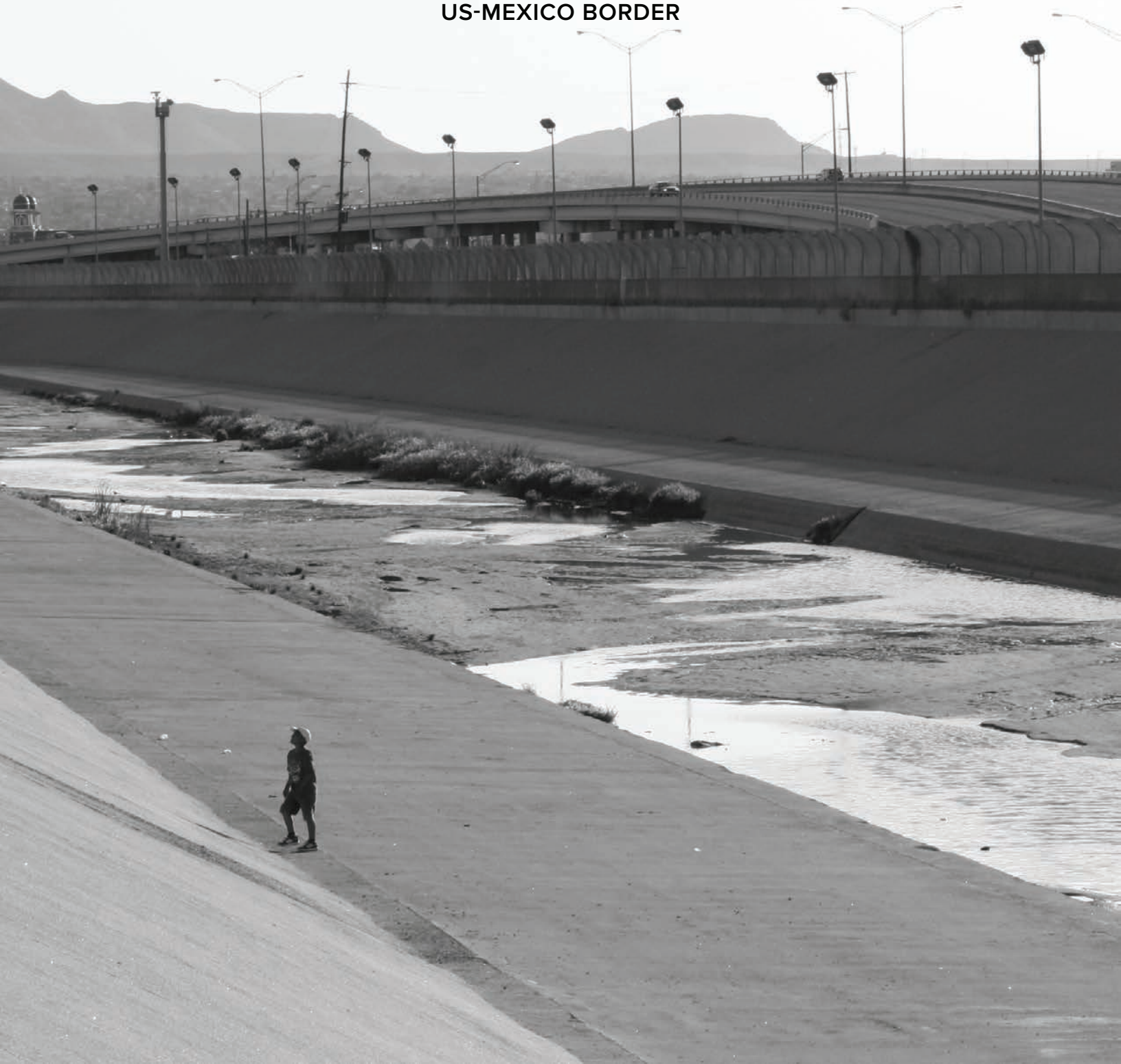


DISCRETION TO DENY

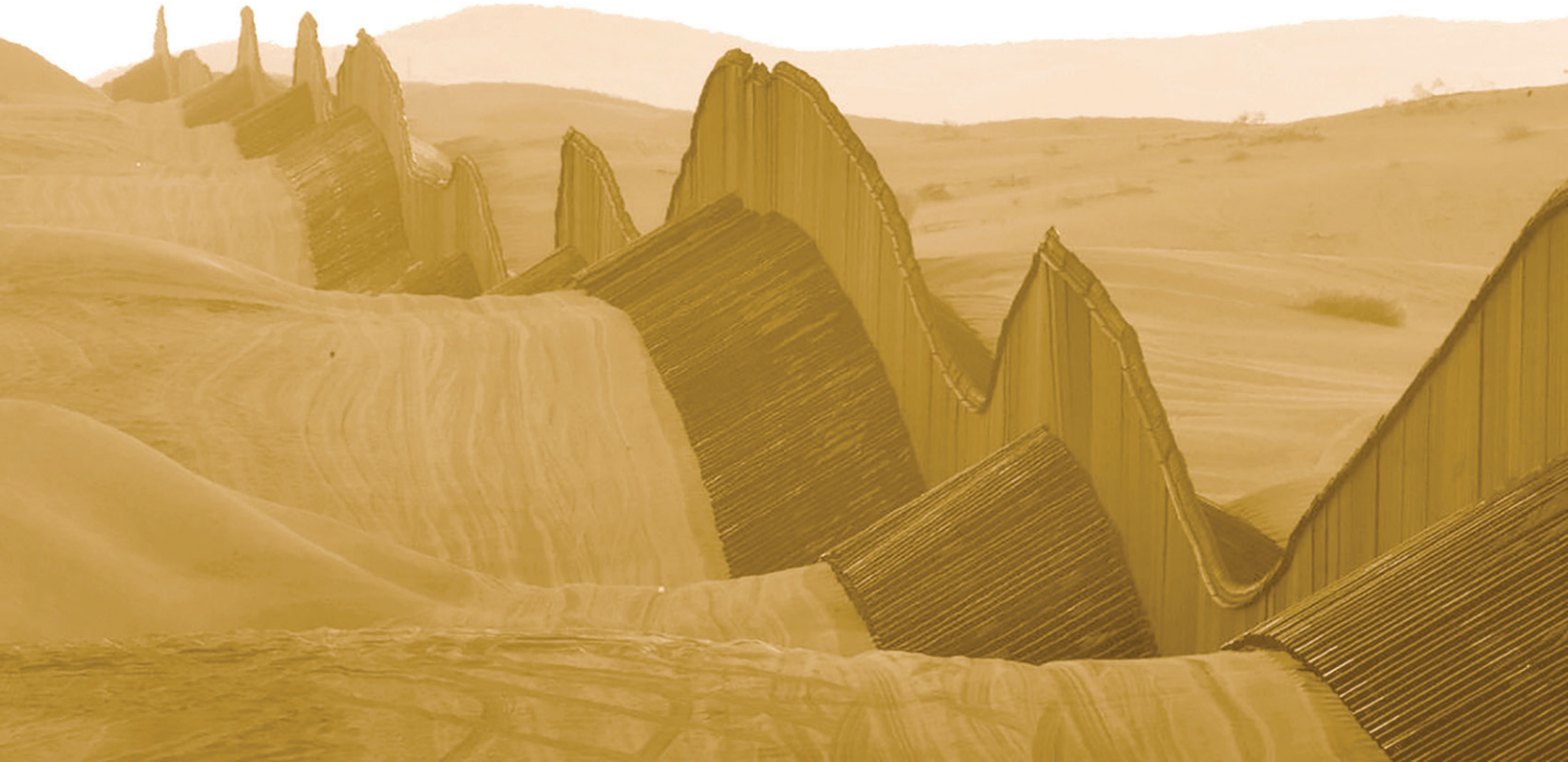
FAMILY SEPARATION, PROLONGED DETENTION, AND DETERRENCE OF ASYLUM SEEKERS AT THE HANDS OF IMMIGRATION AUTHORITIES ALONG THE US-MEXICO BORDER



DISCRETION TO DENY

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*Borderland Immigration Council
February 2017*



THE BORDERLAND IMMIGRATION COUNCIL

The Borderland Immigration Council (BIC) is an El Paso-Las Cruces based coalition of immigration attorneys and service providers, advocacy organizations and concerned community members. BIC is addressing serious concerns with the treatment of migrants and their attorneys by local immigration authorities. This report is a direct response to the need to document trends of due process violations and barriers asylum-seekers face vis-a-vis the Department of Homeland Security (DHS), particularly with ICE and CBP in the El Paso Sector.

THE HOPE BORDER INSTITUTE

Hope Border Institute (HBI) is an independent grassroots community organization working in the El Paso-Ciudad Juárez-Las Cruces region, that seeks to bring the perspective of Catholic social teaching to bear on the social realities unique to our region. Through a robust program of research, reflection, leadership development, advocacy and action, HBI develops and aligns the border's community leaders engaged in the work of justice from across the Mexico-US border to deepen solidarity across borders and transform our region.

AUTHORS

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We dedicate this report to the people whose experiences motivate its writing, and those whose testimonies appear herein.

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EXECUTIVE SUMMARY

This report identifies failures of immigration agencies and officials in the El Paso Sector to respect fundamental human rights and dignity. These systemic failures are indicative of an intricate border security complex -- an overlapping web of individuals and agencies, detention centers and courts, and enforcement priorities and mechanisms -- that denies justice at the cost of the most vulnerable: immigrant and mixed-status families, children, and those who come to the U.S. fleeing violence, persecution and insecurity.

In the border enforcement region commonly known as the El Paso Sector, encompassing counties in West Texas and all of New Mexico, immigrants and asylum-seekers routinely face situations in which Department of Homeland Security (DHS) agencies use a broad and unaccountable mechanism of “discretion” to separate families, remove asylum seekers and keep people in situations of prolonged

detention. El Paso Sector U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) officials make fateful decisions regarding use of discretion, ones which fail to advance DHS enforcement priorities or humanitarian claims and at times contravene stated DHS policy. Far from serving our community and national interests, these decisions undermine the values of justice, fairness and democracy.

In the summer of 2016, private attorneys, legal service providers and advocacy organizations in the El Paso area formed the Borderland Immigration Council to address growing abuses in the immigration enforcement system. Between September 2016 and January 2017, the Hope Border Institute conducted in-depth research on enforcement and detention policies and practices in the El Paso Sector. An analysis of over 100 documented cases revealed the following troubling trends:

1. ENFORCEMENT & FAMILY SEPARATION

CBP and ICE routinely separate families at ports of entry and through detention and enforcement. Minors are torn from parents and caregivers, forcing children into state custody or foster care. Adult male caregivers and other male family members are systematically isolated from family units through detention and deportation. This family separation results in detrimental impacts on legitimate asylum claims as well as the mental, material and physical well-being of children and other family members.

2. SYSTEMATIC DETERRENCE OF ASYLUM SEEKERS

CBP and ICE practices deter and dissuade asylum seekers at all points of the asylum process, from intimidation and harassment of individuals arriving at ports of entry and agents' failure to screen for credible fear, to the use of prolonged detention and the abuse of asylum seekers while in custody. These practices, intended to break the spirits of asylum seekers, lead to the deportation of people seeking refuge, often to situations of extreme danger.

3. UNACCOUNTABLE, ARBITRARY DENIAL OF STAYS OF REMOVAL

ICE increasingly denies even the most urgent humanitarian requests for stays of removal with little to no explanation, even to attorneys. This results in the deportation of individuals with longstanding ties to communities, parents of minor children dependent on their care, and individuals whose prior requests for stays of removal were approved. This new practice has serious negative effects not only on those deported, but also on the communities and lives and livelihoods of family members they leave behind.

4. UNACCOUNTABLE, ARBITRARY DENIAL OF PAROLE

The arbitrary nature of parole denials in the El Paso Sector represents a distinct deviation from previous leadership. Parole denials include those with established family ties and community sponsors, those responsible for family members with urgent medical situations, and parents of minor children. ICE provides minimal or no justification for these denials, holding immigrants and asylum seekers in detention, hindering their cases and causing mental and physical strain.

5. VIOLATIONS OF DUE PROCESS AND BARRIERS TO COUNSEL FOR DETAINED MIGRANTS

Numerous obstacles to effective legal representation, including access to legal representatives, amount to a serious crisis of due process for individuals in immigration proceedings. Patterns identified in the El Paso sector include impediments to attorney-client meetings and confidentiality, the execution of deportation orders without notification to legal counsel; and other practices that inhibit due process.

These findings are not isolated events, but represent systematic and pervasive practices which deter asylum seekers and criminalize immigrants in the El Paso Sector. Furthermore, these documented cases, most dating from after December 2015, are representative of broader trends in immigrant detention and the treatment of asylum seekers across the United States. We reference reports and documentation presented by human rights, advocacy and faith-based organizations identifying many of these same patterns and practices throughout the country.

We join the many advocates in the United States and around the world in the call to end private immigrant detention and to treat asylum seekers

with respect and dignity. Given the devastating human consequences this report depicts, we recommend the following:

1. EFFECTIVE TRANSPARENCY AND ACCOUNTABILITY

CBP and ICE should implement effective vehicles of transparency and accountability in the areas of asylum, detention and prosecutorial discretion.

