

SHUT DOWN BERKS

WHY PENNSYLVANIA MUST END ITS SUPPORT FOR FAMILY DETENTION

BACKGROUND

The U.S. government has a long and disturbing tradition of family detention. Examples include the internment of indigenous peoples, the detention of immigrant families on Ellis and Angel Islands, and the internment of Japanese families during World War II. These policies have been used to oppress, abuse, and discriminate against families. Today, this disgraceful practice has been resurrected in Pennsylvania. In Berks County, immigrant families—often fleeing violent situations at home—are being detained under prison-like conditions while they await their immigration hearings.



As of August 21, 2015, seventy-seven men, women, and children were detained in the Berks County Detention Center (“BCDC”).¹ Families in BCDC have been detained for unreasonably long amounts of time, despite the fact that many have relatives in the U.S. with whom they could reside. The BCDC is overseen by U.S. Immigration and Customs Enforcement (“ICE”). It is operated by Berks County, which in 2015 will receive \$1.3 million in profits for leasing the detention facility to the federal government.²

On October 22, 2014, the Pennsylvania Department of Human Services (“PA DHS”) recognized that BCDC is operating in violation of its license and state law.³ While this public acknowledgement is an important step in the right direction, PA DHS must do more to fulfill its mission to “protect the health, safety, and well-being of children.” These families cannot wait another day. We call on Ted Dallas, Secretary of PA DHS, to *immediately* revoke the license under which the BCDC is currently being operated in violation of state and federal law.

BCDC’S UNLAWFUL LICENSE MUST BE REVOKED IMMEDIATELY

Licensing BCDC as a Child Residential Facility is an abuse of discretion. PA DHS has admitted that PA law makes no provision for the licensure of family residential facilities and has given Berks County until February 21, 2016, to “resume operation as a child residential facility.”⁴ Until then, however, children and adults continue to be detained in BCDC, in violation of state law.⁵ Allowing BCDC to continue operating unlawfully endangers the safety and well-being of the immigrant families detained there. The laws governing child residential facilities do not address the presence of adults. Thus, they do not account for the practical and legal differences between child and adult care facilities, or contemplate the risks of having children reside with non-relative adults. There is no way that Berks County can lawfully carry out the services it has

contracted with ICE to provide—the detention of immigrant children and families. Therefore, PA DHS should not wait until February to revoke BCDC’s license knowing that family detention is unlawful.

The Berks County Detention Center is a secure detention facility. PA DHS has recognized that BCDC is a “secure facility for refugee children and their families.”⁶ Firsthand accounts support this assertion. Advocates have reported that the doors of BCDC are locked and guarded by staff members.⁷ The ICE Family Residential Standards, which govern BCDC, require that all resident-accessible areas be equipped with either deadbolts or deadlocks.⁸ Families are not free to leave BCDC, and can be punished for attempting to do so.⁹ The contract between Berks County and ICE calls for 24-hour guards to ensure around-the-clock visual supervision of immigrant families.¹⁰ Throughout the night, parents and children are awoken from their sleep by guards conducting flashlight checks.¹¹

BCDC operates in violation of state laws regulating child residential facilities. In addition to holding family units unlawfully, the detention of immigrant children in BCDC violates other requirements under PA law. First, children who are not dependent may not be placed in detention or shelter care.¹² Yet, accompanied immigrant children are detained in BCDC, in violation of this rule. State law also prohibits the detention of children under age nine in a secure detention facility.¹³ BCDC has detained numerous children under age nine, including an eleven-day-old infant.¹⁴ Lastly, as a matter of due process, no child may be held in secure care without a Pennsylvania court order committing the child to a secure care facility.¹⁵ No child in BCDC has received a Pennsylvania court order authorizing his or her detention.

RIGHTS VIOLATIONS AT BCDC

The treatment of children detained in BCDC violates their rights under PA law. PA law governing the operation of BCDC states that children may not be deprived of their rights.¹⁶ These rights include, among others: the right to be treated with fairness, dignity, and respect; the right to appropriate medical treatment; and, the right to rehabilitation.¹⁷ Residents in BCDC reveal that conditions in the facility do not meet these basic standards. In one case, a three-year-old child who vomited blood was refused medical care by Berks staff for four days before she was taken to the hospital.¹⁸

The American Academy of Pediatrics has stated that the detainment of children “puts them at greater risk for physical and mental health problems and unnecessarily exposes [them] to additional psychological trauma.”¹⁹ A Human Rights First report states that the mental health program at BCDC does not appear to use any formal, evidence-based tools for screening or monitoring children and families, raising “serious concerns about the care that detained families with compounded

