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October 26, 2016

Prof. [Sètondji Adjovi](#), Chair
UN Working Group on Arbitrary Detention
United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland

RE: URGENT APPEAL TO END FAMILY DETENTION

Dear Prof. Adjovi,

Please find below our urgent appeal to end family detention at Berks, Karnes, and Dilley because of the arbitrary deprivation of liberty in violation of international human rights law.

I. INTRODUCTION

This urgent appeal advocates for the immediate closure of the Berks County Residential Center (Berks), located in Leesport, Pennsylvania, the Karnes County Family Residential Center (Karnes), and the South Texas Family Residential Center (Dilley), both located in South Texas, in light of the UN Working Group on Arbitrary Detention's (WGAD) October 2016 visit to the U.S. The Berks, Karnes, and Dilley facilities are arbitrarily detaining families and depriving them of their liberty. The detention practices exacerbate the ordeal of families who have entered the U.S. to escape the violence in their home countries to seek better lives, but instead find themselves in prison-like detention for weeks, months, or over one year. While the U.S. government can employ less restrictive alternatives such as releasing detainees to family members, it has insisted on continuing its arbitrary policy of detaining families despite the fact that young children are involved.

When migrant families arrive in the U.S. and are sent to Berks, Karnes, and Dilley, parents and children are detained for simply for having come to the U.S. as refugees seeking asylum. Children as young as 11 days old live in a facility with deadbolts and regular 15-minute room checks during the night. Detained mothers in both Berks and Karnes have participated in a hunger strike to shed light on the abuses they must endure every day during their detention, including the ways in which it has caused the deterioration of their physical and mental health. Children detained in these facilities have shown signs of posttraumatic stress disorder, anxiety, depression, and have demonstrated suicidal behaviors. Alma Lopez, a member of Juntos who's husband was also detained in York detention center for 16 months, wrote, "In the Statute of Liberty these words are engraved, 'Give me your tired, your poor, your huddled masses yearning to breathe free.' But those words are not true."

Despite the clear violations of international standards, the U.S. government continues to insist that the detention of migrant families is acceptable. As long as Berks, Karnes, and Dilley continue to operate, the United States fails to uphold its obligation to respect the human rights and dignity of all people.

II. GROUNDS FOR THE REQUEST OF AN URGENT APPEAL

We call on the WGAD to investigate the three family detention centers — Berks, Karnes and Dilley — in light of its mandate to investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international legal instruments. As the WGAD can seek and receive information from multiple sources such as nongovernmental organizations, individuals, and their representatives, this urgent appeal provides information about the circumstances of family detention at Berks on behalf of several nongovernmental organizations, detainees, and family members.

According to the standards set forth by the WGAD, the U.S. is arbitrarily depriving parents and children of their liberty by engaging in family detention. This urgent appeal will show that the deprivation of liberty at Berks: (1) serves no legitimate government purpose, is not necessary, proportional or reasonable, and violates U.S. law (Category I); (2) deprives migrant families of their liberty because they are exercising their fundamental human right to seek asylum under Art. 14 of the Universal Declaration of Human Rights (UDHR) (Category II); and (3) fails to follow the international norms concerning fair process and procedures related to the detention of migrant families (Category III).

As further detailed in our request for relief, we respectfully ask the WGAD to send urgent appeals and communications to the U.S. government about the need to shut down Berks, Karnes, and Dilley and end its policy of family detention.

III. ARBITRARY DETENTION AT BERKS, KARNES, AND DILLEY

A. No Legal Basis to Justify Detention at Berks, Karnes, and Dilley (Category I)

The deprivation of liberty at Berks, Karnes, and Dilley is impossible to justify on any legal basis as the U.S. government has no legitimate purpose for detaining children and their parents who are seeking refuge in the U.S. Nor can it justify that it is necessary, reasonable or proportional to their alleged purpose given the prolonged nature of the detention and availability of less restrictive alternatives. Finally, this deprivation of liberty at Berks, Karnes, and Dilley also lacks legal basis because it violates U.S. law.

1. No Legitimate Government Purpose

At Berks, Karnes, and Dilley the United States is detaining Central American families claiming that this practice deters immigration. This motivation is not in compliance with international human rights law because deterrence is never a valid governmental objective for detention.

The UNHCR Detention Guidelines state that detention must have a legitimate government purpose for it to not be arbitrary. Detention may be utilized when a legitimate goal of the state requires it, such as for public order, public health, or national security. Detaining families based on deterrence, however, punishes those who are migrating and seeking asylum, fundamental rights enshrined in Article 14 of the UDHR.

