



Artesia FOIA Highlights

Access to Counsel for Individuals in Detention and Undergoing Credible Fear Process:

DHS-011-0000006-7: Memo dated March 31, 1997 from the office of the Executive Associate Commissioner, Field Operations, regarding the implementation of the credible fear process, explaining the role of consultants and emphasizing that “every effort should be made to lodge or [sic] made aliens subject to expedited to facilities where access for consultation can be facilitated. Aliens subject to expedited removal should be allowed flexibility regarding access to representations (whether for individual consultation or group presentations), family members, or friends for consultation purposes.”

DHS-027-000010: Email from Asylum Division Chief, John Lafferty, dated Sept. 2, 2014, reminding asylum division staff that the instructions contained in the 1997 memo on the Role of Consultants during credible fear interviews remains in force. This memorandum is described below:

USCIS Asylum Division Memorandum dated November 14, 1997 from Chief Joseph E. Langlois on the Role of Consultants during credible fear interviews.

- “The role of the consultant in the credible fear interview is basically the same as the role of the representative in the affirmative asylum interview.”
- “Only in extremely unusual circumstances should the asylum officer exercise discretion to prevent the consultant from making a statement or comment.”
- “In certain instances, however, it will be appropriate for the consultant to comment during the course of the interview to avoid confusion or misunderstandings. Such comments may be helpful and should not be discouraged.”

DHS-027-000028: Email from Antonio Donis, former supervising officer at Artesia, dated September 17, 2014, providing an example of an asylum officer informing an applicant that they had a right to a free attorney. This sample included sharing information that the free attorney was available in the law library at the Artesia detention center and that an interview could be postponed to allow the applicant to consult with an attorney.

DHS-027-0000066 and DHS-027-0000092: Emails from Mallory Lynn, dated October 27, 2014, and November 7, 2014, reminding asylum officers at Artesia to confirm 2-3 times that the applicant understands that they have the right to have a consultant or attorney present and that they are waiving that right and proceeding with the interview.

DHS-027-0000145-148: Appendix O to the ZART Artesia Daily Operations Standard Operating Procedure, Memorandum on the service of decisions for credible fear interviews [No date included]. Clearly states that an attorney with a G-28 on file may be present for the service of the decision and should be called and informed of the decision. Makes clear that the asylum office is responsible for serving the result of a credible or reasonable fear interview.

DHS-011-0000001-0001026-1027: Email from EOIR Office of Legal Access Programs to Field Office Director at Artesia, dated July 8, 2014, requesting access to resources and facilities to set up LOP at Artesia.

Operational Guidance for DHS Officers:

DHS-011-000072-131: ICE Administrative Removal Proceedings Manual, June 4, 1999: Detention and Deportation Officers' Manual, Appendix 14-1. This manual includes sections on the legal authority for administrative removal, an overview of the process, and detailed enforcement and decision procedures. Further, the manual includes a section on creating and maintaining the record of proceeding, judicial review, and legal issues regarding the nature and sufficiency of evidence.

DHS-011-0000132-135: ICE Memorandum on Expedited Removal Guidance, dated September 14, 2004, explaining the expansion of expedited removal to individuals apprehended within 100 miles of a U.S. international land border and have been present in the U.S. less than 14 days. The memo discusses the parole policy and makes clear that "Juveniles are a special class and must continue to be treated in accordance with the *Flores v. Reno* settlement and other special laws applicable to juveniles."

DHS-011-0000001-0000639-650: Email from Corina Almeida, soliciting a guide for asylum law in the Fifth Circuit, dated December 15, 2014. Attached to this email is a summary for the Tenth Circuit, Asylum and Protection Law Manual Table of Contents and Section 24 on Credible/Reasonable Fear, dated July 16, 2014. This explains that "Pending the credible fear interview, the alien is to be detained, but parole is possible."

DHS-027-0000098-132 ZART (Artesia) Daily Operations Standard Operating Procedures, [No date included], with partial redactions based on b(7)(e) and b(5).

DHS-011-000001-841-872: Artesia ICE Office of Chief Counsel Procedures, October 31, 2014.

