement, *Family Residential Standards*, Department of Homeland Security, March 25, 2011, <https://www.ice.gov/factsheets/facilities-residential-stds> See also U.S. Immigration and Customs Enforcement, *Family Residential Standards*, Department of Homeland Security, Dec. 18, 2019, <https://www.ice.gov/detention-standards/family-residential>

unique nature of families held in ERO custody. While developing these standards, ERO solicited guidance from medical, psychological and educational subject matter experts while collaborating with various organizations that included the DHS Office of Civil Rights and Civil Liberties (CRCL) and many non-governmental organizations (NGOs). In late 2007, ERO approved the Family Residential Standards which contain many revisions based on public comments.³³

Despite issuance of the FRS, complaints filed with the DHS Office for Civil Rights and Civil Liberties (“CRCL”) provided evidence that noncitizen adults and children in family detention centers were still subjected to sexual abuse, mental and physical trauma, and inadequate medical care.³⁴ In 2016 a report from ICE’s Advisory Committee on Family Residential Centers noted the Committee’s concerns about the agency’s own practice of family detention and the subsequent harm to detained children.³⁵

It is important to note that ICE’s standards of detention are merely suggestions and do not exist as binding or regulatory instruments. Alarming, a 2019 report from DHS’s Office of the Inspector General found that “ICE does not adequately hold detention facility contractors accountable for not meeting performance standards,” and that “[i]nstead of holding facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions seeking to exempt them from complying with certain standards. However, ICE has no formal policies and procedures to govern the waiver process, has allowed officials without clear authority to grant waivers, and does not ensure key stakeholders have access to approved waivers. Further, the organizational placement and overextension of contracting officer’s representatives impede monitoring of facility contracts. Finally, ICE does not adequately share information about ICE detention contracts with key officials.”³⁶

³³ U.S. Immigration and Customs Enforcement, *Family Residential Standards*, Department of Homeland Security, March 25, 2011, <https://www.ice.gov/factsheets/facilities-residential-stds>

³⁴ See MALDEF et al, CRCL Complaint re: Sexual Abuse, Extortion, and Harassment of Women at Karnes, Sept. 30, 2014, https://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf; See also AIC et al, CRCL Complaint re: ICE’s Failure to Provide Adequate Medical Care to Mothers and Children in Family Detention Facilities (July 30, 2015)

<https://www.aila.org/advo-media/press-releases/2015/deplorable-medical-treatment-at-fam-detention-ctrs/public-version-of-complaint-to-crcl>; See also AILA et al, CRCL Complaint re: They Psychological Impact of Family Detention on Mothers and Children Seeking Asylum (June 30, 2015)

<https://www.aila.org/advo-media/press-releases/2015/impact-family-detention-mental-health/complaint-crcl>

³⁵ U.S. DEP’T OF HOMELAND SEC., REPORT OF THE DHS ADVISORY COMMITTEE ON FAMILY RESIDENTIAL CENTERS (2016),

<https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>

³⁶ *Id.*

Standards of International Law Applying to the Detention of Noncitizens in the United States

The United States, like every sovereign State, is bound by the rule of international law flowing from international agreements or treaties that it has ratified as well as from customary international law.

Treaties

The United States government or Executive is bound by treaties that have received the advice and consent of the United States Senate, as the U.S. Constitution expressly states that the President of the United States “shall take Care that the Laws be faithfully executed,” including as indicated above international law.³⁷ These treaties should be applied by the courts of the United States whenever an exercise of Executive authority raises an issue of consistency with the United States’ treaty obligations. Indeed, the Supreme Court of the United States has frequently reviewed executive power based on treaties. Justice John McLean, in *Worcester v. Georgia*,³⁸ held that treaties with native American Nations are treaties that “must be respected and enforced by the appropriate organs of the Federal Government.”³⁹ In *Dooley v. United States*,⁴⁰ Justice Henry Billings Brown cited with approval the seminal work of American General Henry Wager Halleck, a jurist and expert in international law, stating that the “[t]he stipulations of treaties . . . are obligatory upon the nations that have entered into to them . . . and therefore the Executive is bound by the laws of war that are international law.”⁴¹ More recently, in *Hamdan v. Rumsfeld*,⁴² the U.S. Supreme Court has applied international law to an armed conflict involving the United States and held that “. . . the Executive is bound to comply with the rule of law . . .” including international law.⁴³

Treaties are expressly made part of U.S. law by the U.S. Constitution that expressly states that “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the Land.”⁴⁴

Customary International Law

Similarly, customary international law should be applied by the Court because it is part of U.S. law according to both the Constitution,⁴⁵ and the holdings of the Supreme Court of the United States.

³⁷ U.S. Const. art. II, § 3.

³⁸ 31 U.S. (6 Pet.) 515 (1932).

³⁹ *Id.* at 594.

⁴⁰ 182 U.S. 222 (1901).

⁴¹ *Id.* at 231–32 (citing Bart, S.H., *Halleck’s International Law*, Vol. II, 433 (1878)).

⁴² 548 U. S. 557 (2006).

⁴³ *Id.* at 635.

⁴⁴ U.S. Const. art. IV, cl. 2.

⁴⁵ U.S. Const. art. III, § 2, cl. 1.

The U.S. Supreme Court has consistently recognized that customary international law is part of U.S. law and that it will apply such law. The Supreme Court has stated that “[f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations [i.e. customary international law].”⁴⁶ Indeed, the first Chief Justice of this Court, Chief Justice John Jay, expressly charged grand juries “that the laws of nations make part of the laws of this and of every other civilized nation. They consist of those rules for regulating the conduct of nations towards each other; which, resulting from right reason, receive their obligations from that principle and from general assent and practice.”⁴⁷ Justice Gray, writing the opinion for the Court in *Hilton v. Guyot*,⁴⁸ expressly agreed, stating that “[t]he most certain guide . . . [to the applicable international law] is a treaty or a statute . . . [but] when . . . there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is”⁴⁹ The opinion states further that “[i]nternational law, in its widest and most comprehensive sense . . . is part of our law, and must be ascertained and administered by the courts of justice as often as such questions are presented in litigation between man and man, duly submitted to their determination.”⁵⁰ In well-known case of *The Paquete Habana*,⁵¹ Justice Gray, again writing the opinion for the Court, stated that “[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination.”⁵² Justice Gray further clarified that “[t]his rule of international law is one which . . . [this Court] . . . administering the law of nations are bound to take judicial notice of, and to give effect to”⁵³

The U.S. Supreme Court has again recently recognized that customary international law is part of U.S. law and must be applied by the U.S. courts.⁵⁴ This view is shared by the American Law Institute in its *Third Restatement of the Foreign Affairs Law of the United States* that states that “[i]nternational law and international agreements of the United States are law of the United States . . . [c]ases arising under international law or international agreements of the United States are within the Judicial Power of the United States”⁵⁵

Reviewing the constitutional history of Executive authority in light of international law, Professor Jordan J. Paust, one of the foremost authorities on international law in U.S. courts, concludes that the U.S. Constitution

⁴⁶ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729 (2004).

