

Justice Denied

Immigrant Families Detained at Hutto



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There is little question that the massive expansion of immigration detention in the United States over the last decade poses a serious human rights crisis. Between 1994 and 2006, the average daily population of immigrants in Immigration and Customs Enforcement (ICE) custody increased from approximately 5,500 to 27,000 detainees. Over the course of 2006, the number of individuals detained reached 283,000. By 2000, detained immigrants represented the fastest-growing segment of the U.S. prison population.

This exponential rise in the detention of immigrants led ICE in recent years to seek additional funding and space to house detainees. Detention

space has increased from approximately 8,300 beds in 1996 to 32,000 beds in 2008. ICE's budget for detention operations has nearly doubled from \$864 million in FY 2005 to \$1.65 billion in FY 2008. Immigration detention, as a result, has become the new face of the prison industrial complex. State and local jails are now renting out space to hold immigrant detainees, usually yielding greater profit than they would reap with state and county detainees. Immigration detention has bailed out private prison companies such as the Corrections Corporation of America (CCA), which was going bankrupt in 2000 but is now making huge profits by running federal immigration facilities.

As part of this growth in the immigration detention industrial complex, ICE has devised new forms of immigration detention. One particularly pernicious form is that of family detention. Family detention involves the detention of immigrant children, ranging from birth to 17 years of age, who are detained with one or more parents as the family awaits removal proceedings. While family detention is still a relatively new form of immigration detention—there are currently two such facilities nation-wide—the story of the fight for human rights within one such facility, the T. Don Hutto Family Detention Center, sheds light on the power of a multi-pronged advocacy strategy. This strategy combines human rights approaches with traditional legal advocacy to hold the government accountable for unacceptable infringements on human dignity and basic human rights.

As immigration enforcement became an increasing priority for the U.S. government, ICE began to shift its practice from releasing immigrant families while their immigration claims were processed to detaining families indefinitely pending resolution of their claims. In November 2005, the Department of Homeland Security (DHS) commenced its “Secure Border Initiative.” By August 2006, DHS Secretary Michael Chertoff declared that the government had fully terminated its previous “catch and release” policy and implemented a new policy entitled “catch and detain.”

DHS justified its policy of family detention by claiming that the “catch and detain” policy, for individuals entering or apprehended in the United States with children, was necessary to deter child smuggling. Whereas, the “catch and release” policy could encourage prospective migrants to “rent” or kidnap children for the purpose of crossing the border, thereby ensuring

the migrant would be released if apprehended. The government first separated parents apprehended with their children, placing the children in shelters for unaccompanied minors managed by the Office of Refugee Resettlement (ORR) and detaining parents in any one of countless detention centers across

cells. Movement in the facility stopped numerous times per day for “count,” which sometimes lasted for hours, and lasers and cameras monitored the cell doors at night to ensure no one moved.

ICE’s choice to expand family detention and to place parents and children in a penal facility like Hutto di-

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the country. However, in response to Congressional criticism that the government was unlawfully designating such children as “unaccompanied,” ICE began to expand its capacity to detain children and their parents together.

Until 2006, the only “family detention” facility used by ICE was an 84-bed former nursing home in Berks County, Pennsylvania. The Berks County facility, opened in 2001, was clearly institutional, but non-penal in atmosphere and practice. In May 2006, however, ICE began housing immigration detainees at the T. Don Hutto Family Residential Center, a 512-bed former medium security prison in Texas. The Hutto facility is owned and operated by the CCA, the nation’s largest for-profit prison provider. Unlike the Berks facility, Hutto is unmistakably a prison, inside and out. The exterior is surrounded by concertina wire; visitors have to pass through extensive security to enter the facility and are prohibited from passing beyond the visitation area. In past years, parents and children were clothed in prison garb and confined to cells for most of the day. Children received only one hour of schooling per day and were prohibited from taking pens, pencils, toys, or even stuffed animals into their

rectly contravened a Congressional preference, first articulated in 2005, that DHS should *release* immigrant families whenever possible or use alternatives to detention, such as the Intensive Supervised Appearance Program. In response to ICE’s opening of the Hutto facility in May 2006, Congress reiterated its concern that family detention should be used only as a last resort and appropriated funding to increase alternatives to detention. DHS ignored this and subsequent Congressional directives in favor of aggressively pursuing its new policy of detaining families.

