



**A REVIEW BY
PA AUDITOR GENERAL
EUGENE A. DEPASQUALE**



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DEAR FELLOW PENNSYLVANIANS,

William Penn founded Pennsylvania as a place where immigrants could find freedom from persecution.

Unless you are descended solely from an indigenous native tribe, your ancestors were part of Pennsylvania's immigration history. Brave immigrants built our commonwealth, shaping and reshaping its culture while powering its economic growth for hundreds of years.

Today, as the national debate rages about how to handle immigrants, a facility in eastern Pennsylvania that houses immigrant families — particularly those seeking asylum — has become part of the conversation. The Berks County Residential Center (BCRC) is one of three facilities the federal government uses to detain some families as they await their hearings before immigration judges.

The process that U.S. Immigration and Customs Enforcement (ICE) uses to decide which families languish in detention is a mystery: While some families who appear at our borders seeking to stay in the U.S. are placed in one of these facilities, others are instead released into communities that have oversight and support services to help them navigate the confusing path to either deportation or, for some, residency.

For almost two decades, BCRC has been licensed by the state Department of Human Services to function as a child residential facility. But BCRC has also been simultaneously housing adults.

Seeking asylum is not a crime. Neither is asking the U.S. government for permission to live on its soil and become a contributing member of its society. Yet the parents and children being held at BCRC are treated like prisoners despite not being accused of any crimes.

U.S. taxpayers shelled out nearly \$1.8 billion in 2017 to keep families detained in residential facilities. Nearly \$12 million of that amount was for detaining families in BCRC.

Ideally, facilities such as BCRC should not exist. If the federal government insists on using them, they must be carefully and humanely managed, and rules governing the detention of immigrants — such as the Flores Agreement, which is a federal court settlement that limits the detention of minors to 20 days — must be closely followed. Repeated documented cases show that's not happening now at BCRC.

Because the space in BCRC is leased by the federal government, the Pennsylvania state government has only limited say in how the space is used. The federal government should stop using BCRC to detain immigrant families. If it cannot, or will not, then Pennsylvania, including its oversight agencies, must continue to play a role in ensuring the health and safety of those detained there.

Thank you for the opportunity to serve you.

Sincerely,



Eugene A. DePasquale



BACKGROUND

WHAT IS BERKS COUNTY RESIDENTIAL CENTER?

The Berks County Residential Center (BCRC), also known as Berks Family Residential Center, is a facility owned by Berks County and leased to U.S. Immigration and Customs Enforcement (ICE), a federal law enforcement agency under the U.S. Department of Homeland Security.

With a capacity of 96 people, BCRC is a secure facility in Bern Township, about 8 miles from Reading, where families with children seeking to immigrate to the United States can be held as they go through the immigration process.

BCRC opened in 2001 and, by 2016, family detention capacity in the United States had increased by 3,400 percent.¹ The federal government, in fiscal year 2017, spent \$1.748

billion in taxpayer funds on detention facilities, including BCRC.² Projected costs for BCRC for fiscal year 2018 totaled \$11.9 million.³

BCRC is one of three such family residential facilities in the United States but is the only one not in Texas.⁴ It is also the only one not run by a private company.

In exchange for operating BCRC, the federal government reimburses Berks County for operating the facility with a staff of 59 county employees.⁵ The arrangement brings roughly \$1.3 million in revenue into Berks County's budget annually.⁶

The Pennsylvania Department of Human Services (DHS) has regulatory authority over BCRC pursuant to the Pennsylvania Human Services Code.⁷

¹ Eagly, Ingrid; Shafer, Steven; and Whalley, Jana. American Immigration Council. *"Detaining Families: A Study of Asylum Adjudication in Family Detention."* Published Aug. 16, 2018. <https://www.americanimmigrationcouncil.org/research/detaining-families-a-study-of-asylum-adjudication-in-family-detention>. Accessed Dec. 6, 2019.

² *Ibid*

³ U.S. Department of Homeland Security. *"U.S. Immigration and Customs Enforcement Budget Overview: Fiscal Year 2018."* <https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf>. Accessed Dec. 6, 2019.

⁴ The facility in Karnes, Texas, has a capacity of 880, and the facility in Dilley, Texas, has a capacity of 2,400.

⁵ U.S. Office of Inspector General. *"Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities."* Published June 2, 2017. <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf>. Accessed Dec. 6, 2019.

⁶ Orozco, Anthony; Mekeel, David; and Shuey, Karen. Reading Eagle. *"What you need to know about the residential center holding immigrant families in Berks County."* Published June 23, 2018. <https://www.readingeagle.com/news/article/berks-detention-center-again-in-spotlight>. Accessed Dec. 6, 2019.

