

## World Refugee Day 2016: Family Detention at Two Years

Two years ago on June 20, 2014—on World Refugee Day, ironically—the Department of Homeland Security (DHS) **announced** plans to significantly increase its capacity to detain parents and children arriving at the southern border, the vast majority of whom were seeking asylum, in order to “deter others from taking the dangerous journey and illegally crossing into the United States.”

At the time, DHS had fewer than 100 family detention beds, all at the Berks County detention center in Pennsylvania. They quickly increased that number with a makeshift facility in Artesia, New Mexico, which was later closed, and then by converting a 532-bed facility in Karnes County, Texas, and opening a new facility in Dilley, Texas that holds up to 2,400 children and their mothers. Since DHS Secretary Jeh Johnson’s 2014 announcement:

- ✓ A federal judge in Washington, D.C. granted a preliminary injunction prohibiting DHS from detaining families “for the purpose of deterring future immigration to the United States and from considering deterrence of such immigration as a factor in custody determinations.” In May 2015, following the court’s ruling and other advocacy, **ICE announced** that it would no longer invoke general deterrence in custody determinations involving families.
- ✓ A federal judge in California ruled that the government’s family detention policy **violated the Flores Settlement Agreement**, which sets standards for the detention, release, and treatment of children in immigration custody. The government appealed this decision to the Ninth Circuit, and **a second case was filed** in

California district court to compel government compliance with *Flores*.

- ✓ Pennsylvania’s Department of Human Services **revoked the license** of Berks County to operate the family detention center as a childcare facility.
- ✓ DHS and the state of Texas’s efforts to secure a childcare license for the Dilley detention center have been temporarily derailed by the ruling of a Texas judge.
- ✓ 178 members of Congress and 35 senators joined religious leaders, health professionals, women’s groups, legal groups, and others in urging the Obama Administration to end its misguided policy of family detention and put in place policies that better align with the United States’ long history of leadership in protecting the persecuted.

Despite **reforms that Secretary Johnson announced** in June 2015 shortening the lengths of stay in family detention, the government has continued with its original plan of sending families to the same facilities created in an **attempt to deter future migration**.

Rather than adopting a refugee protection approach to the increasing number of families arriving at the southern border, the administration and DHS have **explicitly** engaged in a deterrence-based approach, sending more families into detention despite evidence that it is unnecessary and harmful to children’s health and wellbeing.

Two years from Secretary Johnson’s announcement to expand family detention, many of the problems evident at the start of the government’s expanded family detention policy persist.

## Detaining Families is Harmful to Children's Health and Development

While ICE has presented family detention as a "humane alternative" to preserve family unity during immigration proceedings, a growing body of research shows that even brief periods of detention is harmful to children, and in some cases traumatic.

In a July 2015 letter, the American Academy of Pediatrics told DHS Secretary Johnson: "The act of detention or incarceration itself is associated with poorer health outcomes, higher rates of psychological distress, and suicidality making the situation for already vulnerable women and children even worse."

In December 2015, mothers at the Berks facility expressed concern over their prolonged detention and the negative impact on their children's health and wellbeing in written complaints to ICE. One mother described her son's skin condition that had spread over his body, leading to continuous scratching and bleeding. Also at Berks, an eight-year-old girl witnessed a Berks caseworker sexually assault a 19-year-old mother. The perpetrator was convicted and sentenced in a Pennsylvania court earlier this year.

At Dilley, medical providers injected adult doses of the Hepatitis A vaccine to 250 children last summer. And at Karnes, a mother alleged that her 12-year-old girl was sexually assaulted by an unrelated adult who was assigned by the facility to sleep in the same room as her.

## Many Families Are Subjected to Prolonged Detention

Last year, under pressure from advocacy groups, members of Congress, and the *Flores* litigation, ICE maintained that it would strive for an "average length of stay" in family detention of no more than 20 days.

Yet at Berks, the majority of families have now been detained for more than four months. One family has

been held there for nine months. Many of the children are suffering from health problems associated with detention. Mothers say their children are "desperate and no longer want to eat."

Although the families in long-term detention at Berks initially received negative fear determinations—for which their lawyers are seeking federal court review—Human Rights First reviewed some of these initial determinations. We found that the vast majority should be allowed to apply for U.S. protection under applicable legal standards.

