

Abstract

It is difficult to discuss immigration policy without mentioning illegal immigration, and, more recently, family detention. Family detention is the practice of placing whole families who have entered the country illegally into specialized detention facilities while they await a verdict on their ability to remain in the United States. Families spend between 15 to 548+ days in detention. While detaining illegal immigrants is an old practice, the number of immigrants in U.S. detention centers has recently swelled. Today, the Department of Homeland Security (DHS) operates the largest prison system in America (Martin, 2012), and spends more money than all other federal law enforcement agencies combined (González Fernández, 2013). This paper is an extension of a panel discussion on family detention that took place on campus in November 2016. Utilizing primary resources, such as interviews and government resources, as well as secondary sources, the paper explores reasons for the recent swell in illegal immigration, the U.S. governments' responses, and why several influential groups are attempting to end the family detention and close the Berks County Detention Center (BCDC) in Leesport, PA.

On Thin ICE: A look into the Federal Department of Immigration and Customs Enforcement

Family detention is the practice of placing whole families (i.e., mothers, fathers, and children) who have entered the country illegally into specialized detention facilities while they await judgment regarding whether they will be allowed to stay in the United States or will be deported. The practice of detaining immigrants who have arrived illegally began long ago in our nation's history, but has experienced a recent swell. Today, the Department of Homeland Security (DHS) operates the largest prison system in America (Martin, 2012). This system developed gradually until the 1980s, when conditions in Latin America (especially Cuba) pushed immigrants to swarm the United States (Gonzalez, 2011; Martin, 2012). In response to the immigration influx, congress passed the 1986 Immigration Reform and Control Act (IRCA), which criminalized illegal immigrants: such individuals could now be imprisoned for crossing the border illegally (Martin, 2012). In addition, the court ruling in *Wong Wing v. United States* declared that the practice of immigration detention—as utilized to ensure that immigrants appear for legal proceedings—is “not imprisonment in a legal sense” (as qtd. in Chacón, 2014).

History of U.S. Immigration Detention Policies

Adding to the detention frenzy, in 1996, congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Martin, 2012). This act increased deportations of illegal immigrants so to counter the increase in immigration to the United States: under its provisions, immigration officials were required to detain all immigrants, both legal and illegal, who had committed either “aggravated felonies” or “petty crimes,” even if the crimes occurred decades ago (Martin, 2012). Around this time, the Immigrations and Naturalization Services¹ also initiated a practice of deportation that circumvented normal court proceedings (Martin, 2012). Thus, Mexican and Canadian immigrants caught at ports of entry could be deported without a right to due process (Martin, 2012).

Criminalization of illegal immigration peaked following the September 11th tragedy. Following that day, a variety of government initiatives emerged that functioned to increase border security and to swiftly identify and deport “potentially-dangerous” illegal immigrants. To this end, correctional practices across the United States changed as all immigrants who interacted with the corrections system were at risk for detentionⁱⁱ.

“Rights to Family Life”

Along with this rise in the criminalization of immigration and resulting detention-deportation practices, specialized family detention facilities became a necessity as the Department of Homeland Security (DHS) was made aware that individuals in detention were being denied their “right to family life” (Flynn, 2013). In traditional detention centers, females were forbidden to interact with males of any age (Flynn, 2013). Furthermore, the 1997 Flores Settlement Agreement (FSA) specified that children could not be detained in restrictive facilities, must be provided with certain standards of housing, must have access to a range of services, and must have “adequate supervision to protect minors from others... Separation from unrelated adults whenever possible... [and to] ensure the prompt release of children from immigration detention” (as qtd. in Lopez, 2012).

For accompanied minors whose parents were to be detained, this created a problem: the children had to be kept with their parents, but normal detention centers were no longer an option. The DHS’s remedy to the then-common practice of separating husbands, wives and children was to open the Berks County Detention Center (BCDC) in 2001 (Martin, 2012). With a capacity of 84 beds, the shelter was too small to house all detained immigrant families (Martin, 2012). It was big enough, however, to provide the impetus for wide-scale changes to detention practices.

