

STUDY NOTE
Locking Up Children:
Lessons from the T. Don Hutto Family Detention Center

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I. INTRODUCTION

In December 2006, Anna, a fifteen-year-old immigrant from Lithuania and her nine-year-old sister, Sunny, were taken into custody following a routine immigration hearing.¹ Despite the fact that the girls' American stepfather pled with authorities to keep the girls in his custody, they were transferred with their mother from Illinois to a medium-security prison in Texas.² There, they were placed in prison cells with no privacy.³ They were confused, frightened, and without counsel as they waited to learn their fate; however, they were not alone—the family was greeted by many other immigrant families and children in the same position.

The history of detaining immigrant families together in jail cells is short as the practice is a new development in immigration policy. In 2006, the United States Immigration and Customs Enforcement (“ICE”) opened a detention facility for the express purpose of detaining alien families.⁴ The structure, known as the T. Don Hutto Family Residential Facility (“Hutto”), was converted from a failing medium-security prison, yet continued to look and function as a penal facility.⁵ By March 2007, the structure held approximately two-hundred children, along with their family members,⁶ of which the majority were awaiting asylum hearings.⁷ ICE provided very limited schooling opportunities, forced the children to wear prison garb; and allowed guards—trained to work in the adult prison system—to correct and punish the families.⁸

The Department of Homeland Security (“DHS”), working with private for-profit companies, established the detention center by misusing a congressional mandate where the legislative intent was to ensure immigrant families under such

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¹ AMERICAN CIVIL LIBERTIES UNION, FAMILY PROFILES IN THE ACLU'S CHALLENGE TO THE HUTTO DETENTION CENTER, <http://www.aclu.org/immigrants/detention/28868res20070306.html> (last visited Oct. 27, 2008).

² *Id.*

³ *Id.*

⁴ U.S. Immigration and Customs Enforcement, *The ICE T. Don Hutto Family Residential Facility: Maintaining Family Unity, Enforcing Immigration Laws*, <http://www.ice.gov/pi/news/factsheets/huttofactsheet.htm> (last visited Oct. 13, 2008) [hereinafter *ICE Facility*].

⁵ American Civil Liberties Union, *ACLU Challenges Illegal Detention of Immigrant Children Held in Prison-Like Conditions* (Mar. 6, 2007), <http://www.aclu.org/immigrants/detention/28865prs20070306.html> [hereinafter *ACLU Challenges Illegal Detention*].

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

circumstances would be kept together.⁹ While DHS was successful at keeping the families together, it completely disregarded legislators' demands that non-detention alternatives be implemented first, and detention be used only as a last resort. Unfortunately, congress has since implicitly permitted DHS to violate immigrants' liberty interests and basic human rights by failing to act where clear violations are apparent. Because of congressional inaction through a lack of supervision, guidance, and accountability, DHS has become free to create its own inappropriate policies surrounding immigrant children. Accordingly, these children are locked up and mistreated with little or no supervision from advocates acting on their behalf. Although the American Civil Liberties Union ("ACLU") and other advocacy groups successfully created a settlement agreement relating to Hutto with the DHS, the problem is still not fully resolved¹⁰ since the underlying immigrant detention program remains in force. Therefore, detained immigrant children remain unsupervised and unprotected by the U.S. government.

Consequently, this note will discuss the practice of detaining children in prison-like settings. First, I will explain the history of this practice and the problems inherent in its procedures. Next, I will discuss the need for congressional intervention to correct the problems inherent in locking up children, including: (A) a restatement of Congress's mandate that agencies choose non-detention methods before detention when working with families; (B) requiring hearings before providing additional funding to the program to ensure legal compliance; (C) holding separate congressional hearings to verify that business relationships between agencies and private companies in this program are appropriate and arms-length; and (D) giving more exact guidelines to the involved entities. Finally, this Note will conclude with suggestions on how to accomplish these recommended interventions.

