

# Exhibit 1



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## Kellyanne Conway: 'Nobody likes' policy separating migrant kids at the border

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First Read

## Kellyanne Conway: 'Nobody likes' policy separating migrant kids at the border

The White House senior adviser defended the president's rhetoric on the family separation policy, but denied it was a bargaining tool.  
by Carrie Dann / Jun.17.2018 / 7:06 AM ET

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WASHINGTON — Senior White House adviser Kellyanne Conway said Sunday that "nobody likes" the separation of migrant children from their parents at the nation's southern border but took issue with the idea that the Trump administration is using the children to force Democrats to the table on border security.

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## [Kellyanne: 'As a mother, as a Catholic' nobody likes family separation policy](#)

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"As a mother, as a Catholic, as somebody who has a conscience ... I will tell you that nobody likes this policy," Conway said on NBC's "Meet the Press" Sunday.

But Conway also repeated President Donald Trump's assertion that the burden is on Democrats to end the separations — while also rejecting the idea that the White House is using the public outcry over the separations as a way to exert leverage over Democrats resistant to Trump's most stringent proposed overhauls to the immigration system.

"I certainly don't want anybody to use these kids as leverage," she said, adding that she objects "very forcefully" to that implication.



## [Kellyanne: 'No' White House not using migrant children for political leverage](#)

Jun.17.201801:23



That implication is one that White House officials themselves have reportedly confirmed. "The president has told folks that in lieu of the laws being fixed, he wants to use the enforcement mechanisms that we have," [an unnamed White House official told the Washington Post this week](#). "The thinking in the building is to force people to the table."

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Conway suggested that that unnamed official should come forward.

"I want that person to say it to my face, I really do," she said. "I'll meet them at the White House today because I think that is a disgrace."

Still, Conway — as the president has — put the burden squarely on congressional Democrats to address broad immigration reforms in order to solve the larger crisis at the border.

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"If the Democrats are serious, and if a lot of Republicans are serious, they'll come together. They won't just talk about just this week, just the Dreamers, or just the wall, or just catch and release. It's all of the above," Conway said.

Separating migrant families is a policy announced by the Trump administration this spring, and the White House has not identified any law that specifically requires it. "If you are smuggling a child then we will prosecute you, and that child will be separated from you as required by law," Attorney General Jeff Sessions said in May. "If you don't like that, then don't smuggle children over our border."

Conway indicated some agreement with the idea that many migrants are using their children as bargaining chips in their efforts to enter the U.S. illegally.

"Nobody likes seeing babies ripped from their mothers' arms, from their mothers' wombs, frankly, but we have to make sure that DHS' laws are understood through the soundbite culture that we live in," Conway said, adding that "some adults are using children to gain access to the border."

Democratic Rep. Adam Schiff, who also joined "Meet the Press" Sunday, called the separation policy flatly "immoral."

"What the administration is doing is they're using the grief, the tears, the pain of these kids as mortar to build their wall," he said. "And it's an effort to extort a bill to their liking in the Congress. It's, I think, deeply unethical."

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# Exhibit 2

# DHS considering proposal to separate children from adults at border

By Mary Kay Mallonee

Updated 3:31 AM ET, Sat March 4, 2017

## STORY HIGHLIGHTS

The proposal is meant to deter the exploitation of children, a DHS official said

The adults could be kept in detention, and the children could be moved elsewhere under protected status

**(CNN)** — The Department of Homeland Security is considering a proposal to separate children from adults when they are trying to enter the country illegally at the southern border, a senior DHS official confirmed to CNN on Friday.

The official said the proposal is meant to deter the exploitation of children.

"We are trying to find ways to deter the use of children in illegal immigration," he said. "We are seeing kids essentially kidnapped and used to get

here and stay."

Currently, when adults enter the country accompanied by children, they are generally released into the US and able to stay in the country, pending disposition of their cases, the official said.

The proposal would allow US immigration officials to separate children from the adults they came here with. The adults could be kept in detention, and the children could be moved elsewhere under protected status, possibly with family members already in the country or to state protective custody, such as child protective services.

The official said children were being exploited in multiple ways, citing parents taking them on dangerous journeys and smugglers and non-parents claiming the children as their own in order to enter and stay in the United States. The official was unable to say how agents at the border determine family relationships.

"People are taking advantage of the system," the official said, acknowledging there may be perception issues with the proposal.

In a statement to CNN, DHS spokesman David Lapan said the agency "continually explores options that may discourage those from even beginning the journey."

"The journey north is a dangerous one, with too many situations where children -- brought by parents, relatives or smugglers -- are often exploited, abused or may even lose their lives," Lapan said.

No final decision has been made on the proposal, which is still being worked on by staff, the official said.

[Reuters](#) first reported the proposal.

If enacted, the policy would be at odds with a pledge Trump made on the campaign trail in an August, 2015, interview with NBC.

At the time, he said, "We're going to keep the families together. We have to keep the families together. ... But they have to go."

Leon Fresco, a former DOJ official in the Obama administration, said the last administration considered, but ultimately rejected, the move.

"It was never implemented because the idea was that it was too detrimental to the safety of the children to separate them from their parents, and the thinking was it was always preferable to detain the family as a unit or release the family as the unit," Fresco said.

He said he knew of career holdovers at the department who had been in favor of the move and said the change was more likely to occur because those people were now in a position to make it happen.

Fresco also said the impetus for the change is the Flores v. Lynch court case, which held that the government is required to release minors from detention expeditiously even if they are accompanied by their parents, not just if they're unaccompanied. The ruling created problems for the government in detaining undocumented families who were seeking entrance to the US, he said.

*CNN's Tal Kopan and Eli Watkins contributed to this report.*



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# Kelly: DHS is considering separating undocumented children from their parents at the border

By [Daniella Diaz](#), CNN

Updated 7:33 AM ET, Tue March 7, 2017

## STORY HIGHLIGHTS

"Yes I'm considering in order to deter more movement along this terribly dangerous network," he said

CNN reported last week that DHS was weighing its options on this

**Washington (CNN)** — Secretary of Homeland Security John Kelly confirmed that the department is considering separating children from their parents at the border.

"We have tremendous experience of dealing with unaccompanied minors," he told CNN's Wolf Blitzer on "The Situation Room." "We turn them over to (Health and Human Services) and they do a very, very good job of putting them in foster care or linking them up with parents or family members in the United States."

He continued: "Yes I'm considering (that), in order to deter more movement along this terribly dangerous network. I am considering exactly that. They will be well cared for as we deal with their parents. ... It's more important to me, Wolf, to try to keep people off of this awful network."

A senior DHS official [had previously told CNN](#) that the department was considering a proposal to separate children from adults when they are trying to enter the country illegally at the southern border.

The official told CNN the proposal is meant to deter the exploitation of children.

Currently, when adults enter the country accompanied by children, they are generally released into the US and able to stay in the country, pending disposition of their cases, the official said.

The proposal would allow US immigration officials to separate children from the adults they came here with. The adults could be kept in detention, and the children could be moved elsewhere under protected status, possibly with family members already in the country or to state protective custody such as child protective services.

In a statement to CNN last week, DHS spokesman David Lapan said the agency "continually explores options that may discourage those from even beginning the journey."

"The journey north is a dangerous one, with too many situations where children -- brought by parents, relatives or smugglers -- are often exploited, abused or may even lose their lives," Lapan said at the time.

Leon Fresco, a former DOJ official in President Barack Obama's administration, said the previous administration considered, but ultimately rejected, the move.

"It was never implemented because the idea was that it was too detrimental to the safety of the children to separate them from their parents, and the thinking was it was always preferable to detain the family as a unit or release the family as the unit," Fresco said.



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# Exhibit 4





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## Kelly says DHS won't separate families at the border

By Tal Kopan, CNN

Updated 10:15 PM ET, Wed March 29, 2017

### STORY HIGHLIGHTS

Kelly also insisted DACA recipients were safe

He said he would hold a conference on improving the situation in Central America

who attended the meeting.

Kelly later told CNN that characterization was fair, "unless there is some other consideration." He denied that he had been considering a policy to separate families.

"I don't think I have said that," Kelly said. "Wolf Blitzer first asked me about this and I said everything's on the table, we might under certain circumstances do that, but I don't think I've ever said as a deterrent or something like that."

Earlier this month, Kelly **told** Blitzer that he was considering the policy as a deterrent; a senior DHS official also confirmed it.



**Related Article:** Democrats decry 'dismissive' meeting with DHS secretary

**Washington (CNN)** — US Secretary of Homeland Security John Kelly on Wednesday assured Senate Democrats he doesn't intend to separate mothers and children at the border -- apparently walking back an [earlier statement](#) he made that such a policy could deter people from entering the country illegally.

Kelly met with Senate Democrats Wednesday afternoon for more than an hour on Capitol Hill to discuss the administration's immigration policy, a meeting that some members left in "frustration" but others called "positive." Kelly also said he intends to hold a conference this spring on improving conditions in Central America, and discussed the status of deferred action recipients in the wide-ranging meeting.

In response to a question from California Sen. Dianne Feinstein, Kelly said that DHS wouldn't be separating mothers and children at the border unless there was an extenuating reason, such as illness, according to several Democrats

"Yes I'm considering (that), in order to deter more movement along this terribly dangerous network," Kelly said at the time. "I am considering exactly that. They will be well cared for as we deal with their parents. ... It's more important to me, Wolf, to try to keep people off of this awful network."

Feinstein called the meeting satisfying, and said she got assurances on the families issue as well as assurances that there wouldn't be sweeps of undocumented agricultural workers in California unless they had another violation.

Sen. Dick Durbin, D-Illinois, who organized the meeting, called it "positive" and said it offered him more "clarity," though "what remains to be seen is what will happen next." The lawmakers leaving the meeting said they each had a turn to present the secretary with their concerns and cases from their district.

Durbin said he felt there was a "better line of communication with the secretary."

But not all lawmakers left satisfied.

"I leave with frustration," said Sen. Kamala Harris, D-California, who has raised concerns previously about immigration enforcement actions in her state.

"'Frustration' would be a good lead," said Sen. Patty Murray, D-Washington. "He stated he was not separating children from their parents, but that's not been our experience."

Senate Minority Leader Chuck Schumer said he presented Kelly with several "inhumane" cases he wanted more information on, and added that he would await Kelly's answers. One such case was a father arrested while on his way to drop off his children at school.

"I asked questions. There's still answers to come," said Vermont Sen. Patrick Leahy.

Speaking with reporters after the meeting, Kelly said his primary focus is deterring migrants from participating in a smuggling pipeline that takes their life savings, is "incredibly dangerous," has a "super high" rate of abuse for women and in which "young men are siphoned off" to work for the cartels.

"Please, please, please report that what we're trying to do is save lives, by encouraging people not to get on that network," Kelly said. "By the same token, we're working -- and I was briefing the President about this today -- we're working with the Central American republics ... with their presidents, with their religious leaders, with their business leaders to have a conference. ... So we're trying to improve the state of life in the Central American republics so the people don't have to come up here."

He said the Alliance for Prosperity conference would be in Miami "before the summer" and that Mexico has volunteered to cohost, with Canada and Colombia looking to be observers. Kelly said the conference would be run by the State Department.

Kelly categorically ruled out that his department had arrested any eligible Deferred Action for Childhood Arrivals recipient, saying any crimes committed nullify DACA.

"By definition, they're no longer DACA if they have a violation. The DACA status is a commitment not only by the government toward the DACA person or the so-called Dreamer, but by that person to obey the law. And some of them don't. We have not picked up -- I don't care what you read or what people say -- we have not in my time picked up someone who is covered by DACA."

Advocacy groups have accused the government of detaining DACA recipients who had not committed any crimes. Several who were detained have since been released.



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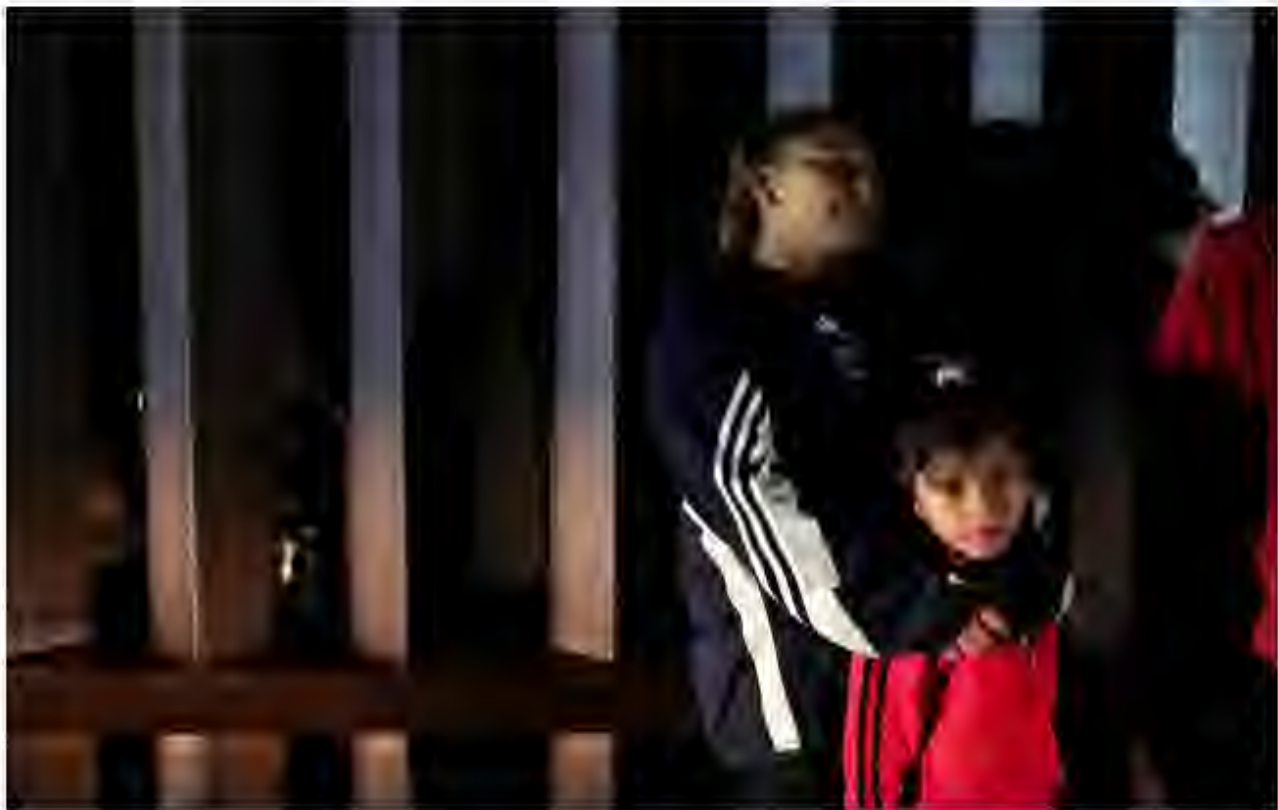
Giuliani questions whether there was FBI informant in Trump campaign

# Exhibit 5

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# HOW THE TRUMP ADMINISTRATION GOT COMFORTABLE SEPARATING IMMIGRANT KIDS FROM THEIR PARENTS

By Jonathan Blitzer May 30, 2018



*Separating families at the border is now an explicit component of the Trump Administration's zero-tolerance immigration policy.*

Photograph by John Moore / Getty

**T**wo months into Donald Trump's Presidency, John Kelly, then the Secretary of Homeland Security, publicly confirmed that his department was considering separating immigrant parents from their children at the border, as a way of discouraging families from crossing illegally. It was a radical idea, one that past Administrations had considered and then dismissed

as too extreme and too complicated. After coming under intense criticism from the press, human-rights advocates, and members of Congress, Kelly backed off from it. But the idea persisted. A few months later, in August, 2017, a group of officials at the Department of Homeland Security gathered to brainstorm new ways to toughen immigration enforcement. Among those leading the discussion was an official named Gene Hamilton, a former aide to Jeff Sessions, the Attorney General, and a close ally of Stephen Miller, the President's chief immigration adviser. "Hamilton told us that over the next few days we'd need to generate paperwork laying out everything we could do to deter immigrants from coming to the U.S. illegally," a person who attended the meeting told me. Memos were drafted outlining a range of possible policies; one of them was separating parents from their kids at the border. "All the memos sucked," the person said. "The outcome was predetermined. We didn't have time to work out any of the policy differences. Some of the ideas didn't make sense. Some were illegal, and some, like separating kids, were just immoral." Many of the proposals, including the one involving family separation, "got bogged down in the clearance process, because of how difficult and controversial it was," the person said. And yet every few months the idea would resurface in discussions. "It would rear its head again."

Last summer, public defenders and immigration judges along the border began noticing an alarming pattern. Parents who had crossed into the U.S. with their children were arriving at detention facilities without them. The reason had to do with the Department of Justice, which was pushing U.S. Attorneys across the country to prosecute more border crossers for entering the U.S. illegally. In the past, many of these people, especially those with children, had been released pending the outcome of their civil immigration cases; now they were being arrested and held for extended periods by the D.H.S. The government was treating their children as though they'd come to the U.S. alone, as unaccompanied minors, and turning them over to the Office of Refugee Resettlement, a branch of the Department of Health and Human Services. There appeared to be no coordination between the different

government agencies involved, so parents were losing contact with their own children. “They have no idea where their child is,” one assistant public defender, in Arizona, told the *Houston Chronicle* last fall. In one judicial order, a federal magistrate judge, in El Paso, Texas, asked the government, “What are the arresting agency’s procedures for providing information (e.g. location and well-being) regarding the unaccompanied minor children of undocumented alien defendants charged with a petty misdemeanor such as illegal entry . . . ?” Government lawyers didn’t seem to have an answer.

At first, the Trump Administration denied there was a formal family-separation policy in place. Then, as the evidence mounted, it claimed that it was only trying to protect immigrant kids from smugglers and imposters posing as their guardians. In February, the A.C.L.U. sued the government for separating a Congolese mother from her seven-year-old daughter, for more than three months, after they had arrived in San Diego seeking asylum. The mother was held in California, while her daughter was sent to Chicago. The D.H.S. claimed that it had doubts about whether the woman was truly the child’s mother, yet it waited four months to administer a DNA test. In April, the *Times* reported that more than seven hundred families had been separated since October, including more than a hundred children under the age of four. A government spokesperson responded, “D.H.S. must protect the best interests of minor children crossing our borders, and occasionally this results in separating children from an adult they are traveling with.”

Last month, the pretense fell away completely. On April 6th, Jeff Sessions and Kirstjen Nielsen, the head of Homeland Security, announced a zero-tolerance policy for immigrants at the border. Anyone who didn’t cross the U.S. border at an official port of entry would be criminally prosecuted, even if they were seeking asylum, and those travelling with their children would be separated from them. The policy was now official, and the Administration acknowledged its rationale: it was separating families to discourage others from travelling to the United States illegally. (A recent analysis, by Dara Lind at Vox, shows how the D.H.S.’s own data undermines the argument that this

policy will act as a deterrent.) According to the D.H.S., six hundred and fifty-eight children were separated from their parents between May 6th and May 19th. Reports have surfaced of children, some as young as toddlers, being wrested from family members, and of parents being deported before they could locate their children, who remain stranded in the U.S. “Little kids are begging and screaming not to be taken from parents, and they’re being hauled off,” Lee Gelernt, a veteran attorney for the A.C.L.U., told the *Washington Post*. “It’s as bad as anything I’ve seen in twenty-five-plus years of doing this work.” Research has shown that removing a young child from her primary caregivers for even a short period can cause long-term psychological harm.

As my colleague Amy Davidson Sorkin has written, the message from senior Administration officials has been unapologetic. Sessions likened immigrants crossing the border with their own children to smugglers, warning them, “If you are smuggling a child, then we will prosecute you, and that child will be separated from you as required by law.” Nielsen, for her part, simply waved away questions about the policy’s impact on children. “What we’ll be doing is prosecuting parents who have broken the law, just as we do every day in the United States of America,” she said during a recent Senate hearing. “The child, under law, goes to H.H.S.”—the Department of Health and Human Services—“for care and custody.”

Yet the network of child shelters overseen by H.H.S. is already operating at more than ninety-per-cent capacity. There’s been talk of sending children to military bases, where there’s more space. “In the immigration context, the government has never taken a stand against the protection of kids in this country,” Muzaffar Chishti, an immigration expert at the Migration Policy Institute, told me. “For the first time, it is now formally taking a position that explicitly goes against the best interests of kids.”

I asked the person who had attended the D.H.S. meeting with Gene Hamilton what had changed since last year, when the Administration was reluctant to publicly embrace the family-separation policy. The person pointed



to the President. In the early days of Trump's Presidency, migrants were anxious about how harsh his policies might prove to be. For a few months, illegal border crossings declined—a fact that Trump bragged about and took personal pride in. But by the end of the year the numbers had returned to levels roughly consistent with where they'd been just before he took office. Trump has complained that U.S. immigration laws are “pathetic” and riddled with “loopholes,” including, among other things, the “catch and release” of asylum seekers. He's also held Nielsen personally responsible for the rise in migration from Central America. “What you're seeing now is the President's frustration with the fact that the numbers are back up,” the person told me. “The only tools the Administration has now, in the absence of legislation, is to make life miserable for people.”



*Jonathan Blitzer is a staff writer at The New Yorker. [Read more »](#)*

## Video



*The Immigrants Deported to Death and Violence*

*Sarah Stillman reports on people who fled their home countries fearing for their lives, and the tragic consequences when they were sent back.*

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# Exhibit 6



## Trump's DHS is using an extremely dubious statistic to justify splitting up families at the border

The government says its new policy reduced border crossings 64 percent. They actually increased 64 percent.

By Dara Lind | [dara@vox.com](mailto:dara@vox.com) | May 8, 2018, 9:30am EDT



Attorney General Jeff Sessions and the Trump administration's Department of Homeland Security have announced that they'll prosecute all adults who cross the US-Mexico border illegally — even if they're seeking asylum. Families will be separated as a result of this policy, with parents put in criminal custody and children treated as "unaccompanied minors." | John Moore/Getty Images

The separation of families who cross into the US from Mexico illegally is now official US government policy.

On Monday, **Attorney General Jeff Sessions and Director of Immigration and Customs Enforcement (ICE) Thomas Homan** announced that the Trump administration would adopt a zero-tolerance policy toward anyone caught crossing into the US by Border Patrol. All border crossers would be referred to the Department of Justice, and everyone referred would be prosecuted for the misdemeanor of illegal entry.

Everyone means everyone — including people **seeking asylum from persecution** (which anyone is legally entitled to do), and including parents who have entered the US with their children. And when adults are transferred to criminal custody, their children get treated as "unaccompanied minors," as if they'd crossed the border alone, split from their parents and sent into the care of a totally separate government department.

"If you are smuggling a child," as Sessions put it Monday, "then we will prosecute you and that child will be separated from you as required by law."

In theory, the family separation isn't indefinite, and could even be fairly brief. And asylum-seekers who present themselves at official ports of entry like road crossings will not be prosecuted (whereas crossing the US between ports of entry is a crime).

But the Trump administration is explicitly doing this to try to stop more families from coming to the US in the future. And their argument that prosecuting parents actually works to deter future border crossings relies on a "statistic" that their own data shows to be fake.

### **This is part of Trump's agenda to end "catch and release" by detaining as many asylum seekers as possible**

Trump spent the first year of his presidency bragging about the steep drop in border crossings after his inauguration. He's spent the second year of his presidency freaking out that it didn't last.

**Border apprehensions** are still very low, historically speaking. But they're higher than they were last year — in large part because of children and families, many of whom are seeking **asylum** (most often from Guatemala, Honduras, and El Salvador),

Federal and international law prevent the government from deporting people back to danger. And it's perfectly legal for someone to present herself for asylum at a port of entry, as the immigrants in the **Central American "caravan"** did last week.

But as the caravan showed, ports of entry often lack the resources to process asylum seekers quickly. Furthermore, some human rights groups accuse border officials of illegally refusing to accept asylum seekers trying to present themselves at entry points.

Many asylum seekers, therefore, choose to cross between ports of entry — to cross illegally into the US — and present themselves to Border Patrol.

When an asylum seeker crosses into the US illegally, she commits a federal misdemeanor. Under previous administrations, the Department of Homeland Security usually processed her asylum case first rather than referring her to the Department of Justice for federal prosecution. Even if DHS referred her for prosecution, DOJ wouldn't usually bother to actually prosecute her before her asylum case was complete.

But Sessions, in particular, is convinced that many of these asylum claims are fraudulent, brought by "dirty immigration lawyers" to gum up the system. So DOJ and

DHS have stepped up their efforts to detain as many asylum seekers as possible and deport as many of them as quickly as possible, in the name of ending **“catch and release.”**

In April, Sessions announced that everyone who got referred by DHS to DOJ for illegal entry would be **charged with the misdemeanor** and prosecuted by US attorneys. Now, DHS is announcing that it will refer *everyone* for prosecution — including asylum seekers with children.

The announcement completes a pipeline: All border crossers will be referred for prosecution, and everyone referred will be prosecuted.



Overall, relatively few people are crossing illegally into the US from Mexico (compared to historical levels). But Central Americans — often children and families seeking asylum — make up an increasing share of illegal border crossers. | John Moore/Getty Images

## The fake statistic at the heart of Trump's case for prosecuting parents

The Trump administration has been engaging in family separation on a smaller scale for a long time. It started ramping up federal illegal entry prosecutions (including against asylum-seekers) during Trump's first months in office. The **New York Times reported in April** that since October 2017, 700 families had been separated at the border. And from July to November 2017, the administration tested out a “zero tolerance” policy for



parents in the El Paso sector of the border, covering western Texas and eastern New Mexico.

Administration officials trot out the El Paso pilot as evidence that “zero tolerance” prosecution works: that it leads to fewer families trying to cross the border illegally to begin with.

But their key statistic is entirely wrong.

The administration claims that after the pilot, illegal crossings of family members in El Paso dropped by 64 percent.

That statistic was used in an internal DHS memo urging Secretary Kirstjen Nielsen to adopt the zero-tolerance policy, as the **Washington Post’s Maria Sacchetti** reported in April. When a DHS official sent background information on the policy to Vox on Monday, it was the only statistic provided:

The number of illegal crossings between ports of entry of family units dropped by 64 percent. This decrease was attributed to the prosecution of adults amenable to prosecution for illegal entry while risking the lives of their children. Of note, the numbers began rising again after the initiative was paused.

The federal government generally uses Border Patrol apprehensions as a proxy for illegal border crossings themselves (on the logic that the more people come through, the more of them will get caught). Customs and Border Protection reports how many members of family units — adults who arrive with one or more children — are apprehended at each border sector each month. According to those statistics, in **July 2017**, 231 family-unit members were apprehended in the El Paso sector. In **November 2017**, that figure was 379.

That’s a 64 percent *increase* in apprehensions — the opposite of what the administration’s statistic suggested.

Asked how they calculated a 64 percent decrease, a DHS official initially suggested that Vox was “missing a variable.” The official then sent a figure from an internal report that showed apprehensions of *all* unauthorized immigrants in the El Paso sector, not just family units, were 64 percent lower over October 1 to 26, 2017 than over October 1 to 26, 2016.

While there aren’t public statistics for that exact time period, border apprehensions across the entire US-Mexico border over the whole month of October 2017 dropped by

43 percent from the previous year, making it hard to understand why a 64 percent drop in one sector would be attributable to that policy. Furthermore, the original claim in the policy memo was specifically that crossings of *families* dropped.

It isn't that prosecuting parents led more families to come. In fact, it's possible that it really did have some sort of deterrent effect. Family-unit apprehensions increased much more from July to November 2017 across the other sectors of the US-Mexico border (110 percent) than they did in El Paso.

But the administration isn't claiming that apprehensions in the El Paso sector rose less compared to other parts of the border as a result of zero tolerance. It's claiming they dropped by nearly two-thirds. And that's simply not the case.

### **Trump is codifying a policy of splitting up families**



The Trump administration promised to end “catch and release,” but the government can't keep families in immigration detention indefinitely. By prosecuting parents in criminal court for illegal entry, however, Trump can detain parents as long as needed while sending children to Health and Human Services. | Getty Images

The Trump administration isn't saying that separating families is the *goal* of their policy, or even that it's an intended punishment. Even Sessions, whose reference to “smuggling children” lumped in parents with professional smugglers, didn't go that far.

But Sessions and other Trump officials aren't leaving much leeway for discretion in individual cases. They are codifying family separation as an acceptable cost of crossing the border between ports of entry without papers.

An increasing share of **border crossers seeking asylum** come as "family units": one or more adults with one or more children. (The Trump administration refers to them as "purported 'family units'" to underline the fact that they could be lying about their family relationship.) And it's much harder for the government to detain whole immigrant families than it is for them to detain adults.

Federal court rulings have set strict standards on the conditions under which families can be detained. Under the Obama administration, courts ruled that they couldn't be kept in detention for more than 20 days.

That's exactly the sort of "catch and release" the Trump administration is trying to prevent. Trump claims that once released, "nobody ever comes back" for their court dates. (The real number is a still-substantial **40 percent**.)

The Trump administration's solution, now codified in policy, is to stop treating them as families: to detain the parents as adults and place the children in the custody of Health and Human Services as "unaccompanied minors."

They don't have to charge parents in criminal court to separate them. But filing criminal charges and transferring defendants to the custody of the US Marshals Service requires children to be separated and sent into HHS custody.

Under the new policy, DHS emphasizes, parents will be reunited with their children once they are returned to ICE custody after their criminal case is completed. DOJ says that in most cases, an immigrant won't be sent back to ICE custody until she's finished serving her criminal sentence. That won't be any longer than six months — the maximum sentence for a first-time illegal entry conviction — and may very well be less.