⁴⁷ John Jay, C.J., Charge to Grand Juries: The Charges of Chief Justice Jay to the Grand Junes on the Eastern circuit at the circuit Courts held in the Districts of New York on the 4th, of Connecticut on the 22d days of April, of Massachusetts on the 4th, and of New Hampshire on the 20th days of May, 1790 in *The Correspondence and Public Papers of John Jay*, Vol. III, 387, 393 (Henry P. Johnston, ed., 1891).

⁴⁸ 159 U.S. 113 (1895).

⁴⁹ *Id.* at 163.

⁵⁰ *Id.*

⁵¹ 175 U.S. 677 (1900).

⁵² *Id.* at 700.

⁵³ *Id.* at 708.

⁵⁴ See *Bolivarian Republic of Venezuela et al., v. Helmerich & Payne International Drilling Co. et al.*, 581 U. S. _____, 137 S. Ct. 348 (2017).

⁵⁵ *Id.* at § 111.

documents an early expectation that international law is part of the supreme federal law to be applied at least by the Executive and the judiciary. It also documents broader legal policies at stake, all of which make it quite evident that if the President violates constitutionally based international law, he violates not only his constitutional oath and duty, but also the expectations of the Framers—still generally shared—about authority, delegated powers and democratic government.⁵⁶

Finally, the *Charming Betsy* doctrine counsels that “an Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.”⁵⁷

* * *

Each of the above sources of international law create international legal obligations for the United States, the failure of which to fulfill can give rise to the responsibility of the United States for an internationally wrongful act and all of its attendant consequences. Nevertheless, the United States courts allow private detention center operators to avoid liability by invoking defenses such as contractor immunity, indispensable third party, and federal preemption. While these defenses may be allowed by law they do not exonerate the United States from its State responsibility for an internationally wrongful act based on a violation of international law. The United States courts must therefore ensure that when these defenses are raised they are considered in a manner that is consistent with international law. When a U.S. court fails to even address arguments based on the international legal obligations of the United States, this Working Group, and, indeed all international authorities, should interpret such action as a *prima facie* violation of international law. In such a situation, the Working Group should encourage all relevant international bodies, including other States, to take all necessary action allowed by international law concerning State responsibility to ensure the United States ends its wrongful actions; redresses its violations of law, including through the compensation of victims; and commits in a binding manner to abiding by the law in the future.

* * *

The below sections of this report focus on the United States’ legal obligations in respect of private detention center operators based principally on three treaties that it has ratified, the International Covenant on Civil and Political Rights (ICCPR),⁵⁸ the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT),⁵⁹ and the International Convention

⁵⁶ Paust, J.J., “May the President Violate Customary International Law? (Cont’d): The President is Bound by International Law,” 81 *Am. J. Int’l L.* 377, 378 (1987).

⁵⁷ *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

⁵⁸ 999 U.N.T.S. 171 (1976).

⁵⁹ 1465 U.N.T.S. 85 (1984).

on the Elimination of All Forms of Racial Discrimination (CERD).⁶⁰ The customary international law applicable to the United States emanates from the Inter-American human rights system and is reflected in the American Declaration on the Rights and Duties of Man (ADRDM)⁶¹ All of these sources create binding international legal obligations for the United States and must be enforced by the domestic courts.⁶²

ALLEGED VIOLATIONS

Respect for the Family Unit

Respect for family life requires at least that the State does not interfere with family life to the extent of separating families for no legitimate reason. It also requires affirmative action by the State to protect families. The obligation is found in ICCPR, art. 23(1) and its customary law expression is reflected in article VI of the ADRDM. The United States government has a responsibility to ensure that private detention center operators abide by the international commitments the United States has made to respect the right to family life.

Evidence of Violations

Perhaps the most well-known violation of this right in recent U.S. history is the mass separation of noncitizen families that began in April 2018 under President Donald Trump's Zero Tolerance Policy.⁶³ Under this policy the U.S. government charged unauthorized noncitizen parents with illegal entry and placed them in the custody of the Department of Justice for criminal prosecution and, upon completion of their criminal proceedings, they were transferred to ICE for immigration proceedings.⁶⁴ Their children were placed in the custody of the Office of Refugee Resettlement, an office of the Department of Health and Human Services.⁶⁵ In a Judge's order in *Ms L. v. ICE*, a lawsuit filed by the American Civil Liberties Union, in the U.S. District Court for the Southern District of California, the government was prohibited from separating families except under very rare circumstances and ordered to reunite all separated children with their

⁶⁰ 660 U.N.T.S. 195 (1969). It should be noted that although the CERD is not raised in any particular context of this report, it is relevant in general as any racial discrimination in the recognition or enjoyment of the rights discussed in the report will constitute a violation of obligations under this treaty.

⁶¹ O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

⁶² The United States has failed to adequately implement the ICCPR, in part, because of a reservation, declaration and understanding it provided when ratifying this treaty indicated it was not self-executing and therefore could not create rights for individuals before the U.S. courts.

⁶³ Press Release, Department of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (April 6, 2018)

<https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>

⁶⁴ See Press Release, DHS, Frequently Asked Questions: Zero Tolerance immigration Prosecutions (June 15, 2018), <https://www.dhs.gov/news/2018/06/15/frequently-asked-questions-zero-tolerance-immigration-prosecutions>

⁶⁵ *Id.*

parents no later than July 26, 2018.⁶⁶ In July 2019 the U.S. House of Representatives Committee on Oversight and Reform released its *Staff Report on the Child Separations by the Trump Administration*.⁶⁷ The report draws on the information collected about approximately 2,648 separated children, and notes that the data is incomplete as it cannot include the information of the many separated children who remain uncounted. Due to the government’s inadequate recordkeeping during the period of mass family separation, only 15% of the approximately 2,648 separated children were reunited with their parents by the time of the report.⁶⁸ 45% of the 2,648 children were released under ORR’s reunification process, and 40% of the separated children were still in ORR custody at the time of the data collection in or around March 2019.⁶⁹

Though mass family separation has not been in practice for more than a year, it remains at the front of the mind of many noncitizens. E.M.C., a RAICES client, was briefly separated from his son while they were held in CBP custody.⁷⁰ He recalls, “The officer did not explain how long we would be separated. I was very afraid that my son and I might be separated forever, because one knows of what the United States has done to families in recent years with family separation.”⁷¹

Since the Order in *Ms. L.*, the threat and enactment of family separation has remained a punitive measure for detained noncitizen families. There has even been the re-separation of families who were separated under Zero Tolerance. Recently a RAICES client reported that a Karnes staff member threatened to have him deported without his son. The client stated that the official told him, “I will send you to a federal prison without your son and your son will have to wait here until he is 21 years old and we will deport him after that.”⁷²

It is not uncommon for family units to be split and detained separately, with one parent in an adult detention center and the other parent with the child in a family detention center. Such separations put both the parent and child at risk of long-term adverse consequences. The Director of Harvard University’s Center on the Developing Child has stated, “Sudden, forcible separation of children from their parents is deeply traumatic for both.... Stated simply, each day we fail to

⁶⁶ *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1144 (S.D. Cal. 2018).