2. LIMIT USE AND DURATION OF IMMIGRANT DETENTION

Detention should not be used as a punitive measure and only as necessary to ensure public safety and appearance in court. ICE and EOIR should prioritize alternatives to detention and utilize prosecutorial discretion to release detainees in accordance with DHS memos, to prioritize humane enforcement and detention that respects dignity and rights.

3. END DETERRENCE & MASS DETENTION OF ASYLUM SEEKERS

CBP and ICE must offer asylum seekers the protections afforded to them by US and international law. Asylum seekers should not be processed as border crossers and detention should not be used as a deterrence for those who seek protection and refuge in the United States.

4. HUMANE ENFORCEMENT OF REMOVAL

ICE should utilize prosecutorial discretion to grant stays of removal to prioritize humane enforcement in a way that respects basic dignity and rights and should ensure that legal counsel and deportees are advised of impending deportation.

5. END FAMILY SEPARATION

DHS agencies tasked with immigration enforcement should prioritize child wellbeing and family unity in all decision making, including in asylum, detention and enforcement processes.

6. GUARANTEE ACCESS TO COUNSEL AND RESPECT DUE PROCESS

ICE and private detention contractors should implement measures to improve and ensure detainees' access to counsel and due process.

This report illustrates policies, practices, patterns and a culture of abuse particular to the El Paso Sector, in which local officials exploit the opaque domain of discretion and in so doing deny fundamental human rights. This situation has become more acute since the arrival of ICE Field Office Director Corey Price. El Paso-based CBP and ICE leadership, along with EOIR, have the power to address these systematic abuses. In doing so, they can protect the most fundamental rights of migrants and asylum-seekers while upholding the law, promoting justice and preserving the integrity of the immigration system in the El Paso sector.

INTRODUCTION

This report details the effects of an increasingly harsh border enforcement paradigm in the area known to immigration officials as the El Paso Sector, encompassing counties in West Texas and all of New Mexico. It provides a snapshot of the human impacts of the metastasizing systems of border enforcement at the twilight of the Obama Administration and the beginning of the Trump Administration. The testimonies and findings presented here illustrate how local immigration officials have repurposed a sprawling complex of border security and immigration control and made of it a means to separate families, dissuade and discourage asylum seekers, block humanitarian claims, deport an ever-increasing number of immigrants, and detain more persons for longer periods of time.

The progressive militarization of the southern border and criminalization of the migrant have deep roots in the history of our country and the region.¹ In recent times, following the implementation of the North American Free Trade Agreement (NAFTA) and in the aftermath of the 9/11 terrorist attacks, a relatively fluid border was significantly hardened. The state apparatus of border and immigration enforcement mushroomed, often under the pretext of national security. This meant an exponential growth in immigration enforcement agents, checkpoints, walls, surveillance technology, immigrant detention centers, and punitive policies criminalizing migrants through programs like Operation Streamline.

IN 2014, IN AN ATTEMPT TO SHUT DOWN OUR BORDERS TO THE THOUSANDS OF MIGRANTS AND REFUGEES ESCAPING EXTREME POVERTY, POLITICAL INSTABILITY AND DANGEROUS SITUATIONS OF CRIME IN CENTRAL AMERICA, THE OBAMA ADMINISTRATION PUBLICLY COMMITTED ITSELF TO AN AGGRESSIVE “STRATEGY OF DETERRENCE.”

This deterrence strategy included a massive expansion of immigrant detention, including

the detention of mothers and children, and the priority deportation of “border crossers” through expedited removal. The Obama Administration’s deterrence strategy marked an inflection point. Harsh measures of enforcement, expressly intended to “send a message” to those who would undertake the treacherous journey to the United States in order to escape economic and political collapse in countries of origin, were no longer just the actions of a renegade few. These measures became official policy.

Following the implementation of this deterrence strategy, attorneys and advocates in the border communities of El Paso, TX and neighboring Las Cruces, NM began to encounter an increasing number of obstacles to effective representation of immigrant clients. Attorneys noticed growing patterns of harsh and abusive treatment among clients at the hands of immigration enforcement agents, in immigration courts and in immigrant detention centers. Asylum seekers were detained in greater numbers, separated from family members. Stays of deportation and grants of humanitarian parole were on the decline. Expedited removal and prolonged detention were on the rise.

These troubling patterns grew more acute with the arrival of U.S. Immigration and Customs Enforcement (ICE) Field Office Director Corey Price in December 2015.

The deported and detained are made invisible by the immigration enforcement system. In the El Paso Sector, an estimated 4,000 immigrants are held in detention on any given night. ICE and U.S. Customs and Border Protection (CBP) are notorious for providing incomplete information regarding their operations and decision making and often assume a defensive posture when confronted with the claims of advocates and attorneys.

Discretion to Deny aims to shine a light on processes, practices and agencies urgently in need of transparency and accountability. We hope to lift up the people whose lives are impacted by this broken system and illustrate the moral impacts of an ever harsher system of border enforcement.

This report is not intended to demonize the men and women that work for ICE or CBP. It is agency leadership who is responsible for instilling and perpetuating an institutional culture that prioritizes accountability, transparency and human dignity. Practices that dehumanize and demoralize asylum seekers and migrants also dehumanize and demoralize agents and officials.

THE REPORT PRESENTS FIVE KEY FINDINGS: FAMILY SEPARATION, DETERRENCE OF ASYLUM SEEKERS, ARBITRARY DENIALS OF STAY OF REMOVAL, ARBITRARY DENIALS OF HUMANITARIAN PAROLE, AND BARRIERS TO DUE PROCESS.

The findings are illustrated by case studies, demonstrating the multiple dimensions of an increasingly punitive system of border enforcement. We follow these findings with a series of broad recommendations for ICE, CBP, and immigration courts in the El Paso sector.

It is our assertion that these abuses of authority are not isolated incidents. The cases on which this report is based represent systematic and pervasive practices which further militarize the border and criminalize immigrants. This report demonstrates not the scattershot anecdotes of a few, but documents trends and patterns of abuse in the El Paso Sector based on the experiences of dozens of legal experts and more than 100 clients. These practices represent a crisis in human rights on the U.S.-Mexico border and a significant challenge to constitutionality and the rule of law.

METHODOLOGY

This report is based on in-depth, one-on-one interviews conducted between September 2016 and January 2017 with 25 legal experts in the El Paso and Las Cruces area. Our goal was to collect evidence to document increased restrictions on due process and access to counsel, in detention centers and during legal proceedings, as well as increased use of detention as a deterrence for asylum-seekers and undocumented immigrants.

A survey instrument for interviews was developed by researchers at the Hope Border Institute (HBI), focusing on the experiences of legal representatives in detention centers and immigration courts as well as in interactions with ICE and CBP officials and agents. Interviews took place at attorney and community organization offices and ranged in duration from 60 minutes to two hours or more. HBI researchers transcribed and coded the interviews and identified major thematic areas.

Detailed information on over 120 cases of asylum seekers, persons requesting humanitarian parole or relief, and individuals detained was collected, coded, analyzed and classified. Additional documentation collected included attorney testimony, redacted affidavits and redacted court documents. Supplemental interviews were conducted with a number of local migration advocates in order to supplement the data. These interviews further corroborated concerns expressed by the legal community regarding growing restrictions pertaining to prosecutorial discretion and the treatment of asylum seekers. While this report is primarily based in the testimonies of legal experts and the content of legal documents, when accessible, testimonies from asylum seekers were also incorporated into the analysis.

LIMITATIONS

This report reflects attorney cases from 2014 to 2016, with the vast majority taking place after December 2015. Being the first study of its kind to be carried out in the El Paso Sector, it documents a discreet but meaningful sample of cases. Research findings are consistent with a wider body of academic and policy literature on the experience of migrants in the US-Mexico borderlands in the context of their interactions with immigration enforcement and control actors.

The findings in this report are based primarily on attorney interviews. While these representatives have access to a great deal of information about their clients and immigration proceedings, this method does present some limitations. Analysis was limited to information which attorneys could provide. Data is primarily qualitative, as the present study constitutes the first of its kind and no systematic tool for data collection has been implemented or used by local organizations to document or report incidents of abuse of prosecutorial discretion. Furthermore, collecting data on victims of intimidation and harassment at the hands of state actors is difficult to obtain. Additionally, there are numerous barriers to obtaining official statistics from ICE and CBP. Given this lack of official statistics, our ability to compare government data on the practices prior to and after the arrival of ICE Field Director Corey Price is limited.

Attorneys were the focus of interviews for this report precisely because of the consequences of trends and practices identified herein. This report describes a system that makes migrants, asylum seekers and those in detention invisible. Many of the clients whose cases are documented have been deported and are thus difficult to contact - either due to unknown whereabouts or because they are in hiding.

This report does not reflect the experiences of migrants or asylum seekers who acted *pro se* or who did not have the assistance of an attorney. This unrepresented population makes up the vast majority of those caught up in the immigration system.² As migrants and asylum seekers with legal counsel have greater access to avenues for relief and prosecutorial discretion, it is our contention that the patterns and practices identified in this report affect a much broader population than is represented here.

ENFORCEMENT & FAMILY SEPARATION

In the El Paso Sector, although immigration enforcement officers have the ability to exercise discretion to preserve family unity and protect the most fundamental rights of children, ICE and CBP demonstrate callous indifference towards family unity.³ Officers routinely make decisions about detention, prosecution and deportation that tear families apart. Minors are separated from parents and caregivers, forcing children into state custody or foster care. Adult male caregivers and other male family members are systematically isolated from family units through detention and deportation. The consequences of family separation are clear and well-documented: detrimental impacts on legitimate asylum claims and harm to the mental, material, and physical well-being of children and other family members. The overarching pattern of total disregard for family unity throughout the immigration enforcement system has been detailed by countless organizations over many years.

“Children seeking asylum are separated from their parents and forced into state custody.”

Arbitrary family separation occurs routinely in the El Paso Sector: nearly one-third of the cases documented for this report involved the separation of families. Shockingly, in over one quarter of the cases, minor children were torn from one or both parents or caretakers.

Family separation occurs at every step in the migration process - while families are in transit, as they cross the border, at the time of apprehension, in or through detention, at the time of deportation, and long after deportation.⁴ Given the scope of this study, our findings focus on decisions that separate nuclear families through apprehension, detention and deportation.

SEPARATING CHILDREN FROM THEIR ONLY PARENT OR CAREGIVER

While the ICE Parental Interests Directive indicates that immigration enforcement activities should not “unnecessarily disrupt the parental rights of both alien parents or legal guardians of minor children” regardless of the dependent’s citizenship, the cases and testimony documented for this report demonstrate that ICE and CBP in the El Paso Sector fail to respect this directive.⁵

The most egregious cases documented in our study were those in which ICE and CBP decisions separated minor children from their primary caretakers, forcing children - often asylum seekers - into state-sponsored shelters or foster care. One attorney interviewed indicated that, in nearly a decade of practice prior to December 2015, she saw children separated from single parents with whom they traveled only a handful of times. But, between January and July 2016, she recorded over 30 such incidents. In fact, a governmental advisory

committee report in September 2016 found that “disconcertingly, recent evidence suggests that some families are separated and adults detained and placed in expedited removal or reinstatement proceedings while children are sent to the Office of Refugee Resettlement.”⁶

VERONICA⁷

Veronica, a 24-year old Guatemalan woman with an asylum claim based on domestic violence and abuse, requested asylum at a port of entry in El Paso in mid August, 2016, along with her five year-old daughter, who had been witness of the violence experienced by her mother. Veronica was separated from her young daughter and detained, likely on the basis of an immigration record. Veronica passed a credible fear interview only two weeks after her initial request for asylum, but was kept in detention. There were no family members in the United States who were able to assume custody of the five-year old girl, and she was subsequently put into state care. During her initial period of detention, Veronica was unable to obtain information regarding the whereabouts or condition of her young daughter, and experienced stress-induced strokes. With the added trauma of separation from her mother, the little girl stopped eating.

Veronica requested parole in mid-November 2016, as the only parent and caretaker for her young daughter. Despite DHS guidance that responses to parole requests should be issued within a week’s time, Veronica’s request was met with silence. After nearly five months of detention, given her daughter’s condition and the toll of the separation, Veronica requested removal. Although she wished to continue her asylum claim, Veronica simply could not stand to see her daughter placed into foster care.

As *Veronica's* experience evidences, once separated by detention decisions, it can be extremely difficult for families to locate one another, maintain communication, and reunite.⁸ This only increases the stress and trauma of detention and separation.⁹

These practices cause trauma for children, families and communities, and stand in direct violation of the

best interests of children, parental rights, and DHS's own directives. Legal experts interviewed for this report further argue that this practice is costly for the government; when children are separated from primary caregivers and forced into government custody or foster care, they become a financial responsibility for taxpayers.¹⁰

ERICA

ICE called Erica, a Mexican woman in her mid-forties, to come in to discuss her request for a stay of removal. Erica has six U.S. citizen children, between the ages of 7 and 18. Her husband, a U.S. citizen, is disabled and has a serious medical condition, which prevents him from working and leaves him dependent on Erica's daily care and assistance.¹¹ Erica had been granted two prior stays of removal. As the only caregiver and income-earner, Erica's family is entirely dependent on her.

The interview was not about her request for a stay; it was to place Erica in removal proceedings. While Erica was held in detention, her attorney fought her case. A month after her apprehension, Erica's husband underwent heart surgery. Despite her role as her family's main caregiver and breadwinner, and the precarious health of her husband, Erica was deported without notice. Neither her family nor her attorney on record received notification of her deportation until after she had been deported.

