



May 7, 2019

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ICE Enforcement and Removal Operations
San Antonio Field Office
1777 NE Loop 410 Floor 15
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Re: Access for *Pro Bono* Volunteers at Karnes Detention Center

Directors Achim and DeLeon:

We appreciate you taking the time to meet with us on Tuesday, April 23 to discuss recent changes at the Karnes detention facility that have limited the ability of *pro bono* counsel to provide legal services to detained persons. Since September of 2014, the Refugee and Immigrant Center for Education and Legal Services (RAICES) along with the law firm Akin Gump, the University of Texas School of Law Immigration Clinic, and the St. Mary's University School of Law Immigration Clinic, has provided *pro bono* legal services to individuals detained at Karnes. Over the last several years, we have collaborated cooperatively with ICE to develop policies for *pro bono* counsel at Karnes, which facilitated access to free legal services for thousands of children and adults. Simply put, these policies worked. Their implementation, though not perfect, created an environment in which people detained at Karnes generally had access to counsel at no government expense, resulting in more efficient and effective adjudication of their proceedings before USCIS and the immigration court.

Despite the success of these policies, ICE drastically changed its policies recently in a way that significantly limits the ability of *pro bono* attorneys to work with detained persons at Karnes. In a phone conversation between RAICES and ICE on April 15, 2019, AFOD DeLeon indicated that recent changes to the visitation practices at Karnes are the direct result of "operational challenges" concerning the "amount of requests" RAICES submitted to meet with specific detained persons seeking our *pro bono* services. AFOD DeLeon stated that locating the persons identified in such visitation requests was "expending a lot of resources for the contractor." Only a week prior, AFOD DeLeon assured RAICES that visitation would not be

restricted and would return to “normal” after the Karnes detention center no longer detained both adult men and women.

The legal visitation policies which ICE has maintained at Karnes since 2014 are not extraordinary. On the contrary, they are firmly based in ICE’s own detention standards. Therefore, the undersigned write to request that ICE reinstate certain policies at Karnes to facilitate orderly and meaningful access to counsel.

Namely, we request that pursuant to the publicly posted “ICE/DRO Residential Standard” for visitation (Family Residential Standard 5.8), attached, ICE implement procedures for consultation visits for residents subject to Expedited Removal and for legal visits consistent with FRS 5.8.¹

The FRS 5.8 recognizes that ICE detainees subject to Expedited Removal and referred to the USCIS Asylum Office for interview “are entitled by statute and regulation to consult with persons of the resident's choosing, both prior to the interview, and while the Asylum Staff's decision is under review” (p.11, section V.11.a). In fact, the FRS 5.8 calls for “procedures that liberally allow” people in ICE custody to consult with persons, including legal representatives, of their choosing.

We request that ICE immediately address changes in policies and practice that have made this statutory right to consultation impossible for many persons detained at Karnes who seek to consult with RAICES and *pro bono* volunteers. Specifically, as of May 6, 2019, forty-two individuals were waiting to meet with RAICES for the first time. Twenty-three of those persons had been waiting to meet with us since April 25, 2019.

As we discussed at our April 23 meeting, there are simple ways that ICE can ensure that *pro bono* volunteers continue to have access to detainees without any serious disruption to operations:

- Resume allowing detained people with whom RAICES staff and volunteers are consulting in visitation to go to their rooms to retrieve documentation for review, then return to visitation to continue their legal visit. On April 30, 2019, GEO informed our staff that our clients are no longer permitted to retrieve documents in their possession

¹ In a phone conversation between RAICES and AFOD DeLeon on Monday, April 15, 2019, and via email that same day, AFOD DeLeon confirmed that Karnes continues to operate under the ICE Family Residential Standards, as it has since August 2014. The ICE website reflects that the attached Visitation Standards (FRS 5.8) are a section of the Family Residential Standards: <https://www.ice.gov/detention-standards/family-residential>. At our in-person meeting on Tuesday, April 23, 2019, ICE personnel did not cite any alternative detention standard as being in effect at Karnes.

from their rooms. It should be noted that the FRS requires that “written legal visitation procedures must provide for the exchange of documents between a resident and the legal representative or assistant.” (p.9, section V.10.j).