But it's not clear how ICE is going to guarantee reunification. Some parents have ended up separated from their children for months, even after being released from immigration detention. And HHS has lost track of **1,500 unaccompanied children** between October 2016 and December 2017, raising serious questions about how easily they could be reunited with their parents in ICE detention centers after the conclusion of a criminal case.

In some cases, according to immigration lawyers, parents separated from their children have begged to withdraw their asylum applications — on the logic that it would be easier



for them to reunify their families in their home countries.



President Donald Trump and Attorney General Jeff Sessions claim that prosecuting parents for entering the US illegally to seek asylum will stop more families from trying to come. It's not clear that's true — and it might run afoul of international law. | Getty Images

## Family separation as a form of deterrence

The Trump administration is dedicating serious resources to doing this. Sessions announced Monday that the DOJ would send 35 prosecutors to the border to process these cases, but many more may be needed.

In March, 3,769 people were **convicted of illegal entry** in criminal courts — but 37,383 people were **apprehended crossing into the US from Mexico**. Illegal entry prosecutions already account for nearly a third of all criminal convictions (in March, they came to 31.7 percent); it's not clear how many more prosecutors and judges it would take to prosecute 10 times as many people, or how that could be done without starving DOJ of the resources to prosecute other crimes.

In the most sympathetic light, the Trump administration — like the Obama administration before it — is trying to spare families the often dangerous journey through Central America and Mexico to the US, by making the endpoint of the journey less appealing.

But this only makes sense if families' lives in their home countries really are safer than what they'd risk on the way to the US — something that in the case of many Central American families isn't clear at all.

For that reason, national and international law are pretty clear that the US can't detain an asylum seeker now just to send a message to other potential future asylum seekers. There has to be some sort of individualized assessment that this particular asylum seeker would skip out on her court hearing, or pose a risk to the US, if released.

If keeping someone in detention is too harsh a treatment for deterrence alone to justify, that's all the more true of separating parents from their children.

The administration isn't treating family separation as a punishment for illegal entry, just as a collateral consequence of it. But it's a consequence of which they're fully aware. They're endorsing family separation as a policy, for anyone who makes the choice to forgo the wait (and the chance of rejection) at a port of entry and decides to cross the border between ports of entry instead.

They're justifying their actions with a thin veneer of evidence — a statistic that's not grounded in their own data — and beneath that, a blunt assertion: Separating families ought to deter future crossings, and if it doesn't, it's no less than people deserve anyway.

# Exhibit 7

# United States Senate

WASHINGTON, DC 20510

February 12, 2018

The Honorable Kirstjen Nielsen  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
3801 Nebraska Avenue N.W.  
Washington, D.C. 20528

Dear Secretary Nielsen:

We write to express our deep concern that the Department of Homeland Security (DHS) under the Trump Administration is considering a proposal to systematically separate immigrant children from their parents upon arrival in the United States. We condemn such a proposal in the strongest possible terms and urge you to unequivocally reject this cruel measure.

We believe that a systematic and blanket policy to separate a child from a parent would likely violate the constitutional rights of the parents, violate the spirit of the *Flores Agreement*, inflict significant trauma on small children, create additional unnecessary due process obstacles to accessing a meaningful day in court, is contrary to arguments the Department of Justice has made before federal courts in the past, and is grotesquely inhumane.

Further, we are deeply concerned that DHS may already be carrying out such a policy. In one recent case, a one-year-old child was separated from his father.<sup>1</sup> The child was placed in a children's shelter in Texas while the father was detained in an adult facility in San Diego.<sup>2</sup> Numerous other cases in which parents have been separated from their children have been documented.<sup>3</sup> It is unconscionable that the Department would consider tearing these children away from their parents, deliberately agonizing children and parents alike.

Terrorizing children and their parents in an effort to prevent future migration also ignores the horrifying circumstances they have experienced. For many of these children and their parents, fleeing their home country is literally a life-or-death situation. Threatening to separate them and impairing their ability to seek protection is not who we are as a country.

During a recent Senate Judiciary Committee hearing, you failed to repudiate this proposal.<sup>4</sup> We ask you to refrain from staining America's long-standing role as a human rights leader and to

---

<sup>1</sup> Caitlin Dickerson & Ron Nixon, *Trump Administration Considers Separating Families to Combat Illegal Immigration*, N.Y. TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/us/trump-immigrant-families-separate.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *The Separation of Family Members Apprehended by or Found Inadmissible While In U.S. Customs and Border Protection (CBP) Custody at the U.S.-Mexico Border*, AM. IMMIGR. COUNCIL, Dec. 11, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/family\\_separation\\_complaint.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/family_separation_complaint.pdf).

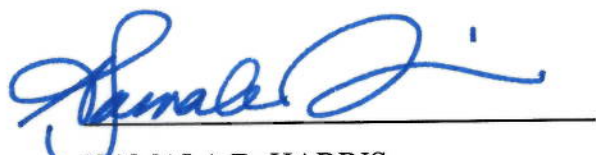
<sup>4</sup> *Oversight of the U.S. Dep't of Homeland Sec.: Hearing Before the S. Comm. on the Judiciary*, 115<sup>th</sup> Cong. (2018) (statement of Kirstjen Nielsen, Secretary, Department of Homeland Security).

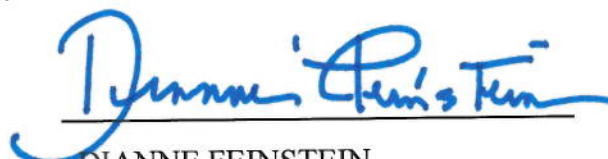


choose a different path on this issue. In a March 7, 2017 interview with Wolf Blitzer, your predecessor, Mr. John Kelly, said that DHS was considering a policy to separate families at the border, a position he later reversed.<sup>5</sup> We urge you to do the same. Do not forsake children, Madam Secretary, especially when they have had no say in their present situation.

We ask you to instead employ policies such as alternatives to detention that better protect families and reduce reliance on a costly and inhumane immigrant detention system. America can and should treat children with care when we take them into federal custody. We appreciate your consideration and request a prompt response on this important matter.

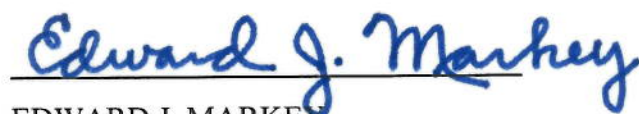
Sincerely,

  
KAMALA D. HARRIS  
United States Senator

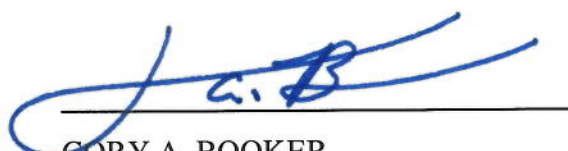
  
DIANNE FEINSTEIN  
United States Senator

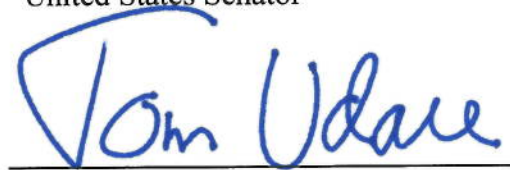
  
PATTY MURRAY  
United States Senator

  
ROBERT MENENDEZ  
United States Senator

  
EDWARD J. MARKEY  
United States Senator

  
KIRSTEN GILLIBRAND  
United States Senator

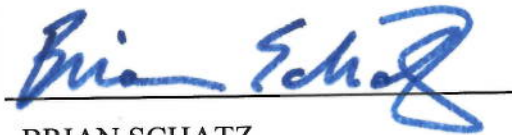
  
CORY A. BOOKER  
United States Senator

  
TOM UDALL  
United States Senator

<sup>5</sup> Daniella Diaz, *Kelly: DHS is Considering Separating Undocumented Children from their Parents at the Border*, CNN (Mar. 7, 2017), <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>.




TINA SMITH  
United States Senator



BRIAN SCHATZ  
United States Senator



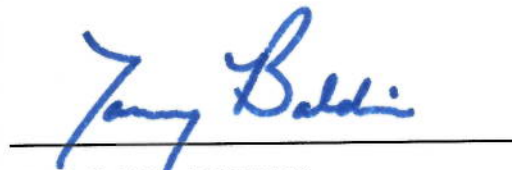
ELIZABETH WARREN  
United States Senator



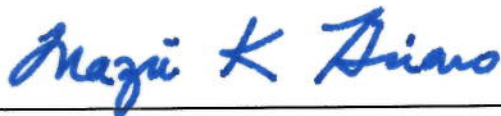
CATHERINE CORTEZ MASTO  
United States Senator



BERNARD SANDERS  
United States Senator



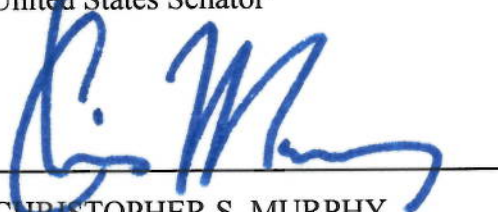
TAMMY BALDWIN  
United States Senator



MAZIE K. HIRONO  
United States Senator



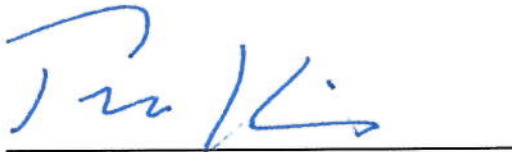
BENJAMIN L. CARDIN  
United States Senator



CHRISTOPHER S. MURPHY  
United States Senator



SHELDON WHITEHOUSE  
United States Senator



TIM KAINE  
United States Senator



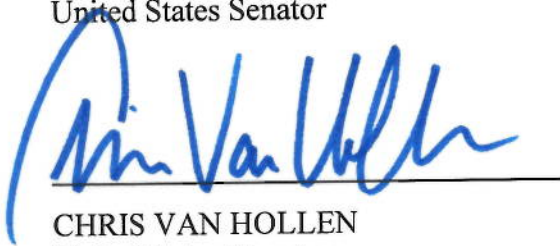
RICHARD BLUMENTHAL  
United States Senator



TAMMY DUCKWORTH  
United States Senator



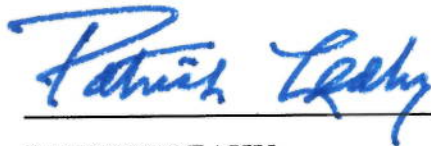
RICHARD DURBIN  
United States Senator



CHRIS VAN HOLLEN  
United States Senator



MICHAEL F. BENNET  
United States Senator



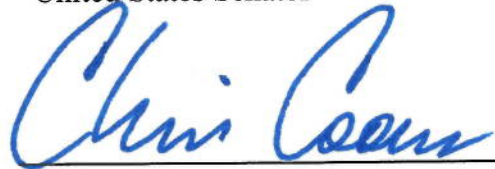
PATRICK LEAHY  
United States Senator



AMY KLOBUCHAR  
United States Senator



MARTIN HEINRICH  
United States Senator



CHRISTOPHER A. COONS  
United States Senator



SHERROD BROWN  
United States Senator



RON WYDEN  
United States Senator



JACK REED  
United States Senator



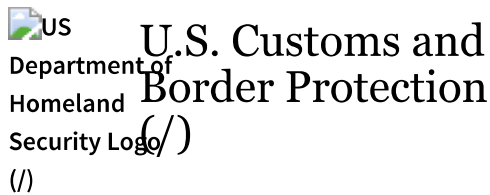
MARIA CANTWELL  
United States Senator

Bob Casey, Jr.

ROBERT P. CASEY, Jr.  
United States Senator



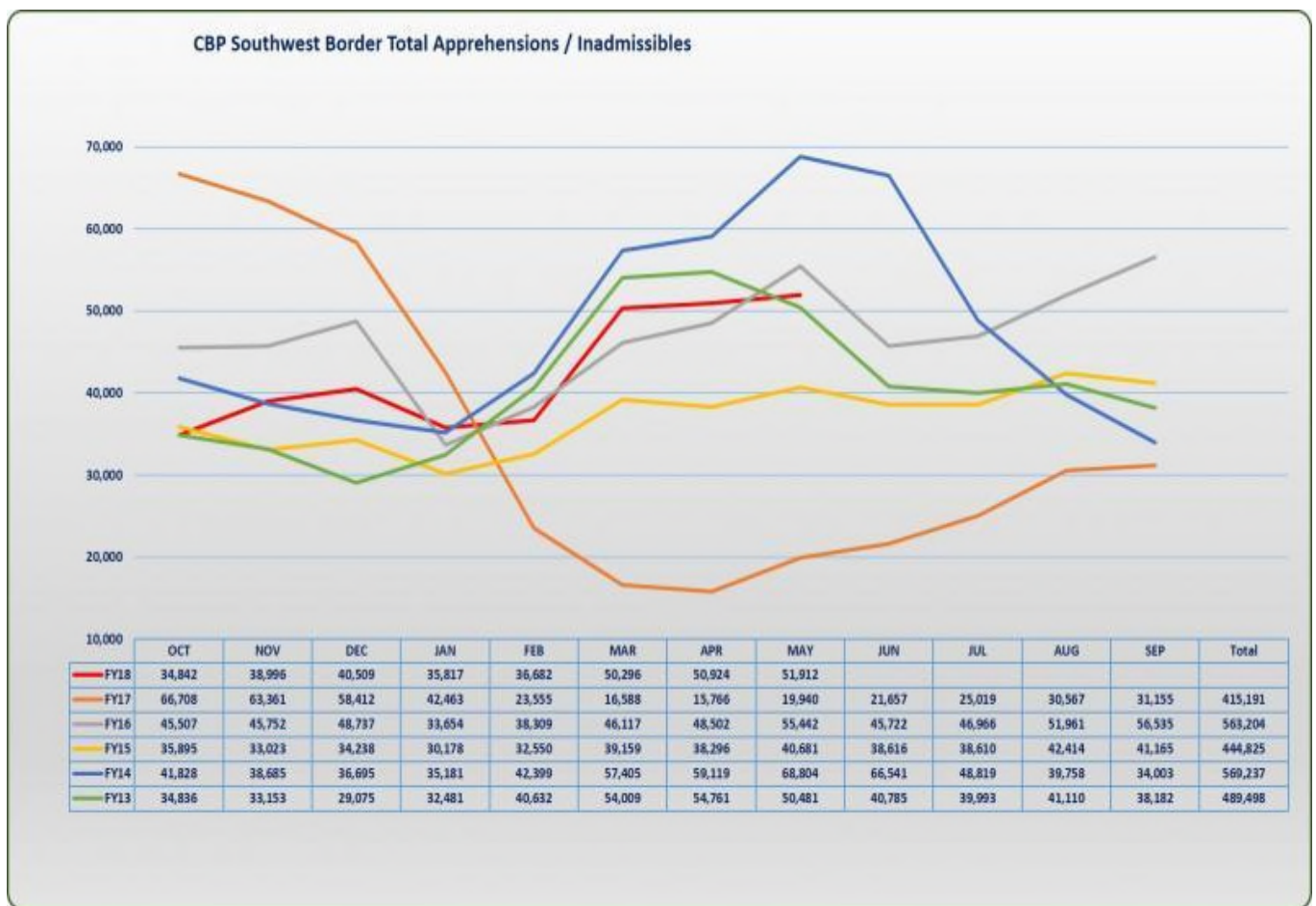
# Exhibit 8



## Southwest Border Migration FY2018

During the month of May, CBP saw a slight 1.9 percent increase overall when compared to April, but a 160 percent increase compared to May 2017.

The number of Family Units increased by 435 percent and the number of unaccompanied children (UAC) increased by 329 percent compared to May 2017.



### U.S. Border Patrol Apprehensions FY2018 YTD (October 1 - May 31)

USBP	Demographic	OCT	NOV	DEC	JAN	FEB	MAR	APR	May	Total
Southwest Border	UAC	3,153	3,975	4,063	3,207	3,122	4,145	4,302	6,405	32,3
	Family Units	4,837	7,016	8,120	5,654	5,475	8,873	9,653	9,485	59,1
Southwest Border Total Apprehensions		25,483	29,086	28,998	25,978	26,665	37,385	38,278	40,344	252,

Tables are accurate as of 6/1/18, totals change as data is adjudicated.

In May a total of 40,344 individuals were apprehended between ports of entry on our Southwest Border, compared with 38,278 in April and 37,385 in March. In Fiscal Year (FY) 2017, USBP apprehended 303,916 individuals along our Southwest Border, compared to 408,870 in FY16, 331,333 in FY15, and 479,371 in FY14.

For breakdown by Sector, visit **USBP Southwest Border Apprehensions by Sector** (/newsroom/stats/usbp-sw-border-apprehensions)

Office of Field Operations Inadmissibles FY2018 YTD (October 1 - May 31)

Field Operations	Demographic	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
Southwest Border	UAC	629	672	905	686	587	1,057	1,015	830	6,271
	Family Units	3,230	3,680	4,906	3,562	3,941	5,162	5,445	4,718	30,640
Southwest Border Total Inadmissibles		9,360	9,912	11,511	9,839	10,020	12,913	12,690	11,568	87,511


Tables are accurate as of 6/5/18, totals change as data is adjudicated.

In May, 11,568 people presenting themselves at ports of entry on the Southwest Border were deemed inadmissible compared to 12,690 in April, and 12,913 in March. In FY 2017 111,275 individuals were deemed inadmissible compared to 150,825 in FY16, 114,486 in FY15 and 90,601 in FY14.

OFO inadmissibility metrics include: individuals encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws; and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.

For breakdown by Field Office, visit **Southwest Border Inadmissibles by Field Office** (/newsroom/stats/ofo-sw-border-inadmissibles)

Last published: June 6, 2018  
Tags: **Statistics, Unaccompanied Alien Children (UAC)**

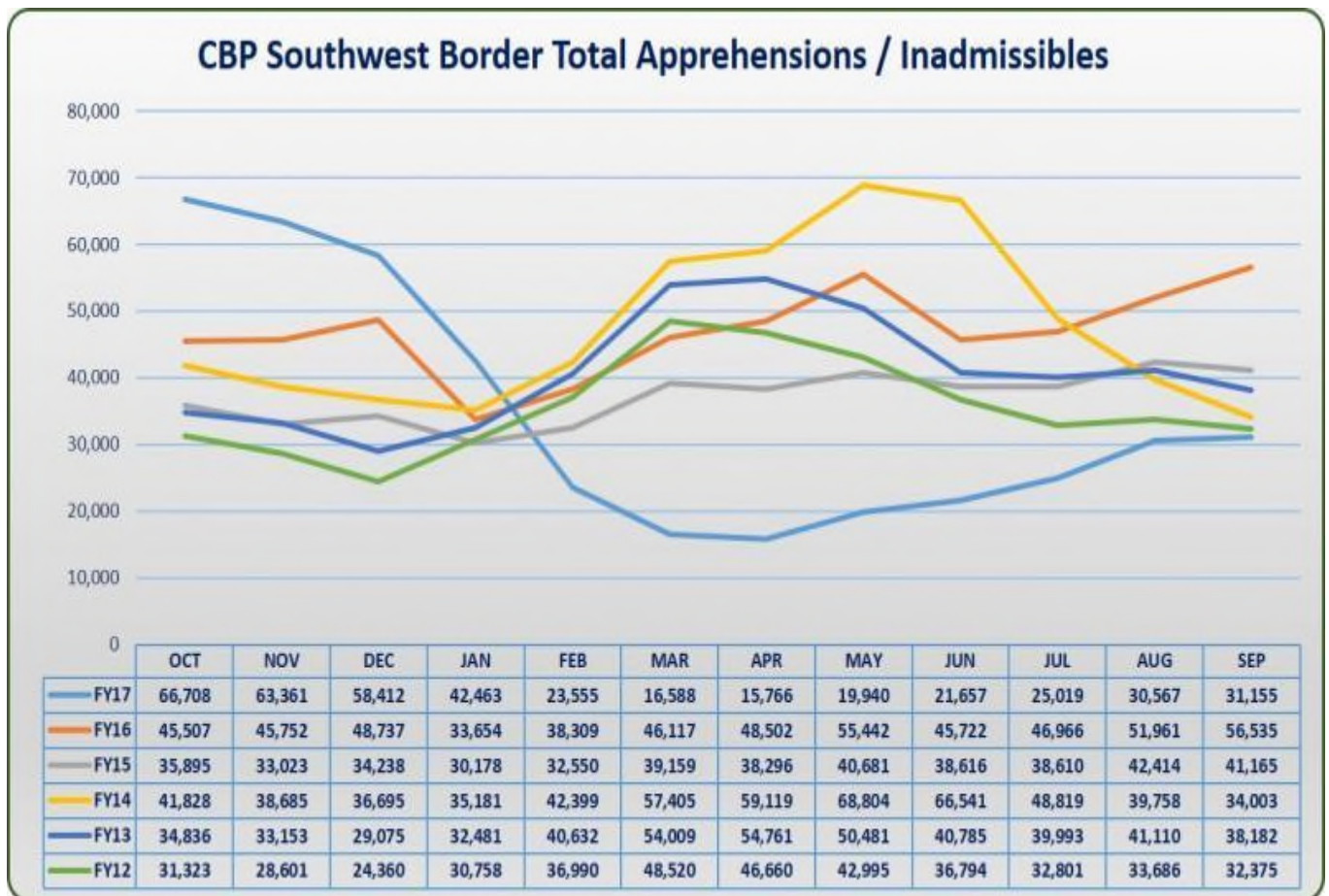
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# Exhibit 9



# U.S. Customs and Border Protection (/)

## Southwest Border Migration FY2017



(/sites/default/files/u6069/sept.jpg).

### U.S. Border Patrol Apprehensions FY2017 (October 1 - September 30)

USBP	Demographic	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Southwest Border	UAC	6,704	7,346	7,187	4,405	1,910	1,041	997	1,473	1,94
	Family Units	13,115	15,588	16,139	9,300	3,123	1,126	1,118	1,580	2,32
Southwest Border Total Apprehensions		46,184	47,211	43,251	31,576	18,754	12,195	11,127	14,519	16,0

In Sept, a total of 22,537 individuals were apprehended between ports of entry on our Southwest Border, compared with 22,288 in August and 18,187 in June. In Fiscal Year (FY) 2016, USBP apprehended 408,870 individuals along our Southwest Border, compared to 331,333 in FY15, and 479,371 in FY14.

For breakdown by Sector, visit **USBP Southwest Border Apprehensions by Sector** (</newsroom/stats/usbp-sw-border-apprehensions-fy2017>)

## Office of Field Operations Inadmissibles FY2017 (October 1 - September 30)

Field Operations	Demographic	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
<b>Southwest Border</b>	UAC	1,830	1,437	963	591	264	121	138	212	250
	Family Units	6,500	5,137	3,868	2,753	1,054	768	781	1,073	1,200
<b>Southwest Border Total Inadmissibles</b>		20,524	16,150	15,161	10,887	4,801	4,393	4,639	5,421	5,500

In September a total of 8,618 people presenting themselves at ports of entry on the Southwest Border were deemed inadmissible compared to 8,279 in August and 6,832 in July. In Fiscal Year (FY) 2016, 150,825 were deemed inadmissible compared to 114,486 in FY15 and 90,601 in FY14.

OFO inadmissibility metrics include: individuals encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws; and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.

For breakdown by Field Office, visit **Southwest Border Inadmissibles by Field Office** (</newsroom/stats/of0-sw-border-inadmissibles-fy2017>)

Last modified: December 15, 2017

Tags: **Unaccompanied Alien Children (UAC), Statistics**



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# Exhibit 10



# U.S. Customs and Border Protection (/)

## CBP Enforcement Statistics FY2018

 **Printer-friendly version** (<https://www.cbp.gov/print/148141>)

U.S. Customs and Border Protection is the nation's largest federal law enforcement agency charged with securing the nation's borders and facilitating international travel and trade. Our top priority is to keep terrorists and their weapons from entering the United States.

At the nation's more than 300 ports of entry, CBP officers have a complex mission with broad law enforcement authorities tied to screening all foreign visitors, returning American citizens and imported cargo that enters the U.S. Along the nation's borders, the United States Border Patrol and Air and Marine Operations are the uniformed law enforcement arms of CBP responsible for securing U.S. borders between ports of entry. (<https://www.cbp.gov/newsroom/stats/typical-day-fy2016>)

The following is a summary of CBP enforcement actions related to inadmissibles, apprehensions, arrests of individuals with criminal convictions and individuals who have been apprehended multiple times crossing the border illegally.

Visit CBP's **Southwest Border Migration** (</newsroom/stats/sw-border-migration>) page for demographic information regarding apprehensions and inadmissibles on the southwest border and the **Use of Force** (</newsroom/stats/cbp-use-force>) page for use-of-force statistics and case summaries.

## TOTAL CBP ENFORCEMENT ACTIONS

Numbers below reflect FY2016 and FY2017 totals, FY2018TD (October 1, 2017 - May 31, 2018)

	FY2016	FY2017	FY2018TD
<b>OFFICE OF FIELD OPERATIONS (OFO)</b>			
<b>Total Inadmissibles</b> <sup>1</sup>	274,821	199,844	153,489
<b>U.S. BORDER PATROL</b>			
<b>Total Apprehensions</b> <sup>2</sup>	415,816	310,531	256,857
<b>Total Enforcement Actions</b>	690,637	487,481	410,346



<sup>1</sup> Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.

<sup>2</sup> Apprehensions refers to the physical control or temporary detainment of a person who is not lawfully in the U.S. which may or may not result in an arrest.

➤ Expand All

➤ ARRESTS OF INDIVIDUALS WITH CRIMINAL CONVICTIONS OR THOSE WANTED BY LAW ENFORCEMENT

➤ Currency Seizures

➤ DRUG SEIZURES

➤ GANG AFFILIATED ENFORCEMENT

➤ U.S. BORDER PATROL RECIDIVISM RATES

Tags: **Statistics**



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# Exhibit 11

## The New York Times

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# *Kirstjen Nielsen, Chief of Homeland Security, Almost Resigned After Trump Tirade*

By **Michael D. Shear** and **Nicole Perlroth**

May 10, 2018

WASHINGTON — Kirstjen Nielsen, the homeland security secretary, told colleagues she was close to resigning after President Trump berated her on Wednesday in front of the entire cabinet for what he said was her failure to adequately secure the nation's borders, according to several current and former officials familiar with the episode.

Ms. Nielsen, who is a protégée of John F. Kelly, the White House chief of staff, has drafted a resignation letter but has not submitted it, according to two of the people. As the head of the Department of Homeland Security, Ms. Nielsen is in charge of the 20,000 employees who work for Immigration and Customs Enforcement.

Mr. Trump's anger toward Ms. Nielsen, who was sitting several seats to his left at the meeting, was part of a lengthy tirade in which the president railed at his cabinet about what he said was its lack of progress toward sealing the country's borders against illegal immigrants, according to one person who was present at the meeting.

Asked about the heated exchange at the meeting, Sarah Huckabee Sanders, the White House press secretary, said Thursday that "the president is committed to fixing our broken immigration system and our porous borders."

In a statement, Ms. Nielsen said she intended to "continue to direct the department to do all we can to implement the president's security-focused agenda." She said Mr. Trump was "rightly frustrated that existing loopholes and the lack of congressional action have prevented this administration from fully securing the border."

Tyler Q. Houlton, a spokesman for the Department of Homeland Security, disputed that Ms. Nielsen had drafted a resignation letter and was close to resigning, calling those assertions "false."

Mr. Trump's anger about immigration has grown in recent weeks, according to several officials. He repeatedly claimed credit for the fact that during his first year in office, illegal border crossings dropped to their lowest levels in decades. But this year, they have risen again, robbing him of one of his favorite talking points.

In remarks to reporters before Wednesday's meeting, Mr. Trump hinted at the anger that would cause him to erupt once TV cameras were led out of the room.

“We’ve very much toughened up the border, but the laws are horrible,” Mr. Trump said. “The laws in this country for immigration and illegal immigration are absolutely horrible. And we have to do something about it — not only the wall, which we’re building sections of wall right now.”

One person familiar with Mr. Trump’s blowup at the meeting said it was prompted by a discussion about why Mexico was not doing more to prevent illegal border crossings into the United States. Another person said the president was primarily focused on the Homeland Security Department because he viewed Ms. Nielsen as primarily responsible for keeping illegal immigrants out of the country.

During the meeting, Mr. Trump yelled about the United States’ porous border and said more needed to be done to fix it. When members of his cabinet pointed out that the country relies on day laborers who cross the border each day, Mr. Trump said that was fine, but continued to complain, one person said.

The president also complained about the continued failure of his administration to find a way to build a wall along the southern border with Mexico, two people familiar with the episode said.

Ms. Nielsen viewed the president’s rant as directed mostly at her, and she told associates after the meeting that she should not continue in the job if he did not view her as effective. One person close to Ms. Nielsen said she was miserable in her job.

Mr. Trump has clashed with Ms. Nielsen for weeks about his belief that more should be done to secure the border. In early April, the president repeatedly expressed frustration with Ms. Nielsen that her department was not doing enough to close loopholes that were allowing illegal immigrants into the country, according to one official familiar with those discussions.

During those discussions, officials had presented Mr. Trump with a list of proposals that would help border agents crack down on those trying to cross the border illegally and send them back more quickly. The president urged Ms. Nielsen to be more aggressive, the official said.

One persistent issue has been Mr. Trump’s belief that Ms. Nielsen and other officials in the department were resisting his direction that parents be separated from their children when families cross illegally into the United States, several officials said. The president and his aides in the White House had been pushing a family separation policy for weeks as a way of deterring families from trying to cross the border illegally.