In February 2015, a U.S. federal judge enjoined the federal government from detaining families for the purpose of deterrence. On August 6, 2015, the U.S. government argued that detention facilities like Berks, Karnes, and Dilley help enforce immigration laws, “which in turn dis-incentivizes future surges of families crossing the Southwest border.” While the Secretary of the U.S. Department of Homeland Security, Jeh C. Johnson,

previously called for the discontinuance of ICE's policy of detention for deterrence purposes, the U.S. government continues to provide this justification for its family detention policies. The UN recognizes this exact motive as an illegitimate government purpose for detaining asylum-seeking families.

2. *Detention of Children Violates the Best Interest of the Child*

Detention of children at Berks, Karnes, and Dilley is concerning to the global community. Depriving children of their liberty requires heightened scrutiny because of their particular vulnerabilities. Often fleeing persecution, abuse, and violence, these children may experience exacerbated trauma upon arrival because of their detention. DHS' review of its own facilities by the Advisory Committee on Family Residential Centers (ACFRC) recognized that the very experience of detention is a continuing source of trauma for families who fled to the U.S. seeking safety.

International authority is unified in its belief of that a necessary part of the best interests of children standard is the principle that children seeking refuge in another country should not be detained in prison-like facilities. Article 24 of the ICCPR states that “[e]very child shall have . . . the right to such measures of protection as are required by his status as a minor.” Article 4 of the Convention on the Rights of the Child requires the realization of civil and political rights of children immediately, without regard to economic circumstances of the country. The Inter-American Commission on Human Rights has stated that international law upholds “the principle of the best interests of the child in actions taken with respect to the child’s life, survival, and development, by measures adapted to the child’s needs.” In other words, states are obligated to choose alternatives that promote care and well-being of children to ensure their comprehensive protection, rather than the deprivation of his or her liberty. ACFRC added that detention of families is never in the best interest of the child. Even over short periods, children placed in detention are at special risk of health and development issues.

Yet at all three facilities, very young children have been detained. At Berks, children as young as 11 days old have been detained. Room checks are conducted every fifteen minutes during sleeping hours, disrupting sleep cycles. This practice causes insomnia, fear, and anxiety in children held within the facility. Medical professionals who have visited the facility have questioned whether ICE can provide appropriate care for children. Mothers have reported taking their children suffering with high fevers to the medical staff and being denied any sort of fever reducer and being told simply to “drink more water.” In one instance, a mother had to obtain a prescription to give yogurt to her daughter who was persistently ill and had lost considerable weight.

Despite having an overwhelmingly Spanish-speaking population, Berks does not employ a Spanish-speaking mental health staff. The ICE Family Residential Standards, which govern all three family detention facilities, require that all resident accessible areas be equipped with either deadbolts or deadlocks. In exceptional circumstances where children are detained, the UN Standard Rules for Prisoners requires that such facilities should include a “nursery staffed by qualified persons, and with the appropriate educational, pediatric, and nutritional services, in order to protect the best interests of the child,” rather than detention in prison-like conditions.

A letter from 22 mothers who engaged in a hunger strike at Berks to call attention to their plight stated that:

We risked our own lives and those of our children so we could arrive on safe ground. While here, our children have told us they sometimes consider suicide, made desperate from confinement. The teenagers say that being here, life makes no sense. One of our children said he wanted to break the window to jump out and end this nightmare.

On many occasions, our children ask us if we have the courage to escape. They grab the chords that hold their ID cards and tighten them around their necks, saying they want to die if they don't get out. The smallest children, who are only two-years-old, cry during the night because they cannot express what they feel. For some time, our children have not eaten well, and they have lost weight.

At the time these letters were written on August 12, 2016, most of these women had been detained at Berks with their children for periods ranging from 270 to 365 days. Since then, none have been released from confinement.

Further, the UNCHR Detention Guidelines state that the best interests standard should prevail “regardless of migration status or that of their parents.” According to the Inter-American Court of Human Rights, “when the child’s best interest requires keeping the family together, the imperative requirement not to deprive the child of liberty extends to her or his parents.” As the ICCPR, Article 23, states that the family “is the natural and fundamental group unit of society and is entitled to protection by society and the State,” parents, along with their children, must necessarily be released from detention to cure the unlawful deprivation of liberty in violation of the best interests of the child.

3. *Detention of Families Is Not Necessary, Reasonable, or Proportional*

Detention of families at Berks, Karnes, and Dilley is not necessary, reasonable, or proportional to any government interest because the U.S. government cannot justify that it is necessary given the many alternatives to detention that exist.