⁷ Under Section 701 (relating to Availability of services) of the Code, DHS must "assure within the Commonwealth the availability and equitable provision of adequate public child welfare services for all children who need them regardless of religion, race, settlement, residence or economic or social status." See 62 P.S. § 701 *et seq.* See also DHS regulations, 55 Pa. Code Chapter 3800: Child and Residential Day Treatment Facilities. Section 3800.1 (relating to Purpose) of the regulations states: "The purpose of this chapter is to protect the health, safety and well-being of children receiving care in a child residential facility through the formulation, application and enforcement of minimum licensing requirements." See 55 Pa. Code § 3800.1. See also 29 Pa. Bull. 3295 (June 26, 1999).

WHO IS DETAINED AT BCRC?

Families held at BCRC come from a variety of locations, and the population inside can shift suddenly from one demographic to another.

Most of the families have been stopped at the border, and many are seeking asylum for various reasons, such as domestic abuse in their home countries. ICE does not make public how it determines which families are placed in detention and which families are released into communities with oversight supports.

According to ICE's service agreement with Berks County, none of the families are facing criminal charges and are, instead, "only held in custody to assure their presence throughout the administrative hearing process."⁸

As of October 2019, BCRC's population comprised about 22 families, all of them seeking asylum, from Mexico, Haiti, and Central American nations.⁹ In 2018, about 20 families seeking asylum came through BCRC from El Salvador, Guatemala and Honduras,¹⁰ according to Bridget Cambria, an attorney who represents people at BCRC and who worked at BCRC in 2002.

The majority of families that have been in detention at BCRC in the past have been Spanish speakers, Cambria said.

Many times, Cambria said, no one in a family speaks English as their primary or secondary language, and BCRC does not provide translators on a regular basis. According to Cambria, most employees at the other two family detention centers — in Dilley and Karnes, Texas — speak Spanish. At BCRC, "maybe two" staff members do.

In June 2015, the U.S. Department of Homeland Security convened an Advisory Committee on Family Residential Centers (ACFRC). In September 2016, ACFRC published its report on the three family residential centers in the country with extensive recommendations. Language access was among the issues addressed in the report.

IMMIGRATION RELIEF

Here are some of the pathways to residency for immigrants seeking asylum:

Special Immigrant Juvenile Status:

Applicable to certain children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment or a similar basis under state law, giving them the ability to seek lawful permanent residence in the U.S.

U-visas: Victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity may qualify.

VAWA self-petitions: Adults and children who are victims of domestic violence by a permanent U.S. resident can file for an immigration visa by this means without the abuser's knowledge, enabling victims to seek both safety and independence.

T visas: Certain victims of human trafficking are eligible to remain in the U.S. for up to 4 years if they have assisted law enforcement in an investigation or prosecution of human trafficking; also available for certain qualifying family members. This non-immigration benefit can lead to those eligible becoming lawful permanent residents.

Source: U.S. Citizenship and Immigration Services

⁸ Orozco, Anthony; Mekeel, David; and Shuey, Karen. Reading Eagle. "What you need to know about the residential center holding immigrant families in Berks County." Published June 23, 2018. <https://www.readingeagle.com/news/article/berks-detention-center-again-in-spotlight>. Accessed Dec. 6, 2019.

⁹ Gammage, Jeff. The Philadelphia Inquirer. "Enough kids to open a day care: Activists push anew to shut down Berks detention center." Published Oct. 29, 2019. <https://www.inquirer.com/news/berks-detention-center-child-migrants-20191029.html>. Accessed Dec. 6, 2019.

¹⁰ *Ibid*

ACFRC was unable to determine whether interpretation services provided via telephone language lines was provided consistently, but even if so, “the extensive discussion that is necessary to substitute for such lengthy documents as the resident handbooks undermines the efficacy of such interpretation.”¹¹

ACFRC found that, despite the fact that most families in ICE detention centers were fleeing pervasive violence and were using appropriate channels to seek asylum, the facilities — including BCRC — did not inform them about or screen them for forms of immigration relief for which they might qualify (see “Immigration relief” box).¹² Ignorance of the process works against families, lengthening their detentions and preventing them from adequately presenting their cases for asylum to immigration judges.

