

## Comments

# Dignity and Due Process for Asylum Seekers: Why Achieving Universal Representation for Asylum Seekers is Essential to Due Process

By KAITLIN M. TALLEY\*

### Introduction

The project's screening criteria were simple: if you are detained in Artesia, we will be your lawyers.

[T]hey made a promise to that mother and to every mother and to every child detained in Artesia: we shall not leave you.

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The project did not screen only for strong cases. It did not screen for difficulty. It did not screen out weak cases. Indeed, the cases least likely to win, were exactly the cases that the project wanted. The most vulnerable. The most defenseless.

.....

That promise was the singular most powerful thing the Pro Bono project did because the promise transformed the volunteer work from a traditional system of direct client services into a movement that could create fundamental change in Artesia.<sup>1</sup>

**I**N THE SUMMER OF 2014, in dusty, steel-corrugated trailers equipped as courtrooms, hundreds of miles into the New Mexican desert, immigration advocates accomplished the near impossible—they provided representation to nearly every asylum seeker detained in the

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1. Stephen W. Manning, *Ending Artesia*, INNOVATION LAW LAB, <https://innovationlawlab.org/the-artesia-report-story/> (last visited Feb. 2, 2018) [<http://perma.cc/K7TR-YLUY>].

Artesia Family Residential Center (“Artesia”).<sup>2</sup> Six months after opening to detain unprecedented numbers of Central American migrants crossing the U.S.-Mexican border, the U.S. government closed Artesia due to the overwhelming due process violations documented by legal volunteers.<sup>3</sup> After only operating for six months, 325 Artesia Pro Bono Project volunteers, with a fourteen volunteer per week average, provided legal services in 3,200 consultations, completed 600 hearings, and brought to life an adaptable “on the ground” response network of attorneys, paralegals, and activists to provide counsel to asylum seekers.<sup>4</sup>

Unlike criminal defendants, detained immigrants do not have a constitutional right to government court-appointed counsel.<sup>5</sup> They often arrive severely traumatized, with very limited English skills, and literally with only the clothes on their backs. Detained asylum seekers, without the help of counsel, may be deported within days without ever seeing an immigration judge because they are unable to articulate their fear in a way that fits within the complicated framework of asylum law or because they simply refuse to bear another day in detention.<sup>6</sup>

This comment emphasizes the necessity of legal representation for asylum seekers, especially those subjected to expedited removal proceedings. Section I provides an overview of the complex statutory framework behind the United States’ current asylum process, and the expedited removal process. Section II discusses the circumstances surrounding the creation of family detention centers and highlights the procedural and legal concerns intensifying the need for counsel at the South Texas Family Residential Center in Dilley, Texas, which opened immediately following the closure of Artesia that necessitated the need for counsel. Section III provides a case study of the CARA Family Detention Pro Bono Project that emerged in Dilley, Texas, as a response to the increased detention of asylum seekers. Lastly, section IV recommends various strategies for increasing asylum seeker representation at various stages of legal proceedings.

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2. *Id.*

3. *Id.*

4. *Id.*

5. 8 U.S.C. § 1362 (2018) (providing that a respondent in immigration proceedings “shall have the privilege of being represented, (at no expense to the government) by such counsel, authorized to practice in such proceedings, as he shall choose”); *see also* Strantzalis v. INS, 465 F.2d 1016, 1018 (3d. Cir. 1972) (holding that “an alien is not entitled to the same rights against self-incrimination and right to counsel as a criminal”).

6. *See* Manning, *supra* note 1.

## I. Asylum Procedures and Statutory Framework: What Happens When an Asylum Seeker Reaches the United States

The following overview of asylum law and the expedited removal process serves to emphasize the complexity of the high stakes processing of detained asylum seekers and illustrates the crucial importance of legal counsel at the beginning of asylum proceedings.

### A. United States' Obligations Under International Human Rights Standards: Non-Refoulement

Asylum law is founded on the standard of non-refoulement, which was originally developed to prevent the atrocities refugees experienced during World War II and the Holocaust from ever occurring again.<sup>7</sup> Non-refoulement is now considered “one of the most widely respected human rights norms.”<sup>8</sup> The countries that signed the Convention Relating to the Status of Refugees in 1951 (“Refugee Convention”) committed to not returning a refugee against his or her will to a country where his or her life or freedom would be threatened, with limited exceptions for refugees who had committed certain crimes.<sup>9</sup> This convention also articulated standards for the treatment of refugees including: providing “access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form.”<sup>10</sup>

The United States became subject to the Refugee Convention when it signed the 1967 Protocol Relating to the Status of Refugees, which removed the Convention’s temporal and geographical limits

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7. See UNITED NATIONS HIGH COMM’R FOR REFUGEES, INTRODUCTORY NOTE FOR THE CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 2–3 (2010) [hereinafter Introductory Note to Refugee Convention].

8. Kathleen M. Keller, *A Comparative and International Law Perspective on the United States (Non)Compliance with its Duty of Non-Refoulement*, 2 YALE HUM. RTS. & DEV. L.J. 183, 184 (1999).

9. *Id.*; see also Convention Relating to the Status of Refugees, art. 1(F)(a)–(c), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 [hereinafter Refugee Convention] (“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”).

10. Introductory Note to Refugee Convention, *supra* note 7, at 3.

and extended protection to refugees throughout the world.<sup>11</sup> The concept of non-refoulement is embodied in many aspects of U.S. immigration law, most prominently in the provisions regarding asylum status that require the government to withhold removal of an individual to a country in which the person's life or freedom would be threatened on the basis of race, religion, nationality, membership in a particular social group, or political opinion.<sup>12</sup>

### B. Initial Encounter with Immigration Officials

Generally, asylum seekers enter the United States in one of two manners: by either crossing a border without inspection by an immigration officer, such as crossing the Rio Grande, or by presenting themselves at a port of entry, such as a land border, airport, or other port of entry, and in addition to these two methods of entry, they must express their fear of returning to their country directly to the immigration officer upon entry. Immigration law treats asylum seekers differently based upon their manner of entry, as explained below.

For example, "Maria" waited in line at the border crossing in San Ysidro, California, presented herself to U.S. border officials, and expressed her fear of returning to El Salvador. Immigration laws consider Maria an "arriving alien," meaning that she presented herself to an immigration officer for admission at a port of entry.<sup>13</sup> The stakes are high for immigrants who arrive in this manner. Arriving aliens are placed immediately in a truncated removal procedure called expedited removal, in which a non-citizen is subject to removal from the United States without a hearing before an immigration judge.<sup>14</sup> Arriving aliens are subject to mandatory detention while undergoing the credible fear interview process, but may be paroled into the United States on a "case-by-case basis for 'urgent humanitarian reasons' or 'significant public benefit'" if the detainee presents neither a danger to the community nor a flight risk.<sup>15</sup>

Another asylum seeker, "Gilberto," entered and was apprehended in the United States after swimming across the Rio Grande.

11. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967).

12. 8 U.S.C. § 1158 (b)(1)(B)(i) (2018) ("To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.").

13. 8 C.F.R. § 1.2 (2018); 8 C.F.R. § 1001.1(q) (2018).

14. 8 C.F.R. §§ 1235.3(b)(1)(i), (b)(2)(ii) (2018).

15. 8 C.F.R. § 212.5(b) (2018).

Immigration law considers him an “applicant for admission” because he entered and was apprehended in this manner.<sup>16</sup> Immigration officials apprehended him as he walked across the desert the following morning. Upon expressing his fear of returning to his home in Honduras to Customs and Border Protection officials (“CBP”), regulations require he be taken to temporary processing facilities for an asylum eligibility screening.<sup>17</sup> If he receives a positive credible fear determination, he will be placed in removal proceedings to assert his asylum claim defensively before an immigration judge.<sup>18</sup>

A third asylum seeker, “Alexa,” crossed the Rio Grande and reunited with family members in California’s Central Valley after avoiding apprehension by immigration officials. Asylum seekers who have not been apprehended by immigration may apply for asylum affirmatively through the United States Citizenship and Immigration Services Asylum Office (“USCIS”) within one year of entering the United States.<sup>19</sup> If the application is denied by USCIS, the case is referred to immigration court and affirmative applicants are afforded a second opportunity to prove their claim through an asylum hearing in front of an immigration judge.<sup>20</sup> Though regulations require filing an application for asylum within one year of the individual’s entry into the United States, the reality is that the asylum interview or hearing may not occur for several months to several years, due to the high number of asylum applicants and the increasing backlog both in the asylum office and immigration courts.<sup>21</sup> Despite regulations requiring that interviews with the asylum office take place within “45 days of receipt absent exceptional circumstances, interviews now regularly take place 3–4 years after receipt.”<sup>22</sup>

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16. 8 U.S.C. § 1225(a)(1) (2018).

17. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (2018).

18. 8 U.S.C. § 1158(b)(1)(B)(iii) (2018).

19. 8 C.F.R. § 1208.4(a)(2) (2018).

20. 8 C.F.R. §§ 208.2(a)–(b) (2018) (providing that RAIO [Refugee, Asylum and International Operations] has initial jurisdiction, but an immigration court can review under certain circumstances and have exclusive jurisdiction).

21. Julia Preston, *Deluged Immigration Courts, Where Cases Stall for Years, Begin to Buckle*, N.Y. TIMES (Dec. 1, 2016), [https://www.nytimes.com/2016/12/01/us/deluged-immigration-courts-where-cases-stall-for-years-begin-to-buckle.html?\\_r=0](https://www.nytimes.com/2016/12/01/us/deluged-immigration-courts-where-cases-stall-for-years-begin-to-buckle.html?_r=0) [https://perma.cc/AJ27-8GKR].

22. USCIS, QUESTIONS AND ANSWERS 2, in USCIS Asylum Division Quarterly Stakeholder Meeting (Nov. 4, 2016), [https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED\\_AsylumQuarterlyEngagementQA11042016.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumQuarterlyEngagementQA11042016.pdf) [https://perma.cc/ELY6-5Y56] [hereinafter Q&A].