On Monday, Justice Department officials announced that border agents will refer 100 percent of illegal crossings for prosecution, a decision that will most likely result in more family separations.

But one official said the family separation issue is just one part of the president’s broader frustration with the pace of progress on an immigration crackdown, which was a central promise that he made to voters during his 2016 presidential campaign.

Since taking office, Mr. Trump's efforts to impose a travel ban on several predominantly Muslim countries were held up for months in the courts. The courts have also interfered with his push to end an Obama-era program to help people brought to the United States illegally as young children.

In recent weeks, Mr. Trump has been increasingly focused on the obstacles to immigration changes, even in public speeches where he had planned to talk about other topics.

"We don't have laws. We have laws that were written by people that truly could not love our country," the president told members of the National Rifle Association last week in Dallas during lengthy remarks about immigration.

"We're going to start defending our country. We're going to start defending our borders," he said with the same enthusiasm that he demonstrated when he talked about immigration during his campaign.

The episode at the cabinet meeting on Wednesday is the latest evidence of staff turmoil at the White House, where many of Mr. Trump's top advisers have either been fired or have resigned in recent weeks.

The president fired Rex W. Tillerson, his secretary of state, and pushed out Lt. Gen. H. R. McMaster, his second national security adviser, replacing him with John R. Bolton, who in turn fired several top aides at the National Security Council.

Those staff changes followed the announced departures of Gary D. Cohn, the president's top economic adviser in the White House, and Hope Hicks, who was Mr. Trump's communications director and confidante. Thomas P. Bossert, the president's homeland security adviser, also quit.

Mr. Trump's relationship with Mr. Kelly, who was the president's first secretary of homeland security, has also soured in recent months as the president has grown weary of Mr. Kelly's attempts to impose order on his White House operations.

Ms. Nielsen was Mr. Kelly's chief of staff at the Homeland Security Department, and followed Mr. Kelly to the White House when he became chief of staff. She frequently clashed with other members of the president's staff as she and Mr. Kelly sought to end the chaotic access to Mr. Trump in the Oval Office.

Mr. Trump later nominated Ms. Nielsen to be the new homeland security secretary on Mr. Kelly's recommendation.

Even so, people close to Mr. Trump said he viewed her with suspicion because she had spent years working for President George W. Bush as a homeland security aide and later as a top official for the Transportation Security Administration in the Homeland Security Department.

Julie Hirschfeld Davis and Maggie Haberman contributed reporting.

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A version of this article appears in print on May 10, 2018, on Page A1 of the New York edition with the headline: A Tirade by Trump, Then a Resignation Letter



# Exhibit 12

## JUSTICE NEWS

### Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, April 6, 2018

## Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry

Attorney General Jeff Sessions today notified all U.S. Attorney's Offices along the Southwest Border of a new "zero-tolerance policy" for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. The implementation of the Attorney General's zero-tolerance policy comes as the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011.

"The situation at our Southwest Border is unacceptable. Congress has failed to pass effective legislation that serves the national interest—that closes dangerous loopholes and fully funds a wall along our southern border. As a result, a crisis has erupted at our Southwest Border that necessitates an escalated effort to prosecute those who choose to illegally cross our border," said Attorney General Jeff Sessions. "To those who wish to challenge the Trump Administration's commitment to public safety, national security, and the rule of law, I warn you: illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers of the Department of Justice. To the Department's prosecutors, I urge you: promoting and enforcing the rule of law is vital to protecting a nation, its borders, and its citizens. You play a critical part in fulfilling these goals, and I thank you for your continued efforts in seeing to it that our laws—and as a result, our nation—are respected."

On April 11, 2017, Attorney General Jeff Sessions announced a renewed commitment to criminal immigration enforcement. As part of that announcement, the Attorney General issued a memorandum to all federal prosecutors and directed them to prioritize the prosecution of certain criminal immigration offenses.

Today's zero-tolerance policy further directs each U.S. Attorney's Office along the Southwest Border (i.e., Southern District of California, District of Arizona, District of New Mexico, Western District of Texas, and the Southern District of Texas) to adopt a policy to prosecute all Department of Homeland Security referrals of section 1325(a) violations, to the extent practicable.

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#### Attachment(s):

[Download Zero-Tolerance Memorandum](#)

#### Topic(s):

Immigration

**Component(s):**

Office of the Attorney General

**Press Release Number:**

18-417

*Updated April 6, 2018*

# Exhibit 13

## JUSTICE NEWS

### **Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration**

San Diego, CA ~ Monday, May 7, 2018

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Thank you all for being here.

Thank you to Tom Homan. Tom, you have done outstanding work leading ICE. Thank you for your more than 30 years of service in law enforcement. We are going to miss you.

Today we are here to send a message to the world: we are not going to let this country be overwhelmed.

People are not going to caravan or otherwise stampede our border.

We need legality and integrity in the system.

That's why the Department of Homeland Security is now referring 100 percent of illegal Southwest Border crossings to the Department of Justice for prosecution. And the Department of Justice will take up those cases.

I have put in place a "zero tolerance" policy for illegal entry on our Southwest border. If you cross this border unlawfully, then we will prosecute you. It's that simple.

If you smuggle illegal aliens across our border, then we will prosecute you.

If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law.

If you make false statements to an immigration officer or file a fraudulent asylum claim, that's a felony.

If you help others to do so, that's a felony, too. You're going to jail.

So if you're going to come to this country, come here legally. Don't come here illegally.

In order to carry out these important new enforcement policies, I have sent 35 prosecutors to the Southwest and moved 18 immigration judges to the border. These are supervisory judges that don't have existing caseloads and will be able to function full time on moving these cases. That will be about a 50 percent increase in the number of immigration judges who will be handling the asylum claims.

These actions are necessary. And they are made even more necessary by the massive increases in illegal crossings in recent months. This February saw 55 percent more border apprehensions than last February. This March saw triple the number from last March. April saw triple the number last April.

The trends are clear: this must end.

Eleven million people are already here illegally. That's more than the population of Portugal or the state of Georgia.

The Congressional Budget Office estimates that those 11 million have 4.5 million children who are American citizens. Combined, that group would be our fifth-most populous state.

This situation has been many years in the making.

For decades, the American people have been pleading with our elected representatives for a lawful system of immigration that serves the national interest—a system we can be proud of.

That is not too much to ask. The American people are right and just and decent to ask for this. They are right to want a safe, secure border and a government that knows who is here and who isn't.

Donald Trump ran for office on that idea. I believe that is a big reason why he won. He is on fire about this. This entire government knows it.

The American people have a right to expect that the laws that their representatives voted for are going to be carried out. Failure to enforce our duly-enacted laws would be an affront to the American people and a threat to our very system of self-government.

And these laws are the most generous immigration laws in the world. We accept 1.1 million lawful permanent residents every year—that's more than the population of Montana, every single year. These are the highest numbers in the world.

I have no doubt that many of those crossing our border illegally are leaving difficult situations. But we cannot take everyone on Earth who is in a difficult situation.

According to a Gallup poll from a few years ago, 150 million people around the world want to immigrate to the United States. Gallup says that 37 percent of Liberians want to immigrate to the United States. One fifth of Cambodians want to move here. One-in-six Salvadorans are already in the United States—and another 19 percent tell Gallup they want to come here.

It's obvious that we cannot take everyone who wants to come here without also hurting the interests of the citizens we are sworn to serve and protect.

We have to have limits. And Congress has already set them.

And if you want to change our laws, then pass a bill in Congress. Persuade your fellow citizens to your point of view.

Immigrants should ask to apply lawfully before they enter our country. Citizens of other countries don't get to violate our laws or rewrite them for us. People around the world have no right to demand entry in violation of our sovereignty.

This is a great nation—the greatest in the history of the world. It is no surprise that people want to come here. But they must do so properly. They must follow our laws—or not come here at all. Make no mistake, the objections, the lawsuits, the sanctuary jurisdictions are often the product of a radical open border philosophy. They oppose all enforcement.

And so this Department, under President Trump's leadership, is enforcing the law without exception. We will finally secure this border so that we can give the American people safety and peace of mind. That's what the people deserve.



Thank you.

---

**Speaker:**

Attorney General Jeff Sessions

**Topic(s):**

Immigration

**Component(s):**

Office of the Attorney General

*Updated May 7, 2018*

# Exhibit 14



Office of the Attorney General  
Washington, D. C. 20530

APRIL 6, 2018

MEMORANDUM FOR FEDERAL PROSECUTORS ALONG THE SOUTHWEST BORDER

FROM:

THE ATTORNEY GENERAL

A handwritten signature in black ink, followed by the date "4/6/18" written in a similar style.

SUBJECT:

Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)

On April 11, 2017, I issued a memorandum to all federal prosecutors entitled “Renewed Commitment to Criminal Immigration Enforcement,” in which I directed the prioritization of the prosecution of certain criminal immigration offenses. I further directed each United States Attorney’s Office along the Southwest Border to work with the Department of Homeland Security to develop guidelines for prosecuting offenses under 8 U.S.C. § 1325(a).

Those seeking to further an illegal goal constantly alter their tactics to take advantage of weak points. That means we must effectively respond with smart changes also. The recent increase in aliens illegally crossing our Southwest Border requires an updated approach. Past prosecution initiatives in certain districts—such as Operation Streamline—led to a decrease in illegal activities in those districts. We must continue to execute effective policies to meet new challenges.

Accordingly, I direct each United States Attorney’s Office along the Southwest Border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a). This zero-tolerance policy shall supersede any existing policies. If adopting such a policy requires additional resources, each office shall identify and request such additional resources.

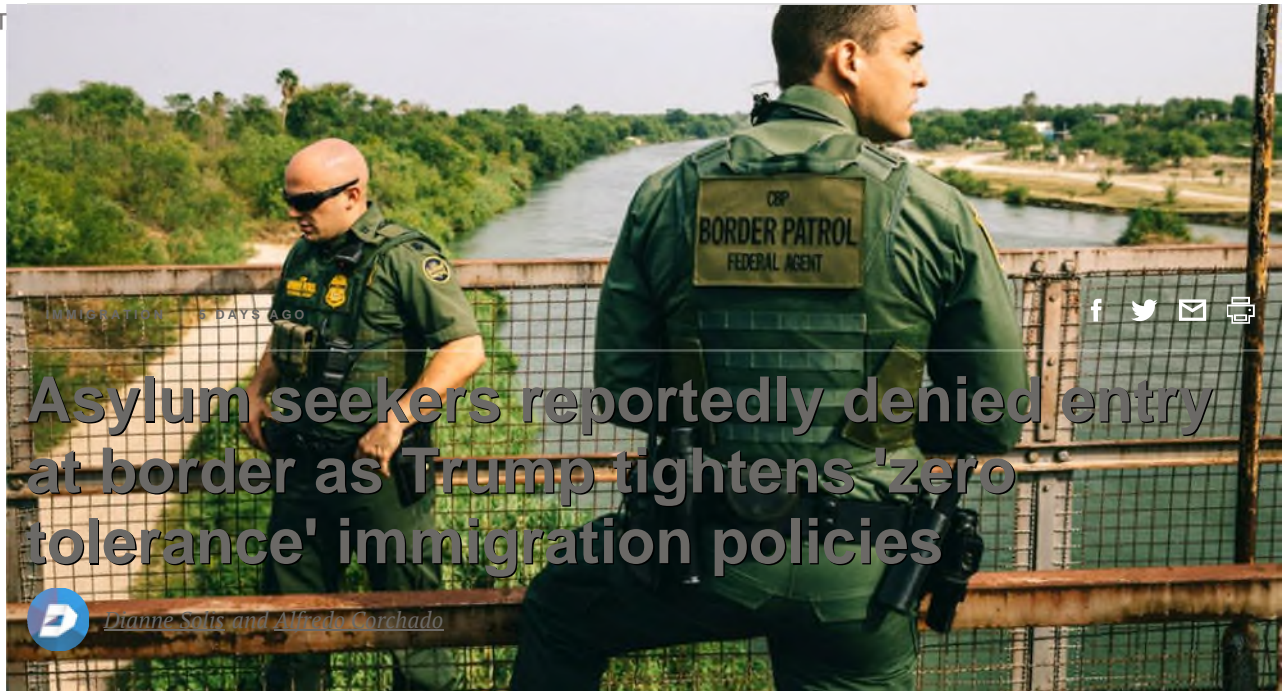
You are on the front lines of this battle. I respect you and your team. Your dedication and insight into border reality is invaluable. Keep us informed, and don’t hesitate to give us suggestions for improvement. Remember, our goal is not simply more cases. It is to end the illegality in our immigration system.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

# Exhibit 15



NEWS ▾



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EL PASO -- Immigration advocates are accusing U.S. border guards of refusing asylum-seekers entry to the U.S. at a bustling pedestrian bridge into the downtown of this city next to the Rio Grande.



It isn't the first time, nor the only port of entry. But the accusation that people are again being illegally refused the opportunity to apply for asylum comes as tensions flare over "zero tolerance" measures escalating the crackdown on legal and illegal immigration by the Trump administration.

U.S. Customs and Border Protection officials say they are doing the best job they can with limited space for immigrants and limited resources. Immigration advocates say the extreme immigration enforcement is inhumane, and is taking a toll on El Paso and other cities along the border.

ADVERTISING



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In recent months, migrant children have been separated from parents, immigration judges have been ordered to speed up cases and federal prosecutors have been instructed to seek criminal charges against anyone who crosses the border unlawfully. And a parade of federal officials including U.S. Vice President Mike Pence, Attorney General Jeff Sessions, and Homeland Security Secretary Kirstjen Nielsen have all made recent visits to the border to trumpet the new policies.



Women carrying children in their arms stand up to protest the opening remarks of Homeland Security Secretary Kirstjen Nielsen (left) during Nielsen's opening remarks before Senate Appropriations subcommittee hearing last month on Capitol Hill. (Pablo Martinez Monsivais/The Associated Press)



"Federal authorities are essentially disrupting our border existence, our way of life of people going back and forth to work, shop, visit relatives," says El Paso attorney [Carlos Spector](#). "They're trying to deter asylum seekers, and at the same time threaten everyone else... the common denominator with this and everything we've been living is punishment, criminalization and now family separation as a deterrence."

Two weeks ago, a reporter for *The Dallas Morning News* walking from Juarez into El Paso on the pedestrian bridge saw two CPB agents standing by the middle of the bridge, under a shaded canopy along the pedestrian walkway. The sight of agents was unusual. They were standing at the line where the U.S. boundary begins, selectively checking crossers, adding another layer of security before pedestrians can reach the official checkpoint where visitors are asked to declare their citizenship. Those seeking refuge must also get to the official checkpoint to officially request asylum.

Complaints about asylum-seekers not being allowed to ask for refuge are received "multiple times and on a daily basis," along the Texas border, said Houston-based attorney Edgar Saldivar of the ACLU of Texas.



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By [ADT](#)

One recent case of Central American asylum seekers being turned back after they entered U.S. territory, but before they had the opportunity to apply for asylum at the border checkpoint, was first reported by *Texas Monthly*. In that case, Ruben Garcia, founder of Annunciation House, a nonprofit that helps immigrants and refugees in El Paso, said CBP agents simply told certain border-crossers they couldn't receive them. That didn't allow the immigrants to get on U.S. soil and tell them of their fears and need for asylum, he said.

"If you look indigenous and you look Central American, they will stop you," Garcia told *The Dallas Morning News*. "They never ask why they are coming. They just say we can't receive you."



MEXICO

Families separated by Trump policies briefly reunite before Mother's Day for #Huq



A group of a dozen people last Saturday was followed by Annunciation House staff and volunteers. Three got past the border and CFB officers and walked to the border checkpoint to make their asylum plea, but another nine Central Americans didn't get past CFB officers who were on the bridge ahead of the border checkpoint, Garcia said.

ADVERTISING



inRead invented by Teads

Garcia said one sunburned Guatemalan woman holding her 10-month-old son in her arms who was identified only as Juana did manage to get across the international boundary line. "The supervisor says, 'Take her in. She is already in,' " Garcia recalled.

Then, Juana told them, "I fear for my life," Garcia said.

U.S. Customs and Border Protection officials said, in written statements, that they are trying to manage the flow of immigrants with what they portray as finite resources, involving translators to detention space. Case complexity plays a role, too, they said in statements.



In general, the spokesman did say, "Individuals who are found to have a credible fear are referred to immigration court, where they may apply for relief from removal, including asylum..."

But when asked more directly if CBP refuses to allow immigrants onto U.S. soil to ask for asylum at the El Paso bridge checkpoint, the officer in an email, "The statement is all we have at this time."

## Others turned away

Complaints about asylum-seekers not being allowed to ask for refuge date back to at least 2016, immigration lawyers say. That's when there was a renewed border surge of immigrant families and immigrant minors travelling alone from El Salvador, Honduras and Guatemala.

"We really saw an uptick of this practice in late October, November, leading into the year of 2018," said Karolina Walters, a lawyer with the [American Immigration Council](#). "It is not just in Tijuana and El Paso."

Months before, the American Immigration Council filed a federal suit in California challenging the alleged practice of turning away asylum seekers at land ports along the entire length of the 2,000-mile border. The case is still pending and the U.S. government seeks its dismissal.

One Honduran man, identified in the lawsuit as Jose Doe, said he tried to ask for asylum in Laredo, but U.S. border officials "misinformed" him about his rights and denied him entry, according to the suit. The suit alleges the Honduran and his family were threatened by gangs in Honduras and, then again, by gangs in Nuevo Laredo.



#### IMMIGRATION

**U.S. citizen kids face the deportation of their immigrant parents**

Saldivar of the ACLU said asylum-seekers, by law, should present themselves at ports of entry. Immigration law, the U.S. Constitution and international law guarantee their right, once they are on U.S. soil, to due process. The [1951 Refugee Convention](#) says a refugee should not be returned to a country where they face serious threats to their life or freedom. [The Refugee Convention](#) also says that those seeking asylum shouldn't be punished for illegal entry if they present themselves without delay.

But that doesn't mean a Central American who makes the 2,000-mile trek to the U.S., fleeing violence or danger in their homeland, necessarily understands those rights. Federal agents can walk forward on the bridge, remaining on U.S. soil but intimidating potential refugees by asking for IDs and saying centers are full, advocates say.

Saldivar said claims that the CBP is doing the best it can with stretched resources isn't a legitimate reason for turning people away. "That is one of their common excuses," he said, "But, again, it is unclear what steps they are taking to ensure that people have access to asylum by the law."

## **Demands of the crackdown**

There's no question that resources are stretched thin at the border. But there is a question about which resources are being stretched thin.

In [April](#) and [May](#), Attorney General Jeff Sessions went to the border in California to announce that the Departments of Justice and Homeland Security would unveil even tougher “[zero tolerance](#)” policies against what was called unlawful immigration.

“If you cross this border unlawfully, then we will prosecute you,” Sessions said. “It’s that simple. If you smuggle illegal aliens across our border, then we will prosecute you. If you are smuggling a child, then we will prosecute you and the child will be separated from you as required by law.”

Among the most controversial of the new measures is the systematic separation of migrant children from their parents when families cross the border seeking asylum. [NBC reported](#) that the federal government oversees shelters that care for more than 11,000 unaccompanied children.

About 100 shelters used for unaccompanied immigrant children are now so full the federal government may send some children to military bases, including Fort Bliss in El Paso, according to The Hill.

It’s far more common for immigrants who cross the border unlawfully to be processed administratively through the immigration courts. Those courts were already struggling with a huge backlog when Trump took office in 2017. It has now soared by more than 100,000 cases to about [700,000 cases](#).

Criminal charges for crossing the border were used in some cases in the administrations of presidents George W. Bush and Barack Obama, but recent policy changes through the Justice Department call for “100 percent of illegal Southwest Border crossings” to be prosecuted by the federal criminal courts for a nonviolent offense known as improper entry, a misdemeanor. A border reentry can be prosecuted as a felony.

The heavier caseload is already showing in the federal criminal courts: Federal criminal prosecutions of those apprehended by CBP at the Mexican border jumped about 30 percent in April over March, according to the [Transactional Records Access Clearinghouse](#).

It’s clear that Garcia in El Paso feels overwhelmed by all the policy changes. His next move will be to organize more witnesses of bridge crossings--and not just in El Paso. But, he adds, “Our resources are very limited.”

#### WHAT YOU NEED TO KNOW ABOUT IMMIGRATION — LEGAL AND ILLEGAL — IN THE TRUMP ERA

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**Report says Trump’s immigration crackdown is ‘breeding a climate of fear’**

**57,000 Hondurans could face deportation as Trump phases out temporary protection status**

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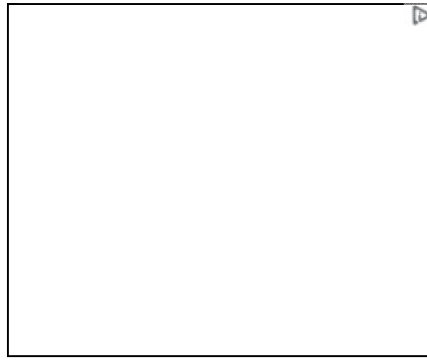
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# Exhibit 16



**Donald J. Trump**   
@realDonaldTrump

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Put pressure on the Democrats to end the horrible law that separates children from there parents once they cross the Border into the U.S. Catch and Release, Lottery and Chain must also go with it and we MUST continue building the WALL! DEMOCRATS ARE PROTECTING MS-13 THUGS.

6:59 AM - 26 May 2018

**22,512** Retweets **90,165** Likes



63K



23K

90K



**Diane** @Diane\_mommyof6 · May 26  
Replying to @realDonaldTrump



"I want to be clear. DHS does not have a blanket policy on separating families as a deterrent," Homan, reportedly said at the press event with Sessions. "Every law enforcement agency in this country separates parents from children when they're arrested for a crime.



66



58

331



**Natalie Oldenkamp** @noldenkamp · May 27  
It's not a crime to want asylum.

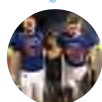


29



30

563



**WeAreTheStorm** @milano\_miste · May 27  
It is a crime to cross our boarders ILLEGALLY. Why dont you try that yourself in a foreign country and see how far you get? Until there has been an investigation into the request for asylum, they are guilty of illegal boarder crossing.



118



23

150



**Diane** @Diane\_mommyof6 · May 27  
It is a civil violation to cross the border at most. It is not a felony or misdemeanor to seek asylum.



31



23

494

# Exhibit 17

POLITICO



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White House senior policy adviser Stephen Miller's briefing appeared an attempt to contain damage from the president's recent tweet that Democrats were to blame for family separations at the border. | AP Photo

# White House's Miller blames Democrats for border crisis

By **TED HESSON** | 05/29/2018 03:45 PM EDT

White House senior policy adviser Stephen Miller bashed Democrats on Tuesday for not repealing laws and overriding court rulings that he said encourage Central American migrants to seek refuge in the United States.

Miller's rare on-the-record briefing appeared an attempt to contain damage from President Donald Trump's tweet over the holiday weekend that Democrats are to blame for family separations at the border. The claim was characterized widely in the press as a blatant falsehood.

In a telephonic briefing with reporters, Miller and other senior administration officials ticked off a series of legal changes that they said would quell the recent increase in migrant traffic at the southwest border.

The administration has pushed Congress to pass legislation that would allow the swift removal of unaccompanied minors from Central America, permit longer detentions of families arrested at the border and tighten standards for asylum claims.

“If we were to have those fixes in federal law, the migrant crisis emanating from Central America would largely be solved in a very short period of time,” Miller said. “Families would then therefore be able to be kept together and could be sent home expeditiously and safely.”

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One incontestable truth amid many claims of varying accuracy is a recent increase in the number of people caught trying to cross the U.S.-Mexico border. That number plummeted after Trump took office in January 2017 but has climbed in recent months. In April, Border Patrol agents arrested 38,234 people, a figure more than three times the number during the same month a year earlier.

With the increased arrests, the Trump administration ratcheted up its immigration crackdown.

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Earlier this month, administration officials announced that the Department of Homeland Security would refer all people suspected of crossing the border illegally to the Justice Department for prosecution, a controversial move that will increase instances of parents being separated from children.

At the same time, House Republicans embarked on an intense debate over how to address immigration in the run-up to the November midterm elections.

“Put pressure on the Democrats to end the horrible law that separates children from there [sic] parents once they cross the Border into the U.S.,” the president tweeted Saturday. “Catch and Release, Lottery and Chain must also go with it and we MUST continue building the WALL! DEMOCRATS ARE PROTECTING MS-13 THUGS.”



## **GOP scrambles to quell immigration revolt**

By **RACHAEL BADE**

But the new policy to prosecute all suspected border-crossers — and therefore separate more families — came directly from Trump's own administration.

Devin O'Malley, a Justice Department spokesman, recapped the policy changes during the call with reporters Tuesday. O'Malley told reporters that based on a policy directed by DHS Secretary Kirstjen Nielsen roughly three weeks ago, DHS and DOJ have begun “in a scaleable manner” to refer more people suspected of crossing illegally.

Suspected crossers “will not be given a free pass,” he said, “and that is irrespective of whether or not they have brought a child with them.”



The officials also addressed reports of nearly 1,500 unaccompanied minors that the Department of Health and Human Services could not locate last year.

Steven Wagner, acting assistant secretary of the Administration for Children and Families, told a Senate subcommittee in late April that HHS “was unable to determine with certainty the whereabouts of 1,475” unaccompanied minors.

Nearly a month later, concerns for the children have provoked outrage on social media under hashtags such as #WhereAreTheChildren and #MissingChildren.

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**CONGRESS****Immigration showdown puts Ryan's job in peril**

By RACHAEL BADE

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Wagner said Tuesday that descriptions of the children as “lost” amount to “an inaccurate characterization of what happened.” He said the children had already been released to parents or guardians, but couldn’t be tracked down when officials made a voluntary call to check in 30 days after the placement.

Wagner said some children are placed with sponsors who themselves lack legal immigration status, which could make them reluctant to respond to a phone call from a federal official.

“There’s no reason to believe that anything has happened to the kids,” Wagner said. “If you call a friend and they don’t answer the phone, you don’t assume that they’ve been kidnapped.”

During the briefing, Miller argued that Democrats “have tried to starve the government of detention space, as part of their crusade for open borders.” But although many Democrats oppose expanding detention, funding for detention beds has risen significantly during the Trump administration.

Congress included funding for 40,520 detention beds in the omnibus spending bill passed in March, a 19 percent increase over the number of beds funded in fiscal year 2016. The Trump administration requested funding for 52,000 detention beds in its latest budget proposal.

“The Obama administration had a policy of ‘catch and release,’ which obviously made detention space for them less of a premium,” Miller said. “But as it stands right now, we are nearing capacity in all aspects of our detention and bed space, and it presents a real public safety crisis.”

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# Exhibit 18

June 17, 2018 3:22 am

## Separating Families at the Border Was Always Part of the Plan

By Chas Danner

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U.S. Border Patrol agents take into custody a father and son from Honduras near the U.S.-Mexico border on June 12, 2018 near Mission, Texas. The asylum seekers were then sent to a processing center for possible separation. Photo: John Moore/Getty Images

President Trump is still trying to avoid responsibility for his administration's [brutal policy](#) of separating migrant children from their parents at the border, but a new report confirms that Trump and his advisors had been considering the extreme measures for as long as they've been in power. [According to the New York Times](#), White House senior policy advisor Stephen Miller was "instrumental" in convincing the president to enact the policy, which applies a zero tolerance approach to prosecuting undocumented immigrants caught entering the U.S. — even if that means taking children away from their parents in the process. And while some members of the Trump administration have reportedly been uneasy over the policy and subsequent fallout, Miller is not one of them. "It was a simple decision by the administration to have a zero tolerance policy for illegal entry, period," Miller told the *Times*, "The message is that no one is exempt from immigration law."



Trump advisor Stephen Miller, seen here walking behind the president, was the primary advocate for dividing immigrant families at the border. Photo: Chip Somodevilla/Getty Images

Trump administration officials continue to defend the policy as nothing more than enforcement of the law, but in the minds of Miller and other immigration hardliners in the White House, the heartlessness of the policy, as well as all the publicity that indifference gets, are exactly the point. That's because their goal is deter other immigrants from attempting to enter the U.S. in the first place, [even though the effectiveness of such tactics is often difficult to discern](#).

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Despite the fact that Trump had repeatedly demonized and dehumanized immigrants on his way to the presidency, he rejected the policy plan at first, but the true-believing Miller — who was also instrumental in pushing the administration's Islamophobic travel ban — never gave up. Finally, sometime this spring, Miller convinced the president to endorse the idea. As a result, [nearly 2,000 children were taken away from their parents and placed in makeshift government shelters in less than a month and a half](#) under the new policy, and that number has undoubtedly gone up in the weeks since (and [separations could soon double in some areas](#)).

Aside from the plain cruelty of separating children from their parents, health professionals are warning that the entire experience puts children's physical and mental health at risk. In particular, the amount of stress the children encounter as a result of being taken from their parents and thrust into a strange new environment — [like one where the kids are denied physical contact](#) — could be toxic, disrupting their developing brains and leading the long term health problems. The situation is especially dangerous for children under ten, and even more so for children under five. With these risks in mind, some 4,600 mental-health professionals and 90 organizations have called on the Trump administration to end the separation policy.

The shelters are managed by the Department of Health and Human Services, but even presuming that workers at the shelters [are doing the best they can to care for the children](#), the system is being pushed to its capacity. More than 11,400 migrant kids are currently in federal custody, including both minors who arrived at the border unaccompanied by an adult and children who have been separated from their parents. More than 2,400 of these children have arrived since the beginning of May. As a result of the rapid influx, HHS has already had to stand up at least one temporary shelter to provide more housing. [A new Trump administration policy](#) mandating the fingerprinting of family members in the U.S. who come to take custody of children living in the shelters will undoubtedly lead to more children being left in government custody — if their only relatives in America are also undocumented.