First, the U.S. government may argue that they need to detain families to process their cases. There is no justification, however, for taking longer than a few days to process a case. Indeed, the Center for Human Rights & Constitutional Law notes that it takes a handful of hours to determine whether a class member appears eligible for relief under the Immigration and Nationality Act. Additionally, the families can provide ICE with their “proof of identity, a verifiable address, and sponsor information” in minutes. However, families are unreasonably detained for months for the supposed processing of their cases. In a letter from mothers detained at Berks, they write:

If the asylum officials gave us a positive result at our credible fear interview, why when we get to the court before the immigration judge they deny our right to a bond, and then after the final court they make us wait more than 3 months for an answer . . . and when the answer comes back negative for our fear of returning back to our countries we have to appeal, and wait up to 6 months with the hope of a positive answer.

In other words, there is no reasonable administrative justification for the prolonged detention of families at Berks for weeks and months. Berks even houses 5 families who have been detained for over a year. The ACFRC recommended that detention should be only long enough to process a family for release into alternatives to detention.

Second, the U.S. government cannot argue that detention is necessary to secure court appearances, especially given the alternatives that exist to detention. The UNHCR Detention Guidelines state that it is necessary to explore alternatives to detention such as community supervision and/or case management programs to “ensure that detention of asylum-seekers is a measure of last, rather than first, resort.”

There are a variety of legitimate alternatives to family detention. According to a recent report about the women at Berks, “All the women and their children have relatives who are willing and able to welcome them in their homes and provide for them.” For example, an asylum-seeker named Jessica (name changed for anonymity) and her son came to the United States “in hopes of a better life and reuniting with her child's father, who has lived in the United States for nearly twelve years.” The child's grandmother, who also lives in the United States, told reporters that it breaks her heart to see her grandson detained and that he tells her he wants to be freed. Similarly, a nine-year old detainee named Yeslin states that she wants to be released “so that [she] can be with [her] father where [she] will be happy and not confined.”

For those that do not have relatives in the U.S., Human Rights First reports that “community-based programs that provide social services and case management services have proven successful in ensuring immigrants' appearance for immigration proceedings and other monitoring obligations.” For example, the Vera Institute of Justice's Appearance Assistance Project implemented a supervised release and assistance program, which boasted a 93% appearance rate for asylum seekers. Lutheran Immigration and Refugee Service and the U.S. Conference of Catholic Bishops' Migration and Refugee Service recently piloted community-based models showing initial results with program compliance rates of 96% to 97%. Even where migrants are labeled “flight risks,” other studies show that 98% of individuals with representation appear for court proceedings.

In the case of setting bond as a condition of release, UNHCR Detention Guideline 4.3 states that bond requirements cannot be “set so high as to be prohibitive.” According to a U.S. Immigration and Customs Enforcement (ICE) representative, \$5,000 is the typical amount for bond to be set at Berks. If the bond amounts are set too high for many asylum-seeking families to pay, however, it effectively blocks or delays many families' release from detention, and is therefore not an adequate alternative to detention.

Finally, the acts of the U.S. government undercut any justification that detention is necessary, reasonable, or proportional. The U.S. government has arbitrarily detained some families while releasing other families with identical case statuses. American Immigration Counsel notes that “[s]ome [families] are released, while others face lengthy detention that makes it much harder to prepare their cases.” The Inter-American Commission on Human Rights has noted that the U.S. government's decision of whether to detain families is seemingly based on whether bed space happens to be available for the family. The same arbitrary decisions govern detention at Berks, where families with identical statuses face different fates. Mothers who have filed a legal case about the right to seek court review of their asylum claims have been held while watching families with similar statuses being released. Lee Gelernt, deputy director of the ACLU's Immigrants' Rights Project said, “[i]t is becoming increasingly hard to conclude that there is not some punitive element to keeping these women in detention simply because they exercised their right to bring a constitutional test case.” These practices undercut any reasonable or uniform approach and instead showcase a family detention policy that is arbitrary and punitive.

The U.S. government, therefore, has failed to both show that family detention is necessary, reasonable, or proportional to a legitimate government purpose and adequately employ available non-liberty restraining measures.

4. *Detention of Families Violates Federal and Local Law*

Detention at Berks, Karnes, and Dilley lacks any legal basis in federal and local law. It fails to comply with a federal court decision prohibiting the detention of children in secure and unlicensed facilities. Further, detention at Berks fails to comply with state law that prohibits the detention of children under the age of nine or who have not otherwise been committed by a Pennsylvania court order.