### C. Credible Fear Interview Process

If an asylum seeker expresses a fear of returning to his or her country of nationality to an immigration official, the official is required to refer the individual to a USCIS asylum officer for a credible fear interview.<sup>23</sup> As I will further discuss in Part II, an immigration officials' failure to refer immigrants who express a fear of returning to their countries for credible fear interviews often denies asylum seekers the opportunity to express their claim.<sup>24</sup>

A credible fear interview is a screening interview in which an asylum officer decides whether the asylum seeker has demonstrated a "significant possibility" of establishing eligibility for asylum.<sup>25</sup> Immigration regulations do not define the "significant possibility" standard of proof; however, the standard is far lower than the well-founded fear standard applied to asylum claims in immigration court.<sup>26</sup> The burden for establishing credible fear is quite low. Even a one-in-ten chance of anticipated persecution may sufficiently establish well-founded fear during an asylum hearing;<sup>27</sup> presumably, the credible fear "significant possibility" standard implies a burden requiring less than a one-tenth chance of future persecution.<sup>28</sup> Despite the low burden, many asylum seekers do not pass this first hurdle because they simply do not know what part of their story may qualify them for asylum, and they may be

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23. 8 C.F.R. § 235.3(b)(ii)(4) (2018). Applicants who are barred from asylum relief, such as individuals who have a prior removal order, are limited to applying for relief under withholding of removal or the Convention Against Torture. 8 C.F.R. § 208.16(c)(4) (2018); see 8 C.F.R. § 208.16(c)(2) (2018) (stating that these applicants are subject to a stricter screening process, where the burden is on the applicant to show "it is more likely than not that he or she will be tortured" upon removal to country).

24. See Sara Campos & Joan Friedland, *Mexican and Central American Asylum and Credible Fear Claims*, AM. IMMIGR. COUNCIL 9–10 (May 2014), [https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum\\_and\\_credible\\_fear\\_claims\\_final\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_and_credible_fear_claims_final_0.pdf) [<https://perma.cc/X5HL-9GAZ>].

25. 8 U.S.C. § 1225(b)(1)(B)(v) (2018) ("For purposes of this subparagraph, the term 'credible fear of persecution' means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.").

26. See USCIS, CREDIBLE FEAR LESSON PLAN 17 (Feb. 28, 2014), <http://cmsny.org/wp-content/uploads/credible-fear-of-persecution-and-torture.pdf> [<https://perma.cc/5CTZ-VHEF>] [hereinafter CREDIBLE FEAR LESSON PLAN].

27. See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430–32 (1987) (implying that even a one-in-ten chance of anticipated persecution would sufficiently establish well-founded fear).

28. Memorandum from Bill Ong Hing, Professor of Law, USF Sch. of Law, to John Lafferty, Asylum Div. Chief, USCIS, on Lesson Plan: Credible Fear of Persecution and Torture Determinations (Apr. 21, 2014) (on file with USF Law Library).

prevented from adequately expressing their fear due to other procedural barriers, which will be discussed in Part II, such as the lack of interpretation and interviews conducted with the applicant's young children in the same room.<sup>29</sup>

If an asylum seeker receives a negative credible fear determination, the applicant may seek *de novo* review by an immigration judge.<sup>30</sup> Pending review, asylum seekers must be detained, subject to limited exceptions.<sup>31</sup>

At the review hearing, asylum seekers are given an opportunity to explain why they were unable to express their fear and explain any other reasons they fear returning to their country.<sup>32</sup> If the immigration judge finds the individual has met the "significant possibility" standard establishing eligibility for asylum, the judge will vacate the negative fear determination and the individual will be eligible to request a bond hearing or release through alternatives to detention.<sup>33</sup>

If the immigration judge affirms the negative credible fear determination, the judge will enter a final removal order and the individual is subject to immediate deportation.<sup>34</sup> Once the judge affirms the determination, the asylum seeker may not appeal the decision to the Board of Immigration Appeals.<sup>35</sup> However, "longstanding agency policy" allows the applicant to submit a request for re-interview with an asylum officer if he or she can present "compelling new information" concerning the case.<sup>36</sup> If the request for re-interview is granted, the same process begins again with a new credible fear interview before an asylum officer, and the asylum seeker has a second opportunity to express their fear of persecution, with another opportunity for review by

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29. See Campos & Friedland, *supra* note 24.

30. 8 U.S.C. § 1225(b)(1)(B)(iii)(III) (2018); see also 8 C.F.R. §208.30(f) (2018).

31. 8 C.F.R. § 1235.3(b)(1)(ii)(4)(ii) (2018) (providing that parole is allowed when a discretionary determination is made that a medical emergency exists or parole is "necessary for a legitimate law enforcement objective").

32. See 8 C.F.R. § 1003.42(f) (2018) (describing how an immigration judge can determine credible fear despite a prior finding of no credible fear).

33. See *id.*; 8 C.F.R. § 1003.42(g) (2018) (providing that an immigration judge does not have authority to review an applicant's custody status during the review of an adverse credible fear finding; the custody determination must be made in separate bond proceedings).

34. 8 C.F.R. § 1208.30(g)(2)(iv)(A) (2018).

35. *Id.*

36. Letter from CARA Family Detention Pro Bono Project, to Leon Rodríguez, Dir., USCIS and Sarah Saldaña, Dir., Immigration & Customs Enf't, on Due Process Violations at Detention Facilities 3 (Dec. 24, 2015), <http://www.aila.org/advo-media/aila-correspondence/2015/letter-uscis-ice-due-process> [<https://perma.cc/H88Z-SSDL>] [hereinafter Due Process Violations]. See generally 8 C.F.R. §1208.30(g)(2)(iv)(A).

an immigration judge.<sup>37</sup> If the request is not granted and the negative determination becomes final, the applicant is subject to immediate removal.<sup>38</sup>

#### D. Release Process

Asylum seekers caught in limbo—waiting for credible fear interviews, judicial reviews, re-interviews, and bond hearings—are generally still subject to mandatory detention, with small exceptions, and may be detained for months while they wait to see an asylum officer or immigration judge.<sup>39</sup>

If an asylum seeker receives a positive credible fear determination, the individual will receive a Notice to Appear (“NTA”) for an asylum hearing in the immigration court closest to where the asylum seeker will live upon release from detention.<sup>40</sup> An asylum seeker may then request a bond hearing or may be eligible for release under parole or certain alternatives to detention programs including: wearing ankle monitors similar to those put on criminals on probation, or under other intensive supervision programs managed by United States Immigration and Customs Enforcement (“ICE.”).<sup>41</sup>

After release, asylum seekers begin the process of filling out an asylum application, which includes: writing a declaration documenting their fear of returning to their country; gathering any possible documents to corroborate their claim; and waiting months or years for their opportunity to present their claim in a merits hearing before an immigration judge.<sup>42</sup>

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37. See Katharine Ruhl & Christopher Strawn, *Assessing Protection at the Border: Pointers on Credible Fear and Reasonable Fear Interviews*, in IMMIGRATION PRACTICE POINTERS 741, 748 (2015–2016 ed.), reprinted in AM. IMMIGR. LAWYERS ASS’N 748 (May 17, 2016), [http://www.aila.org/File/Related/14072246a.pdf?utm\\_source=aila.org&utm\\_medium=InfoNet%20Search](http://www.aila.org/File/Related/14072246a.pdf?utm_source=aila.org&utm_medium=InfoNet%20Search) [<https://perma.cc/VQ3T-JCXH>].

38. 8 C.F.R. § 1208.30(g)(2)(iv)(A).

39. 8 C.F.R. § 235.3(b)(ii)(4)(ii) (2018).

40. See 8 C.F.R. § 235.6(a)(ii) (2018).

41. See *U.S. Immigration and Customs Enforcement’s Alternatives to Detention (Revised)*, U.S. DEP’T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN. 4 (Feb. 4, 2015), [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-22\\_Feb15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf) [<https://perma.cc/A6GN-RS6M>]. Eligibility for bond is determined by assessing the detainee’s flight risk and danger to the community, which includes factors such as the recency and seriousness of any criminal record, family and social ties to the United States, employment history, history of appearing before the court, among other factors; see 8 C.F.R. § 1003.19(h)(3) (2018); see also *In re Guerra*, 24 I&N Dec. 37, 38–41 (B.I.A. 2006).

42. See *Obtaining Asylum in The United States*, USCIS, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states> (last updated Oct. 19, 2015) [<https://perma.cc/FBN3-3P6W>].

Asylum law is exceedingly complex, even for well-trained immigration lawyers. Traumatized, vulnerable, and without legal counsel, asylum seekers often abandon viable claims to be released from detention as soon as possible, even if that means being removed to the very country the individual fled.<sup>43</sup> For this reason, it is imperative, and often literally a matter of life and death, that asylum seekers are equipped with the legal advice necessary to make an informed decision about whether they want to pursue their claim, or face their fears and return home.

## II. Case Study: CARA Pro Bono Family Detention Project in Dilley, Texas

This section discusses the circumstances leading to the creation of the South Texas Family Residential Center in Dilley, Texas, and describes some procedural concerns existing at the center. It further describes the atmosphere through the eyes of a legal volunteer, as documented through my experience volunteering with the CARA Pro Bono Family Detention Project (“CARA”).

### A. History and Background of Dilley

From Ellis Island to Angel Island, the United States has a long, contentious history of detaining immigrants.<sup>44</sup> Today, the majority of detained immigrants are held in centers run by for-profit, private prison companies funded by tax dollars.<sup>45</sup> Many detention centers are located in remote, rural areas with euphemistic names such as “South Texas Family Residential Center” without any mention of “detention” or “immigrants” in the facilities’ titles, seemingly avoiding calling at-

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43. See Letter from CARA Family Detention Pro Bono Project, to Megan Mack, Office of Civil Rights & Civil Liberties and John Roth, Office of Inspector Gen., Dep’t of Homeland Sec., on Ongoing Concerns Regarding the Detention and Fast-Track Removal of Children and Mothers Experiencing Symptoms of Trauma (Mar. 28, 2016), [http://www.aila.org/advo-media/press-releases/2016/cara-crcl-complaint-concerns-regarding-detention?utm\\_source=aila.org&utm\\_medium=InfoNet%20Search](http://www.aila.org/advo-media/press-releases/2016/cara-crcl-complaint-concerns-regarding-detention?utm_source=aila.org&utm_medium=InfoNet%20Search) [https://perma.cc/CQY2-H4L2] [hereinafter Ongoing Concerns].