A two-year-old Honduran asylum seeker cries as her mother is searched and detained near the U.S.-Mexico border on June 12, 2018 in McAllen, Texas. The asylum seekers had rafted across the Rio Grande from Mexico and were detained by U.S. Border Patrol agents before being sent to a processing center for possible separation. Photo: John Moore/Getty Images

As outrage intensifies over the separations, President Trump has insisted he's powerless to change the policy, in an attempt to hide his real agenda. "I hate the children being taken away," Trump claimed on Friday, and [he has continued to repeat the lie](#) that Democrats are the ones responsible. In fact, [as reported by the Washington Post](#), Trump believes that continuing to enforce the policy amid the uproar provides him with political leverage over Congress and could help him force Democratic lawmakers to meet his demands on border security and restrictions on legal immigration. Put another way, the president of the United States is effectively holding thousands of migrant children hostage — and likely causing them irreparable harm in the process — in the hope it will better his chances at enacting the nativist political agenda he campaigned on.

Trump and Miller are not alone in their support for the separations, either. Some administration officials, like Homeland Security Secretary Kirstjen Nielsen, have reportedly opposed the border separation policy, but whatever internal opposition there has been within Trumpworld, it has only been expressed in private. White House Chief of Staff John Kelly, on the other hand, is a full-fledged supporter of the policy. Kelly infamously showed little regard for what happened to the children after they were taken from their parents during [in an NPR interview in May](#). Attorney General Jeff Sessions, who implemented the new rule, has gone so far as to claim that the administration's lack of compassion for immigrant families [is supported by the Bible](#) — a notion which was promptly rejected by prominent Christian leaders like [like Cardinal Timothy Dolan](#).

Outside the administration, Trump's fellow Republicans have so far done nothing of substance to address the separations, [despite rising anxiety that the issue will cost the GOP in this fall's midterm elections](#). Some prominent Republicans have expressed public misgivings about the policy, but even so-called moderates like Senator Susan Collins [are now apparently defending it](#), and no GOP senators are currently supporting a Democratic bill that would block the separations. House GOP leaders, despite their assurances otherwise, [have essentially done nothing](#) to address the separations in their proposed immigration legislation.

The "zero tolerance" practice of immediately imprisoning, prosecuting, and deporting immigrants who illegally enter the United States has been around since 2005, but the George W. Bush and Obama administrations were morally and pragmatically opposed to separating immigrant children from their families, even if some adult immigrants were clearly taking advantage of that compassion.

"That's not who we are," a team of Obama officials concluded after briefly considering the separations, [according to](#) former domestic policy advisor Cecilia Muñoz. Another Obama administration veteran, former Homeland Security Secretary Jeh C. Johnson, told the *Times* that efforts to deter undocumented immigrants from entering the U.S. are ineffective. "Whether it's family detention, messaging about dangers of the journey, or messaging about separating families and zero tolerance, it's always going to have at best a short-term reaction," he explained.



But President Trump and his policymakers, having risen to power on the back of Trump's xenophobic campaign rhetoric, employ a darker and more morally flexible pragmatism. The *Times* reports that Trump officials began discussing the division of immigrant families at the border soon after taking office, and that the Department of Homeland Security even did some trial runs separating children from their parents last summer in Texas. Implementing the border separation policy has always been part of their plan, it just took a little longer than people like Stephen Miller had hoped. After all, the Trump administration has arguably enjoyed no greater success than in its efforts targeting immigrants and all forms of immigration. Zero tolerance, especially towards immigrants, isn't just a policy proposal to this president and his allies — it is the ideology that animates the entire Trump phenomenon, and a defining characteristic of the world as they want it to be.

---

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*By Andrew Sullivan*

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# Exhibit 19

## President Trump: "The United States Will Not Be A Migrant Camp," "Not On My Watch"

Posted By [Tim Hains](#)  
On Date June 18, 2018

President Trump commented on the controversy surrounding detention of illegal immigrant children at a White House event for the National Space Council ([full event replay here](#)).

"If I might, I -- I just wanted to make a brief statement on immigration and what's happening," the president said. "And I'll say it very honestly, and I'll say it very straight: Immigration is the fault, and all of the problems that we're having, because we cannot get them to sign legislation. We cannot get them even to the negotiating table. And I say it's very strongly the Democrats' fault. They're obstruction -- they're really obstructionist, and they are obstructing."

"The United States will not be a migrant camp, and it will not be a refugee holding

facility. Won't be. You look at what's happening in Europe, you look at what's happening in other places; we can't allow that to happen to the United States. Not on my watch."

He also says, "We want safety and we want security for our country. If the Democrats would sit down, instead of obstructing, we could have something done very quickly. Good for the children. Good for the country. Good for the world."

PRESIDENT DONALD TRUMP: Thank you very much, everybody. Thank you very much...

If I might, I -- I just wanted to make a brief statement on immigration and what's happening. And I'll say it very honestly, and I'll say it very straight: Immigration is the fault, and all of the problems that we're having, because we cannot get them to sign legislation. We cannot get them even to the negotiating table. And I say it's very strongly the Democrats' fault. They're obstruction -- they're really obstructionist, and they are obstructing.

The United States will not be a migrant camp, and it will not be a refugee holding facility. Won't be. You look at what's happening in Europe, you look at what's happening in other places; we can't allow that to happen to the United States. Not on my watch.

For the rest of the world, you look at everything that's taking place; pick up your newspapers this morning, and you see.

We want safety and we want security for our country. If the Democrats would sit down, instead of obstructing, we could have something done very quickly: good for the children, good for the country, good for the world. It could take place quickly. We could have an immigration bill. We

could have child separation. We're stuck with these horrible laws. They're horrible laws.

What's happening is so sad. It's so sad. And it can be taken care of quickly, beautifully, and we'll have safety.

This could really be something very special. It could be something, maybe even for the world to watch. Just like they're watching our great economy, how it's soaring, they could watch this.

We have the worst immigration laws in the entire world. Nobody has such sad, such bad and actually, in many cases, such horrible and tough - you see about child separation, you see what's going on there.

But just remember: A country without borders is not a country at all. We need borders. We need security. We need safety. We have to take care of our people.

You take a look at the death and destruction that's been caused by people coming into this country without going through a process -- we want a merit-based immigration system, so that Boeing and Lockheed and all of the people -- Grumman, all of the people that are here today, the heads of every company -- so that you can hire people on a merit-base.

You know they're coming in, they're people that came on merit, not based on a lottery or not people that snuck across the border. And they could be murderers and thieves and so much else.

So we want a safe country. And it starts with the borders and that's the way it is.

Now I'd like to -- thank you.

(APPLAUSE)

Thank you.

And again, we can do this very quickly if the Democrats come to the table. Everybody wants to do it. We want to do it more than they do. If they come to the table instead of playing politics, we can do it very, very quickly.

So welcome to the third meeting of the National Space Council. I want to begin by recognizing our great vice president, Mike Pence, who's been so involved.

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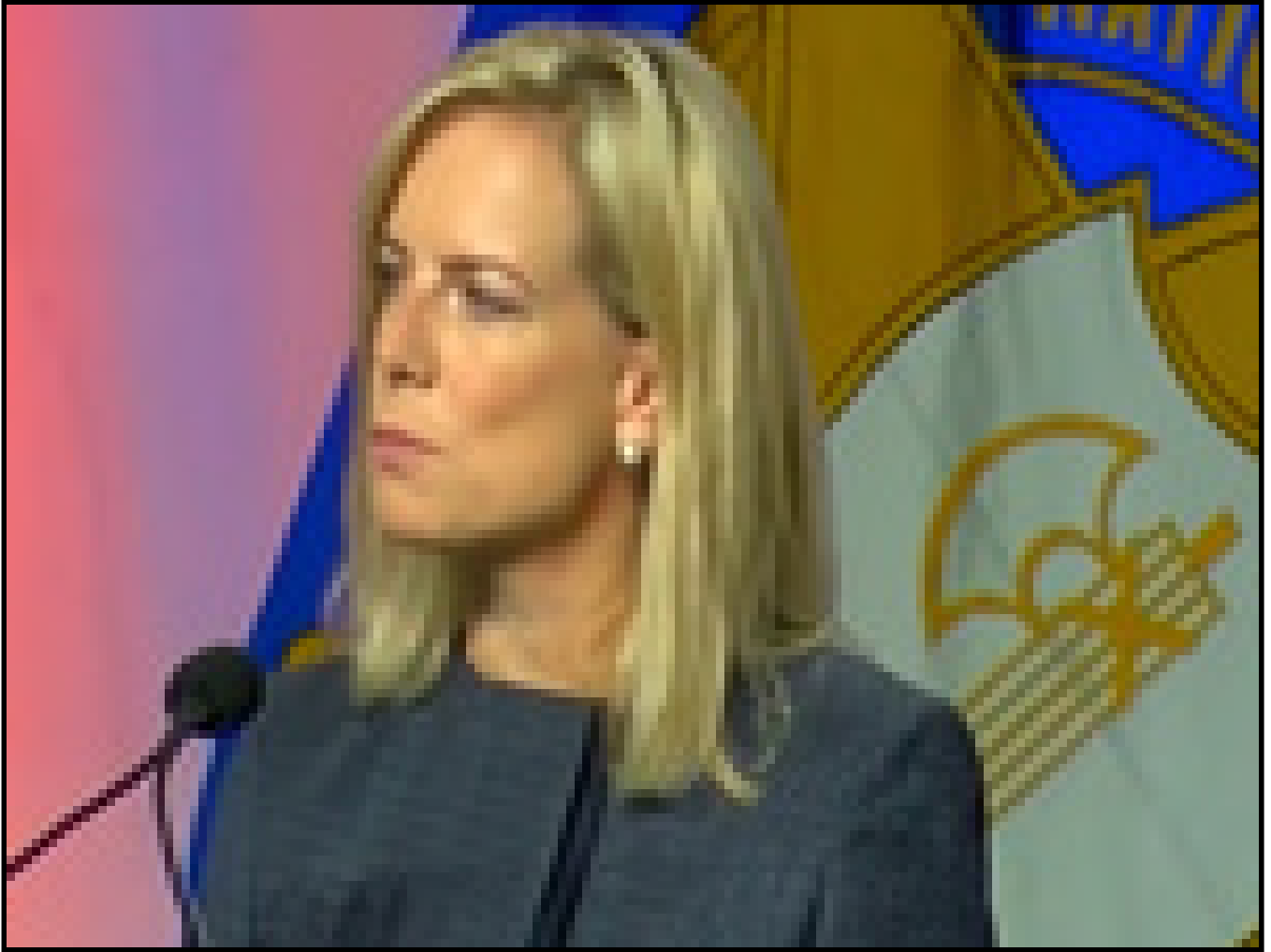


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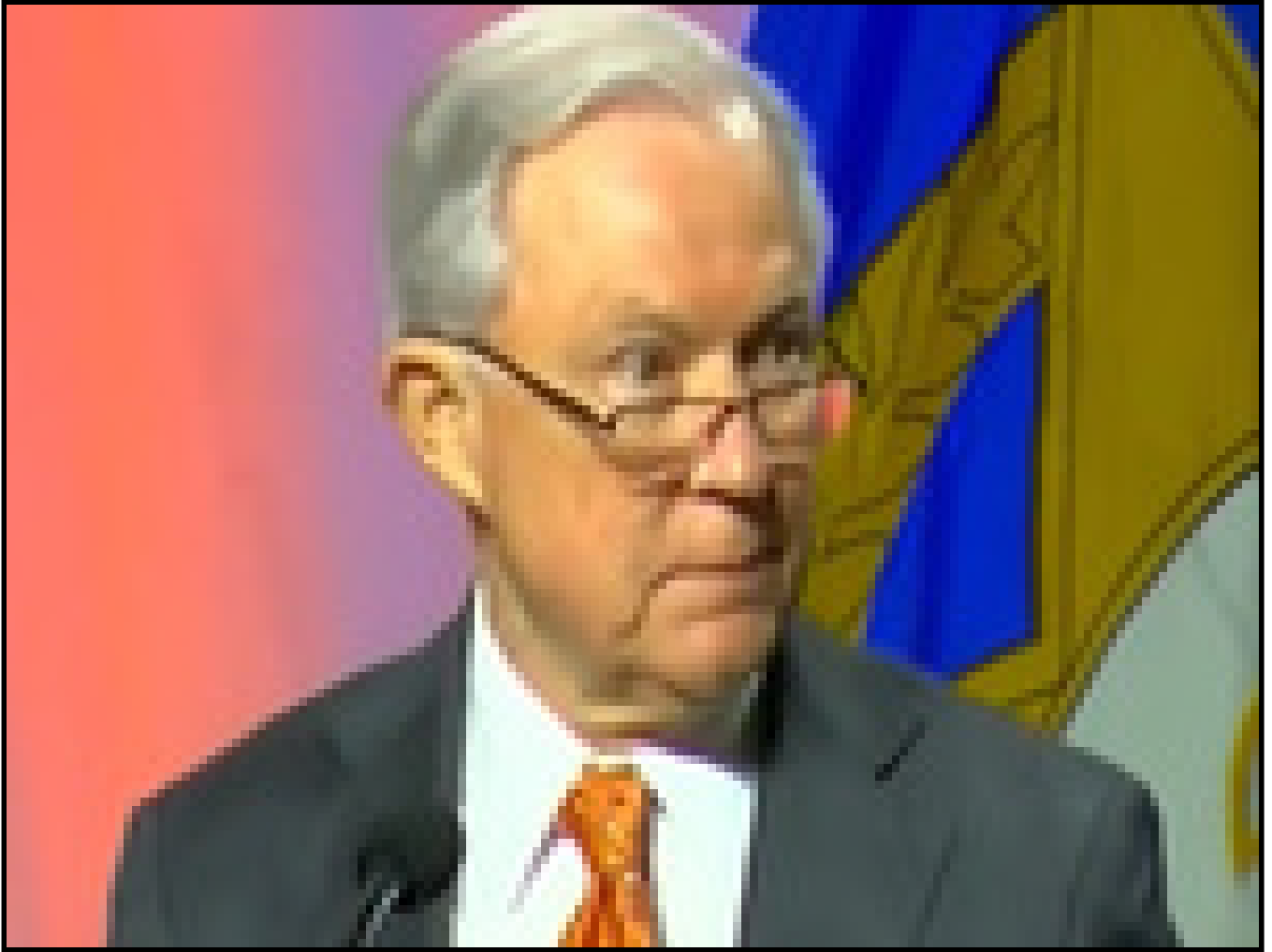
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### **DHS Sec. Nielsen: We Have A Simple Message, "We Will Prosecute You" If You Enter The U.S. Illegally**

In a speech at the National Sheriff's Association meeting in New Orleans, Homeland Security Secretary Kirstjen Nielsen laid out the Trump administration's policy that if you enter the United States illegally, you will be prosecuted. "We have to do our job. We will not apologize for doing our..."

[Kirstjen Nielsen](#)[Homeland Security Department](#)[Trump Administration](#)[Illegal Immigration](#)



### Sessions: Building Border Wall Will End Family Separation

Attorney General Jeff Sessions addressed the controversy about illegal immigrant child detention in a speech Monday at the 2018 National Sheriffs Association conference in New Orleans. "President Trump has said this cannot continue," Sessions said about the issue. "We do not want to separate..."

[Jeff Sessions](#)[Justice Department](#)[Illegal Immigration](#)[Immigration Reform](#)[Comment](#)[Show comments 63](#)

# Exhibit 20



# Sessions on separating families: If we build a wall and pass legislation, we won't have these 'terrible choices'

BY LUIS SANCHEZ - 06/18/18 12:27 PM EDT

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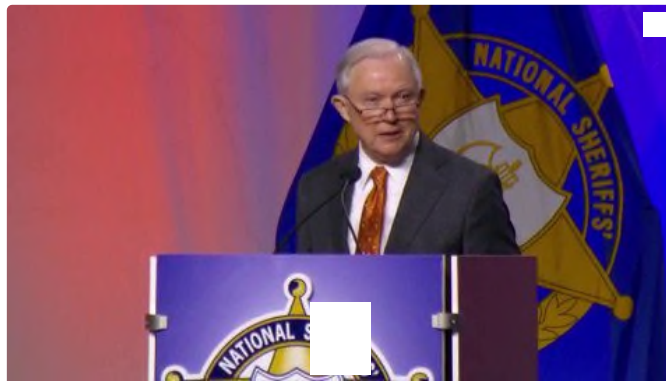


© Greg Nash

Attorney General Jeff Sessions said Monday that if Congress passes legislation to build a wall on the Mexican border, the Trump administration wouldn't need its "zero tolerance" border policy that has resulted in the separation of parents from their children.

"President Trump has said this cannot continue. We do not want to separate parents from their children," Sessions told the National Sheriffs' Association annual conference on Monday.

"If we build the wall, if we pass legislation to end the lawlessness, we won't face these terrible choices."

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**NBC News**  
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WATCH: AG Sessions' full remarks on Trump admin. policy of separating migrant families at US border.

8:40 AM - Jun 18, 2018

63 194 people are talking about this

The administration is embroiled in a growing controversy and political crisis over the policy, which has been panned by figures in both parties.

The policy has allowed thousands of migrant children to be separated from their parents as the adults are prosecuted separately.

Stories of parents sent back to their home countries with little contact with their children and images of crying children have raised public attention to the issue. But President Trump has shown no signs of shifting and has sought to blame Democrats over his own administration's policy.

Sessions defended the policies in his remarks.

"We will have a system where those who need to apply for asylum can do so and those who want to come to this country will apply legally. The American people are generous people who want our laws enforced. That is what we intend to do, and we ask Congress to be our partners in this effort," he said.

When he announced the policy, Sessions noted it would likely lead to more separations but said the policy would help deter more migrants from trying to cross the southern border.

During his speech on Monday, Sessions said that the Trump administration is "dedicated to caring for children" but added that it "will not encourage people to bring children by giving them blanket immunity from our laws."

"We have a generous, lawful system that admits over a million people a year with legal status," Sessions said. "But when we ignore our laws at the border we obviously encourage hundreds of thousands of people a year to likewise ignore our laws and illegally enter our country, creating an enormous burden on our law enforcement, our schools, our hospitals, and social programs."

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# Exhibit 21



# 'We will not apologize': Trump DHS chief defends immigration policy

By [Tal Kopan](#), CNN

Updated 12:40 PM ET, Mon June 18, 2018

**Washington (CNN)** — Department of Homeland Security Secretary Kirstjen Nielsen [defended the Trump administration's highly scrutinized immigration policy](#) Monday while at the same time calling on Congress to change the law.

"We will not apologize for the job we do or for the job law enforcement does for doing the job that the American people expect us to do," she said, speaking in front of a friendly audience of the National Sheriffs' Association about the administration's policies resulting in family separations. "Illegal actions have and must have consequences. No more free passes, no more get out of jail free cards."

She claimed "misinformation" was being spread about the policy, which is that all people caught crossing the border illegally are prosecuted and thus families are separated.



**Related Article:** Outrage grows as families are separated. Will Trump change his policy?

Critics have lambasted the policy calling it cruel, inhumane to unnecessary. Outcry has come from Democratic and Republican lawmakers as well as the United Nations and religious leaders. Many have said the idea of separating children from their parents defies American and human values, as well as not needed when there are pilot programs that have shown that families with the right release conditions do show up for their court proceedings in the vast majority of cases.

Nielsen noted that it is common in all criminal matters that children do not go to jail with their parents, without noting that in most cases, those parents do not return from jail to find their kids transferred to the custody of another government agency and have to figure out how to get those kids back.



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President Donald Trump squarely -- and misleadingly -- blamed Democrats for the unfolding crisis in opening remarks at a space policy event.

"I say it's very strongly the Democrats' fault, their obstruction, they're really obstructionist and they're really obstructing," he said.

"The United States will not be a migrant camp and it will not be a refugee holding facility, it won't be," Trump said. "We want safety and we want security for our country. If the Democrats would sit down, instead of obstructing, we could have something done very quickly, good for the children, good for the country, good for the world. It could take place quickly."

Earlier Monday he tweeted: "It is the Democrats fault for being weak and ineffective with Boarder Security and Crime. Tell them to start thinking about the people devastated by Crime coming from illegal immigration. Change the laws!"

Though she was not as explicit as the President in characterizing the policy as a negotiating tactic, Nielsen clearly linked the effort with the demands the administration has made on Congress, which include passing laws that even some Republicans don't support.

"We are enforcing the laws passed by Congress, and we are doing all that we can in the executive branch to protect our communities. It is now time that Congress act to fix our broken immigration system," Nielsen said. "Surely it is the beginning of the unraveling of democracy when the body who makes the laws, rather than changing them, asks the body who enforces the laws not to enforce the laws. That cannot be the answer."

Attorney General Jeff Sessions, speaking at the same event as Nielsen, also defended the Trump administration's immigration practices Monday morning.

"These children are not entering at points of entry, but dangerous places," Sessions said. "They can go to our ports of entry if they want to claim asylum."

Sessions said the children "are taken care of," at an "enormous cost." Sessions called the system "generous." He also emphasized most children have come here unaccompanied and said the Department of Health and Human Services takes custody of them at a cost of more than \$1 billion a year.

Nielsen called a 2015 court settlement -- dating back to a court ruling in 1997 that requires children not be detained longer than 20 days -- a "historic get out of jail free practice of the past administration."

No previous administration has interpreted this as requiring the separation of parents from their children, instead releasing families with court dates for immigration proceedings and various monitoring tactics.

**Kellyanne Conway doubles down on immigration agenda** 01:08

"It is important to note that these minors are very well taken care of -- don't believe the press -- they are very well taken care of," Nielsen said. But, she added: "If you cross the border illegally. If you make a false immigration claim, we will prosecute you. If you smuggle aliens ... we will prosecute you."

And once again, she told asylum seekers to show up at a legal port of entry. CNN is looking into reports that these individuals are being turned away there, as well.

"If you are seeking asylum, go to a port of entry," Nielsen said.

After that, Nielsen once again walked through the administration's wishlist for changing immigration laws -- including targeting sanctuary city policies, changing the threshold for qualifying for asylum to be much higher, and reversing many protections for children allowing them to be detained for longer or deported immediately.

Nielsen also addressed some of her remarks directly at lawmakers as they are expected to vote on immigration legislation in the House this week. She framed the issue as anyone who votes against their preferred policy is voting against the "rule of law."

"My message to members is clear: You have a chance. If you want to secure our borders, if you want to keep gangs such as MS-13 out of our communities, if you want to address ... if you want to restore the rule of law, you must close the legal loopholes," Nielsen said, referring to the pieces of law that the administration wants to change.

"However, if you want to support a broken immigration system that harms the interest of Americans and our security, that rewards those who thumb their noses at our laws ... then don't vote to fix the problem. It's a simple choice," she said.

Nielsen said "those who have complained" about the policies now have an "opportunity" to work with the administration on the issue.

"As (GOP Rep. Steve Scalise) said, it is an issue that every one of the last four administration has faced. It is time to fix it," Nielsen said.

*CNN's Laura Jarrett contributed to this report.*



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Rudy Giuliani tries to clarify his remarks on Biden: 'I meant he's dumb'

# Exhibit 22



# How Trump's family separation policy has become what it is today

Nation Jun 14, 2018 3:14 PM EDT

There is no current law that mandates the separation of families at the U.S. border.

But since the Trump administration rolled out its so-called “zero-tolerance” policy last month, separation of parents from their children has become a more routine part of the process.

Here's why. Critical to this change is the administration's decision to call for the criminal prosecution of all adults who illegally cross into the United States. According to **existing U.S. immigration enforcement procedure**, when a parent is referred for prosecution, the adult is sent to a federal jail and any children are placed in the care of an adult sponsor or, if no close family member or other adult is available to sponsor the child, to a shelter.

Former President Barack Obama also faced criticism for his administration's use of family detention centers, especially amid the 2014 surge of Central American migrants arriving at the border, often fleeing violence in their home countries.

The federal government has released some preliminary data on family separation in the weeks following the Trump administration's new policy but the full impact on families at the border is not immediately clear. (More on this data below.)

What follows is a timeline that details how the Trump administration came to embrace this policy.

## March 2017

Amid a flurry of executive actions that dealt with the border wall, so-called “sanctuary cities,” and a travel ban that targeted Muslim-majority countries, reports start to emerge that the Department of Homeland Security was discussing the possibility of implementing a policy of separating children from their parents at the border. Sources tell Reuters in early March 2017 that the Trump administration's goal is to **deter mothers** from bringing their children on the oftentimes perilous journey to the U.S. border. When CNN asks then-DHS Secretary John Kelly about the potential policy days later, **he said**, “Yes I'm considering, in order to deter more movement along this terribly dangerous network. I am considering exactly that.”

Weeks later, after facing criticism for the comments, the DHS head appears to **walk back** the statement.

## August 2017

The idea of a family-separation proposal never quite went away, a source familiar with the discussions among Department of Homeland Security officials tells The New Yorker. A proposal for family separation **keeps coming up in discussions** on broader measures targeting illegal border crossings. “It would rear its head again,” the person said.

## October 2017

The Trump administration starts to increase prosecutions of illegal entry in October, according to a data analysis by The New York Times. The newspaper also finds that from October 2017 to April 2018, 700 families were separated at the border, including at least 100 children under age 4. This data was not known until the Times **published its report** months later, on April 20, 2018. A DHS spokesman tells the Times that the agency does not separate families at the border as a means to deter illegal immigration. The statement appears to contradict Kelly's previous comments in which he said he was considering a family-separation proposal as part of a broader deterrence effort.

## Dec. 5, 2017

The Senate **votes** to confirm Kirstjen Nielsen as the new Department of Homeland Security secretary. Nielsen replaces Kelly, who became President Donald Trump's chief of staff.

## April 8, 2018

Attorney General Jeff Sessions announces in **early April** that anyone “illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers of the Department of Justice.” In a memo, Sessions **directs U.S. attorneys offices** in southwest states along the border to prosecute all cases flagged for illegal entry, “to the extent practicable.”

## May 7, 2018

Following his April directive Sessions announces a **“zero-tolerance” policy** for illegal entry into the U.S.: “If you cross this border unlawfully, then we will prosecute you. It’s that simple,” he said. According to the policy, any migrant crossing the border beyond the official ports of entry will face criminal prosecution, including asylum seekers with children.

*In early May, Sessions says the administration’s “zero-tolerance” policy may split families at the border. Video by PBS NewsHour*

Sessions continues: “If you smuggle illegal aliens across our border, then we will prosecute you. If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law.” He adds: “So if you’re going to come to this country, come here legally. Don’t come here illegally.”

The administration also says it had tested its “zero-tolerance” policy as part of a pilot program in the El Paso, Texas, area from July to November 2017. Administration officials say the program led to fewer families attempting to illegally cross into the U.S., effectively acting as a deterrent. Vox’s Dara Lind, however, points out that the statistic officials used to make that claim **was faulty**. The administration says border crossings at the El Paso sector dropped by 64 percent. But Lind finds the opposite: that federal data showed an increase of illegal border crossings during that time.

## May 15, 2018

Nielsen tells a Senate committee that the Trump administration has been ramping up prosecutions of illegal border crossers, and **not focusing on family separation**. “We do not have a policy to separate children from their parents. Our policy is, if you break the law, we will prosecute you,” she says in her testimony.

## May 23, 2018

A U.S. Customs and Border Patrol official tells a Senate committee that 638 adults who arrived at the border with 658 children **have been prosecuted** within the two weeks since Sessions announced the new “zero-tolerance” policy. It’s not immediately clear how many of the 638 children were separated from their parents.

## June 8, 2018

A Reuters report published on June 8, 2018, says that **nearly 1,800 families** have been separated by border agents between October 2016 and February 2018. If that’s indeed the case, the Trump administration would have installed this type of policy earlier than previously thought. The exact origins on when the Trump administration rolled out this policy have not been cleared up by federal officials.

## June 14, 2018

While speaking in Fort Wayne, Indiana, Sessions defended the “zero tolerance” policy by **citing the Bible**. “I would cite you to the Apostle Paul and his clear and wise command in Romans 13, to obey the laws of the government because God has ordained them for the purpose of order,” Session said. “Orderly and lawful processes are good in themselves and protect the weak and lawful.”

When asked about Sessions’ comment later that day, White House press secretary Sarah Huckabee Sanders repeatedly told reporters that family separation was happening because of existing laws, “and the president is simply enforcing them.” Again, that’s not true. There’s no law mandating that.

**June 15, 2018**

During a briefing call today, DHS officials confirmed to reporters that 1,995 children were separated from 1,940 adults at the U.S.-Mexico border from April 19 through May 31. These adults were referred for prosecution after illegally crossing the border.


*This is a developing post. We'll continue to update.*

**READ MORE: What happens when a child arrives at the U.S. border?**

By – **Joshua Barajas**

Joshua Barajas is the deputy online editor for the NewsHour. He can be reached at [jbarajas@newshour.org](mailto:jbarajas@newshour.org).

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 **@Josh\_Barrage**

## **Outgoing ICE director says separating parents and children is 'sad' but part of the job**

Politics May 31





# Exhibit 23

POLITICO

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President Donald Trump's defiant posture comes amid a torrent of criticism as stories and images have emerged of young children being ripped from their immigrant parents' arms. | Evan Vucci/AP Photo

## Defiant Trump refuses to back off migrant family separations

‘The United States will not be a migrant camp,’ the president said.