SEPARATION OF FAMILIES THROUGH APPREHENSION, DETENTION AND DEPORTATION

Another practice uncovered by this study is that of separating families at the time of apprehension or when they request asylum at ports of entry. "We have seen hundreds of cases like this. They [CBP officers] began granting parole at the border to asylum seekers, but only to women and children; they would hold the men. This became standard practice; men would be detained and often deported."¹²

This trend has been identified in other border regions; numerous reports point to the arbitrary and unjustified practice of releasing mothers with children, while separating adult males from their families through detention. This extends to single fathers, who are often separated from their minor children upon contact with immigration officials.¹³

MIGUEL

Three generations of a Mexican family were subject to violent persecution in their hometown. The elderly grandfather was shot and wounded, and the rest of the family witnessed the attack. The grandfather requested asylum in the U.S. and was granted humanitarian parole because of his injury.

The man's son, Miguel, a young man in his 20's with a partner and children, requested asylum in December 2015. Although Miguel's partner and their children were released into the

U.S., and sent to live with the grandfather to continue their asylum application, Miguel was detained and placed into removal proceedings.

A stay of removal was filed in March 2016, based on humanitarian circumstances; Miguel was seeking asylum, his elderly father been shot and needed care during recovery, and Miguel was the primary caregiver of his two children, as their mother was ill and unable to adequately care for them. Despite the shared asylum claim, and the rest of the family's positive credible fear, Miguel's request for a stay of removal was denied. Torn from his family, Miguel was detained for six months and then deported.

As Miguel's case evidences, family units requesting asylum under the same asylum claim are routinely separated, not only creating additional burdens on the immigration adjudication system and attorneys who represent asylum seekers by duplicating caseloads, but leading to divergent outcomes for family units seeking asylum.¹⁴ Long-term separation compounds the trauma children and families fleeing violence face and, for the family members deported, may lead to continued persecution, violence and even death.

Agency practices that separate families have impacts beyond recent arrivals and asylum seekers. Family unity is impacted by immigration enforcement decisions to reinstate orders of removal and deny stays of removal. Our research found that both ICE and CBP fail to utilize discretion in maintaining family unity by denying humanitarian parole and holding family members

in detention despite compelling humanitarian concerns, including serious illness of immediate family members.¹⁵ These findings are discussed in greater detail in further sections.

Systematic practices resulting in family separation are on the rise and have devastating, long-term impacts on all those involved: "deportation of noncitizens with U.S. family ties affects the economic, emotional and physical well being of children and spouses who remain in the United States."¹⁶ Extensive research has been conducted into the devastating impacts that parental deportation has on minor children, which include poverty, diminished access to food and health care, mental health and behavioral problems and limited educational opportunities.¹⁷ In No Safe Haven Here, researchers find that the practice of family separation "piles on additional trauma and creates additional risk for depression, anxiety, and post-traumatic stress."

While immigration officers can favorably utilize prosecutorial discretion to preserve family unity, our study reveals a pattern of detaining and deporting parents of minor children - legal permanent residents and U.S. citizens, as well as undocumented children - despite the guidelines of the parental directive. These decisions, which have a significant impact on children's welfare and family unity, are arbitrary, in El Paso and beyond.¹⁸ As deportations rise, so, too, do family separation and its devastating consequences.¹⁹

The inexplicable and inhumane pattern of arbitrary family separation in the El Paso Sector is traumatic for children, has far-reaching impacts on affected families and communities, and puts asylum seekers at risk.

A person is walking on a concrete path in a detention facility. The background shows a large, fenced-in area with many tall light poles and a building in the distance. The overall scene is dimly lit, suggesting dusk or dawn.

SYSTEMATIC DETERRENCE OF ASYLUM SEEKERS

CBP and ICE practices deter and dissuade asylum seekers at all points of the asylum process, from intimidation and harassment of individuals arriving at ports of entry and agents' failure to screen for credible fear, to the use of prolonged detention and the abuse of asylum seekers while in custody. While asylum seekers, fleeing extreme violence and persecution, should be treated with respect and dignity, they encounter practices intended to compel them to abandon their claims. This is deeply concerning not only because it violates DHS policy and international norms, but leads to the deportation of people to situations of extreme danger.

“You’ll just be detained for six months and then deported anyway.”

The United States has moral and legal obligations to respect and protect those seeking asylum who arrive at our borders. U.S. and international law require that authorities offer protection to those facing persecution in their home countries. Because of their vulnerability, asylum seekers are to be treated in a manner decidedly distinct from other non-citizen border crossers and offered protections to ensure *non-refoulement*.²⁰

Since 2014, the number of Central Americans - unaccompanied minors, family units and individuals - arriving to the U.S. has remained at historic highs. Tens of thousands of Central Americans, hailing from one of the most violent regions in the world, have since requested asylum. The El Paso Sector has seen influxes of asylum seekers from other regions of the world in recent years, including Haitians, Bangladeshis, Chinese, Cubans and families and individuals from other countries, as well as many people seeking asylum from governmental and drug-cartel related persecution in Ciudad Juarez and throughout Mexico.

Every legal expert and community advocate interviewed for this report stated that CBP and ICE practices intended to deter asylum seekers were common. Over one-third of the cases documented include verbal dissuasion from requesting asylum during apprehension; intimidation and inhumane treatment of asylum seekers in CBP and ICE custody; the use of prolonged detention to pressure asylum-seekers to abandon their claims; and language barriers that prolong the asylum process and create obstacles for asylum seekers. The extent and prevalence of these deterrence practices demonstrate a culture of disregard for the rights and lives of asylum seekers.

These systematic trends of deterring asylum seekers at all points in the asylum process are not unique to the El Paso Sector. These practices have been widely documented across the borderlands and throughout the U.S., signaling the uniform practice of an unwritten rule rooted in DHS culture.²¹

INTIMIDATION AND HARASSMENT AT PORTS OF ENTRY AND FAILURE TO SCREEN FOR CREDIBLE FEAR

Deterrence efforts intended to force asylum seekers to give up their claims begin during initial contact with CBP and Border Patrol officers in the El Paso Sector. CBP officers and Border Patrol agents are not asylum officers; they are required to ask why an individual left his or her home country and if they fear persecution, and refer immigrants who may qualify for asylum on to immigration courts for asylum determination.²² However, our research indicates that CBP and Border Patrol officers in the El Paso Sector routinely and intentionally discourage people from seeking asylum. In 12% of the cases documented for this report, individuals expressing fear of violence upon return to their country of origin were not processed for credible fear screenings and instead, were placed into removal proceedings.²³ Attorneys interviewed for this report maintain that it is commonplace for asylum seekers to be placed in expedited removal proceedings and summarily deported without appearing before a judge or having had an opportunity to present their asylum claim, despite expressing fear.²⁴

PEDRO

Pedro, a young Honduran, requested asylum, having faced persecution because of his sexual orientation. Although he told CBP officers he feared for his life, Pedro was put into expedited removal proceedings, because, according to the CBP officers who detained him, sexual orientation is not a basis for asylum. Pedro's family was able to retain an attorney, who immediately tracked down Pedro's whereabouts and sent documentation to notify ICE that Pedro was seeking asylum. Pedro was transferred overnight to a facility in Louisiana for immediate deportation. Following days of persistent efforts from Pedro's attorney, Pedro was finally returned to the West Texas Detention Facility where he faced constant, ongoing harassment from the detention guards because of his sexual orientation.

This is not an isolated event; Pedro's attorney asserts that many LGBTQ asylum seekers have been denied access to the asylum process by CBP officers and face harassment and abuse while in detention.

According to legal experts interviewed for this report, immigrants are subjected to hours-long "interviews" during CBP screening, which more closely resemble interrogations, with intending asylum seekers being badgered by authorities until they provide the answers DHS officials seek - that an individual has come to the United States to work or reunite with family, not seeking safety.

Our findings are supported by research identifying numerous flaws at this initial stage in the asylum process, including lack of knowledge of the asylum process among would-be asylum seekers, screenings conducted by uniformed and armed government agents, and the conditions in which screenings are conducted.²⁵ The U.S. Commission on International Religious Freedom recently observed significant inconsistencies and non-compliance during CBP interviews, in El Paso and nationwide, including a vast majority of screenings in which individuals were not asked if they feared return to their home country, as is required.²⁶

LANGUAGE BARRIERS

In sixteen documented cases, asylum seekers faced language barriers that nearly prevented them from seeking asylum and prolonged their claims. In the El Paso Sector, one of the most prevalent language-related findings was related to indigenous asylum seekers, who often do not speak English or Spanish well enough to fully comprehend what immigration authorities ask or tell them or to express their fears in a meaningful way.²⁷

SANDRA

Sandra, a 23 year old indigenous woman from Guatemala, was apprehended crossing into the US in early 2016. Sandra spoke an indigenous language, and her understanding of Spanish was very limited; when asked in Spanish by CBP if she was afraid to return to Guatemala, she said no. Sandra had been gang raped in Guatemala and received no protection or support from local police. She was, indeed, afraid to return, but signed a sworn affidavit - in English - that she was not afraid and was placed in removal proceedings.

Sandra was later able to communicate her fears, and passed a credible fear interview. However, during a bond hearing, an immigration judge questioned Sandra's credibility due to the discrepancies between her sworn affidavit and her asylum claim. Sandra received no mental health support while in detention, and quickly became demoralized and disheartened. Facing indefinite detention, Sandra gave up and requested voluntary departure to Guatemala, where she faces violence and danger.

Half of the attorneys interviewed for this report stated that CBP affidavits are often inconsistent with asylum-seekers' own accounts. Individuals are forced to sign legal documents in English without translation. For those that are able to proceed with their asylum claims, these inconsistencies lead to an asylum seeker's "credibility" being questioned by government attorneys and immigration judges. This not only leads to prolonged detention but also jeopardizes the asylum claim.²⁸

PROLONGED DETENTION UNDER CRIMINALIZED, ABUSIVE CONDITIONS

Asylum seekers face verbal, physical and mental harassment at the hands of CBP, ICE, and security contractors throughout the apprehension, detention and asylum processes.²⁹ Twenty-eight such cases were documented for this report.

Criminalized, punitive immigrant detention is a deterrent in itself³⁰ and other reports of abuse and maltreatment of detainees in the El Paso Sector and across the country have been made public.³¹ Verbal harassment to deter asylum seekers includes comments such as: “You’ll just be detained for six months and then deported anyway.” These abusive practices compound the trauma asylum seekers have experienced.

SILVIA

Silvia, a Mexican woman in her 50s, asked for political asylum after being raped and persecuted by drug cartels. She was initially told by a CBP officer that “Mexicans don’t get asylum,” and was denied entry to the U.S. She tried to ask for asylum a second time but was detained and charged with illegal re-entry. Her mental health issues and posttraumatic stress disorder caused Silvia to have a nervous breakdown during her credible fear interview and she was unable to complete it. An immigration judge refused to declare her incompetent and would not grant her a second credible fear interview. Meanwhile, Silvia remained in detention while her physical and mental health deteriorated.

In a dozen cases documented for this report, asylum seekers held in detention needed mental health care, not available to them in detention. Conditions of detention aggravated the mental health situation of many of these individuals. Asylum seekers have been through traumatizing events, and detention comes to represent yet another traumatic event in their lives.

JULIA

Julia, a Brazilian woman in her mid-30s, traveled to the US southern border with her six year old daughter to request asylum. Although Julia presented proof of parental relationship, she and her daughter were separated - Julia was detained and her daughter was sent first to a child crisis center, then transferred to two distinct foster homes, then sent back to the child crisis center.

The little girl is a U.S. citizen and was a witness to the domestic abuse that is the basis for Julia’s asylum claim. Already traumatized, she is now facing separation from her mother and the instability of bouncing around between foster homes and child crisis centers. They have scarcely been able to see each other, as visitation is only permitted on certain days of the week and depends on the policies of child crisis centers and the wishes of foster families.

Julia did not appear before a judge until after having been detained for two months and, as no interpreter was present, her hearing was postponed another month. Despite having a community sponsor, Julia’s request for parole was denied because she was deemed a flight risk, based on a prior order of deportation issued in absentia of which Julia was unaware.

Nearly one-quarter of the cases documented involved prolonged detention, in which asylum seekers are held for over six months, and sometimes up to two years, in criminalized detention facilities. Despite having authority to release asylum seekers,³² failure to utilize discretion leaves many asylum seekers languishing in detention for unjustifiably long periods of time. Furthermore, when separated from their families, prolonged detention impacts the children and life partners of those detained. When physical, verbal and mental abuse and harassment occur in prolonged detention, asylum seekers are compelled to drop their claims to end confinement. As one attorney interviewed stated: “People are having to choose between their lives and their freedom.”

ARUN

Arun, a Bangladeshi asylum seeker, was detained at the El Paso Processing Center for almost two years. His case was delayed for a multitude of reasons, including a hearing scheduled for insufficient time and a hearing rescheduled because an interpreter was not present.

Arun requested parole, stays of removal, and two custody redeterminations. These requests were all denied, citing Arun as a flight risk and a terrorist bar - based on his affiliation to a political party, which was the basis for his asylum claim. Arun strongly believed that he was denied parole because of his religion. His health severely suffered in detention; a petite man, Arun lost over 20 pounds and his diabetes - previously under control through diet alone - worsened.