⁶⁷ Staff of H.R. Comm. on Oversight and Reform, 116th Cong., Rep. on Child Separations by the Trump Administration (Comm. Print 2019), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ CBP temporary holding facilities are often referred to as *hieleras* (“ice boxes”), *perreras* (“dog pounds”) and *polleras* (“chicken coops”). Noncitizens are typically held in these temporary facilities after crossing the southern border before they are either released or transferred to another detention center.

⁷¹ Declaration of E.M.C., ¶ 8

⁷² Declaration of S.J.B.H. ¶ 2

return these children to their parents, we compound the harm and increase its lifelong consequences.”⁷³

Right to Work and Fair Remuneration

The right to work and fair remuneration protects all individuals under the jurisdiction of a State from being compelled to work in unsafe conditions or from being denied work in a discriminatory manner. The right as part of customary international law is reflected in article XIV of the ADRDM. The United States government has a responsibility to ensure that private detention center operators abide by the international commitments the United States has made to respect the right to conditions of work.

Evidence of Violations

In recent years private detention companies have faced at least seven class action suits alleging serious labor violations and accusing the companies of engaging in forced labor of noncitizens.⁷⁴ One such case, *Barrientos v. CoreCivic*, which is still being litigated, alleges that CoreCivic forces noncitizens detained in the Stewart Detention Center to work for \$1.00 to \$4.00 per day, a wage that allows them to be “spared some of Stewart’s more unfavorable conditions” by purchasing “necessities from the commissary.”⁷⁵ In a separate case, on November 26, 2019, a U.S. District Court judge issued an order effectively permitting former detainees of nearly all GEO detention centers to pursue back pay and damages for GEO’s “so-called voluntary work program.”⁷⁶ Additionally, on February 28, 2020, the U.S. Court of Appeals for the Eleventh Circuit held that the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”) indeed “applies to private for-profit contractors operating federal immigration detention facilities,” allowing the case to proceed in the federal courts.⁷⁷ RAICES clients have also reported losing their jobs without warning for what they suspect to be punitive reasons.⁷⁸

⁷³ Statement on Separation of Families, Jack P. Shonkoff, M.D., Director of the Center on the Developing Child, Harvard University, June 20, 2018.

<https://developingchild.harvard.edu/about/press/shonkoff-statement-separating-families>.

⁷⁴ LexisNexis, Cert. Denied in *Menocal v. GEO Group*, Immigration Law, March 25, 2011,

<https://www.lexisnexis.com/legalnewsroom/immigration/b/insideneews/posts/cert-denied-in-menocal-v-geo-group-oc-t-1-2018>

⁷⁵ *Barrientos v. Corecivic, Inc.*, 332 F. Supp. 3d 1305 (M.D. Ga. 2018)

⁷⁶ LexisNexis, ICE Prison’s Dollar-a-Day Wages Face Class-Action Suit: *Novoa v. GEO Group*, December 6, 2019, <https://www.lexisnexis.com/legalnewsroom/immigration/b/insideneews/posts/ice-prison-s-dollar-a-day-wages-face-class-action-suit-novoa-v-geo-group>

⁷⁷ *Shoab Ahmed, et al v. CoreCivic Inc.*, (11th Cir. Ct. of Appeals, Feb. 28, 2020)

Opinion issued by court as to Appellant CoreCivic Inc. Decision: Affirmed. Opinion type: Published. Opinion I would use what working group method, <http://www.ca11.uscourts.gov/opinions>.

⁷⁸ Declaration of O.P.V. ¶ 15

Right to Seek Asylum

The right to seek asylum is provided for under the laws of the United States and in both treaties and customary law applicable to the United States. Article 12 of the ICCPR provides for freedom of movement and article 13 provides for due process in relation to efforts to remove or deport a migrant. The customary international law applying to the United States requires that the U.S. government secure this right, which is reflected in article XXVII of the ADRDM that states that every person has the right to “to seek and receive asylum.” The United States government has a responsibility to ensure that private detention center operators abide by the international commitments the United States has made to ensure adequate access to asylum procedures.

Evidence of Violations

The right to seek and receive asylum requires that an asylum seeker be provided adequate means to present their claim for protection. At the very least this means humane treatment, including adequate housing, food, and medical care, and access to legal representation. Often these necessities are denied or restricted by the private companies that run the detention centers housing asylum seekers.

RAICES clients consistently report that U.S. officials mock them for, or discourage them from, requesting asylum upon arrival to the United States. These reports often cite “border interviews,” where U.S. officials gather preliminary information about the arriving noncitizen. One client told RAICES, “I told the officer I came fleeing with my son for our lives, that we wanted asylum. The officer told me I would be deported and that he did not have time for nonsense.”⁷⁹ He continued, “The officers would speak with hate, with racism. For example, when I was asked why I came to the United States, the officer said, “we are going to deport you to Mexico.” I was so afraid, because I thought I was being denied asylum and I had not even had the chance to explain my case yet. If one comes fleeing and is told they will be deported, that is being denied asylum.”⁸⁰ Additionally, the considerable interferences with their other rights, as outlined below, significantly restrict noncitizens’ ability to claim and pursue asylum while in detention.

Right to Liberty and Security of Person

The right to security of person is guaranteed by articles 7, 9(1), 9(4), and 10(1) of the ICCPR. In sum, these articles require humane treatment of detainees. Such treatment is also required under customary international law as reflected in article XXV of the ADRDM. The intimidating and threatening environment created in some detention centers by private contractors creates an

⁷⁹ Declaration of E.M.C. ¶ 5

⁸⁰ *Id.* ¶ 6

inhumane environment and constitutes a *prima facie* claim to inhumane treatment. The fact that the intimidation and threats have sometimes been followed by action only makes the intimidation and threats more credible. Actions that rise to the level of cruel, inhumane, or degrading treatment or punishment or torture are also prohibited by the CAT. The United States government has a responsibility to ensure that private detention center operators abide by the international commitments the United States has made to ensure the humane treatment of immigration detainees.

