

Baby Jails Are Not Child Care

Introduction

The U.S. government is responding to the Central American refugee crisis with family detention and other harmful strategies. This misguided focus on enforcement and deterrence risks children's safety and wellbeing while ignoring the violence and instability that has forced families to flee their home countries. The families being held in detention facilities are primarily mothers with young children and predominately come from the "Northern Triangle" region of Central America: El Salvador, Guatemala, and Honduras. The Northern Triangle is considered one of the most dangerous places in the world, with extremely high rates of murder and gender-based violence.¹ Many of the families that arrive in the U.S. are eligible for asylum.

The first large immigrant detention center designed for holding family units, the T. Don Hutto Family Detention Center, opened in Texas in 2006. The center was closed in 2009 after multiple lawsuits and public outcry regarding its grossly inappropriate conditions for children.² However, the federal government expanded the practice of detaining families following the influx of unaccompanied children and family units from Central America in 2014. In addition to a small facility in Berks County, Pennsylvania that had been used to hold family units for short periods of time prior to their removal from the United States, the Department of Homeland Security opened three additional facilities: a temporary facility in Artesia, New Mexico and two permanent facilities operated by private prison companies in Karnes City, Texas and Dilley, Texas.³ The 2,400-bed Dilley center is the largest family detention facility in U.S. history.⁴

Family Detention is Detrimental to Children

The long-term harm of family detention on children has been well documented. Over half of children who are being held in U.S. family detention centers are under six-years-old and the vast majority have experienced some sort of trauma prior to entering the facilities, either in their home country or on their journey to the U.S.⁵ One study found that mothers and children had suffered 15 to 20 traumatic events in their home countries alone.⁶ Children are 10 times more likely than adults to experience symptoms of Post-Traumatic Stress Disorder (PTSD). Moreover, symptoms increase the longer a child is in detention.⁷ In addition, Dr. Luis Zayas, an expert on children with immigrant parents and child mental health, has evaluated almost 30 children and 18 mothers who were being held at either Karnes or Dilley. His research has found regressions in child development, suicide attempts, and high levels of anxiety and depression.⁸ Testimony from medical experts and detainees also cite poor conditions, including limited privacy and lack of access to adequate health services.⁹ In addition to impeding children's healthy development, family detention damages the relationship between parents and children by undermining parental authority. It also compromises the ability of mothers and children to access legal representation and counsel for their asylum hearings.¹⁰

Several lawsuits have sought to prevent migrant children from being held in detention facilities, including the 1997 *Flores v. Meese* agreement, which established minimum standards for the detention of children.¹¹ Under the *Flores* agreement, facilities that hold children for more than 72 hours must be licensed, as other child residential facilities, by the state in which they operate.¹²

In January 2016, the Pennsylvania Department of Human Services revoked the license of the Berks County Residential Center in Pennsylvania.¹³ The Department maintained that the license under which Berks was operating was intended to provide housing and treatment for delinquent children, not to detain immigrant children and families. The Berks Center appealed and continued to operate for a year under a suspended license. In April 2017, an administrative court ruling allowed the facility to continue operating without a valid state license.¹⁴

Texas Efforts to License Detention Centers as Child Care Facilities

The Texas Department of Family Protective Services (DFPS) is responsible for regulating child care facilities and child-placing agencies. Child care licensing is intended to ensure that licensed child care centers comply with minimum standards, which include maintaining children's health and wellbeing, establishing basic care requirements for children, and training staff.¹⁵ In late 2015, DFPS quietly introduced a regulation informally known as the 'FRC rule,' creating a category of child care licensing for detention centers that allowed exemptions for health and safety standards. In June 2016, a state district court judge issued a temporary injunction, halting licensure to Dilley. The judge ruled that the new licensing standards could subject children to abuse.¹⁶ In December 2016, a federal judge upheld that injunction and ruled that children held for longer than 20 days must be housed in "non-secure" facilities with child care licenses.¹⁷

Despite these rulings, two troubling bills (SB 1018 and HB 2225) were introduced during the 2017 Texas legislative session with support from two private prison companies running the Karnes and Dilley detention centers.¹⁸ These bills would have given DFPS the ability to waive any minimum

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standards in order to license the Karnes and Dilley centers. In other words, it would have exempted them from regulations that other licensed facilities are required to follow, such as barring unrelated adults from sleeping in the same room as children.¹⁹ In addition to weakened safety standards, children would have been subject to much longer stays in these restrictive environments, undermining their mental and physical health. In fact, while lobbyists for the private prison corporations argued that this license would reduce the time of stay, the **SEC filing made by one of the prison companies** stated: "Presently, the center operates as a short-term processing facility... this licensing process will allow for longer lengths of stay." The bills were defeated by advocates, but the crisis in the Northern Triangle remains. As more children and families cross the U.S. southern border in search of asylum, the practice of family detention is likely to continue, along with administrative and legislative efforts to license these facilities.

Family Detention is Not Child Care

The practice of family detention has proven ineffective, extremely costly, and harmful to children. Moreover, it contradicts the mission of family protective services to safeguard children's wellbeing. Last year, Texas made matters even worse by trying to license family detention centers as child care facilities. This further undermines the best interests of vulnerable children by weakening standards of care and increasing the amount of time children spend in these jail-like facilities.