Prolonged detention is impacted by numerous decisions and decision makers, including ICE decisions on parole and EOIR practices regarding bond (see appendix for further discussion of bond). The practice of prolonged detention has legal consequences for asylum seekers; there is an enormous difference in outcomes for immigrants held in detention as compared to their non-detained counterparts.³⁴ The reason for this disparity is clear: it is much more difficult to prepare an asylum case from inside an immigration detention center because of limited ability to gather evidence, contact witnesses, and even use a phone, along with the numerous barriers to due process imposed by detention facilities.³⁵

As a global leader, it is the United States' responsibility to protect asylum seekers in accordance with national laws and international norms. Far from offering refuge and protection to the vulnerable, this section has described how immigration authorities in the El Paso Sector engage in deterrence practices at all points in the asylum process, from the moment asylum seekers come into contact with agents and officials through prolonged detention. The patterns and practices identified in this section are deeply woven into the immigration enforcement system and seem designed to induce suffering for a highly vulnerable population: asylum seekers, a population who has already endured violence and persecution before arriving at the US's southern border. This forces families and individuals to relinquish their requests for protection opting instead to return to danger. In short, it is a system designed to "break the spirit" of asylum seekers, as one seasoned attorney described. Such deterrence undercuts the integrity of the immigration system, puts asylum seekers' lives at risk, and is in violation of U.S. and international law.

RONALDO

As of January 2017, Ronaldo had been detained for 11 months. This young man fled Honduras because he was persecuted by a gang who killed his brother. He appeared with his mother at the El Paso port of entry and together, they requested asylum. Ronaldo was taken into custody and separated from his mother, who was paroled and reunited with a legal resident daughter. ICE reported that he had "eluded inspection" and was charged with illegal entry. His request for parole was denied in August 2016, indicating he was a flight risk. Ronaldo has no criminal record and did not elude inspection - he asked for asylum at a port of entry. Despite efforts from his attorney and advocates, at the time of publication of this report, Rolando was still in detention and his final determination hearing had yet to take place.³³

UNACCOUNTABLE, ARBITRARY DENIAL OF STAYS OF REMOVAL

ICE El Paso systematically and with increasing frequency denies even the most urgent humanitarian requests for stays of removal with little to no explanation, even to attorneys. A stay of removal allows a person with a compelling humanitarian claim to temporarily postpone his or her deportation, one way in which a broken immigration system allows for justice and fairness. These denials result in the deportation of individuals with longstanding ties to communities, parents of minor children dependent on their care, and individuals whose prior requests for stays of removal had been approved. This practice, not previously employed in the El Paso Sector, has serious negative effects not only on those deported - the parent of a seriously ill child, the primary caregiver for an infirm elderly person, the primary caregiver of a U.S. citizen minor child - but on the communities and lives and livelihoods of family members they leave behind.

“This is something new. People who are here on stays [of removal] now know that they are in jeopardy.”

ICE officials have the power to grant temporary relief from deportation to individuals with compelling humanitarian arguments, including individuals with “family or community ties in the United States ... or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative” who do not otherwise represent “a threat to national security, border security, or public safety.”³⁶ This stay of removal does not grant an individual any kind of legal status, but allows the person to remain in the United States for a predetermined period of time.

Attorneys interviewed for this report insist that, prior to December 2015, ICE El Paso leadership utilized discretion to grant requests for stays of removal for compelling cases. Since that time, even exceptional requests for stays of removal are routinely denied. Fourteen percent of the cases documented in this report involved denials of stays of removal.

ROSA MANI

Rosa Mani is the mother of three children, including Emily, an 11-year-old US citizen suffering from a rare form of Systemic Juvenile Idiopathic Arthritis, with epilepsy and depression. Emily’s family could not afford the treatment available to her in Mexico, and so the children’s father travelled with them to Chicago. Rosa requested a visa to join her family through legal means, and when denied, sought to cross the border. She was apprehended, detained for two months, and deported. In desperation, Rosa re-attempted to cross the border only to be apprehended again in August 2016. Despite clear, compelling humanitarian exceptions - a very ill US citizen daughter who needed her mother’s care - Rosa’s request for a stay of removal was denied, and she was deported to Ciudad Juarez late at night, in violation of the Local Repatriation Arrangement. Emily’s mental health has worsened without the presence of her mom.

SEE APPENDIX FOR DOCUMENTS DETAILING ROSA’S CASE.

Denials of stays of removal provided by ICE El Paso are often one-page boilerplate forms, making little or no reference to the details of the case and providing limited, if any, explanation of the grounds for denial. Little attention or weight is given to supporting evidence presented as a part of a request for a stay of removal, and exceptional cases do not receive due attention by ICE officials.³⁷ This suggests that ICE El Paso is electing not to review requests for stays in any meaningful sense and echoes the findings of a 2015 report on prosecutorial discretion nationwide: “Prosecutorial discretion requests receive a truncated review, if they are reviewed at all.”³⁸ Lack of meaningful response in denying requests for stays of removal further impedes attorneys’ ability to present more complete or favorable petitions for stays of removal in the future or to determine with their clients whether that effort has a chance at success. Finally, with absolutely no detail provided in denials, it is impossible to provide oversight or monitoring of ICE El Paso’s inconsistent, arbitrary decisions.³⁹

According to one attorney interviewed: “This is something new. People who are here on stays [of removal] now know that they are in jeopardy.”

RICARDO

Ricardo, a 35-year old father of a three-year old U.S. citizen child and married to a U.S. citizen, entered the U.S. without documents as a teenager. In the fall of 2016, he was apprehended by immigration authorities and placed in detention. While his attorney presented a request for a stay of removal, Ricardo’s mental health quickly deteriorated and he suffered from severe insomnia and anxiety. He attempted suicide and was transferred to an area hospital; Ricardo was in the hospital under surveillance when ICE denied his request for a stay and immediately deported him. Neither Ricardo’s family nor his attorney were informed that he was to be deported, but instead, found out when Ricardo called them from Mexico.

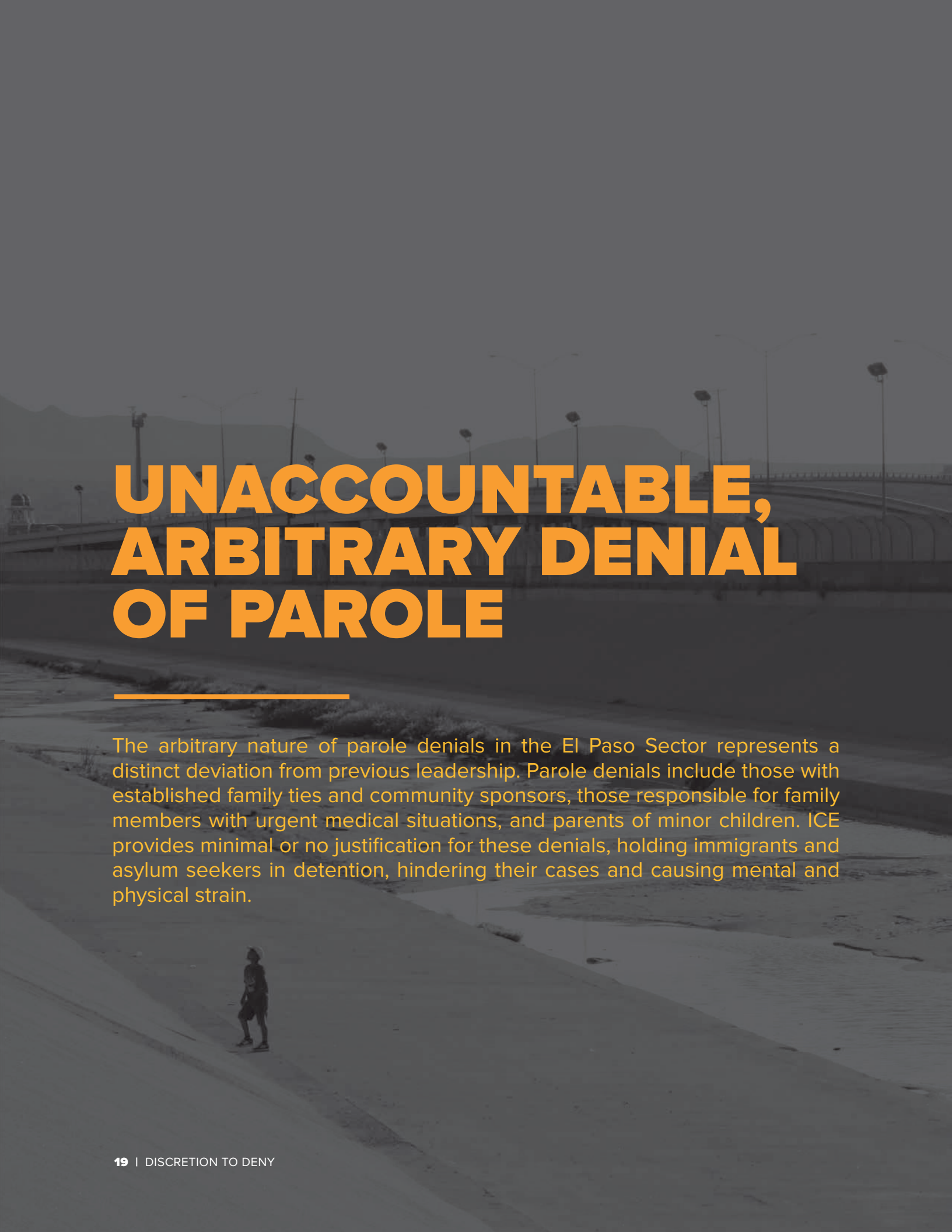
Individuals whose requests for stays of removal have been arbitrarily denied in the El Paso sector in recent years do not pose any threat to public safety or national security. As their petitions demonstrate, use of discretion would clearly and demonstrably serve the public interest by allowing them to stay. ICE El Paso's practice of failing to favorably utilize its discretionary powers for individuals clearly worthy of such discretion not only causes serious, detrimental effects on the person who is deported, but on lives and livelihoods of their family members and communities.

In three of the cases documented, previous requests for stays of removal had been granted; the only change was ICE leadership in El Paso.

These cases demonstrate an increasing trend not only of arbitrarily denying even the most compelling humanitarian stays of removal, but a concerning practice of misleading petitioners in order to get them to report to ICE for deportation, alongside ICE's failure to inform attorneys of record about impending deportations.

GUILLERMO

Guillermo is a 45-year-old Mexican national and resident of the U.S. for over 20 years. He is a father of four U.S. citizen children - aged 20, 17, 15 and 10 - and a 24-year-old DACA recipient and has substantial ties to the community. Guillermo applied for a fourth stay of removal as the primary caregiver of his three minor children.⁴⁰ Despite having an attorney of record, Guillermo received a call directly from ICE officers asking him to report in person. He did so, and was detained based on a prior removal order.⁴¹ Guillermo's family called his attorney, who filed a request for a stay of removal. The stay was denied, and Guillermo was deported just before Christmas. The same stay of removal request was granted three years in a row to allow this father of five to remain in the U.S. to care for his children.

A person is walking on a concrete path in a detention facility. The path is bordered by a concrete wall on one side and a fence on the other. In the background, there are mountains and a large building with a dome. The scene is dimly lit, suggesting dusk or dawn.

UNACCOUNTABLE, ARBITRARY DENIAL OF PAROLE

The arbitrary nature of parole denials in the El Paso Sector represents a distinct deviation from previous leadership. Parole denials include those with established family ties and community sponsors, those responsible for family members with urgent medical situations, and parents of minor children. ICE provides minimal or no justification for these denials, holding immigrants and asylum seekers in detention, hindering their cases and causing mental and physical strain.

Asylum seekers and individuals with urgent humanitarian claims are held in criminalized detention facilities, face barriers to their constitutional rights to due process, and are separated from families and communities.

Parole is not a final determination of admissibility or an asylum claim; it is a way to ensure that individuals are not needlessly detained at great cost to themselves and the immigrant detention system. U.S. law states that noncitizens in removal proceedings must not be detained or required to pay bond unless they pose a demonstrated public-safety or flight risk.⁴² The 2009 “Parole of Arriving Aliens Found to Have Credible Fear of Persecution or Torture” directive grants Field Office Directors the express authority to utilize discretion to parole “arriving aliens” in the asylum process for “urgent humanitarian reasons” or “significant public benefit,” including for “aliens whose continued detention is not in the public interest.”⁴³ The directive instructs appropriate ICE officers to parole asylum seekers who have been found to have credible fear, who establish their identity, and who are neither flight risks nor dangers to the community. Still, many such individuals continue to be detained in the El Paso Sector.