“When I started my journey to the U.S., all I could think about was keeping my son safe . . . after several months locked up my son didn’t even want to eat anymore. He cried all the time and kept telling me he wanted to leave . . . he still wakes up shaking with nightmares from the trauma.”²²

Christina
Mother detained at Berks for 14 months

histories of trauma receive.”²⁰ Moreover, the facility does not employ Spanish-speaking mental health staff, despite the population being mostly Spanish-speaking.²¹

In January 2015, a nineteen-year-old mother detained in BCDC was sexually assaulted by a guard.²³ ICE’s only response to the sexual assault, other than firing the guard, was implementing a stringent dress code for the detained women.²⁴

Detention inhibits immigrant families’ access to counsel. Immigrants detained in BCDC have a hard time exercising their legal rights. While local organizations have intervened to improve access to counsel issues, such problems could be easily resolved by ending the practice of family detention and allowing immigrants to pursue their claims outside of the BCDC’s walls.

“I represent a father with his 8 year old Guatemalan daughter . . . He told me that [he and his daughter are] sharing a room with . . . 2 other adult males, a 14-year-old boy, and one 9 year old girl. The two have been detained for over 2 months now . . . Her father told me there have been times when she was the only female in the room. . . . Her father says she cries a lot.”²⁶

Carol Anne Donohoe, Esq.
Attorney Representing Families in BCDC

Family detention inhibits immigrants’ ability to effectively pursue their immigration claims. For example, the federal government is currently only permitted to detain immigrant families in licensed, secure facilities for 3-5 days. This short timeframe limits immigrant families’ opportunity to find and secure an attorney—if they can afford one—before their Credible Fear Interview (“CFI”). A CFI is very important, as it is used to determine whether an individual will be permitted to pursue an asylum claim. Alarming reports have surfaced that ICE has coerced individuals detained in BCDC into waiving their right to have an attorney present during their CFIs.²⁵

Another barrier to accessing counsel is the remote location of BCDC. The remote location of the facility negatively affects the availability of pro bono counsel who can consult with immigrant families before their CFIs. The facility’s remote location also inhibits access to translators and culturally-appropriate community resources. Families who are released from detention have a much better chance to find a pro-bono or low-cost lawyer to help them understand their case requirements and advocate for protection.

As a result of these problems, BCDC has become a deportation mill. Deportations occur twice a week, with many individuals being deported without any due process.²⁷ In one case, an individual was awoken at 3:00 a.m. by BCDC staff and deported.²⁸

FAMILY DETENTION IS UNNECESSARY

The decision to detain certain families is arbitrary, inhumane, and has irreversible life-changing consequences for parents and their children.²⁹ In determining whether or not to detain a family, ICE does not consider the parent's or child's age, a family's reasons for coming to the U.S., family ties in the U.S., eligibility for lawful status, or credible fear of persecution abroad.³⁰ Further, not all immigrant families apprehended crossing the U.S. border are detained.³¹ Many families captured by ICE are released to live with relatives or friends in the U.S. while they pursue their immigration cases.³² The government's current policy of family detention is arbitrary and applied indiscriminately, evidencing that the entire scheme is completely unnecessary.

Further, the use of family detention resurfaced only recently. Prior to June 2014, ICE's general practice was to release children and parents upon a determination that those individuals were not a significant flight risk or a danger to the public.³⁶ However, in June 2014, ICE changed its policies and practices and began detaining all Central American families without the possibility of release on bond, supervision, or parole if it believed that those families arrived in the U.S. as part of the "surge" of unauthorized migrants.³⁷ Government policy changed in the face of increased media attention and political pressure to address the influx of immigrant families, primarily from Central America. Rather than bow to this political pressure, ICE could return to its longstanding general practice of not detaining immigrant families while they pursue their immigration claims because their detention is both unnecessary and inhumane.

PA DHS SHOULD NOT COOPERATE WITH ICE

State and local governments are not required to cooperate with ICE. Instead, they may pass policies limiting their cooperation with ICE in the detention or deportation of undocumented immigrants. Today, an increasing number of state and local jurisdictions across the United States have limited their partnership, or refused to cooperate, with ICE.³⁸ Almost half of all counties in Pennsylvania have limited their cooperation with ICE in some way.³⁹

ELECTRONIC MONITORING DEVICES: NOT A SOLUTION TO DETENTION

Every individual released from BCDC is required to wear a GPS-enabled electronic monitoring ("EM") device. These are cumbersome bands, usually placed on the ankle, which cannot be removed.