- Resume allowing detained individuals to wait in the waiting room outside of visitation for a legal visit when a RAICES staff person or volunteer is not immediately available to meet with them.
 - GEO should ensure that individuals named on our visitation lists are informed that they may wait in the visitation waiting space for their scheduled appointments. Recently, GEO has not informed persons on RAICES’ first scheduled waiting list about their appointments, resulting in long delays to begin legal visits.
 - Additionally, we request the reinstatement of the buzzer system for persons on a RAICES visitation list but for whom a RAICES staff person or volunteer is not immediately available. Under this system, which was created and initiated by ICE, buzzers were made available so that persons called into visitation could leave the waiting area and return to visitation at RAICES’ request when notified through the buzzer. This was an efficient system that maximized access to counsel and minimized expense for GEO, whose staff did not have to individually search for people called for a legal visit.
- Resume allowing the entire RAICES staff and volunteer team to enter the visitation area to be available for legal visitation meetings. On April 15, 2019, ICE stopped allowing the RAICES team to enter visitation as a group until there was a 1 to 1 ratio of prospective or current clients available to meet with each person on our team.
 - This has resulted in a sharp decrease in our capacity to meet the legal needs of persons detained at Karnes. For example, our team of staff and volunteers was able to meet with an average of 100-150 individuals daily prior to April 15, 2019. Following the new rule, we now meet with only 40-60 individuals daily.
 - This new rule has also resulted in inefficient use of our staff and volunteer time. For example, on May 6, 2019, one of our staff and five volunteers waited in the lobby at Karnes for approximately seven hours without being allowed into visitation because of this new rule, despite dozens of scheduled legal visit appointments to which these legal staff and volunteers could have attended.
- Implement strategies to facilitate the efficient coordination of legal visits and promptly inform people who have requested consultation with RAICES that legal visitors are available to meet with them in the visitation space. Specifically, we request a standard policy be applied such that RAICES may request GEO staff to notify more than one person at a time that a legal visitor is available to meet with them, and upon RAICES’ request, GEO provide such notice at least twice via the public announcement system before relying on a GEO staff person to physically locate the detained person.
 - ICE should instruct GEO that, as affirmed by AFOD DeLeon at our in-person meeting on April 23, 2019, RAICES may call additional persons into visitation at

our discretion if the initial person called does not appear at visitation within a reasonable time.

- Allow RAICES to, as it has for years, add detained persons who urgently need to meet with our staff to an existing visitation list and call them into visitation immediately. For years, RAICES has been able to add the names and A-numbers of individuals not specified on a visitation list for the day to the existing visitation lists and call them in that same day. However, on April 16, 2019, GEO informed RAICES that this would no longer be generally permitted.
- Instruct GEO that RAICES shall be permitted to meet with more than one detained person at a time. At our in-person meeting on April 23, 2019, AFOD DeLeon indicated that more than one detainee is permitted in a private visitation room at any given time. It should be noted that the capacity in 3 of the private visitation rooms permit up to four people, and capacity in 2 of the private visitation rooms permit up to 7 people.
- Consider extending Karnes legal visitation hours per the FRS 5.8 (“[i]f necessary to meet demand, the facility administrator shall increase the facility's consultation visiting hours” (p.11, section V.11.b).)