The overwhelming majority of lawyers and advocates interviewed for this report maintain that discretion has become nearly non-existent in the El Paso Sector as of late 2015. ICE routinely elects to deny parole for even the most urgent, humanitarian and exceedingly reasonable requests. One attorney estimated that in one year, less than ten percent of her organization’s parole requests were granted, a significant decrease over previous years.⁴⁴

One fifth of the cases documented for this report involved arbitrary, unexplained, and unjustified denials of parole. This trend is echoed by reports from across the country of asylum seekers routinely denied parole and bond,⁴⁵ even after meeting appropriate criteria.⁴⁶ Furthermore, parole denials are communicated on a rote form where a box is ticked but frequently, no additional details are provided. As is the case with denials of stays of removal, this leads us to question the extent to which parole requests are reviewed on a case-

RENE

Rene is a Mexican national in his 30s. Rene, his twin brother, and a cousin were detained and tortured by members of the Mexican federal police in 2013; Rene’s brother was killed and his cousin was disappeared. Rene laid next to his brother’s lifeless body for hours in the back of a truck until he was let go. He came to an El Paso point of entry and requested asylum, and was detained based on a prior misdemeanor charge. Despite the harrowing basis for Rene’s asylum claim, several parole requests were denied, and he was held in detention for two years.

by-case basis, as is required in the directive. Finally, ICE is exceedingly slow in responding to parole requests, during which time individuals are deprived of freedom and held in detention.

ICE El Paso elects not to publicize numbers of parole requests or denials; as such, it is difficult to hold ICE leadership accountable in their lack of compliance with internal directives. ICE’s 2009 directive explicitly calls on ICE Detention and Removal Operations (DRO) to monitor parole statistics and implement a quality assurance processes.

MARIANA

A young Mexican mother fleeing violence and subjugation at the hands of a powerful cartel leader in Ciudad Juarez, Mariana was separated from her infant child, who was still breastfeeding, after the family requested asylum in El Paso in February 2016. Mariana was originally released on parole with her infant in order to pursue their

asylum claim. She was later called to report to the ICE office and left her baby with an aunt with whom they were staying. After a few hours, when Mariana hadn't come home, the family called to ask after her. They were told that she had been detained.

Mariana's attorney requested parole the following week; what they received in response was a simple, rote form, indicating without further explanation that Mariana was a flight risk. Mariana and her sister, Laura, together with their mother, Cristina, were denied parole even though the U.S. Citizenship and Immigration Services (USCIS) deemed the family to have a viable, credible asylum claim. ICE disregarded agency humanitarian policies even as Mariana remained separated from her six-month old baby.

Mariana was finally released from detention in late October, 2016, under the terms of the Convention Against Torture, but placed on restrictive conditions, including ankle bracelet monitoring, home visits, and telephone check-ins. Her mother, inexplicably, was held in detention for another month before being released.

DETENTION AND PHYSICAL & MENTAL HEALTH

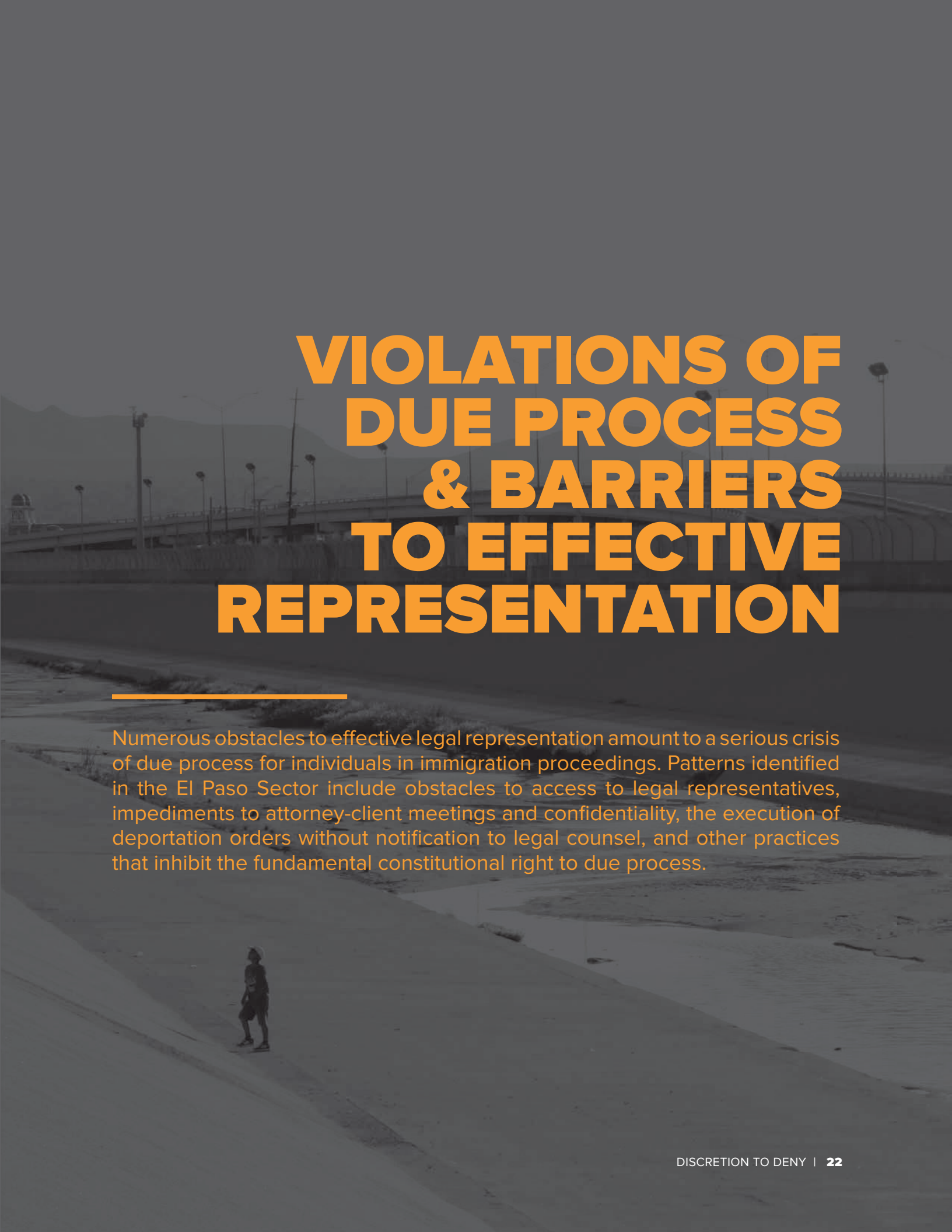
Detention has a detrimental impact on the physical and mental health of detainees, aggravating previously existing conditions and triggering mental health episodes. Twenty cases of serious health concerns were documented for this report, consistent with allegations of medical neglect at the El Paso Processing Center and other detention facilities nationwide.⁴⁷

SUSAN

In January 2016, Susan came to the southern U.S. border seeking asylum, facing persecution and threats from the government in her home country government because of her activism. Susan passed her credible fear interview, but failed to disclose her engagement to a U.S. citizen. Despite having no criminal

record, no immigration violations and strong ties to the community, she was denied parole three times and labeled a flight risk. As of January 2017, Susan remains in detention, under threat of deportation. Susan is suffering from depression and has shown suicidal ideations. Susan's parole denials offered no explanation as to why ICE considered her a flight risk.

This report sheds light on a pattern of arbitrary decision making by ICE leadership in the El Paso Sector; a process that is wholly unaccountable and offers little by way of explanation, but one that has devastating consequences. Asylum seekers and individuals with urgent humanitarian claims are held in criminalized detention facilities, face barriers to their constitutional rights to due process, and are separated from families and communities.

A person is walking on a concrete path in a detention facility. The path is bordered by a high wall on one side and a fence on the other. In the background, there are mountains and a building with a dome. The scene is dimly lit, suggesting dusk or dawn.

VIOLATIONS OF DUE PROCESS & BARRIERS TO EFFECTIVE REPRESENTATION

Numerous obstacles to effective legal representation amount to a serious crisis of due process for individuals in immigration proceedings. Patterns identified in the El Paso Sector include obstacles to access to legal representatives, impediments to attorney-client meetings and confidentiality, the execution of deportation orders without notification to legal counsel, and other practices that inhibit the fundamental constitutional right to due process.

Although representation at government expense is not a right in civil proceedings like immigration, detainees do have a right to counsel in immigration proceedings and due process rights.⁴⁸ Policies and practices in the El Paso Sector clearly infringe on this most basic right, at times at the expense of a legitimate asylum claim or family separation.

A recent study by the American Immigration Council found that access to counsel is scarce and uneven across the United States, with rates of representation far worse for immigrants held in detention than non-detained immigrants, and that immigrants with representation fare better at every stage of the court process, from custody hearings to outcomes of relief decisions.⁴⁹ Although representation of detained immigrants at the El Paso Processing Center (EPC) is higher than the national average, attorneys who attempt to provide representation at EPC report a wide variety of challenges and barriers in accessing clients and in preparing and presenting cases.

Concerns regarding access to counsel and violations of due process in the El Paso Sector were described in detail in an open letter sent to ICE Field Office Director Corey Price and other local leadership of the Department of Homeland Security and Department of Justice in January 2017. These concerns include:

1. UNREASONABLE RESTRICTIONS AND IMPEDIMENTS TO CONFIDENTIAL ATTORNEY-CLIENT MEETINGS

Because of lack of access to adequate facilities, attorney-client meetings at EPC are not confidential. Detention center guards, other detainees and other attorneys are privy to private and sensitive information. This presents a serious burden to asylum cases, as asylum seekers are afraid to share information in a non-confidential environment.

Attorneys are routinely denied access to contact rooms and are forced to utilize malfunctioning phone booth for meetings. On rare occasions when representatives are granted access to contact rooms, these do not have even minimally appropriate furnishing for case preparation, including lack of writing surfaces.⁵⁰

“YOU CAN HEAR GUARDS YELLING TO EACH OTHER OR AT DETAINEES, YOU CAN HEAR GUARDS TALKING TO ONE ANOTHER, LAUGHING. IF YOU CAN HEAR THEM, THEY CAN HEAR YOU.”

2. EXECUTION OF DEPORTATION ORDERS WITHOUT ATTORNEY NOTIFICATION

Prior to December 2015, interviewees report that clients and attorneys would receive advance notification of deportation. Since that time, attorneys increasingly receive written notices only after a client has been deported. Failure to notify attorneys of impending deportation dates not only prevents attorneys from filing appeals, but in numerous cases has put the lives of asylum-seekers and migrants at risk.

“I HAVE NEVER BEEN ADVISED AHEAD OF TIME THAT OUR CLIENT IS GOING TO BE REMOVED. WE GET [A NOTIFICATION] IN THE MAIL DAYS LATER, BUT WE GET A CALL FROM THE CLIENT FROM MEXICO BEFORE THEN. WE HAVE NEVER, EVER BEEN ADVISED AHEAD OF TIME.”

3. DIRECT AND INDIRECT BARRIERS TO ACCESSING EXPERTS AND INTERPRETERS FOR CASE PREPARATION

Barriers for experts, including lengthy wait times for background checks, to access individuals in detention make use of such experts prohibitive. These issues have led to clients abandoning valid asylum claims or having stays of removal denied -- not based on the facts of their cases, but because of an inability to access expert witnesses and effective representation. Additionally, accredited representatives and clergy with pre-clearance have been denied access to detainees at EPC. Lastly, many detainees in the El Paso Sector are non-English and non-Spanish speaking, but interpreters are not provided during hearings and detention centers impede access to interpretation services.⁵¹

“YOU NEED TO BE ABLE TO COLLECT EVIDENCE AND CORROBORATE CLAIMS. YOU HAVE TO DO RESEARCH, PULL POLICE RECORDS, LOOK FOR NEWS ARTICLES TO BACK UP ASYLUM CASES; YOU CAN’T DO THIS WITHOUT NAMES AND IDENTITIES.”

4. BURDENSOME AND INEXPLICABLE WAIT TIMES FOR ATTORNEY-CLIENT MEETINGS

Legal representatives face unduly burdensome wait times - often up to two hours - to meet with clients at EPC. This forces representatives to plan entire schedules around the detention facility and increases the cost of legal representation.

5. LACK OF ACCESS TO NECESSARY CLIENT DOCUMENTATION PRIOR TO HEARINGS

Attorneys are often prevented from obtaining necessary case files and documents to prepare and present cases. Clients cannot present a defense if they do not have access to their own immigration records.

6. INEXPLICABLE RESTRICTIONS ON ACCESS TO COURTROOMS

Attorneys depend on detention center guards to allow them into the courtroom for hearings; guards routinely fail to do so in a timely manner. Presiding

judges admonish attorneys for their tardiness and this has led to rescheduling of hearings, thereby prolonging detention. Immigration attorneys also lack access to computers, printers and internet in the context of court, equipment widely available to government attorneys. This places migrants’ counsel in serious disadvantage, being unable to access files, statutes, and precedents while in court.

“WE DON’T HAVE INTERNET ... ALL THE CODES, LAWS, POLICIES YOU NEED TO HAVE THEM, AND THE ONLY ALTERNATIVE IS TO HAUL IN A STACK OF BOOKS WITH YOU. THIS IS INHERENTLY UNFAIR WHEN GOVERNMENT ATTORNEYS DO HAVE INTERNET ACCESS.”

7. RESTRICTION ON ACCESS TO AND LACK OF CLEAR GUIDELINES ON TECHNOLOGY IN DETENTION CENTERS

There are no clear regulations regarding use of technology during attorney-client meetings, and legal teams report frequent and arbitrary denial of cell phone use upon arrival at the EPC. Attorneys need access to telephonic interpreters to interview their clients and prepare cases. Attorneys seek various mechanisms to use personal cell phones for interpretation, including emailing ICE for written permission, however private security guards allow or deny cell phones seemingly at their whim.