When word that children as young as one and two years old were being incarcerated with their parents at the Hutto facility began to reach churches, attorneys, and activists in Taylor and neighboring Austin, in the Fall of 2006, the community responded with outrage and indignation. A group of activists began to march and hold vigils outside the Hutto facility. They were frequently joined by local clergy and community members shocked to find that there were children in prison nearby. The protests attracted media attention, which in turn generated interest and concern about the conditions

at Hutto from national and international advocacy organizations.

The Women's Commission for Refugee Women and Children (WCRWC) sent Michelle Brané, Director of its Detention and Asylum Program, to observe and document conditions in both the Hutto and Berks facilities. Brané's findings were published by the WCRWC in a lengthy report entitled *Locking Up Family Values: The Detention of Immigrant Families*, issued on February 22, 2007. The report, which sharply criticized the penal environment at Hutto and ICE's policies toward family detention, garnered significant national media attention. The public now had access to a report that documented conditions and problems at Hutto using a human rights framework. The report also placed family detention in an in-

ternational context by providing relevant comparative analysis and international standards enumerated in several human rights declarations and treaties that apply to children and families in detention, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC). These conventions elevate the role of the family as a fundamental unit in society and permit the use of detention against children only as a measure of last resort and for the shortest possible time. They also restrict the use of detention for asylum seekers, particularly children and other vulnerable populations.

The United States is also a party to the ICCPR which reiterates the basic

protections relating to family detention provided by the UDHR. These include the right to a timely court proceeding to determine the legality of arrest and immediate release should the detention be determined unlawful; recognition of the family's right to protection by the state as the core unit of society; and the right to protection by the law against arbitrary or illegal interference with a family's privacy, home, honor and reputation.

Together, these articles as articulated by the UDHR and reiterated by the ICCPR combine to reinforce the core principle—that all human beings, regardless of political or immigration status, are entitled to fundamental protections and to be treated fairly, humanely, with dignity, and with recognition universally as a person before the law.

Although the United States has not yet ratified the CRC, it was a major participant during the ten year drafting process and, as a signatory, is prohibited from taking actions that would defeat the CRC's goals and principles. Specific provisions within the CRC apply directly to the ongoing and increasing detention of families within the United States and its obligation to ensure adequate services and conditions to children regardless of their immigration status:

- Article 10, "Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner."

- Article 25, "States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment or his or her physical or mental health, to a periodic review of the treatment provided to the



Belkys Susana Blanco (right) and her daughter Susana Rodriguez Blanco, prepare to depart from the Austin airport to stay with friends while pursuing their asylum claims. Belkys and Susana were detained at Hutto for nearly six months.

child and all other circumstances relevant to his or her placement.”

- *Article 27, “State’s Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”*

In February 1999, the Office of the United Nations High Commissioner for Refugees (UNHCR) issued the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers. The document frowns upon the detention of asylum seekers but states that, if used, detention should be restricted to the minimum period necessary to establish the applicant’s identity and basis for asylum claim. States are required to ensure adequate treatment levels including education, healthcare and counseling. The UNHCR guidelines also call for special protection of vulnerable populations—especially women and children. Minors who are asylum seekers should not be detained and no asylum seeker should be penalized for illegal entry or residence so long as

they present themselves as requested to the authorities and are able to show demonstrable cause for their presence.