44. See A.B.A., *Family Immigration Detention: Why the Past Cannot be Prologue* 6 (July 31, 2015), [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/FINAL%20ABA%20Family%20Detention%20Report%208-19-15.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/FINAL%20ABA%20Family%20Detention%20Report%208-19-15.authcheckdam.pdf) [https://perma.cc/T3K3-RK78].

45. Sharita Gruberg & Tom Jawetz, *How the U.S. Department of Homeland Security Can End Its Reliance on Private Prisons*, CTR. FOR AM. PROGRESS (Sept. 14, 2016, 9:04 AM), <https://www.americanprogress.org/issues/immigration/news/2016/09/14/144160/how-the-u-s-department-of-homeland-security-can-end-its-reliance-on-private-prisons/> [https://perma.cc/NR4W-HKQW].

tention to immigrant detention. Centers are frequently found hours away from legal aid organizations and immigration lawyers.<sup>46</sup>

The South Texas Family Residential Center (“Dilley”) in Dilley, Texas, was created as part of a multi-faceted response to the unprecedented surge of nearly 70,000 Central American migrants, many of whom entered the United States as a family unit in the summer of 2014.<sup>47</sup> Among the Obama administration’s response priorities was a marked emphasis on creating more detention centers and facilitating the expedited removal of unaccompanied minors and mothers with children.<sup>48</sup> Family detention centers expanded nationwide to include over 3,000 beds for women and children, a drastic increase from the ninety-five beds available for women and children in 2014.<sup>49</sup> As a result, many women and children asylum seekers with no criminal history, apart from their immigration record, experienced lengthy stays in detention, sometimes waiting up to one year, before receiving a bond hearing that would allow them to leave detention.<sup>50</sup>

Dilley opened its doors in the summer of 2015, one year after the surge summer and shortly following the closure of the newly constructed detention center in Artesia, New Mexico.<sup>51</sup> When Artesia was shut down due to numerous documented due process violations, the children and their mothers were transferred to newly constructed detention centers in Dilley and Karnes, Texas.<sup>52</sup>

Dilley is now the nation’s largest immigration detention facility with 2,400 beds. Converted from a camp formerly used for oil field workers, it now includes school rooms for children, a doctor and dentist office, lounge space, and a beauty salon where detainees can earn

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46. See Patrick G. Lee, *Immigrants in Detention Centers Are Often Hundreds of Miles From Legal Help*, PROPUBLICA (May 16, 2017, 4:00 PM), <https://www.propublica.org/article/immigrants-in-detention-centers-are-often-hundreds-of-miles-from-legal-help> [https://perma.cc/PG5G-VYZG].

47. Julia Preston, *Hope and Despair as Families Languish in Texas Immigration Centers*, N.Y. TIMES (June 14, 2015), [http://www.nytimes.com/2015/06/15/us/texas-detention-center-takes-toll-on-immigrants-languishing-there.html?hp&action=click&pgtype=Homepage&module=second-column-region&region=top-news&WT.nav=top-news&\\_r=0#](http://www.nytimes.com/2015/06/15/us/texas-detention-center-takes-toll-on-immigrants-languishing-there.html?hp&action=click&pgtype=Homepage&module=second-column-region&region=top-news&WT.nav=top-news&_r=0#) [https://perma.cc/GLN9-ZWJP].

48. *Id.*

49. *Id.*

50. See Wil S. Hylton, *The Shame of America’s Family Detention Camps*, N.Y. TIMES (Feb. 4, 2015), [https://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html?\\_r=0](https://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html?_r=0) [https://perma.cc/GUF5-NEXC].

51. David McCabe, *Administration to Close Immigration Detention Center at Month’s End*, HILL (Nov. 18, 2014, 7:04 PM), <http://thehill.com/news/administration/224626-administration-to-close-immigrant-detention-center> [https://perma.cc/JW79-8RM6].

52. *Id.*; Manning, *supra* note 1.

\$1 a day for styling hair.<sup>53</sup> For some, the time in Dilley is often the first time in months or even years that asylum seekers have felt truly safe from their persecutors, or their children have eaten three meals a day.<sup>54</sup>

In contrast to Artesia, where one of the most urgent problems was the length of detention of mothers and their children, in Dilley, one of the main concerns is the asylum seekers' access to due process as Department of Homeland Security and ICE strive to decrease the processing times of families and rapidly change processing policies and priorities.<sup>55</sup> While efficient processing is crucial for asylum seekers, pro bono attorneys have witnessed legal standards unlawfully heightened and procedural protections bypassed in credible fear interviews, requests for re-interviews, and processing of other requests as processing times decrease.<sup>56</sup>

## B. Who is Detained at Dilley

The majority of the women and children detained in Dilley have traveled at least 1,500 miles to the United States border from one of the Northern Triangle countries of Central America: El Salvador, Guatemala, and Honduras.<sup>57</sup> However, increasingly, asylum seekers from many parts of the world, including the Caribbean, the Middle East, and Asia, cross the Mexico–U.S. border by land and are also detained at Dilley and other detention centers throughout the United States.<sup>58</sup> Despite the media's focus on the surge in unaccompanied minors crossing the border in 2014, many migrants travel as a family unit, meaning at least one person under age eighteen travels with a

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53. Preston, *supra* note 47; *Family Detention*, RAICES, <https://www.raicetexas.org/pages/karnes> (last visited Feb. 12, 2018) [<https://perma.cc/G4UA-924E>]; see also Jim Forsyth, *Largest Family Detention Center for Immigrants Opens in Texas*, REUTERS (Dec. 15, 2014, 2:25 PM), <https://www.reuters.com/article/us-usa-texas-immigration/largest-family-detention-center-for-immigrants-opens-in-texas-idUSKBN0JT2H320141215> [<https://perma.cc/AZ7T-UZ5X>].

54. See Preston, *supra* note 47.

55. See Due Process Violations, *supra* note 36, at 1; see Ongoing Concerns, *supra* note 43, at 3.

56. Ongoing Concerns, *supra* note 43, at 2–4.

57. See A.B.A., *supra* note 44, at 25–26.

58. Maria Recio, *Syrian Families Turned Themselves in to Authorities at Texas-Mexico Border*, STAR-TELEGRAM (Nov. 19, 2015, 7:19 PM), <http://www.star-telegram.com/news/state/texas/article45480042.html> [<https://perma.cc/H3XC-U5R6>]; see also, Q&A, *supra* note 22, at 12 (expressing concern over the adequacy of interpretation and legal service provider information made available to Eritrean asylum seekers at the U.S.–Mexico border).

parent or legal guardian.<sup>59</sup> While family units often cross the border together, upon apprehension, adult males are detained at a separate detention center that could be several hundred or thousands of miles away, even completely across the country.<sup>60</sup> Communication between separated family members is difficult or non-existent.<sup>61</sup> Women often do not know if their partner has been detained, released, or deported.<sup>62</sup> Pro bono organizations try to bridge the gap for detainees by calling detention centers and immigration court case status lines for possible updates on the partner's location and status.<sup>63</sup> Separation often forces the asylum claims to be severed and heard separately, which can make proving the claim for the entire family much more difficult.<sup>64</sup>

A large majority of the women and children that are detained when they cross the southern border of the United States are asylum seekers, as opposed to solely economic migrants.<sup>65</sup> Due to the current conditions in the Northern Triangle, and the claims asylum seekers are presenting, approximately eighty-five percent of Dilley detainees, and eighty-eight percent of all women and children detained receive a positive credible fear interview determination.<sup>66</sup> Central American asy-

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59. In fiscal year 2014, more than 68,000 migrants crossed as a family unit, and the number increased to more than 77,000 migrants in fiscal year 2016. U.S. Border Patrol, *Family Unit and Unaccompanied Alien Children Apprehensions FY 16*, <https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20-%20FY16.pdf> (last visited Feb. 12, 2018) [<https://perma.cc/7KQT-VCU9>]. Apprehensions of unaccompanied minors were recorded at approximately 68,000 and 59,000 for fiscal years 2014 and 2016 respectively. *Id.*

60. See generally LEIGH BARRICK, *DIVIDED BY DETENTION: ASYLUM-SEEKING FAMILIES' EXPERIENCES OF SEPARATION* 2, 5–10 (Am. Immigration Council ed., Aug. 2016), [https://www.americanimmigrationcouncil.org/sites/default/files/research/divided\\_by\\_detention.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/divided_by_detention.pdf) [<https://perma.cc/9AMY-LDY7>] (explaining stories of families who are split up upon detention).

61. *Id.* at 17.

62. *Id.* at 6.

63. See *id.* at 2–6.

64. See *id.* at 18–19.

65. JONATHAN T. HISKEY ET AL., *UNDERSTANDING THE CENTRAL AMERICAN REFUGEE CRISIS, WHY THEY ARE FLEEING AND HOW U.S. POLICIES ARE FAILING TO DETER THEM* (Am. Immigration Council ed., Feb. 1, 2016), [https://www.americanimmigrationcouncil.org/sites/default/files/research/understanding\\_the\\_central\\_american\\_refugee\\_crisis.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/understanding_the_central_american_refugee_crisis.pdf) [<https://perma.cc/L48M-8TYZ>].