These detained families with minor children are generally “high functioning, self-sufficient, independent, autonomous and responsible individuals who are pursuing long-term gains,” according to the ACFRC’s report. “They have made a dangerous journey in search of safety for themselves and their children. They have job skills, were gainfully employed and provided for their children, hold religious beliefs, paid taxes, owned homes, and voted where it was permitted in their home countries.”¹³

At the time of ACFRC’s report, no one in detention at any family detention center had a criminal record, but, “once in ICE custody, they are managed by ICE and its contractors in the same manner that the criminal justice system manages criminal defendants and convicted inmates.”¹⁴ BCRC’s voluntary work program, for instance, assigns adults detainees to maintain the center’s cleanliness, for which they are paid \$1 per day.¹⁵ That compensation rate has not been raised in almost 70 years.¹⁶

The committee report describes how treating non-criminals this way undermines any effort to provide trauma-informed care — by treating families this way, BCRC cannot effectively mitigate the real risks that threaten families’ sense of safety: “The very experience of detention ... is a continuing source of trauma for families who fled to the U.S. seeking safety,” the ACFRC report said.¹⁷

The detention of families “should be premised upon civil, rather than criminal, principles,” ACFRC determined, citing statutory mandate and case law that says “migrants must not be detained to deter, detained to punish, or detained indefinitely.”¹⁸

Most families in detention at BCRC are going through immigration proceedings. Removal proceedings, according to the American Immigration Council, mean an average of 87 days spent in detention.¹⁹

¹¹ “Report of the DHS Advisory Committee on Family Residential Centers.” Published Sept. 30, 2016. <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>. Accessed Dec. 6, 2019.

¹² *Ibid*

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ U.S. Commission on Civil Rights. “U.S. Commission on Civil Rights Concerned with Alleged Abusive Labor Practices at Immigration Detention Centers.” Published Dec. 21, 2017. <https://www.usccr.gov/press/2017/12-21-PR.pdf>. Accessed Dec. 6, 2019.

¹⁶ *Ibid*

¹⁷ “Report of the DHS Advisory Committee on Family Residential Centers.” Published Sept. 30, 2016. <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>. Accessed Dec. 6, 2019.

¹⁸ *Ibid*

¹⁹ Eagly, Ingrid; Shafer, Steven; and Whalley, Jana. American Immigration Council. “Detaining Families: A Study of Asylum Adjudication in Family Detention.” Published Aug. 16, 2018. <https://www.americanimmigrationcouncil.org/research/detaining-families-a-study-of-asylum-adjudication-in-family-detention>. Accessed Dec. 6, 2019.

Withholding-only proceedings — which do not provide a path to residency but do protect a person from being deported — mean an average of 132 days in detention.²⁰

In the past, county officials have refused to speak publicly about BCRC, citing the contract with ICE.²¹ However, Kevin Barnhardt, chairman of the county commissioners, said in July 2019 that he would like the contract to end.²² In the wake of that announcement, Gov. Tom Wolf’s office has been attempting to negotiate with Barnhardt and other officials to stop the detention of immigrants at BCRC.²³

WHAT IS THE FLORES AGREEMENT?

BCRC was originally leased to Immigration and Naturalization Services (INS), which preceded ICE, as Berks County Youth Center. According to the intergovernmental service agreement between the county and federal immigration authorities, Berks County is “responsible for maintaining compliance with the standards set forth by the Flores v. Reno Settlement Agreement,” better known as the Flores Agreement.

The Flores Agreement is a 1997 consent decree to a 1985 lawsuit, according to The New York Times. It

establishes standards for the way minors in federal immigration authorities’ custody are detained, how they are treated in detention and how they are released.²⁴

According to the Flores Agreement, minors cannot be detained for more than 20 days.²⁵ However, BCRC’s service agreement also defines “short-term” care as being “up to 90 days” and “long-term” care as being “in excess of 90 days.”

In its 2016 report, ACFRC noted that U.S. District Judge Dolly Gee “entered an order in Flores in July 2015 requiring speedier release of most children from family detention.”²⁶ While the report indicates the two facilities in Texas hewed closer to the Flores Agreement, “families housed at Berks have faced very substantially longer detention periods, with some families remaining in detention for over a year.”²⁷

The Flores Agreement defines a “licensed program” as “any program, agency or organization that is licensed by an appropriate state agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special-needs minors.”²⁸

²⁰ *Ibid*

²¹ Hall, Peter. The Morning Call. “Immigrant family detention center puts Berks County in eye of political storm.” Published July 7, 2018. <http://www.mcall.com/news/local/mc-nws-berks-immigration-family-detention-center-20180703-story.html>. Accessed Dec. 6, 2019.

²² Shuey, Karen. Reading Eagle. “Commissioners debate future of Berks County Residential Center.” Published July 18, 2019. <https://www.readingeagle.com/news/article/commissioners-debate-future-of-berks-county-residential-center>. Accessed Dec. 6, 2019.

²³ Meyer, Katie. WITF. “Gov. Wolf and a Berks County official are plotting ways to close an immigrant detention center.” Published Oct. 28, 2019. <https://www.witf.org/2019/10/28/gov-wolf-and-a-berks-county-official-are-plotting-ways-to-close-an-immigrant-detention-center/>. Accessed Dec. 6, 2019.

