Video of Obama-appointed lawyer defending the denial of child detainees soap, toothpaste sparks outrage

Joe Williams
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A video demonstrating the viciousness of the US government's bipartisan war on immigrants went viral last week, eliciting outrage from the public and provoking an avalanche of angry responses on the internet.

Justice Department attorney Sarah Fabian argued before a three-judge panel of the Ninth Circuit last week that it is legal for Customs and Border Protection (CBP) to deny children in detention soap, toothpaste, blankets, and a place to sleep for days or weeks on end.

The video of Fabian's arguments demonstrates the bipartisan character of the war on immigrants, which is being carried out just as ruthlessly by Democrats as by Republicans. In fact, the case featured in the viral video was filed in 2017, seeking to remedy abuses that occurred under the watch of Democratic President Barack Obama.

Since being appointed to the Justice Department's Office of Immigration Litigation by the Obama administration in 2011, Fabian, a registered Democrat, has carved out a niche for herself in specializing in defending all manner of sadistic child abuse by American immigration agencies.

In 2015, she defended the Obama administration when it was sued for detaining families with children for prolonged periods of time in facilities that were not licensed or equipped to accommodate children on the basis that it would deter other children and families from immigrating.

The next year she argued a case nearly identical to the one now in the headlines, in which children were denied basic hygiene items like soap and toothpaste. Also like the current case, children were given foil blankets that provided little insulation as they slept on cold, concrete floors with bright lights shining 24 hours per day, in temperatures that dropped below freezing at times.

Fabian argued at that time that meeting immigrant children's basic needs would only encourage them to take advantage of the government's generosity: "To find otherwise would allow Plaintiffs to use the Agreement to require any number of conditions at CBP facilities that were never intended to be covered by this Agreement."

Now making the same arguments on behalf of the Trump administration, Fabian justified denying young detainees the essentials of life by explaining that a 1997 consent decree requiring the government to provide children in custody "safe and sanitary" accommodations did not specifically enumerate them.

She was frequently interrupted by the justices, who expressed disbelief at the arguments put before them. "Are you really going to stand up and tell us that being able to sleep isn't a question of safe and sanitary conditions?" US Circuit Judge Marsha Berzon asked.

Fabian expressed concern that "any number of things" might fall under the rubric of "safe and sanitary" if the government started down the slippery slope of giving a child a blanket thick enough to prevent hypothermia.

Unable to contain his bewilderment, Senior Judge A. Wallace Tashima, a survivor of the World War II Japanese American internment camps, exclaimed "To me it's more like it's within everybody's common understanding: If you don't have a toothbrush, if you don't have soap, if you don't have a blanket, it's not safe and sanitary."

When Fabian, after a moment of hemming and hawing, acknowledged that one could argue that soap and toothpaste may be necessary components of hygiene, Tashima cut her off, saying "What are you saying, 'may be?' You mean, there's circumstances when a person doesn't need to have a toothbrush, toothpaste and soap? For days?"

The online reaction was a swift and brutal, expressing the working class' compassion for immigrants, which is rooted in the objective relationship between immigrants and the broader working class of which they are a part. Some comments on various YouTube pages sharing the exchange are worth quoting:

· "This has literally broke me down into tears, I can't believe this is happening and is being made ok." - Ashley R.

· "Our allies really need to sanction us in the US for this."

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- Rebecca Phillips

· “Next the children won’t deserve toilet paper because the administration believes they’re all animals.” - Lily Dale

· “I agree with everybody, this is crazy but… The lady knows she is supporting an untenable position. She’s been sent to argue the party line and she’s trying… In spite of how insane it is, to argue that position. Either that, or she really is as awful as the administration she represents.” - Ralph Livingston

Before being hired by the Obama administration, Fabian worked at the firm of Kirkland and Ellis, which was found to be one of the most politically conservative major law firms in America in a study published by the *Journal of Legal Analysis* .

Other lawyers employed by the firm have included the Trump appointed Supreme Court Justice Brett Kavanaugh, failed Reagan Supreme Court nominee Robert Bork, Clinton impeachment investigator Kenneth Starr, current Attorney General William Barr, war-hawk and National Security Advisor John Bolton, and George W. Bush’s special envoy for human rights in North Korea, Jay Lefkowitz.

Kirkland and Ellis represented BP in the wake of the 2010 oil spill in the Gulf of Mexico, and won the summary judgment ruling in favor of BP that it had no duty to report the Deepwater Horizon oil spill under the US Emergency Planning and Community Right-to-Know Act. The list of other attacks on the working class carried out by Kirkland and Ellis includes being retained to defend Volkswagen after the emissions scandal was exposed in 2015, and General Motors when the ignition switch scandal resulted in at least 124 deaths in 2014.

After several days of being pilloried online, Fabian attempted to dismiss the withering criticisms of her by posting a lengthy and self-absorbed letter on Facebook in which she took no responsibility for her actions, and even tried to portray herself as a defender of humanitarian values. She even put forward the same “just following orders” defense that Nazi officers unsuccessfully proffered at Nuremberg.

Fabian insisted that her position that children do not need soap, toothbrushes, sleep, or above-freezing temperatures a “technical legal argument” that would not be worth “parsing out.”

“I personally believe that we should do our very best to care for kids while they are in our custody, and I try to always represent that value in my work,” she glibly declared after working to ensure the opposite outcome.

Significantly, this is the second time in the past year that a Trump administration official has invoked this defense to justify their participation in the mass internment and systematic abuse of immigrants and asylum seekers. Appearing on Tucker Carlson’s Fox News program in June of last year, Immigration and Customs Enforcement (ICE) acting director Thomas Homan declared, without appearing to sense the rich irony, that “it’s an insult to the brave men and women of the border patrol and ICE to call law enforcement officers Nazis. They are simply enforcing laws enacted by Congress.”

It is important that workers not be led astray and think that the challenges facing the working class are posed by the individual characteristics of people like Fabian or her current employer, Donald Trump. In fact, this episode proves that workers confront an entire political system which is arrayed against them, in which both big business parties are in fundamental agreement.

As a Democrat appointed by the Obama administration, Fabian has been tapped by the right wing, fascistic Trump Administration to wage a despicable and cowardly legal battle against children fleeing from poverty and violence caused American imperialism. The video of Fabian has gone viral less than three months after Trump withdrew Ron Vitiello as his nominee to head up ICE and replaced him with Obama’s head of the Border Patrol, Mark Morgan. Trump explained his decision to choose the Obama appointee saying he “wanted to go in a tougher direction.”

The war on immigrants is being waged to divide the working class. A system of concentration camps has been erected throughout the United States that can be used to round up socialists and dissident workers as the US continues its collapse into authoritarianism.

The popular revulsion instigated by the video of Fabian is an expression of the popular sympathy for immigrants, which finds no expression in the political system. Workers must take action to protect their brothers and sisters by forming defense committees in their neighborhoods, at schools and at workplaces to safeguard immigrants and mobilize the working class against the bipartisan assault on democratic rights.

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