Immigrants are forced to wear these onerous, privacy-invading devices at all times—beneath their clothes, in the shower, while they sleep—as they await a ruling from the courts. The devices must be plugged into a wall twice a day for two hours to charge—while still attached to the wearer.

Individuals released from detention with these devices reported symptoms that included swelling and infections of the ankle, severe leg cramps, headaches and dizziness, and skin burns when the device heats up during charging. Many also reported feeling shamed and humiliated by the devices.³³

Electronic monitoring is done by BI Incorporated, a wholly-owned subsidiary of the for-profit corporation Geo Group, operating under contract with ICE. The new contract is "expected to generate approximately \$47 million in annualized revenues," according to a press release from Geo Group.³⁴

Family detention and electronic monitoring are unnecessary to ensure that families show up to their court hearings. In 2014, ninety-eight percent of individuals with representation appeared in court.³⁵

While many states and local governments have opposed ICE policies, the Commonwealth of Pennsylvania—through PA DHS—has assisted ICE in the detention and deportation of immigrant families by licensing the BCDC. This cooperation is contrary to PA DHS’s mission to protect the “health, safety, and well-being of children.” It also violates federal law per the *Flores v. Reno* settlement.⁴⁰ A federal court order, issued by U.S. District Judge Dolly M. Gee on August 21, 2015, ruled that *Flores* requires the release of immigrant families and children from secure detention within five days.⁴¹ BCDC unlawfully holds immigrant families in a secure setting for longer than five days. PA DHS must end its involvement in ICE’s unlawful detention scheme by immediately revoking the license for BCDC.

CALL TO ACTION

Secretary Ted Dallas of PA DHS took an important step on October 22, 2015 in confirming that BCDC is operating in violation of Pennsylvania law. However, immigrant families should not be left to suffer in unlawful detention for another day—let alone another four months. PA DHS has the authority to revoke BCDC’s license *immediately*, and need not give ICE or Berks County time to come into compliance with state law.⁴² History has shown that the detention of families is a serious mistake that should never be repeated. The conditions in BCDC illustrate the failure of detention to provide for the safety and welfare of families and negative effects on immigrants’ ability to pursue their legal claims. We call on Secretary Dallas to correct these wrongs and to end the State’s complicity in the detention of immigrant families in Berks County. PA DHS is not required to assist ICE in the detention of families and should join the many jurisdictions that have opposed unjust federal immigration policies.

Immigrant Families Cannot Wait.
PA DHS must *immediately* revoke Berks County Detention Center’s license to allow for the release of families incarcerated there.



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ENDNOTES

¹ Anthony Orozco, *Dissension Heard on U.S. Judge's Immigration Detention Decision*, THE READING EAGLE, Sep. 15, 2015, available at <http://www.readingeagle.com/news/article/dissension-heard-on-us-judges-immigration-detention-decision&template=mobileart>.

² *Id.*

³ Letter from Theodore Dallas, Sec'y, Pa. Dep't of Human Serv. to Diane Edwards, Exec. Dir., Berks Cnty. Residential Ctr. (Oct. 22, 2015).

⁴ *Id.*

⁵ BCDC is currently licensed as a "Child Residential and Day Treatment Facility." This license does not provide for the detention of both children and adults. 55 Pa. Code §3800.

⁶ Press Release, Pa. Dep't of Human Serv., Dep't of Human Serv. Sec'y Issues Statement on Berks County Residential Center (Oct. 22, 2015).

⁷ Decl. Bridget Cambria dated Nov. 7, 2014 at ¶ 6, Pls.' First Set Exhibits In Support Mot. Class-Wide Enforcement of Settlement 67 (Doc. 101-3), Flores v. Johnson, Case No. CV 85-04544 RJK (Px) (C.D. Cal. filed Feb. 2, 2015).

⁸ ICE Residential Standard Key and Lock Control at 4, available at http://www.ice.gov/doclib/dro/family-residential/pdf/rs_key_and_lock_control.pdf.

⁹ Berks Family Residential Center Resident Handbook at 28 (on file with authors); ICE Residential Standard on Use of Physical Force and Restraints at 1, available at http://www.ice.gov/doclib/dro/family-residential/pdf/rs_use_of_force.pdf.

¹⁰ ICE Contract, Art. XVII.B.10 (on file with authors).

¹¹ Berks Family Residential Center Resident Handbook at 10; see also 55 Pa. Code § 3800.274(7).

¹² 42 Pa. C.S.A. § 6325.

¹³ 55 Pa. Code § 3800.283(7).