Evidence of Violations

As immigration matters fall under U.S. civil law and not criminal law, a noncitizen detained solely because of an immigration matter is not in criminal detention. Both GEO and CoreCivic operate immigration and criminal detention facilities; and their administration of the two are virtually indistinguishable. RAICES has found that detained noncitizens suffer the penalties of criminal detention without enjoying the specific rights that protect those in criminal detention. When possible, the liberty of noncitizens should be respected; and in the rare cases where a noncitizen loses her liberty, she should enjoy *at minimum* the same rights as individuals in criminal detention.

The squalid conditions of CBP and ICE detention facilities have gained public attention in the last few years. The conditions are so bad that some asylum seekers have chosen to return to their country of origin and face persecution, rather than stay in U.S. immigration detention. Indeed, one RAICES client stated:

I am very afraid to return to Haiti. I am not giving up on appealing my deportation because of lack of fear. I am giving up on appealing my deportation because detention is so terrible.⁸¹

The U.S. government has faced multiple allegations of inhumane conditions in CBP holding facilities. In the 2016 case, *Doe v. Johnson*, plaintiffs submitted as exhibits several video stills of overcrowded cells in an Arizona CBP holding facility.⁸² RAICES clients have also provided accounts of the deplorable conditions of CBP holding facilities. As one father described:

In the cell for adults, it was so full of people that the other migrants and I could not even sleep. There was not enough room to lay down due to the sheer number of people locked in the same cell. There were approximately 40 people in the same cell at once, maybe more but I could not see. It was so crowded that when the officials would enter the cells,

⁸¹ Declaration of J.J., ¶ 3

⁸² American Immigration Council, *Photo Exhibits in Doe v. Johnson*, American Immigration Council, 2020, <https://www.americanimmigrationcouncil.org/content/photo-exhibits-doe-v-johnson>

they would have trouble navigating the room themselves....In the hielera almost everyone gets sick. If its not from the contamination from other sick families, it's from the alimentation or the abusive officers. The food is not enough, and it is not healthy. About four times a day, the officers would distribute a single cookie and some juice to eat, and that was the only thing we were given. And on top of that treatment, the officers would treat us like animals.⁸³

N.M.R. also described the conditions, stating that she had been sick since she was placed into CBP custody. N.M.R. was afraid to tell the CBP officers that she was unwell because another detainee warned her that, "if you were sick, the officers would keep you at the detention center in Del Rio. And it was horrible there. We had to sleep on the concrete floor and it was very, very cold. We ate very little, mainly just burritos."⁸⁴

A father, J.C.A.G., corroborated N.M.R.'s claims, stating:

It's very hard to be inside the hieleras because they are so cold. In addition, we were fed very little. We only just got crackers and one pre-packaged burrito per meal. Children also received one juice box each meal. Since adults did not get anything to drink, we had to drink out of big water jugs even though the water tasted like chlorine. As a result, many people refused to drink the water. We also did not sleep in the two days we were held there. It is practically impossible to sleep because officers are always waking us up or yelling at us.⁸⁵

O.A.V.A., a father who was detained with his son, described the conditions in the hieleras:

More than 26 people were forced in a small cell. We did not have room to lie down.... CBP officers did not let us shower. We did not shower or clean ourselves during the three days we were there. Many families spent much longer than us. When little children soiled their diapers, CBP officers yelled at their mothers saying "Why did you come here? This is not your home?"⁸⁶

One of the more frequent issues raised by RAICES clients is mistreatment by officers in the hieleras and perreras. One father stated, "I told the officer I came fleeing with my son for our

⁸³ Declaration of E.M.C. ¶ 12

⁸⁴ Declaration of N.M.T. ¶ 2

⁸⁵ Declaration of J.C.A.G. ¶ 3-4

⁸⁶ Declaration of O.A.V.A. ¶ 3, 6

lives, that we wanted asylum. The officer told me I would be deported and that he did not have time for nonsense.”⁸⁷ The father, E.M.C., continued:

The officers would speak with hate, with racism. For example, when I was asked why I came to the United States, the officer said, “we are going to deport you to Mexico.” I was so afraid, because I thought I was being denied asylum and I had not even had the chance to explain my case yet. If one comes fleeing and is told they will be deported, that is being denied asylum.... The officers in the hielera would not even let us have pencils or paper, so when officers were abusive to us we could not note down their names or have proofs of who mistreated us. We had no access to telephones. There was no recourse to be able to report abuses. If they aren’t even able to give us medical attention, of course they would not give us access to justice for the abuses they committed against us.⁸⁸

Perhaps one of the most troubling reports comes from a father who was detained in Karnes with his son. In his declaration he states:

I often feel like things may be happening under the table here in Karnes. After intake when I first entered the facility, I was pulled aside by a GEO officer.... He told me ‘en este lugar pasan cosas de que inmigracion no sabe’ meaning ‘there are things that happen here that ICE does not know about.’ That left me wondering, worried, if there are things that GEO could know about my asylum case that could hurt me or harm me and my son. It seemed more likely to harm than help. Because GEO officers are the officers, we most come in contact with in the detention center, as they administrate the jail, it made me feel like I was walking on egg shells. It made me feel monitored, as if any little step could put me or my son in danger.”⁸⁹

Indeed, detained RAICES clients report humane treatment and detentions so often that RAICES staff in the family detention center has an established procedure for documenting and raising such complaints.

As stated above, Karnes does not provide a separate menu for children. One father, A.E.G.A., reported that the food in Karnes made his one-year-old son sick, and that he himself got nauseous from the water’s strong chlorine taste.⁹⁰ When A.E.G.A. repeatedly raised these

⁸⁷ Declaration of E.M.C. ¶ 5

⁸⁸ Declaration of *Id.* ¶ 5, 19

⁸⁹ Declaration of E.M.C. ¶ 37

⁹⁰ Declaration of A.E.G.A. ¶ 3

concerns to Karnes medical staff, they told him that it “is normal with the children in this detention center.”⁹¹

Detainees in Karnes have also raised questions about the safety of the food they are served. J.C.A.G. recalls:

About two weeks ago, while eating, I noticed that the orange juice and milk were expired. We had all been consuming expired food.... In addition to the food being expired, many detainees, including myself, believe that the beans GEO serves us are contaminated with tiny white worms. Only once have I not seen the white specks in the beans. Although I cannot confirm what they are, they look like worms.”⁹²

Right to a Fair Trial

The right to a fair trial requires that all noncitizens seeking protection in the United States be allowed access to legal representation and facilities to prepare their claims and that these claims to protection will be determined by a fair, impartial and independent authority. This right is guaranteed in article 14 of the ICCPR as a treaty obligation of the United States and under customary international law as reflected in article XVIII (fair trial) and XXVI (due process) of the ADRDM. The United States government has a responsibility to ensure that private detention center operators abide by the international commitments the United States has made to ensure adequate access to administrative and judicial procedures. Erecting barriers to access to procedures for the determination of a noncitizen’s asylum or other protection claims interferes with this right.