A question commonly considered in the discourse of family detention is “Why not release the families with Notices to Appear (NTAs) in court? Why detain them?” According to Lopez (2012), many families who were issued NTAs never appeared for their court dates. This fact, coupled with congressional directives (2005-2007) mandating the DHS to “keep immigrant families together, and either to release such families altogether or to use alternatives to detention” led Immigration and Customs Enforcement (ICE) to change its policies regarding families in 2006 (Lopez, 2012): instead of breaking most families apart or releasing them with NTAs into the community, the DHS decided to detain most illegally immigrating families in “residential centers” (Lopez, 2012).

From “Family Life” to “Family Strife”

So, in 2006, the DHS opened the T Don Hutto Residential Centre near Austin, Texas (Flynn, 2013). Contracted out to an independent organization that received 2.8 million dollars a month to run the old prison as a family detention center (Lopez, 2012), the center contained 512 beds (Martin, 2012). After only three years in operation, however, the Obama administration shut down the Hutto Centre due to many allegations of abuse and dehumanizing living conditions (Lopez, 2012).

When the Hutto Centre shut its doors in 2009, the BCDC continued to operate its 84-bed family detention center. Reports of immigration lawyers and news reporters, however, attest that the shelter was mainly a temporary stop for families applying for asylum, and that most families were moved quickly through the system and out of detention (C.A. Donohoe & A. Orozco, personal communication, November 21, 2016). A 2011 United Nations High Commissioner of Refugees even lauded the facility, stating that it was the prototype of “best practices for a truly civil immigration detention model” (Flynn, 2013).

The closure of the Hutto Center, and the attention that it drew to the abuse suffered by detained immigrants, was a step in the right direction. Soon after, however, the 2009 court ruling in *Fabian v. Dunn* set immigration reform back a few steps: After receiving a request to suit based on abuses suffered by several juvenile boys at another detention center, the court ruled that the plaintiffs had no premise for their suit because no prior court ruling had guaranteed any rights to detained immigrants, including the “prevention of the episodic acts of abuse by program staff such as occurred here” (Lopez, 2012).

Immigration & Family Detention Today: A Tale of Exploitation, Subjugation, & Profit

Today, ICE continues to deny detained immigrants any rights: they are not promised access to services, phone calls, feminine products for women, adequate medical care or birthing facilities for pregnant women, translation services, protection from sexual or other abuses, recreation time, the right to attend court dates in person, the right to visitors, or even to due process in the form of a full court hearing (Brané & Wang, 2013). Furthermore, legal counsel is not provided, women and men housed in traditional detention centers are forbidden from mingling despite familial relations, and often times—if there are not enough illegal immigrants to fill an entire housing unit of a jail—immigrants are housed with convicted criminals (Brané & Wang, 2013).

This severe lack of protections violates several international treaties (Lopez, 2012), including the United Nation’s Convention on the Rights of the Child (CRC), and has fueled the recent surge in family detention that began in the summer of 2014. That summer, thousands of accompanied and unaccompanied Latin American Children crossed the U.S. border in an attempt to escape the militaristic regimes, increasing gang presence, desperate poverty and long-time separation from family members that characterize the plight of Central American countries (Hernandez, 2014). Overnight, it seemed, the BCDC swelled as more families were placed into detention (C.A. Donohoe, personal communication, November 21, 2016). As the BCDC ran out of room rapidly, the DHS hastily opened two more family detention in the American South and Southwest (Hernandez, 2014).

Two family detention centers in Texas house the majority of families in detention. According to C.A. Donohoe, an immigration lawyer for residents of the BCDC, families are only housed in these Texas facilities for approximately 21 days before being released (personal communication, November 21, 2016). For especially difficult and long asylum requests, the BCDC acts as a holding place where families spend more than 12-18 months in detention (C.A. Donohoe, personal communication, November 21, 2016; & Robins, 2016).

