DECLARATION OF LAURA L. LICHTER

I, Laura L. Lichter, make the following declaration based on my personal knowledge and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an attorney in private practice based in Denver, Colorado. Since my admission to the Colorado bar in 1994, I have practiced exclusively immigration and nationality law. I have represented clients in immigration proceedings, including detained noncitizens, for approximately 20 years. I am a member of the Board of Governors and a Past President of the American Immigration Lawyers Association (AILA).

2. In mid-July, I became aware that Immigration and Customs Enforcement (ICE) had begun detaining primarily Central American women and children at what appeared to a be an ad hoc detention facility housed at the Federal Law Enforcement Training Center (FLETC) in Artesia, New Mexico. Shortly thereafter, I began receiving disturbing reports from colleagues who had been to FLETC regarding the over 600 women and children detained under trying conditions in desperate need of legal help.

3. In stark contrast with press reports and government statements that the women and children detained at FLETC were economic migrants, my colleagues reported that the overwhelming majority were bona fide refugees with credible cases for asylum. The most common bases for the asylum claims my colleagues were seeing involved one of the most complicated areas of asylum law: the always developing and highly contested category of claims based on "particular social group." The cases my colleagues observed involved sexual violence and forced sexual slavery by gangs; extreme domestic and/or family violence; targeting of individuals based on their sexual orientation; targeting of evangelicals by gangs; targeting of gang-resisters, and related claims.

4. Descriptions of these cases came to me from attorneys whom I have known and respected for more than a decade. With nearly twenty years of practice in this area, I recognized not only the strength of these claims, but the harm that was being inflicted on these women by the manner in which the credible fear process was being administered and their lack of access to counsel or other meaningful legal resources.

5. For example, while there is a so-called "law library" at the facility (which happens to be in the same space that volunteer attorneys meet with detainees), the sole items that relate to self-help are two dedicated computer terminals pre-loaded with an asylum application in English and, apparently, Lexis/Nexis. I observed no dedicated law librarian or other staff to assist a detainee with legal research or use of the computers. In fact, none of our volunteers ever saw a detainee in the "law library" at the dedicated computer terminals.

6. What was particularly troubling regarding the legal process was that, other than a handful of attorneys, there were no legal resources to help these women and children through what is an incredibly challenging process. This complicated process of determining whether an individual has a "credible fear" was made even more challenging given the speed with which the government was pushing families through it. In addition, there was no legal orientation program at the detention facility, and the list of free legal service providers handed out to detainees

referenced providers in El Paso, Texas, approximately three and a half hours' drive away (and none of which were able to accept cases from Artesia). Sometime later, Diocesan Migrant and Refugee Services (DRMS) of El Paso began making their standard Legal Orientation Program (LOP) presentation two days a week, though the program was based on a generalized, pre-approved script and did not specifically address the legal issues faced by the detainees in Artesia. The state of New Mexico has no free legal service providers that represent detained noncitizens in immigration proceedings.

7. My colleagues described how these women and children were being rushed through credible fear interviews by the U.S. Citizenship and Immigration Services (USCIS) Asylum Office, usually within only a few days of arrival. Credible fear interviews were conducted with children in tow—no matter how distracting or disruptive or how delicate the subject. Having children present at all times was not only wearing on their mothers, but made it nearly impossible for them to speak freely.

8. The lack of childcare at the Artesia facility further complicates matters. My colleagues also informed me that ICE officers consistently berate mothers to look after their children, in some cases insisting that they must keep their children in their laps while consulting with attorneys, which is practically impossible with a squirming toddler or sleeping infant. One colleague described how she had to beg for an Asylum Officer to "babysit" while a mother was interviewed so that she could speak freely about how one of her children was the product of rape. Another mother would not disclose death threats against her children while they were present at the interview because she did not want them to be frightened. In other cases, the issues concerned are even more personal and unlikely to be discussed freely, like sexual orientation.