The WCRWC report also highlighted the fact that while the United States

ees inside. Barbara Hines, a University of Texas School of Law professor, who runs the university’s immigration clinic, was able to begin interviewing clients beyond the security checkpoint at Hutto

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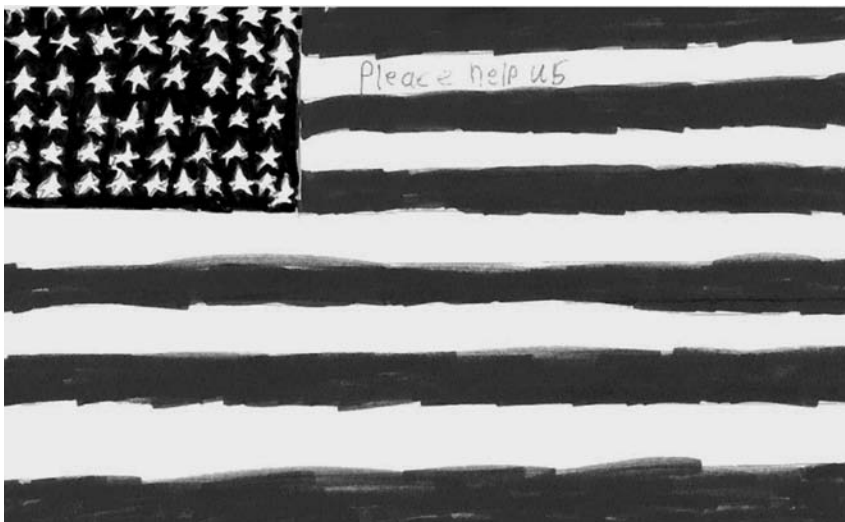
is not alone in detaining families—the United Kingdom and Germany also detain families under conditions similar to those at Hutto —nations such as Australia and Sweden offer alternative approaches that might serve as a model for improved detention practices in the United States.

Despite the groundswell of opposition to Hutto, it remained difficult for the public to get information about conditions inside the facility. ICE routinely refused all public requests for access to the facility or to the detain-

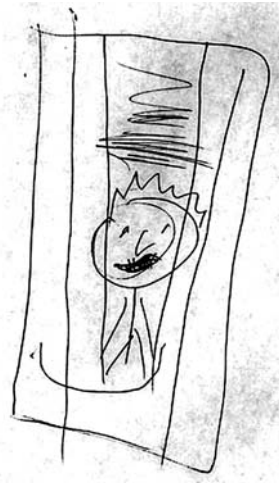
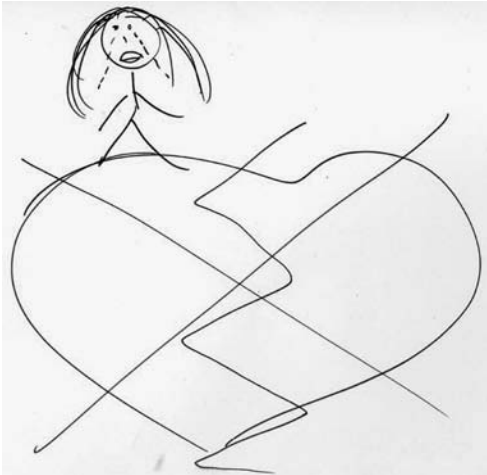
ees in September 2006. She was shocked to see infants dressed in institutional clothing and alarmed about conditions for the children detained inside. She reached out to the ACLU of Texas which issued a series of Open Records Requests to Williamson County.

In early 2007, lawyers from the ACLU national office began to interview detainees with Barbara Hines. It soon became clear that conditions at Hutto were degrading and harmful to the detainee children. Approximately 400 people were then detained in Hutto, half of them children and many of them refugees seeking political asylum. What ICE called a “Family Residential Facility” was in fact functionally and structurally a prison. Children were required to wear prison garb, received only one hour of recreation a day, Monday through Friday, and some children did not go outdoors for a month at a time. They were detained in small cells for 11-12 hours each day where they could not keep food, toys, or pens, and had no privacy, even when using the toilet.

Many children lacked access to adequate medical, dental, and mental health treatment, and were denied meaningful educational opportunities. Guards frequently disciplined children by threatening to separate them per-



A child detained at Hutto embedded a heartbreaking plea in this painting of the American flag.