Furthermore, the FRS 5.8 allows that “the facility administrator may permit a confidential meeting (with no staff present) involving the requester and two or more residents” for a group legal meeting, and instructs that “The facility should grant such request to the greatest extent practicable” (p.9, section V.10.i). At an in-person meeting between ICE and RAICES on March 4, 2019, AFOD DeLeon indicated that she would follow up with RAICES regarding our use of a private space outside of visitation which would be available Monday, Wednesday, and Friday for group meetings. To date, we have not received a response regarding our request for a private group meeting space. ICE should immediately reinstate the following policies:

- Provide RAICES with a confidential group meeting space. It should be noted that the San Antonio EOIR has authorized RAICES and its volunteers to use the courtroom space at Karnes for group meetings, per the attached correspondence.
- Allow more than one RAICES staff person or volunteer to meet with a scheduled group.
- Allow RAICES to schedule multiple group meetings daily.
- Permit RAICES to call detained persons into visitation for a legal visit while a group meeting is occurring.
- Allow RAICES to begin a scheduled group meeting before all attendees arrive, and permit those who arrive after the scheduled start time to join the group meeting.

The FRS 5.8 states that a *pro bono* legal organization, such as RAICES, may “request the posting and/or general circulation of a sign-up sheet. The facility administrator shall then notify residents of the sign-up sheet's availability and, according to established procedures, ensure coordination with the *pro bono* organization” (p.10, section V.10.m). Since at least early 2017,

ICE has posted a “walk-in” sign up sheet in the waiting area outside of visitation. Persons detained at Karnes have been able to walk into the visitation waiting room and write their name and A-number. GEO visitation staff regularly gave the list to RAICES at various times throughout the day and permitted RAICES to call people into visitation on the same day that they signed up to meet with us. This list and its use are consistent with FRS 5.8.

- On Monday April 15, 2019, ICE and GEO ended the use of the “walk-in” sign up list, about which RAICES and ICE, most recently, AFOD DeLeon, have previously corresponded on multiple occasions, most recently at an in-person meeting on March 4, 2019. Indeed, it is our understanding that on April 15, 2019, a list containing the names of persons who sought to meet with RAICES was removed or otherwise discarded without that information being provided to RAICES.
- We request that the walk-in list be re-implemented; specifically, that the attached sign-up sheet be posted in the visitation waiting room, that ICE and GEO permit detained persons to freely access the list at any time to write their name and A-number, and that GEO share the list with RAICES throughout the day as people sign-up, and at RAICES’ request.
 - We also request that RAICES be permitted to schedule a legal visit with individuals who sign up to meet with us on this walk-in list on the same day of their request for our services. Prior to April 15, 2019, our team of staff and volunteers regularly met with such individuals on the same day that we received their information via the walk-in list. Now, due to combined effects of this policy and others, individuals detained at Karnes must wait an average of 10 days for an initial *pro bono* legal visit.
- We request that detained individuals once again be permitted to share their A-numbers with us, as GEO staff historically and consistently require that we provide an A-number to call a detained person into visitation. It should be noted, however, that FRS 5.8 expressly prohibits the facility from imposing a requirement that legal visitors submit an A-number as a “condition of visiting” and instead require that the facility “shall make a good-faith effort to locate a resident if provided with *any other* information about the resident” (p.8, section V.10.e)(emphasis added).

In addition, the FRS 5.8 notes that, “When a situation arises where private conference rooms are in use and the attorney wishes to meet in a regular or alternate visiting room, the request should be accommodated to the extent practicable. Such meetings should be afforded the greatest degree of privacy possible under the circumstances” (p.9, section V.10.i).

- Accordingly, we request that when the five private meeting rooms in the visitation area are in use, ICE find another private location in which RAICES staff and volunteers can meet with detained persons at Karnes. The general visitation space is not private as GEO

staff are always present, ICE staff regularly enter the space, and family visits as well as private attorney visits occur in the space.