- The Deputy Chief Counsel's responsibility includes "Coordinating with the Denver immigration court to address issues of mutual interest, including, but not limited to, identification of cases that have not been docketed in a timely manner, identification of last-minute case additions to the court calendar, etc."
- This document also indicates that OCC Denver has daily access to the immigration court calendar and that the Legal Assistant will forward the next day's court calendar via email to the Artesia Daily Docket group and the AILA point of contact by 4pm.
- Discusses requests for reconsideration of negative credible fear determinations made with the USCIS asylum office and makes clear that the Deputy Chief Counsel should remind ICE Enforcement and Removal Operations that "it has agreed to place a 'Z' hold on such residents until the AFRC APSO provides notice of his/her decision to accept or deny the motion for reconsideration."
- Makes clear that an individual should not be removed where the asylum office is considering a request for reconsideration, or, where a request for reconsideration has been granted. Also makes clear that if the asylum office "makes another negative credible fear determination, she will forward her findings to the Immigration Judge for review. This will require ERO to make the resident available for a hearing."
- This document notes that the "AFRC automatic stay policy for Motions to Reconsider negative credible fear determinations is under review as of September 26, 2014."

DHS-011-0000001-000-904-933: Email chain between ICE Office of the Principal Legal Advisor and the DHS Immigration Law Division of the Office of General Counsel, dated June 26, 2014, discussing INA Section 235(b)(2)(c). Attached is an excerpt from the 2005 Inspector's Field Manual, 17.15 Expedited Removal, addressing expedited removal. Previous redacted versions of this document were made available through an AILA FOIA, but this version has no redactions, and includes previously unavailable information on claims to U.S. citizenship and lawful permanent residence.

DHS-011-0000001-000934- 1020: Expedited Removal Training, developed by the ICE Office of the Principal Legal Advisor, November 2007. Powerpoint training on expedited removal, with many redactions pursuant to (b)(6) and (b)(7)(c).

DHS-011-0000001-001200-1214: Memo from CBP Assistant Commissioner, Office of Field Operations, dated March 19, 2009, on "Implementation of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), including CBP Interim Guidance on Processing Unaccompanied Alien Children, the UAC A-File Preparation Guide, and ICE Field Guidance for the TVPRA.

DHS-011-0000001-001354-1368: Email chain from September 19, 2014, between ICE OPLA and ICE Office of Acquisition Management. Attached to the email is the Family Residential Facility Statement of Work – Draft – for Karnes and Artesia.

DHS-011-0000001-5: Memo from John P. Torres, ICE Director, dated January 22, 2007, regarding Expedited Removal for Salvadoran Nationals and the need to comply with District Judge Margaret M. Morrow's order in the *Orantes* case. Salvadorans must have read to them in a language they understand, sign, and date the Modified *Orantes* Advisal and must be given a copy of the legal services list and the advisal to keep.

DHS-00000011-0000413-415: Internal forwarded ICE email – "Summary of Secretary Johnson's Visit to Artesia," originally dated July 12, 2014. Explains ICE's intention to argue judges should deny all bonds because of flight risk.

DHS-011-0000001-003610: Email originally sent on August 1, 2014, by Philip T. Miller, Assistant Director for Field Operations, titled "UPDATE: Change in Bond Eligibility for Certain RGV ER Aliens Encountered Outside a POE." The memo makes clear that "effective immediately, ER aliens encountered between ports of entry will be detained as 'no bond' if they are (1) Other-than-Mexican (OTM) Adults, (2) USCIS has found credible fear and placed them in INA section 240 proceedings; AND (3) they were encountered in the Rio Grande Valley (RGV) Border Patrol Sector." This amended a prior policy, announced by email on June 6, 2014, also attached, which stated that in light of the *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005) decision, undocumented immigrants subject to the 2004 Expedited Removal designation were "subject to mandatory detention and may only be released pursuant to DHS's parole authority under INA Section 212(d)(5)" prior to a positive credible fear determination. Further, after a positive finding of credible fear, until a final removal order, "these aliens are detained under section 236, may be released on bond, and may seek a bond redetermination before an immigration judge."

