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# THOMAS: ‘Don’t Drink the Water’: Act Now to Stop the Indefinite Detention of Immigrant Children

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# THOMAS: 'Don't Drink the Water': Act Now to Stop the Indefinite Detention of Immigrant Children

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CLAIRE R. THOMAS, DIRECTOR OF THE ASYLUM CLINIC AND AN ADJUNCT PROFESSOR OF LAW AT NEW YORK LAW SCHOOL // COURTESY OF CLAIRE R. THOMAS

**By Claire R. Thomas**

As volunteers, we were instructed to bring our own drinking water into 'Baby Jail.'

Fracking had contaminated the local water supply with arsenic and lead in Dilley, TX and we were told that we should not make coffee using tap water or even cook with it inside the South Texas Family Residential Facility, known as "Baby Jail."

We watched employees carry gallon jugs of filtered water for personal use and observed as these same employees filled up five-gallon coolers with tap water every morning for the women and children — including babies, toddlers and nursing mothers — detained within the facility.

Immigration detention — the civil incarceration of non-U.S. citizens awaiting a determination of their immigration status or deportation — ensnares roughly 400,000 people in the United States each year.

No one seems out of reach of immigration enforcement: young and old, pregnant, seriously ill or disabled people ill, lawful permanent residents and even U.S. citizens are churned through the system, warehoused in remote locations and held for indefinite periods of time.

Medical care remains non-existent, sexual assault occurs, legal counsel is difficult to find, and basic information is hard to come by.







DEMONSTRATORS PROTEST FAMILY SEPARATION AND THE INDEFINITE DETENTION OF CHILDREN. // PHOTO BY DANIEL DI PALMA

For children, immigration detention takes an even more sinister toll.



Medical experts overwhelmingly agree that children should not be detained. The American Medical Association condemns child detention, even for brief periods, because the risk of permanent psychological damage is so great among young people.

I twice volunteered at "Baby Jail." The youngest person I advocated for was five months old.

He was detained with his mother after they were both separated from the baby's father. Only time will tell the impact of this period of detention on his life.

For more than 20 years, the Flores Settlement Agreement has provided protections for detained immigrant children.

The agreement was named after a lawsuit initiated on behalf of a 15-year-old Salvadoran girl named Jenny Lisette Flores. Flores fled unaccompanied to the United States in 1985 and was strip-searched and detained with strange adults.

The agreement protects children from indefinite stays in detention and requires that children be reunited with family members without delay. It further protects children by providing due process rights and mandates that they are held in the "least restrictive setting appropriate to age and special needs" in facilities licensed by a child welfare agency.

In practice, children were typically held in detention for no more than 20 days. State agencies generally licensed facilities and provided oversight at any site where children would be held longer due to public safety or flight risk concerns or because there was no adult to whom the child could be released.

But in its latest act of political warfare against immigrant children, the Trump administration seeks to gut the Flores Settlement Agreement by introducing regulations to keep both "accompanied children"—kids who were apprehended with their parents or caretakers—and unaccompanied children detained indefinitely in facilities that the federal government will self-license.

The proposed "Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children" rule seeks to further reduce access to due process and humanitarian protections for the most vulnerable: immigrant children and families.

The Trump administration's arguments in favor of family detention center on deterrence and ensuring that families appear at their deportation hearings.

The use of civil detention as deterrence has long been held to be unconstitutional, with courts stating that detention is not supposed to be punitive and that detention without an individualized assessment of flight risk or danger to society is overly broad. Further, numerous studies show that alternatives to detention, including the Family Case Management Program, prove to be both cost-effective and ensure compliance. Thus, if immigrants, especially immigrant families, overwhelmingly appear in immigration court for their deportation hearings and detention is not deterrence, then why detain?

Detention of immigrant families is a choice disguised as policy.

Profiting from misery is a business strategy. The answer is greed. Immigration detention facilities are overwhelmingly for-profit entities that are run by private prison corporations with investment from Wall Street banks.

Fueled by the increase in incarceration resulting from the failed "War on Drugs" and further ignited by changes in immigration laws requiring the mandatory detention of immigrants with certain criminal convictions, the immigration detention machine geared up to its full force in the 1980s.

After further changes in immigration laws in the 1990s and the passage of the Homeland Security Act in 2002, immigration detention became an enforcement strategy. A quota was introduced, mandating that 34,000 beds be filled by immigrants at detention facilities every night.

Family detention — the incarceration of mostly mothers and children together — became increasingly common during the summer of 2014. This past summer, the forcible separation of children from their parents led to enormous public outcry, only for the Administration to respond by re-detaining many of the reunited families together.

Contrary to almost daily assertions by Attorney General Jeff Sessions, seeking asylum is a right under both U.S. domestic and international law. It's not a loophole.

You can take action to defend immigrant children and families by submitting a comment and taking part in the Federal Rulemaking Process. This proposed rule is published in the Federal Register and is open to comment by the public until Nov. 6, 2018. Anyone concerned about the indefinite detention of immigrant children and families can submit a comment online to oppose the proposed rule at [regulations.gov](https://www.regulations.gov).

A government that knowingly provides contaminated drinking water to detained children should not be in the business of licensing their jailers. While some members of Congress liken family detention facilities to summer camps, this comparison reeks of callous indifference.

To be clear, families belong together — but not in cages. Children should be in school, not in internment camps. The indefinite detention of immigrant children is legally and morally wrong. Make your voice matter and submit a comment.

*Claire R. Thomas is the director of the Asylum Clinic and an Adjunct Professor of Law at New York Law School.*

TAKE ACTION TO DEFEND IMMIGRANT CHILDREN AND FAMILIES BY SUBMITTING A COMMENT AND PARTICIPATING IN THE FEDERAL RULEMAKING PROCESS.

 David Brand /

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 Claire R. Thomas, Immigration, Baby Jail, New York Law School, Legal Observer



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