²⁴ Jordan, Miriam. The New York Times. “The History of Migrant Children Protection in America Started with Two Girls in Los Angeles.” Published Aug. 20, 2019. <https://www.nytimes.com/2019/08/20/us/flores-migrant-children-detention.html>. Accessed Dec. 6, 2019.

²⁵ <https://www.govinfo.gov/content/pkg/FR-2018-09-07/pdf/2018-19052.pdf>. Accessed Dec. 6, 2019.

²⁶ “Report of the DHS Advisory Committee on Family Residential Centers.” Published Sept. 30, 2016. <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>. Accessed Dec. 6, 2019.

²⁷ *Ibid*

²⁸ <https://www.hsgac.senate.gov/imo/media/doc/2018.08.15%20PSI%20UAC%20Report%20Appendix.pdf>. Accessed Dec. 6, 2019.

WHAT IS THE RELATIONSHIP BETWEEN DHS AND BCRC?

From 2001 to 2015, Pennsylvania’s Department of Human Services (DHS) regulated, inspected and issued a license to BCRC to operate as a “child residential facility” under the Pennsylvania Human Services Code and DHS regulations.²⁹

In January 2016, DHS chose not to renew BCRC’s certificate of compliance and revoked the certificate of compliance it had previously issued, saying it was “not operating as a child residential facility under the Human Services Code or the department’s regulations” because it was simultaneously housing adults.³⁰

Under Pennsylvania’s Human Services Code and its associated regulations, the facility was licensed to provide “residential services — community based, dependent and delinquent.”³¹ Technically, there is no provision in Pennsylvania’s Human Services Code or its regulations that allows for minor children and

adults to be housed together.

Berks County appealed DHS’s ruling to the Bureau of Hearings and Appeals (BHA), which determined DHS’ revocation of the license and certificate of compliance was “arbitrary” and “capricious” because DHS had known for 14 years that “BCRC has operated as a family residential facility.”³²

The legal case remains tied up in litigation. In the meantime, DHS continues to inspect BCRC on a monthly basis, according to DHS senior staff.³³

Reports generated from those inspections are posted only when DHS cites the facility for a violation. According to the website, no violations of the Pennsylvania Code have been found since June 2018.³⁴

²⁹ See the Human Services Code, 62 P.S. §§ 901-922, 1001-1088. See also 29 Pa. Bull. 3295 (June 26, 1999).

³⁰ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20160128_14386.pdf. Accessed Dec. 6, 2019.

³¹ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20160211_14386.pdf. Accessed Dec. 6, 2019.

³² *Ibid*

³³ The Human Services Code and Chapter 3800 of the DHS regulations allows DHS to inspect the facility for general provisions, general requirements, child rights, staffing, the physical site of the facility, fire safety, child health, staff health, nutrition, transportation, medications, restrictive procedures, services, child records, specific requirements for facilities serving nine or more children, secure care, secure detention, transitional living, outdoor and mobile programs, and day treatment. <http://swantoolkit.org/wp-content/uploads/Chap-3800-residential-facilities.pdf>.

³⁴ <http://services.dpw.state.pa.us/dhs/ViolationReport.aspx?reportid=14386&fac=BERKS%20COUNTY%20RESIDENTIAL%20CENTER#.WywNLIUuRu>. Accessed Dec. 6, 2019.

Some violations for which DHS has cited BCRC since its attempt to not renew its license include the following:

- **July 2018 inspection:** Unsteady beds, unlabeled bar soap, inadequate differentiation in the timing of overnight fire drills, failure to provide a child with a hearing screening within the first 30 days of the child's detention and failure to develop an individual service plan (a written document describing a child's care and treatment needs) for a child within the first 30 days of the child's detention.³⁵
- **July 2017 inspection:** Failure to secure consent for treatment authorization for three children by their parent(s) when their detention began.³⁶
- **January 2017 inspection:** Failure to list possible side effects of medication for two children on their medical administration records.³⁷
- **September 2016 inspection:** Failure to include intervention plans for identified health risks in two children's Health & Safety Plans.³⁸
- **April 2016 inspection:** Failure to provide adequate privacy for a child in detention with her father, to whom BCRC assigned a bedroom and bathroom with two boys and two adult men without solid doors connecting the rooms.³⁹
- **March 2016 inspection:** Failure to provide DHS with a description of services BCRC provides and the ages, needs and special characteristics of children served by BCRC.⁴⁰

³⁵ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20180619_14386.pdf. Accessed Dec. 6, 2019.

³⁶ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20170728_14386.pdf. Accessed Dec. 6, 2019.

³⁷ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20170126_14386.pdf. Accessed Dec. 6, 2019.

³⁸ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20160915_14386.pdf. Accessed Dec. 6, 2019.