Evidence of Violations

Noncitizens face significant barriers to their right to a fair trial. Unlike criminal proceedings in the United States, there is no right to an attorney in immigration proceedings. In its 2016 report *Access to Counsel in Immigration Court*, the American Immigration Council stated found that “[a]ccess to counsel is scarce and unevenly distributed across the United States,” and that “[i]mmigrants with attorneys fare better at every stage of the court process.”⁹³ Detained noncitizens face an additional barrier to securing legal representation during their court proceedings, as many noncitizens are detained in remote locations.⁹⁴

⁹¹*Id.* ¶ 4

⁹² Declaration of J.C.A.G. ¶16-17

⁹³ American Immigration Council, *Access to Counsel in Immigration Court*, American Immigration Council, Sept. 2016,

https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf

⁹⁴ *Id.*

Troublingly, there is no legal access for noncitizens detained in CBP custody and noncitizens are forced to rely solely on border patrol agents for their introduction into the U.S. immigration system.

When E.M.C. recalls that an official in the hielera told him, “An attorney isn’t going to do anything for you. You can get an attorney, but it’s not going to change anything.”⁹⁵ Based on that statement, E.M.C. believed that having an attorney would not benefit him during the immigration process and that legal representation did not matter. E.M.C. states that he was not informed that he could “seek free legal help from RAICES in legal visitation” in Karnes.⁹⁶ Subsequently, E.M.C. entered his CFI without an attorney and without the knowledge that he had a right to an attorney. “If I had known I had the right to an attorney,” he states, “I would have liked to have one with me.”⁹⁷

Although RAICES is ostensibly able to provide *pro bono* legal services to noncitizens detained in Karnes, RAICES clients and staff alike have reported several instances of GEO interfering with that ability. One of the most common complaints from RAICES staff is that on a regular basis, GEO attempts to force RAICES staff and clients to leave the legal visitation area before the mandated visitation hours end.⁹⁸ RAICES employee Aramis Mendez recalls one such instance, on March 11, 2020, when the GEO guard interrupted RAICES staff members meeting with clients and instructed the clients to leave at 7:50, ten minutes before the closure of the legal visitation area.⁹⁹ The disruption and termination of meetings is a regular occurrence, despite ICE’s consistent instructions that RAICES be allowed to meet with clients until 8:00 PM.¹⁰⁰ There are also reports that GEO has lied to RAICES, stating that a detainee refused to meet with their attorney when the detainee did no such thing. Julia Valero, a RAICES staff member, recalled one such event. A GEO employee informed Ms. Valero that three fathers - O.V.P., J.L.M.M., and R.H.B. - would not be coming to their appointments and had refused to meet with RAICES. Ms. Valero knew that was untrue because she was actively meeting with two of the fathers at that time. When Ms. Valero informed the fathers that GEO said they refused to meet with RAICES, the fathers expressed surprise and concern when they told her it was untrue. Ms. Valero later met with the other father, R.H.B., who also stated that he had not refused to meet with RAICES.

Additionally, RAICES staff attorney Gianvito Grieco reported that, in violation of the confidentiality of Credible Fear hearings, a GEO staff member attended and took notes on the

⁹⁵ Declaration of E.M.C. ¶ 29

⁹⁶ *Id.* ¶ 30

⁹⁷ *Id.* ¶ 29

⁹⁸ Declaration of Aramis Mendez

⁹⁹ *Id.* ¶ 4

¹⁰⁰ *Id.* ¶ 2, 4

disposition of his clients' confidential Credible Fear hearings. Attorney Grieco stated on the record:

I object to the violation of the respondent's right to a confidential hearing and highlight to the court that GEO's purpose is not to be present for security, but is actually to document the result of the confidential hearing. It is unnecessary and inappropriate to involve a government contractor, over the Respondent's objections, where the court's order notifies DHS of the result of the hearing, among many other reasons.¹⁰¹

The Immigration Judge overruled those objections. Attorney Grieco reports that, as of March 11, 2020, "GEO continues to place staff members inside the courtroom at Karnes to document hearings, including confidential Credible Fear review hearings," in violation of the detainee's right to confidentiality in a Credible Fear review hearing.¹⁰²

Right to Health

The right to health requires that the United States government protect the well-being of detainees and ensure their adequate access to healthcare. Although not a federal constitutional right, the majority of State constitutions of the fifty United States do provide for this right. Similarly, the overwhelming majority of States in the international community have recognized the universally legal binding nature of the right to health. This customary international law right is reflected in article XI of the ADRDM and ensures all persons under the jurisdiction of the United States access to and the benefits from "sanitary and social measures relating to food, clothing, housing and medical care." While this right can be limited to the "extent permitted by public and community resources," limitations cannot be based on nationality, especially in relation to life-saving healthcare. The United States government has a responsibility to ensure that private detention center operators abide by the international commitments the United States has made to ensure the right to health of all detainees.

Evidence of Violations

On numerous occasions, RAICES has publicly raised concerns about the standard of medical care for detained noncitizens. While RAICES appreciates the adequate education provided in detention, it sharply contrasts with the inadequate medical care while also demonstrating that detention centers are, in fact, able to provide basic services that meet minimum adequate standards. RAICES clients' complaints about inadequate medical care can typically be put into five general categories: lack of translation services, lack of response to clients' requests for

¹⁰¹ Declaration of Gianvito Grieco ¶ 8

¹⁰² *Id.* ¶10

medical treatment, inadequacy of the medical treatment itself, mistreatment by medical care providers, and inadequate medical care for children.