Recently, several organizations have begun rallying to shut down the BCDC (Juntos, 2016). These organizations cite many reasons for the facility to close its doors, including extended, unlawful detention of children, the recent prosecution of a former employee who repeatedly raped a detainee in front of minors, deplorable conditions, malnourished children, labor exploitation, the practice of detaining newborns, restricted access to medical care, and the recent loss of the center's license to operate as a facility that houses minors (DiClemente & Joki, 2015; Feltz, 2016; & Ordonenz, F., 2016).

While these organizations--such as Make the Road Pennsylvania, Juntos, Detention Watch Network, the Greater Reading Immigration Project (GRIP), and GALAEI—continue to lobby law makers and hold demonstrations in order to keep the center in the forefront of the public eye, some Berks County commissioners are fighting to keep the shelter open (Juntos, 2016; & Migdail-Smith, 2016). After losing their license in early 2016, Berks County immediately filed an appeal: The county receives 1.1 billion a year for “use” of the facility and its operations costs are all federally funded. According to the commissioners, losing such a contract with DHS would mean a huge hit to the county budget (Midgail-Smith, 2016).

Berks County is not alone in its reasons for not wanting to shut down its center: While the criminal justice system has seen a decrease in incarceration in favor of using more cost-effective options, many counties have seen federally-funded immigration detention as a viable way to make money by renting out unused jail space (Chacón, 2014; & Flynn, 2013). In addition to counties, private companies are fighting for immigration detention to continue: fifty percent of the 34,000 beds that the DHS aims to fill every night with illegal immigrant are run by private companies (González Fernández, 2013).

Regardless of these individual monetary concerns, family detention—and detention in general—costs the federal government billions a year in tax payers' dollars. In 2012 alone, “detainer requests” over \$20 billion dollars was spent to detain and deport illegal immigrants. That monetary total is significantly higher than the combined total that was spent in 2012 on all other federal law enforcement agencies (González Fernández, 2013). What is most puzzling, however, is the fact that the entire process of detention could be avoided *for most immigrants, and almost all immigrant families*, if the DHS were to adopt more cost-efficient methods of monitoring immigrants' whereabouts. Such methods, including house arrest and electronic tracking, cost about one-seventh of the cost of detention, and avoid all of the human rights issues that inherently surround detaining individuals (González Fernández, 2013).

Conclusion

Taking all of this into consideration, it is puzzling why the DHS persists in utilizing and expanding immigration detention, including family detention. In the end, the answer appears to be strategic. As Martin (2012) suggests, detaining illegal immigrants serves multiple functions: detention separates the detainees from support and severely impedes access to legal services, both of which help to ensure that the detainee is deported. González Fernández, in his 2013 article, cites statistics which vividly illustrate just how important legal services are in regards to preventing deportation: immigrants with access to legal counsel are deported at a significantly

lower rate than are those who must represent themselves. In addition to helping facilitate deportation, detention disrupts the lives of relatives who both live in—and are considering coming to—America by robbing them of connections, income, and sometimes, the detainee’s entire life savings (Martin, 2012). As one researcher describes, detention can “fragment the relations of care that sustain transnational migrant networks” (Martin, 2012). Detention further promotes xenophobia and the criminalized social view of migrants, which only further ostracizes illegal immigrants and makes them unwelcome in America (Martin, 2012). Overall, detention continues despite its high social and fiscal costs because it functions as a penal and a deterrent system.

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NOTES:

ⁱ The Immigration and Naturalization Services (INS) Agency is now called the Immigrations and Customs Enforcement (ICE) Agency, which is a sub-agency of the Department of Homeland Security.

ⁱⁱ “Secure Communities” is the result of congressional acts that removed all barriers to the detention of illegal immigrants and forced local police officers to send copies of fingerprint records to ICE for cross-comparison. The goal of “Secure Communities” was to expedite identification and removal of “terroristic threats” in America (Martin, 2012). Recent changes, however, have led to the use of fingerprinting to detain and deport both legal and illegal immigrants who barely have a statistical probability of committing a crime (Martin, 2012).