WOMEN'S REFUGEE COMMISSION
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BACKGROUNDER

The *Flores* Settlement and the False Choice Between Family Detention and Separation

What is the *Flores* Settlement and why is it relevant now?

The 1997 *Flores* Settlement Agreement (*Flores*) sets national standards regarding the detention, release, and treatment of all—both unaccompanied and accompanied—children in immigration custody and underscores the principle of family unity. It requires that 1) children be released from custody without delay and preferences release to a parent, and 2) where they cannot be released because of significant public safety or flight risk concerns, children must be held in the least restrictive and an appropriate setting; generally, in a non-secure facility licensed by a child welfare entity.

In June 2020, the judge presiding over the *Flores* case ordered Immigration and Customs Enforcement (ICE) to release children from family detention facilities given the risks they face due to the COVID-19 pandemic. However, given that *Flores* applies only to children, it is up to ICE to either 1) release children together with their parents, 2) force parents to "choose" to remain detained while their children are released to a sponsor, or 3) force parents to waive their children's *Flores* rights and remain detained together.

Does *Flores* require family separation or family detention?

No. *Flores* sets out requirements on the treatment of children in U.S. immigration custody, calls for their reunification with family or sponsors, and emphasizes that detention is harmful to children. *Flores* does not require separation from their parents or legal guardians, nor does it require their detention together.

In fact, *Flores* requirements mean that children detained in any of the existing ICE family detention facilities should be released after no more than 20 days, because family detention facilities **do not comply with *Flores* requirements** for what custody for children must look like. And while *Flores* does not directly address family separation, it does prioritize the release and reunification of children with family. The American Academy of Pediatrics and other medical and mental health professionals have emphasized that both detention and separation causes harm to children, and courts have discouraged family separation.

Since *Flores* requirements do not directly apply to the parents of children, the government has refused to release children together with parents and is using Flores to try to force parents into an impossible choice. **When the government offers a parent the "choice" to be separated while their child is released or to instead be detained together in unacceptable conditions, it intentionally disregards the fact that neither detention nor separation is required by any law or court settlement.** It is a cruel political choice on a practice that has been decried by experts.

The government should turn to case management to ensure that families comply with their immigration requirements

Families—and others—seeking protection should be placed in removal proceedings, or allowed to pursue an appeal, **without being prosecuted or detained.** They can be released into the community—together as a family unit—as they await their immigration court hearing and case outcome. Release allows families to find stability and an immigration attorney as they go through their immigration case, which is critical to successful outcomes and appearance rates.

In some cases, the government can also turn to alternative to detention (ATD) programs. These programs should incorporate lessons from previous programs and should be community-based and non-profit-operated. Though terminated by the Trump administration for political reasons, the **Family Case Management Program (FCMP)** was a promising **government-funded** example that can be expanded and improved. FCMP had 99% compliance rates with ICE check-ins and immigration court appearances, and prioritized referrals to stabilize families in their communities, at a fraction of the cost of ICE detention.

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