Translation

A detained noncitizen woman, C.Y.G.P., was diagnosed with a brain tumor in her home country. While she was detained at Karnes, C.Y.G.P. suffered severe symptoms, including migraines, insomnia, and difficulty breathing. The symptoms continued when C.Y.G.P. was transferred to Adams. When she finally met with a specialist, there was not adequate translation so she was not able to communicate effectively with him. C.Y.G.P. states:

On November 9, 2019, I met with the specialist. He did not speak Spanish. I did not have an interpreter or language line use to explain my medical situation. I told him that I did not understand him. He got a CoreCivic officer. The officer did not speak Spanish either. I had to use point to different parts of my body and try to speak Spanglish to explain what was going on. He perform an x-ray of my head. He gave me the results in English. I only understood the word ‘infection’ because the word is so close to Spanish word. Then, he opened my mouth and touched my gums. Afterwards, he touched my cheeks. I am not sure why he did that, I assume it has something to do with my infection. In addition, he looked up my nose. I do not why because nothing was explained to me in Spanish. The doctor did not understand any of my questions. He began talking to the CoreCivic officer in English. I could not understand was going on. He had me sign papers. He explained to me what the papers contained but he was speaking in English, so I did not understand. The only word that I understood was “scanner.”¹⁰³

In another case, a woman had to rely on a fellow detainee to translate her medical information because the guard did not speak or understand Spanish.¹⁰⁴ The lack of adequate translation in the medical context forces detained noncitizens to share the details of a private medical matter with their peers, prevents them from receiving adequate care, and interferes with their ability to be appropriately informed of their medical diagnoses and treatment.

Nonresponsiveness

Detainees also report not receiving a response when they request medical treatment, sometimes even after multiple requests. A detained noncitizen woman, K.A.G.C., informed a doctor of her existing PTSD and HIV diagnoses and requested to see a psychologist. However, K.A.G.C. received no follow-up and was unable to see a psychologist.¹⁰⁵

¹⁰³ Medical Declaration of C.Y.G.P. ¶ 15-16

¹⁰⁴ Medical Declaration of A.D.D. ¶ 7

¹⁰⁵ Declaration of K.A.G.C. ¶ 6

Another detainee, N.M.R., reported her severe symptoms, including vomiting, nausea, and insomnia, multiple times to officials at the detention facility. In her declaration N.M.R. states, “I have been at Karnes now for over two months and I am still unable to sleep and to eat and I still vomit when I do eat. I have asked to have a full exam. I have had urine tests but I do not know the results of those tests. I have not had any blood test and no X-rays or scans. I have not seen any doctor either in Karnes Detention nor have I been taken outside Karnes to a doctor or hospital. I have only seen the nurse and the psychologists at Karnes.”¹⁰⁶

Another detained noncitizen woman stated:

I have submitted 4 Requests for Health Services forms to the medical center since I have arrived. I haven’t received a response to any one of the requests. I also submitted a request to ICE to attend my medical issues but haven’t received a response for that either.

¹⁰⁷

In another instance C.Y.G.P., who was diagnosed with a brain tumor in her home country, reports that on five separate occasions she requested to see a doctor.¹⁰⁸ After her first request during the initial intake, the only response she received was ICE instructing her to see a doctor.¹⁰⁹

Approximately three days later, during a meeting with a psychologist, the psychologist said that he would speak with someone to get her an appointment; but C.Y.G.P. received no follow up from ICE or CoreCivic and did not see a doctor.¹¹⁰ Approximately one week later C.Y.G.P. requested medical treatment but received no response.¹¹¹ Approximately one week after that she submitted a fourth request to see a doctor but received no response.¹¹² After approximately one week, C.Y.G.P. went to the nurse for a separate medical issue and was finally taken to see the facility doctor.¹¹³ This was approximately one month after her first request.

Inadequate Treatment

Upon arrival at the Karnes Detention Center, A.D.D., a detained noncitizen woman, informed detention center staff that she was diagnosed with and treated for cysts in her breasts and ovaries in her home country.¹¹⁴ Approximately one week later A.D.D. informed the medical staff that she was experiencing severe pain and requested an examination. She was told that they could only

¹⁰⁶ Declaration of N.M.T. ¶ 7

¹⁰⁷ Advocacy Declaration of A.D.D. ¶ 9

¹⁰⁸ Medical Declaration of C.Y.G.P.

¹⁰⁹ *Id.* ¶ 8

¹¹⁰ *Id.* ¶ 9

¹¹¹ *Id.* ¶ 10

¹¹² *Id.* ¶ 12

¹¹³ *Id.* ¶ 13

¹¹⁴ Advocacy Declaration of A.D.D. ¶ 3

offer her ibuprofen and that they did not have the right specialist for the examination. She returned to the medical center approximately four times with the same complaints, and each time she was given ibuprofen or acetaminophen and told that they did not have the specialist or equipment to attend to her issues.¹¹⁵ After submitting four unanswered requests for medical treatment, A.D.D. gave up on trying to get medical care for her diagnosed conditions in Karnes.¹¹⁶ She was later transferred to a different medical facility, where her symptoms worsened. A.D.D. saw medical staff in the second detention center, but again did not receive adequate treatment. When A.D.D. told nurses that ibuprofen did not work, a nurse said that it was her only option.¹¹⁷ In a later visit a nurse spoke to A.D.D. in English, although A.D.D. only speaks Spanish. “The nurse talked to me in English and based on her tone, she seemed to be really annoyed by me. I explained to her through the guard that I have ovarian cysts and in pain She told me that my pain was not an emergency and that my only option was to take a ‘laxante’, which means a laxative. I told her that I did not need or want a laxative, but she made me take it anyway.”¹¹⁸ A.D.D. was finally taken to a hospital, where she received an exam. She was diagnosed with endometriosis, but she continued to receive only ibuprofen to manage the pain, and no other form of treatment or pain management.¹¹⁹

Detained noncitizens consistently report inadequate or nonexistent medical care in hieleras. One father, J.C.A.G., reported that his son developed a cold while in the hieleras and noted that many other children were also sick.¹²⁰ Despite the prevalence of illness in the hieleras, J.C.A.G. stated that he never saw a medical professional in the hielera and the first time he communicated with a medical professional was when he arrived at Karnes.¹²¹

Of his experience in the hieleras, another father recalled:

We also got sick while in the hielera. We had constant stomach aches and vomited about three to five times. The toilets did not flush. We threw up on top of other people’s waste.

¹²²

Mistreatment by Officials and Medical Practitioners

RAICES clients regularly report mistreatment by officials and medical practitioners in the CBP holding facilities, as well as in Karnes. One man reported that while he was in the hielera he

¹¹⁵ Id. ¶ 4-6

¹¹⁶ Id. ¶ 7

¹¹⁷ Medical Declaration of A.D.D. ¶ 6

¹¹⁸ Id. ¶ 10

¹¹⁹ Id. ¶ 17

¹²⁰ Declaration of J.A.C.G. ¶ 6

¹²¹ Id.

