Family Incarceration, Family Separation and Asylum

The Obama Administration began incarcerating asylum-seeking families in 2014.¹ This practice was challenged in court and led to a ruling in Flores v Lynch,² which limited the government’s ability to incarcerate immigrant children for more than twenty days.

To abide by the twenty-day rule for the release of children but still imprison parents who are seeking asylum, the Trump Administration began releasing children from immigration detention but continued to detain their parents, thereby separating families. A court ruled in another case, Ms. L. et al. v. U.S. Immigration and Customs Enforcement (ICE), et al.,³ that the separation of families in immigration detention was a violation of a parent’s right to family integrity. The Administration, faced with the requirements under Flores and under Ms. L, began charging the parents with crimes instead, taking them out of immigration detention and placing them in criminal detention where they must be separated from their children. This “zero-tolerance” policy was met with strong public outcry. Though most families have been reunited, the harm continues.

Hundreds of families are still separated. The government concludes that these remaining families cannot be reunited but questions loom about whether the government has upheld the due process rights for parents. The Executive Order announced in June to end family separation⁴ contained a plan to criminalize the migration of parents and imprison families together for more than the twenty-day limit in Flores, indicating a further increase in family detention. The separation of families and the insistence on incarcerating asylum-seekers shows a desire to deter asylum-seekers from entering the U.S. at a time when so many need international protection.⁵

Since the separation of families this summer the government has also continued to slow entry at ports of entry, causing many people to wait for days, even months for the chance to approach a border officer and ask for asylum. Coupled with this practice the President announced that those found entering irregularly will be automatically denied asylum. This is not how our asylum law reads. Asylum-seekers may ask for protection regardless of status or the nature of the entry into the U.S. A nation’s asylum laws are only meaningful if they are honored in times of crisis. The U.S. is not honoring it’s promises to the world.

What can be done? Ask your representatives for the following:

- A plan for family reunification that honors due process rights and rights to family integrity for every parent. Challenge any “agreements” that parents who, under the duress of incarceration and separation from their children, made with government officials.

- Oppose an expansion of and urge an end to family detention. Asylum-seeking families must have freedom to access due process, to find lawyers, and to prepare their cases as a family unit.

- Oppose the criminalization of immigration. Make enforcement officers honor asylum law, which allows those seeking protection to ask for asylum, regardless of entry or immigration status.⁶

¹  http://oga.pcusa.org/section/mid-council-ministries/immigration/family-detention/
⁴  https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/
⁵  https://genesisofexodusfilm.com/thefilm/
• Protect the asylum process. Do not place limitations on what is allowed under the Immigration and Nationality Act. Stop imposing wait times at ports of entry that serve to manufacture crisis that make people choose between homelessness and irregular entry into the U.S.

• Ask for the Fair Day in Court for Kids Act. Individuals seeking asylum only have access to an attorney if they can afford one. As a result, 80 percent of detained migrants go without a lawyer. This is true even though immigration proceedings affect a person’s liberty, family integrity, livelihood, and, in cases of asylum and torture, their very lives. The Fair Day in Court for Kids Act would provide a minor improvement by guaranteeing counsel for unaccompanied children, who currently go without representation as well.

Refugee Resettlement

For fiscal years 2018 and 2019, the U.S. government committed to resettling 45,000 and 30,000 refugees, respectively. This commitment was a drastic decrease from the year before when the government committed to 110,000. This slump in resettlement hindered new families from entering the U.S. and drastically slowed the reunification of family members who were separated on their refugee journeys as well. We must continue to ask our government to restore the nation’s humanitarian commitment to refugee resettlement.

Ask your representatives for the following:

• Urge Department of Homeland Security to prioritize the reunification of family members.
• Restore our commitment to refugees by increasing our commitment to 75,000.
• Ask that Congress maintain budgetary commitments for the Office of Refugee Resettlement.

Appropriations

In a time when we have witnessed friends and family torn from our communities and unspeakable harms visited to those only seeking safety at our borders, all in the name of enforcement and rule of law, it is time to question the current funding of these agencies—not to increase it.

Ask your representatives for the following:

• Do not increase the funding of Customs and Border Protection or Immigration and Customs Enforcement. Do not increase the numbers of officers, agents, walls, or detention beds.
• Demand independent monitoring systems for both agencies and the private institutions with which they contract.
• Begin discussions about how to reform the mandate and focus of these agencies. Their blind enforcement and selective application of laws and rights have damaged families, communities, and economies in the interior and the borderlands of the U.S.