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CGRS Denounces Obama Administration's Response to Family Detention Ruling

The Center for Gender & Refugee Studies (CGRS) condemns the Obama administration's recent response to U.S. District Judge Dolly Gee's ruling on the imprisonment of mothers and children seeking asylum in the U.S.

In its response last week to Judge Gee's ruling, the administration continues to advocate for a flawed and illegal policy of locking up refugee women and children who have fled violence and persecution in their home countries. Judge Gee's ruling correctly found that incarcerating children with their mothers violates the Department of Homeland Security's (DHS) obligations under the 1997 *Flores v. Reno* settlement agreement, which governs the custody and treatment of children by DHS. That agreement prohibits the government from imprisoning immigrant children as a first resort, and instead requires release of children along with their mothers unless the families pose a flight risk or danger. Judge Gee also found that, even in extreme cases where detention may be justified due to individualized risk, use of unlicensed, jail-like family detention centers violates the *Flores* agreement, which requires that children in custody be housed in non-secure, licensed facilities.

Rather than agreeing to end family detention in light of Judge Gee's clear and correct finding of illegality, the government's recent response urges the court to reconsider its decision. In support of its position, DHS stresses recent policy commitments to decreasing the "average" time spent by most families in detention.

DHS's response, however, rests on a fundamentally flawed premise: that the inhumane incarceration of refugee mothers and children becomes permissible if slightly tweaked and somewhat shortened. But no amount of family detention is justifiable. In her order, Judge Gee cited evidence showing that confinement of children causes them "long-lasting psychological, developmental, and physical harm." Moreover, CGRS has documented that women and children currently held in family detention have fled persecution, torture, and extreme violence in their home countries, including domestic violence and rape. As the court describes, detention exacerbates the mental health problems often experienced by survivors of violence. It also impedes access to legal representation, critical for asylum seekers navigating our complex system of immigration laws.

Notably, while the government has disavowed its prior policy of considering deterrence of future migration in deciding to detain certain refugee families that have passed an initial screening, it continues to advocate for the overall use of family detention as a deterrent. Specifically, the government argues that requiring expeditious release of children with their mothers would end up "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." However, as found by Judge Gee, the government cites to no persuasive evidence that detention will reduce migration flows. The government must cease viewing the harm caused by illegal detention of refugee children as a proper instrument for policy gains. Instead, it should focus its efforts on addressing the violent conditions in the countries that force families to flee.

The operation of inhumane family detention facilities violates the rights of refugee families and contravenes our cherished national commitments to liberty, due process, and justice. Locking up these mothers and their grade school, infant, and toddler children also harms our standing as a global leader on human rights and refugee protection. CGRS calls on the administration to abandon its legally and morally unjustifiable position, and to end the mass incarceration of refugee families.

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Read the [full order](#) from the court.

Read the government's [response](#).

Read our [May 2015](#) and [July 2015](#) statements calling for the end to family detention.