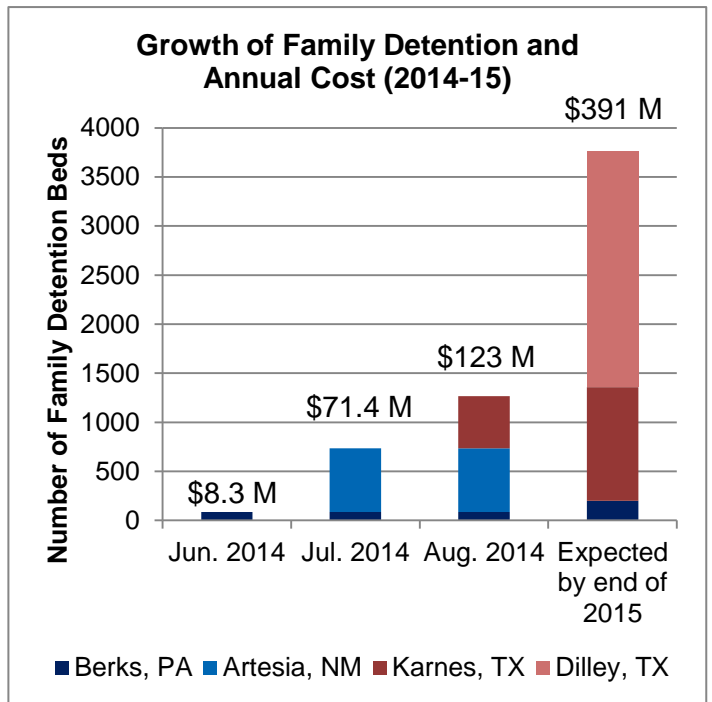


**Costly Family Detention Denies Justice to Mothers and Children**  
*May 2015*

**Background**

For decades, refugees have sought safety in the United States. Recent rampant violence in El Salvador, Guatemala, and Honduras has prompted a substantial number of mothers and children to seek refuge in the United States. Central America is one of the most violent regions in the world.<sup>1</sup> In 2011, El Salvador had the highest rate of gender-motivated killing of women in the world, followed by Guatemala (third highest) and Honduras (sixth highest).<sup>2</sup>

In response to this latest influx of refugees, **DHS significantly expanded detention of mothers and children by more than 4,000 percent** from approximately 85 detention beds to nearly 3,800 beds (See chart). In December 2014, DHS closed the controversial family detention center in Artesia, New Mexico and opened a new, privately-run, for-profit facility in Dilley, Texas with capacity to detain 2,400 mothers and children by the end of May 2015. Among individuals entering family detention in fiscal year 2014, **more than half of all children were age six or younger**.<sup>3</sup> Families are subjected to an alarmingly swift expedited removal process. According to DHS Secretary Jeh Johnson, new detention facilities were built to quickly deport people and deter future migrants.<sup>4</sup> Now under an injunction that prohibits DHS from detaining for deterrence, DHS has begun to justify family detention as a means of keeping families together, falsely implying that DHS would otherwise have no choice but to separate mothers and children. Reports show that the denial of due process is widespread and mothers and their children are in danger of being deported into potentially life threatening situations.<sup>5</sup>



**Congressional funding for the expansion of family detention:** The House DHS appropriations bill for the remainder of FY 2015 (HR 240) provides approximately **\$362 million to maintain 3,732 family detention beds**, noting that the expansion of family detention is intended to deter future migration.<sup>6</sup> The bill increases DHS spending on detention to \$2.5 billion, plus an additional \$391 million annually once all family detention beds are filled. The Obama Administration has requested \$345.3 million to fund family detention in the FY 2016 budget and increased the bed quota to 34,040.

**Detention is inappropriate for mothers and children because:**

**1. Family detention has negative physical and mental health effects**

- Detention re-traumatizes children and mothers who are victims of violence as control over their lives is placed in the hands of the guards and they lose autonomy over their freedom of movement. Allegations of sexual abuse by a guard at the Berks, PA facility are currently being criminal prosecuted.
- Children are particularly vulnerable. Children detained at Artesia experienced weight loss, gastrointestinal problems, and suicidal thoughts.<sup>7</sup> Regardless of the amount of time they are detained, children can suffer psychological trauma and subsequent mental health issues.<sup>8</sup>
- The longer families are detained, the more likely family relationships are to break down.<sup>9</sup> Given the restrictions and disciplinary rules within a detention facility, the limited authority retained by mothers

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weakens their parenting skills. Mothers often feel conflicted about continuing to subject their children to detention in order to seek protection from harm at home.

## 2. Family detention impedes due process

- Detention centers located in South Texas have limited legal resources that are overwhelmed, making it difficult to access legal services.
- Attorneys face a myriad of challenges working with detained families, including accessing the facilities in person or by phone, gathering their supporting documentation, and preparing cases moving expeditiously for credible fear interviews as well as bond and merits hearings.

