

United States Senate

WASHINGTON, DC 20510

The Honorable Jeh Johnson
Secretary of the Department of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

October 16, 2014

Dear Secretary Johnson:

We recognize that responding to the drastic increase in unaccompanied immigrant children on our Southern border presents significant challenges to the administration, but we are nonetheless deeply concerned by the decision to build a large new immigration detention facility for women and children in Dilley, Texas. This decision threatens to make permanent a practice of presumptive detention for families and marks a reversal of this administration's family detention policy. We fear that the result will be the ongoing detention of asylum-seeking women and children who have shown a credible fear of being returned to their home country and pose no flight risk or danger to the community. We are particularly concerned with the negative consequences of long-term detention on the physical and mental well-being of young children.

The decision to construct this new 2,400 bed facility – what will be the largest immigration detention facility in the country – stands in contrast to the principles this administration embraced just five years ago when it stopped detaining families at the Hutto facility in Texas and set aside plans for three new family detention facilities. At the time, John Morton, then Director of Immigration and Customs Enforcement, stressed the importance of reforming the detention system so that detention is “done thoughtfully and humanely” and observed that the system’s purpose was to remove immigration violators from the country, not imprison them.¹ Recent plans to expand the family detention system represent a marked departure from these objectives. Since the administration reinstated this summer what we then believed to be a temporary family detention policy using facilities in Artesia, New Mexico and Karnes, Texas, we have heard significant concerns regarding the conditions of confinement and obstacles to due process for detainees. We are troubled by your apparent decision to make permanent and greatly expand the policy of family detention against the backdrop of these problems.

We are also troubled by the decisions that are helping drive the demand for additional family detention beds, particularly the administration’s current practice of seeking expedited review and detention for all mothers and children arriving from Honduras, El Salvador, and Guatemala, regardless of their individual circumstances and asylum claims. It appears that the dominant question officials ask before detaining these families is whether there is available bed space, and if 2,400 more beds become available, the answer to that question will increasingly be yes. This is a significant shift from the policy pursued until just recently, where families were only held

¹ Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, N.Y. TIMES (Aug. 5, 2009), http://www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all&_r=0.

when they were unable to find suitable housing outside a detention facility or where there was a serious public safety or flight risk.

The administration's practice of opposing bond in all of these cases, even those cases in which credible fear has been established and where there is no evidence of danger to the community or risk of flight, furthers the injustice for those families detained and unnecessarily increases the demand for bed space. Concerns over flight risk can be ameliorated through Alternatives to Detention (ATD), which help ensure the appearance of asylum seekers in immigration proceedings and are more cost effective.

The rushed nature of expedited review has led to indications that the due process rights of these women and children are being denied and that those with valid claims for asylum may be removed to countries where they could be at risk of persecution. These problems are exacerbated by the obstacles to meaningful access to counsel for families being held in often-isolated detention centers.

We appreciate the administration's efforts to improve conditions at existing family detention facilities. However, the problems that have been documented are indicative of a system that is not working. In the long run, the best way to protect both border security and due process is to implement an immigration detention system that prioritizes public safety risks based on individualized case-by-case review.

Mothers and their children who have fled violence in their home countries should not be treated like criminals. They have come seeking refuge from three of the most dangerous countries in the world, countries where women and girls face shocking rates of domestic and sexual violence and murder. Here in the United States, we have just celebrated the twentieth anniversary of the Violence Against Women Act, a law we hold out as an example of our commitment to take these crimes seriously and to protect all victims. The ongoing detention of women and children who have made credible claims that they have been victims of those very crimes is unacceptable. As outlined above, categorical family detention raises serious concerns. We urge you to reconsider this policy.

Sincerely,



PATRICK J. LEAHY
United States Senator



HARRY REID
United States Senator


DICK DURBIN
United States Senator


CHARLES E. SCHUMER
United States Senator

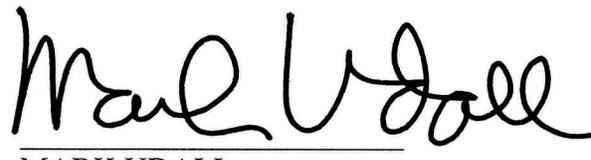

PATTY MURRAY
United States Senator


RICHARD BLUMENTHAL
United States Senator


ROBERT MENENDEZ
United States Senator


MICHAEL F. BENNET
United States Senator


MAZIE HIRONO
United States Senator


MARK UDALL
United States Senator

cc: Cecilia Muñoz, Director of the Domestic Policy Council
Lisa Monaco, Assistant to the President for Homeland Security and Counterterrorism