Immigration detention must comply with the laws of the country detaining immigrants according to Article 9(1) of the ICCPR. The UN Human Rights Council recognizes that if the deprivation is not in conformity with domestic law, it is unlawful.

The Ninth Circuit Court of Appeals has ruled that family detention must comply with the standards set out by the *Flores v. Reno* settlement in 1997, for the detention and treatment of children. On July 6, 2016, the Ninth Circuit confirmed that the federal government cannot detain minors with parents in custody beyond 3-5 days unless they are held in a state licensed, non-secure facility. At Berks, the government detains minors in a secure facility that was never properly licensed under state law. The facility is secure as it monitors the ingress and egress of visitors, prohibits voluntary egress, and subjects residents to nightly 15-minute room checks. Families are not free to leave Berks, and can be punished for attempting to do so. The contract between Berks and ICE calls for 24-hour guards to ensure around-the-clock visual supervision of immigrant families. The license has not been renewed as of January 2016 because Berks has failed to comply with the state law requirements for licensing. This detention, therefore, violates the federal court's order.

Similarly, in Texas, a district judge issued a temporary injunction in June 2016 prohibiting the Texas Department of Family and Protective Services from issuing a childcare license to Dilley. The injunction was granted because this facility does not qualify as a childcare facility under Texas state law. Judge Karin Crump noted the inherent danger in forcing children to share mixed gender living quarters with adults. While this case is still in active litigation, the facility is operating in current violation of the federal court's order.

Further, Berks' detention of families also violates state law intended to protect the health, safety, and well-being of children. Under Pennsylvania's state law, children who are not dependent may not be placed in detention or shelter care. State law also prohibits the detention of children under age nine in a secure detention facility. 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. Yet Berks has detained numerous children under age nine in violation of these rules. No child in Berks has received a Pennsylvania court order authorizing his or her detention.

The detention of families, therefore, has no justifiable legal basis as it fails to comply with domestic laws.

B. Families Seeking Asylum Are Deprived of their Liberty (Category II)

Detention at Berks, Karnes, and Dilley violates human rights to liberty and freedom from persecution because it interferes with their right to seek asylum.

Berks, Karnes, and Dilley detain families that are seeking asylum. The UDHR, in Article 14, protects the crucial right for migrants to "seek and to enjoy in other countries asylum from persecution." The UN Convention and Protocol Relating to the Status of Refugees also codifies the right of refugees to seek special protection and to not be penalized with arbitrary detention for seeking asylum. The Inter-American Court on Human Rights agrees that the detention of asylum seekers is almost never permissible, and the United Nations Council on Human Rights urges that detention of asylum seekers be a measure of last resort and lays out numerous standards as to their humane treatment while in detention. The European Court on Human Rights further asserts that all states have a duty of protecting vulnerable persons fleeing their native countries due to persecution.

Despite the internationally recognized right to seek asylum, the current practices at Berks, Karnes, and Dilley also raise concerns that detained families are not being granted sufficient due process rights to seek asylum. Family detention inhibits immigrants' ability to effectively pursue their immigration claims. According to

attorneys working with families at Berks, families are not given adequate time to find attorneys prior to their Credible Fear Interviews (CFI), which determine whether they will have the opportunity to seek asylum. Some detainees have been coerced into waiving their right to counsel, saving effort for the staff at Berks at the cost of what may be legitimate asylum petitions. Further, the remote location of these facilities negatively affects the availability of pro bono counsel, as well as access to translators and culturally-appropriate community resources. ICE has also transferred represented mothers and children away from counsel sometimes without meaningful notice and more recently, without any notice. Nor have the U.S. courts yet provided an adequate remedy to many families seeking asylum. The Third Circuit in *Castro v. Department of Homeland Security* recently denied the right of these families to seek court review of their order of deportation only after a brief interview with a government officer that was seriously flawed. The plaintiffs from this case are among those who have been held the longest in detention at Berks. This same systematic interference with the right to seek asylum is also present at Karnes and Dilley, especially for families placed in expedited removal.

The American Immigration Lawyers Association has also reported that ICE has gone to the unconscionable length of deporting detainees while their cases were still in progress. ICE has ignored pending requests for review to federal courts, civil rights requests, and USCIS asylum office requests when carrying out deportations. According to a report by Democracy Now!, a Guatemalan asylum-seeker and her twelve-year-old daughter spent a year in detention while seeking asylum before being deported. However, because of inadequacies with the process they were returned to Berks to await further proceedings. Sending persecuted asylum-seekers back to their countries of origin prior to the conclusion of their asylum case violates international law and puts vulnerable families back in the very danger that forced them to leave their homes in the first place.

