

THE HARM OF FAMILY DETENTION

Why Modifying *Flores* and Detaining Families Together Cannot Be the Answer to Family Separation

On June 20, 2018, the Trump Administration issued an [Executive Order](#) (EO) purporting to end the separation of families at the U.S.-Mexico border. The EO does not explicitly end family separation, and it clearly leaves in place the “zero-tolerance” policy that resulted in over [2,300 children](#) separated from their families since early May 2018.

The EO also instructed the Justice Department to seek a modification of the 1997 *Flores* Settlement Agreement (*Flores*). The administration, as well as numerous Congressional Republicans, seek to modify *Flores* either through the court, or through the passage of legislation, for two main reasons:

- In order to be allowed to detain children in inappropriate conditions, such as secure, non-licensed facilities.
- In order to be allowed to detain children in inappropriate conditions for prolonged periods of time.

Immigration and Customs Enforcement (ICE) already operates three family detention centers — none of which comply with *Flores* requirements for long term custody of children — with capacity for more than 3,000 parents and children. **ICE is now exploring expanding family detention by up to 15,000 beds, including potentially on military bases.** As Congress weighs bills and the Administration considers policies that would result in the long-term detention of families, here is why modifying *Flores* and expanding family detention cannot be the answer to the Trump administration’s self-created family separation policies.

1. *Flores* instituted basic child protection measures so that children experience less harm and trauma. Overturning or limiting those measures eliminates requirements on the government that ensure children are treated properly.

Flores resulted from over a decade of litigation responding to the U.S. government’s detention policy in the 1980s towards migrant children Central America. At the time, **children were being detained with unrelated adults in prison-like conditions for long periods of time, without access to education, recreation, or family visitation. The children in the case were subject to regular strip searches, including vaginal strip searches.** The agreement sets national standards regarding the detention, release, and treatment of all — unaccompanied and accompanied — children in immigration detention and underscores the principle of family unity. It requires that children be released from custody without delay, preferably to a parent, and that if they cannot be released they must be held in non-secure settings licensed by child welfare entities.

If *Flores* is modified, overturned, or ignored so that the administration can expand family detention, then migrant and asylum-seeking children would be subject to inappropriate conditions that have already been well-documented. These include: 1) prolonged detention, including for years, 2) being held in unlicensed facilities and subject to abuse, 3) care and disciplinary decisions made by guards who are not child welfare experts, 4) an inability to access a lawyer, translators, and other due process violations, and 5) inadequate medical and mental health care. **These protections are not “loopholes,” as the administration likes to portray, but instead requirements for care and due process grounded in child protection principles.**

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2. There is no humane way to lock up families.

We already know what it looks like when the government does not comply with *Flores* in cases of family detention. Women's Refugee Commission and numerous others have long documented the harm of family detention, even for short periods of time. Our reports [Locking Up Family Values](#) and [Locking Up Family Values, Again](#) documented the trauma and harm of family detention. Since family detention was widely expanded in 2014, numerous [Members of Congress](#) and [Senators](#) have opposed the practice, as has the [American Academy of Pediatrics](#) and [Immigration and Customs Enforcement's \(ICE\) own Advisory Committee on Family Residential Centers](#); these groups have similarly found that family separation cannot be the alternative. Administrative complaints documented [sexual assault](#) in family detention centers, as well as the [traumatic impact](#) of family detention and the absence of meaningful mental health and [medical care](#). Family detention also does not deter those fleeing harm from seeking protection in the United States, as former DHS Secretary Jeh Johnson – who oversaw the resurrection of family detention in an effort to deter migration – recently [wrote](#).

For a comprehensive set of dozens of articles, reports, Congressional statements, litigation materials, and more on family detention, see the links at this [timeline](#) documenting family detention through 2016.

3. Family detention (and family separation) eviscerate access to asylum.

[Only 14 percent of those in immigration detention have a lawyer](#), even though their chances of success [increase ten-fold](#) with representation. As has been extensively documented, detention and separation are also traumatizing, making it more difficult to explain one's fear of return, especially without a lawyer, during a credible fear interview or before an immigration judge. Moreover, current policies and Republican proposals do not envision an end to the "zero-tolerance" policy, meaning that asylum-seeking families are first still criminally prosecuted despite exercising their legal right to seek asylum.

DHS's own [fact sheet](#) on family reunification implies that ICE is taking steps to reunite children and parents only for purposes of deportation. Parents are effectively being pressured to accept deportation and give up what could be credible asylum cases for the possibility of seeing their child(ren) again.

4. Family detention – like family separation – costs taxpayers billions.

Government estimates place the [cost](#) of a single bed in ICE's current family detention facilities at nearly \$320 per person per day. A bed in ICE adult detention, where a separated parent is detained alone, is over \$130. Separated children transferred to the custody of the Office of Refugee Resettlement (ORR) stay in shelters or foster care programs that [cost](#) an average of \$256 per child per night, or, if sent to one of the agency's new "tent cities" to accommodate the large number of children, \$775 per child per night.

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5. The government has better options, but it is ignoring proven alternatives.

This approach is not only inhumane, but ignores the fact that the government could safely release many families to sponsors in the community while the family pursues their immigration case in court. It could also turn to [alternatives to detention](#) that boast compliance rates of 99% with court appearances but cost as little as \$5 per day. And it could re-start the [Family Case Management Program](#) (FCMP), a program specifically used for asylum-seeking families but discontinued in June 2017, that favored case management to ensure access to social and other services, including legal information, and had [100% compliance rates](#) with court proceedings for the cost of \$36 for an entire family each day.