¹⁴ Letter from Matthew J. Archambeault to Kathleen Kane, Att'y Gen., Pa. Office of Att'y Gen. (Mar. 23, 2015).

¹⁵ 55 Pa. Code § 3800.271.

¹⁶ 55 Pa. Code § 3800.32.

¹⁷ *Id.*

¹⁸ Ed Pilington, *Child Immigrant Detainees: 'There's an Overwhelming Sadness Among Them'*, THE GUARDIAN, May 12, 2015, available at <http://www.theguardian.com/us-news/2015/may/12/immigration-detention-centers-children>.

¹⁹ Letter from Sarah G. Hassink, President, Am. Acad. of Pediatrics to Jeh Johnson, Sec'y, U.S. Dep't of Homeland Sec. (Jul. 24, 2015) available at <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAP%20Letter%20to%20Secretary%20Johnson%20Family%20Detention%20Final.pdf>.

²⁰ HUMAN RIGHTS FIRST, FAMILY DETENTION IN BERKS COUNTY, PENNSYLVANIA 8 (Aug. 2015) available at <http://www.humanrightsfirst.org/sites/default/files/HRF-Family-Det-Penn-rep-final.pdf>.

²¹ *Id.*

²² Press Release, We Belong Together, Formerly Detained Moms Call for End to Immigrant Detention (May 21, 2015) available at <http://www.webelongtogether.org/press-releases/formerly-detained-moms-call-for-end-to-immigrant-detention>.

²³ Maurice Chammah, *Long Shorts and Baggy Shirts*, THE MARSHALL PROJECT, Apr. 17, 2015, available at <https://www.themarshallproject.org/2015/04/17/long-shorts-and-baggy-shirts>.

²⁴ *Id.*

²⁵ Conversation with Caitlin Barry, Esq., Sept. 19, 2015 (on file with authors).

²⁶ Conversation with Carol Anne Donohoe, Esq., Oct. 3, 2015 (on file with authors).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Fact Sheet, Family Detention is a Failed Policy, Women's Refugee Commission, available at <http://imijr.org/wp-content/uploads/2013/10/Family-Detention-Infographic-2015.pdf>.

³⁰ See Decl. of Bridget Cambria, *supra* note 7, at ¶ 5.

³¹ LUTHERAN IMMIGR. AND REFUGEE SERV. & WOMEN'S REFUGEE COMM'N, LOCKING UP FAMILY VALUES, AGAIN 6 (Oct. 2014) available at http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf.

³² *Id.*

³³ Jane Guskin, “*Something Better*” than Detention for Immigrants?, TRUTHOUT, May 21, 2015, available at <http://www.truth-out.org/news/item/30913-something-better-than-detention-for-immigrants>.

³⁴ *The GEO Group Awarded Contract by U.S. Immigration and Customs Enforcement for the Continued Provision of Services under Intensive Supervision and Appearance Program*, BUSINESSWIRE, Sep. 10, 2014, available at <http://www.businesswire.com/news/home/20140910005643/en/GEO-Group-Awarded-Contract-U.S.-Immigration-Customs>.

³⁵ Olga Byrne, *Don’t Believe the Hype: Immigrant Families Show Up for Court Hearings*, HUMAN RIGHTS FIRST, Jul. 31, 2015, available at <http://www.humanrightsfirst.org/blog/don-t-believe-hype-immigrant-families-show-court-hearings>.

³⁶ See Decl. of Bridget Cambria, *supra* note 7, at ¶ 2.

³⁷ *Id.* at ¶ 3.

³⁸ TEMPLE UNIV. SHELTER CENTER FOR SOCIAL JUSTICE, A CHANGING LANDSCAPE: PENNSYLVANIA COUNTIES REEVALUATE POLICIES ON IMMIGRATION DETAINERS 1–2 (Mar. 2015) available at <http://www2.law.temple.edu/csaj/files/a-changing-landscape.pdf>.

³⁹ *Id.* at 2.

⁴⁰ Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997), available at https://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf.

⁴¹ Order Re Response to Order to Show Cause, *Flores v. Lynch*, Case No. CV 85-04544 DMG (Ex) (Doc. 189) (C.D. Cal. Aug. 21, 2015) available at <https://www.documentcloud.org/documents/2298479-federal-ruling-on-detention-of-immigrants.html>.

⁴² See, e.g., *KC Equities v. Dep’t of Pub. Welfare*, 95 A.3d 918, 930 (Pa. Commw. Ct. 2014); *Pine Haven Residential Care Home v. Dep’t of Pub. Welfare*, 512 A.2d 59 (Pa. Commw. Ct. 1986).

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Action Timeline