## 3. Women and children face barriers to pursue asylum in detention

- In an effort to deter future migration, DHS has been placing families in a results-oriented expedited removal system that robs detained families of fair and meaningful opportunities to pursue asylum.
- To proceed with the asylum process, mothers must pass a screening process known as the “credible fear interview” (CFI). DHS uses CFIs to gather information to evaluate whether individuals have a fear of return that could qualify them for asylum in the United States. Interview conditions, in which children may be present, can discourage mothers from being candid and sharing painful details of their experiences. Mothers also report that asylum officers rush their interviews and limit their responses.
- DHS tightened its credible fear standard in the spring of 2014 as the numbers of children and families arriving increased.<sup>10</sup> Without an attorney, it is very difficult for these women to understand how their fears qualify them for protection in the U.S. Initially, when lawyers were not available the credible fear screen-in rate for Artesia families was 37.8 percent, compared to the nationwide average credible fear screen-in rate of 62.7 percent at that time.<sup>11</sup> After a huge effort to bring *pro bono* attorneys to family detention facilities, the credible fear screen-in rate for the most recent quarter of FY 2015 has reached nearly 88 percent, demonstrating the need for due process and access to counsel.<sup>12</sup>

## Policy Recommendations

- **End the use of family detention.** The U.S. government essentially eliminated family detention in 2009 after a lawsuit challenged conditions.<sup>13</sup> Warehousing vulnerable mothers and children in remote facilities is inhumane and is a gross waste of taxpayer dollars.
- **Expand the use of ATDs,** such as orders of supervision, community-based alternatives, case management, and secure ankle bracelets, which are more humane and cost-effective. ATDs cost 70 cents to \$17 per day<sup>14</sup> compared to nearly \$350 per person per day in family detention.<sup>15</sup>
- **Government-appointed counsel for all.** Individuals in detention particularly struggle to find counsel and navigate the complex immigration system. Access to legal counsel generates efficiencies for immigration courts by making sure that individuals understand the process and their rights. This ensures that individual’s protection concerns receive adequate consideration.<sup>16</sup>

<sup>1</sup> Chavez, S. & Avalos, J., “The Northern Triangle: The Countries That Don’t Cry for Their Dead.” *InSight Crime – Organized Crime in the Americas*, 24 Apr. 2014, <http://www.insightcrime.org/news-analysis/the-northern-triangle-the-countries-that-dont-cry-for-their-dead>.

<sup>2</sup> Geneva Declaration on Armed Violence and Development, *Global Burden of Armed Violence 2011*, Oct. 2011, [http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011\\_CH4\\_rev.pdf](http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011_CH4_rev.pdf).

<sup>3</sup> *Locking Up Family Values, Again*, Lutheran Immigration and Refugee Service & Women’s Refugee Commission, Oct. 2014, <http://lirs.org/familyvalues>.

<sup>4</sup> *Hearing on the Review of the President’s Emergency Supplemental Request for Unaccompanied Children and Related Matters*, 10 Jul. 2014, <http://www.appropriations.senate.gov/webcast/full-committee-hearing-president%E2%80%99s-emergency-supplemental-request>.

<sup>5</sup> *M.S.P.C. v. Johnson*, 2014.

<sup>6</sup> “Explanatory Statement Submitted by Mr. Rogers of Kentucky... Regarding H.R. 240,” House Committee on Appropriations, Jan. 12, 2015, <http://docs.house.gov/billsthisweek/20150112/114-HR240-ES.pdf>, p. 26.

<sup>7</sup> Rappleye, H. & L. Riordan Seville, “Flood of Immigrant Families at Border Revives Dormant Detention Program,” *NBC News*, 25 Jul. 2014.

<sup>8</sup> International Detention Coalition, *Captured Childhood*, 2012, [http://idcoalition.org/wp-content/uploads/2012/03/Captured\\_Childhood-report.pdf](http://idcoalition.org/wp-content/uploads/2012/03/Captured_Childhood-report.pdf), p. 49.

<sup>9</sup> Pinnix, J. “AILA and Other Organizations Call for Ending Family Detention,” Allen, Pinnix & Nichols, P.A., 16 Jul. 2014, <http://immigration-naturalization-law.com/immigration-news/family-detention>.

<sup>10</sup> *M.S.P.C. v. Johnson*, 2014.

<sup>11</sup> See *M.S.P.C. v. Johnson* (2014) and U.S. Citizenship and Immigration Services (USCIS) Stakeholder Meeting, 12 Aug. 2014.

<sup>12</sup> U.S. Citizenship and Immigration Services, “USCIS Asylum Division: Family Facilities Reasonable Fear,” <http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-family-facilities-FY2015Q2.pdf>.

<sup>13</sup> ACLU, “DHS Plans to Improve Immigration Detention and Close Hutto Facility a Good First Step,” 6 Aug. 2009, <https://www.aclu.org/immigrants-rights/dhs-plan-improve-immigration-detention-and-close-hutto-facility-good-first-step>.

<sup>14</sup> National Immigration Forum, *Math of Immigration Detention*, Aug. 2013, [www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf](http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf).

<sup>15</sup> See *M.S.P.C. v. Johnson*, 2014 and Julia Preston, “Detention Center Presented as Deterrent to Border Crossings,” *New York Times*, Dec. 15, 2014.

<sup>16</sup> Montgomery, J., *Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings*, NERA Economic Consulting, May 2014, [http://www.nera.com/nera-files/NERA\\_Immigration\\_Report\\_5.28.2014.pdf](http://www.nera.com/nera-files/NERA_Immigration_Report_5.28.2014.pdf).