



Immigrant Family Detention in the United States

Every year, the U.S. Department of Homeland Security (DHS) imprisons hundreds of thousands of non-citizens in administrative immigration detention. In the summer of 2014, however, in response to the increased number of Central Americans arriving at the U.S.-Mexico border, the U.S. government dramatically expanded its detention of immigrant families, including those with young children. Prior to the summer of 2014, the United States had largely abandoned detention of immigrant families, maintaining only one residential shelter for immigrant families in Pennsylvania with capacity for 96 people. But in June 2014, the government abruptly reversed course, announcing plans to expand family detention. Since that time, the government opened three new family detention facilities: first, a 646-bed, make-shift family detention facility in Artesia, New Mexico (which ceased operation in December 2014); then in August 2014, a family detention facility in Karnes County, Texas, with almost 600 beds, run by the GEO private prison company, and most recently, in December 2014, a facility in Dilley, Texas, which currently holds several hundred mothers and children, but will ultimately have the capacity to hold 2400 people – making it the single largest immigration detention facility in the nation. Dilley is run and operated by the largest private prison company in the United States—Corrections Corporation of America.

The majority of the families detained in these facilities are Central American women and children who have fled extreme violence in their countries and are seeking political asylum. According to DHS, approximately 70 percent of the women and children in family detention demonstrate a credible fear of returning to their country of origin, which means they have a significant possibility of establishing eligibility for asylum. However, even though many of these women and children are eligible for release on bond or their own recognizance, and even though most have family members or friends residing in the U.S. who have offered them a place to live and support while their asylum cases are pending, the U.S. government imposed a blanket no-release policy for the express purpose of sending a deterrent message to other Central Americans who might be considering migrating to the U.S. In December 2014, the ACLU challenged this policy in federal court, seeking a preliminary injunction to stop the government from detaining these families for deterrence purposes. The District Court agreed with the ACLU's arguments and blocked the government from locking up families for deterrence purposes, requiring instead that their detention be based on an individualized determination of danger or flight risk. Rather than using the court's ruling as an opportunity to change its unlawful policy, however, the government is continuing to fight the ruling, recently filing a motion with the court to reconsider its decision. Moreover, although the government is technically complying with the injunction by setting bonds for some detained families, the bonds set are very high, usually at either \$7,500 or \$10,000, and sometimes as high as \$15,000. Because most families do not have the money to pay such bonds, they remain detained until they can seek a bond hearing from an immigration judge, which prolongs their detention by several weeks at a minimum. Meanwhile, in a separate lawsuit to enforce the *Flores* Settlement Agreement (which provides standards and limitations on the detention of children), the U.S. government has continued to rely on deterrence arguments to justify the incarceration of children and their mothers at detention facilities.

International human rights law strongly disfavors the use of immigration detention, and rejects it completely for children. Detention harms children's health. Their physical and psychological development suffers during detention, and the harms can be long-lasting. Being held in a prison-like setting, even for a short period of time, can cause psychological trauma for children and increase their risk factor for future mental disorders. According to Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, detention can also exacerbate the trauma experienced by both children and adults who have fled violence in their home countries – precisely the population detained in these new facilities. In addition, there have been allegations of abusive conditions at the different family detention facilities, including sexual abuse, threats by guards to separate mothers from their children, retaliation against mothers for engaging in actions to protest their detention, and inadequate mental health and medical care. Finally, U.S. policies and practices in constructing remote detention facilities like Artesia, Dilley, and Karnes directly result in unfair hearings. There are few private or free legal service providers available in those rural areas to provide representation in often complex legal proceedings, and it is difficult to prepare cases

for asylum or other forms of relief from inside a detention facility where access to counsel, phone services, supporting witnesses, and evidence is severely limited. The vast majority of detained mothers and children do not have immigration counsel, and the government is not providing counsel for these families. At the same time the government is moving with great speed to deport Central American families as quickly as possible.

Recently, dozens of international and domestic organizations [wrote](#) to President Obama, calling upon his administration to cease its use of family detention. In his November 20, 2014 memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” DHS Secretary Jeh Johnson explains that “field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest.” Nearly all the detained mothers are primary caregivers of their children. Many of the mothers and children in family detention have physical or mental illnesses, many are survivors of horrific abuse and trauma, many are nursing, and some children have evidence of disabilities. Yet the government has generally not considered these circumstances in deciding to detain them. In 2011, the United States supported the UPR recommendations that it “reconsider alternatives to detention” (rec. 212), “investigate carefully each case of immigrants’ incarceration” (rec. 183), and “adapt the detention conditions of immigrants in line with international human rights law” (rec. 184). In its 2015 UPR report response, the United States claims that immigrants are detained “only after an individualized determination that detention is appropriate or required by law.” But in expanding family detention, the U.S. government’s conduct directly contravenes the UPR recommendations and its obligations under international human rights law.

Recommended Questions

1. Why has the U.S. government expanded its use of family detention, rather than investing in community-based alternatives to detention with case management services?
2. What is the U.S. government doing to ensure adults and children in detention are provided legal representation?
3. Will the U.S. government commit to ending its unlawful policy of detaining bond-eligible families for deterrence purposes, rather than continuing to defend its policy in federal court as it is currently doing?
4. Will DHS halt the imposition of prohibitively high bonds (\$7,500 and up), and ensure that each family is considered for release on reasonable bond?

Suggested Recommendations

1. Halt the detention of families and children. Abandon the no-bond policy and ensure that every parent and child receives an individualized assessment of the need to detain. Ensure that the detention of families and children is only used as a last resort, for the shortest period of time possible. Use and expand the use of community-based alternatives to detention with case management services in place of institutional detention.
2. Investigate all complaints regarding conditions of confinement or abuse, ensure that officers who abuse immigration detainees are held accountable, and revise oversight protocol, training, and other policies to prevent inappropriate conditions of confinement or officer behavior in the future.
3. Adopt policies to ensure that all detained families are provided immigration counsel and an adequate opportunity to prepare their asylum and deportation defense cases.

For more information, contact the Human Rights Program of the ACLU: humanrights@aclu.org

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