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Freedom from Detention for Central American Refugee Families

By Jennifer Moore

OUP Blog
August 17, 2015



August 19th is [World Humanitarian Day](#), declared by the UN General Assembly in 2008, out of a growing concern for the safety and security of [humanitarian workers](#) who are increasingly killed and wounded in direct military attacks or [infected by disease](#) when helping to combat global health pandemics. World Humanitarian Day is an occasion to express our solidarity with the tens of thousands of humanitarian professionals and volunteers who serve and sacrifice on behalf of war- and disaster-affected communities. It is also our opportunity to stand with the tens of millions of the world's citizens who are the direct victims of armed conflict, human rights abuses, and environmental disasters.

As a response to conflict and insecurity throughout the world, humanitarian action is grounded in the tenets of international humanitarian law. The [foundational principles](#) are humanity, the alleviation of suffering, distinction, the protection of civilians, and proportionality and necessity, the use of military force only sparingly and as a last resort. These customary principles find expression in the four Geneva Conventions of 1949, ratified by the United States, particularly [Common Article 3](#), which requires the humane and non-discriminatory [treatment of civilians](#), detained persons, and wounded combatants.

The principles and treaty provisions of international humanitarian law combine with international refugee law to affirm the dignity, agency, wellbeing and legal personality of all individuals confronted with violence and forced displacement in time of war or peace. The US Congress enacted the 1980 Refugee Act to establish procedures for granting asylum to individuals with a well-founded fear of persecution consistent with US obligations under the [1967 Protocol](#) relating to the Status of Refugees.

Since the summer of 2014, thousands of mothers and children fleeing gang, cartel, and domestic violence in Honduras, El Salvador, and Guatemala have been [detained in Texas and Pennsylvania](#), in corporate detention centers under contract with the US Department of Homeland Security, as they pursue their asylum claims in Immigration Court. Initially, most of the arriving moms and kids were detained in Artesia, New Mexico, until December of 2014, when they were transferred to Texas and re-interned, along with hundreds of newly arriving families, in two family immigrant detention centers in the San Antonio area – Karnes managed by [GEO Group](#), and Dilley by the [Corrections Corporation of America](#) (CCA).

Over the past 12 months, the plight of [detained mother and child asylum-seekers](#) from Central America has been met with a groundswell of community solidarity with the families as refugees with bona fide claims to protection from persecution. The painful experiences of these families, at home, in flight, and in detention, has led to mounting interfaith and grassroots opposition to the internment of mothers and children in jail-like facilities with inadequate medical care amid mounting [evidence of child endangerment and maternal trauma](#). At the same time, non-profit immigrant service agencies such as [RAICES](#) of San Antonio and national lawyers groups such as the [American Immigration Lawyers Association](#) (AILA) have brought [volunteer lawyers and law students](#) into the detention centers, to assist the mothers in their initial interviews with asylum officers, and with their [bond and asylum hearings in Immigration Courts](#).

Litigation filed at the federal level has led to [two important rulings by federal district court judges](#) this year, the first in February rejecting the Administration's claim that the families are presumptive risks to national security; and [the second in July](#) finding the detention of children in closed facilities to be a violation of the [1987 Reno v. Flores consent decree](#) on the protection of migrant youth.

Despite community activism, hunger strikes, [suicide attempts on the part of mothers](#), and Judge Dorothy Gee's most recent finding that the government is in violation of the Flores settlement, the [Obama Administration continues to maintain](#) that the internment of asylum-seeking families in private detention facilities is a viable policy. The Administration's position with regard to Flores flies in the face of the government's release of hundreds of mothers and children since Judge Gee's ruling, and the June [2015 statement of Homeland Security Secretary Jeh Johnson](#) that the long-term detention of immigrant families should be discontinued.

As an American looking forward to 19 August, I am mindful of the humanitarian community volunteers and advocates working on either side of the US-Mexico

border who demand due process and equal protection for Central American asylum seekers, and to all Americans regardless of descent. Our US elected officials also have a humanitarian role to play. How will they observe their obligations under international and US refugee law on World Humanitarian Day?

Jennifer Moore is Professor of Law at the University of New Mexico School of Law, where she has been a member of the faculty since 1996. She served as Associate Protection Officer for the UN High Commissioner for Refugees in Conakry, Guinea and Washington, DC prior to entering law teaching. Professor Moore received her JD from Harvard and taught International Law as a Fulbright Senior Scholar at the University of Dar es Salaam in Tanzania. She is the author of Humanitarian Law in Action within Africa.

Image credit: McAllen, TX, USA - July 8, 2014: A volunteer member of a Catholic Charities Disaster Response Team talks with a Central American refugee mother and child at the intake and orientation table of the reception hall of the Sacred Heart Catholic Church. (c) vichinterlang via iStock.

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