DHS-027-0000334: Email from Patrick R Curphrey to Amarilde F Castaldii, dated July 7, 2014. This email includes the language: "Positive Services: Audrey had suggested that I try to set up Artesia the same way we did the pilot program officers where ICE serves the positives. We didn't have any positives to serve yet

and things were so crazy that I didn't have that conversation with anyone at ICE. So that may be something you still want to do." Second, "Stats: Kaevan Lichine is the SDDO in charge of ERO there and he really needs daily stats..."

Information regarding Requests for Reconsideration and Stays of Removal:

DHS-011-0000001-0000723-726: E-mail chain from October 14, 2014, with ICE Office of Chief Counsel in Arizona indicating that after a second credible fear interview (pursuant to a request for reconsideration under 8 C.F.R. Section 1208.30(g)(2)(iv)(A), the asylum office refers the Records of Negative Credible Fear Findings and Request for Review to the appropriate immigration court. *This is a change from the current policy (which shifted around early November 2015) not to refer an individual for immigration judge review after a second credible fear interview.*

DHS-011-0000001-0000730-733: E-mail chain between ICE OPLA, ICE Denver, and ICE Artesia regarding the informal policy of staying removal for detained families in Artesia who had filed requests for reconsideration of a negative credible fear determination, dated September 22, 2014. Jim Stolley, Special Advisor to the Deputy Principal Legal Advisor, of OPLA, advised that unless a proper stay request is filed and granted, attorneys should be advised that their clients can be removed, notwithstanding an outstanding request for reconsideration with the USCIS asylum office.

Information regarding the separation of detained families when a child turns 18 in detention:

DHS-011-0000001-002160-2161: Email titled "Maintaining Family Unity at Residential Facilities – DQT" sent on October 3, 2014, from "SNADQT" on behalf of the "Chief of Staff." This memo makes clear that when a resident child turns 18, "it has been a long-standing practice in ICE's family program to allow families with a child who turns 18 to remain intact at the facility while pending immigration proceedings on a case by case basis, considering the totality of the circumstances."

Information regarding DHS cooperation with Consulates to issue travel documents:

DHS-01100000001-002162-2164: Email chain from July 21, 2014, with to and from lines redacted, titled "Central America Update," making it clear that ERO works with the consulates to push them to issue travel documents (TDs). According to a July 16 email in the chain, Guatemala, for example "will be issuing TDs for 5 family units and will give us a few extra TDs in case we need to bump someone for legal, medical, etc." Email chain also includes statements that one consular official (presumably El Salvador) did not issue travel documents because the individuals "expressed fear" and asks that this information be passed on to Salvadoran Ambassador to the United States, Mari Carmen Aponte.

Guidance for Asylum Officers Conducting Credible Fear Interviews:

DHS-027-0000151: Email from Mallory Lynn, dated July 31, 2014, to asylum officers reminding them to use "plain language" when communicating with applicants and there is a need to use language they understand and not terms like "persecuted by agents of the government" or "consent or acquiescence to your harm."

DHS-027-0000154: Email from Mallory Lynn, dated August 6, 2014, to asylum officers reminding them to use plain language and not to specifically reference legal concepts that applicants may be unable to understand. Advises officers not to ask about “particular social group,” for example.

DHS-027-0000213: Email from Renata Penel, dated September 10, 2014, forwarded by Mallory Lynn, advising asylum officers to ask a question specifically addressing any past or future harm by family members during credible fear interviews.

DHS-027-0000218-228: Email from Mallory Lynn, dated November 4, 2014, sharing Artesia suggested Credible Fear Interview Template – including standard questions asked by asylum officers during credible fear interviews.

DHS-027-000303-304: Memo from John Lafferty, Chief of Asylum Division dated May 2, 2014, APSS Release 1.2.0.0 – Electronic APSS Reports, TECS/IBIS Change, New Close Codes, Remote Processing and Non-Detained Case Processing. Details that new “close codes” are included for no shows at non-detained interviews, for where an asylum officer determines that an individual lacks mental capacity to testify on their own behalf, where an interview cannot be conducted because of a medical hold, speaks a rare language and an interpreter cannot be found within 48 hours, and where the applicant is held in state or federal law enforcement custody.

DHS-027-0000163-164: APSS Guide: USCIS Asylum Office – III.E.2 Family Members Arriving Concurrently with the Applicant. Gives guidance for asylum officers in conducting credible fear interviews and determining when derivatives may be joined with a principal applicant. This is an attachment to the publicly available June 27, 2014, memo from Asylum Division Chief, John Lafferty, on “Guidance on Immediate Family Members in Credible Fear.”