II. HISTORY

Families illegally crossing U.S. borders have long posed a challenge for immigration officials. The government has entrusted two agencies, the DHS and ICE, with the responsibility for protecting the integrity of the nation's borders. While DHS is in charge of national security generally,¹¹ ICE is under the DHS and is its largest investigative arm.¹² Together, these agencies have almost total control of U.S. immigration enforcement and procedure.

Prior to 2001, immigration officials often released illegally-entering families rather than detaining them.¹³ However, following September 11, 2001, the policies

⁹ See H.R. REP. NO. 109-79, at 38 (2006) (Conf. Rep.).

¹⁰ Settlement Agreement at 1, *In Re Hutto Family Detention Center*, No. A-07-CA-164-SS (W.D. Tex. Aug. 26, 2007).

¹¹ U.S. Immigration and Customs Enforcement, *ICE Operations*, <http://www.ice.gov/about/operations.htm> (last visited Oct. 13, 2008) [hereinafter *ICE Operations*].

¹² *Id.*

¹³ *Bunikyte ex rel. Bunikiene v. Chertoff*, Nos. A-07-CA-164-SS, A-07-CA-166-SS, A-07-CA-166-SS, 2007 WL 1074070 at *1 (W.D. Tex., Apr. 9, 2007).

became stricter: “More restrictive immigration controls, tougher enforcement, and broader expedited removal of illegal aliens have made the automatic release of families problematic.”¹⁴ DHS tightened its policy by detaining family groups, separating the adults from the children, and placing children in the Office of Refugee Resettlement’s (“ORR”) custody.¹⁵ “DHS argued this was necessary because alien smugglers had begun ‘renting’ children to travel with illegally entering adults in hopes of passing the groups off as ‘families’ and thus avoiding ‘detention’ under the automatic-family-release policy.”¹⁶ In 2005, Congress called on the DHS to reform its policy of splitting up immigrant families.¹⁷ Congress stated:

Children who are apprehended by DHS while in the company of their parents are not in fact ‘unaccompanied’ and if their welfare is not at issue, they should not be placed in ORR custody. The committee expects DHS to release families or use alternatives to detention such as the Intensive Supervised Appearance Program *whenever possible*. When detention of family units is *necessary*, the Committee directs DHS to use appropriate detention space to house them together.¹⁸

The solution was to convert a failing medium-security prison owned by Corrections Corporation of America (“CCA”) into the Hutto family detention center, which was opened shortly thereafter in 2006.¹⁹ CCA also operated the facility and named it after one of CCAs co-founders.²⁰ CCA used prison guards to watch over the immigrant adults and children.²¹ CCA had little or no experience in running a facility aimed at preserving family unity because, as the fifth-largest prison (corrections) system²² in the United States, it only was experienced in managing adult correctional facilities.

¹⁴ *Id.*

¹⁵ *Id.*; see THE OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP’T OF HEALTH & HUM. SERVICES, FACT SHEET (2007), http://www.acf.hhs.gov/opa/fact_sheets/office_refugee_printable.html (ORR is responsible for caring for unaccompanied alien children until their immigration cases are finalized).

¹⁶ *Id.*

¹⁷ American Civil Liberties Union, *Case Summary in the ACLU’s Challenge to the Hutto Detention Center* (Mar. 6, 2007), <http://www.aclu.org/immigrants/detention/28870res20070306.html> [hereinafter *ACLU Case Summary*].

¹⁸ H.R. REP. NO. 109-79, at 38 (2006) (Conf. Rep.) (emphasis added); see also *Bunikyte*, 2007 WL 1074070 at *1–2.

¹⁹ *ICE Facility*, *supra* note 4.

²⁰ Corrections Corporation of America, *A Quarter Century of Service to the Public Sector*, <http://www.correctionscorp.com/about/cca-history/> (last visited Oct. 13, 2008); see Ralph Blumenthal, *U.S. Gives Tour of Family Detention Center That Critics Liken to Prison*, N.Y. TIMES, Feb. 10, 2007, at A9, available at 2007 WLNR 2644079.

²¹ See *ACLU Challenges Illegal Detention*, *supra* note 5.