By **LOUIS NELSON** | 06/18/2018 10:21 AM EDT | Updated 06/18/2018 10:37 PM EDT

President Donald Trump and his Cabinet are refusing to publicly back down from their intensely controversial practice of separating migrant families at the border, despite pressure from fellow Republicans to ease up on what critics are calling a heartless policy.

“It is the Democrats fault for being weak and ineffective with Boarder Security and Crime,” Trump tweeted on Monday, continuing to blame Democrats for his own administration’s

policies. “Tell them to start thinking about the people devastated by Crime coming from illegal immigration. Change the laws!”

Trump hit back at the criticism during a space policy event at the White House later on Monday, saying the family separations are “so sad” and falsely stating that “we’re stuck with these horrible laws.”

“If the Democrats would sit down instead of obstructing, we could have something done very quickly. Good for the children, good for the country, good for the world,” Trump said.

Meanwhile, Attorney General Jeff Sessions and Homeland Security Secretary Kirstjen Nielsen fiercely defended the child separation policy on Monday while delivering speeches at the National Sheriffs' Association's annual conference in New Orleans.

"We do not have the luxury of pretending that all individuals coming to this country as a family unit are, in fact, a family," Nielsen said. "We have to do our job. We will not apologize for doing our job. We have sworn to do this job. This administration has a simple message. If you cross the border illegally, we will prosecute you."

The defiant posture comes amid a torrent of criticism as stories and images have emerged of young children being ripped from their immigrant parents' arms and put in detention facilities akin to prisons.



**Donald J. Trump**

@realDonaldTrump

It is the Democrats fault for being weak and ineffective with Boarder Security and Crime. Tell them to start thinking about the people devastated by Crime coming from illegal immigration. Change the laws!

6:53 AM - Jun 18, 2018

97.4K

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Over the weekend, a growing number of Republicans — including Sens. Susan Collins of Maine and Jeff Flake of Arizona — put pressure on the administration to address the furor, while Melania Trump's office even put out a rare statement saying the first lady “hates to see children separated from their families” and hopes both parties can reach a solution.

All four of the living former first ladies — Rosalynn Carter, Hillary Clinton, Laura Bush and Michelle Obama — have also denounced the practice.

But Trump and his allies have falsely stated that their hands are tied. They've argued that Democrats are to blame for the much-criticized practice and that the administration is only enforcing laws that are already in place.

Neither argument has stood up to scrutiny. The separation policy was orchestrated not by Democrats, the minority party on both sides of Capitol Hill, but by the Trump administration, which sent a directive ramping up the practice and could send another ending it. And while the White House has claimed that the law mandates that it separate families who cross the border illegally, no such law exists. It is the administration's new "zero-tolerance" policy of prosecuting all illegal border-crossers as criminals that has prompted the separations.


Nielsen on Monday evening again pushed blame onto Democrats and past administrations for creating "this crisis."

"The voices most loudly criticizing the enforcement of our current laws are those whose policies created this crisis and whose policies perpetrate it," Nielsen said at a White House press briefing, saying the administration was limited in how it could hold families while it prosecutes parents for crossing the border illegally.

"Until these loopholes are closed by Congress, it is not possible as a matter of law to detain and remove whole family units who arrive illegally in the United States," she said.

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She said most of the 12,000 children in custody had not been separated from their parents but had instead arrived in the U.S. without them.

When asked whether the "policy" of splitting up families was "cruel," Nielsen dodged the question: "It's not a policy. Our policy at DHS is to do what we're sworn to do, which is to

enforce the law." She later ducked questions on why Trump had "offered no compassion" to families separated at the border.

"What I believe is that we should exercise our democratic rights as Americans and fix the problem. It's a problem. Let's fix it," she later said after being pressed again about whether the policy is "moral."

Nielsen said the children being detained were not being used as bargaining chips to force Congress to pass legislation.

"The children are not being used as a pawn. We are trying to protect the children," she said.

Amid a sometimes contentious interview on Monday night, White House counselor Kellyanne Conway appeared to distance the administration from at least one previous defense of the policy. John Kelly, then Homeland Security secretary, said in March 2017 that separating children from their parents would act as a deterrent to other migrants. As White House chief of staff, Kelly made similar comments in May to NPR when he said that "a big name of the game is deterrence."

"That was over a year ago and the homeland security secretary did not say that today," Conway told CNN anchor Chris Cuomo, when asked about Kelly's past comments.

Sessions, in his remarks on Monday morning, contended that if lawmakers would give in to Trump's demands — including a massive border wall — the issue of family separation would no longer exist.

"We do not want to separate parents from their children," Sessions said. "If we build the wall, if we pass legislation to end the lawlessness, we won't face these terrible choices."

He also pitched the deterrent effect of strict policies. "We cannot and will not encourage people to bring their children or other children to the country unlawfully by giving them immunity in the process," Sessions said.

"Let's remember," he continued. "We have a generous lawful system that admits over a million people a year to permanent legal status in America."

Sessions and Trump have both consistently pushed for hard-line immigration policies — a message that plays well with Trump's base. A Quinnipiac University poll released Monday found that 66 percent of American voters oppose the practice of separating children from parents who illegally cross the border, but the results were highly partisan. While 91 percent of Democrats oppose the policy, only 35 percent of Republicans do.

And Democrats are warning that the problem of family separations may only get worse. Sen. Dianne Feinstein of California released what she said were new statistics from the Department of Homeland Security showing that 2,342 children were taken from their parents at the border between May 5 and June 9.

“The pace of separations has increased — from nearly 50 to nearly 70 per day — despite widespread opposition throughout America,” Feinstein said in a statement. “The White House appears deaf to the wellspring of opposition and deep concern about the welfare of children.”

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#### EMPLOYMENT & IMMIGRATION

### **'Grim sight': Migrants await uncertain future at strained Border Patrol facility**

By ELANA SCHOR

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In his tweets earlier in the day, Trump accused Democrats of holding up immigration legislation in Congress to the benefit of gang members and drug cartels. He also incorrectly warned that “crime in Germany is way up” — the crime rate there is at its lowest point since 1992 — because of an influx of immigrants who have “so strongly and violently changed” Germany’s culture.

“The people of Germany are turning against their leadership as migration is rocking the already tenuous Berlin coalition. Crime in Germany is way up. Big mistake made all over Europe in allowing millions of people in who have so strongly and violently changed their culture!” Trump wrote, adding that “we don’t want what is happening with immigration in Europe to happen with us!”

He expanded on that warning during the White House event.

“The United States will not be a migrant camp, and it will not be a refugee holding facility,” Trump said in apparently impromptu remarks. “It won’t be. You look at what’s happening in Europe, you look at what’s happening in other places, we can’t allow that to happen to the United States.”

The president’s focus on immigration came as lawmakers from both parties are heaping criticism on his administration over the separation policy.

Lawmakers and reporters were allowed over the weekend to tour facilities in Texas at which children are held in fenced-in cages with green mats and foil blankets, stark images that quickly circulated and prompted an outcry from opponents of the separation policy.

Rep. Will Hurd (R-Texas), whose rural district encompasses a third of the total length of the U.S.-Mexico border, said the policy “is something that is squarely within the hands of this administration to ultimately change” and that stand-alone legislation to end the family separation practice “would get north of 300 votes” in the House.

Asked whether such legislation might be forthcoming, Hurd told CNN that “you’d have to ask” GOP leaders on Capitol Hill and that neither of the immigration bills currently under consideration there appropriately address the family separation policy.

“What has happened for us to have to craft legislation to say don’t pull kids out of the arms of their mothers? We shouldn’t be at this point,” Hurd said. “In the land of the free and the home of the brave, we shouldn’t be using kids for deterrence.”

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#### EMPLOYMENT & IMMIGRATION

### **Pressure mounts for Trump to address family separations at border**

By BRENT D. GRIFFITHS and BURGESS EVERETT

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Sen. Pat Toomey (R-Pa.), in an interview with conservative talk radio host Hugh Hewitt, said the practice of separating families is “not a sustainable situation” and “not the right thing to be doing.” Toomey conceded that it has the potential to become a political liability for the president on par with former President George W. Bush’s widely criticized handling of the devastation wrought by Hurricane Katrina in New Orleans in 2005.

Sen. Ben Sasse (R-Neb.) was even more pointed in his criticism, writing on Facebook that “family separation is wicked. It is harmful to kids and absolutely should NOT be the default U.S. policy. Americans are better than this.” He added that “this bad new policy is a reaction against a bad old policy,” the so-called “catch-and-release” practice adopted by the Obama administration for asylum seekers entering the U.S.

And Sen. Kamala Harris (D-Calif.), the first-term lawmaker whose name is often floated among potential 2020 challengers to Trump, called on Nielsen to resign over not just the family separation policy, but also a slew of immigration policies and a lack of a “commitment to transparency and accountability.”

“The Department’s lack of transparency under Secretary Nielsen’s leadership combined with her record of misleading statements including yesterday’s denial that the Administration even had a policy of separating children at the border, are disqualifying,” Harris’ statement said, referring to a claim Nielsen made on Twitter a day earlier. “We must speak the truth. There is no law that says the Administration has to rip children from their families. This

Administration can and must reverse course now and it can and must find new leadership for the Department of Homeland Security.”

The House minority leader, Rep. Nancy Pelosi of California, also called on Nielsen to step down following a trip to the U.S.-Mexico border Monday afternoon. Pelosi was joined by roughly a dozen other House Democrats who toured a San Diego detention center housing migrant children separated from their parents.

“I think she should resign,” Pelosi told reporters. The California Democrat had a message for Trump, as well: “Stop this inhumane, barbaric policy. Rescind your actions. Take responsibility for it.”

Jeb Bush — who frequently tangled with Trump on the 2016 campaign trail and who previously stated that many illegal immigrants come out of an “act of love” — had his own terse message for the president.

“Children shouldn’t be used as a negotiating tool,” the former Florida governor wrote on Twitter. “@realDonaldTrump should end this heartless policy and Congress should get an immigration deal done that provides for asylum reform, border security and a path to citizenship for Dreamers.”



**Jeb Bush**

@JebBush

Children shouldn’t be used as a negotiating tool.

[@realDonaldTrump](#) should end this heartless policy and Congress should get an immigration deal done that provides for asylum reform, border security and a path to citizenship for Dreamers.

**Donald J. Trump**    @realDonaldTrump

Children are being used by some of the worst criminals on earth as a means to enter our country. Has anyone been looking at the Crime taking place south of the border. It is historic, with some countries the most dangerous places in the world. Not going to happen in the U.S.

8:18 AM - Jun 18, 2018

79.1K    32.2K people are talking about this



Children shouldn't be used as a negotiating tool. @realDonaldTrump should end this heartless policy and Congress should get an immigration deal done that provides for asylum reform, border security and a path to citizenship for Dreamers. <https://t.co/00jv0vNeVg>  
— Jeb Bush (@JebBush) June 18, 2018

Republican Massachusetts Gov. Charlie Baker, meanwhile, said he was pulling back on a plan to send National Guard troops to the U.S.-Mexico border because of the Trump administration's "cruel and inhumane" family separation policy.

"We told the National Guard to hold steady and to not go down to the border, period," Baker said. "We won't be supporting that initiative unless they change the policy."

Even longtime Trump allies have pushed the president to back away from the controversial policy. Former White House communications director Anthony Scaramucci, who wrote on Twitter over the weekend that "separating innocent children from their families is not the Christian way, the American way, nor what @POTUS wants," told CNN on Monday that the practice is "inhumane" and "cruel" and that "the President is a humane guy ... and he doesn't need this type of visual."

In Florida, Republican Gov. Rick Scott, a Trump ally whose Senate bid the president has endorsed, said in a statement that "I do not favor separating families," placing blame on "bipartisan inaction and failure from our federal government." And Harvard law professor Alan Dershowitz, who has defended the president on other issues, addressed Trump directly during an appearance Monday on "Fox & Friends," the morning news show the president is known to prefer.

"Mr. President, it just has to stop," he said. "There are better ways of doing this. You're better than this. The American people are better than this. The American government is better than this. So I implore you to stop it now."

*Rebecca Morin and Heather Caygle contributed to this report*

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# Exhibit 24

## EXECUTIVE ORDERS

# Affording Congress an Opportunity to Address Family Separation

## IMMIGRATION

Issued on: June 20, 2018



By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, it is hereby ordered as follows:

Section 1. Policy. It is the policy of this Administration to rigorously enforce our immigration laws. Under our laws, the only legal way for an alien to enter this country is at a designated port of entry at an appropriate time. When an alien enters or attempts to enter the country anywhere else, that alien has committed at least the crime of improper entry and is subject to a fine or imprisonment under section 1325(a) of title 8, United States Code. This Administration will initiate proceedings to enforce this and other criminal provisions of the INA until and unless Congress directs otherwise. It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources. It is unfortunate that Congress's failure to act and court orders have put the Administration in the position of separating alien families to effectively enforce the law.

Sec. 2. Definitions. For purposes of this order, the following definitions apply:

(a) "Alien family" means

(i) any person not a citizen or national of the United States who has not been admitted into, or is not authorized to enter or remain in, the United States, who entered this country with an alien child or alien children at or between designated ports of entry and who was detained; and

(ii) that person's alien child or alien children.

(b) "Alien child" means any person not a citizen or national of the United States who

(i) has not been admitted into, or is not authorized to enter or remain in, the United States;

(ii) is under the age of 18; and

(iii) has a legal parent-child relationship to an alien who entered the United States with the alien child at or between designated ports of entry and who was detained.

Sec. 3. Temporary Detention Policy for Families Entering this Country Illegally. (a) The Secretary of Homeland Security (Secretary), shall, to the extent permitted by law and subject to the availability of appropriations, maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members.

(b) The Secretary shall not, however, detain an alien family together when there is a concern that detention of an alien child with the child's alien parent would pose a risk to the child's welfare.

(c) The Secretary of Defense shall take all legally available measures to provide to the Secretary, upon request, any existing facilities available for the housing and care of alien families, and shall construct such facilities if necessary and consistent with law. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(d) Heads of executive departments and agencies shall, to the extent consistent with law, make available to the Secretary, for the housing and care of alien families pending court proceedings for improper entry, any facilities that are appropriate for such purposes. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(e) The Attorney General shall promptly file a request with the U.S. District Court for the Central District of California to modify the Settlement Agreement in *Flores v. Sessions*, CV 85-4544 ("*Flores* settlement"), in a manner that would permit the Secretary, under present resource constraints, to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration proceedings.

Sec. 4. Prioritization of Immigration Proceedings Involving Alien Families. The Attorney General shall, to the extent practicable, prioritize the adjudication of cases involving detained families.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

June 20, 2018.

# Exhibit 25

## The New York Times

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# *Trump Retreats on Separating Families, but Thousands May Remain Apart*

By Michael D. Shear, Abby Goodnough and Maggie Haberman

June 20, 2018

WASHINGTON — President Trump caved to enormous political pressure on Wednesday and signed an executive order meant to end the separation of families at the border by detaining parents and children together for an indefinite period.

“We’re going to have strong — very strong — borders, but we are going to keep the families together,” Mr. Trump said as he signed the order in the Oval Office. “I didn’t like the sight or the feeling of families being separated.”

But ending the practice of separating families still faces legal and practical obstacles. A federal judge could refuse to give the Trump administration the authority it wants to hold families in custody for more than 20 days, which is the current limit because of a 1997 court order.

And the president’s order does nothing to address the plight of the more than 2,300 children who have already been separated from their parents under the president’s “zero tolerance” policy. Federal officials initially said those children would not be immediately reunited with their families while the adults remain in federal custody during their immigration proceedings.

“There will not be a grandfathering of existing cases,” said Kenneth Wolfe, a spokesman for the Administration for Children and Families, a division of the Department of Health and Human Services. Mr. Wolfe said the decision about the children was made by the White House.



But later Wednesday evening, Brian Marriott, the senior director of communications for the agency, said that Mr. Wolfe had “misspoke” and insisted that “it is still very early, and we are awaiting further guidance on the matter.” Mr. Marriott said that “reunification is always the goal” and that the agency “is working toward that” for the children separated from their families because of Mr. Trump’s policy.

His statement left open the possibility, though, that the children could be connected with other family members or “appropriate” sponsors living in the United States, not necessarily the parent they were separated from at the border.

The president signed the executive order days after he said that the only way to end the division of families was through congressional action because “you can’t do it through an executive order.” But he changed his mind after a barrage of criticism from Democrats, activists, members of his own party and even his wife and eldest daughter, who privately told him the policy was wrong.

Mr. Trump had previously been told by advisers that there was no way for the policy to be changed through an executive order, and it was unclear what the genesis of the measure he signed was. But the White House counsel, Donald F. McGahn II, had concerns about moving ahead with an executive order that would face an uphill battle in the courts.

The president’s chief of staff, John F. Kelly, did not voice major objections, according to a White House official. The move also helped alleviate pressure on Kirstjen Nielsen, Mr. Kelly’s protégée and handpicked successor at the Department of Homeland Security.



Undocumented migrants waiting for asylum hearings on Wednesday outside the port of entry in Tijuana, Mexico. Sandy Huffaker for The New York Times

Stories of children being taken from their parents, audio of wailing toddlers and images of teenagers in cagelike detention facilities had exploded into a full-blown political crisis for Mr. Trump and congressional Republicans, who were desperate for a response to those who have called the practice “inhumane,” “cruel” and “evil.”

The president’s four-page order says that officials will continue to criminally prosecute everyone who crosses the border illegally, but will seek to find or build facilities that can hold families — parents and children together — instead of separating them while their legal cases are considered by the courts.

But the action raised new questions that White House officials did not immediately answer. The order does not say where the families would be detained. And it does not say whether children will continue to be separated from their parents while the facilities to hold them are located or built.

Officials on a White House conference call said they could not answer those questions.

Justice Department officials said the legal authority to end family separation relies on a request they will make in the coming days to Judge Dolly M. Gee of the Federal District Court in Los Angeles, the daughter of immigrants from China who was appointed by President Barack Obama. She oversees a 1997 consent decree, known as the Flores settlement, which prohibits immigration authorities from keeping children in detention, even if they are with their parents, for more than 20 days.

The 1997 case imposes legal constraints on the proper treatment of children in government custody, which stopped Mr. Obama after his administration began detaining families together during a similar flood of illegal immigration several years ago.

“It’s on Judge Gee,” said Gene Hamilton, the counselor to Attorney General Jeff Sessions. “Are we going to be able to detain alien families together or are we not?”

Mr. Hamilton said the judge’s previous rulings prohibiting extended detentions of families has “put this executive branch into an untenable position.”

He said that the president’s order is a stopgap measure that could be fixed permanently if Congress passes legislation to overhaul the immigration system. While the House is scheduled to vote Thursday on two competing immigration bills, the president’s decision appeared to lessen the urgency for lawmakers to address the issue.

With Republicans in the House and Senate pursuing different approaches to put a stop to the heart-wrenching scenes at the border, no legislative breakthrough seemed imminent.

Republicans in the Senate have proposed narrow legislation that would end the practice, while House Republican leaders are focused on a broader bill, though its passage was in doubt on the eve of Thursday’s vote.

In the meantime, legal experts said it seems highly unlikely that the courts will agree to the request by the Trump administration. That would mean the president is almost certain to face an immediate legal challenge from immigration activists if the government tries to detain families for more than the 20-day limit.

“I don’t think anyone wants to see little children detained for long periods of time,” said Lee Gelernt of the American Civil Liberties Union, which challenged the Trump administration’s separation of families. “If they start detaining families and kids in tents or other places, I think you will see immediate lawsuits.”

Kevin Appleby, a senior director at the Center for Migration Studies, predicted such a challenge.

Advocates said officials should jail only those immigrants who have committed other crimes, are a flight risk or pose a danger to others.

“It is outrageous that the president is pushing the criminal detention of innocent children as a solution to his own evil act,” Mr. Appleby said. “The best solution would be releasing families to sponsors or placing them in community-based alternatives to detention programs, which are less expensive and much more humane.”

Until Wednesday, Mr. Trump had refused to simply end his government’s zero-tolerance policy that was announced last month and led to the separation of more than 2,300 children from their parents, saying that the alternative would be to fling open the country’s borders and allow immigrants who cross the border illegally to remain in the United States.

But the president, furious about the pummeling he has taken in the news media in recent days, began casting about for a solution to the politically damaging situation, people familiar with his thinking said.

He made his announcement flanked by Vice President Mike Pence and Kirstjen Nielsen, the secretary of homeland security, and vowed not to relent in his administration’s prosecution of people trying to enter the country illegally.

“We are keeping a very powerful border, and it continues to be a zero tolerance,” Mr. Trump said. “We have zero tolerance for people that enter our country illegally.”

But he added, “The border’s just as tough, but we do want to keep families together.”

In signing the order to end the separation of families, Mr. Trump also abandoned the positions that he and his allies had stuck to for weeks: that Democrats were to blame for the wrenching scenes of kids being torn from their parents, and that the administration was helpless to fix the problem without action by Congress to overhaul immigration laws.

In effect, though, the president was caught between his messaging and the likelihood of inaction on Capitol Hill. That became clearer on Tuesday when Republicans in the Senate and House moved in different directions on confronting the family separation issue.

Mr. Trump acknowledged his position during remarks to reporters before his announcement on Wednesday.

“The dilemma is that if you’re weak, if you’re weak, which some people would like you to be. If you are really, really pathetically weak, the country’s going to be overrun with millions of people,” Mr. Trump said. “And if you’re strong, then you don’t have any heart. That’s a tough dilemma. Perhaps I’d rather be strong.”

In addition to the public condemnations of his policy — including by Pope Francis on Wednesday — Mr. Trump had been lectured by the first lady, Melania Trump, and Ivanka Trump, his eldest daughter, according to White House officials.

Melania Trump had been pushing her husband about the family separation policy from the beginning, an official said, arguing that there was a middle way between opening America’s borders and tearing children away from their parents. Separating children from their mother and father, she told him, is wrong.

Ivanka Trump and her husband, Jared Kushner, were also pressing the president to find a way to end the political crisis caused by the family separations at the border, according to people familiar with their conversations.

But it is not clear what the political damage may be to Mr. Trump from having taken actions that he repeatedly said he was not allowed to do.

As recently as Tuesday, in a speech to the National Federation of Independent Business, the president insisted that there were “only two options: totally open borders or criminal prosecution for law breaking.”

“And you want to be able to do that,” he said. “We don’t want people pouring into our country.”

The president has also opened himself up to charges of hypocrisy. During the 2016 presidential campaign, Mr. Trump repeatedly slammed Mr. Obama for abusing his executive authority when he issued an executive order to protect the young immigrants known as Dreamers.

As a candidate, Mr. Trump said he would use executive orders sparingly, adding that “Obama, because he couldn’t get anybody to agree with him, he starts signing them like they’re butter. So I want to do away with executive orders for the most part.”

Mr. Obama, whose administration also grappled with how to handle massive flows of illegal immigrants from Central America, has remained mostly silent during the controversy over the separation of children from their parents at the border. But in a Facebook post on Wednesday, Mr. Obama denounced the lack of morality in a policy that leads to the kinds of scenes that have played out across television screens during the past several weeks.

“To watch those families broken apart in real time puts to us a very simple question: are we a nation that accepts the cruelty of ripping children from their parents’ arms, or are we a nation that values families, and works to keep them together?” Mr. Obama wrote. “Do we look away, or do we choose to see something of ourselves and our children?”

Michael D. Shear and Abby Goodnough reported from Washington, and Maggie Haberman from New York. Katie Benner and Thomas Kaplan contributed reporting from Washington.

A version of this article appears in print on June 20, 2018, on Page A1 of the New York edition with the headline: In Retreat, Trump Halts Separating Migrant Families

# Exhibit 26



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## Trump signs order stopping his policy of separating families at border



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Immigration

## Trump signs order stopping his policy of separating families at border

Government officials familiar with early drafts say the executive order would allow families to be held in immigration detention together.  
by Adam Edelman / Jun.20.2018 / 9:24 AM ET / Updated Jun.20.2018 / 2:13 PM ET







## [Trump orders end to policy separating migrant families who enter U.S. illegally](#)

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President Donald Trump, under mounting political pressure from angry members of his own party, signed an executive order Wednesday reversing his administration's policy of separating children from their parents at the border and allowing families to instead be detained together.

"It's about keeping families together while ensuring we have a powerful border," Trump said.

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## [President Trump signs order halting family separation at border](#)

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Trump said the order "will solve that problem" of children being separated from their parents, but that it wouldn't end his administration's "zero tolerance" policy of charging everyone who attempts to cross the U.S.-Mexico border illegally. The practice has led to thousands of migrant children, some under a year old, being split from their parents or legal guardians and housed in detention centers.

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### ['We have zero tolerance for your policy': Democrats call on DHS' Nielsen to resign](#)

"I didn't like the sight or the feeling of families being separated," Trump said.

The executive order won't stop the detention of children — or Trump's "zero tolerance" policy of charging people with a misdemeanor for entering the country illegally — but will allow them to be held with their parents pending "any criminal improper entry or immigration proceedings involving their members."

The order directs the agency to "prioritize" hearings for families in detention to speed up processing and also directs Attorney General Jeff Sessions to file a request in federal court to modify a longstanding federal court decree — known as the "Flores settlement" — that prohibits the government from holding children in detention for longer than 20 days.

Such a modification would allow DHS "to detain alien families together" throughout pending criminal proceedings for improperly entering the country or other immigration proceedings, according to the order.

The Alabama-based Southern Poverty Law Center said Trump's reversal still amounts to treating families like criminals by holding them in detention facilities.

A statement from the president of the organization, Richard Cohen, says there are other alternatives available. And it says indiscriminate enforcement is "shattering" communities across the country.

House Minority Leader Nancy Pelosi, D-Calif., said the order "seeks to replace one form of child abuse with another."

"Instead of protecting traumatized children, the president has directed his attorney general to pave the way for the long-term incarceration of families in prison-like conditions," Pelosi said in a statement.

Under the order, the Defense Department must also provide and, "if necessary," construct facilities to house and care for the families.

Defense Secretary Jim Mattis says the Pentagon will "respond if requested" to house migrants detained after crossing the U.S.-Mexico border illegally.

When a reporter noted that federal agencies have assessed four military bases for potential use as temporary housing for detained migrants, including unaccompanied children, Mattis said the Pentagon will "support whatever" the Department of Homeland Security says it needs. In the meantime, he said, this is not a matter for the Pentagon to comment on.

It remains unclear how the government will get around the immediate separations that occur when parents are charged with a crime and taken to court for entering the country illegally. But officials said they believe they have found a way to continue those charges without separating the children.

It also remains unclear how the administration will reunite the families that have already been separated at the border. In a call with reporters, a Department of Justice official referred questions about the children who are currently without their parents to the Department of Health and Human Services and the Department of Homeland Security.

The order marks an abrupt about-face for the president, who said as recently as Friday that when it came to keeping migrant families together, "you can't do it through executive order." He had faced extraordinary pressure from Capitol Hill, even from some of his closest GOP allies, as well as from members of his own family, to end his administration's policy of separating children from parents who cross the U.S.-Mexico border illegally.

Many Republicans have demanded an end to the policy, and at least two bills to halt it are under consideration in the House.

Pressure grew Tuesday night after The Associated Press reported that administration officials have been sending babies and other young children forcibly separated from their parents at the U.S.-Mexico border to at least three "tender age" shelters in South Texas.

First lady Melania Trump has also been a factor, a source familiar with the matter told NBC News. According the source, Mrs. Trump has been having private discussions behind the scenes in order to try to end the separation of kids and families at the border. Earlier this week, she uncharacteristically waded into the immigration debate, pushing for bipartisan cooperation to end the practice.

The House is set to vote [Thursday on two immigration bills](#): a more conservative measure written by Rep. Bob Goodlatte, R-Va., chairman of the House Judiciary Committee, and a compromise measure.

Following Trump's remarks Wednesday, roughly two dozen House Republicans headed to the White House to discuss the measures.

Despite the order, Trump nevertheless doubled down on his hard-line stance on immigration, saying earlier in the day that he "likes to be strong" and that migrants were "using the children as a ticket to get into" the country.

Trump also announced that he'd canceled a congressional picnic that had been scheduled for Thursday, saying the timing "just didn't feel right."