DHS-027-0000309: Email from Asylum Division Chief John Lafferty on June 25, 2014, on the processing of family credible fear cases. He makes it clear that the longstanding policy has been to consider the whole family as a “positive” if one individual establishes a positive credible fear determination. He states, “[t]his process has been in place for many years, though we’ve had only limited occasion to use it until recently.”

DHS-027-0001123-24: Email from Ted Kim to Asylum Office Directors and Deputy Directors asking for volunteers to work at the Artesia detention center, dated June 25, 2014. He states “Please thank your staff for rising to this immense challenge before us. We are being tested to our limits as a program, and it is reassuring to know that so many are willing to step up to the plate and take their best swings.”

DHS-011-0000001-0000795-797: E-mail chain between ICE Office of Chief Counsel in Arizona and Colorado. Denver ICE trial attorney appearing before a Denver Judge in a bond proceeding for the Artesia docket asked why USCIS grants credible fear in “gang-based claims,” dated October 15 and 17, 2014. This prompted ICE to reach out to USCIS at Artesia. The email chain then reports back on a meeting with Supervising Officer Mallory Lynn, who explained that USCIS applies the law most favorable to an individual in credible fear cases, including the law in any jurisdiction, and the law of the circuit in reasonable fear cases. When pressed, Ms. Lynn apparently explained that there is no case law that says a gang cannot be a persecutor and that most of the gang-related cases at the Artesia family residential center involve familial relationships and mixed motives.

DHS-027-0000271: Email from Antonio Donis, Artesia Supervising Officer, send on July 30, 2014, with “Essential Questions” that should be asked in every credible and reasonable fear interview at Artesia. These questions include asking the asylum seeker whether she is comfortable proceeding without an attorney, with her children present, and including “everyone” in the mother’s case. It also includes the questions – “Towards the end, if we are going negative on the principal. . . . Does anyone else have a fear of returning to ____? If so, would you like to speak with me about it separately or with your family in the room?”

DHS-027-0000272-275: Email chain between USCIS at Artesia (Antonio Donis), and headquarters, including Ted Kim and John Lafferty, dated between July 17-20, 2014. This email chain discusses the processing of family cases and discusses at what age a child should be asked if they want to be included on their mother’s claim. Ted Kim states that “this is relatively new ground for us (i.e. interviewing detained families en masse). . .” The email chain began with a query from Molly Groom to John Lafferty stating “I am hearing that children are not being separately screened for asylum claims and that several families have been denied credible fear and even deported when the child had a very valid and serious claim – without ever having interviewed or considered the child’s case separately.”

Guidance for Asylum Officers Regarding Interpretation during Fear Interviews:

DHS-027-0000141-144: Appendix N to the ZART (Artesia) Daily Operations Standard Operating Procedures, USCIS Artesia Guide for Rare Languages [No date included]. This memorandum highlights the importance of effective communication, securing interpretation, lists common indigenous languages, describes contract interpreter services (and its limits), and protocol for determining the applicant’s best language. The memo recognizes that in some situations an individual will state they are comfortable proceeding in Spanish but the officer will note a lack of comprehension and require interpretation or case closure. If no interpretation is available, guidance for closing a case due to rare language is provided.

DHS-027-0000289-294: Memo from Joseph Langlois, Chief of Asylum Division, dated September 12, 2006, Guidance on using interpreter services other than Lionbridge when conducting credible fear, reasonable fear, and safe third country screening interviews. Emphasizes the need to conduct timely interviews and to use another contractor when necessary.

DHS Statistics, Statement, and Representations regarding Family Detention to Congress and International Bodies:

DHS-001-000471-518: DHS Responses to questions from the Committee on the Convention for the Elimination of Racial Discrimination, August 8, 2014. Pieces of interest related to family detention are:

- DHS-001-000494: Noting the policy that “absent extraordinary circumstances or requirements of mandatory detention, ICE policy dictates that individuals should not be detained if they are . . . primary caretakers of children.”
- DHS-001-000507: Highlights again that ICE policy, per an ICE Directive on Facilitating Parental Interests in the Course of Immigration Enforcement Activities, “discourages the use of detention resources on detainees who can demonstrate that they are primary caretakers of children, absent extraordinary circumstances or a requirement for mandatory detention.”

