

Western New England University

Digital Commons @ Western New England University

Media Presence

School of Law Faculty Scholarship

8-18-2015

Obama Fights to Continue Detention of Migrant Families

Lauren Carasik

Western New England University School of Law, Carasik@law.wne.edu

Follow this and additional works at: <https://digitalcommons.law.wne.edu/media>



Part of the [Immigration Law Commons](#)

Recommended Citation

Lauren Carasik, *Obama Fights to Continue Detention of Migrant Families*, TRUTHOUT (Aug. 18, 2015), <http://www.truth-out.org/opinion/item/32395-obama-fights-to-continue-detention-of-migrant-families>.

This Editorial is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons @ Western New England University. It has been accepted for inclusion in Media Presence by an authorized administrator of Digital Commons @ Western New England University.

Obama Fights to Continue Detention of Migrant Families

Lauren Carasik
August 18, 2015

Despite a withering ruling by federal court Judge Dolly Gee ordering the Obama administration to release detained migrant families locked in detention facilities, the U.S. Department of Justice is contesting the decision.

Judge Gee held that detaining children in secure facilities constitutes a material breach of the 1997 Flores settlement agreement, a class-action lawsuit governing the treatment of unaccompanied minors in the custody of the Department of Homeland Security (DHS). The judge decried the "widespread and deplorable conditions in the holding cells of Border Patrol stations." She found that the conditions are causing "long-lasting psychological, developmental and physical harm" and gave the government 90 days to comply with the order. But the Obama administration has made clear that it will fight to keep the centers open.

The Flores settlement bars the government from incarcerating immigrant children unless they pose a flight or security risk, prohibits facilities that house minors whose detention is justified from being prison-like, and requires them to possess the requisite child care licenses. Gee ruled that the settlement applied not only to unaccompanied minors but also those in the custody of their parents. Yet the family detention facilities are secure, and managed not by licensed child welfare professionals but instead for-profit contractors. Whistleblowers, reporters and advocates have painted a disturbing picture of conditions there.

The Obama administration acted swiftly to defend its practice. In a 60 page response filed on Aug. 6, the administration claimed that ending detention "would heighten the risk of another surge in illegal migration ... by incentivizing adults to bring children with them on their dangerous journey as a means to avoid detention and gain access to the interior of the United States." But a federal court in Washington, D.C., issued an injunction in February barring the government holding families in detention solely "for the purpose of deterring future immigration." And Judge Gee found that the government had not presented persuasive evidence that family detention would have a measurable impact on migration flow. Instead of a blanket policy of detention, immigration authorities must conduct an individualized determination of a family's asylum claim and flight risk.

Obama ended family detention in 2009, but revived the practice in response to last summer's surge of migrants crossing the border, most of whom fled violence and poverty in Central America's Northern Triangle – Honduras, Guatemala and El Salvador. Some 38,000 children crossed the border with their mothers last fiscal year. To supplement a small existing facility in Berks County, Pennsylvania, the U.S. Department of Homeland Security began detaining mothers and children in Dilley and

Karnes City, both in Texas. Some 1,400 women and children are now being held in the Texas facilities, down from more than 2,000 in June.

The increasingly controversial practice of detaining families came under fire after a flurry of reports exposing harrowing conditions in the facilities, a spate of lawsuits and mounting political pressure. In May, 135 members of Congress wrote a letter to Johnson to alert him about strong evidence that immigration detention is detrimental to mothers and children, and is "not reflective of our Nation's values." The legislators urged the DHS to end family detention. After Judge Gee's ruling, more than 170 members of Congress wrote to Johnson again, reiterating the prior concerns and imploring him to comply with Judge Gee's ruling. In a gambit to decrease its census and alleviate pressure, the DHS recently began releasing hundreds of detained mothers and children who had established a credible fear of returning to their home country on bond or electronic monitoring anklets. But many remain in the detention centers. And as Judge Gee noted, voluntary compliance leaves the government too much wiggle room, since they "could easily revert to the former challenged policy as abruptly as [it] adopted the new one."

The administration say it is only holds families with credible asylum claims for a few weeks, and that the "addressed practices and policies that no longer exist." But in visiting the Dilley facility immediately following Judge Gee's order, Human Rights First found a starkly different picture – most of the 40 families they interviewed had already been in custody for between one and two months, and some as long as six. The rights group also found that although many of the women and children had family ties and the verifiable addresses of family sponsors with whom they would stay in the U.S., bonds were initially set at between US\$7,000-\$9,500, a figure out of reach for impoverished migrants who likely spent whatever meager resources they had in reaching the border. Bonds can be reduced later by an immigration judge, but even short detention can cause psychological and physical distress for families already traumatized by violence and persecution.

Though the administration claims to be implementing more humane practices, a few days after the Flores decision a U.S. Immigration and Customs Enforcement attorney said he had been instructed to "vigorously contest" the conditional release of families and to seek high bonds amounts intended to impede their release. And instead of moving toward closure, more than 350 people were reportedly sent to the Dilley facility after Judge Gee's order to release the families.

Meanwhile, five migrant mothers filed court papers this month seeking millions in damages from the government for psychological and physical harms associated with their detention. And last month, 10 mothers filed a complaint alleging they received substandard medical care while detained by DHS.

The mothers and children in family detention are vulnerable asylum seekers who fled violence and despair and pose no threat to the nation. After the Obama administration's recent filing, Zoe Lofgren, a Democratic Congresswoman from California and a staunch

critic of detention, wrote, "The writing is on the wall — family detention is unacceptable, un-American, and will end. Rather than fight the court's ruling, the right and moral response is to swiftly take the necessary steps to bring our nation's detention policy in line with the Flores settlement agreement."

The Obama administration should concede that family detention is inhumane and unlawful, and cease the practice now, before more harm is done.

Lauren Carasik is a Clinical Professor of Law and the Director of the International Human Rights Clinic at Western New England University School of Law. She recently traveled to Guatemala to observe the genocide trial with a delegation from the National Lawyers Guild.

Source: Lauren Carasik, *Obama Fights to Continue Detention of Migrant Families*, TRUTHOUT (Aug. 18, 2015), <http://www.truth-out.org/opinion/item/32395-obama-fights-to-continue-detention-of-migrant-families>.