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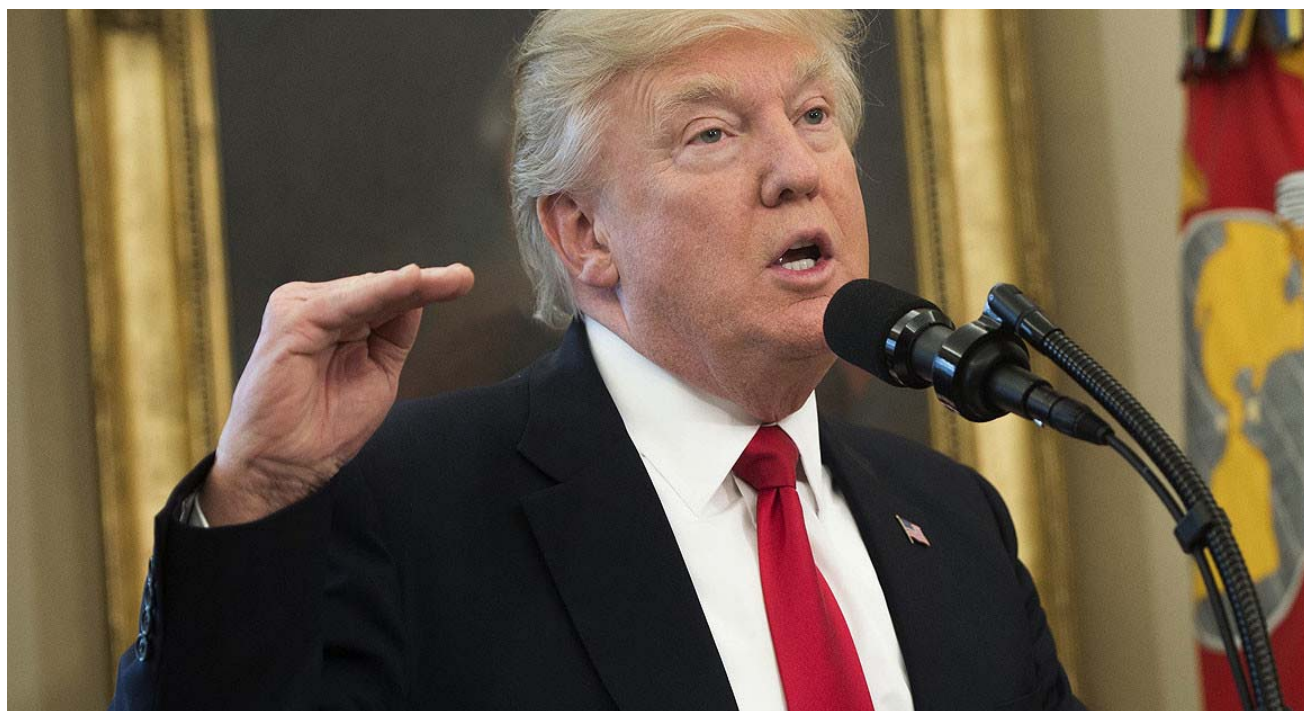
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# Exhibit 27

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"This is the only solution to the border crisis," Trump said Tuesday. "We have to stop child smuggling. This is the way to do it." | Saul Loeb/AFP/Getty Images

## Trump falsely claimed for days that he couldn't end family separations

The president is now reversing himself after facing fierce backlash for forcibly removing thousands of children from their parents.

By **MATTHEW NUSSBAUM** | 06/20/2018 01:10 PM EDT

President Donald Trump on Wednesday said he would sign an executive order to pull back on his administration's highly controversial policy of separating undocumented immigrant children from their parents.

It was a jarring reversal for the president who has been falsely stating for days that only Congress could fix the problem.

Here are Trump and his allies incorrectly claiming this week that he could not end family separations:

### **Trump, in a Tuesday address**

"So what I'm asking Congress to do is to give us a third option, which we have been requesting since last year — the legal authority to detain and promptly remove families together as a unit. We have to be able to do this. This is the only solution to the border crisis. We have to stop child smuggling. This is the way to do it."

### **Trump on Twitter on Tuesday**

"Homeland Security @SecNielsen did a fabulous job yesterday at the press conference explaining security at the border and for our country, while at the same time recommending changes to obsolete & nasty laws, which force family separation. We want 'heart' and security in America!"

### **Homeland Security Secretary Kirstjen Nielsen on Monday**

"Until these loopholes are closed by Congress, it is not possible, as a matter of law, to detain and remove whole family units who arrive illegally in the United States. Congress and the courts created this problem, and Congress alone can fix it. Until then, we will enforce every law we have on the books to defend the sovereignty and security of the United States."

### **White House press secretary Sarah Huckabee Sanders on Monday**

"There's only one body here that gets to create legislation and it's Congress. Our job is to enforce it, and we would like to see Congress fix it. That's why the President has repeatedly called on them to work with him to do just that."

### **Fox News host and Trump ally Sean Hannity, on Monday**

"No one likes the idea of separating any child from any parent, but this issue has been in the hands of Congress. And right now, the whole issue can be fixed. Every law can be changed, and if they did their job, it would happen."

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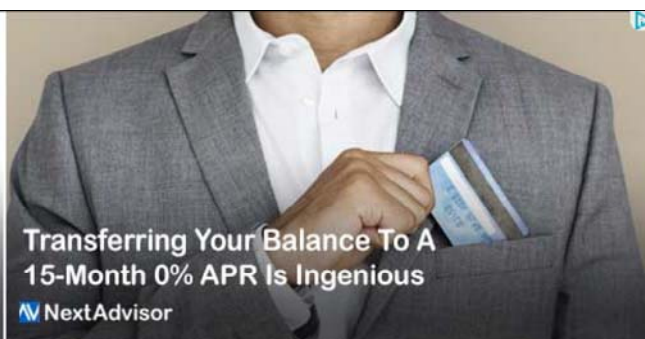
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## Vice President Mike Pence: Democrats Can Fix Family Separation At Border

Pence adds families seeking asylum a ports of entry are not separated.



THE MIKE PINTEK SHOW

JUNE 20, 2018 - 12:37 PM



CATEGORIES: National, Local, Politics, Mike PinteK

PITTSBURGH (Newsradio 1020 KDKA) - Vice President of the United States Mike Pence discussed the issue of families being separated at the southern border Wednesday.

Pence says there is a "crisis at our southern boarder" and that "no one wants to see children taken away from their parents and the images, they pull at the heart strings of every American including the President of the United States and this Vice President."

To solve the crisis Pence says that the first thing that needs to be done is funding and construction of a southern border wall. He adds that there is currently legislation being considered in Congress that would "fully fund



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with small children to make the long and arduous and dangerous trek up the peninsula to try to and illegally enter our country."

Pence adds if those loopholes are cut off "we'll cut off that inducement entirely."

According to Pence, President Trump supports legislation currently being considered in Congress that would keep families together.

He stresses that families who come to a port of entry into the United States are not separated from their families, it is only the ones that comes to the country United States illegally that it happens.

Pence says they currently have two options. They can capture an illegal immigrant, release them and give them a court date "but more often than not folks never show back up for a court date."

The other option is to "simply enforce the law. We can be a nation with not only a border but with a rule of law but in doing that under current law, we don't incarcerate children with people that have been charged with a crime." Pence add that is what is causing children to be separated from their parents.

Both he and the president are calling for a change that would allow them to enforce the law while keeping families together but it is the Democrats that are obstructing any legislation that would allow change to the law.

"I think the American people want the Democrats to stop the obstruction, to stop standing in the way of the kind of reforms at our border that will end the crisis of illegal immigration. We can solve this issue of separation," said Pence. "We can even solve the issue of people brought into the country through no fault of their own over many years and the DACA program even while we build a wall and close the loophole that are facilitating this crisis on our border to begin with."



The Mike Pintelk Show

### Vice President Mike Pence Talks To Pintelk About Family Separation At Southern Border

08:17

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## Vice President Mike Pence - FULL INTERVIEW with Mike PinteK

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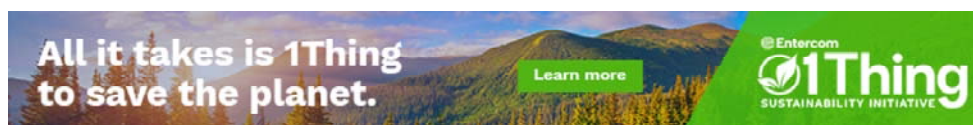
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# Exhibit 29

## The New York Times

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# *Explaining Trump's Executive Order on Family Separation*

By Charlie Savage

June 20, 2018

WASHINGTON — President Trump on Wednesday sought to quell the uproar over his administration's systematic separation of immigrant children from their families at the border, signing an executive order he portrayed as ending the problem.

## **What caused the problem?**

Previously, many families caught sneaking across the border — especially those seeking asylum — were released into the United States while their immigration cases were processed. But in April, Attorney General Jeff Sessions announced that federal prosecutors would now pursue a zero-tolerance policy of criminally prosecuting every adult who illegally crossed the border or tried to do so.

Sending adults to jail for prosecution prompted a set of court-imposed rules stemming from a class-action lawsuit over how the government handled unaccompanied minors in immigration detention. In the Trump administration's view, the government cannot hold children in immigration detention for over 20 days.

That meant that if adults were sent to jail or long-term indefinite detention while their asylum requests or removal orders were processed, the children could not stay with them. As a result, the Trump policy of prosecuting adults has also led to a practice of separating families and holding children separately while trying to place them with relatives or in a licensed facility.

## **Did Trump's order restore the old approach?**

No. His order explicitly states that the executive branch will continue to criminally prosecute people who cross the border illegally, signaling that the zero-tolerance policy remains in place.

## **What does the order change?**

The order states that it is now the policy of the Trump administration to keep families together. It appears to envision a system in which families will be housed together in ad hoc detention centers, including on military bases, that the administration hopes a court will approve. It calls for many agencies — including the Pentagon — to make available “existing facilities,” or to construct them, for the Department of Homeland Security to use “for the housing and care of alien families.”

## **Will this happen right away?**

The answer is unclear. At a briefing organized by the White House on Wednesday afternoon, Gene Hamilton, a counselor to Mr. Sessions, sidestepped a question about whether a family that shows up now would be separated. He said that an “implementation phase” would happen but that he was not sure precisely what the Departments of Homeland Security and Health and Human Services would do.

Since the administration has concluded that it can detain families together for up to 20 days under the existing rules, the start of the revised policy may turn on how much family-style detention space is available and how many new families are apprehended.

Separately, a Justice Department official said that family separation was prompted in the past when adults were taken into the custody of United States marshals, while children were held by Immigration and Customs Enforcement for three days and then transferred to the Health and Human Services Department. Under the new plan, the official said, the entire family will stay in ICE's hands. While the adults will still be prosecuted, that will prevent the need to immediately separate family members. The administration appears to be hoping that the courts or Congress will change the rules within 20 days, allowing families to be detained together indefinitely.



## **What does the Flores case have to do with this?**

The long-running class-action litigation over the treatment of children in immigration custody ended with a 1997 consent decree known as the Flores settlement. Under it, the government has been obligated to release children from immigration detention to relatives or, if none can be found, to a licensed program within about three to five days. If that is impossible, they must be held in the “least restrictive” setting appropriate to their age and needs.

In the second term of the Obama administration, amid a surge of migrants, the administration adopted a policy of detaining families headed by women together while their cases were processed. After those conditions were challenged in court, Judge Dolly M. Gee of Federal District Court for the Central District of California ruled that the Flores settlement terms also applied to accompanied minors, so holding children with their mothers in indefinite immigration detention was unlawful.

## **How much can Trump do without court permission?**

The most important part of Mr. Trump's order set in motion a request to get a court to approve holding families together for longer than 20 days. The order directs Mr. Sessions to promptly ask a federal court to “modify” the consent agreement in a manner that would permit the Department of Homeland Security to hold families together throughout immigration court proceedings. At his press briefing, Mr. Hamilton said that unless Congress acted sooner to change the law, it would be up to Judge Gee to decide whether the administration could keep families together.

## **What happens to the children already separated?**

The administration initially said it would not try to reunite children and parents who were separated at the border under the zero-tolerance policy, according to Kenneth Wolfe, a spokesman for the Health and Human Services Department.

But the agency retreated later Wednesday evening, saying that “it is still very early, and we are awaiting further guidance on the matter.”

“Reunification is always the goal,” said Brian Marriott, the senior director of communications for the agency, noting that the department was working toward that for children affected by the president’s policy.

That statement left open the possibility, though, that the children could be reunited with relatives or “appropriate” sponsors in the United States, not necessarily the parent they were separated from at the border.

More than 2,300 children were separated from their parents at the border and placed in government-licensed shelters or in temporary foster care with families across the country.

## **How do these parents differ from others whose children were removed by the government?**

The migrant parents did not lose custody of the children because of poor parenting. “Nobody judged these parents were incapable of taking care of their kids,” said Kay Bellor, a vice president at Lutheran Immigration and Refugee Service.

Lutheran is one of several nonprofits that have found temporary foster families to care for children separated from their parents at the border. Ms. Bellor said that none of them have been reunited with their parents since the separation.

## **Was an order even necessary?**

No. Mr. Trump likes the flourish of signing executive orders in front of cameras, but most of his have amounted to asking his administration to conduct reviews and come up with proposed solutions to problems, or they have consisted of directives that he could have instead made with a phone call. This is one of those orders.

Katie Benner and Abby Goodnough contributed reporting from Washington, and Miriam Jordan from Los Angeles.

*Follow Charlie Savage on Twitter: [@charlie\\_savage](https://twitter.com/charlie_savage).*

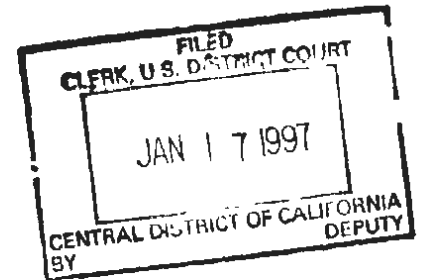
A version of this article appears in print on June 20, 2018, on Page A10 of the New York edition with the headline: Here Is What the Executive Order Does, and Doesn't Do

# Exhibit 30

8/12/96

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,	)	Case No. CV 85-4544-RJK(Px)
	)	
Plaintiffs,	)	Stipulated Settlement
	)	Agreement
-vs-	)	
	)	
JANET RENO, Attorney General	)	
of the United States, et al.,	)	
	)	
Defendants.	)	

Plaintiffs' Additional Counsel

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U.S. Immigration & Naturalization Service

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Washington, DC 20536

/ / /

## STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement

(the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

## I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.

2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.

3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.

4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.

5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.

6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in



Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with

major restraining construction or procedures typically associated with correctional facilities.

## II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this

Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of this Agreement, attached hereto as Exhibit 2.

### III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

### IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

### V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12.A. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to

protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19, (i) within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such

emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

## VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that

of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;
- B. a legal guardian;
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;
- E. a licensed program willing to accept legal custody; or
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;

- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian, in writing, seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

## VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject



of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

- i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);
- ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

- B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;
- C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);
- D. is an escape-risk; or
- E. must be held in a secure facility for his or her own safety, such as when the INS has

reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

- A. the minor is currently under a final order of deportation or exclusion;
- B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;
- C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24.A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any

United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770, (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services available in the district pursuant to INS regulations (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

## VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except:

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause B, minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

## IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

## X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1)

biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the

terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

#### XI ATTORNEY-CLIENT VISITS

32.A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who

may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minors in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

## XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

### XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

### XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

### XV RESERVATION OF RIGHTS

36. Nothing in this Agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

### XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that a party has violated the terms of this Agreement shall be served on plaintiffs addressed to:

/ / /



CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW  
Carlos Holguín  
Peter A. Schey  
256 South Occidental Boulevard  
Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW  
Alice Bussiere  
James Morales  
114 Sansome Street, Suite 905  
San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson  
Assistant United States Attorney  
300 N. Los Angeles St., Rm. 7516  
Los Angeles, CA 90012

Allen Hausman  
Office of Immigration Litigation  
Civil Division  
U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044

## XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

## XVIII ATTORNEYS' FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of \$374,110.09, in full settlement of all attorneys' fees and costs in this case.

/ / /

## XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement, except that the INS shall continue to house the general population of minors in INS custody in facilities that are licensed for the care of dependent minors.

## XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

For Defendants: Signed: Louis Meissner Title: Commissioner, INS

Dated: 7/16/76

For Plaintiffs: Signed: per next page Title: \_\_\_\_\_

Dated: \_\_\_\_\_

The foregoing stipulated settlement is approved as to form and content:

CENTER FOR HUMAN RIGHTS AND  
CONSTITUTIONAL LAW

Carlos Holguin  
Peter Schey

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere  
James Morales

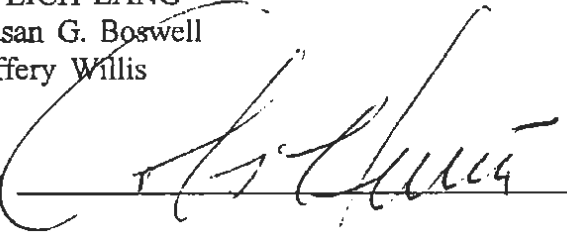
ACLU FOUNDATION OF SOUTHERN CALIFORNIA

Mark Rosenbaum  
Sylvia Argueta

STEICH LANG  
Susan G. Boswell  
Jeffery Willis

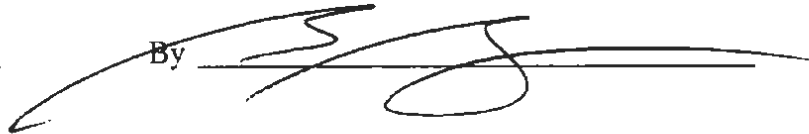
Date: 11/13/97

By



Date: 11/13/96

By





## EXHIBIT 1

### MINIMUM STANDARDS FOR LICENSED PROGRAMS

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be

residing in the United States and may be able to assist in family reunification.

4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.
5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.
6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.
7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management

is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.
9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.
10. Whenever possible, access to religious services of the minor's choice.
11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.
12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.
13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.
14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or

exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.





## EXHIBIT 2

### INSTRUCTIONS TO SERVICE OFFICERS RE: PROCESSING, TREATMENT, AND PLACEMENT OF MINORS

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

**(a) Minors.** A minor is a person under the age of eighteen years. However, individuals who have been “emancipated” by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

**(b) General policy.** The INS treats, and will continue to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

**(c) Processing.** The INS will expeditiously process minors and will provide a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS's concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the juvenile cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in

INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

**(d) Release.** The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others. Minors shall be released, in the following order of preference, to:

- (i) a parent;
- (ii) a legal guardian;
- (iii) an adult relative (brother, sister, aunt, uncle, or grandparent);
- (iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;
- (v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or
- (vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

**(e) Certification of custodian.** Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- (i) provide for the minor's physical, mental, and financial well-being;
- (ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;
- (iii) notify the INS of any change of address within five (5) days following a move;
- (iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;
- (v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

- (vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

**(f) Suitability assessment.** An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

**(g) Family reunification.** Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue as long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

**(h) Placement in licensed programs.** A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. Exhibit 1 of the *Flores v. Reno* Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

- (i) the minor is an escape risk or delinquent, as defined in Paragraph (i) below;
- (ii) a court decree or court-approved settlement requires otherwise;
- (iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or
- (iv) the minor must be transported from remote areas for processing or speaks an unusual

language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

**(i) Secure and supervised detention.** A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor —

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

"Chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

(a) the minor is currently under a final order of deportation or exclusion;

(b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

(c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional Juvenile Coordinator.

**(j) Notice of right to bond redetermination and judicial review of placement.** A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review as set out in Exhibit 6 of the *Flores v. Reno* Settlement Agreement, and (2) the list of free legal services providers compiled pursuant to INS regulations (unless previously given to the minor).

**(k) Transportation and transfer.** Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The INS may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

**(l) Periodic reporting.** Statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours must be reported to the Juvenile Coordinator by all INS district offices and Border Patrol stations. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration

status, and (f) hearing dates. INS officers should also inform the Juvenile Coordinator of the reasons for placing a minor in a medium-security facility or detention facility as described in paragraph (i).

**(m) Attorney-client visits by Plaintiffs' counsel.** The INS will permit the lawyers for the *Flores v. Reno* plaintiff class to visit minors, even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

**(n) Visits to licensed facilities.** In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.







## EXHIBIT 3

### CONTINGENCY PLAN

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in programs licensed by an appropriate state agency as expeditiously as possible. An "emergency" is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An "influx" is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that the INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the List. The Emergency Placement List will include the facility name; the number of beds potentially available at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.

2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, (3) date placed in INS custody, and (4)

place and date of current placement.

3. Within one business day of the emergency or influx the Juvenile Coordinator or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.



## EXHIBIT 4

### AGREEMENT CONCERNING FACILITY VISITS UNDER PARAGRAPH 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.





EXHIBIT 5

LIST OF ORGANIZATIONS TO RECEIVE INFORMATION RE: SETTLEMENT AGREEMENT

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137

Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W. 4th Floor, Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550







EXHIBIT 6  
NOTICE OF RIGHT TO JUDICIAL REVIEW

“The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form.”

1 PROOF OF SERVICE BY MAIL

2 I, Sonia Fuentes, declare and say as follows:

3 1. I am over the age of eighteen years and am not a party to this action. I am  
4 employed in the County of Los Angeles, State of California. My business address is 256  
5 South Occidental Boulevard, Los Angeles, California 90057, in said county and state.

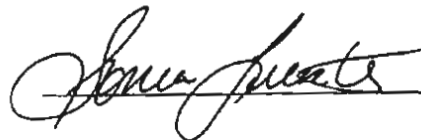
6 2. On January \_\_, 1997, I served the attached STIPULATED SETTLEMENT AGREEMENT  
7 on defendants in this proceeding by placing a true copy thereof in a sealed envelope  
8 addressed to their attorneys of record as follows:

9 Mr. Michael Johnson  
10 Assistant U.S. Attorney  
11 300 N. Los Angeles St. #7516  
Los Angeles, CA 90012

12 and by then sealing said envelope and depositing the same, with postage thereon fully  
13 prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between  
14 the place of mailing and the place so addressed.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed this \_\_th day of January, 1997, at Los Angeles, California.

17  
18   
19 \_\_\_\_\_

20 ///

LODGED

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

Carlos Holguín

Peter A. Schey

Charles Song

256 South Occidental Boulevard

Los Angeles, CA 90057

Telephone: (213) 388-8693; Fax: (213) 386-9484

LATHAM & WATKINS

Steven Schulman

555 Eleventh St., NW, Suite 1000

Washington, DC 20004

Telephone: (202) 637-2184

*Of counsel:*

YOUTH LAW CENTER

Alice Bussiere

417 Montgomery Street, Suite 900

San Francisco, CA 94104

Telephone: (415) 543-3379 x 3903

*Attorneys for plaintiffs*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,

Plaintiffs,

-vs-

JANET KENO, Attorney General  
of the United States, et al.

Defendants

Case No. CV 85-4544-RJK(Px)

STIPULATION EXTENDING  
SETTLEMENT AGREEMENT AND FOR  
OTHER PURPOSES; AND ORDER  
THEREON

1 / 1

1  
2 IT IS HEREBY STIPULATED by and between the parties as follows:

3 1. Paragraph 40 of the Stipulation filed herein on January 17, 1997, is modified to read  
4 as follows:

5 "All terms of this Agreement shall terminate ~~the earlier of five years after the date of~~  
6 ~~final court approval of this Agreement or three years after the court determines that~~  
7 ~~the INS is in substantial compliance with this Agreement,~~ *45 days following defendants'*  
8 *publication of final regulations implementing this Agreement*  
9 ~~except that~~ *Notwithstanding the foregoing,* the INS shall continue to house the general  
10 population of minors in INS custody in facilities that are state-licensed for the care of  
11 dependent minors."

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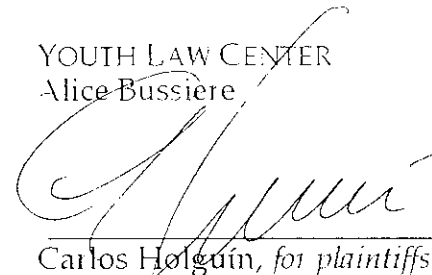
1           2 For a period of six months from the date this Stipulation is filed, plaintiffs shall not  
2 initiate legal proceedings to compel publication of final regulations implementing this  
3 Agreement. Plaintiffs agree to work with defendants cooperatively toward resolving  
4 disputes regarding compliance with the Settlement. The parties agree to confer regularly no  
5 less frequently than once monthly for the purpose of discussing the implementation of and  
6 compliance with the settlement agreement. However, nothing herein shall require plaintiffs  
7 to forebear legal action to compel compliance with this Agreement where plaintiff class  
8 members are suffering irreparable injury.

9 Dated: December 7, 2001.

CENTER FOR HUMAN RIGHTS &  
CONSTITUTIONAL LAW  
Carlos Holguín  
Peter A. Schey

LATHAM & WATKINS  
Steven Schulman

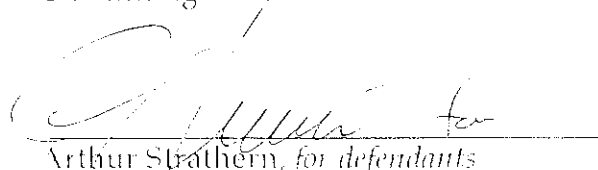
YOUTH LAW CENTER  
Alice Bussiere



Carlos Holguín, for plaintiffs.

17 Dated: December 7, 2001

Arthur Strathern  
Office of the General Counsel  
U.S. Immigration & Naturalization Service



Arthur Strathern, for defendants  
Per fax authorization

23 IT IS SO ORDERED

24 Dated: December \_\_\_\_\_ 2001

UNITED STATES DISTRICT JUDGE

2 For a period of six months from the date this Stipulation is filed, plaintiffs shall not  
initiate legal proceedings to compel publication of final regulations implementing this  
Agreement. Plaintiffs agree to work with defendants cooperatively toward resolving  
disputes regarding compliance with the Settlement. The parties agree to confer regularly no  
less frequently than once monthly for the purpose of discussing the implementation of and  
compliance with the settlement agreement. However, nothing herein shall require plaintiffs  
to forebear legal action to compel compliance with this Agreement where plaintiff class  
members are suffering irreparable injury.

Dated: December 7, 2001.

CENTER FOR HUMAN RIGHTS &  
CONSTITUTIONAL LAW  
Carlos Holguín  
Peter A. Schey

LAIHAM & WATKINS  
Steven Schulman


YOUTH LAW CENTER  
Alice Bussiere

---

Carlos Holguin, *for plaintiffs*

Dated: December 7, 2001.

Arthur Strathern  
Office of the General Counsel  
U.S. Immigration & Naturalization Service



---

Arthur Strathern, *for defendants*  
Per fax authorization

IT IS SO ORDERED

Dated: December 7, 2001.

---

UNITED STATES DISTRICT JUDGE

1 PROOF OF SERVICE BY MAIL.

2 I, Carlos Holguin, declare and say as follows:

3 1 I am over the age of eighteen years and am not a party to this action. I am  
4 employed in the County of Los Angeles, State of California. My business address is 256  
5 South Occidental Boulevard, Los Angeles, California 90057, in said county and state

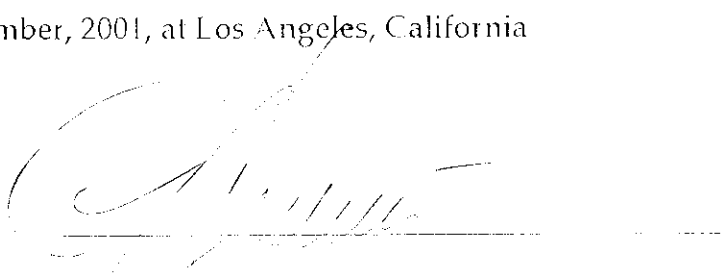
6 2 On December 7, 2001, I served the attached STIPULATION on defendants in this  
7 proceeding by placing a true copy thereof in a sealed envelope addressed to their attorneys  
8 of record as follows:

9 Arthur Strathern  
10 Office of the General Counsel  
11 U.S. Immigration & Naturalization Service  
12 425 I St. N.W.  
13 Washington, DC 20536

14 and by then sealing said envelope and depositing the same, with postage thereon fully  
15 prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between  
16 the place of mailing and the place so addressed.

17 I declare under penalty of perjury that the foregoing is true and correct

18 Executed this 7th day of December, 2001, at Los Angeles, California  
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# Exhibit 31



1 CHAD A. READLER  
2 Acting Assistant Attorney General  
3 AUGUST E. FLENTJE  
4 Special Counsel to the Assistant Attorney General  
5 Civil Division  
6 WILLIAM C. PEACHEY  
7 Director  
8 COLIN KISOR  
9 Deputy Director  
10 SARAH B. FABIAN  
11 Senior Litigation Counsel  
12 U.S. Department of Justice  
13 Office of Immigration Litigation  
14 District Court Section  
15 Box 868, Ben Franklin Station  
16 Washington, DC 20442  
17 Telephone: (202) 532-4824  
18 Fax: (202) 616-8962

19 Attorneys for Defendants

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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES; <i>et al.</i> ,	)	Case No. CV 85-4544-DMG
	)	
Plaintiffs,	)	<b>DEFENDANTS' MEMORANDUM OF</b>
	)	<b>POINTS AND AUTHORITIES IN</b>
v.	)	<b>SUPPORT OF <i>EX PARTE</i></b>
	)	<b>APPLICATION FOR RELIEF FROM</b>
JEFFERSON B. SESSIONS III,	)	<b>THE FLORES SETTLEMENT</b>
Attorney General of the	)	<b>AGREEMENT</b>
United States; <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

## I. INTRODUCTION

When the U.S. Department of Homeland Security (“DHS”) apprehends a family with minor children illegally entering the United States outside a port of entry, it traditionally has three options to choose from: (1) keep the family together by placing the family members at an appropriate residential facility during the pendency of their immigration proceedings; (2) separate the family by detaining the parents and transferring the children to U.S. Health and Human Services (“HHS”) custody; or (3) provide the family with a Notice to Appear for removal proceedings, release the family members from custody into the interior of the United States, and accept the now-common reality that families frequently fail to appear at the required proceedings, thus remaining illegally in the United States.

Only the first option accomplishes the dual goals of enforcing federal law and keeping families together. Accordingly, in 2015 the Government came to this Court to explain the importance of family detention to both enforcing the immigration laws while avoiding family separation. *See* Defendants’ Motion to Modify Settlement Agreement, ECF 120 (Feb. 27, 2015). Unfortunately, however, this Court’s construction of the Flores Settlement Agreement eliminates the practical availability of family detention across the nation, thus creating a powerful incentive for aliens to enter this country with children in violation of our criminal and immigration laws and without a valid claim to be admitted to the United

1 States, as the Government previously explained. *See* Declaration of Tae D.  
2 Johnson, ECF 120-1 at 2 ¶ 7 (Feb. 27, 2015).