The nature of detention at Berks, Karnes, and Dilley, therefore, systematically interferes with the special protections accorded migrants seeking asylum by international law.

C. The Process and Procedures for Detaining Families Is Unfair (Category III)

The process by which the U.S. government determines whether to detain families is arbitrary. As stated above, the U.S. government has arbitrarily detained some families while releasing other families with identical case statuses. The same arbitrary decisions govern detention at Berks, Karnes, and Dilley where families with identical statuses face different fates. The Inter-American Commission on Human Rights has observed that there was “no automatic judicial review of the legality of the immigration detention nor was there a periodic review of its continued need.” Depending on the status of a family’s case (CFI determination) and how they had entered the country, only those migrants meeting certain specific criteria were entitled to a bond or custody review. Those placed in expedited removal have not had the right to seek a review of their custody. These practices fail to provide adequate due process protections for reviewing a family’s detention. ACFRC has recommended that any decision to detain rather than release should be reviewed at least monthly at the ICE Headquarters level. The U.S. government’s practice of arbitrarily determining who would be detained, therefore, showcases a family detention policy with an unfair process and procedure that is truly arbitrary.

IV. REQUEST FOR RELIEF

At Berks, Karnes, and Dilley, the U.S. is engaged in unfair and arbitrary practices that restrict liberty and endanger the health and dignity of families. These practices violate international human rights standards that the

U.S. is obligated to uphold. We hereby submit this urgent appeal to the UN Working Group on Arbitrary Detention, and respectfully call on the working group to:

- A) Issue an opinion urging the U.S. government to immediately close the Berks County Residential Center (Berks), the Karnes County Family Residential Center (Karnes), and the South Texas Family Residential Center (Dilley);
- B) Issue an opinion condemning the U.S.' detention of families as an act of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the relevant international legal instruments;
- C) Meet with government officials and urge them to immediately close Berks, Karnes, and Dilley and end family detention;
- D) Include the family detention issues raised by Berks, Karnes, and Dilley in WGAD's report summarizing its October 2016 visit concerning arbitrary detention in the U.S.;
- E) Issue a press release and utilize the UN's broad-reaching media platform to bring attention to the human rights abuses and call on the U.S. to close Berks, Karnes, and Dilley and end family detention; and
- F) Engage in any other activities the WGAD sees as fit and proper to address the concerns raised by this urgent appeal.

Sincerely,

Juntos

Social Justice Lawyering Clinic, Sheller Center for Social Justice, Temple University Beasley School of Law

Grassroots Leadership

Detention Watch Network

Community Initiatives for Visiting Immigrants in Confinement (CIVIC)

Mijente

Not1More

The Kairos Center

Unitarian Universalist Service Committee

U.S. Human Rights Network

Women's International League for Peace and Freedom

350 Philadelphia

ACLAMO Family Centers

ACT UP Philadelphia

Adjunct Justice

Alas Movimiento
Aquinas Center
Asian Americans United
Black and Brown Workers Collective
BuxMont Peace and Justice Committee
BuxMont Unitarian Universalist Fellowship
BuxMont UU Fellowship Peace and Justice Committee
Ceiba
Children's Health Center
Clinicians for Healthy Families
Denver Health
First Focus
Franciscan Action Network
Free Migration Project
Georgia Latino Alliance for Human Rights
Global Women's Strike/US & UK
Grupo de Apoyo e Integración Hispanoamericano
Guerrero Glass
Immigrant Detainee Accompaniment Program
JusticeStrategies
Lowry Family Health Clinic
Make the Road Pennsylvania
Maryknoll Office for Global Concerns
Michigan Solidarity Network
Migrant Justice
Missionary Sisters of the Sacred Heart of Jesus
Movement of Immigrant Leaders in Pennsylvania (MILPA)
National Advocacy Center of the Sisters of the Good Shepherd
National Justice for Our Neighbors
NETWORK Lobby for Catholic Social Justice
New Sanctuary Movement of Philadelphia
NWDC Resistance

Payday men's network/US & UK

Pennsylvania Immigration and Citizenship Coalition

Philadelphia JACL

Philadelphia Storytelling Project

Provincial Council Clerics of St. Viator (Viatorians)

School Sisters of St. Francis

Unitarian Universalist Congregation of York Social Justice Committee

Unitarian Universalist Fellowship of Centre County, PA

Unitarian Universalist PA Advocacy Network

VietLead

Waco Immigration Alliance

Women of Color in the Global Women's Strike/US & UK

APPENDIX A- STATEMENTS FROM DETAINED FAMILIES

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APPENDIX B - REFERENCES

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