## Access to Counsel and Other Due Process Problems Persist

During the past two years, pro bono legal providers have had to overcome significant barriers to access the families held in detention, such as the remote location of the detention centers, in order to provide them with basic legal assistance. DHS has also continued the practice of transferring families from the Texas facilities to the Berks detention center without sufficient notice to the families' counsel of record. Human Rights First and the CARA Pro Bono Project documented these and other serious due process concerns in a letter to DHS.

Recently, pro bono legal providers in Texas have experienced new challenges with the increasing number of infants and toddlers held at those facilities. Due to requirements that mothers stay with their young children at all times and severely limited childcare options, meetings with legal counsel are often interrupted by crying and breastfeeding babies, or inhibited by the fact that mothers who have experienced severe violence and persecution fear the potential trauma they could cause their children by revealing these stories in front of them.

Moreover, many of the families recently placed in family detention centers as a result of DHS enforcement raids had no legal counsel at all before receiving a removal order. Pro bono legal providers

have now found that many have bona fide claims for protection.

The importance of legal counsel cannot be overstated. Recent data show a fourteen-fold difference in outcomes of mothers and children who were represented by lawyers in their asylum cases. Moreover, representation is associated with very high rates of appearance for court hearings. Of the families whose cases began in fiscal year 2014 and who secured legal counsel, 98 percent were still in compliance with their immigration proceeding obligations as of April 2016.

### Family Detention Violates International Law

Shortly after announcing the expansion of family detention in 2014, Secretary Johnson testified before the Senate Committee on Appropriations asking for increased support on “an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers”—an approach that continues two years on.

A detention policy based on deterrence—by definition—precludes the fair review of the individual circumstances of the case, as called for under the International Covenant for Civil and Political Rights as well as the Refugee Convention and its Protocol. UNHCR’s guidelines on the detention of asylum seekers also make clear that “detention that is imposed in order to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms.”

Moreover, the detention of children for immigration purposes is a clear violation of the U.N. Convention on the Rights of the Child (CRC). As a signatory to the CRC, the United States is bound to not take actions that would defeat the Convention’s “object and purpose.” The Committee on the Rights of the Child stated in 2012 that “regardless of the situation, detention of children on the sole basis of their

migration status or that of their parents is a violation of children’s rights, is never in their best interests and is not justifiable.”

### The Obama Administration Should Implement a Refugee Protection Approach and End Harmful, Unnecessary Family Detention

The vast majority of families placed in the family detention centers are from the Northern Triangle countries of El Salvador, Honduras, and Guatemala—a region plagued by increasing instability and violence that has affected a wide range of people, including women targeted for murder, rape, and domestic violence, LGBT persons, journalists, police officers, and others terrorized by transnational criminal organizations that sometimes have close ties to government.

The UNHCR recently issued eligibility guidelines outlining the protection needs for asylum seekers from El Salvador stating: “the small and densely-populated country... presently has the highest rate of homicides of any country in the world.” Nearly 10 percent of the Northern Triangle countries’ thirty million residents have fled and sought protection elsewhere, not just in the United States. Costa Rica, for example, saw a 176 percent increase in protection claims in 2015 as compared to 2014.

The Obama Administration should take the opportunity on this World Refugee day, the two-year anniversary of this misguided policy, to stand true to the United States’ obligation to protect refugees. Specifically, Human Rights First recommends:

- The Obama Administration should end family detention once and for all;
- DHS should refer all families directly into removal proceedings before an immigration judge, and/or refer them directly for full asylum eligibility interviews before the USCIS asylum office, rather than invoking expedited removal;

- DHS should immediately end enforcement raids in communities against children and families, many of whom have been unrepresented and have not had a fair opportunity to pursue their claims for protection;
- DHS and the Executive Office for Immigration Review (EOIR) should implement community-based alternatives to detention programs and legal orientation presentations at the border, and increase access to counsel; and
- The Obama Administration should work with regional partners to improve refugee protection in the region and to develop and implement a comprehensive plan to address the Central American refugee crisis by improving conditions in Central America so that children, families, and other individuals can safely remain in their countries of origin.●