¹²² Declaration of O.A.V.A. ¶ 7

asked an officer why he could not see his sick son, who was being held separately from his father. The official told the father, “If you feel well or unwell, that’s your problem. You made the decision to come to this country. You are no longer in your home, this is our country.”¹²³

Another woman stated that upon arriving at a detention center, “I was afraid to tell the medical team of my condition because I did not want to be placed in isolation. It’s common knowledge that when someone at Karnes has a severe medical condition, they are placed in isolation.”¹²⁴

W.P.G., a Spanish-speaking noncitizen, recalled an incident where he was treated with racism by Karnes medical staff:

I went to see the doctor about 10:00 PM because they had told us that they are available twenty-four hours a day. I arrived, gave my ID to the secretary, and she told me they would see me. A bit of time passed, and they hadn’t seen me. I can understand quite a bit of English. Then the doctor said that she didn’t want to see immigrants, but she said it in English. After that, the secretary came and told me that the doctor would not see me, that I would have to come back tomorrow and wait my turn. I told her that I understood the doctor, that I understood what the doctor had said.¹²⁵

W.P.G. left the medical center and filed a report. The next day, officials came to escort him to the doctor. When W.P.G. said that he no longer needed to see the doctor the officials threatened to file a report against him if he did not go to the doctor.¹²⁶

Children’s Medical Care

Parents have raised concerns about medical care provided to noncitizen children who are in the custody of the U.S. government. In addition to concerns about family detention facilities not having sufficient staff trained specifically for pediatric medical or dental care, detained parents have reported that children, some as young as one year old, are fed the same food as the adults. One father, B.D.C.A., whose son has gastroschisis, stated that his son does not have an appetite and will not eat the food.¹²⁷ B.D.C.A. reports that when he asked medical staff for alternative food options for his son, they told him there were no other options.¹²⁸ B.D.C.A. goes on to state, “I feel like for the most part, the Karnes medical team has failed him. I find that the medical

¹²³ Declaration of E.M.C. ¶ 17

¹²⁴ Declaration of K.A.G.C. ¶ 5

¹²⁵ English translation of declaration of W.P.G.

¹²⁶ *Id.*

¹²⁷ Declaration of B.D.C.A. ¶ 4

¹²⁸ *Id.*

treatment here is minimal. If children get worse in their care, they cover it up rather than help the children. I do not feel like I can request to have more work done to help my child.”¹²⁹

COVID-19 Preparedness

The recent outbreak of the Coronavirus, or COVID-19, has highlighted the inadequacy of private detention centers’ healthcare and health emergency preparedness. Neither Karnes, Dilley, nor Berks had prepared emergency protocol, nor had they taken adequate emergency measures to deal with the outbreak, even months after it had started. Requests for protocols have been ignored or the response has been that there simply are none. At these detention centers there are not adequate isolation rooms, medical staff, or even basic hygienic products or equipment. Moreover, the living quarters--for sleeping and eating--are often overcrowded and social distancing is impossible. At least one of the detention centers banned products with alcohol content, including hand sanitizer. The absence of adequate preparedness protocols coupled with inadequate steps to protect detainees constitutes a violation of the right to health of the detainees.

Right to Freedom of Expression

The United States has perhaps shown more respect for the right to freedom of expression in its society and legal forums than any other right. The United States proposal for the Universal Declaration of Human Rights when it was being drafted in 1946-48 contained one right: the right to freedom of expression. This right is protected by the First Amendment to the U.S. Constitution. It is also protected in article 19 of the ICCPR and under customary international law as reflected in article IV (freedom of expression) of the ADRDM. The closely related rights to the freedoms of association and assembly are protected in articles 21 (assembly) and 22 (association) of the ICCPR and under customary international law as reflected in articles XXI (assembly) and XXII (association). The United States government has a responsibility to ensure that private detention center operators abide by the international commitments the United States has made to these expression rights.

Evidence of Violations

In response to the length and conditions of their detention, some detained noncitizens have engaged in peaceful protest. One father, J.J., watched as “white families are released from Karnes” while he and the other Haitians, “the only blacks in Karnes, continue to wait weeks and weeks to be deported.”¹³⁰ J.J. and other Haitian fathers complained to the officers and told officers that they were “thinking of striking or protesting” for either release or improved detention conditions. The group met and planned nonviolent mobilization in the form of a strike.

¹²⁹ *Id.* ¶ 7

¹³⁰ Declaration of J.J. ¶ 6

A few days before the strike was set to begin, J.J. and the other fathers were called in to meet with ICE officers. The ICE officers said “that GEO had written a letter to ICE saying, ‘the families were causing trouble.’ This letter was on the table when we Haitian families were meeting with ICE.” J.J. saw the letter, written in English, during the meeting but did not get a copy and was not given time to read it. He did not know what the letter said, other than what ICE told the fathers.¹³¹

W.P.G. was also engaged in nonviolent protest while he was detained at Karnes. He noted, “For everything we do they tell us, ‘We going to file a report on you – give us your ID.’ We aren’t doing anything bad. There are good officials and bad officials. There are some that tell you they’ll file a report on you for anything.”¹³² CONCLUSION AND RECOMMENDATIONS Throughout this submission RAICES has raised serious concerns about the deprivation of noncitizens’ human rights in U.S. immigration detention. Chief among them are concerns about respect for the family unit and about noncitizens’ rights to work and fair remuneration, asylum, liberty and security of person, a fair trial, health, humane detention conditions, and freedom of expression.

Reitering Unheeded Past Recommendations

RAICES takes this opportunity to highlight and put forth again several recommendations from the Inter-American Commission on Human Rights’s 2015 report *Refugees and Migrants in the United States: Families and Unaccompanied Children*. Primarily, RAICES joins the Inter-American Commission in reminding the United States “that deprivation of liberty should not be the presumption - rather the presumption should be of liberty...” and that “detention is a disproportionate measure in the majority of these cases and that the United States should immediately develop and implement alternatives to detention and desist from creating any more immigration detention facilities.”¹³³ Moreover, the United states should “adopt legislative measures” to prevent particularly vulnerable individuals, “like asylum seekers, refugees, victims of human trafficking, crime victims, children and adolescents, survivors of torture and trauma, pregnant women, nursing mothers, senior adults, persons with disabilities or those with physical or mental health needs,” from being placed in immigration detention.

RAICES also reiterates the Inter-American Commission’s recommendation that the United States provide attorneys to “unaccompanied children and to families who require this and are unable to cover the costs[.]”¹³⁴ Similarly, RAICES joins the Inter-American Commission in urging the

¹³¹ *Id.* ¶ 10

¹³² English translation of Declaration of W.P.G.