²² Kevin Harlin, *Corrections Corp. of America Nashville Tennessee; Feds and States Looking to Private Prisons*, INVESTOR’S BUS. DAILY, May 2, 2007, at A06.

By 2007, the ACLU noticed that the DHS, ICE, and CCA were not operating the facility in a way that protected each immigrant family member's basic human rights.²³ The fact that children's rights were not being monitored became evident through examining the goals of the three organizations exclusively responsible for the administration of the detention centers. DHS's and ICE's missions are to eliminate vulnerabilities in the nation's border and maintain security.²⁴ CCA's goal, on the other hand, is pure profit.²⁵ This raised the concern that Congress's intent to create a more humane management of immigrant families was not being met because all decision-making authority was misplaced in the hands of three organizations whose goals were far removed from basic human rights.

The ACLU claimed the facility not only breached basic human rights, but also violated a settlement in *Flores v. Meese*, which "established minimum standards and conditions for the housing and release of all minors in federal immigration custody."²⁶ The ACLU found instead that, in 2007, authorities were holding approximately two-hundred children at Hutto in prison-like conditions:

[The facility] is still functionally and structurally a prison. Children are required to wear prison garb, receive only one hour of recreation a day, Monday through Friday, and some children did not go outdoors in the fresh air the whole month of December [Children] are detained in small cells for 11–12 hours each day where they cannot keep food and toys and they have no privacy, even when using the toilet.²⁷

In March 2007, the ACLU helped bring a lawsuit against Michael Chertoff, Secretary of DHS, along with six officials from ICE, charging that "children are being imprisoned under inhumane conditions while their parents await immigration decisions."²⁸ This lawsuit ultimately settled in August 2007.²⁹ Significantly, the settlement provided DHS and ICE with a legal mandate to modify Hutto to be more suitable for the children being detained there.³⁰

Following the initial court filings, CCA made improvements to Hutto. "Children [were] no longer required to wear prison uniforms and [were] allowed much more time outdoors. Educational programming [was] expanded and guards [were] instructed not to discipline children by threatening to separate them from

²³ See *ACLU Challenges Illegal Detention*, *supra* note 5.

²⁴ *ICE Operations*, *supra* note 11.

²⁵ Blumenthal, *supra* note 20. Blumenthal notes that in the eight months following the inception of the Hutto project, for example, CCA's stock prices doubled and the company began earning \$2.8 million per month from the federal government to manage this facility, which was previously empty and brought in no revenue. *Id.*

²⁶ *ACLU Case Summary*, *supra* note 17.

²⁷ *ACLU Challenges Illegal Detention*, *supra* note 5.

²⁸ *Id.*

²⁹ See Settlement Agreement, *supra* note 10 at 2.

³⁰ *Id.*

their parents.”³¹ Under the settlement agreement, the court ordered further changes and required the facility to be reviewed by the magistrate judge in the case three times over the next two years.³² Other improvements included, but were not limited to: greater mobility within the facility, toys for the children, privacy curtains for showers and toilets, structural improvements such as porcelain fixtures (rather than metal) and wood doors (rather than bars), unlimited family time together during the day, a healthier dietary plan, schooling, arts and crafts, field trips, access to standard street clothing, free access to a library and books, and a more adequately-trained staff (including mental health professionals, dentists, and doctors) who are fluent in Spanish when possible.³³ However, although the ACLU and its partners were able to secure substantial benefits for families detained at Hutto through the settlement agreement, the problem is far from resolved. Congress must step in to protect detained immigrant families by creating an adequate remedy that prevents future misapplications of their legislation.

III. CONGRESS SHOULD ACT TO DISCONTINUE ABUSES BY IMMIGRATION AGENCIES

Following the Hutto agreement, the DHS and ICE have still not been held accountable for continuing to violate Congress’ mandate to use alternative methods to detention “whenever possible,”³⁴ Instead, ICE has continued to request new family detention centers. In May 2008, for example, ICE solicited bids for three additional family detention facilities to be built around the country.³⁵ This practice shows that, although twenty-six children were released as part of the Hutto settlement, many more children are very likely to be detained in the near future. Further, the program also lacks adequate oversight. If DHS insists on choosing detention before alternative methods when dealing with immigrant families, then more oversight is needed. Currently, aside from the ignored congressional mandate, there is little or no guidance from lawmakers. Agency officials, therefore, are allowed to fulfill the mandate in an illegal manner without accountability.

