

The Detention of Immigrant Families

In 2014, years after closing the infamous [T. Don Hutto family detention facility](#) prompted by an outcry over its conditions, the Obama Administration dramatically increased the detention of immigrant families apprehended at the border. This policy decision followed a significant increase in early 2014 of children and families escaping [violence](#) in El Salvador, Guatemala, and Honduras and arriving at the U.S./Mexico border. As documented by the United Nations High Commissioner for Refugees (UNHCR), this migration formed part of a [712% increase](#) in asylum applications by Central Americans to countries in the region other than the U.S. Originally justifying its policies by claiming a need to deter others from fleeing to the U.S., the Department of Homeland Security (DHS) continues to either not release or set high bonds for the majority of families, even though [88% of mothers and children](#) have been found by U.S. officials to be bona fide asylum seekers. Seeking asylum is not an illegal act, and these families should be met with protection, not punishment.

Key Developments

- **Plaintiffs and DHS are negotiating a response to a lawsuit seeking to compel the government to enforce standards established by the [1997 Flores settlement](#) applicable to government custody of immigrant children.** In the lawsuit, DHS maintained that it does not have to comply with the *Flores* standards, which include a requirement that children are detained in licensed, appropriate conditions, and only in exceptional circumstances. Media reports indicated that the judge tentatively rejected the government's arguments.
- **ICE announced "Enhanced Oversight," but not closure, for family detention centers.** In May 2015, ICE issued a [press release](#) announcing it will create an Advisory Committee, review concerns over conditions, and review cases of prolonged detention. The announcement did not include plans to reduce or end family detention.
- **Members of Congress call for an end family detention.** Following DHS's announcement, several Members of Congress publicly called to end family detention. [Eleven Representatives](#) held a press conference together with a formerly detained mother strongly denouncing the practice. Since then, [136 Representatives](#) and subsequently [33 Senators](#) issued letters to the Administration calling for an end to family detention practices.
- **The [New York Times editorial board](#) calls for an end to immigration detention, including family detention.**
- **ICE announces it will no longer detain families for purposes of deterrence.** Following a federal court's February 2015 [preliminary injunction](#) blocking the government from detaining asylum seeking families in an effort to deter others ICE has stated it will not factor "deterrence" in its custody decisions, but the Administration has submitted a "motion to reconsider."
- **May 2015 USCIS statistics show [88%](#) of recently detained families were found to have a credible fear of persecution if deported.** Statistics for "fear" found rates in credible and reasonable fear interviews continue to illustrate that detained families may be eligible for protection.

Family Detention Facilities and Policies

In May 2014, DHS had fewer than 100 family detention beds, all in its Berks County, PA family detention facility. Until summer 2014, those families seeking asylum who had ties to the community were generally released after an initial screening to determine a "credible fear" of return. In addition to the now closed Artesia, NM detention facility (operational from June - December 2014 with approximately 650 beds), family detention facilities include:

- Karnes City, Texas (532 spaces, with expansion up to 1,100 planned in 2015)
- Dilley, Texas (2,400 spaces)
- Berks County, Pennsylvania (~96 spaces, to be doubled in 2015)

In total, from 2014 to 2015, the United States will have seen a nearly 40-fold increase in family detention spaces, to roughly 3,700 spaces. **From June 2014 through April 2015, over 4,800 individuals have been booked into family detention, and it costs [\\$343](#) per day to detain a single child or mother.**

Who is in Family Detention?

Based on data from *pro bono* attorneys and legal service providers as well as government data, we know that the vast majority of these families are women and children seeking asylum. Specifically:

- From Jan. - March 2015, [87.9%](#) of detained family members expressing a fear of return passed an initial "credible fear" screening, indicating they may be eligible for asylum and protection.
- Many women and children in family detention are survivors of trauma, having fled domestic or other [gender-based and sexual violence](#), threats or attacks by local gangs and cartels, and other severe dangers.
- In Fiscal Year 2014, over half the children who entered family detention were [six years old or younger](#).
- Many families have ties to the community, pose no danger to society, and have a strong incentive to appear in court given that they have claims for relief.

Conditions and Access to Counsel

[Reports](#) continue to show that **there is no humane way to detain families**, regardless of conditions of any given facility.

- The detrimental impact of detention on [children's development and wellbeing](#) is well-documented and long-recognized. Some families have now been detained for over 9 months. Facilities have inadequate access to mental and medical health care.
- Inability to access meaningful child care results in women having to testify to painful, traumatic experiences to an immigration judge in front of their children or babies in order to win bond or an asylum case.
- [Allegations of sexual assault](#) have been made at two of the three existing facilities. A mother in the Dilley facility tried to commit suicide after learning she would remain detained.
- Each facility is over an hour away from the nearest metropolitan area. Due to the enormous additional caseload family detention has created in Texas, legal services organizations and lawyers in the San Antonio area are overwhelmed and completely unable to meet the legal needs of those in detention.

Alternatives to Detention

The expansion of family detention is especially inappropriate given that community-based and other monitoring measures exist where appropriate and needed. Alternatives, especially community-based support programs, not only facilitate release to ease the psycho-social impact of detention on a family, but also can assist with connecting families to much needed legal counsel or other social services. **However, it is important that these measures are used in place of current detention capacity, NOT in addition to current detention capacity.** Existing alternatives may cost anywhere from [70 cents to \\$17 per day](#) and for years have demonstrated high rates of appearance and compliance.

Recommendations on Family Detention

End Family Detention and Keep Families Together

The Administration should reverse course and end the practice of detaining mothers with children. Evidence has overwhelmingly shown that there is no humane way to detain families. DHS should also not separate families at the border but release parents with their children to sponsors or community-based case management programs.

Invest in Alternatives to Detention (ATDs) in Place of Detention

Congress and the Administration should turn to cost-effective community support programs and other measures to support compliance with removal proceedings. These programs should be used **instead of – rather than in addition to –** existing family detention.

Fund and Facilitate Access to Counsel and Due Process

Congress should continue to fund legal orientation programs and fund [life-saving government-appointed counsel](#) for indigent detained families. Many families are eligible for asylum or other protections based on having survived crime, trafficking, or domestic violence, but these legal protections are inaccessible without legal representation.

How Can Members of Congress Help?

1. *Call on DHS and the Administration to end family detention.*
2. *Make floor speeches and issue statements opposing family detention.*
3. *Visit family detention facilities. Karnes and Dilley are within driving distance of San Antonio, TX. Berks Co., PA is approx. 3 hours from Washington.*
4. *Oppose funding for family detention in FY 2016 DHS appropriations bills.*
5. *Support and co-sponsor legislation or sign-on letters that seek to end family detention.*

For more information, please see:

Letters from 136 Representatives (May 2015) and 33 Senators (June 2015) opposing family detention:

<http://1.usa.gov/1GDDOCg> and <http://bit.ly/1SU1SG6>

“House Democrats Call for End to Family Detention” May 21, 2015: <http://1.usa.gov/1K9Db2r>

May 2015 Letter from 188 Organizations Calling for End to Family Detention: <http://bit.ly/1LtDqGs>

AILA Resources on Family Detention, including stories of AILA pro bono clients: <http://bit.ly/1BgRLzT>

New York Times, May 2015 “End Immigration Detention”: <http://nyti.ms/1BOARFy>

ACLU Resources on *RILR v. Johnson*: <https://www.aclu.org/immigrants-rights/rilr-v-johnson>

LIRS, WRC, KIND Backgrounder on Applicability of *Flores* to DHS Custody: <http://bit.ly/1zbTZ1i>

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