9. The same lack of childcare plagues credible fear reviews before immigration judges. The last two individuals described in paragraph 8, above, failed both their credible fear interviews and their credible fear reviews before immigration judges. Both were pro se, and both only saw volunteer legal counsel after they were placed on a list for deportation. In both cases, volunteer counsel filed Motions to Reconsider with the USCIS Asylum Office, which were granted. Had it not been for an outbreak of chicken pox delaying removals, it is certain that both of these women and their children would have been removed before they had a meaningful opportunity to tell their stories.

10. A related issue is that Asylum Officers ask mothers and children if they wish to pursue their cases "as a family" or separately. Uniformly, detainees opted to pursue their cases together for fear that their family units would be separated. Unfortunately, children are not automatically interviewed independently for credible fear. Additionally, children may not feel comfortable describing independent bases for credible fear. Independent bases that I am aware our volunteer attorneys have encountered include: sexual assault by a family member, coerced sex by a gang member, and sexual orientation.

11. Given the lack of legal help available and my alarm at the conditions and due process violations that had been reported to me, on July 29, 2014, I traveled from Denver, Colorado to Artesia, New Mexico, a distance of over 800 miles. The trip took approximately 9 hours. Accompanying me on the trip was an associate attorney from my firm, Elanie Cintron.

12. While in Artesia, the only hotel available on Orbitz with a room available for our dates [redacted] was the La Quinta Inn. Our discounted double room rate was $169 a night,

which after taxes was approximately $190 a night. We left Artesia to return to Denver at 8:30 pm on [redacted] and had to stay overnight in Las Vegas, New Mexico. Our shared room there cost $88 for the night. Our total lodging expenses for the trip were $1,040. Mileage and related expenses for the drive at the 2014 IRS rate was $453.60. Meals and other incidentals added another $500 to our expenses.

13. I returned to Artesia on [redacted] again driving the over 800 miles from Denver. This time, I was able to stay at a less expensive hotel, at a rate of $145 a night, including tax, for a total of approximately $290, plus meals and mileage expense. I returned to Colorado on [redacted] because of a prior commitment in Manitou Springs on the weekend, but returned again on [redacted] driving approximately 700 miles each way. The rate at my current hotel, The Hotel Artesia, is $125, including tax.

14. On my initial arrival in Artesia, I met with several immigration lawyers and legal support staff who had volunteered to provide legal services. In addition to the issues described above, I learned from them that detainees were uniformly describing what at best was a misunderstanding, and at worst, affirmative misdirection about their legal rights, including their right to counsel. Specifically, detainees told volunteers the following:

a. That ICE officers had informed them that there were no free lawyers and if they wanted a lawyer they had to pay for one themselves;
b. That once their cases were scheduled, they were required to participate in the cases and could not ask for more time to find a lawyer;
c. That if they asked for more time to find a lawyer, their cases would go forward without them;
d. That if they asked to get a lawyer, the government official would get angry because of the delay;
e. That asking for more time or a lawyer would hurt their cases;
f. That they would be deported without being able to present their cases if they delayed their cases to try to find lawyers;
g. That detainees who were brave enough to ask for time to find a lawyer felt intimidated and pressured and were concerned that asking for time would turn the official against them.

As a result, we drafted a notice, in Spanish entitled "Conozca Sus Derechos" ("Know Your Rights"), on a half sheet of fluorescent green paper. The document was only printed in Spanish. On the front, we included the following:

> Casos de inmigración son muy complicados. ¡Usted tiene el derecho de obtener ayuda legal! [*Immigration cases are very complicated. You have the right to obtain legal assistance!*[1]]
>
> Usted no tiene que hablar con los oficiales sobre su caso hasta que haya tenido la oportunidad de hablar con un abogado. [*You do not have to talk to the officials about your case until you have had the opportunity to talk to a lawyer.*]
>
> Hay abogados voluntarios gratuitos en este centro de detención listos para ayudarle con su caso, o también puede contratar su propio abogado. [*There are volunteer lawyers here*

[1] The bracketed translations in this document were not included on the document we distributed.

in this detention center, ready to help you with your case, or you can hire your own lawyer.]