Drawings from children detained at Hutto.

manently from their parents; children were prohibited from having contact visits with non-detained family members; and fathers and mothers were not permitted to be together in their respective detention spaces. ACLU lawyers discovered that Hutto was not licensed by any state agency.

By operating the facility, ICE was violating its duty to meet the minimum standards and conditions for the housing and release of all minors in federal immigration custody set forth in a 1997 settlement agreement in the case of *Flores v. Meese*. Recognizing the vulnerability of children, this settlement established that children should be released promptly to family members when possible, that those who remained in ICE's custody be placed in the least restrictive setting available, and that minors be guaranteed basic educational, health, and social benefits and rights.

On March 6, 2007, the ACLU, in conjunction with the ACLU of Texas, the University of Texas School of Law Immigration Clinic and the law firm of LeBoeuf, Lamb, Greene & MacRae LLP filed lawsuits on behalf of ten immigrant children, ages 3 to 16, chal-

lenging their illegal detention at the T. Don Hutto facility in Taylor, Texas. The families represented came from countries including Lithuania, Canada, Haiti, Honduras, Somalia, and Guyana and many had fled dangerous situations to seek asylum in the United States.

The ACLU's lawsuit was coordinated with a communications strategy to inform the public about conditions at

just days before the visit, DHS abruptly announced that the Special Rapporteur would not be granted access to the facility on the grounds that Hutto was subject to "pending litigation."

On May 8, 2007, thirty-seven national and international organizations submitted an open letter to DHS Secretary Chertoff urging Mr. Bustamante to reconsider the decision, given the special role of Special Rapporteurs in ensuring that states abide by their obligations under international human rights law. Although DHS refused this appeal, the ACLU and immigrants' rights organizations arranged for him to interview former detainees who described conditions at Hutto.

Advocacy around the Special Rapporteur's visit and the government's last-minute decision to deny him entry to Hutto added to mounting pressure on the government to make changes within the facility. The Special Rapporteur's final report, submitted to the U.N. Human Rights Council in March 2008, included a specific recommendation that the U.S. government cease family

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Hutto. National and international media outlets decried the detention of children. The U.N. Special Rapporteur on the Human Rights of Migrants, Dr. Jorge Bustamante, was scheduled to tour the Hutto facility on May 7, 2007, as part of a multi-state official fact-finding mission. The mission had been carefully planned and negotiated with the government but

detention and identify alternatives to detention. The report provided yet another opportunity for local, national and international advocacy and attention to the ongoing human rights violations at Hutto.

On August 2007, the ACLU announced a landmark settlement with

ICE that greatly improved conditions for immigrant children and their families detained at Hutto. Since the original lawsuits were filed, all 26 children represented by the ACLU have been released.

More recently, advocates have gained the attention of the Inter-American Commission on Human Rights (IACHR or “the Commission”). The Commission, which is affiliated with the Organization of American States, monitors compliance by member states, including the U.S., with the American Declaration of Rights and Duties of Man and other international human rights laws. On October 1, 2008, attorneys with the IACHR met with advocates and former detainees in Austin, to discuss

conditions at Hutto as part of a fact-finding mission on the treatment of immigrant families and asylum seekers. On October 28, a number of organizations, including the University of Texas School of Law Immigration Clinic, testified in front of the IACHR in support of their petition regarding due process violations in immigration detention.

Conditions at Hutto have gradually improved as a result of the groundbreaking litigation and public scrutiny that brought about profound changes in the operation of the facility and the population housed there. Nevertheless, the practice of family detention remains in stark violation of all prevailing human rights laws and standards; and advocacy groups continue to press Con-

gress to insist that DHS find humane alternatives for managing families whose immigration status is in limbo. Though, at first, the human rights abuses at Hutto seemed impervious to challenge, a multipronged strategy combining human rights and traditional legal advocacy resulted in widespread reform of conditions and practices in the facility and sparked a public debate over the legitimacy of family detention that continues to generate national and international attention.

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