Those skilled at working with or advocating on behalf of children must be added to the equation. It is not acceptable for border security (DHS and ICE) and monetary profit (CCA) to be the only two goals represented in the government’s immigration program.³⁶ Congress should ensure that the families’ interests are also represented. Congress is the arm of government responsible for protecting families by creating clear, constitutionally-sound laws based on public policy that the state can properly enforce, but legislators have remained silent on these issues.

³¹ American Civil Liberties Union, *Landmark Settlement Announced in Federal Lawsuit Challenging Conditions at Immigrant Detention Center in Texas* (Aug. 27, 2007), <http://www.aclu.org/immigrants/detention/31469prs20070827.html>.

³² Settlement Agreement, *supra* note 10, at 6.

³³ *Id.* at Exhibits B & C.

³⁴ H.R. REP. NO. 109-79, at 38 (2006) (Conf. Rep.); *see also* *Bunikyte*, 2007 WL 1074070 at *2.

³⁵ Anna Gorman, *Family Detention Sites in Works*, L.A. TIMES, May 18, 2008, at 22, *available* at 2008 WLNR 9388378.

³⁶ Blumenthal, *supra* note 21; ICE OPERATIONS, *supra* note 12.

Congress need only look to America's recent history to remember the importance of carefully administering a program that has the potential to improperly imprison people for non-compelling reasons. On February 19, 1942, Americans began an internment program that would eventually detain over 120,000 Japanese Americans based on intense wartime fears.³⁷ Eventually, in 1976, President Gerald Ford recognized this type of imprisonment was "wrong."³⁸ However, America's responsibility for that mistake did not end with President Ford's apologetic statement. In 1980, a committee "composed of former members of Congress, the Supreme Court, and the Cabinet . . . unanimously concluded that the factors that shaped the internment decision were racial prejudice, war hysteria, and a *failure of political leadership*, rather than military necessity."³⁹ Not only did this program injure our nation's integrity—in regards to our fundamental truths of freedom and humanity—but it also cost our country a large sum of money. In an attempt to repair the damage, the federal government paid approximately \$1.6 billion in 1988 to the families affected by the misguided detention program.⁴⁰ As realized by President Gerald Ford in 1976, by the Supreme Court, Congress, and the Cabinet in 1980, and by President Ronald Reagan in 1988, Americans must be highly skeptical of detention programs based on fear and prejudice which deny people their basic human rights.⁴¹

Now, in order to guarantee human-rights standards in the United States, and that children are not being detained illegally, Congress must take affirmative action to bring this program under control. Thus, in the following sections, I propose several steps that Congress should take to guarantee proper legal administration of this system. U.S. legislators should provide a Congressional restatement of their position reaffirming that the least-restrictive means should be used when dealing with illegal immigrant families. Next, to monitor agency compliance, Congress should hold hearings before granting additional funds to DHS for family detention centers. To verify the legality of relationships between the government and private companies, Congress should require hearings to probe whether improper business relations exist between DHS, ICE, and private companies while they establish family detention centers. Lastly, Congress should establish clear guidelines and

³⁷ Geoffrey R. Stone, *Civil Liberties v. National Security in the Law's Open Areas*, 86 B.U. L. REV. 1315, 1324 (2006); Tim Eigo, *Justice: Denied and Remembered*, ARIZ. ATT'Y 60, 60, (Oct. 2008). In 1944, the U.S. Supreme Court affirmed the conviction of Fred Korematsu, a Japanese American, for violating an order based on the Executive Order No. 9066, 7 Fed.Reg. 1407, which limited Japanese American's mobility because government officials feared espionage. *Korematsu v. United States* 323 U.S. 214, 215 (1944). In its affirmation of the procedure, the court stated "hardships are part of war, and war is an aggregation of hardships." *Id.* at 195. Fifty-four years later, President Bill Clinton awarded Korematsu with the Presidential Medal of Freedom. Daniel F. Tritter, *In the defense of Fred Korematsu: Vox Clamantis in Deserto Curiarum*, 27 T. JEFFERSON L. REV. 255, 307 (2005). In his acceptance speech, Korematsu stated that "we should be vigilant to make sure this will never happen again." *Id.*

³⁸ Stone, *supra* note 37, at 1324.