³⁹ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20160428_14386.pdf. Accessed Dec. 6, 2019.

⁴⁰ http://services.dpw.state.pa.us/Resources/Documents/Pdf/ViolationReports/20160318_14386.pdf. Accessed Dec. 6, 2019.

OBSERVATION 1:

REPORTS ON THE CONDITIONS AT BCRC VARY WIDELY.

Accounts and descriptions of the conditions inside BCRC vary greatly. U.S. Rep. Madeleine Dean called it “a golden cage.”⁴¹ DHS senior staff called it “an excellent facility.” Yet a group of mothers in detention at BCRC wrote, “On many occasions our children have thought about suicide because of the confinement and desperation that is caused by being here.”⁴²

On the following pages are three perspectives on BCRC.

The first is from a family detained in October 2019; their story provides a look at the current conditions inside BCRC. The second is from a mother, detained in 2014, who was sexually assaulted by a BCRC guard who later pleaded guilty to institutional sexual assault and was sentenced to prison in April 2016.⁴³ The third is from regulatory bodies that assess the way BCRC functions.

In December 2019, federal authorities, through the Berks County solicitor’s office, refused to allow staff from the Department of the Auditor General to tour BCRC to gather a firsthand look at the conditions inside.

⁴¹ Shuey, Karen. The Pottstown Mercury. “Scanlon, Dean make surprise visit to Berks detention center.” Published July 23, 2019. https://www.pottsmmerc.com/news/scanlon-dean-make-surprise-visit-to-berks-detention-center/article_4f5d4c74-acc3-11e9-92cd-af44606aa540.html. Accessed Dec. 6, 2019.

⁴² Feltz, Renee. The Guardian. “Mothers at US immigration center on hunger strike to protest year in custody.” Published Aug. 15, 2016. <https://www.theguardian.com/us-news/2016/aug/15/immigration-women-hunger-strike-pennsylvania-berks-county>. Accessed Dec. 6, 2019.

⁴³ Weaver, Stephanie. Reading Eagle. “West Reading man sentenced for sex with detainee.” Published April 13, 2016. <https://www.readingeagle.com/news/article/west-reading-man-sentenced-for-sex-with-detainee>. Accessed Dec. 6, 2019.

THE CONNORS FAMILY

David, 30, and Eileen Connors, 24, and their 3-month-old baby, residents of England vacationing in Canada, were held in BCRC for 11 days in October 2019. The family was flown to BCRC on Oct. 5, two days after being detained along the U.S.-Canadian border.

There were eight families with children under 5 years old at BCRC at the time of the Connors' detention, but a child under age 1 was a rarity.⁴⁴ When ICE told the Connors their son could be sent elsewhere — he was “a bit young” to be at BCRC — if they wanted to sign papers allowing themselves to be separated from him, Eileen Connors said they were “shocked and disgusted.”⁴⁵

After that, she said, “thinking that someone might come in and take him from me,” she could not sleep.⁴⁶ BCRC staff also performed checks in 15-minute intervals throughout the night, she said, shining a flashlight into the Connors' room and startling the baby and his parents.⁴⁷

Nothing BCRC provided to the Connors seemed to them to have been washed — a baby bathtub

“had broken bits” inside it, the blankets and sheets in their room smelled “like a dead dog.”⁴⁸ All the clothes and blankets that the baby arrived with were taken for washing, Eileen Connors said, and BCRC had no clothes to provide for him in the interim.⁴⁹

“When I ask, ‘How am I supposed to keep my baby warm in this horrible cold?’ All they tell me is to put a hat on him,” Connors said.⁵⁰

By Oct. 11, six days after they arrived at BCRC, their baby's skin was “rough and blotchy,” his left eye “swollen and teary.”⁵¹

Bridget Cambria is the Connors' attorney, and she said there was no available explanation of the charges on which they were confined.⁵²

“Everyone (at BCRC) right now has been through worse” than the Connors, Cambria said. The difference is that the Connors, as English speakers, were able to advocate for their rights, which expedited their transfer out, she said.⁵³

ICE confirmed the Connors' deportation Oct. 16.⁵⁴

⁴⁴ The New York Times. “British Family Says One Wrong Turn Led to ICE Detention Nightmare.” Published Oct. 16, 2019. <https://www.nytimes.com/2019/10/16/us/british-family-ice.html>. Accessed Dec. 6, 2019.

⁴⁵ Chiu, Allyson. The Washington Post. “A British family on vacation say they accidentally drove into the U.S. They've spent days detained with their 3-month-old baby.” Published Oct. 16, 2019. <https://www.washingtonpost.com/nation/2019/10/15/eileen-connors-british-family-ice-vacation-detention/>. Accessed Dec. 6, 2019.