DHS-001-000844-849: Diplomatic Efforts to Address Influx of Central American Migrants in the Rio Grande Valley, [date unclear,] includes one section on “Immigrant Processing of Unaccompanied Minors and Adults processed for removal. Where detention space is available and appropriate, these adults with children are placed in expedited removal.” *This makes clear that the presumption is in favor of detention and initiation of expedited removal, as long as bed space is available.*

DHS-011-0000001-0000341-344: Email exchange between the Deputy Director of Field Operations at ICE Office of Principal Legal Advisor and Special Counsel to the Director of Field Legal Operations, discussing the grant rates for detained families, dated November 14, 2014. This email states that from July 7, 2014- November 13, 2014, relief was granted in 23 cases at Artesia (out of 1710 removal hearings), in 3 cases at Berks (out of 189 removal hearings), and no grants for relief at Karnes.

DHS-011-0000001-0000350-356: EOIR Response to Request for Statistics, dated October 28, 2014 – Grant Rates for Credible Fear Interviews and Vacatur rates, asylum grant rates, and in absentia rates. Indicated that between July 18, 2014 and October 21, 2014, immigration judges at Artesia reversed the asylum office’s credible fear determination in 53% of cases.

DHS-001-000009-18: DHS Responses to Chairman Goodlatte’s June 19, 2014 letter (available here: DHS-001-000148-151: House Judiciary Committee Chairman Goodlatte’s Letter to DHS Secretary Johnson, June 19, 2014) with responses to the requests, which includes statistics including numbers of unaccompanied minors and families apprehended trying to enter the United States from contiguous and non-contiguous countries for fiscal years 2010-2014, including numbers granted humanitarian parole, placed into removal proceedings, and numbers of individuals who failed to appear at ICE check ins or immigration court hearings.

DHS-0001-000272-278: DHS Briefing Paper on Expedited Removal and Credible Fear, including statistics on how many individuals subject to expedited removal were referred for a credible fear interview from 2006-2013 and the top five nationalities referred for a credible fear interview from 2009-the third quarter of Fiscal Year 2014. [No date included].

Agency Materials and Information for Detained Families:

DHS-027-0000168-169: USCIS Advisal: Information about How to Seek Release from Detention: Parole Eligibility and Process for Certain Asylum Applicants [No date included]. This document describes the parole process and gives asylum applicants an understanding of the criteria that will be assessed during an ICE interview to determine whether the applicant will be released from detention.

DHS-011-0000001-001369-1401: Artesia Family Residential Center Resident Handbook and Informational Pamphlet. Date not included.

Agency Discussion of the Flores Settlement:

DHS-011-0000001-0001314-1321: White Paper on Conditions of Detention in Family Units, dated June 13, 2014. This White Paper discusses whether the Department of Homeland security may deviate from general standards reflected in the *Flores* and *Hutto* settlements in establishing an interim family facility. The paper provides an assessment of obligations under *Flores*. *Interesting, in footnote 1, the author*

questions “whether and what portions of the Flores settlement agreement are still applicable to the Department as regards to unaccompanied alien children.” This seems to assume, then, that Flores applies to accompanied children, contrary to the government’s litigating position in the current Ninth Circuit Flores appeal. All but the first page is redacted pursuant to (b)(5).

DHS-011-0000001-0001071-1076: “Bullet Points for Addition to Family Detention Section in Update to Flores Declaration,” No date included. States that: “Allowing detainees to bond out has indirect yet significant adverse national security consequences as it undermines the integrity of our borders. As described above, migrants already are motivated in part by the belief that they will be released from detention.” Further, the memo states: “Detention is thus a crucial part of the U.S. government’s far-reaching campaign to reduce the flow of illegal migration from Central America . . .”