³⁹ *Id.* (emphasis added).

⁴⁰ Eigo, *supra* note 37, at 60.

⁴¹ Stone, *supra* note 37, at 1324.

methods to instruct DHS on acceptable procedures for dealing with detained immigrant families.

A. Restate Congressional Intent

The first line of defense against this improper program should be Congress' restatement of the mandate, which DHS and ICE must follow. The statement should remain consistent with previous guidelines and include three previously stated elements: (1) ICE has authority to release immigrant families when appropriate; (2) ICE should use non-detention methods as a preference; and (3) ICE should only detain immigrant families when absolutely necessary, in appropriate detention spaces.⁴² It is important that this statement be identical to previous statements to prevent any confusion and to maintain the integrity of the mandate.

There is very little reason for U.S. legislators to resist reiterating this statement. They have clearly stated their position a number of times before.⁴³ There may, however, be some thrust for lawmakers to adjust their statement or make it fall in line with the actions that DHS has already taken (for instance, Congress could make detention the primary option when holding immigrant families to support DHS's previous actions in acquiring these types of facilities). This is not advised because Congress should not lessen its mandate to accommodate the current, faulty program. Congress' original mandate was clear, concise, and provided a strong guideline for fairness and human rights while maintaining adequate flexibility for agencies.⁴⁴ It is DHS who is culpable for choosing an improper method, and Congress should not adapt to sustain DHS's poor decision-making. Instead, Congress should hold DHS and ICE to the goals included in the original statement. Presenting an identical statement would strengthen Congress' position by reinforcing that it was originally right, and that Congress is standing by its original decision and demanding compliance. This affirmative statement would express, on the record, Congress' disapproval of agency action that uses detention as a first resort. This statement would also strengthen the position of future litigants and provide an incentive for agencies to conduct themselves in the manner intended by Congress.

B. Conduct Hearings and Reviews before Providing Additional Funding

Because DHS and ICE are expanding the number of family detention programs nationally,⁴⁵ and likely requesting more money to do so, Congress should closely evaluate these requests and insist that any resources provided be allowed

⁴² H.R. REP. NO. 109-79, at 38 (2006) (Conf. Rep.).

⁴³ *Id.*; see, e.g., 151 Cong. Rec. E1025-01 (2005), available at 2005 WL 1185446, E1025; 153 Cong. Rec. S10230-01, S10241 (2007), available at 2007 WL 2176790; *ACLU Case Summary*, supra note 17.

⁴⁴ H.R. REP. NO. 109-79, at 38 (2006) (Conf. Rep.).

⁴⁵ *Id.*

only for programs that fall under the previously-discussed congressional mandate.⁴⁶ If programs do not meet the mandate's standards, Congress should deny funding and require DHS to change so that it comes within the legislative mandate.

This solution is quite strong, and may require that Congress make difficult decisions regarding DHS's and ICE's plans. In fact, if DHS and ICE are unable to provide adequate reasoning for their programs during this phase, then these plans may need to be revised or totally abandoned, which would cause the loss of money already invested in the programs. Further, there is certain to be pushback from large companies profiting from these programs who are sure to argue against the lost wages and interference into small town economies.