- Furthermore, we request that ICE direct private attorneys to such space when RAICES staff and volunteers are using the five private rooms to work with detained persons. Currently, GEO gives preference to private attorneys and their clients over detained persons utilizing RAICES' *pro bono* legal services. GEO instructs RAICES staff that when a private attorney arrives, we must give up a private visitation room to accommodate their visit. The same is not asked of private attorneys when RAICES staff arrives to Karnes. In fact, on May 7, 2019, a GEO officer explicitly informed RAICES that "private attorneys would always have preference" over RAICES. It is of great concern that GEO contractors have stated intent to provide unequal access to counsel for those who cannot afford private counsel.
- We also request that private attorneys be required to vacate a private visitation room while waiting for a client. On May 7, 2019, AFOD DeLeon expressed that private attorneys need not wait for clients outside of private visitation rooms, yet that RAICES *pro bono* attorneys and volunteers must do so. Again, it is troubling that ICE affirms that detained persons at Karnes who cannot afford private counsel will receive disparate access to their *pro bono* counsel.

The FRS 5.8 provides that "residents subject to Expedited Removal may bring and consult advisors during the asylum staff interview" (p.12, section V.11.d). However, on Wednesday April 17, 2019, a woman detained at Karnes requested that a RAICES attorney, Carlos Rodriguez, who was present at the detention center in the visitation area that day, be present for her interview. Implying that she was following GEO's directive, the asylum officer indicated that accommodations for Attorney Rodriguez's presence could not be made because GEO would have to "go find him." No one from GEO contacted Attorney Rodriguez in the visitation area, and the woman's interview was delayed and rescheduled to a later date. This is a good example of the changes in policy in fact harming the operation of the facility and the legal process.

- We request that RAICES staff and *pro bono* volunteers be permitted physical presence in the asylum office's interview space to comply with FRS 5.8.
- We additionally request that ICE provide at RAICES' request a copy of the NCFI/NRFI service packet to our staff upon presentation of form G-28.

The FRS 5.8 states that "On regular business days, legal visitations may proceed through a scheduled meal period, and the resident shall receive a meal tray after the visit." (p.7, section V.10.b). However, it has rarely, if ever, been the practice that GEO present detained persons with the option to continue their legal visit through a scheduled meal time. Instead, GEO officers regularly interrupt ongoing legal visits and insist that detained individuals must go to the

cafeteria to eat. For example, on May 7, 2019, AFOD DeLeon instructed GEO staff to remove individuals waiting for scheduled legal visits and sent them to eat at the meal hall, which, in combination with other new rules, hindered their ability to meet with RAICES legal visitors. We request that ICE follow established standards and instruct GEO to provide the required meal tray to those in an ongoing legal visit or waiting for a legal visit during meal time.

The FRS 5.8 requires that “staff shall maintain a separate log to record all legal visitors, including those denied access to the resident. The log shall include the reason(s) for denying access” (p.10, section V.10.o). We request a copy of this log as it pertains to RAICES staff and volunteers.

We also request that the *pro bono* room again be made available to *pro bono* legal service providers at Karnes, that the refrigerator and microwave in the break room outside of visitation be made available for legal visitors, and that RAICES be permitted to store items overnight in the *pro bono* room.

Furthermore, as mentioned in our April 23 meeting, it has come to our attention that GEO staff are distributing RAICES materials in the library at Karnes. ICE should immediately investigate and inform RAICES as to what documents are being distributed, who is distributing the documents, and what such persons tell people upon distribution of these documents. We are concerned that GEO staff is giving legal advice.

Finally, on May 2, 2019, RAICES staff attempted to submit forms G-28 to ICE via in-person delivery, as we have done on several occasions. Instead, purporting to be making copies of our appearance forms, a GEO staff person took the G-28 forms and a certificate of service meant for ICE to sign, reported to our staff that she left all of the forms on an ICE officer’s desk, yet could not remember with which officer she left the forms. There was no way that RAICES could ensure that the G-28s were in fact received by ICE. These actions constitute interference with RAICES’ attorney-client relationship as this GEO officer effectively prevented RAICES from ensuring that appearances were properly entered for our clients.

At our April 23 meeting you indicated that you hoped to have responses to our requests in short order. We would appreciate your prompt attention to these urgent matters of access to counsel for persons detained in your custody. We look forward to continuing a cooperative relationship that ensures that access to counsel for detainees at Karnes is both efficient and effective.

Sincerely,

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