⁴⁶ *Ibid*

⁴⁷ Gammage, Jeff. The Philadelphia Inquirer. “They swerved from Canada into the U.S. to avoid an animal on the road. Now they and their baby are in custody.” Published Oct. 14, 2019. <https://www.inquirer.com/news/berks-detention-center-immigration-migrant-ice-border-patrol-family-20191014.html>. Accessed Dec. 6, 2019.

⁴⁸ <https://www.washingtonpost.com/nation/2019/10/15/eileen-connors-british-family-ice-vacation-detention/>

⁴⁹ <https://www.inquirer.com/news/berks-detention-center-immigration-migrant-ice-border-patrol-family-20191014.html>

⁵⁰ *Ibid*

⁵¹ <https://www.washingtonpost.com/nation/2019/10/15/eileen-connors-british-family-ice-vacation-detention/>

⁵² Moore, Daniel. Pittsburgh Post-Gazette. “Detention of U.K. family fuels calls to close troubled Berks County facility.” Published Oct. 14, 2019. <https://www.post-gazette.com/news/politics-nation/2019/10/14/Immigration-detention-center-Berks-County-Tom-Wolf/stories/201910140089>. Accessed Dec. 6, 2019.

⁵³ <https://www.nytimes.com/2019/10/16/us/british-family-ice.html>

⁵⁴ Benschoff, Laura. WHYY. “British family returned home after ICE detention in Pa.” Published Oct. 16, 2019. <https://whyy.org/articles/british-family-claiming-mistreatment-deported-from-ice-detention-in-pa/>. Accessed Dec. 6, 2019.

E.D.

Nineteen-year-old “E.D.” came to the U.S. in May 2014 with her 3-year-old son, having left Honduras to escape domestic violence and sexual assault.⁵⁵ She was transferred from Texas to BCRC, where, by July 2014, she was being sexually assaulted by 40-year-old BCRC employee Daniel Sharkey.⁵⁶

By August 2014, the assaults had been witnessed by other residents, including a 7-year-old girl.⁵⁷ That girl, whose mother was in detention with her at BCRC, was the first person to report Sharkey’s abuse.⁵⁸ By that time, other BCRC staff members were aware that Sharkey was serially assaulting E.D. and failed to intervene.⁵⁹ Fearing deportation, E.D. delayed reporting the assaults directly to anyone, but once she did — to her immigration attorney — she alleged that the staff members retaliated against her, creating a more restrictive environment and denying her and her son

privileges that isolated them from other detainees.⁶⁰

In her suit, E.D. alleged that the staff was “deliberately indifferent to the violation” and that Berks County, as owner of the facility, “failed to implement policies to prevent the violating conduct.”⁶¹

The defendants — which included Sharkey, BCRC and Berks County — appealed the suit. The U.S. District Court for the Third Circuit denied the appeal because “immigration detainees are entitled to such protections” as the right to bodily integrity under the Fourteenth Amendment, which is what E.D. claims in her suit was violated.⁶²

ICE says its “policies and standards prohibit staff from sexually abusing immigration detainees and define any sexual contact, regardless of whether it is consensual, as sexual abuse.”⁶³

⁵⁵ <https://www2.ca3.uscourts.gov/opinarch/181688p.pdf>

⁵⁶ Lozano, Alicia Victoria. NBC 10. “*Berks Detention Center Remains Open Despite Call to Immediately Shut It Down.*” <https://www.nbcphiladelphia.com/news/local/Berks-Detention-Center-Remains-Open-Despite-Call-to-Immediately-Shut-It-Down-486188021.html>. Accessed Dec. 6, 2019.

⁵⁷ <https://www2.ca3.uscourts.gov/opinarch/181688p.pdf>

⁵⁸ Feltz, Renee. The Guardian. “Immigration facility guard given jail time for sexual assault of detainee.” Published April 23, 2016. <https://www.theguardian.com/us-news/2016/apr/23/immigration-detention-center-guard-sexual-assault-prison>. Accessed Dec. 6, 2019.

⁵⁹ <https://www2.ca3.uscourts.gov/opinarch/181688p.pdf>

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² *Ibid*

⁶³ <https://www2.ca3.uscourts.gov/opinarch/181688p.pdf>

COMPLIANCE CHECKS

Despite reports of conditions such as those described by the Connors and E.D., BCRC remains open. Among those bodies regularly inspecting BCRC are Danya International and the Pennsylvania Department of Human Services (DHS).