El oficial no puede forzarle a hablar sobre su caso hasta que usted este lista, y ellos no pueden negarle su caso si pide tiempo para hablar con un abogado. Pedir hablar con un abogado NO afectara su caso. No la pueden deportar sin haber presentado su caso. [*The official cannot force you to talk about your case until you are ready, and they cannot deny your case if you ask for time to talk to a lawyer. Asking to talk to a lawyer will NOT affect your case. They cannot deport you until you have presented your case*.]

Hable con un abogado antes de hablar con un oficial sobre su caso, así usted puede entender cual es la información necesaria que necesita compartir con el oficial y como mejor presentar su caso. Consultar a un abogado mejora su posibilidad de ganar su caso. [*Talk to a lawyer before talking to an official about your case; in this way you can understand what is the necessary information you need to share with the official and how to best present your case. Consulting with an attorney improves the possibility of winning your case*.]

On the reverse, we included the following:

***Si usted desea hablar con un abogado antes de su entrevista entregue esta tarjeta al oficial.* [*If you wish to talk to a lawyer before your interview, hand this card to the official.*]**

I would like to continue my case so that I may seek legal help.

Yo deseo tiempo para conseguir consejo legal.

Nombre [Name]_____

A#_____

Date: _____

15. The purpose of the form was two-fold: to counter the misinformation that detainees understood about access to legal counsel; and just as importantly, to ensure that detainees had a tool that would allow them to get the time they needed to secure counsel, whether that meant retaining a private attorney or seeking an appointment with our volunteers.

16. The following morning, after arriving in the "law library," our volunteers began passing out the forms. I was not present, but I was told by my colleagues that almost immediately, ICE officers physically barred our attorneys from distributing the forms. At the same time, they grabbed the forms away from the detainees and told volunteers that they were not to approach the detainees with legal information and that they could not pass out the flyers. Thereafter, the volunteers were restricted to a desk area. From then on, instead of going to the detainees, we provided a copy of the notice to the families with whom we met. Most if not all asked for additional copies to take back to the dorms, which we provided.

17. The following day, when meeting with detainees, we heard that ICE officers had yelled at women who had attempted to pass on the "Know Your Rights" flyers and had taken the flyers away from them. I contacted ICE management and a representative of ICE's Office of the

Principal Legal Advisor at Artesia and was advised that the flyers would not be allowed and that passing them out was in violation of the facility's rules. When pressed, the ICE officials indicated that the flyer was in violation of ICE's residential facility detention standards.

18. I advised the ICE representatives that we were not a Legal Orientation Program and that neither ICE, nor EOIR, nor anyone else had the right to review, limit, edit or approve legal materials—even those which might be of general use—that we provided to our clients, or that our clients chose to pass on to other detainees. The officials told me that we could not provide multiple copies of the flyers.

19. A few days later (the day following my departure), ICE approached the new AILA volunteer attorney coordinating the project, Stephen Manning, regarding the forms. He related to me that they did not like the wording of the flyer, and particularly objected to the inference that ICE would "punish" a detainee for seeking legal help. As evidenced by the text of the form set forth in paragraph 13, above, that phrase did not appear on the form.

20. Because ICE objected to our distributing copies of the first form, we created a second form, with different wording acceptable to ICE, which served primarily as a legal visit request form. Based on an agreement with program attorneys, ICE placed locked boxes in the dorms and/or common areas into which detainees could place these request forms. The boxes were to be accessed only by a representative of our volunteer group on a daily basis.

21. After a few days, ICE officers informed another of my colleagues, Angela Ferguson, that due to operational constraints, an ICE officer would not be available to escort us to the boxes and instead, ICE would collect the contents of the boxes and bring them to us. That evening, I voiced my objection via email to ICE management. The following day, I was told in person the same: that we would not be allowed to collect the forms directly, but that the contents of the boxes would be brought to the AILA volunteers. The first day this new process went into effect, August 14, the contents were actually brought to an ICE guard who reviewed all the requests, violating the confidentiality of the process. The next day, I was told by an ICE officer that there were no requests in any of the boxes. However, we continued to receive requests for case reviews via our green sheets, which we continue to circulate.