8. ARBITRARY PRACTICES THAT NEGATIVELY AFFECT ATTORNEY ABILITY TO REPRESENT CLIENTS

In addition to the serious systematic impediments to due process detailed above, the legal community reports many more subtle ways in which agencies, officers and private security contractors denigrate them and make daily work more difficult. These include the denial of water, sexual harassment by guards and a general lack of written policies and rules.

Individually and as a whole, these barriers to basic due process serve to deter those seeking asylum,⁵² by prolonging detention and also by contributing to a general environment of mistreatment at immigrant detention and processing centers in the sector.⁵³

RECOMMENDATIONS

The findings in this report reveal an entrenched culture of disregard for human dignity within the immigration enforcement system in the El Paso Sector. Far from isolated incidents, these cases demonstrate systemic abuses obscured by opaque decision making processes and unaccountable leadership, which result in long-term, devastating impacts on the lives of asylum-seekers and migrants.

Immigration enforcement officials in the El Paso Sector should treat every individual humanely and respectfully while guaranteeing their legal rights. This includes the treatment of asylum-seekers at ports of entry and upon apprehension and extends to decisions and processes to remove individuals from the United States. Detention should not be used as a mechanism to deter asylum claims and should not be the default strategy of immigration authorities. The decisions made by ICE, CBP, and Executive Office for Immigration Review in El Paso are not without consequence. These decisions often have irreparable ramifications on the families and communities affected by them. In the case of asylum-seekers, these practices may mean life or death.

While immigration law and enforcement policies are complex and local actors must inevitably balance a complicated nexus of national priorities, memorandums and legislative actions, local authorities still exercise significant power and discretion in enforcing immigration law. The following broad recommendations are aimed at rectifying the unaccountable and inhumane nature of decision making in the El Paso Sector and injecting rationality, fairness and coherence into this system. We call on the responsible Department of Homeland Security and Department of Justice authorities in the El Paso Sector to:

1. **Increase and Promote Transparency and Accountability**
2. **Limit Use and Duration of Immigrant Detention**
3. **End Deterrence & Mass Detention of Asylum Seekers**
4. **Enforce Removal in a Humane Manner**
5. **End Family Separation**
6. **Guarantee Access to Counsel & Respect for Due Process**

INCREASE AND PROMOTE TRANSPARENCY AND ACCOUNTABILITY

CBP and ICE should implement effective vehicles of transparency and accountability in the areas of asylum, detention and prosecutorial discretion.

In addition to improving training for ICE and CBP agents, creating mechanisms for accountability, and improving communication regarding decision making, CBP and ICE should publish statistics related to asylum, detention and prosecutorial discretion. The 2009 ICE parole directive clearly states that DRO Field Offices shall maintain national and local statistics on parole determinations and establish a quality assurance process.⁵⁴ Implementation of this directive is critical. As an important first step towards increasing transparency, EOIR and ICE El Paso should publish information on a wide range of relevant data, including, but not limited to:

- **Length of detention of asylum seekers for FY 2015 & 2016.**
- **Children and family separation**
- **Issuance of parole to arriving aliens with credible fear determinations for FY 2015 & 2016**
- **Issuance of bond for FY 2015 & 2016**
- **Detention and alternatives to detention for FY 2015 & 2016**
- **Applications for stays of deportation for FY 2015 & 2016**

A complete list of the information under each of these areas is detailed in the appendix.

We refer local authorities to additional reports, which present specific mechanisms and implementation steps to promote accountability, including community engagement and relationship-building between immigration authorities and civil society.⁵⁵

LIMIT USE AND DURATION OF IMMIGRANT DETENTION

Immigration detention should only be utilized when necessary to ensure public safety and appearance in court. Immigrant detention should not be the default decision. ICE should make individualized detention decisions, especially for those seeking asylum and long-term residents of the U.S. with family ties (including legal permanent resident or citizen spouses and children).⁵⁶ The burden of proof should lie with agencies to justify holding individuals in detention facilities.

ICE and EOIR should also prioritize the use of alternatives to detention for asylum seekers, migrants with mental and physical health problems, and migrants with immediate family in the United States. Alternatives to detention are not only a moral imperative, they are effective.⁵⁷

Additionally, ICE should utilize prosecutorial discretion to release asylum seekers and immigrants from detention in accordance with existing DHS memos, in a way that prioritizes humane enforcement and detention practices that respect human dignity. When ICE elects to deny requests for parole, it should provide detailed and case-specific reasons, demonstrating a serious assessment of both positive factors and risk factors. The current denial form, often vague or nearly blank, suggests arbitrariness and lacks meaningful specifics.⁵⁸

EOIR should follow the lead of the U.S. Court of Appeals for the 9th Circuit and establish automatic detention determination hearings at the six-month mark, as required by the U.S. Constitution.⁵⁹

Finally, detention facilities should be decriminalized and should reflect the civil nature of proceedings. Such steps should include expanded visitation for family, clergy and friends; greater freedom of movement; and humane treatment and conditions.⁶⁰

END DETERRENCE & MASS DETENTION OF ASYLUM SEEKERS

Agencies should take every step necessary to ensure that asylum seekers are offered the protections afforded to them by U.S. and international law, including the ability to request asylum at ports of entry and upon apprehension and the ability to

present asylum claims before an immigration judge.

Asylum seekers should not be miscategorized as border crossers for purposes of removal and detention and detention should not be used as deterrence for those who seek protection and refuge in the United States. Given the undue burden detention places on asylum seekers - on legal claims and wellbeing - asylum seekers should not be detained unless the state can demonstrate that detention is in the interest of the community.

The burden should lie with the state to prove that an individual is a public security or flight risk. Agency officials and federal prosecutors should decline to prosecute those who express fear of persecution with illegal entry/re-entry, so as to avoid detention and a higher bar for processing what are otherwise legitimate asylum claims.⁶¹

Furthermore, CBP and ICE officials should cease all practices that intimidate, abuse, harass or otherwise dissuade asylum seekers. Extensive recommendations for improved training, accountability mechanisms, and oversight have been set forth by non-governmental organizations with expertise in these areas, and we refer agency leadership to these reports.⁶² Implementation plans should be expanded to include all those who come into contact with asylum seekers, including private security contractors.

ENFORCE REMOVAL IN A HUMANE MANNER

ICE should utilize prosecutorial discretion and grant stays of removal to prioritize humane enforcement in a way that respects human dignity and rights. Greater weight should be placed on humanitarian concerns of those requesting relief, and these considerations should be made on a case-by-case basis.

Furthermore, ICE should desist from misrepresenting the purpose of in-person meetings and all communication regarding case-related issues should be conducted only through the attorney of record, in the case of individuals with representation. No one should be pressured to sign final deportation orders or other documents. Individuals should be provided these documents in their primary language and should not be denied access to their attorney or the ability to consult with an attorney.

Legal counsel and deportees should be advised in a timely manner before deportation orders are executed to ensure that all legal measures have been exhausted and so that a deportee and her family can make necessary preparations for safe removal. Finally, deportation should always respect Local Repatriation Agreements.

END FAMILY SEPARATION

DHS agencies tasked with immigration enforcement should prioritize child wellbeing and family unity in all decision-making, including in asylum, detention and enforcement processes.

Families should not be separated at any point in enforcement processes by CBP or ICE, including the detention of parents and caregivers of minor children, or those with mental or physical health concerns. Furthermore, ICE and CBP should take positive steps to reunify families when they have been separated through failure to utilize prosecutorial discretion and decisions regarding detention and parole.

Numerous reports with recommendations for DHS agencies regarding family separation, parental rights and reunification have published in recent years. We refer agency leadership to these reports for additional guidance on implementation steps to respect and guarantee family unity within the immigration enforcement system.⁶³

ACCESS TO COUNSEL & RESPECT FOR DUE PROCESS

Given the extent, gravity and systemic nature of barriers to access to counsel and violations of due process, ICE, EOIR and the Office of the Chief Counsel should implement corrective measures throughout the El Paso Sector to improve and guarantee detainee access to counsel. These recommendations have been detailed and presented to DHS and DOJ leadership through an official complaint letter.⁶⁴

- **Detention facilities should permit legal counsel maximum access and flexibility in meeting and speaking with, advising and representing clients, and authorities should ensure confidentiality of attorney-client communications.**
- **Detention facilities should ensure timely access to experts (including psychological experts and others).**
- **EOIR and OCC should implement policies and procedures that eliminate investigative disparity between immigration attorneys/respondents and the government.**
- **Detention facilities and EOIR should establish clear, consistent policies regarding use of technology in client meetings and the courtroom.**
- **Government and private attorneys should be treated equally as officers of the court.**
- **Detention facilities and EOIR should ensure that respondents are able to participate meaningfully in proceedings by facilitating language access during communication with attorneys and other officers of the court.**

CONCLUSION

On November 8th, Donald J. Trump was elected President of the United States on a wave of rhetoric and campaign promises demonizing migrants, border communities, Mexicans and many others. Since that time, advocates and immigrants have experienced a further emboldened CBP and ICE, manifested in the deepening of a culture of inhumane treatment that violates the basic human dignity of those encountering the immigration system in El Paso.

Since his inauguration, President Trump has signed a number of highly controversial executive orders. Through these orders, predicated on a “surge of illegal immigration” and a “significant increase in violent crime and United States deaths,” the President directs government agencies to “construct a physical wall along the southern border;” increase immigrant detention and expedited removal proceedings; expand the size of CBP and ICE forces; engage local law enforcement “to perform the functions of an immigration officer;” prioritize the prosecution of “offenses *having a nexus* to the southern border;” and placing substantial restrictions on refugee and asylum programs.

While it is, as yet, unclear how many of these executive orders will be carried out to the letter and under what timeline, advocates along the US-Mexico border see a new stage in an already long process -- one that has led to the hyper-criminalization of the migrant and the militarization of the southern border. There is well-founded fear that these executive orders, along with new departmental leadership and the policies and memoranda they may implement,

will further reduce the use of prosecutorial discretion, allow for increasingly arbitrary decisions with less oversight, and erect further obstacles to due process and fundamental human rights through an expanded immigrant enforcement and detention system. In short, advocates fear that the egregious violations of human dignity depicted in this report will worsen.

By shedding light on the human and moral consequences of a broken border enforcement paradigm, we hope to begin to repair the institutional culture embedded in immigration enforcement agencies. Today, this culture rejects engagement with local communities and advocates, shies away from transparency and accountability, and is enabled by racist rhetoric, xenophobia and general disregard for human rights. The efforts of the many advocates, grassroots leaders, and members of the legal community in El Paso, TX and Las Cruces, NM who work to build a more just border renew our hope in the power of local communities to overcome systems of oppression by working together. Their efforts are the inspiration for this report.

APPENDIX

CASE SUMMARY TABLE

Detailed information on over 120 cases of asylum seekers, individuals requesting humanitarian parole or relief, and detained and deported people

was collected, coded, analyzed and classified in the creation of this report. The following chart presents the raw number and percentage of cases in which people were subjected to ICE and CBP practices and decisions:

FINDING	TOTAL	%
Families separated by immigration enforcement decisions	36	30
Minor children separated from parents and/or caregivers	31	25
Immigrants and asylum seekers deported as a result of deterrence practices and or abuse of prosecutorial discretion	25	20
CBP & ICE practices intended to deter and dissuade asylum seekers	44	36
Deterrence practice: failure to process credible fear interviews	14	11
Deterrence practice: Language barriers during initial interviews	16	13
Deterrence practice: Verbal, physical, and mental harassment and abuse while in detention	28	23
Inconsistencies between sworn affidavits written by CBP & Border Patrol and client's testimonies	9	7
Detention exceeding six month period	27	22
Untreated physical and mental health problems in detention	26	21
Unaccountable, arbitrary denial of parole	23	19
Unaccountable, arbitrary denial of stays of removal	18	15

BOND

In addition to the findings presented in the report, researchers identified bond as another major issue in the immigration system in the El Paso Sector. Numerous attorneys reported that bond hearings are treated, by many EOIR judges, as preliminary asylum hearings, and if significant evidence and documentation of the asylum claim are not presented, Judges do not consider bond. The merits of a full asylum claim have nothing to do with whether the individual in detention represents a flight risk or security risk. Furthermore, asylum seekers have the highest court appearance rates in the immigration system, an indication that releasing asylum seekers from punitive detention does not create a high risk of failure to appear. Finally, given the many challenges to preparing an asylum claim from detention, forcing counsel and asylum seekers to argue the asylum claim while detained presents a serious burden. In addition to treating bond hearings as preliminary asylum hearings, attorneys report that when granted, bond amounts are exorbitant -- well above \$10,000 and up to \$30,000.

The issue of bond - how hearings are treated as well as denial rates - is an important concern, but one that went beyond the scope of this report. Researchers believe this is an important area for future study.

INCREASE AND PROMOTE TRANSPARENCY AND ACCOUNTABILITY: DETAILED INFORMATION

The following information should be made available to attorneys and advocates through the Borderland Immigration Council, as well as published by ICE on a biannual basis:

■ **Length of Detention of immigrants claiming fear of return to home country (“Asylum Seekers”) in El Paso sector for FY 2015 & 2016.**

- How many immigrants claimed fear of return in the El Paso sector for FY 2015 & 2016?
- What was the average length of detention for asylum seekers in the El Paso Sector for FY 2015 & 2016?
- How many asylum seekers withdrew their claim of fear in the FY 2015 & 2016 (i.e. took a removal order or voluntary departure in lieu of pursuing asylum claim)?
- How many of those who withdrew or abandoned their applications for asylum were in detention for more than 6 months?