Danya International

Danya International is a marketing consulting firm that conducts monthly inspections of BCRC on behalf of its client, ICE, evaluating it strictly according to ICE's family residential standards.⁶⁴

According to ACFRC, "ICE's Family Residential Standards are based upon, and extremely similar to, standards developed by the American Correctional Association for adult criminal defendants who are incarcerated pretrial."⁶⁵

Not only do the standards by which it evaluates BCRC inherently criminalize those in detention, but Danya International, according to ACFRC, "does not appear to have the requisite experience to adequately assess ICE's compliance with either the current or ideal Family Residential Standards."⁶⁶

The latest Danya International inspection that ICE made available identifies 31 people as being in detention at BCRC over a period of two days in August 2019, 14 of whom were school-age

children.⁶⁷ No areas of noncompliance were found during that inspection.⁶⁸

One standard Danya International is supposed to check is language access service: "Where required, detainees have regular access to translation services and/or are provided information in a language that they understand," according to the ACFRC.⁶⁹

In compiling its report, ACFRC found that ICE did "not adequately track either non-Spanish languages needed for interpretation/translation, or how well its language access processes are working."⁷⁰ Details such as a comprehensive list of languages that those in detention speak or read and the number of language-line interpretation requests or hours of language-line usage are unknown, so ACFRC was not able to make assessments about language lines. It did note that "we think it likely that FRC detainees who do not speak English or Spanish are not receiving interpretive services during orientation."⁷¹

DHS

DHS posts reports generated from its monthly inspections only when it cites the facility for a violation. As mentioned above, according to the website, no violations of the Pennsylvania Code have been found since June 2018.⁷²

⁶⁴ To see examples of the standards, go to <https://www.ice.gov/detention-standards/family-residential>.

⁶⁵ <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

⁶⁶ *Ibid*

⁶⁷ https://www.ice.gov/doclib/facilityinspections/brcrFIR_081319.pdf

⁶⁸ *Ibid*

⁶⁹ https://www.ice.gov/doclib/dro/family-residential/pdf/rs_staff_resident_communications.pdf

⁷⁰ <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

⁷¹ *Ibid*

⁷² <http://services.dpw.state.pa.us/dhs/ViolationReport.aspx?reportid=14386&fac=BERKS%20COUNTY%20RESIDENTIAL%20CENTER#.WywNLIUuRu>

OBSERVATION 2: DOCUMENTED CASES SHOW BCRC ROUTINELY VIOLATES THE FLORES AGREEMENT BY HOLDING CHILDREN LONGER THAN 20 DAYS.

“Unconscionable” is what York Immigration Court Judge Walter Durling called the detention of one boy held for more than two years, from 2016-2018, with his mother in BCRC.⁷³

As of Dec. 9, 2019, one 6-year-old girl had been in detention at BCRC with her father for 167 days, and one 17-year-old girl had been detained for 153 days.⁷⁴

These cases are not anomalies at BCRC; in fact, they represent the norm.

The Flores Agreement establishes that children should not be held in confinement for more than 20 days.⁷⁵

In summer 2016, mothers in BCRC went on a hunger strike specifically “to challenge government claims they are released after 20 days,” stating “our children are entitled to freedom according to the case of Flores, and still they are here with us.”⁷⁶

According to the U.S. Office of the Inspector General’s (OIG) inspection of BCRC, conducted for fiscal year 2016, most families in detention as of that

time had been there “for more than 6 months; many of these families had cases on appeal in administrative immigration proceedings.”⁷⁷ That is compared to ICE’s other two Texas-based family-detention centers, where families were detained, on average, for one week.⁷⁸

Rather than resolving this, the OIG noted, it is known that those in detention in Texas who are waiting as legal proceedings unfold are transferred to BCRC for longer-term detention.⁷⁹

ACFRC noted in its 2016 report that “a year in detention, particularly in the life of a child, is an extraordinarily long time that has serious repercussions for legal access, education, medical and mental health, and civil liberties more generally. Such detention should not be prolonged regardless of the status of a legal claim to protection.”⁸⁰

To be compliant with the Flores Agreement, a licensed program must also meet a set of standards and “be non-secure as required under state law.”⁸¹ ACFRC also said children in immigration custody should be placed in the “least restrictive setting.”⁸²

⁷³ <http://www.mcall.com/news/local/mc-nws-berks-immigration-family-detention-center-20180703-story.html>

⁷⁴ Bridget Cambria email, Dec. 9, 2019.

⁷⁵ <https://www.hsgac.senate.gov/imo/media/doc/2018.08.15%20PSI%20UAC%20Report%20Appendix.pdf>.