66. Between December 19, 2014, and March 31, 2015, 575 of the 678 (84.9%) Credible Fear Interviews conducted in Dilley received positive determinations. USCIS Asylum Div., *Family Facilities Reasonable Fear Report* (Apr. 2015), <http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-family-facilities-FY2015Q2.pdf> [<https://perma.cc/8AHU-RGHV>]. In all detention facilities holding women and children between July 1, 2014, and March 31, 2015, (Berks, Dilley, Artesia, and Karnes) 1,147 out of 1,291 Credible Fear Interviews (87.9%) received positive determinations. *Id.*

lum seekers are fleeing truly unimaginable threats of violence in their home countries.<sup>67</sup> Corruption and extortion is rampant and powerful violent gangs have infiltrated cities and rural towns alike.<sup>68</sup> Reports on the conditions of these countries include reports of gang members who recruit, threaten, kidnap, rape, and kill young women and men who refuse to become involved in a gang; domestic partners who inflict brutal violence and refuse to allow the woman to file for divorce or leave the relationship; police who offer no protection whatsoever because they too fear the gangs and cartels; and violent repercussions for expressing a homosexual identity.<sup>69</sup>

Although most of the women and children detained in Dilley are from Central America, and almost all of them speak Spanish, detention facility staff may or may not speak Spanish.<sup>70</sup> However, some women speak indigenous languages and either speak limited Spanish as their second language or do not speak Spanish at all.<sup>71</sup> Many of the indigenous language speakers are Guatemalan, and most commonly speak the indigenous languages of K'iche, Q'eqchi, or Mam.<sup>72</sup> As I met with women throughout the week, some women came to me and pointed to a handwritten sentence on a piece of paper, written by a previous volunteer that said, "I do not understand English or Spanish. I speak Mam, please use an interpreter to communicate with me."<sup>73</sup> Indigenous asylum seekers have an especially challenging time in de-

67. See generally Hylton, *supra* note 50 (describing the violence that refugees flee).

68. See generally UNHCR, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION (Pamela Goldberg ed., 2014), <http://www.unhcr.org/en-us/56fc266f4.pdf> [<https://perma.cc/5XCH-Y9PJ>] (providing statistics and information on the threats of violence faced by refugee children in their home countries).

69. See generally *id.* (describing the violent threats faced by refugees in their home countries).

70. Molly Hennessy-Fiske, *Latest Complaint on Family Detention: Few Spanish-speaking Staffers*, L.A. TIMES (Aug. 6, 2015, 1:19 PM), <http://www.latimes.com/nation/immigration/la-na-family-detention-spanish-20150806-story.html> [<https://perma.cc/KGX4-7GBN>].

71. Letter from CARA Family Detention Pro Bono Project, to Megan Mack, Office of Civil Rights & Civil Liberties and John Roth, Office of Inspector Gen., on Family Detention—Challenges Faced by Indigenous Language Speakers (Dec. 10, 2015), <http://www.aila.org/advo-media/press-releases/2015/crcl-complaint-challenges-faced-family-detention> [<https://perma.cc/SWT8-UGA8>] [hereinafter CRCL Complaint].

72. See Blake Gentry, *Exclusion of Indigenous Language Speaking Immigrants in the US Immigration System, A Technical Review*, AMA CONSULTANTS 16 (2015), [http://www.amaconsultants.org/uploads/Exclusion\\_of\\_Indigenous%20Languages\\_in\\_US\\_Immigration\\_System\\_19\\_June2015version\\_i.pdf](http://www.amaconsultants.org/uploads/Exclusion_of_Indigenous%20Languages_in_US_Immigration_System_19_June2015version_i.pdf) [<https://perma.cc/C7CZ-8SFW>].

73. Kaitlin Talley, *Treat Central American Asylum Seekers with Dignity and Fairness*, JESUIT REFUGEE SERV. (Dec. 14, 2015), [http://jrsusa.org/campaign\\_detail?TN=PROJECT-20151214103821&PTN=PROMO-20100826120437](http://jrsusa.org/campaign_detail?TN=PROJECT-20151214103821&PTN=PROMO-20100826120437) [<https://perma.cc/GJ2S-G3US>] [hereinafter *Treat Central American*]. All eye-witness accounts and personal experiences while at

tention because information is generally provided in English or Spanish, and indigenous language interpreters are very difficult for the legal volunteers and the government to obtain.<sup>74</sup>

As such, indigenous language speakers are isolated by a language barrier and are especially vulnerable to due process violations throughout the asylum screening process because they cannot effectively communicate with other detained women, CBP staff, asylum officers, or legal counsel.<sup>75</sup> The CARA Pro Bono Project has access to an indigenous language interpreter line that facilitates communication between legal volunteers and clients. If interpreters are not quickly available through that service, family members fluent in the indigenous language and Spanish are called to facilitate communication. These conversations are sometimes the first time that women can finally voice their questions about their detention, the entire process, and express their fear of returning to their country. Indigenous women are sometimes forced to complete asylum interviews in Spanish, even if they can barely understand and express themselves in the language.<sup>76</sup>

### C. Physical Detention Conditions

Listening to the women's horrendous stories of violence and persecution in their home countries and hearing of the further traumatic conditions they endured after arriving in the United States was disheartening.

Some of the most concerning reports regarding poor detention conditions stem from asylum seekers' experiences at CBP-operated temporary holding facilities.<sup>77</sup> CBP holds women and children in these facilities immediately following their apprehension until transferring them to Dilley, Karnes, or another family detention center.<sup>78</sup>

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Dilley are referred to as Letter from Kaitlin Talley, Volunteer, CARA Family Detention Pro Bono project (Oct. 2015) [hereinafter Talley Letter] (on file with author).

74. CRCL Complaint, *supra* note 71, at 7–9.

75. *See generally id.* at 1–10 (providing examples of how due process violations take place when indigenous language speakers are unable to receive interpreters for proper communication).

76. *See id.* at 8–9.

77. *See generally Treat Central American, supra* note 73 (providing examples of conditions suffered by women and children who are detained at temporary holding centers).

78. *See generally* GUILLERMO CANTOR, *Hieleras (Iceboxes) In the Rio Grande Valley Sector* (Am. Immigration Council ed., Dec. 2015), [https://www.americanimmigrationcouncil.org/sites/default/files/research/hieleras\\_iceboxes\\_in\\_the\\_rio\\_grande\\_valley\\_sector.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/hieleras_iceboxes_in_the_rio_grande_valley_sector.pdf) [<https://perma.cc/YZV7-D2UH>] (describing the conditions women and children exposed to when they are initially detained before being transferred to the detention centers).

These infamous facilities have garnered nicknames such as: “the ice box” and “the pound” or “*la hielera*” and “*la perrera*” as named in Spanish.<sup>79</sup> Many women and children were treated so badly at those centers, including being detained in cold, overcrowded conditions, provided inadequate access to basic hygiene items, and forced to sleep on concrete floors in wet clothes, that they viewed the conditions at Dilley as pleasant, despite the many persistent problems at the center.<sup>80</sup>

Women I spoke to complained about CBP officials who angrily yelled at them for no apparent reason.<sup>81</sup> Others said officials separated them from their children for the entirety of their stay, without telling them if they would see their children again.<sup>82</sup> Other women said the border officials called them liars and criminals and told them they would never be able to stay in the United States legally.<sup>83</sup> Officials told them their children would never go to school, that their family would never receive medical attention, even in emergencies, and their family would never be allowed to work in the United States.<sup>84</sup> This information is clearly incorrect: undocumented immigrants have enjoyed a constitutionally protected right to the same education as non-immigrants for over thirty years,<sup>85</sup> immigrant families can receive medical care in the United States,<sup>86</sup> and asylum seekers are allowed to apply for a work permit after waiting 150 days after the submission of their asylum application.<sup>87</sup>

Further complaints included maintaining the cells at very cold temperatures, refusing to give the women and children blankets, keeping the lights on all night, requiring the women of one cell to share one drinking cup, and refusing access to a bathroom.<sup>88</sup> Some mothers reported that the detention center staff in Dilley and CBP

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79. *Id.* at 1.

80. Talley Letter, *supra* note 73.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *See Plyler v. Doe*, 457 U.S. 202, 230 (1982) (holding that states cannot deny students a free public education on account of their immigration status without “showing that it furthers some substantial state interest”).

86. *Cf.* Ruben Castaneda, *Where Can Undocumented Immigrants Go for Health Care?*, U.S. NEWS & WORLD REP. (Nov. 2, 2016, 1:01 PM), <https://health.usnews.com/wellness/articles/2016-11-02/where-can-undocumented-immigrants-go-for-health-care> [https://perma.cc/VUX8-5SDL] (contending that although there are ways immigrants may receive medical attention, these options provide costly and inefficient services).

87. 8 C.F.R. § 208.7(a)(1) (2018).

88. CANTOR, *supra* note 78, at 11–12, 18; Talley Letter, *supra* note 73.

detention centers would come into their room at night, turn on the lights, shine flashlights in their faces, and even yank the blankets off the sleeping mothers and children to count everyone.<sup>89</sup>

#### D. Lack of Access to Medical and Psychological Care

In Dilley, sounds of crying, coughing, and sneezing were constant throughout the week. Children and their mothers arrived exhausted and sick from their long journey to the United States, and others quickly became sick from detention in close quarters.

Many mothers reported that their children would cry through the night, wet the bed, or simply refuse to eat.<sup>90</sup> Other mothers reported waiting hours for medical treatment for their child's fever, headache, stomach ache, or other complaints, only to be told to put ice cubes under their armpits, to drink honey and water, or that the child simply had "allergies."<sup>91</sup> Some children were given vaccines, but often children became sick after mistakenly receiving adult doses.<sup>92</sup>

Psychological care within immigrant detention centers is very limited despite the tremendous need.<sup>93</sup> Many women and children are obviously suffering from trauma arising from violence they have suffered and the new trauma inflicted by detention.<sup>94</sup> Several women in the Dilley detention center have attempted suicide.<sup>95</sup> Despite the clear signs of psychological issues, one detainee was "treated" by being put into solitary confinement with her child.<sup>96</sup> If a woman is able to meet with a psychologist, she is often forced to have the meeting with her

89. CANTOR, *supra* note 78, at 12; Talley Letter, *supra* note 73.

90. See John Burnett, *U.S. Immigration Agency Again Drops 'Family Friendly' Detention Centers*, N.P.R. (July 16, 2015, 5:02 AM), <https://www.npr.org/2015/07/16/423435424/u-s-immigration-agency-again-drops-family-friendly-detention-centers> [https://perma.cc/MCP9-T7VC]; *Treat Central American*, *supra* note 73.