DHS-011-0000001-003600: Email from Mission Support Specialist on Behalf of the Chief of Staff, DHS, ICE/ERO, San Antonio Field Office, dated November 25, 2014. The subject is “Family Separations at Residential Facilities.” The email includes a message sent on behalf of Tae D. Johnson, Assistant Director for Custody Management, with the concurrence of Philip T. Miller, Assistant Director for Field Operations, addressed to all Field Office Directors and Deputy Field Office Directors for the PHI, SNA, and ELP Field Offices. The memo emphasizes the importance and goal of maintaining family unity in detention, but that “there may be instances when after placement in an FRC, families must be separated due to circumstances beyond ICE’s control. These instances include, but are not limited to acute resident medical conditions, allegations or physical abuse/violence, or when certain residents become otherwise ineligible for housing in a residential setting etc.” The last sentence of the document, which is cut off, says “Thus, in accordance with the Flores Settlement Agreement. . .” *This indicates that the Assistant Directors for Custody Management and Field Operations believed that they are bound by the Flores settlement when detaining accompanied minors back in November 2014.*

Documents regarding other family detention centers, in Dilley, TX, and Berks County, PA:

DHS-011-0000001-001454-1459: Emails about “Pre-Occupancy status” at Dilley and must-haves before Dilley opens, dated December 9, 2014, including life, health, and safety concerns that must be addressed prior to resident admissions.

DHS-011-0000001-001664-1666: Email with names redacted, dated July 14, 2014, regarding how the National Guard can help with Enforcement and Removal Operations at Artesia, but with a side conversation by Mike Moore regarding how is speaking with the Berks County Board of Supervisors “to shorten the timeline on Berks.”

Agency Reaction to Critiques from Advocates:

DHS-011-0000001-002086-2095: Email chain dated July 25, 2014, including Adrian Macias (Deputy Assistant Director for Custody Programs), Philip Miller (Assistant Director for ICE-ERO Field Operations, and Marc Moore), discussing the recent “negative statements” by NGO staff who toured the Artesia detention center. Adrian Macias suggest working up an “official response for you to review for the Working Group and hopefully this will help stop further damaging stories and internet postings about the facility.” The email attaches a July 24, 2014 press release from AILA, a Texas Observer article, and a Latin Post

article quoting individuals from the Women’s Refugee Commission, the National Immigration Law Center, and the ACLU’s Immigrants’ Rights Project along with the National Immigrant Justice Center.

DHS-027-0001214-1217: Email from John Lafferty dated June 5, 2014, affirming that it was “good to talk” and “discuss the Human Rights First Report and our plan to change the Credible Fear and Reasonable Fear QA [Quality Assurance] categories,” including a link to the report.

DHS-027-0001218-1219: Email chain between Asylum Division Chief John Lafferty and Mariela Melero, regarding the upcoming changes to the Quality Assurance review of credible and reasonable fear cases. On May 29, 2014, Mr. Lafferty states “Given our experience with the recent update to our Credible Fear Lesson Plan, I thought that it would be good to turn to the public engagement experts to get your thoughts on our proposed course of action before we proceed.”

DHS-027-0000201: Email from Mallory Lynn dated July 30, 2014. The email states “Please note that this CF case is being submitted as a high profile/publicity case because the attorney of record is an outspoken critic of processing in Artesia and her views are being published on national websites.”

Information on Alternatives to Detention/Ankle Monitors and Detained Families:

DHS-011-0000001-002121-2122: Email from Phoenix Field Office to all Arizona ERO personnel sharing a reminder from Tae D. Johnson, Assistant Director for Custody Management, on Alternatives to Detention in the Rio Grande Valley, dated June 23, 2014. This makes clear that *all* families released from custody must be enrolled in the Alternatives to Detention Program and specifically “in line with standard ATD recommendations all eligible aliens should be considered for Full-Service (FS) component enrollment and assigned a GPS unit initially.”

DHS-011-0000001-002131-2132: Email from Phoenix Field Office Deputy Field Office Director sent on November 25, 2014 sharing a memo from Tae D. Johnson, Assistant Director for Custody Management, on the Rio Grande Valley Alternatives to Detention Pilot Program. This makes clear that individuals can be “disqualified” from the ankle monitor program if they are “verifiably pregnant” or have “significant medical issues.” Otherwise, “each HoH [head of household] or other qualifying alien selected will be referred immediately to the contractor onsite for an abbreviated enrollment...”