

Family Detention 101

Detention Watch Network opposes the detention of families. As outlined below, the U.S. government has a poor track record of maintaining family detention facilities that comply with domestic law and basic human rights standards. Moreover, the use of family detention runs contrary to clear Congressional intent.

What is family detention?

Immigrations and Customs Enforcement (ICE), under the Department of Homeland Security (DHS), operates a sprawling system of over 250 immigration detention facilities, costing taxpayers over \$2 billion annually. ICE detains adults and family units apprehended along the U.S. border and within the interior of the country.

Since 2001, ICE has operated the 96-bed Berks County Family Shelter (Berks) in Pennsylvania. From 2006 to 2009, ICE also operated the 512-bed T. Don Hutto Correction Center (Hutto) in Texas as a family detention center. With the increase of children and families migrating to the U.S. from Central America this year, the Administration quickly opened a nearly 700-bed family detention facility in Artesia, New Mexico on the grounds of a Border Patrol training facility. NGOs, human rights groups, and other stakeholders received only one or two days' notice before it became operational. To date, NGOs have not had access to the facility, though the media has received tours. ICE will allow a limited group of advocates to visit the Artesia facility on July 22, 2014 – nearly 4 weeks after its opening.

ICE has created [family detention standards](#). However, these standards are not codified, meaning they do not have the force of law and do not confer a cause of action in court. Moreover, family detention facilities – like all ICE detention facilities – are subject to minimal independent oversight to ensure compliance with standards.

Family detention is operated by ICE, not the Dept. of Health & Human Services or Customs & Border Protection.

Generally, when Customs and Border Protection (CBP) apprehends families and/or children at the border, those migrants are immediately placed into CBP holding cells. Under the law, children arriving at the border alone (other than children from Mexico) are then transferred into the care of the Office of Refugee Resettlement (ORR), under the Department of Health and Human Services. However, not all children arriving at the border are unaccompanied. Children apprehended at the border with a parent are placed into ICE custody in family detention facilities.

Family detention holds infants, toddlers, women, and children who have legitimate asylum claims.

The vast majority of families currently arriving at the border are seeking safety or protection from violence and consist of women with young children, including infants and toddlers. However, family detention may not be limited to families apprehended at the U.S.-Mexico border; it includes families apprehended in the U.S. ICE can detain families with mentally ill individuals, pregnant women, and the elderly. **Detention is psychologically damaging and completely inappropriate for toddlers and children.** [Studies](#) conducted by the bipartisan U.S. Commission on International Religious Freedom, New York University's Bellevue Program for Survivors of Torture, and Physicians for Human Rights have demonstrated that detention poses a serious threat to the psychological health of detained immigrants and further aggravates isolation, depression, and mental health problems associated with past trauma.

Has the U.S. always detained families?

No. In 2001, the then-Immigration and Naturalization Service (INS) began to hold families at Berks (96 beds) in Leesport, Pennsylvania. In 2006, ICE expanded family detention with the addition of Hutto (512 beds) in Taylor, Texas. Prior to the opening of Hutto, ICE was placing children in ORR shelters and separating them from their parents, who were transferred to immigration jails nationwide.¹ This resulted in the forced separation of parents from their children, which unlawfully rendered the children unaccompanied. After learning about this practice, Congress directed DHS to stop separating migrant families.² In response, DHS began expanding the practice of detaining families together and opened Hutto in 2006. The practice of detaining families in jail-like settings is

¹ For more details and the history of family detention, please see [Locking Up Family Values: The Detention of Immigrant Families](#), an extensive 2007 report by the Women's Refugee Commission and Lutheran Immigration and Refugee Service.

² House Committee on Appropriations, *Department of Homeland Security appropriations bill, 2006: report together with additional views (to accompany H.R. 2360)*, 109th Cong., 1st Session, 2005, H. Rep. 109-79.

contrary to the explicit intent of Congress. Congress reaffirmed its intent in 2007, encouraging ICE to avoid detention of families and expressing its alarm over the use of family detention.³ In 2009, ICE closed Hutto (more below). The current expansion of family detention is inconsistent with our nation's international obligations to protect the rights of vulnerable migrants. Moreover, Congressional intent indicates a desire to end, *not expand*, family detention.

Attempts by ICE to detain families on a mass scale have failed and are inhumane.

In 2006, ICE opened Hutto, a former medium-security prison built by the Corrections Corporation of America, a private prison corporation that is one of the major companies operating nearly 60% of immigration detention beds today. ICE insisted that Hutto was specially equipped to meet the needs of families. However, [reports](#) emerged that **children as young as eight months wore prison uniforms and jumpsuits, lived and slept in locked prison cells with open-air toilets, families were subject to highly restricted movement and threatened with family separation if children cried or played too loudly.** Medical treatment was wholly inadequate, infants lost weight due to poor nutrition, and children received only one hour of education a day.

In 2009, ICE stopped using Hutto to detain families after public opposition and a [lawsuit](#) highlighting that conditions were entirely inappropriate for children and families. The Administration also withdrew plans for three new detention facilities. Contrary to concerns at the time – which echo concerns from Congress and the administration today – family arrivals did *not increase* directly following the end of family detention at Hutto.

DHS is legally mandated to place families with children in the least restrictive setting possible.

In 1996, a [settlement](#) in *Flores v. Meese*, No. CV 85-4544-RJK (Px) (C.D. Cal. 1988) (*Flores* settlement), set forth a policy for all children under the age of 18 in government custody. **The Flores settlement mandates that the government “release a minor from its custody without unnecessary delay”** as long as detention is not required to ensure a child's appearance in immigration court or for safety reasons. This settlement and other [legal precedents](#) demand that the government actively and continuously seek the release of each child in custody. Since the government has often [failed to comply](#) with these requirements, Congress has passed legislation multiple times to reform the immigration system as it applies to children. The government's failed record in compliance with legal obligations makes clear that family detention is not a viable option.

What should the government do?

- **Reject the use of detention as an enforcement tool for reducing migration. Families held in DHS custody are seeking protection from violence, trafficking, and domestic violence; our default should *not* be to put toddlers in prisons.** We risk repeating the mistakes from Hutto if the administration continues expanding family detention at its current rapid rate and without any real input from communities and NGOs.
- **The President's supplemental request seeks funding for approximately 6,300 additional detention beds. It would be much more effective for Congress and the Administration to end the use of family detention and shift funds to ORR and support programs already in use.** Alternatives to detention should be expanded and must include case managers or social workers to help with access to appropriate services, rather than incarcerating families.
- **Children require specialized medical, educational, and legal support that secure detention facilities cannot provide.** For families without housing, the government should partner with non-profit shelter or child welfare organizations experienced in supporting asylum-seeking and immigrant families.
- **Detention runs contrary to our values of basic dignity, due process, and human rights.** Detention is inappropriate and imposes a significant financial cost on the federal government. Detention prohibits due process by cutting off access to legal support and case management that families need to navigate immigration laws that have been compared in complexity to the U.S. tax code.

³ House Committee on Appropriations, *Department of Homeland Security appropriations bill, 2007: report together with additional views (to accompany H.R. 5441)*, 109th Cong., 2d Session, 2006, H. Rep. 109-476.