UPDATE: Asylum-Seeking Parents Confront Sophie's Choice

ICE decision deadline postponed: Family separation versus coronavirus exposure.

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Update: The day we published this article, a federal judge in California extended Judge Dolly Gee’s deadline, giving Trump & Co. 10 more days to ponder the fates of 366 migrant children -- until July 27. Those children have been detained with their parents already for far more than the 20 days allowed by the 1997 Flores Settlement Agreement. This frustrates both families and human rights advocates alike, who have been raising concerns about the growing coronavirus cases among immigrant detainees for months.

On the upside, it gives us more time to demand that ICE #FreeThemAll! At issue is this: Judge Gee, who oversees government compliance with the Flores settlement, can only hold sway over what happens to the kids in U.S. custody, not the parents. We MUST convince ICE to release the kids AND parents, too, otherwise it’s family separations all over again. And that can only lead to tragic results, for one and all.

In May 2020, officials at the three US Immigration and Customs Enforcement (ICE) detention centers that incarcerate families offered parents a choice: Continue to keep your kids locked up with you, where they are exposed to the coronavirus; or agree to have them released, alone, and placed in the custody of the Department of Health and Human Services (HHS).

ICE family detention centers hold inmates in open-floor plan suites with multi-person cells whose residents share the same toilet, sink and living area. Social distancing is impossible. And the basics for containing the virus, like soap, masks, and hand-sanitizer, have been in short supply in facilities where ICE employees are known not to take precautions.

As a result, ICE detention centers are now swimming in COVID-19 cases.

ICE has the discretion to release inmates that do not pose a threat to society or a flight risk, so it could have freed both adults and children by now. But instead, the agency gave detained parents a Sophie’s Choice: Keep your children with you in prison, condemning them to possible illness, maybe even death; or let the kids go.

In other words, choose to self-separate.

Children released from detention, however, are labeled “unaccompanied minors” by the Trump administration and passed to the Office of Refugee Resettlement (ORR). If there is no parent or “other relative” in the US willing to receive them, their fate will reside with ORR. They may be placed in child “shelters” where COVID is also a risk; and their parents may never see them again.

The Trump administration, which has systematically been deporting released detainees and new migrant arrivals in middle-of-the-night flights throughout the pandemic, has not committed to allowing the children to remain in the US or to seek asylum.

So the world looked to Judge Dolly Gee, of California’s Central District, for an answer.

As both a lawyer and a judge, Gee has been a vocal advocate for immigrants. She has been critical of both the Trump and Obama administrations for detaining families. She’s called conditions at family detentions centers “deplorable and unsanitary,” while affirming that the 1997 Flores Agreement prohibits the indefinite detention of children, even in the company of their parents.

As June 2020 came to a close, Judge Gee ruled that ICE must let the kids go by July 17th. That’s tomorrow. But she left it up to ICE to decide whether to release them with their parents or not. And ICE doesn’t appear to be budging.

That means that despite the fact that not one of the 366 families in ICE family detention agreed, back in May, to separate from their children, the Trump administration may be splitting up families again as of tomorrow.

Lawyers and human rights advocates are calling it Family Separation 2.0. But by my count they’re up to 6.0 by now…at least.

Separations of immigrant families started with kids surging across the US Southern border in 2013/14, sent by parents desperate for them to escape the gang violence and persecution caused by decades of no good, really bad US foreign policy in the region. That was Family Separation 1.0.

Then Trump & Co started ripping children out of the arms of their parents in Summer 2017, although the practice wasn’t made public until Spring 2018. Family Separation 2.0.

While that ended by executive order in June 2018, Trump & Co didn’t stop separating families. They just did it covertly. Family Separation 3.0.

Then Trump & Co’s Migrant “Protection” Protocol--which doesn’t protect anyone at all--killed the right to asylum in the US. When parents realized they were trapped in squalor and in danger in tents and shelters all along the US/Mexico border, some made the torturous choice of sending their kids across the border without them. Family Separation 4.0.

But Trump & Co just threw those kids into detention centers, deprived them communication with their parents, and used many of them as bait to locate and deport their undocumented relatives. Family Separation 5.0+.

Now comes the latest Trump & Co tactic: to guilt parents in ICE family detention into “saving their kids” from COVID-19 by releasing them into the “care” of ORR, where they will no longer have the right to decide with whom their children are placed or if they are allowed to remain in the US at all. Family Separation 6.0.?

Most of the families currently locked up by ICE arrived lawfully at a US Port of Entry and requested asylum per their International Right. They are not criminals. They do not pose a threat to society. They are not a flight risk. They should be freed, parents and children together, and allowed to go live with their sponsors.

Those who crossed into the US by river or desert committed a misdemeanor crime equal to the crime of jaywalking. When is the last time you jaywalked? Have you ever been stopped and punished for such a crime? Do you agree that you should be incarcerated and run the risk of having your kids taken away for a misdemeanor?

I didn’t think so.

#BeOutraged. Call your representatives today. Tell them to tell ICE to #FreeThemAll because #FamiliesBelongTogether. #AsylumIsNotACrime #RestoreAsylumNow

Here’s what you can do:

\* Join the Raices series of phone-banking parties this week (with celebrity guest appearances!) to call on Congress & ICE to #FreeThemAll #SafeAndTogether. Sign up here.

\* Follow the Raices Facebook page to stay updated on the subject; they are organizing webinars, protests and other related events.

\* Help us flood their offices with phone calls and mail:

South Texas Family Residential Center, San Antonio Field Office, 300 El Rancho Way, Dilley, TX, 78017. Phone: (830) 378-6500

Berks County Residential Center, Philadelphia Field Office, 1600 Callowhill St., 6th Floor Philadelphia, PA 19130. Phone: (215) 656-7164

Karnes County Residential Center, San Antonio Field Office 409 FM 1144 Karnes City, TX, 78118. Phone: (210) 283-4750