



Flores Settlement: Myth v. Fact
June 2018

Myth: Flores is a law making the government separate children.

FACT: The 1997 Flores Settlement Agreement (Flores) was the result of over a decade of litigation responding to the U.S. government's detention policy of children. The agreement set national standards regarding the detention, release, and treatment of all children in immigration detention and underscores the principle of family unity.

It requires that:

1. Juveniles be released from custody without unnecessary delay, and in order of preference to the following: a parent, legal guardian, adult relative, individual specifically designated by the parent, a child welfare licensed program, or, alternatively when family reunification is not possible, an adult seeking custody deemed appropriate by the responsible government agency.
2. Where they cannot be released because of significant public safety or flight risk concerns, juveniles must be held in the least restrictive setting appropriate to age and special needs, generally, in a nonsecure facility licensed by a child welfare entity and separated from unrelated adults and delinquent offenders.

Myth: The government only started separating children because of the Flores settlement.

FACT: The Trump Administration has chosen to implement a criminal prosecution policy of asylum seekers that is separating children from their parents. This policy is new, has never been done before, and is directly responsible for the systematic separations. When a parent is sent to U.S. Marshals custody, their child is rendered unaccompanied and sent to the custody of HHS.

Myth: The government is restricted by Flores in how long it can detain a child.

FACT: Flores requires a preference for release but except:

1. Where the detention of a child is necessary to ensure his or her appearance in immigration court; or
2. Where the continued detention of the child is required to ensure his or her safety or the safety of others. When HHS cannot find a suitable sponsor for a child, that child remains in the custody of HHS. Flores mandates the minimum conditions that child must be held in.

Myth: The government must detain families.

FACT: Long-term detention of mothers and children is not the solution to the trauma caused by family separation. There are more humane and cost efficient alternatives that have proven effective. The Family Case Management Program which President Trump terminated, allows families to be released together and monitored by caseworkers. Despite claims that families won't show up for court, the program has a 99% success rate of court attendance.

Myth: There is a new law that didn't force previous presidents to separate families

FACT: The Obama Administration litigated issues around the Flores settlement when it reopened family detention facilities. The 9th Circuit Court of Appeals asserted the settlement only applied to children and that mothers may be released from detention with their kids. The court's decision did not force the Obama Administration to begin separating families. Separation is a Trump policy.