■ **Children and Family Separation**

- How many immigrant children arrived or were encountered in the El Paso Sector for FY 2015 & 2016?
 - How many of these children were asylum seekers?

INCREASE AND PROMOTE TRANSPARENCY AND ACCOUNTABILITY: DETAILED INFORMATION

- How many immigrant children who arrived or were encountered in the El Paso Sector were unaccompanied by an adult relative (UACs) for FY 2015 & 2016?
- How many children who arrived with or were encountered in the El Paso Sector with an adult relative in 2015 & 2016 were separated from their adult relative?
- How many adult asylum seekers arrived or were encountered in the El Paso Sector with a child in the FY 2015 & 2016?
- Of these adult asylum seekers, how many were been separated from the child?
- How many of these adult asylum seekers who arrived with a child were detained by ICE for at least 48 hours?
- How many of these adult asylum seekers who were detained were sent to a family detention center with the child they arrived with (i.e. Dilley, Karnes, Artesia), and how many were detained without the child at another ICE location?

■ Issuance of Parole to Arriving Aliens with Credible Fear Determinations for FY 2015 & 2016

- Please clarify that ICE is responsible for determining whether an arriving alien who claims fear will be detained or paroled.
- How many people were designated as “arriving aliens” in the El Paso Sector for 2015 & 2016?
- How many arriving aliens were granted parole by ICE in El Paso Sector in the FY 2015 & 2016?
 - How many of those granted parole were adults who arrived with children, were pregnant, or had medical issues which served as the basis of parole?
 - How many of those granted parole were children?
- How many arriving aliens were denied parole by ICE in El Paso Sector for FY 2015 & 2016?
 - How many of those denials were based on danger to the community?
 - How many of those denials were based on flight risk or “overriding militating factors”?

■ Issuance of bond by ICE for FY 2015 & 2016

- Please clarify whether the the Risk Classification Assessment Tool (“RCA”) is being utilized in each office for every bond eligible alien.
- Please provide numbers of how many people were run through the RCA system in the El Paso Sector for FY 2015 & 2016, by the field office where the RCA was administered (i.e. Albuquerque Field Office, Midland/Odessa Field Office, El Paso Field Office, etc).
- How many people (total) were granted bond or Release on Recognizance (RoR) by ICE in the El Paso Sector for FY 2015 & 2016, broken down by field office)?
- How many asylum seekers were run through the RCA in the El Paso sector for FY 2015 & 2016 by field office, and how many were issued bond or RoR?

■ **Detention and Alternatives to Detention for FY 2015 & 2016**

- How many people were detained in the El Paso Sector each month in 2015 & 2016?
- How many people were enrolled in an Alternative to Detention (“ATD”) program, (such as GPS monitoring or telephone check-ins) each month in the El Paso Sector for FY 2015 & 2016?
- How many people were under orders of supervision administered by the El Paso Sector for FY 2015 & 2016?
 - How many of those under an order of supervision were asylum seekers?
 - How many of those under an order of supervision were children?

■ **Applications for Stays of Deportation for the El Paso Sector for FY 2015 & 2016**

- How many applications for Stays of Deportation were filed in El Paso Sector in FY 2015 & 2016?
- How many were approved?
 - How many of these approvals were based on eligibility for some of relief (ex. U visa, DACA, etc.)?
 - How many of these approvals were based on compelling humanitarian factors alone?
- How many applications for stay of deportation were denied (by month if possible) in 2015 and 2016?
- Of the applications that were denied, how many claimed eligibility for a U visa or other form of relief?



U.S. Immigration
and Customs
Enforcement

12 OCT 2016

Carlos Spector, Esq.
Law Offices of Carlos Spector
1430 E. Yandell
El Paso, TX 79902

Re: [REDACTED] A [REDACTED]

Dear Mr. Spector:

This letter is in response to your client's Application for a Stay of Deportation or Removal filed with U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) on September 15, 2016.

This office has thoroughly reviewed the information and documentation provided with your request, taking into consideration the individual circumstances of your client's case. I have determined that your client's removal from the United States is a priority under The Department's civil immigration enforcement priorities and as such he does not warrant a favorable exercise of prosecutorial discretion. Please see the Department's Civil Immigration Enforcement Priorities 2014 and 2015. This case was also reviewed under the terms of the August 23, 2013 ICE Directive, *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities*, also referred to as the Parental Interests Directive.

Upon review of the evidence submitted, I determined that your client does not warrant a favorable exercise of prosecutorial discretion under the Directive. Your client's application for a stay of removal is hereby denied. You may not appeal this decision; however, it does not prohibit your client from seeking any other form(s) of relief available. If you have any questions regarding this matter, please contact Deportation Officer Patricia Noga at [REDACTED]

Sincerely,


Corey A. Price
Field Office Director

RECEIVED OCT 15 2016

U.S. Department of Homeland Security
11541 Montana Avenue Suite E
El Paso, TX 79936



**U.S. Immigration
and Customs
Enforcement**

August 18, 2016

[REDACTED]
C/O El Paso Processing Center
8915 Montana Avenue
El Paso, Texas 79925

In Reference to: [REDACTED]

NOTIFICATION DECLINING TO GRANT PAROLE

Dear [REDACTED]

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided not to parole you from detention at this time. Under ICE policy, arriving aliens determined by an Asylum Officer to have a credible fear of persecution or torture are initially considered for parole. While the decision whether to grant parole is discretionary, ICE policy is generally to grant parole to aliens determined to have a credible fear if they establish their identity and that they pose neither a flight risk nor danger to the community.

As part of its determination whether to parole you, on 04/06/2016, ICE conducted an initial interview with you. Your immigration files and any supplemental documentation that you provided were reviewed at that time. After reviewing all available information, ICE has determined that parole is not appropriate in your case at this time based on the following reason(s):

- You have not established your identity to the satisfaction of ICE.
 - You did not present valid, government-issued documentation of identity, or any documents you submitted did not, to ICE's satisfaction, establish your identity.
 - You did not provide third-party verification of your identity, or any third-party information you provided did not, to ICE's satisfaction, establish your identity.
 - You did not, to ICE's satisfaction; establish your identity through credible statements.
- You have not established to ICE's satisfaction that you are not a flight risk.
 - You failed to provide, to ICE's satisfaction, a valid U.S. address where you will reside while your immigration case is pending.
 - You did not establish, to ICE's satisfaction, substantial ties to the community.
 - Imposition of a bond or other conditions of parole would not ensure, to ICE's satisfaction, your appearance at required immigration hearings pending the outcome of your case.

You have not established to ICE's satisfaction that you are not a danger to the community or U.S. security. In making this determination, ICE has taken into account any evidence of past criminal activity, activity contrary to U.S. national security interests, activity giving rise to concerns of public safety or danger to the community, disciplinary infractions or incidents, or other criminal or detention history that shows you have harmed or would likely harm yourself or others.

Additional exceptional, overriding factors (e.g., law enforcement interests or potential foreign policy consequences) in your case militate against parole, as follows:

Subject is a recent entrant and a flight risk. Subject only has a LPR sister who resides in the United States.

ICE previously provided you with a written decision declining to grant parole, and you have failed to provide additional documentation or to demonstrate any significant changed circumstances which would alter ICE's previous determination.

You may request a redetermination of this decision in writing, based upon changed circumstances in your case or additional documentation you would like ICE to consider. Such changed circumstances or documentation should relate to the reason(s) indicated above why ICE is not paroling you from custody at this time. For example, if you have not established your identity to ICE's satisfaction, you may wish to consider providing previously unfurnished government-issued documents such as passports, birth certificates, or identity cards. Identity can also be established through written statements prepared by individuals whom you know in the United States and whose identity ICE can verify to its satisfaction. These statements should include the address of the person you know in the United States and evidence of his or her identity. Finally, if there are multiple grounds checked above, you should try to provide further evidence addressing each of them.

If you request redetermination of this decision, please direct your written request to the address above, include a copy of this letter and any other prior ICE written decision(s) declining to grant you parole, and clearly explain what changed circumstances or additional documents you would like considered. Failure to provide satisfactory documentation and explanation may result in a denial of your request for redetermination.

Sincerely,



A Alfredo Fierro
Deputy Field Office Director
El Paso Field Office

(x) cc: Attorney of Record or Designated Representative
() cc: A-File



**U.S. Customs and
Border Protection**

December 9, 2016

Robert Reed
Sonoma Springs Covenant Church
3940 Sonoma Springs Avenue
Las Cruces, New Mexico 88011

Dear Mr. Reed,

Thank you for your correspondence received on December 6, 2016 on behalf of Rosa [REDACTED] [REDACTED] regarding her request for parole and subsequent denial on October 28, 2016 at the Port of El Paso.

First, please allow me to express regret for her situation. CBP is tasked with protecting our Nation's borders as well as enforcing numerous laws at our Nation's ports of entry on behalf of a variety of other Government agencies, including state and local law enforcement. All international travelers attempting to enter the United States, including all U.S. citizens, are subject to examination upon each arrival into this country.

CBP does not have the authority to admit an inadmissible alien. Certain discretionary mechanisms, such as parole or waiver of the requirement to present certain documents during the inspection/admission process, may be applied in appropriate situations. The exercise of discretion to grant parole into the United States is an extraordinary measure, sparingly used only for urgent or emergency circumstances or for significant public benefit. Parole is not to be used to circumvent normal passport and visa requirements. Moreover, discretion cannot be exercised favorably for a person that poses a substantial risk to contributing to the illegal population of the U.S. nor for any potential threat of committing criminal acts. After careful review, it has been determined that the denial of Ms. [REDACTED]'s parole request at the Port of El Paso on October 28, 2016 was appropriate.

CBP is greatly committed to maintaining the physical integrity of all individuals under our custody, and as such, we regret that Ms. [REDACTED]'s repatriation during the early hours of September 3, 2016 was not in accordance with our established practices. We have already addressed this issue with the Mexican consulate, by providing a written explanation of the timeline and events that occurred during the early hours of September 3, 2016, and have taken steps to ensure that our officers will comply with the terms of the repatriation agreement. Additional information regarding U.S. Customs and Border Protection may be found at www.CBP.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Hector A. Mancha".

Hector A. Mancha
Director, Field Operations
Office of Field Operations

ENDNOTES

- 1 For more on the historical context of the El Paso area, see: Staudt, Kathleen and Josiah Heyman. "Immigrants Organize Against Everyday Life Victimization" in *The Immigrant Other: Lived Experiences in a Transnational World*, ed. Furman, Rich et al. (Columbia University Press 2016), 75-89.
- 2 Early, Ingrid and Steven Shafer. "Access to Counsel in Immigration Court." American Immigration Council Special Report. September 2016.
- 3 While we support calls to expand the definition of "family" to extended family units in order to protect asylum seekers and reduce vulnerability of migrants upon deportation, for the purposes of this report, we focus on separation of immediate family members (spouses and minor children) at the moment of apprehension and through detention and deportation.
- 4 This report focuses on family separation through decisions regarding detention and deportation. For background on the practices and consequences of separation prior to apprehension and post-deportation, see: Danielson, Michael S. *Documented Failures: the Consequences of Immigration Policy on the U.S./Mexico Border*. Nogales, AZ and Sonora, Nogales, Mexico: Jesuit Refugee Service/USA, Jesuit Conference of the United States, and Kino Border Initiative. 2013.
- 5 U.S. Immigration and Customs Enforcement. *Facilitating parental interests in the course of civil immigration enforcement activities*. Washington, DC: US Department of Homeland Security Immigration and Customs Enforcement. 2013.
- 6 DHS Advisory Committee on Family Residential Centers, ACFRC Consolidated Draft Subcommittees' Recommendation Report, "Report of the DHS Advisory Committee on Family Residential Centers. September 2016. Available at: <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf> (accessed 31 January 2017)
- 7 In order to ensure the privacy and protection of the individuals whose cases and testimonies appear in this report, we use pseudonyms for the vast majority of these cases.
- 8 The KINO Report, *Our Values on the Line*, details many of these barriers, and the challenges faced by individuals separated from their families and held in detention who are seeking to relocate their family members: "In most cases separation is attributable to predictable consequences of an increased criminalization of unauthorized migration or an administrative failure of U.S. immigration authorities to determine familial relationships and keep track of the whereabouts of family members through the process of detention and deportation." (Page 1)
See also, Lutheran Immigration and Refugee Services. *Separation of Immigrant Families in U.S. Immigration Custody*. March 2016. "When families are detained in different federal facilities, there is no way to regularly monitor this or inform the detainee where their family member is located, making it nearly impossible to reunite or pursue a joint asylum claim without counsel." (Page 2)
- 9 See, Family Detention: Still Happening, Still Damaging. Human Rights First. October 2015.
For documentation of other traumatic cases of family separation through detention, see: O'Connor, Kathleen; et al. *No Safe Haven Here: Mental Health Assessment of Women and Children Held in U.S. Immigration Detention*. Unitarian Universalist Service Committee, October 2015.
"ICE separates families as a matter of course and in a way that risks family members losing each other permanently. One of the women interviewed had been separated from her 10-year old son as well as from her husband. The husband, interned on the East Coast somewhere, was desolate at losing his family and tried to commit suicide. The mother and her young daughter were released on the last day of the team's field trip but are stuck in the shelter waiting for her son to be released. The woman reported experiencing migraines and not being able to sleep or eat since she could not stop thinking about her son. Her two youngest children would hear their mother cry at night and would also start crying, wondering why their brother and father were not with them." (Page 8)
- 10 *No Safe Haven Here* authors state that "if the human cost of family separation is not sufficient to warrant ending the practice, the government should consider taxpayer burden when spending tax dollars on foster care subsidies that would be unnecessary if families were kept intact." (8-9)
- 11 Due to a prior unauthorized re-entry charge, Erica is ineligible to apply for legal status despite being married to a U.S. citizen.
- 12 Interview. Transcript on record at Hope Border Institute.
- 13 Women's Refugee Commission. *Background: Separation of Immigrant Families in U.S. Immigration Custody*. March 2016. Available at <https://www.womensrefugeecommission.org/rights/gbv/resources/document/download/1384> (accessed on January 31, 2017).