¹³³ Inter-American Commission on Human Rights’s 2015 report *Refugees and Migrants in the United States: Families and Unaccompanied Children* ¶ 219

¹³⁴ *Id.* ¶ 222

United States to “invest more in its immigration courts - hiring more judges and court administrative support, to start - so that judges can have manageable dockets and provide the necessary time and focus on the cases before them,” as “doing so will also help to reduce the backlog, reduce wait times and favor more expeditious processing.”¹³⁵

General Recommendations

RAICES acknowledges and appreciates the U.S. government’s periodic review of and update to standards governing immigration detention. However, U.S. government reports and this submission clearly evidence ICE’s, GEO’s, and CoreCivic’s noncompliance with those standards.¹³⁶ RAICES urges CBP, ICE, GEO, and CoreCivic to ensure that adult immigration detention conditions comply with, at minimum, the standards set out in the PBNDS. RAICES also implores that CBP, ICE, GEO, and CoreCivic strictly comply with the standards and regulations in both the Family Residential Standards and the Flores Settlement Agreement, in all detention facilities that detain noncitizen children. This includes short-term CBP holding facilities. RAICES further recommends that both the government agency and the private contractor be held accountable for failures to meet those standards.

1. To meet the detention standards which ICE itself has created and promulgated, RAICES recommends that ICE, CoreCivic, GEO, and all parties involved in the management, operation, and administration of immigration detention centers make the following modifications to conditions in immigration detention centers:
2. Detain noncitizens for the shortest time possible in the least restrictive setting possible. This is also vital to ensure compliance with the Flores Settlement Agreement, which regulates standards of detention for children, including noncitizen children, in the custody of the federal government.
3. Detain children and families only in facilities constructed to fit the specific needs of and regulations around the detention of children. This
4. Provide a law library. RAICES appreciates the existing law library at Karnes and suggests that the library acquire similar materials in additional languages, as well as adaptive materials for individuals with disabilities or who are unable to read.
5. Increase food quality and variety. While Karnes provides additional beverages and snack foods in refrigerators on the premises, RAICES urges Karnes to provide a separate menu for children, with alternative options available.

¹³⁵ *Id.* ¶ 222

¹³⁶ Department of Homeland Security Office of the Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, Jan. 29, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

6. Improve access to communication methods, including increasing availability and decreasing cost of telephone and internet access.
7. Raise wages to meet or exceed federal and state minimum wage and comply with federal and state labor regulations.
8. Ensure each facility has an adequate number of full-time and on-call medical professionals, including mental health professionals.
9. Provide adequate translation for all medical professionals and other detention center staff and officials. If translation is not available for an individual's language, RAICES recommends that the individual be released from detention.
10. Prohibit the use of punitive detention, separation, and isolation.
11. Take all available and reasonable steps to prioritize and preserve the family unit.
12. Implement regular third-party oversight and clearly outlined consequences for noncompliance. RAICES recommends that this include the creation and implementation of an anonymous grievance system overseen by a separate government agency, to prevent potential conflicts of interest that arise when entities self-report grievances filed against them. This system would include periodic reports that are publicly available. An anonymous grievance system of this type would allow detained noncitizens to raise issues directly with the parties that operate the facility without fear of reprisal, and give those parties the opportunity to address the issues internally and ensure compliance with detention standards.

RAICES also makes the following recommendations for CBP to ensure that its holding facilities abide by domestic and international laws:

1. Hold detainees for no more than 72 hours before transferring them to the appropriate government agency.
2. Provide adequate and nutritious food and beverages.
3. Provide adequate access to sanitation, including toilets, showers, and sinks.
4. Provide adequate access to hygiene products, including showers and facilities for noncitizens to brush their teeth.
5. Increase the temperature to comply with the Flores Settlement Agreement.
6. Prevent overcrowding of cells to ensure adequate space for individuals to, at minimum, sit, stand, lie down, and walk.
7. Develop and enforce strict guidelines on the treatment of detained noncitizens.
8. Create and implement an anonymous grievance system similar to the one outlined above.
9. Increase oversight of CBP holding facilities. Steps include but are not limited to opening CBP holding facilities open to inspections of intergovernmental organizations, non-governmental organizations, and governmental officials, and increasing the frequency of unannounced inspections by government officials. CBP may consider

basing the regulations on ICE regulations around third-party and oversight visits to family detention facilities.

10. Allow legal representatives, including pro bono attorneys and organizations, and third-party legal orientation programs, to inform noncitizens about the U.S. immigration system and of their rights as noncitizens.

In addition to the recommendations set forth above, RAICES makes the following recommendations to the U.S. government in general:

1. Immediately stop the construction and development of any new family detention facilities.
2. Move away from privately run detention centers, with the end goal of federally run and operated detention centers.
3. To ensure the availability of the legal forums in which detainees who have been wronged by private prison operators can make legally enforceable claims for both injunctive relief and damages.
4. In the rare cases when the detention of a noncitizen is necessary, detain the noncitizen in a facility built and run specifically for immigrant detention, and not in a criminal detention center.
5. End the practice of family detention.
6. Ratify the following international documents as rapidly as possible: Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty; Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Elimination of All Forms of Discrimination against Women; International Covenant on Economic, Social and Cultural Rights; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.
7. Agree to all of the following communications or complaint procedures, the individual complaints procedure under article 22 of the Convention against Torture; the individual communications procedure under the Optional Protocol to the International Covenant on Civil and Political Rights; the individual communications procedure under Article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance; the individual communications procedure under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the individual communications procedure under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination; the individual communications procedure under the Optional protocol to the International Covenant on Economic, Social and Cultural Rights; the individual complaints procedure under article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and

Members of Their Families; the individual communications procedure under the Optional Protocol to the Convention on the Rights of the Child; and the individual communications procedure under the Optional protocol to the Convention on the Rights of Persons with Disabilities.

8. To agree to all the procedures of enquiry as follows: under article 33, inquiry procedure under the International Convention for the Protection of All Persons from Enforced Disappearance; under articles 8 and 9, the inquiry procedure under the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women; under article 11, the inquiry procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; under article 13, the inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child; and under article 6 and 7 the inquiry procedure under the Convention on the Rights of Persons with Disabilities.
9. Increase transparency around and oversight of immigration detention.
10. Realign the immigration system so that the protection of human rights is prioritized above corporate profits.

RAICES welcomes the forthcoming report of the Working Group on private detention center operators and the opportunity to continue work with the Working Group on this and future reports.

We recommend that the Working Group be actively engaged in the upcoming Universal Periodic Review of the United States.

Respectfully submitted,

On behalf of the Refugee and Immigrant Center for Education and Legal Services

by Haley N. Olig and Curtis Doebbler

802 Kentucky Avenue

San Antonio, Texas 78201

Tel: +1-210-226-7722, ext. 171 or +1-210-780-0054

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