Texas' approach to licensing detention facilities as child care centers is misguided and does not serve the interests of children in detention centers or any care settings. Licensing detention centers operated by private prison companies weakens child care standards, by creating a dangerous precedent for reducing standards for specific categories of care.

No child in the U.S.—regardless of circumstance—should ever be jailed for seeking safety. Instead, the federal government should ensure the safety and wellbeing of asylum-seeking children and families. That means utilizing community-based models that keep children with their families, keep them in the community, and

provide them supports while they await the outcome of their immigration case.

Endnotes

- ¹ United Nations High Commissioner for Refugees, *Women on the Run: First Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*, United Nations, 2015, <http://www.unhcr.org/en-us/publications/operations/563of24c6/women-run.html>.
- ² American Civil Liberties Union, *ACLU Challenges Illegal Detention of Immigrant Children Held in Prison-Like Conditions*, 2007, <https://www.aclu.org/news/aclu-challenges-illegal-detention-immigrant-children-held-prison-conditions?redirect=cpredirect/28865>.
- ³ Core Civic (formerly known as the Corrections Corporation of America or CCA) and the GEO Group are the United States' two major private prison companies. The 2,400 bed Dilley Detention Center is operated by Core Civic, and the 532-bed Karnes Detention Center is run by the GEO group. Both organizations have histories of abuse and misconduct inside their facilities. Cristina Parker, Judy Greene, Bob Libal, Alexis Mazon, *For-Profit Family Detention: Meet the Private Prison Corporations Making Millions by Locking Up Refugee Families*, Grassroots Leadership, 2014, <https://grassrootsleadership.org/reports/profit-family-detention-meet-private-prison-corporations-making-millions-locking-refugee>.
- ⁴ American Immigration Council, *A Guide to Children Arriving at the Border*, 2015, <https://www.americanimmigrationcouncil.org/research/guide-children-arriving-border-laws-policies-and-responses>.
- ⁵ Wendy Cervantes, *Family Detention: The Harmful Impact on Children*, First Focus, 2015, <https://firstfocus.org/wp-content/uploads/2015/07/Family-Detention.pdf>.
- ⁶ Kathleen O'Connor, Claire Thomas-Duckwitz, Guillermina Gina Nuñez-Mchiri, *No Safe Haven Here: Mental Health Assessment of Women and Children Held in U.S. Immigration Detention*, Unitarian Universalist Service Committee, 2015, http://www.uusc.org/press_release/new-report-complex-trauma-disorder-in-detained-refugee-mothers-children/.
- ⁷ Australian Human Rights Commission, *The Forgotten Children: National Inquiry on Immigrant Children in Detention*, 2014, <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>.
- ⁸ Claire Hutkins Seda, "Dr. Luis Zayas Provides Testimony on Family Detention," *Migrant Clinicians Network*, July 29, 2015, <http://www.migrantclinician.org/blog/2015/jul/dr.-luis-zayas-provides-testimony-family-detention.html>.
- ⁹ Meredith Hoffman, "Prison Company Struggles to get License to Hold Children," Associated Press, April 20, 2017, <https://apnews.com/adbd71efcfaf4b9a96c379face79fbeg/private-prison-company-struggles-get-license-family>.
- ¹⁰ Cervantes, *Family Detention*.
- ¹¹ The Flores v. Reno Settlement set national standards for treatment of minors in Federal custody. It required that minors be treated "with dignity, respect, and social concern for their particular vulnerability as minors." Flores v. Reno, Case No. 85-4544 RJK (Px), Central District Court of California, 1997, <https://www.aclu.org/legal-document/flores-v-meese-stipulated-settlement-agreement-plus-extension-settlement>.
- ¹² Flores v. Reno Case No. 85-4544
- ¹³ Michael Matza, "PA Fights to Shut Down Immigrant Family Detention Center in Berks," *The Inquirer*, May 9, 2017, <http://www.philly.com/philly/news/pennsylvania/Pa-renews-effort-to-revoke-the-license-of-immigrant-family-detention-center---.html>.
- ¹⁴ Renée Feltz, "Pennsylvania Doubles Down on Revoking Child-Care License for Controversial Family Detention Center," *Rewire*, May 5, 2017, <https://rewire.news/article/2017/05/05/pennsylvania-doubles-revoking-child-care-license-controversial-family-detention-center/>.
- ¹⁵ Texas Department of Family and Protective Services Licensing Division, Minimum Standards for Child-Care Centers, Stock Code P20330-0000, April 2017, https://www.dfps.state.tx.us/Child_Care/documents/Standards_and_Regulations/746_Centers.pdf.
- ¹⁶ Alexa Garcia-Ditta, "Judge Halts Child Care License for Dilley Detention Center," *Texas Observer*, June 2, 2016, <https://www.texasobserver.org/immigrant-family-detention-license-hold/>.
- ¹⁷ Grassroots Leadership v. Texas Department of Family and Protective Services, Final Judgement, D-1-GN-15-004336, District Court of Travis County 2016, https://grassrootsleadership.org/sites/default/files/uploads/gli_v._dfps_final_judgment.pdf.
- ¹⁸ Hoffman, "Prison Company Struggles".

¹⁹ Perry Hughes, S.B. No. 1018, <http://www.capitol.state.tx.us/tlodocs/85R/billtext/html/SBo1018I.htm>.