ENDNOTES

- “Decisions to prosecute immigrants and asylum seekers for illegal re-entry have increased the number of minor children separated from family members with whom they are traveling, resulting in these children being classified as unaccompanied minors and referred to ORR custody.” (2)
See also, *Report of the DHS Advisory Committee*: “Currently, the criteria and conditions for admissions and releases of mothers with minor children and fathers with minor children appear to be different and arbitrary, with insufficient justification.” (12)
- 14 Barrick, Leigh. *Divided By Detention: Asylum Seeking Families’ Experience of Separation*. American Immigration Council. August 2016.
“Far from preserving family unity, DHS custody and release decisions for family members that have fled violence together are inconsistent and result in the separation of asylum seekers from their loved ones, especially when they fall outside of the ICE definition of a family unit as parents with children, or its de facto definition as mothers with children ... By separating asylum-seeking families, DHS throws new hurdles into what is already an arduous legal process. It jeopardizes families’ well-being and access to humanitarian protection, while multiplying the government resources required to adjudicate the same asylum claim...” (22)
See also, *Backgrounder: Separation of Immigrant Families in U.S. Immigration Custody*, 2016:
“Family separation can impede the ability of families to access asylum and other protection mechanisms because individual family members may be unable to apply for the same benefit they are legally entitled to apply for as a family unit.” (1)
“[ICE custody determination]has widespread negative consequences: loss in immigration relief determinations (e.g. asylum) because of separate claims ... or result in removal of some family members while others continue to pursue relief.” (3)
See also, Campos, Sara, Esq. and Joan Friedland, Esq. *Mexican and Central American Asylum and Credible Fear Claims: Background and Context*. Washington, DC: American Immigration Council, 2014.
- 15 United Nations Commissioner of Refugees. Working Group on Arbitrary Detention: Preliminary Findings from its visit to the United States of America. October 11-24, 2016. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20746&LangID=E> Accessed January 31, 2017.
- 16 Srikantiah, Jayashri, Charles Abbott, Lisa Weissman-Ward, and Francisco Quintana. “Report on Prosecutorial Discretion and Family Unity: US Government Officials’ Failure to Consider the Impact of Deportation on Families.” In support of the Request for Public Thematic Hearing Concerning U.S. Deportation Policy and the Rights of Migrants before the Inter-American Commission on Human Rights. 149th Period of Sessions. Mills Legal Clinic, Stanford Law School and CEJIL. 2016.
See also, Wessler, Seth Freed et al. *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*. Applied Research Center. November 2011.
“In fiscal year 2011, the United States deported a record-breaking 397,000 people and detained nearly that many. According to federal data ... a growing number and proportion of deportees are parents ... These deportations shatter families and endanger the children left behind.” (5)
See also, Amnesty International USA. *In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the US Southwest*. March 2012.
- 17 Satinsky, Sara, et. al; *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families*. Human Impact Partners. June 2013.
See also: *Shattered Families* 2011.
- 18 Women’s Refugee Commission. *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*. New York: December 2010.
- 19 *Our Values on the Line* (2015) found that mothers, fathers, and guardians deported by ICE in Arizona are often separated from their citizen children; of their sample, three-fifths of adults deported were torn from a child remaining in the U.S. For numbers on the increase in deportation of parents of minor children, see Satinsky, Sara, et. al; *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families*. Human Impact Partners. June 2013.
See also, *Shattered Families*.
- 20 The U.S. has ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the Refugee Protocol. Available at: <https://www.state.gov/j/drl/reports/treaties/index.htm#ftn2>. Accessed on January 29, 2017.
- 21 See, Human Rights First. *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers*. July 2016.
And, Amnesty International. *Home Sweet Home? Honduras, Guatemala and El Salvador’s Role in a Deepening Refugee Crisis*. London: 2016.
Hiskey, Jonathan T.; et. al. *Understanding the Central American Crisis: Why They Are Fleeing and How U.S. Policies are*

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- Failing to Deter Them*. American Immigration Council. February 2016.
Wolgin, Philip E. *A Short-Term Plan to Address the Central American Refugee Situation*. Center for American Progress. May 2016.
- 22 U.S. Citizenship and Services website. *Credible Fear FAQs*. DOI (<https://www.uscis.gov/faq-page/credible-fear-faq#t12831n40132>) Accessed on December 13, 2016.
- 23 More egregious still, there are many reports of CBP agents turning asylum seekers away at ports of entry. The American Immigration Council recently presented a complaint addressing this very issue. See, “U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border.” American Immigration Council. 13 January 2017.
- 24 See, U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border. The American Immigration Council. January 13, 2017. Available at: <https://www.americanimmigrationcouncil.org/content/us-customs-and-border-protections-systemic-denial-entry-asylum-seekers-ports-entry-us>.
And, Martinez, Daniel, Guillermo Cantor, and Walter Ewing. “No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse.” American Immigration Council Special Report. May 2014.
And, Human Rights First. “How to Protect Refugees and Prevent Abuse at the Border: A Blueprint for US Government Policy.” June 2014.
- 25 See, Rosenblum, Marc R., et.al. *The Deportation Dilemma: Reconciling Tough and Humane Enforcement*. Migration Policy Institute. April 2014.
See also, Dominguez, Lara et al. “U.S. Detention and Removal of Asylum Seekers: An International Human Rights Law Analysis,” prepared at the request of Human Rights First. June 20, 2016.
- 26 Cassidy, Elizabeth and Lynch, Tiffany. *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*. The U.S. Commission on International Religious Freedom. November 2016.
- 27 For further analysis, see: Gentry, Blake. *Exclusion of Indigenous Language Speaking Immigrants in the U.S. immigration System, a technical review*. Ama Consultants. June 2015.
- 28 The USCIRF report *Barriers to Protection* (2016) found that sworn statements “were neither verbatim nor reliable, and often indicating that information was conveyed when in fact it was not and sometimes including answers to questions that never were asked,” and in 72 percent of the cases, asylum seekers are not allowed to review the document before signing it. (19)
- 29 This is happening in El Paso as well as nationally. The USCIRF report “found that asylum seekers continue to be detained under inappropriate penal conditions before their credible fear interviews, and in some cases, even after being found to have a credible fear.” (40).
- 30 See, *Report of the DHS Advisory Committee*.
- 31 See, Detained Migrant Solidarity Committee “*‘I was treated like a dog instead of a human being:’ Degradation, negligence, and abuse in ICE’s El Paso Processing Center*.” El Paso: November 2016.
Also see, *Shadow Prisons: Immigrant Detention in the South*. Southern Poverty Law Center, National Immigration Project of the National Lawyers Guild, Adelante Alabama Worker Center. November 2016.
U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison. Human Rights First. June 2009.
- 32 U.S. Immigration and Customs Enforcement. *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*. December 2009.
- 33 The letter denying Rolando’s parole application can be found in the Appendix.
- 34 Steering Committee of the New York Immigrant Representation Study Report, “Accessing Justice I: The Availability and Adequacy of Counsel in Removal Proceedings,” *Cardozo Law Review*, (2011) Vol. 33:2, p. 364 and seriatim, available at <http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf>
- 35 *U.S. Detention of Asylum Seekers, 2009*.
- 36 Johnson, Jeh Charles, Secretary of U.S. Department of Homeland Security, Memorandum for Thomas S. Winkowski et al. re: Policies for the Apprehension, Detention and Removal of Undocumented Immigrants. November 2014.

ENDNOTES

- 37 These issues are not limited to the El Paso sector, or any specific national or ethnic group. For example, see: Automatic Injustice: A Report on Prosecutorial Discretion in the Southeast Asian American Community. October 2016. “Even SEAs whose stories are indeed “compelling and exceptional,” who indeed are valued family members (mothers, fathers, aunts and uncles), and who have demonstrated rehabilitation and pose no threat to those around them continue to be deported.” (4)
And, Letter from Congress Calling for DHS Accountability on Immigration Enforcement Priorities. **AILA Doc. No. 15051208**. 11 May 2015. Available at: <http://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/congress-calling-dhs-accountability-on-enforcement>
“[I]n many instances, ICE summarily denies a request for prosecutorial discretion with little or no review of a request.” (2)
- 38 Canizales, Carolina; Shah, Paromita. *Prosecutorial Discretion DENIED*. United We Dream. April 2015.
- 39 For further discussion of the inconsistency in DHS decision making regarding stays, see:
Hing, Bill Ong. *The Failure of Prosecutorial Discretion and the Deportation of Oscar Martinez* (2013).
And, *The Scholar: St. Mary’s Law Review on Race and Social Justice*, Vol. 15, 2013; Univ. of San Francisco Law Research Paper No. 2013-10. Available at SSRN: <https://ssrn.com/abstract=2215989>
- 40 This stay of removal would have been Guillermo’s last petition; he was going to be able to adjust his status in the coming year.
- 41 While ICE officers insisted they had notified Guillermo’s attorney of the removal order, the attorney on record had not received any such notice.
- 42 In *Human Right First* (June 2016) from *Matter of Patel*, 15 I&N. Dec. 666, 666 (B.I.A. 1976).
- 43 *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*.
- 44 As a non-profit service provider with limited resources and many clients, this attorney further maintained that her organization is selective about the parole requests it submits.
- 45 See appendix for further discussion of bond in the El Paso Sector.
- 46 Human Rights First. *Reducing the Immigration Court Backlog and Delays*. Fact Sheet. July 2016. Available at: <http://www.humanrightsfirst.org/resource/reducing-immigration-court-backlog-and-delays>
- 47 See, “*I Was Treated Like A Dog Instead of a Human Being*.”
And, Amnesty International. *Jailed Without Justice: Immigrant Detention in the USA*. March 2009.
- 48 *Dakane v. U.S. Attorney General*, 371 F.3d 771 (11th Cir. 2004).
- 49 Early, Ingrid and Steven Shafer. “Access to Counsel in Immigration Court.” American Immigration Council Special Report. September 2016.
- 50 See also, See also, Penn State Law and Legal Action Center of the American Immigration Council, “Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel,” May 2012, as cited in, Human Rights Watch. *You Don’t Have Rights Here: US Border Screening and Returns of Central Americans to Risk of Serious Harm*. October 2014.
“ICE fails to provide or facilitate access to counsel when questioning represented individuals, restricts attorney-client communications in detention facilities, and has also discouraged noncitizens from seeking legal counsel.” (30)
And, *Lifeline on Lockdown*: “individual facility operators, which in effect set their own rules regulating attorney access to facilities, sometimes impede access to counsel.” (33)
- 51 See, American Immigration Lawyers Association. *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States*. AILA Doc. No. 16061461. June 2016.
- 52 See also, *Report of the DHS Advisory Committee on Family Residential Centers*.
- 53 For documentation of human rights abuses and inhumane treatment at the El Paso Processing Center see, “*I was treated like a dog instead of a human being*.”
- 54 *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*.
- 55 See:

ENDNOTES

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- 56 See: *Jennings v. Rodriguez* oral arguments. November 30, 2016. Available at (https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-1204_k536.pdf). Accessed on January 20, 2017.
- 57 Please refer to the following reports for in-depth recommendations on the use of alternatives to detention:
Danielson, Michael S. *Our Values on the Lines: Migrant Abuse and Family Separation at the Border*. Kino Border Initiative. Study prepared for the Jesuit Conference of Canada and the United States. September 2015.
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Punishment Before Justice: Indefinite Detention in the US. Physicians for Human Rights. 2011. Available at: https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf.
Barriers to Protection 2016.
- 58 *Automatic Injustice* 2016. SEARAC states that parole denial forms should include a detailed analysis outlining the decision making process, including the weighing of positive factors against information the government has against a request for parole.
- 59 Letter to Secretary Johnson from former Immigration Jurists. October 31, 2016. Available at: http://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/2016-11/ImmJudges_IncreasedDetention_Letter_October2016.pdf
- 60 See: "I was treated like a dog instead of a human being." 2016.
Jailed Without Justice 2008.
- 61 This recommendation is echoed by numerous human rights organizations; see:
Barriers to Protection 2016.
Lifeline on Lockdown 2016.
Fatal Neglect 2016.
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United Nations Commissioner of Refugees 2016.
- 62 See, United States Commission on International Religious Freedom. *Report of Asylum Seekers in Expedited Removal*. February 2005.
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You Don't Have Rights Here 2014.
- 63 See:
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- 64 Available on request; contact the Hope Border Institute.



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