91. *Treat Central American*, *supra* note 73.

92. Burnett, *supra* note 90.

93. CRCL Complaint, *supra* note 71, at 6.

94. *Id.*

95. See Roque Planas, *Mother Locked in Family Detention Attempts Suicide to Free Her Kids*, HUFFPOST (May 26, 2017, 9:00 AM), [https://www.huffingtonpost.com/entry/mother-family-detention-suicide-attempt\\_us\\_59271267e4b062f96a34da5c](https://www.huffingtonpost.com/entry/mother-family-detention-suicide-attempt_us_59271267e4b062f96a34da5c) [https://perma.cc/3UP8-TEFG].

96. *Summaries of the 10 Individual Cases*, AILA 3 (July 30, 2015), [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.aila.org\\_advo-2Dmedia\\_press-2Dreleases\\_2015\\_deplorable-2Dmedical-2Dtreatment-2Dat-2Dfam-2Ddetention-2Dctrs\\_summaries-2Dof-2Dthe-2D10-2Dindividual-2Dcases&d=DwMFaQ&c=qgVugHHq3rzouXkEXdxBNQ&r=gc\\_MC AVS6qKpi0QuznWBLQJligvcEdfqZvi8Q0dgfC0&m=MCrR9ANx-RrJ2uxbdoBITuUcuSC1aN-WRPP966dGDf8&s=Dbq-sbJXAaZyIKdk7SzQtWHMR84RNiqPfGe0-QE\\_-aM&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.aila.org_advo-2Dmedia_press-2Dreleases_2015_deplorable-2Dmedical-2Dtreatment-2Dat-2Dfam-2Ddetention-2Dctrs_summaries-2Dof-2Dthe-2D10-2Dindividual-2Dcases&d=DwMFaQ&c=qgVugHHq3rzouXkEXdxBNQ&r=gc_MC AVS6qKpi0QuznWBLQJligvcEdfqZvi8Q0dgfC0&m=MCrR9ANx-RrJ2uxbdoBITuUcuSC1aN-WRPP966dGDf8&s=Dbq-sbJXAaZyIKdk7SzQtWHMR84RNiqPfGe0-QE_-aM&e=) [https://perma.cc/XE6J-FW8R].

child in the room, inhibiting her from openly discussing the traumatic events.<sup>97</sup>

Detention is especially emotionally and physically difficult for children; but in particular, for those children old enough to understand what is happening.<sup>98</sup> In Dilley, detention visibly wore on children.<sup>99</sup> They continually asked their mothers when they could leave, when they would be able to see their family in the United States, and why they were being held in the center.<sup>100</sup>

## E. Procedural Barriers

The following excerpts from affidavits given by women detained in Dilley illustrate some of the procedural obstacles asylum seekers must overcome to assert their claims while in detention. These affidavits were prepared by the CARA Pro Bono Project.

### 1. Intimidation and Coercion by CBP and ICE Officials

Unfortunately, intimidation and coercive tactics are common in many of the temporary and longer-term immigrant detention centers throughout the United States, and Dilley is no exception.<sup>101</sup> Below is an excerpt from the affidavit of “Beatriz,” highlighting the group intimidation tactics ICE officers employ to coerce women to choose leaving with an ankle monitor instead of asking for a bond hearing:

I believed that I was eligible to post bond for my release and advised [the officer] that I wanted to post a bond.

The ICE officer tried to persuade me instead that I should take the ankle monitor.

The ICE officer spoke to a group of about 40 asylum applicants in a Court room [sic]. There were 3 or 4 officers present. They told us that the shackle was our best option, and asked for a show of hands of how many people wanted the shackle.

I was the only one who said I wanted a bond.

The officer told me in front of the group that they were offering our freedom with the shackle, and if we refused the shackle, we were refusing their [sic] freedom and wouldn't get any further help from ICE because we were choosing to stay here.

The ICE officer also told me that it would be weeks or months before a judge could see me to set a bond because they had so many files.

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97. See CRCL Complaint, *supra* note 71 at 5–6.

98. Talley Letter, *supra* note 73.

99. *Treat Central American*, *supra* note 73.

100. Talley Letter, *supra* note 73.

101. See *generally* Due Process Violations, *supra* note 36 (describing all the coercive tactics at detention centers).

The officer also told me that if my child got sick, he might not get medical help since I was choosing to stay here.<sup>102</sup>

Below is an excerpt from an asylum seeker, “Olga,” demonstrating how ICE officials intimidate detainees by threatening deportation:

I also think he might be the officer in charge of deportations, because he told us at the meeting that if we thought that the process was taking too long, we should let him know and he, himself, would start the process of deporting us back to our countries the next day.

I feel that ICE confuses us, and when we are waiting for results, it gives us fear [sic] of the way ICE explains things to us. It gives me fear [sic], sometimes, the way the ICE officers respond to our questions and constantly telling us that they can deport us immediately if we want.<sup>103</sup>

## 2. Misinformation by CBP and ICE Officials

The misinformation given by CBP and ICE officials, combined with limited access to legal counsel, often leads asylum seekers to make rash decisions that contradict their best interests. Without knowing the full extent of their legal options, asylum seekers may be persuaded to not express their fear of persecution, or to stop pursuing a viable claim, essentially destroying the asylum seeker’s case.

Below is an excerpt from the affidavit of “Olga,” illustrating the blatant misinformation ICE officials told Olga and other women regarding bond procedures, alternatives to detention, and work authorization:

Yesterday, on September 9th, 2015, an ICE officer called a meeting for the women in the blue building . . . .

. . . .

At the beginning, he told us that all women leaving the facility were leaving with the ankle bracelet.

. . . .

He told us that ICE did not need the support letter anymore. That most of the women that are leaving, are leaving with the ankle monitors. He told us that he did not recommend leaving with a bond, because it was going to be too expensive, around ten thousand dollars, and that it was too long of a process, perhaps 3 months.

He then told us that if you have an ankle bracelet, a person will not be allowed to work.<sup>104</sup>

102. Beatriz Aff. ¶¶ 3–9, Sept. 26, 2015, [http://www.aila.org/File/Related/15093004\\_Beatriz.pdf](http://www.aila.org/File/Related/15093004_Beatriz.pdf) [<https://perma.cc/7MXB-QEYB>].

103. Olga Aff. ¶¶ 12–13, Sept. 10, 2015, [http://www.aila.org/File/Related/15093004\\_Olga.pdf](http://www.aila.org/File/Related/15093004_Olga.pdf) [<https://perma.cc/Z7KF-H9R3>].

104. *Id.* at ¶¶ 2, 4, 6.

These assertions are clearly incorrect: the minimum bond amount is \$1,500; some asylum seekers may be eligible for conditional parole, which allows them to be released without paying bond; and wearing an ankle bracelet does not prohibit an asylum seeker from obtaining work authorization.<sup>105</sup>

This excerpt from “Lillian’s” declaration further highlights the misinformation often given by ICE officials regarding bond procedures and the ankle monitor as an alternative to detention:

On September 18, 2015, I met with ICE officers with a group of about 40 other women, and were told that getting a bond would take about 35 or more days and that the quickest option out of the detention center is the ankle monitor option. I was told that the ankle monitor would be worn for 10 to 15 days. . . .

Had the officer told me correct and true information, I would have chosen to depart on bond after a hearing before an immigration judge. The officer made it difficult for me to say no to the ankle monitor and now that I know what happened, I feel coerced.<sup>106</sup>

### 3. Preventing Access to Counsel

Access to counsel is a particularly challenging issue for many clients and attorneys in these detention centers.<sup>107</sup> Confidential meetings with clients are hard to secure, as space for client meetings is limited to a single trailer for detainees’ visitors.<sup>108</sup> Legal volunteers are forced to meet with clients in an open legal visitation trailer, near the

105. See 8 U.S.C. § 1226(a)(2)(A)–(B) (2018); see also, 8 C.F.R. § 208.7(a)(1) (2018).

106. Lillian Aff. ¶¶ 2–3, Sept. 23, 2015, [http://www.aila.org/File/Related/15093004\\_Lillian.pdf](http://www.aila.org/File/Related/15093004_Lillian.pdf) [<https://perma.cc/5YJK-8MCU>]. There is conflicting information about how long ankle monitors are supposed to be worn. Some sources suggest that application for removal of an ankle bracelet can occur in as little as thirty days, while others suggest removal can occur ninety days after. Many detainees however, wait as long as a year until removal. See Letter from Eleni Wolfe-Roubatis, Centro Legal de la Raza, to Megan H. Mack, Office of Civil Rights & Civil Liberties, and John Roth, Office of Inspector Gen., Dep’t of Homeland Sec. (Apr. 20, 2016), <http://centrolegal.org/wp-content/uploads/2016/05/Complaint-to-OCRCL-Cover-Letter.pdf> [<https://perma.cc/66TU-EUEG>]; see also Kyle Barron & Cinthya Santos Briones, *No Alternative: Ankle Monitors Expand the Reach of Immigration Detention*, NACLA (Jan. 6, 2015), <https://nacla.org/news/2015/01/06/no-alternative-ankle-monitors-expand-reach-immigration-detention> [<https://perma.cc/3W9A-HYEQ>].

107. See Letter from CARA Pro Bono Family Detention Project, to Megan Mack, Office of Civil Rights & Civil Liberties, and John Roth, Office of Inspector Gen., Dep’t of Homeland Sec., on Complaint Regarding Coercion and Violations of the Right to Counsel at the South Texas Family Residential Center in Dilley (Sept. 30, 2015), <http://www.aila.org/advo-media/press-releases/2015/coercion-intimidation-detained-mothers-children/complaint-regarding-residential-center-in-dilley> [<https://perma.cc/K378-6BTB>] [hereinafter Public Complaint].