3 Under current law and legal rulings, including this Court's, it is not possible  
4 for the U.S. government to detain families together during the pendency of their  
5 immigration proceedings. It cannot be done. One reason those families “decide to  
6 make the dangerous journey to illegally enter the United States is that *they expect*  
7 *to be released from custody.*” *Id.* (emphasis added). Following the July 2015  
8 ruling, there was a 3 to 5-fold increase in the number of illegal family border  
9 crossings. This surge is not a mere coincidence, it is the direct result of the  
10 message sent to those seeking illegal entry: we will not detain and deport you.  
11

12 These realities have precipitated a destabilizing migratory crisis: tens of  
13 thousands of families are embarking on the dangerous journey to the United States,  
14 often through smuggling arrangements, and then crossing the border illegally in  
15 violation of our federal criminal law. And as the Government has previously  
16 stated, once these families are released into the interior, a vast segment fail to  
17 appear at their immigration hearings. *See* Declaration of Thomas Homan, ECF  
18 184-1, at 14 ¶ 30 (Aug. 6, 2015) (in 2014-2015, out of 41,297 cases involving  
19 families, 11,976 had already resulted in *in absentia* removal orders). This entire  
20 journey and ultimate crossing puts children and families at risk, and violates  
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1 criminal laws enacted by Congress to protect the border. Those illegal crossings  
2 must stop.

3 Since 2015, the number of families illegally crossing the southwest border  
4 has increased markedly, well beyond the high levels that led to the Government's  
5 request for modification in 2015. Undeniably the limitation on the option of  
6 detaining families together and the marked increase of families illegally crossing  
7 the border are linked. Illegal family crossings and apprehensions that were in the  
8 range of 1,000 to 3,000 per month in early 2015 dramatically increased to a range  
9 of 5,000 to 9,000 per month in the months after July 2015, when this Court ruled to  
10 prevent the Government from detaining families together.<sup>1</sup>

11 In the absence of congressional action addressing border security and  
12 immigration, the President has directed the Executive Branch to take three  
13 immediate steps to ameliorate the crisis. First, the President has directed the  
14 Secretary of Homeland Security to retain custody of family units through any  
15 criminal improper entry or immigration proceedings, to the extent permitted by  
16 law. Executive Order, Affording Congress an Opportunity to Address Family  
17 Separation §§ 1, 3, 2018 WL 3046068 (June 20, 2018).<sup>2</sup> Second, the President has

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25  
26 <sup>1</sup> See [https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-](https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016)  
27 [children/fy-2016](https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016).

28 <sup>2</sup> Available at [https://www.whitehouse.gov/presidential-actions/affording-](https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/)  
[congress-opportunity-address-family-separation/](https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/).

1 directed the Department of Justice to promptly seek relief from this Court from the  
2 provisions of the Flores Settlement Agreement that “would permit the Secretary [of  
3 Homeland Security] . . . to detain alien families together through the pendency of  
4 criminal proceedings for improper entry or any removal or other immigration  
5 proceedings.” *Id.* § 3(e). And the President has directed federal agencies to  
6 marshal resources to support family custody and to speed up the resolution time for  
7 immigration cases involving family units by “prioritiz[ing] the adjudication of  
8 cases involving detained families.” *Id.* §§ 3(c), 3(d), 4.

12 This crisis at the border regarding illegal family crossings mandates that the  
13 Government take action. Accordingly, we ask for immediate interim relief from  
14 this Court that would permit family detention during immigration proceedings.  
15 This Court should provide limited emergency relief in two respects. *First*, the  
16 Court should provide a limited exemption from its construction of the Flores  
17 Settlement Agreement’s release provisions so that ICE may detain alien minors  
18 who have arrived with their parent or legal guardian together in ICE family  
19 residential facilities. *Second*, the Court should determine that the Agreement’s  
20 state licensure requirement does not apply to ICE family residential facilities.  
21 These changes are justified by several material changes in circumstances—chief  
22 among them the ongoing and worsening influx of families unlawfully entering the  
23 United States at the southwest border.  
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1 The Government requests that this Court provide a prompt hearing relating  
2 to its request. The government has moved expeditiously here given the President's  
3 direction, but is prepared to supplement this request with further factual  
4 information in advance of that hearing or at a time requested by the Court,  
5 including updating information submitted in connection with the Government's  
6 2015 request relating to the circumstances at ICE family residential centers. The  
7 Government is also open to promptly discussing other options with Plaintiffs and  
8 the Court that will permit families to be kept together at residential facilities during  
9 the time needed to complete immigration processing. This Court, given its  
10 ongoing exercise of jurisdiction over the Flores Settlement Agreement, has the  
11 authority and responsibility to resolve these growing concerns by immediately  
12 permitting family detention.  
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## 18 **II. BACKGROUND**

19 In 2015, the Government filed a motion to modify the Flores Settlement  
20 Agreement in order to exclude accompanied minors from the Agreement and  
21 permit use of ICE family residential centers during immigration proceedings,  
22 which would have allowed the Government to exercise this option to keep families  
23 together to the greatest extent possible during removal proceedings. *See*  
24 Defendants' Motion to Modify Settlement Agreement, ECF 120 (Feb. 27, 2015).  
25 In that filing, the Government explained that a "practice of general release  
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1 encourages parents to subject their children to this dangerous journey in order to  
2 avoid their own detention” and puts “unrelated children at increased risk of  
3 trafficking by smugglers who bring them across the border in an attempt to avoid  
4 detention by representing themselves as a family unit.” Declaration of Tae D.  
5 Johnson, ECF 120-1 at 5 ¶ 11 (Feb. 27, 2015).  
6

7  
8 In 2015, the Government apprised this Court that a result of not amending  
9 the Flores Settlement Agreement could be the separation of families. The  
10 Government explained that DHS required “additional, family-appropriate  
11 immigration detention capacity to hold families apprehended at the border, *without*  
12 *requiring separation of parents from their children.*” Defendants’ Opposition to  
13 Motion to Enforce, ECF 121 at 1 (Feb. 27, 2015) (emphasis added). The  
14  
15 Government further explained that Plaintiffs’ opposition to family detention  
16 units—based on an agreement that arose out of litigation that was limited to  
17 *unaccompanied* children—“threatens family unity and ignores the significant  
18 growth in the number of children . . . apprehended while unlawfully crossing the  
19 southwest border” with and without parents. *Id.* at 2. The Government urged  
20 against an application of the Flores Settlement Agreement that would “mak[e] it  
21 impossible for ICE to house families at ICE family residential centers, and to  
22 *instead require ICE to separate accompanied children from their parents or legal*  
23 *guardians.*” *Id.* at 17 (emphasis added).  
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1 This Court denied that motion in July 2015, Order, ECF 177 (July 24, 2015),  
2 and the Ninth Circuit affirmed that denial on July 6, 2016, holding that this Court  
3 had not abused its discretion. *Flores v. Lynch*, 828 F.3d 898, 909-10 (9th Cir.  
4 2016). In so ruling, the Ninth Circuit concluded that the Government’s request “to  
5 exempt an entire category of migrants from the Settlement” was not “a ‘suitably  
6 tailored’ response to the change in circumstances.” *Id.* at 910. The Ninth Circuit  
7 acknowledged, however, that “relaxing certain requirements” might be appropriate  
8 where a showing of changed circumstances has been made. *Id.* And in the face of  
9 the Government’s warning that family separation could result from this Court’s  
10 decision, the Ninth Circuit specifically envisioned separating parents from their  
11 children under the terms of the Agreement – releasing the children while  
12 maintaining detention of their parents. *Flores*, 828 F.3d at 908-09; *see* Appellants  
13 Ninth Circuit Brief at 61, No. 15-56434 (Jan. 15, 2016).

19 The circumstances created by this application of the Agreement have  
20 become untenable. After a significant reduction in family units crossing the border  
21 in FY 2015 when the Government was holding families together, *see* ECF 184-1 at  
22 8 ¶ 17, family crossings away from legal ports of entry nearly doubled in FY 2016,  
23 as measured by apprehensions. Such apprehensions have only increased annually  
24 since that time, except for a brief drop at the start of 2017—including an increase  
25 this year that, when projected to cover the full year, represents a 17% increase over  
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the illegal family entries in 2017 and a 30% increase in illegal family entries in 2014, the year that prompted the Government's prior filing with this Court. And the increase in family entries over FY 2015 is 123%, from 39,838 in FY 2015 to a number that, when projected to cover the full year, is 88,670 for FY 2018.<sup>3</sup> The year-to-year data follows:

**SW Border Family Apprehensions:**

<u>Fiscal Year</u>	<u>Family Apprehensions</u>
2012	11,116
2013	14,885
2014	68,445
2015	39,838
2016	77,674
2017	75,622
2018 (8 months)	59,113 (12 month projection: 88,670). <sup>4</sup>

The month-to-month figures show the sharp rise in family border crossings during 2015—from a figure in the range of 1,600 to 4,000 before this Court's July

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<sup>3</sup> The simple projection is based on the assumption that illegal crossers for the remaining four months will arrive at the same rate as in the prior eight months, a projection that does not account for seasonal variations.

<sup>4</sup> See <https://www.cbp.gov/newsroom/stats/sw-border-migration> (2018); <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017> (2017); <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (2012-2016). In addition, 34,650 family units who presented at ports of entry on the southwest border this fiscal year were determined to be inadmissible. *Id.*

2015 decision, to a figure ranging from 5,000 to nearly 9,000 in the months after the decision:<sup>5</sup>

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
1622	2041	2782	3087	3861	4042	4503	5159	5273	6025	6471	8973

### III. APPLICABLE LEGAL STANDARDS

The Government invokes Federal Rule of Civil Procedure 60(b)(5) and 60(b)(6) in support of its request to modify the Flores Settlement Agreement.

#### A. Federal Rule of Civil Procedure 60(b)(5)

Under Federal Rule of Civil Procedure 60(b)(5), the Court may relieve a party from “a final judgment, order, or proceeding [if] applying [the prior action] prospectively is no longer equitable.” Fed. R. Civ. Proc. 60(b)(5); *see Frew ex. rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004); *McGrath v. Potash*, 199 F.2d 166, 167-68 (D.C. Cir. 1952). The party seeking relief “bears the burden of establishing that a significant change in circumstances warrants revision of the decree.” *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 383 (1992). That burden may be met by showing “a significant change either in factual conditions or in law.” *Id.* at 384; *see also Horne v. Flores*, 557 U.S. 433, 447 (2009) (“[T]he passage of time frequently brings about changed circumstances—changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts,

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<sup>5</sup> *See* <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

1 and new policy insights—that warrant reexamination of the original judgment.”).

2 A motion under this section must be brought “within a reasonable time.” Fed. R.  
3 Civ. Proc. 60(c)(1).  
4

5 The Flores Settlement Agreement is an example of what the Supreme Court  
6 has termed “institutional reform litigation.” *Horne*, 557 U.S. at 447 (quoting *Rufo*,  
7 502 U.S. at 380). A district court’s ability to modify a decree in response to  
8 changed circumstances is heightened in institutional reform litigation. *Rufo*, 502  
9 U.S. at 380. “Because such decrees often remain in place for extended periods of  
10 time, the likelihood of significant changes occurring during the life of the decree is  
11 increased.” *Id.* And “the public interest is a particularly significant reason for  
12 applying a flexible modification standard in institutional reform litigation because  
13 such decrees ‘reach beyond the parties involved directly in the suit and impact on  
14 the public’s right to the sound and efficient operation of its institutions.’” *Id.* at  
15 381 (quoting *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989)).  
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21 **B. Federal Rule of Civil Procedure 60(b)(6)**

22 Federal Rule of Civil Procedure 60(b)(6) allows a Court to relieve a party  
23 from “a final judgment, order, or proceeding for . . . any other reason that justifies  
24 relief.” Fed. R. Civ. Proc. 60(b)(6). The rule generally is “used sparingly as an  
25 equitable remedy to prevent manifest injustice.” *United States v. Alpine Land &*  
26 *Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). The frustration of  
27  
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1 performance of a settlement agreement may provide reason to grant a motion under  
2 this Rule. *Stratman v. Babbitt*, 42 F.3d 1402, 1994 WL 681071, at \*4 (9th Cir.  
3 Dec. 5, 1994). A motion under this section must be brought “within a reasonable  
4 time.” *Alpine*, 984 F.2d at 1049 (quoting *In re Pacific Far East Lines, Inc.*, 889  
5 F.2d 242, 249 (9th Cir. 1989)).  
6

#### 7 **IV. ARGUMENT**

8  
9 This Court should provide limited emergency relief to enable the  
10 Government to keep alien families together. *First*, the Court should provide a  
11 limited exemption from its interpretation of the Flores Settlement Agreement’s  
12 release provisions so that U.S. Customs and Immigration Enforcement (ICE) may  
13 detain alien minors who have arrived with their parent or legal guardian together in  
14 ICE family residential facilities. *Second*, the Court should exempt ICE family  
15 residential facilities from the Agreement’s state licensure requirement. These  
16 changes are justified by several material changes in circumstances—including the  
17 worsening influx of families unlawfully entering the United States at the southwest  
18 border.  
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23 The Government does not, at this time, ask to be relieved from the  
24 Agreement’s substantive requirements on the conditions of detention in these  
25 facilities. And it does not, at this time, ask to be relieved from any other provision  
26 of the Flores Settlement Agreement that otherwise affects accompanied (or  
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1 unaccompanied) minors. Instead, in this motion, the Government asks for limited  
2 relief that would promote an important, widely shared goal that has spanned  
3 administrations: keeping families together while effectively carrying out removal  
4 proceedings required by immigration law.  
5

6 This Court has clear authority to grant these exemptions. It should exercise  
7 that authority to help keep families together. The Government seeks this  
8 emergency relief on an *ex parte* basis, to enable the Government both to maintain a  
9 secure southwest border while also avoiding family separations.  
10  
11

12 **A. Significant Changes in Circumstances—Including the Ongoing,**  
13 **Worsening Influx of Family Units on the Southwest Border—**  
14 **Show that this Court Should Modify the Flores Settlement**  
15 **Agreement.**

16 This Court should modify the Flores Settlement Agreement in light of  
17 “significant change[s] in circumstances.” *Rufo*, 502 U.S. at 383 (modification of a  
18 consent decree is appropriate when “a significant change in circumstances warrants  
19 revision of the decree”). This changed-circumstances standard is met where there  
20 have been “changes in circumstances that were beyond the defendants’ control and  
21 were not contemplated by the court or the parties when the decree was entered.”  
22 *Id.* at 380-81 (discussing *Philadelphia Welfare Rights Org. v. Shapp*, 602 F.2d  
23 1114, 1119-21 (3d Cir. 1979)). Several significant changes satisfy these standards.  
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1       *First*, since the Agreement was entered, the number of persons illegally  
2 crossing the border in family units has dramatically increased and has materially  
3 changed from what the parties or Court could reasonably have contemplated. That  
4 increase has consisted in significant measure of children who are accompanied by  
5 their parents. Although the Ninth Circuit previously found that the parties  
6 “expressly anticipated an influx” when the Agreement was signed, *Flores*, 828  
7 F.3d at 909, nothing suggests that the parties anticipated that this increase would  
8 consist largely of children who were accompanied by their parents. Indeed, the  
9 Agreement arose from litigation solely about *unaccompanied* minors. A  
10 modification is warranted to account for the important, widely shared interest in  
11 keeping families together.

12       The current situation is untenable. As the Government explained in 2015,  
13 aliens cross the border illegally relying on promises from traffickers that “they will  
14 not be detained but instead will be released.” Declaration of Tae D. Johnson, ECF  
15 120-1 at 2 ¶ 7. (Feb. 27, 2015). Such an incentive structure increases the chances  
16 that an alien without a valid claim for relief in the United States will be able to  
17 remain here illegally or during lengthy removal proceedings. As the Government  
18 explained in 2015, “detaining these individuals dispels such expectations, and  
19 deters others from unlawfully coming to the United States.” *Id.* at 4 ¶ 8..  
20 Moreover, many of these aliens are smuggled for “significant fees” and those  
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1 “payments are then used by cartels to fund additional illicit and dangerous  
2 activities in the United States and Mexico.” *Id.* ¶ 9. The more constrained DHS’s  
3 ability to detain families together during the period necessary to promptly conduct  
4 immigration proceedings, the more likely it is that families will attempt illegal  
5 border crossing. As the Government explained in 2015, a “practice of general  
6 release encourages parents to subject their children to this dangerous journey in  
7 order to avoid their own detention” and puts “unrelated children at increased risk  
8 of trafficking by smugglers who bring them across the border in an attempt to  
9 avoid detention by representing themselves as a family unit.” *Id.* at 5 ¶ 11.

13 *Second*, neither the parties nor the Court anticipated that, when the  
14 Government first began applying the Agreement to accompanied minors, as  
15 required by this Court’s order, that shift in practice would lead to the current  
16 situation that incentivizes a dangerous journey by family units with young  
17 children, risky illegal entry attempts by families with children, and trafficking of  
18 families through Mexico in a manner contrary to the intent of asylum treaties. As  
19 explained above, the number of family units crossing the border illegally has  
20 increased dramatically since the Government sought relief in 2015—by 30% since  
21 the 2014 influx that led the Government to seek relief from this Court. Without the  
22 option to keep families together during the pendency of removal proceedings, the  
23 Government must choose between acquiescing to and incentivizing illegal  
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1 immigration by releasing all family groups, or detaining the parents but separating  
2 the family (as a result of the Agreement, as interpreted). These are precisely the  
3 sorts of changes that warrant “relax[ation] [of] certain requirements” of the  
4 Agreement. *Flores*, 828 F.3d at 910.

6       *Third*, class-action litigation has been filed challenging the legality of family  
7 separation. In one case, the plaintiffs seek class-wide relief requiring DHS to  
8 discontinue family separation. *See Ms. L. v. U.S. Immigration and Customs*  
9 *Enforcement*, Motion, No. 18-428, ECF No. 48-1, at 26 (S.D. Cal.); *see also*  
10 *Mejia-Mejia v. ICE*, No. 18-1445, Complaint ¶ 4 (D.D.C. filed June 19, 2018) (“If,  
11 however, the government feels compelled to continue detaining these parents and  
12 young children, it should at a minimum detain them together in one of its  
13 immigration family detention centers”). Yet in declining the Government’s  
14 previous request to amend the Flores Settlement Agreement, the Ninth Circuit held  
15 that family separation is permissible under the Agreement, and reversed this  
16 Court’s holding that the Agreement required the release of both the parents and  
17 children to maintain family unity. *See Flores*, 828 F.3d at 910 (Flores Settlement  
18 Agreement “provides no affirmative release rights for parents”). It cannot be the  
19 case—nor is it consistent with immigration law—that the Government’s only  
20 option, when facing a crisis of illegal border crossings, is simply to permit such  
21 illegality by releasing all aliens after apprehension with full knowledge that later  
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1 voluntary appearance for removal proceedings is increasingly rare. This point was  
2 true when the Government made it in 2015, and it remains true today.

3 *Finally*, the President has identified this issue as a significant problem  
4 warranting focused attention throughout the Executive Branch. *See* Executive  
5 Order, Affording Congress an Opportunity to Address Family Separation (June 20,  
6 2018). In doing so, he has directed significant resources to provide adequate  
7 facilities where families can be together, and the prioritization of their immigration  
8 proceedings to minimize the amount of detention. *Id.* § 4 (the “Attorney General  
9 shall, to the extent practicable, prioritize the adjudication of cases involving  
10 detained families”). Those efforts justify renewed consideration of family custody  
11 under the Flores Settlement Agreement.

12 **B. Two Narrow Modifications to the Flores Settlement Agreement**  
13 **Are Warranted to Address the Significant Changes in**  
14 **Circumstances.**

15 Given the circumstances set forth above, two “tailored” modifications to the  
16 Agreement are warranted at this time. *Rufo*, 502 U.S. at 383 (once the moving  
17 party has established that modification is warranted, “the court should consider  
18 whether the proposed modification is suitably tailored to the changed  
19 circumstance”).

20 *First*, the Court should provide the Government an exemption from  
21 Paragraph 14 of the Agreement so that children may be placed in ICE custody with  
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1 their parent or guardian, rather than be released to another individual or placed into  
2 HHS custody. *See* Flores Agreement ¶ 14 (requiring INS to “release a minor from  
3 its custody” in certain circumstances). So long as paragraph 14 of the Agreement  
4 is applied as written to accompanied children, ICE is required to separate parents  
5 or guardians from their children in situations where the law requires detention or  
6 ICE or an immigration judge determines that a parent or guardian should be  
7 detained to prevent flight or danger to the community during removal proceedings.  
8  
9 Exempting ICE family residential centers from this requirement on the limited  
10 basis proposed by the Government will permit DHS to more effectively prevent  
11 large numbers of alien families from illegally entering the United States through  
12 the southwest border, while also allowing families to stay together in specially  
13 designed facilities during their criminal and removal proceedings.  
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18 *Second*, the Court should provide an exemption for ICE family residential  
19 centers from the licensing provisions of the Agreement. Those provisions require  
20 that minors “be placed temporarily in a licensed program.” Agreement ¶ 19;  
21 Exhibit 1 (laying out the minimum standards for conditions in facilities holding  
22 minors). A “licensed program” is one “that is licensed by an appropriate State  
23 agency to provide residential, group, or foster care services for dependent  
24 children.” Agreement ¶ 6. This exemption is necessary because of ongoing and  
25 unresolved disputes over the ability of States to license these types of facilities that  
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1 house both adults and children. Exemption from this requirement is tailored to  
2 address the immediate influx with which the Government is currently dealing,  
3 while providing time for ongoing efforts in Congress to address these issues. And  
4 the Government does not now object to the requirement that ICE family residential  
5 facilities would continue to meet the standards laid out in Exhibit 1 to the  
6 Agreement.  
7

8  
9 These are narrow, targeted requests aimed at addressing a specific and  
10 growing problem. Notably, while the Government continues to believe that it was  
11 incorrect to hold that the Flores Settlement Agreement applies to accompanied  
12 minors, the Government does not seek here to “exempt an entire category of  
13 migrants from the Settlement.” *Flores*, 828 F.3d at 910. Rather, at this time, the  
14 Government seeks only to permit family detention under the Agreement given the  
15 ongoing severe influx of family units at the border.<sup>6</sup> The Government does not  
16 seek through this motion to exempt accompanied minors—or any other group—  
17 from all of the settlement provisions. The two requested exemptions are the sort of  
18 “relax[ation] [of] certain requirements” of the Agreement that the Ninth Circuit  
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26 <sup>6</sup> The Government continues to disagree that the Flores Settlement Agreement  
27 covers accompanied minors and with other aspects of this Court’s rulings  
28 interpreting the Agreement, and preserves its arguments in the event of further review .

1 invited the Government to seek. *Id.* Relaxing these requirements would permit  
2 family units to be kept together in appropriate facilities.

3       The equities and human considerations strongly support this narrow relief.  
4  
5 Family detention during the pendency of removal proceedings has been a  
6 continuing goal of DHS for a considerable time, and across administrations. DHS  
7 has viewed this authority as critical to addressing the growing influx of family  
8 units illegally crossing the southwest border. The inability to employ this option  
9 creates a continued incentive for parents to bring their children on the dangerous  
10 journey to the United States and to enter the country illegally, rather than at ports  
11 of entry. Entering illegally provides two opportunities to remain in the United  
12 States for a family with no valid asylum claim—either if the family evades  
13 detection entirely or if the family is caught and then released, the family unit  
14 disappears. Proposed legislation in Congress seeks to address the issues created by  
15 the limitations that the Agreement, as it has been interpreted, places on the  
16 Government’s ability to use ICE family residential centers. This process is fluid,  
17 but the emergency currently existing on the southwest border requires immediate  
18 action. This Court can take such action to help address this urgent problem.  
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25                               \*       \*       \*

26       The Government is prepared to make a more thorough showing, if  
27 necessary, in support of this request to amend the Flores Settlement Agreement.  
28

1 The Government respectfully requests a prompt hearing on its request for  
2 immediate relief, together with any additional proceedings the Court believes  
3 appropriate.  
4

5 **V. CONCLUSION**

6 For the above reasons, the Government respectfully asks this Court to grant  
7  
8 limited emergency relief that would: (1) exempt DHS from the Flores Settlement  
9 Agreement's release provisions so that ICE may detain alien minors who have  
10 arrived with their parent or legal guardian together in ICE family residential  
11 facilities; and (2) exempt ICE family residential facilities from the Agreement's  
12 state licensure requirement. The Government is not asking to be relieved from the  
13 substantive language of the Agreement on the conditions of detention in these  
14 facilities. The Government asks for immediate relief, along with a schedule to  
15 allow the parties to more fully address the issues raised by this request.  
16  
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18

19  
20 DATED: June 21, 2018

Respectfully submitted,

21  
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23 Acting Assistant Attorney General

24 /s/ August E. Flentje  
25 AUGUST E. FLENTJE  
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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2018, I served the foregoing pleading on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ August E. Flentje  
August E. Flentje  
Attorney for Defendants

# Exhibit 32



The Washington Post

## Checkpoint

Pentagon will make room for up to 20,000 migrant children on military bases

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by [Dan Lamothe](#), [Seung Min Kim](#) and [Nick Miroff](#) June 21 [✉Email the author](#)

The Defense Department will house up to 20,000 unaccompanied migrant children on military bases in coming months, a Pentagon official said Thursday, the latest twist in the Trump administration's immigration enforcement effort.

The agreement comes after the Department of Health and Human Services made the request. Army Lt. Col. Jamie Davis, a military spokesman, said Thursday that the Pentagon will support it.

In a notification to lawmakers, the Pentagon said Wednesday night that officials at HHS asked whether beds could be provided for children at military installations "for occupancy as early as July through December 31, 2018."

*[Trump administration preparing to hold immigrant children on military bases]*

The plan seemingly will have similarities to 2014, when the Obama administration housed about 7,000 unaccompanied children on three military bases. As required under the Economy Act, the memo said, the Defense Department would be reimbursed for all costs incurred.

The sites will be run by HHS employees or contractors working with them, the memo said. They will provide care to the children, "including supervision, meals, clothing, medical services, transportation or other daily needs," and HHS representatives will be at each location.

The memo, first reported on by The Washington Post, was sent to lawmakers Wednesday after President Trump reversed his administration's unpopular policy to separate children from their parents as the migrants arrived at the southern U.S. border.

The president's executive order directed Defense Secretary Jim Mattis to "take all legally available measures" to provide Homeland Security Secretary Kirstjen Nielsen with "any existing facilities available for the housing and care of alien families" and the construction of new facilities "if necessary and consistent with law."

The Trump administration spent months planning, testing and defending its family separation policy at the border, taking more than 2,500 children from their parents in the six weeks before the president signed an executive order Wednesday bringing the practice to a halt.

The U.S. government has been examining for weeks whether it can use military bases to house migrant children. Representatives from HHS visited three bases in Texas — Fort Bliss, Dyess Air Force Base and Goodfellow Air Force Base — last week to review their facilities for suitability, and they were scheduled to review Little Rock Air Force Base in Arkansas on Wednesday, Davis said.

The Obama administration set up temporary centers in 2014 at three military bases: Fort Sill in Oklahoma, Lackland Air Force Base in Texas and Naval Base Ventura County in California.

Asked about the possibility of military bases being involved again, Mattis said Wednesday that the Defense Department would "see what they come up with" in HHS, and that the Pentagon would "respond if requested." Mattis dismissed concerns about housing migrants on military bases, noting that the Defense Department has done it on several occasions and for several reasons.

"We have housed refugees," he said. "We have housed people thrown out of their homes by earthquakes and hurricanes. We do whatever is in the best interest of the country."

The secretary, pressed on the sensitivities of the Trump administration separating children from their parents, said reporters would need to ask "the people responsible for it."

"I'm not going to chime in from the outside," he said. "There's people responsible for it. Secretary Nielson, obviously, maintains close collaboration with us. You saw that when we deployed certain National Guard units there, so she's in charge."

Sen. Jack Reed (R.I.) and Rep. Adam Smith (Wash.), the top Democrats on the Senate and House Armed Services committees, wrote a letter to Mattis on Wednesday requesting assurances that members of Congress would have access to any migrant facility established on a military base. The letter, sent before Trump dropped his administration's family-separation policy, said it was essential to have access even in cases where only short notice is provided.


Mattis has approved temporarily detailing 21 military attorneys to the Justice Department to help with the glut of immigration cases that have emerged on the border. The order, issued this month, calls for 21 attorneys with criminal-trial experience to assist as special assistant U.S. attorneys for 179 days, Davis said. They will help in prosecuting border immigration cases, he added, "with a focus on misdemeanor improper entry and felony illegal reentry cases."

The possibility was raised in a congressional hearing in May, and first reported as underway by MSNBC on Wednesday night. U.S. law permits a judge advocate lawyer to be assigned or detailed to another agency, including to provide representation in civil and criminal cases.


*This report was originally published at 2:44 p.m. with an update at 4:39 p.m. when a Pentagon spokesman confirmed that the Defense Department will support HHS's request.*


**Correction:** An earlier version of this post incorrectly listed Rep. Adam Smith's state. He is a representative from Washington state, not California.

 **308 Comments**

Dan Lamothe covers the Pentagon and the U.S. military for The Washington Post. He joined the newspaper in 2014. He has covered the military for more than a decade, embedding with U.S. troops in Afghanistan on numerous occasions.  Follow @danlamothe

Seung Min Kim is a White House reporter for The Washington Post, covering the Trump administration through the lens of Capitol Hill. Before joining The Washington Post in 2018, she spent more than eight years at Politico, primarily covering the Senate and immigration policy.