22. I also observed many problems with proceedings before EOIR for Artesia cases. Volunteer attorneys consistently reported to me that attorney participation in Immigration Judge reviews of negative credible fear findings is extremely limited. Specifically, they told me that immigration judges, in reliance on the Immigration Court Practice Manual, told them that they have "no role" in the review process.

23. [redacted] I personally attended a hearing for a review of a negative credible fear determination for a client. Lead counsel, Ashley Morris, and I had met with the detainee earlier that day to discuss the purpose of the hearing. At the time of our meeting, the client was wearing a blanket, tied around her neck like a cape, over a cotton T-shirt. She indicated that she was always cold and that her son (who was also wearing a blanket) was sick because he was always cold, too.

24. After consulting with the client, Ms. Morris and I determined that she would ask for additional time on the client's behalf because counsel had only just met with her and had not had the opportunity to fully consult with and advise her.

25. ICE officer/s escorted Ms. Morris and me, along with our client and her son, to the building where the videoconference hearings were held. We tried—unsuccessfully—for approximately 15 minutes to fax Ms. Morris's representation form (Forms E-28) to the Immigration Court in Arlington, Virginia, where all of the immigration judges who preside over credible fear reviews are based. Eventually, Immigration Judge [redacted] advised us that he would take an oral entry of appearance.

26. It was extremely difficult to communicate with the judge. The screen is small, and the counsel table was set far enough away from the computer monitor that the judge's image on the screen was only a few inches high. There is no view of opposing counsel. The split screen has one image showing the judge's courtroom and one showing the detainee's courtroom. Each image is approximately 7" by 8", and the resolution was so poor that we could not see the judge's expression, though we could clearly see that he was not often looking at his screen.

27. Audio was also challenging. The microphone allowed only one person to talk at a time. While the judge and the lawyers recognized this, it was clear that our client was unaware that on several occasions, the judge did not hear her statements because her comments overlapped with his. Ms. Morris was tasked as lead attorney; I sat next to Ms. Morris at the table and took notes on my laptop. No one representing DHS was present at the hearing.

28. After confirming with Ms. Morris that she would find a way to transmit her representation form after the hearing, the immigration judge began discussing his understanding of the attorney's role in the process. Ms. Morris asked the judge if we were on the record. He stated no, because the hearing had yet not begun. Ms. Morris specifically asked that this discussion about the procedure for the hearing be put on the record. The judge refused and stated, "I will not go on the record, counsel. Let me explain: as I read the regulations, there is no role for attorneys here."

29. Ms. Morris again asked to go on the record. According to my notes of the hearing, the judge again refused and stated, "The respondent is not represented in these proceedings." He continued, "There is no opportunity to question the respondent. There is no opportunity to introduce evidence or exhibits. You cannot make an opening or a closing. Even appearance of counsel is at the discretion of the court, and I may or may not allow counsel to be present."

30. Ms. Morris again asked to go on the record. The judge again refused and asked Ms. Morris if her client needed more time. Ms. Morris stated that she disagreed with the judge's statement and that while the Immigration Court Practice Manual might suggest otherwise, a more active role for counsel was contemplated and allowed by the regulations and statute.

31. The judge responded that he did not "believe that the regulations allowed that." He stated that our client had a right to consult with counsel prior to the review, and if that had not been done he would grant more time. Ms. Morris confirmed that she had not had sufficient time to prepare her client for the hearing. The judge again noted that the client had a right to consult an attorney, and that he would grant a continuance if that had not taken place.

32. Ms. Morris made one more attempt to engage the judge on the record, to which he replied "I do not intend to allow you to make a record, counsel. You have no role in this hearing." He

went on to say that he would either go forward that day or consider a request for more time, but only if that request was made directly by the client. The respondent was sworn in and the judge asked if she had met with Ms. Morris previously. She explained that she had met Ms. Morris, but that she had not prepared for the hearing. The judge told her and Ms. Morris that he would grant a continuance, but stated that he did not know when the hearing would be rescheduled.

Executed this 20th day of August, 2014 at Artesia, New Mexico.

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