



# New Developments in the Flores Litigation and the Impact on Family Detention

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On Friday, July 24, federal district court Judge Dolly Gee ruled in [Flores v. Johnson](#) that the Administration's policy of incarcerating children with their mothers in family detention centers violates the national [Flores Settlement Agreement](#) ("Agreement") that has set binding standards for the detention and treatment of immigrant children for nearly two decades.

## Key aspects of Judge Gee's ruling:

- The Agreement applies to *all* minors in DHS custody, not just unaccompanied minors.
- The Agreement forbids DHS from holding a child (except in rare, dangerous cases) in a secure facility (which means a facility from which they are not free to leave), or in a facility that is not licensed for the care of dependent children. None of the current family detention facilities – in Karnes, TX, Dilley, TX, and Berks, PA – meets this standard.
- Under the Agreement, children have a right to be released as a first priority to a parent, *including their accompanying parent*, regardless of the parent's immigration status.
- To effectuate this right, DHS must release children *with their mothers* unless the mother poses a significant flight risk or public safety threat that cannot be mitigated by any of a wide variety of alternatives to detention that include bond and orders of supervision.
- DHS's defense that family detention is necessary to deter future migration lacks any evidentiary basis.
- Short-term Border Patrol custody facilities are "deplorable" and violate a child's right under the Agreement to be held in "safe and sanitary" conditions.

## Doesn't family detention actually keep families together?

No. Many detained mothers have other non-detained children, spouses, siblings or parents in the U.S. from whom they are being separated by the very fact of detention. Because detaining a mother while releasing her child would endanger the child, DHS argued that the detention of both together was necessary. But Judge Gee ruled that if the government follows the Agreement properly, it will release both parent and child together in the vast majority of cases, obviating the very risk the government identified to justify detention.

## Must DHS separate mothers from their children to comply with Judge Gee's order?

No. In fact, Judge Gee ordered DHS to release children *with their mothers* in all cases unless the mother poses a "significant flight risk" or public danger that cannot possibly be mitigated by any

of a [wide variety of alternatives to detention \(ATDs\)](#) like bond, orders of supervision, or community-based support. There will be very few cases in which a mother cannot be released in compliance with this part of the order. Almost all of the mothers currently detained pose no threat to anyone, have family or friends here in the U.S. willing to sponsor them, and have every incentive to show up at court because they have strong claims for protection under U.S. law.

With its recent reforms, isn't DHS already doing what Judge Gee's order requires?

No. In response to public outrage over the prolonged detention of mothers and children suffering mentally and physically in detention, DHS recently announced that it would detain families for shorter periods of time, and would generally release children and mothers once they have established a credible or reasonable fear of persecution. But this policy still requires families to remain in detention for several weeks. It does not cover families in other procedural postures, who wait even longer. And from what AILA attorneys on the ground working with the [CARA Pro Bono Project](#) have seen, the new policy is being executed in a [wholly chaotic fashion that denies due process and has given rise to repeated instances of coercion and intimidation](#).

What should DHS do to comply with this ruling?

DHS should comply with the Court's ruling by promptly releasing the families currently in custody and immediately start shutting down the family detention centers.