108. See *Treat Central American*, *supra* note 73.

client's children and other women.<sup>109</sup> Detainees' phone calls are highly regulated, preventing regular communication with attorneys.<sup>110</sup> Some ICE officials have also been adamant about not letting attorneys accompany their clients in certain crucial moments in the client's case (see Juliza affidavit below).<sup>111</sup> This leads to asylum seekers being coerced into making decisions that are against their best interests, or signing documents they do not understand.<sup>112</sup>

This affidavit from "Juliza", illustrates how ICE officials refused to let her attorney accompany her to a meeting:

On September 4, 2015, I met with a CARA pro bono project attorney who agreed to represent me. During our meeting, officers showed up and took me to the court. I did not know why they were bringing me to court. I was nervous because I had no idea what was about to happen. They would not let my attorney come with me.

....

The next day, on September 5, I was called in to court again. I was brought into a court room with long wooden benches. I still did not know why I was there or what was going on.<sup>113</sup>

This affidavit from "Renita" also shows how ICE pressures detainees to accept ankle monitors:

I was confused about why the[y] [made] this meeting to try to get me to accept the ankle monitor again because the Judge already said I could pay bond to be released.

....

... I wish that I had lawyers with me when ICE pressured me, on four separate occasions, to accept the ankle monitor. I found the process confusing and frightening.

All I want is to receive protection in this country. I did not want to wear an ankle shackle because I did not want to suffer the stigma attached to it, or worry about charging it every day. I also don't want my young daughter to look at her mommy and think that I am a criminal. I am glad that I was able to post bond because I promise to show up for my court hearings and I am not going to run away.<sup>114</sup>

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109. *Id.*

110. See generally Julia Harumi Mass & Carl Takei, *Forget About Calling a Lawyer or Anyone at All if You're in an Immigration Detention Facility*, HUFFPOST: THE BLOG, [https://www.huffingtonpost.com/julia-harumi-mass/forget-about-calling-a-lawyer-immigration-detention\\_b\\_10462438.html](https://www.huffingtonpost.com/julia-harumi-mass/forget-about-calling-a-lawyer-immigration-detention_b_10462438.html) (last updated June 15, 2017) [<https://perma.cc/EY7E-TY2T>] (discussing access to phones generally at immigration detention facilities).

111. See, e.g., Public Complaint, *supra* 107, at 4–5.

112. *Id.* at 5.

113. Juliza Aff. ¶¶ 2, 4, Sept. 15, 2015, [http://www.aila.org/File/Related/15093004\\_Juliza.pdf](http://www.aila.org/File/Related/15093004_Juliza.pdf) [<https://perma.cc/JGQ4-RFBP>].

114. Renita Aff. ¶¶ 5, 10–11, Sept. 28, 2015, [http://www.aila.org/File/Related/15093004\\_Renita.pdf](http://www.aila.org/File/Related/15093004_Renita.pdf) [<https://perma.cc/NK3R-Z2NZ>].

Below is an excerpt from “Yesenia’s” declaration, demonstrating how ICE officials did not allow her attorney to be with her during a critical meeting in which ICE officers coerced Yesenia into signing documents in English that were never interpreted or translated for her:

On September 10, 2015, at 2:30pm in the afternoon, I was summoned to court again. At this second meeting, there were more than four ICE officers, but I don’t remember how many. During this second meeting, I signed the agreement to take the ankle monitor. The agreement was in English and no one translated or interpreted it for me, the officer just told me to sign. I didn’t really understand what I was signing, but I thought that if I didn’t sign, my children and I would be deported . . . .

. . . I wish that an attorney had been with me during these meetings. I would have felt better, understood more what was going on, and been more comfortable asking questions.<sup>115</sup>

Without proper legal counsel, and appropriate access to health-care, and other social services, an asylum seeker’s likelihood of a favorable legal outcome becomes slim, resulting in similarly negative short-term and long-term effects to the asylum seeker’s emotional, physical, and mental well-being.<sup>116</sup> Having legal advocates, both on-the-ground and off-site, is critical to ensure that individuals with viable claims do not abandon their claims and are not improperly removed.

### III. The CARA Pro Bono Family Detention Project Model and the Need for Counsel for Detained Asylum Seekers

#### A. The CARA Pro Bono Project Model

In light of the detention conditions and expedited removal process, the importance of having legal counsel is clear. To fill this need for legal counsel, the CARA Pro Bono Project responded as a continuation of the immigrant advocate response at Artesia.<sup>117</sup> The project represents collaboration between the Catholic Legal Immigration Network, the American Immigration Council, the Refugee and Immigrant Center for Education and Legal Services, and the American Immigration Lawyers Association, collectively known as CARA.<sup>118</sup>

115. Yesenia Aff. ¶¶ 3–4, Sept. 28, 2015, [http://www.aila.org/File/Related/15093004\\_Yesenia.pdf](http://www.aila.org/File/Related/15093004_Yesenia.pdf) [<https://perma.cc/7X5F-KE6J>].

116. See generally Ongoing Concerns, *supra* note 43.

117. CARA Pro Bono Family Detention Project, *Who*, <http://caraprobono.org/partners/> (last visited Feb. 18, 2018) [<https://perma.cc/8NCW-DQJ2>] [hereinafter *Who*].

118. *Id.*

Building on the success of the Artesia project, CARA formed a highly adaptive and resilient model for legal services that has provided counsel to thousands of asylum seekers detained in Dilley.<sup>119</sup> In its first year of service, the project hosted over 700 volunteers and assisted more than 8,000 detained families.<sup>120</sup> In addition to providing direct services to asylum seekers, the project also documents due process concerns, files various complaints, and initiates litigation to address the concerns present in the center.<sup>121</sup>

Each week, the small, but mighty, on-the-ground staff team manages new incoming volunteers.<sup>122</sup> Volunteers come from all over the country, and include: law students, interpreters, attorneys, and mental health professionals who pay their own costs of transportation and lodging to volunteer for one or more weeks at the Dilley center.<sup>123</sup> After each week, the volunteers hand their cases off to the next set of volunteers, which may range from as little as groups of five to over twenty individuals at a time.<sup>124</sup> In addition to the on-the-ground staff and volunteers, the program also has long-term volunteers all across the country that draft motions, file documents in immigration court, and complete other necessary administrative tasks to maintain the project.<sup>125</sup>

## B. Daily Operations as a Legal Volunteer

As a volunteer with CARA in Dilley, Texas, I worked directly with the mothers and children detained at the center. Many crossed the border only days before by crossing the Rio Grande or by approaching immigration officials at a border checkpoint and declaring their fear of returning to their country.<sup>126</sup> Staff members describe the environment as a “cross between a legal aid office and an emergency room.”<sup>127</sup> Trauma was high and emotions were raw. Many of the women had very recently experienced the horrific events that urged

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119. *Id.*

120. CARA Pro Bono Family Detention Project, *1 Year Anniversary Infographics*, [http://www.aila.org/File/Related/CARA\\_1\\_year\\_Infographics\\_3-6.jpg](http://www.aila.org/File/Related/CARA_1_year_Infographics_3-6.jpg) [<https://perma.cc/XKL9-84AX>] (celebrating their first anniversary on March 31, 2016).

121. *Who, supra* note 117.

122. *Id.*

123. *Id.*

124. *Id.*

125. *See id.*

126. *Treat Central American, supra* note 73.

127. Brianna Rennix, *At The Border: What Happens When Refugees Make it to Texas*, CURRENT AFFAIRS (July 25, 2017), <https://www.currentaffairs.org/2017/07/at-the-border> [<https://perma.cc/BY98-R87A>].

them to make the final decision to embark on the dangerous journey of more than 1,500 miles to the United States.<sup>128</sup> The trauma they suffered during these triggering events was still painfully fresh in the women's minds as they recounted their stories. Women's conversations with volunteers were often the first time they told their story to someone outside of their family or to anyone at all. A fellow volunteer recounted preparing a woman's testimony about being raped, an event that before she had only kept "between her and God."<sup>129</sup>

Each day legal volunteers set up in a visitation trailer just inside the security checkpoint for the entire detention facility. Lawyers and volunteers from CARA are not allowed beyond the legal visitation trailer or the court trailer. At 7:30 a.m., we were met by the faces of thirty to fifty mothers and children, ranging from infants to seventeen year olds, waiting for their morning meetings with a volunteer. In the afternoon, at least that many individuals were waiting again.

The role of a CARA volunteer is to educate asylum seekers concerning the detention process, the basic framework of asylum law, the credible fear interview process, and the release process. Volunteers begin each initial orientation presentation for the most recently arrived asylum seekers by welcoming asylum seekers to the United States. This was one of the most powerful moments of the day, as the women's responses were immediately palpable. Some would smile, while others would become emotional or start crying when we looked them in the eye and told them that we truly welcome them and that a legal volunteer would be there to help them navigate the detention process. We were often the first people they had encountered in the immigration system who genuinely wanted to be their advocate. As such, we took the responsibility seriously, and did all we could to prepare them for the process ahead. This meant explaining their rights and responsibilities throughout the process, answering questions about that process, and most importantly, listening to them express their stories and preparing them to express their fear in a manner that most strongly fits into the complicated framework of asylum law.

Legal volunteers also met individually with women to help prepare affidavits for bond hearings or for negative credible fear review hearings. Lawyers represented women in bond hearings and negative credible fear determination review hearings in a separate trailer that is set up with makeshift courtrooms equipped with video access to immi-

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128. *Id.*

129. Talley Letter, *supra* note 73.

gration court. Each woman who passed the credible fear threshold and received an NTA, the document that provides notice of their upcoming immigration court date, received an orientation on her responsibilities after release.

### C. How Detention Affects Asylum Seekers' Claims

While volunteering at Dilley, the paralyzing barriers detention imposes on asylum seekers become painstakingly clear. Like Dilley, most immigrant detention centers are located in isolated locations that severely restrict communication with family, legal counsel, interpreters, and health and social services.<sup>130</sup> While in detention, straightforward tasks become infinitely more difficult; attempting to contact and retain counsel, speaking with family members, and gathering necessary documents to receive a positive credible fear determination or to be released on bond or parole become extremely challenging.<sup>131</sup> The fact that detention centers are so remote makes these tasks exceedingly difficult, as very few immigration attorneys may be located in the area and family or friends may be unable to travel to assist in gathering documents.