⁷⁶ <https://www.theguardian.com/us-news/2016/aug/15/immigration-women-hunger-strike-pennsylvania-berks-county>

⁷⁷ <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf>

⁷⁸ *Ibid*

⁷⁹ *Ibid*

⁸⁰ <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

⁸¹ <https://www.hsgac.senate.gov/imo/media/doc/2018.08.15%20PSI%20UAC%20Report%20Appendix.pdf>

⁸² <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

According to the American Immigration Council, BCRC, like ICE's other family-detention facilities in Texas, is "locked and guarded."⁸³

However, according to Joshua G. Reid — an assistant field office director for ICE who has overseen the day-to-day operations related to case management at BCRC and York County Prison, which also houses ICE detainees — BCRC is "an unsecured facility":

"There are no physical impediments to a resident departing the facility. If a resident were to leave [BCRC] without authorization, however, they could be considered a fugitive and subsequently may be arrested by ICE officers depending on the circumstances of their departure and their individual case."⁸⁴

Reid has also said, "There are no 'guards' at the [BCRC]. Unlike a guard, the [BCRC] counselors are not law enforcement officers and have no arrest authority. Counselors are stationed throughout the center to ensure the safety and security of residents and to assist them with any issues or needs."⁸⁵

Bridget Cambria used to be one of BCRC's counselors. She said her job responsibilities were counting and monitoring detainees. "A counselor counsels," she said. "A guard guards. I was guarding."⁸⁶

⁸³ <https://www.americanimmigrationcouncil.org/research/detaining-families-a-study-of-asylum-adjudication-in-family-detention>

⁸⁴ <https://www.clearinghouse.net/chDocs/public/IM-CA-0002-0030.pdf>

⁸⁵ *Ibid*

⁸⁶ Rosenthal, Annie. Pittsburgh Post-Gazette. "Berks center with history of abuses could become model for detention of asylum-seeking families." Published July 10, 2018. <https://www.post-gazette.com/news/politics-nation/2018/07/09/Berks-county-residential-center-asylum-seekers-could-become-model-mass-family-detention/stories/201807070078>. Accessed Dec. 6, 2019.

OBSERVATION 3: DATA SHOW THAT FAMILIES INTEGRATED INTO COMMUNITIES WHILE THEY AWAIT IMMIGRATION PROCEEDINGS FARE BETTER, HAVE BETTER ACCESS TO LEGAL COUNSEL AND ARE LIKELY TO ATTEND HEARINGS.

Detention only exacerbates the problems facing immigrant families when they arrive in the U.S.

ICE would not provide ACFRC with any data in 2016 on lengths of detention for families at BCRC, but protracted detentions of the kind that have been reported for families at BCRC “may result in a larger number of issues for attorney teams to address with clients.”⁸⁷

The few private attorneys and nongovernmental organizations that routinely travel to BCRC to represent the families there or help them obtain representation are, according to ACFRC, “under-resourced and are unable to meet the high demand.”⁸⁸

Legal representation is vital, Cambria noted, because the people in detention at BCRC are in a place they have never been before, their home country has become unsafe and often they have been traumatized, yet they are expected to make effective arguments on their own behalf during high-stakes hearings.⁸⁹

Data from the American Immigration Council show that families who are supported in communities are very likely to appear for their court hearings, with 86 percent attending all their court dates.⁹⁰

OBTAINING A HEARING

To avoid deportation and attempt to get a hearing, a person must express fear of going back to the country from which they came, and they will receive a **credible fear interview** with an asylum officer. If they are found to have credible fear, proceedings begin with an immigration judge.

If an asylum officer does not find that someone has credible fear, that person can request a **credible fear review proceeding** in front of an immigration judge, who reviews their claim anew. If the judge reverses the asylum officer’s decision and finds the person’s fear credible, proceedings begin, also in front of an immigration judge.

Source: American Immigration Council

When it comes to those families applying for asylum, the rate at which all immigration court hearings were attended was even greater: 96 percent.⁹¹

The American Immigration Council also noted that families released from detention were more likely to have legal representation: “76 percent of family members who had been released from detention were represented by counsel, compared to 53 percent of family members who remained detained.”⁹²

⁸⁷ <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

⁸⁸ *Ibid*

⁸⁹ <https://www.theguardian.com/us-news/2016/aug/15/immigration-women-hunger-strike-pennsylvania-berks-county>

⁹⁰ <https://www.americanimmigrationcouncil.org/research/detaining-families-a-study-of-asylum-adjudication-in-family-detention>

⁹¹ *Ibid*

⁹² *Ibid*

RECOMMENDATIONS

1. IMMIGRATING FAMILIES SHOULD NOT BE HELD IN BCRC AND SHOULD INSTEAD BE RELEASED INTO COMMUNITIES WITH OVERSIGHT AND SUPPORT.
2. AS LONG AS BCRC REMAINS OPEN, THE STATE DEPARTMENT OF HUMAN SERVICES MUST CONTINUE TO CONDUCT MONTHLY INSPECTIONS TO OVERSEE THE TREATMENT OF THE CHILDREN BEING DETAINED THERE.



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