



The Flores Settlement & Family Separation at the Border

June 15, 2018

What is the Flores Settlement?

The 1997 [Flores](#) Settlement Agreement (*Flores*) was the result of over a decade of litigation responding to the U.S. government's detention policy towards an influx of unaccompanied migrant children in the 1980s from Central America. At the time, children were being detained for long periods of time, including with unrelated adults, and in prison-like conditions. The agreement sets national standards regarding the detention, release, and treatment of all – both unaccompanied and accompanied – children in immigration detention and underscores **the principle of family unity**. It requires that:

- 1) Children be **released from custody without delay** and preferences release to a parent
- 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.

Does Flores require family separation?

No.

Flores sets out requirements on how children who enter U.S. immigration custody should be treated and detained. *Flores* does not require separation from their parents or legal guardians.

Is Flores a “loophole”? Does it create “loopholes”?

No.

The Trump administration frequently references *Flores* as being a “loophole” or creating “loopholes” exploited by migrants. This is not true. The *Flores* requirement to generally release children is not a loophole; in fact, the entire settlement aims to ensure the appropriate treatment of children. This is consistent with numerous [expert findings](#) that it is not in the best interest of children to detain them.

Does Flores permit the detention of families together?

Under the Obama administration, immigration authorities dramatically increased the use of family detention facilities when more families and unaccompanied children began seeking asylum at the U.S. border. These family detention facilities – in Karnes County and Dilley, Texas, and in Berks County, Pennsylvania – detain children together with their parents but **do not comply with Flores requirements** for what custody for children must look like. A federal judge ruled that in times of influx or emergencies the government has some leeway with timeframe before children must be transferred to an appropriate facility or with children who cannot be promptly reunified. **However, the government must not engage in the lengthy or unnecessary detention of children.**

Because the government's family detention facilities do not comply with *Flores* requirements, the government must currently release children from these facilities within 20 days – the timeframe generally permitted by the court for their detention in these facilities when the government is experiencing an “influx.” Families released from custody are still in removal proceedings and still required to present their case before an immigration judge. However, they may do so while living with a sponsor in the community, and in some cases are electronically monitored or placed into another alternative to detention program.

If *Flores* does not permit the long-term detention of children in family detention, does that mean it requires separating them?

No. The Trump administration and many Republicans are presenting a **false choice** between detaining children with their parents – which *Flores* generally does not permit in unlicensed and secure facilities – and separating them, while pointing to *Flores* as one justification for this false choice. **The administration's current practices of widespread family separation are not required by any law or court settlement.** The administration can end this practice immediately.

The administration has a third choice that it refuses to acknowledge. Adults and families who present themselves at a port of entry to seek asylum, or who are apprehended between ports of entry, can be placed into removal proceedings **without being prosecuted and detained**, or in cases where they are first detained, **should be released if found to have a credible fear of return.** In these cases, the family is still placed into removal proceedings and will be required to appear before an immigration judge to make their asylum or other claim. However, they will be released into the community – together as a family unit – as they await their immigration court hearing.

How does the government ensure that families comply with their immigration requirements?

Releasing a family who is seeking asylum means that the family is much more likely to find an immigration attorney as they go through their immigration case, which is critical not only to being able to successfully make an asylum claim, but also helps to support appearance rates.

In some cases, the government can also place families into [alternative to detention \(ATD\) programs](#). Unfortunately, **the government eliminated one of its most promising and cost-effective ATD programs – the Family Case Management Program (FCMP) – last year, despite the fact that it is far more appropriate for families seeking asylum than either detention or separation.** However, the government also has other ATD programs, and often relies on more onerous electronic monitoring, for families and individuals it might otherwise detain. These programs are incredibly cost-effective – costing only \$4-\$5 each day rather than \$120 - \$300 each day of detention in adult or family detention, respectively. They also have high compliance rates with court hearings, including final court hearings, and with removal.

For more information, please contact Katharina Obser at katharinao@wrcommission.org or Leah Chavla at leahc@wrcommission.org.