In addition to the lack of communication, the additional trauma from being detained inflicts severe consequences on asylum seekers' mental, emotional, and physical health, ultimately affecting their ability to testify competently on their own behalf.<sup>132</sup> The hostile detention conditions significantly compound the trauma that asylum seekers have already experienced.<sup>133</sup>

Increased trauma in turn makes the asylum process more difficult for asylum seekers, legal counsel, and immigration officials.<sup>134</sup> Trauma influences emotional stability, clarity of memory, and anxiety, all of which have a tremendous effect on an asylum seeker's ability to clearly and credibly testify at an asylum hearing.<sup>135</sup> Post-traumatic stress disorder complicates the court's ability to assess an asylum seeker's credibility, and immigration judges are often faced with the

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130. See Kyle Kim, *Immigrants Held in Remote ICE Facilities Struggle to Find Legal Aid Before They're Deported*, L.A. TIMES (Sept. 28, 2017), <http://www.latimes.com/projects/la-na-access-to-counsel-deportation/> [https://perma.cc/2WX2-RWSR].

131. See Lee, *supra* note 46.

132. See generally, Guy J. Coffey et al., *The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum*, 70 SOC. SCI. & MED. 2070, 2070–79 (2010) (discussing about all the negative effects of long-term detention).

133. See generally CRCL Complaint, *supra* note 71.

134. *Id.*

135. See generally Coffey et al., *supra* note 132.

challenging task in determining whether the applicant is having difficulty testifying coherently due to trauma or because the applicant is fabricating the claim.<sup>136</sup>

For these reasons, among many others, access to legal counsel during detention is critical. Represented asylum seekers are much more likely to be released on bond or parole, which greatly reduces the time they are detained and the further trauma detention inflicts<sup>137</sup> Indeed, ninety-nine percent of detainees the CARA project represented in its first year of operation were released on bond or parole.<sup>138</sup>

#### **IV. Strategies for Increasing Representation of Asylum Seekers**

After the unprecedented surge of migrants in 2014 and the expansion of family detention, immigrant advocates responded valiantly with every possible strategy.<sup>139</sup> Advocates from all over the United States rose to action with urgency and vigor. Actions included: first responders arriving on the ground in Artesia, Dilley, and Karnes; founding law clinics serving the “surge” population post-release in asylum merits hearings and applications for other relief; strengthening pro bono partnerships with private firms; and securing funding for fellowships, clinics, and volunteer work. Increasing asylum seeker representation during each stage of the legal process requires a continued creative and collaborative multi-disciplinary response, as well as maintaining open dialogue between attorneys, non-profits, social service providers, mental health providers, and governmental agencies.

##### **A. Strengthen the Presence of On-the-Ground Legal Services**

First-responder programs such as the CARA project in Dilley, Texas, the Refugee and Immigrant Center for Education and Legal Services (“RAICES”) project in Karnes, Texas, and long-standing programs such as the Florence Project in Florence and Eloy, Arizona, the Northwest Immigrant Rights Project in Tacoma, Washington, and the

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136. See Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457, 494–95 (2016).

137. Catholic Legal Immigration Network, Inc., *One Year of CARA Pro Bono Project, Thousands Helped*, <https://cliniclegal.org/resources/articles-clinic/one-year-cara-pro-bono-project-thousands-helped> [<https://perma.cc/KG9Q-R9AV>] (providing that 99% of detainees the CARA Pro Bono Project represented in its first year of operation were released on bond or under parole).

138. *Id.*

139. A.B.A., *supra* note 44, at 53–57.

Pennsylvania Immigration Resource Center in Berks, Pennsylvania, among others, are indispensable and have tremendous positive impacts on the outcomes of asylum seekers' cases while in detention.<sup>140</sup> Programs such as these have fearlessly strived towards the goal of universal representation.

As new detention centers continue to expand across the country,<sup>141</sup> the ability of attorneys to meet the need for representation and continue to strive for universal representation is critical. These service models have shown extraordinary abilities to quickly adapt and scale their services to meet the rapidly changing policies and priorities of immigrant detention through recruiting on-the-ground volunteers, developing protocol to provide consistent and seamless legal services with each new group of volunteers, establishing competent off-site teams, and collaborating with other organizations to document due process violations. On-the-ground programs must continue to be supported as immigrant detention expands, requiring the continued commitment of volunteers, legal staff and attorneys, technology resources, and financial resources.

#### **B. Enhance Initiatives for Public Grants Supporting Fellowships, Clinics, and Non-Profits Providing Post-Release Representation of Asylum Seekers**

Obtaining representation after release from detention is essential to the success of an asylum seeker's claim. Asylum seekers have numerous responsibilities upon release, including properly updating the court of any change of address, applying for asylum within one-year of entry, presenting themselves for possible check-ins with ICE, and most importantly, appearing for court hearings.<sup>142</sup> Many asylum seekers are

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140. See generally *Who*, *supra* note 117; *Family Detention*, *supra* note 53; *Direct Services*, FLORENCE PROJECT, <https://firtp.org/what/directservices/> (last visited Feb. 19, 2018) [<https://perma.cc/S3BK-CBNM>]; *Detention & Deportation Defense*, NORTHWEST IMMIGR. RTS. PROJECT, <https://www.nwirp.org/our-work/direct-legal-services/detention-deportation/> (last visited Feb. 19, 2018) [<https://perma.cc/QRJ3-MDQW>]; *Programs for Detained Immigrants*, PA. IMMIGR. RESOURCE CTR., [http://www.pirclaw.org/programs/detained\\_programs](http://www.pirclaw.org/programs/detained_programs) (last visited Feb. 19, 2018) [<https://perma.cc/9MPP-PLCF>].

141. See Meredith Hoffman, *Immigrant Center to Be Built in Texas for \$110M*, U.S. NEWS & WORLD REP. (Apr. 13, 2017, 10:05 PM), <https://www.usnews.com/news/best-states/texas/articles/2017-04-13/texas-getting-first-immigrant-lockup-built-under-trump> [<https://perma.cc/T4DB-EWJC>]; see also Chris Hayes & Brian Montopoli, *Exclusive: Trump Admin. Plans Expanded Immigrant Detention*, MSNBC (Mar. 3, 2017, 8:48 PM), <http://www.msnbc.com/all-in/exclusive-trump-admin-plans-expanded-immigrant-detention> [<https://perma.cc/NZD4-XYVK>].

142. See generally PUB. COUNSEL LAW CTR., *Asylum Manual for Public Counsel's Volunteer Attorneys* (Jan. 2012), <http://www.publiccounsel.org/tools/publications/files/Asylum->

unaware of, or do not fully understand these requirements, and as a result, they miss a hearing and are ordered removed in absentia for their failure to appear, even before they have had the opportunity to present the merits of their claim.<sup>143</sup> Further, the failure to timely file for asylum within one year of entry may also bar the individual from receiving asylum or any relief from removal.<sup>144</sup>

Pro bono immigration legal service providers often have waitlists that extend for many months.<sup>145</sup> Though judges often grant continuances allowing asylum seekers time to secure counsel, continuances are not granted indefinitely and the asylum seeker will eventually be required to move forward with his or her case *pro se*.<sup>146</sup> In asylum seekers' desperation to find legal counsel, they often fall victim to schemes by notaries and even licensed attorneys who defraud immigrants, or worse, file fraudulent documents on their behalf.<sup>147</sup> Fraud complicates the asylum seeker's path to relief tremendously, and can ultimately prevent an individual from qualifying for the relief for which he or she was originally eligible.

A competent immigration attorney can ensure that an asylum seeker complies with all post-release obligations, and that his or her case is presented with the highest possible chance for success. For example, national data indicates that more than half of unrepresented minors seeking asylum are deported, whereas nine in ten represented minors are successful in their asylum claims.<sup>148</sup> Additionally, immigra-

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Manual.pdf [https://perma.cc/72P6-3EAD] (listing, under chapter 4 of the manual, the responsibilities that an attorney has when representing an asylum seeker). More often than not, asylum seekers do not have an attorney to guide them through these legal hurdles. *See generally id.*

143. 8 U.S.C. §1229a(b)(5)(A) (2018) (providing that a respondent who fails to appear to an immigration hearing shall be removed if the government proves by clear and convincing evidence that the respondent received written notice of the hearing and the respondent is removable).

144. 8 U.S.C. § 1158(a)(2)(B), (D) (2018) (requiring that asylum seekers apply for asylum within one year of entry to the United States, which may be overcome by satisfying exceptions for "exceptional circumstances" and "changed circumstances" related to the delay in filing).

145. Fernanda Santos, *It's Children Against Federal Lawyers in Immigration Court*, N.Y. TIMES (Aug. 20, 2016), <https://www.nytimes.com/2016/08/21/us/in-immigration-court-children-must-serve-as-their-own-lawyers.html?smid=pl-share&r=0> [https://perma.cc/5TME-TUZ5].

146. *See* 8 C.F.R. § 1003.29 (2018) (providing that an immigration judge *may* grant a motion for continuance for good cause shown).

147. A.B.A., *About Notario Fraud*, [https://www.americanbar.org/groups/public\\_services/immigration/projects\\_initiatives/fightnotariofraud/about\\_notario\\_fraud.html](https://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud.html) (last visited Feb. 19, 2018) [https://perma.cc/CMN5-DDMY].

148. *See Santos, supra* note 145.

tion attorneys can further assist an asylum seeker transitioning to life in the United States by connecting them to other community resources and social services, such as schools and English classes, medical and mental health services, and providing additional assistance such as obtaining identification or a driver's license.