Although this solution may cost agencies, the companies, and possibly local town revenue, Congress is not justified in knowingly funding any program that violates people's rights. If Congress does provide funding for a program that violates human rights, the price will far exceed any amount that is incurred by this solution. The fact that fixing these programs is likely to be extremely expensive and cost taxpayers and towns money in anticipated revenue is evidence that the programs should be halted in their infancy. It will be far more economically devastating to see these programs continue; to see buildings purchased and staff hired, only to have a court determine the programs are being illegally managed or maintained. If Congress corrects the programs (by requiring strict compliance initially), it is being fiscally responsible in cleaning up a difficult situation. Therefore, Congress must strictly press agencies through mandatory hearings before providing resources to fund any program that potentially affects the rights of immigrant children.

C. Conduct Hearings into Improper Business Relations between Private Entities and Government Agencies

To further protect immigrants from the misadministration of a sensitive program, Congress should investigate the business dealings behind Hutto to verify that private entities are not improper benefactors of the program. It is imperative that agencies implement Congress' decisions to benefit American public policy, not private interests. This note is not suggesting there was indeed corruption, however, there was a lot of money involved and there was clearly room for problems to arise. Further, there are suspicious facts from the Hutto case, which suggest that decisions were made to benefit a private entity rather than to protect American borders.⁴⁷ Thus, it is Congressional representatives' responsibility to

⁴⁶ See NCSL Human Services and Welfare Committee, National Conference of State Legislatures, *HHS Announces That All States Receive Child Support Incentive Awards; Fourteen States Also Receive Penalties* (Nov. 18, 2003), <http://www.ncsl.org/statefed/humserv/cs incentive.htm> (providing an example where Congress has stated guidelines and expectations and conditioned funding upon strict compliance).

⁴⁷ Such concerning facts include inappropriate ties between advocates and decision-makers in the process. One example is Philip Perry. Mr. Perry is the son-in-law of Vice President Dick Cheney. He served as General Counsel for the Department of Homeland Security and lobbied for CCA while he was an attorney at Latham & Watkins. He also served as General Counsel at the Office of

address this issue; accordingly, an inquiry into the actual workings and benefactors of DHS' family detention program is highly recommended.

D. Establish Non-Detention Methods as the Proper Solution to Working with Immigrant Families

It is Congress' duty to clearly express its goals and give clear guidance on how to achieve them. This is especially true where an agency, such as DHS, has proven that it does not understand Congress' intent. Therefore, Congress should clarify the requirements for working with detained immigrant families, and give specific guidelines and instructions for DHS and ICE to follow.

So immigration agencies can fully comply with Congress' mandate to protect immigrant families, Congress should explicitly state the standards governing each of the three options provided in its mandate. The first option stated is to release the family. Congress should use a very strict standard for this option. As ICE is likely to agree, catching and releasing illegal immigrants into our cities and towns is not a suitable procedure. Given the heightened security risks since September 11, 2001, such releases would be ill-advised except under the most ideal of situations (for example, when a trustworthy family has demonstrated continued respect and diligence to immigration proceedings and processes). The second option, utilizing non-detention alternatives, should remain Congress' preferred method. To establish this method as the default option, Congress should provide that alternative options to detention must be used unless an agency can proffer a compelling reason for detention based on the particularized facts of the case. This would establish Congress' least-restrictive preference as the primary method because it would place the burden of proof on the agency before allowing detention. It is important to note here, that the agency would retain the flexibility and authority to detain immigrant families; Congress would allow agencies to hold families as long as they had a valid reason for choosing that method over the preferred option of non-detention. In setting the median option as the preferred method, and enforcing it by placing the burden of proof on the agency, Congress would ensure effective implementation of the best possible plan for working with illegal immigrant families.

Choosing alternative methods of monitoring illegal immigrant families instead of detention is preferred because these methods use fewer resources and tend to violate individual liberties less than detention centers. Detaining one individual costs approximately \$95 a day.⁴⁸ Under this method, ICE is paying

Management and Budget, giving him oversight of discretionary payments to CCA. *See*, Stephanie Mencimer, *Texas hold'em: the Lucrative Business of Locking up Immigrants*, MOTHER JONES 56, 56 (Jul. 1, 2008); Adam Zagorin, *Scrutiny for a Bush Judicial Nominee*, TIME, Mar. 13, 2008 at A3, available at <http://www.time.com/time/nation/article/0,8599,1722065,00.html>; Latham & Watkins LLP, Philip J. Perry Partner Biography, <http://www.lw.com/Attorneys.aspx?page=AttorneyBio&attno=02162> (last visited Oct. 13, 2008).

