Corpuz & Archambeault
IMMIGRATION AND NATIONALITY LAW

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COPY

March 23, 2015

Pennsylvania Office of Attorney General
Attention: Attorney General Kathleen Kane, Esquire
16th Floor, Strawberry Square
Harrisburg, PA 17120

RE: Request for closure of the Berks County Residential Center due to unlawful imprisonment of children contrary to the laws of our Commonwealth

Dear Attorney General Kane:

As attorneys and advocates for the mothers, fathers and children imprisoned at the Berks County Residential Center (hereinafter "BCRC") we respectfully request that your office investigate the unlawful imprisonment of the children at this facility. We further respectfully request that your office immediately order the closure of BCRC and contemplate civil and criminal penalties against those responsible for this willful contravention of the laws of our Commonwealth resulting in the unlawful imprisonment of hundreds of children over the last several years.

The BCRC is licensed as Child Residential and Day Treatment Facility under Chapter 3800 of PA Code 55. The BCRC operates as a secure care facility which is defined in section 3800.5 as:

Secure care—Care provided in a 24-hour living setting to one or more children who are delinquent or alleged delinquent, from which voluntary egress is prohibited through one of the following mechanisms:

1. Egress from the building, or a portion of the building, is prohibited through internal locks within the building or exterior locks.

The problem with the BCRC operating as a secure care facility is that none of the children detained within are delinquent or alleged delinquent. They are all refugees seeking asylum here in the United States. Prior to the acceptance of a juvenile to secure care the facility shall require the following documents from the committing court pursuant to section 3800.272:

(1) A description of the offenses and circumstances that make secure care necessary.
(2) The child's needs to be addressed during placement.
(3) The court order committing the child to a secure care facility.

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As advocates for many of the children currently and formerly imprisoned we can confidently state we have never seen a court order committing any of these children to the BCRC. These children are typically shipped there by Immigration and Customs Enforcement from the US southern border. None of them have committed acts, as defined in PA Code 200.3, which would lead them to being adjudicated delinquent in the Commonwealth of Pennsylvania. They are typically simply charged with the civil offense of unlawful entry into the United States. The children that have been imprisoned at the BCRC have been as young as 11 days old with many of them being under the age of 10. We also see no provision under Pennsylvania law that allows for the imprisonment of children under the age of 10.

Before last summer the BCRC was typically used to house families, usually a mother and a child or two, while ICE worked to reunited these vulnerable individuals with family here in the United States. The summer of 2014 saw a change in policy in which ICE has refused release of these refugees and has begun to hold them in long term detention. There is a mother and child currently at the BCRC since April of 2014. Eight to ten months of detention of these children is not unheard of any longer.

While some may sympathize with the intent of ICE's detention of these children seeking refuge here our country, their detention here in the Commonwealth of Pennsylvania is clearly contrary to our laws. Further, ICE's goal of ensuring that these children and their parents attend their immigration court proceedings and potential compliance with an order of removal can be accomplished with much less restrictive means such as electronic monitoring making this unlawful detention unnecessary.

Additionally, long term detention of refugees and their children have deleterious affects on these parents and children. Recently a BCRC guard, Daniel Sharkey, committed an institutional sexual assault against a young mother under his supervision. This guard, despite extensive video monitoring at the facility and constant supervision by other facility guards managed to have sexual intercourse on several occasions in a public bathroom with this young mother during late afternoon and early evenings hours. This lewd behavior was allowed to take place in an area open and available to children, in fact this lewd and illegal behavior by the guard was witnessed by a seven year old survivor of sexual violence from her home country in Central America. Sharkey is currently facing charges of Institutional Sexual Assault in Berks County.

Even more recently BCRC accepted into their facility a newborn baby who was only 14 days old at the time she was admitted. Many of the children have lost significant weight since they have been detained with some even vomiting blood due to the poor conditions within.

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These children are imprisoned with a parent; however, they are still imprisoned and there is no provision in the laws of this Commonwealth for the imprisonment of children who have not been ordered either dependent, delinquent or pending adjudication for delinquency. The BCRC has received a license from the PA Department of Human Services despite their clear violation of the laws of the Commonwealth.

We are calling upon your office to conduct an investigation into the circumstances behind the issuance and re-issuance of their license. In the mean time, it is clear that the operation of BCRC is unlawful and their license should be immediately revoked and BCRC should be immediately ordered to close. Further, an investigation into whether or not charges of false imprisonment under Title 18 Chapter 29 Section 2903 should be brought against the relevant individuals should be conducted immediately.

I am signing this request on the behalf of the below interested attorneys and advocates.

Sincerely,

Matthew J. Archambeault
Attorney at Law

On behalf of:

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PA Department of Human Services
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Berks County Commissioners' Office
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Berks County District Attorney's Office
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