For these reasons, it is essential that affordable legal services are made available to asylum seekers. One way to achieve this is through furthering efforts to obtain public grants and other financial resources to support the expanded representation of asylum seekers. Additional funding for organizations that represent asylum seekers allows for more direct representation and more robust participation of pro bono attorneys from the private bar who often seek technical training and mentoring from non-profit organizations when taking on an asylum case.<sup>149</sup>

One example of publicly funded representation is the University of San Francisco Immigration and Deportation Defense Clinic ("USF Clinic"), which was founded by Bill Ong Hing in 2015, and funded through grants from San Francisco City and County and the California State Legislature.<sup>150</sup> Unlike many law school clinics that manage a limited number of cases that serve primarily as a tool for educating students, the USF Clinic has taken on a role as a service provider itself, representing over sixty clients each year in addition to training and supervising law students and organizing outreach and legal workshops throughout the Bay Area and California Central Valley.<sup>151</sup> The USF Clinic partners with various non-profits and bar associations throughout the Bay Area and California, providing representation to asylum seekers as organizations reach their capacity.<sup>152</sup> Partnerships and public grants such as these serve as an essential tool for increasing representation to post-release asylum seekers.

149. See Centro Legal de La Raza, *Immigration Program*, <http://centrolegal.org/our-work/immigration-program/> (last visited Feb. 19, 2018) [<https://perma.cc/C5KC-BHBL>].

150. See USF School of Law, *Immigration and Deportation Defense Clinic*, <https://www.usfca.edu/law/professional-skills/law-clinics/immigration-deportation> (last visited Feb. 19, 2018) [<https://perma.cc/26NK-NPJ7>]; see Elise Foley, *San Francisco Supervisors Vote to Provide Lawyers for Kids Facing Deportation*, HUFFPOST (Sept. 17, 2014, 12:33 PM), [https://www.huffingtonpost.com/2014/09/17/san-francisco-immigrants\\_n\\_5836230.html](https://www.huffingtonpost.com/2014/09/17/san-francisco-immigrants_n_5836230.html) [<https://perma.cc/7T4T-GWUU>]; see Alex Dobuzinskis, *California Sets Up Fund for Legal Representation of Immigrant Children*, REUTERS (Sept. 27, 2014, 5:50 PM), <https://www.reuters.com/article/us-usa-immigration-california/california-sets-up-fund-for-legal-representation-of-immigrant-children-idUSKCN0HN00B20140928> [<https://perma.cc/AE2M-5SZY>].

151. Bill Ong Hing, *Contemplating a Rebellious Approach to Representing Unaccompanied Immigrant Children in a Deportation Defense Clinic*, 23 CLINICAL L. REV. 167, 168–69 (2016); USF School of Law, *supra* note 150.

152. Hing, *supra* note 151, at 214.

### C. Support Initiatives to Expand Public Defender Representation of Detained Immigrants

Public Defender offices throughout the nation, such as those in New York City, Alameda County, and San Francisco City and County, have initiated groundbreaking pilot programs to ensure that immigrants facing criminal charges are represented in immigration proceedings.<sup>153</sup>

New York City is leading landmark change in the representation of detained immigrants.<sup>154</sup> A grant was approved to significantly expand the New York Immigrant Family Unity Project (“NYIFUP”) in 2018, which will ensure that every financially eligible detained immigrant obtains counsel.<sup>155</sup> Since 2014, the project has been representing almost all financially eligible, otherwise unrepresented immigrants in New York City.<sup>156</sup> Andrea Saenz, a NYIFUP coalition partner stated, “[w]ith this funding, New York has sent a powerful message and set the standard for the rest of the nation. No person should face detention and deportation alone, without legal advice or counsel through a frightening process in which a person’s family or even her life may be at stake.”<sup>157</sup>

California’s first such unit was launched in Alameda County in 2014, with the hiring of one full-time attorney.<sup>158</sup> The Alameda

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153. See Hansi Lo Wang, *New Pilot Program Gives Immigrant Detainees Public Defenders*, NPR (Nov. 29, 2013, 2:24 PM), <https://www.npr.org/sections/codeswitch/2013/11/29/247579071/new-pilot-program-gives-immigrant-detainees-public-defenders> [<https://perma.cc/92J5-UAMY>]; see also Tamara Aparton, *SF Public Defender Immigration Unit Launches Today*, S.F. PUB. DEFENDER (May 23, 2017), <http://sfpublicdefender.org/news/2017/05/sf-public-defender-immigration-unit-launches-today/> [<https://perma.cc/4J4C-8CVN>]; see also Ali Winston, *Alameda County Public Defender Stands Up for Immigrants*, EAST BAY EXPRESS (Aug. 20, 2014), <https://www.eastbayexpress.com/oakland/alameda-county-public-defender-stands-up-for-immigrants/Content?oid=4048368> [<https://perma.cc/QQ2Z-EPNG>].

154. See Wang, *supra* note 153.

155. *Press Release: New York State Becomes First in the Nation to Provide Lawyers for All Immigrants Detained and Facing Deportation*, VERA INSTI. JUST. (Apr. 7, 2017), <https://www.vera.org/newsroom/press-releases/new-york-state-becomes-first-in-the-nation-to-provide-lawyers-for-all-immigrants-detained-and-facing-deportation> [<https://perma.cc/6UTS-VVCB>] [hereinafter *Press Release*].

156. JENNIFER STAVE ET AL., EVALUATION OF THE NEW YORK IMMIGRATION FAMILY UNITY PROJECT: ASSESSING THE IMPACT OF LEGAL REPRESENTATION ON FAMILY AND COMMUNITY UNITY 7 (Vera Inst. of Justice eds., 2017), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy\\_downloads/new-york-immigrant-family-unity-project-evaluation.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy_downloads/new-york-immigrant-family-unity-project-evaluation.pdf) [<https://perma.cc/XV6T-DH9P>].

157. *Press Release*, *supra* note 155.

158. Brendon D. Woods & Robert C. Shipway, *California’s First County Public Defender Immigration Representation Project*, ALAMEDA COUNTY OFF. PUB. DEFENDER, <http://www.acgov>

County Office of the Public Defender opined, “[h]er hiring recognizes that effective representation does not end at the courthouse doors.”<sup>159</sup> The program marks “an important shift toward a more holistic model of indigent defense, and [the Alameda County Office of the Public Defender] invites other public defenders to follow in its footsteps.”<sup>160</sup>

The San Francisco Public Defender’s Office followed closely behind by forming a new immigration unit, comprised of three attorneys and one paralegal, which began representing clients in immigration court in May 2017 and is expected to handle at least 150 cases per year.<sup>161</sup>

These pilot units represent an incredibly important step towards achieving universal representation. This commitment is especially influential for immigrants who have criminal convictions, as determining the immigration consequences of criminal convictions is notoriously difficult, even for experienced immigration attorneys.<sup>162</sup>

#### **D. Continue Litigation and Advocacy Efforts to Call for an Amendment of Immigration Statutes to Allow Court-Appointed Counsel for the Most Vulnerable Asylum Seekers**

Fairness requires that asylum seekers have access to counsel to guide them through the complex asylum law system. While government appointed counsel for all asylum seekers may be a lofty goal,<sup>163</sup> a small group of immigrants have already secured this right. Through an unprecedented order issued by the U.S. District Court of the Central District of California in *Franco-Gonzalez v. Holder*, the court ruled that certain detained immigrants with serious mental disabilities must

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.org/defender/documents/PRESSRELEASEJorjanihiringChorneyedits.pdf (last visited Feb. 19, 2018) [<https://perma.cc/S77Z-5MZJ>].

159. *Id.*

160. *Id.*

161. Bay City News Serv., *Public Defender Launches New Immigration Court Unit*, S.F. GATE (May 23, 2017, 11:50 AM), <http://www.sfgate.com/news/bayarea/article/Public-Defender-Launches-New-Immigration-Court-11167626.php> [<https://perma.cc/3SFG-34WJ>].

162. See Maria Rita Reyes-Stuby, *Criminal Convictions and Consequences*, ASIAN J. (Nov. 10, 2016), <http://asianjournal.com/immigration/criminal-convictions-and-consequences-2/> [<https://perma.cc/UXN6-42P9>].

163. See Careen Shannon, *Immigration is Different: Why Congress Should Guarantee Access to Counsel in All Immigration Matters*, 17 UDC/DCSL L. REV. 165, 165 (2014).

be provided qualified court-appointed counsel.<sup>164</sup> Although at first this order only applied to detainees in Washington, Arizona, and California, the Department of Justice issued an order extending this policy nationwide.<sup>165</sup> Despite this progress, there is still no right to court-appointed counsel for other vulnerable groups, such as unaccompanied minors and detained asylum seekers generally.

Advocates must continue to advance efforts to secure court-appointed counsel for the most vulnerable individuals in the asylum system, especially minors. Appointing counsel would increase the likelihood that individuals receive a meaningful opportunity for their asylum claims to be heard, while reaffirming the United States' commitment and compliance with the UN Protocol Relating to the Status of Refugees and the international policy of non-refoulement.<sup>166</sup>

### Conclusion

As Americans, but more importantly as human beings, we must not overlook the refugee crisis happening at our own border. Despite its imperfect past and present, the United States has remained at the forefront of shaping asylum law globally and providing protection to refugees. There is much work ahead to make sure our country fairly and humanely welcomes those fleeing danger. One fundamental step is ensuring that asylum seekers have access to legal counsel so they are empowered to make informed decisions, and those with viable claims are properly allowed an opportunity to present their case.

As detention for asylum seekers continues, legal advocates and immigrant activists must be prepared to collaborate creatively and resourcefully across disciplines, communities, and institutions to ensure that asylum seekers are treated with the dignity and due process they deserve in their pursuit to live a life free from violence.

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164. *See* No. CV 10-02211 DMG (DTBx), 2013 WL 3674492, at \*3 (C.D. Cal. Apr. 23, 2013) (regarding Plaintiffs' Motion for Partial Summary Judgment and Plaintiffs' Motion for Preliminary Injunction on behalf of seven class members).

165. *See id.* at \*2; Shannon, *supra* note 163, at 212–13.

166. Refugee Convention, *supra* note 9, 19 U.S.T. at 6276, 189 U.N.T.S. at 176.