⁴⁸ Scott Lewis & Paromita Shah, *Detaining America's Immigrants: Is This The Best Solution?*, http://www.fcni.org/pdfs/civ_liberties/DetainingAmericasImmigrants.pdf at 1 (citing Meredith Kolooner, *Immigration Enforcement Benefits Prison Firms*, N. Y. TIMES, July 19, 2006 at D1).

approximately \$11,400 a month to detain a family of four. There are surely alternative methods that could accomplish the DHS and ICE's goals at a less expensive rate. For example, if ICE were to rent the family a home at the price of \$1,500 a month, a nice home to be sure, the family (often impoverished with no income or anywhere else to go) is likely to stay put. This of course is an oversimplified example, but it does show the flexibility available in crafting non-detention alternatives. It also shows that an argument regarding lack of government resources to implement such a program is hardly acceptable given the high cost that detention demands. On the other hand, even if humane methods were more expensive than detention—which they are not—expense should not be a factor when children's rights are being violated. No matter the cost, no program is acceptable if it violates the fundamental right of a child's freedom. A more obvious and well-considered plan, which better serves the safety of the American people while maintaining the privacy and dignity of immigrant families, would easily come under the price we are currently paying for detention.

The plan should be comprehensive and adequately address the many problems that arise when working with immigrant families, including: legal proceedings, flight risk, poverty, language barriers, etc. Such a plan should include a caseworker for each family, ankle bracelets on adults for tracking purposes, subsidized housing to help families remain nearby until their proceedings are complete, interpreters to ease the process, health insurance for all family members, and legal advocates to work on behalf of the family.

The counterargument to such a plan is clear. ICE would likely argue that these families are being rewarded for entering America illegally. It is important to note here that it is not ICE's responsibility to make such a judgment call. Congress has stated that these families must be dealt with in efficient and humane ways, and that alternative methods to detention are preferred.⁴⁹ These families should be kept together. Their cases should be handled as thoroughly and efficiently as possible while maintaining the integrity of American values of freedom and humanity.

Therefore, because it is less expensive and has a far lower propensity to violate children's rights, Congress should establish a clear preference for utilizing non-detention alternatives when working with immigrant families. This element would be met if the agency could provide a compelling reason for choosing detention. If simple release is chosen, the agency should show that the family was in good standing and could be trusted. Either piece of evidence should be shown on an individual basis and should not be the justification for a broad policy favoring one of the secondary options.

IV. CONCLUSION

Congress has directed the DHS to ensure that immigrant families are treated fairly by keeping families together, using alternative methods when working with

⁴⁹ See H.R. REP. NO. 109-79, at 38 (2006) (Conf. Rep.); see also *Bunikyte*, WL 1074070 at *1–2.

immigrant families, and by using detention as a last resort. The DHS and ICE used this mandate to immediately start holding entire immigrant families. The DHS and ICE are not working with other government agencies which are accountable to the Constitution or a voting body, but rather with private companies whose first and only motive is profit. Nowhere in the equation are the fundamental rights of the immigrant families being protected. This is especially true when considering the vulnerable immigrant children whose rights are being infringed upon. Congress continues to support the efforts of mass detention by providing funding, despite DHS' clear abuse of power and misconstruction of a congressional mandate.

It is Congress' duty to maintain the integrity of the projects it is supporting. It is inconsistent for Congress to send a mandate to protect immigrant families and children and incarcerate them only when no other solution exists and then, at the same time, send millions of dollars into private industries to build facilities that make grand scale incarceration possible. It is further irresponsible for Congress to allocate such money without providing for adequate oversight into its use, especially when the use so clearly has a slippery slope towards the violation of children's rights. Accordingly, Congress should take a stand and mandate specific rules and guidelines for the detention of immigrant children and families.