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Nick Miroff covers immigration enforcement, drug trafficking and the Department of Homeland Security on The Washington Post's National Security desk. He was a Post foreign correspondent in Latin America from 2010 to 2017, and has been a staff writer since 2006.  Follow @NickMiroff



# Exhibit 33

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# Pentagon eyes temporary camps for immigrants at two bases

Phil Stewart

3 MIN READ



EIELSON AIR FORCE BASE, Alaska (Reuters) - The U.S. military is preparing to build temporary camps at two military bases to house immigrants, Defense Secretary Jim Mattis said on Sunday, in the latest sign of a growing U.S. military support role for President Donald Trump's politically charged immigration policies.

FILE PHOTO: U.S. Defense Secretary James Mattis testifies before the Senate Appropriations Defense Subcommittee hearing on funding for the Department of Defense, on Capitol Hill in Washington, U.S., May 9, 2018. REUTERS/Yuri Gripas

Mattis, speaking to reporters during a flight to Alaska, did not specify the names of the bases or say whether they would house immigrant children or their parents, or both.

“The details are being worked out ... about exactly how much capacity they need at the two bases, what other kinds of facilities they need built,” Mattis said, as he disclosed the request for the facilities from the government’s Department of Homeland Security.

In the face of outrage at home and overseas over his crackdown on illegal immigration, Trump was forced last week to abandon his policy of separating children from parents who are apprehended for illegally crossing the U.S.-Mexico border.

Even though the president has now ordered that families be kept together in detention during immigration proceedings, it remained unclear where families would be held while the parents face criminal charges.

The U.S. military, and Mattis in particular, have stressed that it is simply providing logistical support to the Department of Homeland Security, which deals with immigration issues.

Mattis said the U.S. military had for decades provided shelter to immigrants, including for Vietnamese refugees in the aftermath of the Vietnam War.

“Providing shelter for people without shelter, we consider that to be a logistics function that is quite appropriate,” he said, when asked whether he had any concerns about a U.S. military role in immigration policies.

Although Mattis did not cite how many people could be housed at the bases, the U.S. military said on Thursday it had been asked by the government to get ready to house up to 20,000 immigrant children.

It said the government had already assessed three military bases in Texas and would review another in Arkansas.

Trump has previously turned to the military to help with his border crackdown. Earlier this year, U.S. National Guard forces were dispatched to border states to help tighten security.

Reporting by Phil Stewart; Editing by Peter Cooney

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# Exhibit 34

TIME

## Exclusive: Navy Document Shows Plan to Erect 'Austere' Detention Camps

By PHILIP ELLIOTT and W.J. HENNIGAN June 22, 2018

The U.S. Navy is preparing plans to construct sprawling detention centers for tens of thousands of immigrants on remote bases in California, Alabama and Arizona, escalating the military's task in implementing President Donald Trump's "zero tolerance" policy for people caught crossing the Southern border, according to a copy of a draft memo obtained by TIME.

The internal document, drafted for the Navy Secretary's approval, signals how the military is anticipating its role in Trump's immigration crackdown. The planning document indicates a potential growing military responsibility in an administration caught flat-footed in having to house waves of migrants awaiting civilian criminal proceedings.

The Navy memo outlines plans to build "temporary and austere" tent cities to house 25,000 migrants at abandoned airfields just outside the Florida panhandle near Mobile, Alabama, at Navy Outlying Field Wolf in Orange Beach, Alabama, and nearby Navy Outlying Field Silverhill.

The memo also proposes a camp for as many as 47,000 people at former Naval Weapons Station Concord, near San Francisco; and another facility that could house as many as 47,000 people at Camp Pendleton, the Marines' largest training facility located along the Southern California coast. The planning memo proposes further study of housing an undetermined number of migrants at the Marine Corps Air Station near Yuma, Arizona.

The planning document estimates that the Navy would spend about \$233 million to construct and operate a facility for 25,000 people for a six-month time period. The proposal suggests these tent cities be built to last between six months and one year.

Capt. Greg Hicks, Navy's chief spokesman, declined to provide details on the matter. "It would be inappropriate to discuss internal deliberative planning documents," he told TIME.

Although the military has not yet been ordered to construct these new detention facilities, it is clear it is bracing to join a policy challenge that is ricocheting throughout the whole of government. What began as a crackdown on immigrants crossing the border illegally has now spread to the departments of Justice, Homeland Security, Defense and Health and Human Services.

In the Navy document, military officials propose a 60-day timeline to build the first temporary tent facility for 5,000 adults. After that, military officials suggest they could add room for 10,000 additional individuals each month.

The memo was written by Phyllis L. Bayer, the Assistant Secretary of the Navy for Energy, Installations and Environment, in anticipation for a request from the Department of Homeland Security. It recommends Navy Secretary Richard Spencer sign off on the plan, which allocates roughly 450 square feet per immigrant held for housing, support staff and security, and send it to Defense Secretary James Mattis.

Mattis' office declined to comment on the proposed plan obtained by TIME.

Trump on Wednesday **ordered** the Pentagon to work with the Department of Homeland Security to house the tens of thousands of immigrants currently being held awaiting criminal proceedings for crossing the U.S.-Mexican border illegally. Under the administration's so-called "zero-tolerance" immigration policy, current facilities are at their breaking point and the immigration courts face deep backlogs. At the same time, children who previously had been separated from their parents are now going to be held with the adults, further straining the system.

**Read More:** *U.S. Attorney in West Texas Drops 'Zero-Tolerance' Charges Against Migrants Who Came With Children*

The Pentagon has been asked make preparations on military bases to house as many as 20,000 house immigrant children who are apprehended at the U.S.-Mexico border without an adult relative or separated from parents, U.S. military officials said. Department of Health and Human Services completed assessments this week at Goodfellow Air Force Base, Dyess Air Force Base, Fort Bliss in Texas and Little Rock Air Force Base in Arkansas for potential use for the Unaccompanied Alien Children program.

"While four bases (3 in Texas and 1 in Arkansas) have been visited by HHS for possible housing, it doesn't mean any or all children would be housed there," Army Lt. Col. Jaime Davis, a Pentagon spokesman, said in a statement.

Earlier this week, Mattis deferred questions on the matter to the Department of Homeland Security but did acknowledge the military's willingness to help with the Trump Administration's latest crisis. "We have housed refugees," he told reporters Wednesday at the Pentagon. "We have housed people thrown out of their homes by earthquakes and hurricanes. We do whatever is in the best interest of the country."

Currently, migrant children are being held in facilities run by the Office of Refugee Resettlement within the Department of Health and Human Services.

One facility, a converted **Walmart** in Texas, was **recently opened to reporters**, igniting a media firestorm.

Using military bases in this way is not new. In 2014, the Obama Administration placed around 7,700 migrant children on bases in Texas, California and Oklahoma. The temporary shelters were shuttered after four months.



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**Homeland  
Security**

# Fact Sheet: Zero-Tolerance Prosecution and Family Reunification

U.S. Department of Homeland Security sent this bulletin at 06/23/2018 10:17 PM EDT

U.S. DEPARTMENT OF HOMELAND SECURITY

Office of Public Affairs

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FOR IMMEDIATE RELEASE

June 23, 2018

## **Zero-Tolerance Prosecution and Family Reunification**

The Department of Homeland Security (DHS) and Health and Human Services (HHS) have a process established to ensure that family members know the location of their children and have regular communication after separation to ensure that those adults who are subject to removal are reunited with their children for the purposes of removal. The United States government knows the location of all children in its custody and is working to reunite them with their families.

As part of the apprehension, detention and prosecution process, illegal aliens, adults and children, are initially detained by U.S. Customs and Border Protection (CBP) before the children are sent to HHS' Office of Refugee Resettlement (ORR) and parents to Immigration and Customs Enforcement (ICE) custody. Each entity plays a role in reunification. This process is well coordinated.

### **U.S. Customs and Border Protection**

- CBP has reunited 522 Unaccompanied Alien Children (UAC) in their custody who were separated from adults as part of the Zero Tolerance initiative. The reunions of an additional 16 UAC who were scheduled to be reunited on June 22, 2018 were delayed due to weather affecting travel and we expect they will all be reunited with their parents within the next 24 hours. There will be a small number of children who were separated for reasons other than zero tolerance that will remain

separated: generally only if the familial relationship cannot be confirmed, we believe the adult is a threat to the safety of the child, or the adult is a criminal alien.

- Because of the speed in which adults completed their criminal proceedings, some children were still present at a United States Border Patrol (USBP) station at the time their parent(s) returned from court proceedings. In these cases, the USBP reunited the family and transferred them, together, to ICE custody as a family unit.

## **U.S. Immigration and Customs Enforcement**

- ICE has dedicated the [Port Isabel Service Processing Center](#) as the primary family reunification and removal center for adults in their custody.
- A parent who is ordered removed from the U.S. may request that his or her minor child accompany them. It should be noted that in the past many parents have elected to be removed without their children.
- ICE has posted information in all of its facilities advising detained parents who are trying to locate, and/or communicate with, a child in the custody of HHS to call the Detention Reporting and Information Line for assistance, which is staffed by live operators Monday through Friday from 8 AM to 8 PM.
- The information provided by these parents to the call operators will be forwarded to HHS for action. ICE and HHS will coordinate a review of their custodial data to identify where each child is located, verify the parent/child relationship, and set up regular communication and removal coordination, if necessary.
- Each ICE Field Office has Juvenile Coordinators who manage these cases throughout the immigration court proceedings.
- Further, ICE maintains a publicly available online detainee locator which can be used to locate adults detained by ICE. This site can be accessed at: <https://locator.ice.gov/odls/#/index>

ICE has completed the following steps toward reunification:

- Implemented an identification mechanism to ensure on-going tracking of linked family members throughout the detention and removal process;
- Designated detention locations for separated parents and will enhance current processes to ensure communication with children in HHS custody;
- Worked closely with foreign consulates to ensure that travel documents are issued for both the parent and child at time of removal; and

- Coordinated with HHS for the reuniting of the child prior to the parents' departure from the United States.

### **U.S. Health and Human Services Office of Refugee Resettlement**

- Minors come into HHS custody with information provided by DHS regarding how they illegally entered the country and whether or not they were with a parent or adult and, to the extent possible, the parent(s) or guardian(s) information and location. There is a central database which HHS and DHS can access and update when a parent(s) or minor(s) location information changes.
- As of June 20th HHS has 2,053 separated minors being cared for in HHS funded facilities, and is working with relevant agency partners to foster communications and work towards reuniting every minor and every parent or guardian via well-established reunification processes. Currently only 17% of minors in HHS funded facilities were placed there as a result of Zero Tolerance enforcement, and the remaining 83% percent arrived to the United States without a parent or guardian.
- Parent(s) or guardian(s) attempting to determine if their child is in the custody of the Office of Refugee Resettlement (ORR) in HHS Administration for Children and Families should contact the ORR National Call Center ([www.acf.hhs.gov/orr/resource/orr-national-call-center](http://www.acf.hhs.gov/orr/resource/orr-national-call-center)) at 1-800-203-7001, or via email [information@ORRNCC.com](mailto:information@ORRNCC.com). Information will be collected and sent to HHS funded facility where minor is located. The ORR National Call Center has numerous resources available for children, parent(s), guardian(s) and sponsors.
- Within 24 hours of arriving at an HHS funded facility minors are given the opportunity to communicate with a vetted parent, guardian or relative. While in HHS funded facilities' care, every effort is made to ensure minors are able to communicate (either telephonic or video depending on the circumstances) with their parent or guardian (at least twice per week). However, reasonable safety precautions are in place to ensure that an adult wishing to communicate with a minor is in fact that minor's parent or guardian.
- Minors in HHS funded facilities are permitted to call both family members and/or sponsors living in the United States and abroad. Attorneys representing minors have unlimited telephone access and the minor may speak to other appropriate stakeholders, such as their consulate, the case coordinator, or child advocate. Additional information on telephone calls, visitation, and mail policies are available in the [policy guide](#).
- Under HHS' [publicly available](#) policy guide for Unaccompanied Alien Children, the Office of Refugee Resettlement (ORR) releases minors to sponsors in the following order of preference: parent; legal guardian; an adult relative (brother, sister, aunt, uncle, grandparent or first cousin); an adult individual or entity



designated by the parent or legal guardian (through a signed declaration or other document that ORR determines is sufficient to establish the signatory's parental/guardian relationship); a licensed program willing to accept legal custody; or an adult individual or entity seeking custody when it appears that there is no other likely alternative to long term ORR care and custody.

# # #

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# Exhibit 36



# Trump will reunite separated families — but only if they agree to deportation

**Families are being offered an impossibly cruel choice: fight to stay in the US apart, or give up and get sent back together.**

By [Dara Lind](#) | [dara@vox.com](mailto:dara@vox.com) | Updated Jun 25, 2018, 11:39am EDT



Families who were caught together at the US-Mexico border and separated are now being offered the opportunity to reunite — but only if they agree to deportation, giving up their attempts to seek asylum and stay in the US. ( [Getty Images](#) )

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**On Saturday night, the Trump administration finally announced its plan for reuniting the 2,053 families who are still separated thanks to President Donald Trump’s “zero-tolerance” prosecution policy: The administration will reunite children with their parents — in order to deport them both.**

**Over weeks of chaos and confusion, it became clear that the various departments and agencies involved in family separation — chiefly the Department of Homeland Security (DHS), which handles immigration enforcement, and the Department of Health and Human Services (HHS), which takes separated kids reclassified as “unaccompanied alien children” into custody — were so badly coordinated that it was nearly impossible for parents and immigration attorneys to locate children.**

**The Trump administration is promising to fix that — but only in some circumstances.**

**Parents in immigration detention will be helped to get in touch with their children and speak to them regularly, and the Trump administration will make sure — from a “reunification and removal” facility in Port Isabel, Texas — that when a parent is ordered deported, her child will be sent back to their home country beside her.**

**For parents who are trying to fight to stay in the US (for example by pursuing asylum claims, as they are legally entitled to do), though, this isn’t much of a promise. It’s a horrible choice.**

**Either a parent can keep fighting for asylum and accept that he may not be able to see his children for the months or years his case might take — or he can give up, waive both his own rights and the rights of his child, and agree to be reunified with his child en route to the country both of them fled to begin with.**

**DHS is promising to reunite parents once they’ve been ordered deported — but not while they’re still fighting an asylum claim**

**The “[fact sheet](#)” released Saturday night by DHS and HHS claimed that the Trump administration “knows the location of all children in its custody and is working to reunite them with their families.”**

**But the process that the government has in place for reunification isn't for all families separated by the administration between May 5 and June 20, when the "zero tolerance" policy separated more than 2,300 children from their parents at the border. It is solely "to ensure that those adults *who are subject to removal* are reunited with their children *for the purposes of removal*" (emphasis added).**

**There is no such assurance for parents who are fighting deportation because they are trying to claim asylum (or another form of relief) in the United States.**

**What this means, in practice, is that a parent who is currently trying to pursue an asylum claim but wants to see her child as quickly as possible will have to waive two sets of rights: her own and her child's. She'll have to withdraw her own asylum case and agree to be deported instead. And she'll have to agree that her child should **withdraw their own case** to remain in the US — which is a separate case in the legal system because the child is now considered "unaccompanied" — in order to accompany her back to her home country.**

**Lawyers are already claiming to see this at the Port Isabel facility. "We have people in there who are considering not continuing on with really strong asylum claims because they think they'll get reunited with their kids faster if they give up their claim," civil-rights lawyer Sirine Shebaya told the **Washington Post**. And the **Texas Tribune** reported that one asylum-seeker had agreed to be removed voluntarily "out of desperation" because he was told he'd be reunited with his daughter if he did — a claim that Department of Homeland Security officials were unable to verify or disprove without getting the man's name or case number (which the Texas Tribune declined to provide).**

**The Department of Homeland Security stresses that they are not pressuring anyone to withdraw their asylum claims, or explicitly telling anyone to choose between pursuing a claim and reunification.**

**This is a choice that some untold number of parents have already made. Even before family separations became widespread in early May, lawyers told reporters of cases where parents had felt pressured to withdraw their asylum claims so that they could be reunited with their children. And Jacob Soboroff of MSNBC reported Sunday morning that “separated parents were quickly given the option to sign paperwork leading to deportation” — and that “many” chose to do so.**

**We don’t know how many parents were deported before **President Trump signed an executive order** June 20 that has resulted in an end to widespread family separation (at least for the moment, as the various agencies involved try to figure out how the heck to implement Trump’s instructions).**

**We do know that not all of the parents already deported were, in fact, deported with their children. In fact, reporters have unearthed many cases in which they were **deported *without their children*** — and even cases in which parents agreed to deportation to see their children again, **only to be deported alone.****

## **Parents might have to choose between access to their children and access to lawyers**

**While “zero tolerance” was in full effect, a pile of logistical problems often made it impossible or near-impossible for parents to even find out where their children were being held, much less communicate with them. Some immigrants couldn’t call government hotlines for a slew of reasons: they lacked money to make the call; hotline calls went unanswered; parents couldn’t *receive* calls in immigration detention; a parent who was successfully able to call her child once might not be able to get anyone at that number to pick up the next time she called; or government officials were **unwilling to give information about a child’s location to her parent’s lawyers.****

**The Trump administration is now promising to streamline this process. According to Saturday’s fact sheet, parents separated from their children**

**will be held in a single immigration detention facility, where staff will coordinate with HHS to make sure parents are put in touch with their children (at least, if HHS feels there's enough information to prove the parent really is related to the child) and allowed to speak to them at least twice a week.**

**But people who are apprehended crossing the US between ports of entry don't usually stay in immigration detention very long. They're generally subject to deportation without a court hearing and deported in a matter of days. The only parents likely to be in immigration detention for any length of time are those who are fighting to stay in the US legally by making, for example, an asylum claim.**

**Even in a best-case scenario, an asylum-seeker is likely to get held in detention for at least six weeks: She has to have a screening interview scheduled, conduct the screening interview, wait to see if she has passed the screening interview, and then, if she passes, wait to get a hearing with an immigration judge at which the judge can set bond, so she doesn't have to stay in detention during the months or years it will take for her full asylum claim to be approved or denied.**

**Detainees may not have much (or any) access to a lawyer during that period. There's no right to a lawyer in immigration court, and especially before the initial screening interview, it can be hard for pro-bono lawyers to get in touch with asylum-seekers in time.**

**In general, it's much easier for a lawyer to help an immigrant put her case together once she's out of detention. Most asylum-seekers pass initial screenings, but most of those still ultimately lose their cases — but asylum-seekers who have lawyers are much, much more likely to have their cases approved.**

**But the Trump administration isn't making any promises about keeping parents in touch with their children even after they've left detention. It's not clear that it's going to be any easier for released parents to locate, talk to,**

**and reunite with their children than it has been for the last several weeks — when it’s been nearly impossible.**

## **Parents who are freed from detention might lose access to children**

**Immigrants and lawyers alike have assumed that the best chance for a family to be reunited is for the parent to get released from immigration detention on bond while she fights her case, then get her child back from the Office and Refugee Resettlement (ORR).**

**But under the government’s new “reunification for removal” plan, a parent freed from detention might lose the ability to communicate regularly with her child, much less be reunited with him.**

**In theory, the ORR — the office within HHS tasked with taking care of the children — isn’t supposed to keep “unaccompanied alien children” in its custody for any longer than necessary. It’s supposed to place them with sponsors: either their parents, close relatives, family friends, or some other form of long-term foster care (in that order of preference).**

**But ORR is also responsible for carefully vetting potential sponsors to make sure that they are who they say they are — and that the child isn’t being put at risk by being placed with them. The office has recently come under attack for “losing” hundreds or thousands of children (a story that blew up into a brief social panic when some critics falsely assumed that losing contact with a child meant the child had been placed with human traffickers).**

**Vetting requires the sponsor to submit **extensive documentation** proving their own identity, their relationship with the child, and their own address. It also requires them to demonstrate **they can provide** “adequate care, supervision, access to community resources, and housing” for the child — something an immigrant who’s just been released from immigration detention may not be able to prove to the satisfaction of government officials.**



**The federal government isn't guaranteeing that ORR will release children to their parents if the parent has been released from detention while her asylum claim is pending. Instead, the agency maintains it's going to keep its typical screening process in place.**

**In other words, the Trump administration is making no distinction between a parent who was separated from her 6-year-old child just a few weeks ago and the parent of a 17-year-old who arrived unaccompanied. And it's going to hold parents who have just been released from immigration detention to standards of care provision designed for people who are well established in the US.**

**Furthermore, it's not even clear if relatives of separated families who could qualify to sponsor the children will be allowed to do so.**

**Because ORR's first preference is to reunite children with their parents, HHS officials have implied that they are trying to keep children in custody close to where their parents are being detained so that if the parent is deported it is easy to send the child with them. (This **hasn't always happened in practice.**)**

**Some relatives of separated children have tried to apply as sponsors — to little success. The **Wall Street Journal** reported on one case last week:**

**For 30 days, Ms. Serrano and her husband, who live in suburban Maryland, have been struggling to gain temporary custody of (*their nephew*) Danny. They have navigated a bureaucratic thicket to get Ms. Serrano named Danny's "sponsor": A home inspection; fingerprinting for background checks; frequent phone calls with Danny's social worker in New York, Lupe in Texas and relatives back in Honduras. Ms. Serrano said she is still waiting for approval.**

**The government isn't saying categorically that it won't reunite children with their parents if the parent is out of detention and waiting for her asylum case to be resolved. But we know from the past several weeks how apparently**

**insurmountable the obstacles can be for such parents. And those obstacles are not being removed under the new policy.**

## **Parents who choose between asylum and reunification might end up getting neither**

**The government's stance is that parents who accept deportation will be reunited, and parents who do not — who choose to continue the fight for asylum instead — may not.**

**But the artificial choice between asylum and reunification doesn't actually mean that parents are guaranteed even one of the two.**

**Parents who choose to stay in the US and pursue their asylum claims, even if they pass their initial screenings, may well find those claims ultimately denied and face deportation anyway. The approval rates for asylum claims among Central Americans are a lot lower than the pass rates for the initial screening — which is why Attorney General Jeff Sessions and other Trump administration officials are trying to tighten standards to pass the screening interview. And Sessions is currently trying to make it harder for asylum-seekers to have their claims approved based on being the victims of domestic or gang violence — the basis on which many parents' claims are likely to rest.**

**A parent who waits in detention for weeks or months, or is released from detention while her case takes months or years, might find that she is ultimately ordered deported anyway — and has just wasted all that time separated from a child for exactly the same result she would have gotten if she'd chosen quick deportation and reunification.**

**On the other hand, the government can't guarantee that accepting deportation means being reunited with children.**

**It can't guarantee that because we already know that some parents have accepted deportation and been deported alone.**

**According to DHS and HHS, some parents have agreed to be deported alone. But reports from the [New York Times](#), [Houston Chronicle](#), and others have documented that some parents who were deported alone thought they had agreed to be deported with their children. Maybe they misunderstood what they were agreeing to; maybe some parents agreed to be deported alone, but in other cases, the government failed to reunite families prior to deporting them.**

**The only assurance the government is making now is that parents who accept deportation (or are ordered deported once their asylum claims are denied) will be rewarded with reunification. Even that assurance may not be a reliable one. And to get that assurance now, asylum-seeking parents will have to give up — on their own behalf and that of their children — the thing they came to the US to seek: humanitarian protection and the ability to stay.**

**UPDATE: This piece has been updated to reflect the contention of the Department of Homeland Security that agents are not actively pressuring parents to withdraw asylum claims.**

# Exhibit 37

**Jacob Soboroff** ✓

@jacobsoboroff

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NEW: DHS official tells me this morning separated parents were quickly given the option to sign paperwork leading to deportation. Many chose to do so.

That would mean a \*large\* percentage of parents of the 2,053 kids left in HHS custody may no longer be in USA.

Asked for numbers.

5:29 AM - 24 Jun 2018

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660



6.1K



10K

# Exhibit 38




≡ MENU

# Kids in exchange for deportation: Detained migrants say they were told they could get kids back on way out of U.S.

In a detention center near Houston, an asylum seeker from Honduras said he agreed to sign a voluntary removal order from the U.S. after federal officials promised to reunite him with his 6-year-old daughter.

BY **JAY ROOT** AND **SHANNON NAJMABADI** JUNE 24, 2018 10 AM



Undocumented immigrant children at a U.S. Border Patrol processing center in McAllen, Texas.  U.S. Customs and Border Protection

FAMILIES **DIVIDED**

*The Trump administration's "zero tolerance" immigration policy, which led to the separation of children from adults who crossed the border illegally, has fueled a national outcry. [Sign up](#) for our ongoing coverage. Send story ideas to [tips@texastribune.org](mailto:tips@texastribune.org). [MORE IN THIS SERIES](#) →*

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HOUSTON — Central American men separated from their children and held in a detention facility outside Houston are being told they can reunite with their kids at the airport if they to sign a voluntary deportation order now, according to one migrant at the facility and two immigration attorneys who have spoken to detainees there.

A Honduran man who spoke to The Texas Tribune Saturday estimated that 20 to 25 men who have been separated from their children are being housed at the IAH Polk County Secure Adult Detention Center, a privately-operated U.S. Immigration and Customs Enforcement facility for men located 75 miles outside Houston. He said the majority of those detainees had received the same offer of reunification in exchange for voluntary deportation.

The 24-year-old detainee, who spoke on the condition of anonymity and requested the Trib use the pseudonym Carlos because he feared retaliation, told the Tribune that he abandoned asylum case and agreed to sign voluntary deportation paperwork Friday out of "desperation" to see his 6-year-old daughter, who was separated from him after the pair illegally crossed the border in late May. The man said two federal officials suggested he'd be reunited with his daughter at the airport if he agreed to sign the order, which could lead to him being repatriated to his violent home country in less than two weeks.

"I was told I would not be deported without my daughter," said Carlos, adding that he's now hoping to revoke the voluntary deportation order he signed and get legal help to fight his case. "I signed it out of desperation... but the truth is I can't go back to Honduras; I need help."

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Carlos said he's only spoken to his daughter once — on June 21 — since the pair were separated three weeks ago in McAllen. He said he paid a smuggler \$7,000 for the 10-day journey from Honduras because he feared being caught up in the violence waged by organized crime syndicates and gangs in the country. He and his daughter turned themselves in to Border Patrol officers shortly after illegally crossing into the United States on a raft that pushed off from the bank of Rio Grande on the Mexico side near Reynosa, Carlos said.



He said he wanted a better life for his only daughter and hoped U.S. officials would grant th asylum. He was told he did not pass the first hurdle — proving he had "credible fear" of persecution or torture in Honduras — but volunteer attorneys have instructed him to revoke paperwork he signed and appeal his credible fear ruling before an immigration judge.

Anne Chandler, Houston director of the Tahirih Justice Center, a national organization that advocates for immigrant women and girls, said she's heard an almost identical account from another Central American migrant detained at the Livingston facility, a taupe and blue build surrounded by two chain link fences lined with coils of razor wire.

Carl Rusnok, an ICE spokesman, said Saturday evening that the agency "cannot research va allegations" but would do so if given specific details about the migrants who made the claim

"It is unprofessional and unfair for a media outlet to publish such allegations without provi names, dates and locations so that these allegations can be properly researched," Rusnok sa Tribune declined to give Rusnok the detainees' identifying information.

A Homeland Security and Health and Human Services [fact sheet](#) released Saturday said parents ordered removed from the U.S. can "request that his or her minor child accompany them" but that "many parents have elected to be removed without their children."

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More than 2,500 migrant children have been separated from their parents since early May, a the federal government cracked down on border crossers and began pressuring federal prosecutors on the southwest border to pursue charges against anyone alleged to have entered or tried to enter the country without authorization.

Homeland Security said Saturday that 522 unaccompanied minors have been reunified with family members since the "zero tolerance" policy began, and that they have a reunification plan for those who remain in federal custody.

But both Chandler and Cynthia Milian, a private attorney working with Tahirih, questioned whether the offers that the immigrants have reported receiving could be honored by the government, given the sprawling and slow-moving nature of the nation's immigration bureaucracy.

While migrant adults are prosecuted by the Justice Department and then detained by Immigration and Customs Enforcement, their children are placed in shelters funded and overseen by the Department of Health and Human Services. Chandler said it could take between one to two months to secure the release of an unaccompanied migrant child.

Many immigrant parents have been placed in removal proceedings and some have already been deported without their children.

Milian, who has spoken to Carlos, said his situation is a “parent’s worst nightmare” and that it was highly unlikely he would be met at the airport by his daughter. “I doubt they would put a child on a plane to get her to where he would get deported out from, especially if she’s in Arizona,” where Carlos was told she is being held. “I just don’t see that happening.”



IAH Secure Adult Detention Facility in South Livingston. 📷 U.S. Immigration and Customs Enforcement website

Carlos said he worries about the conditions in the facility where his daughter is being held, whether she’s receiving proper care for her asthma and how she will find her way to an aunt in Los Angeles if he is deported back to Honduras without her.

When they spoke on Thursday, Carlos said his daughter was “very sad ... and wanted me to get her out of there.”

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Carlos is one of the thousands of migrants impacted by the "zero tolerance" directive announced by U.S. Attorney General Jeff Sessions in April, which requires federal prosecutors along the U.S.-Mexico border to prosecute nearly all allegations of unauthorized border crossings. The policy inundated already backlogged federal courts; several courtrooms, including one in McAllen where Carlos was charged in May, have held mass hearings where dozens of migrants plead guilty to illegal entry charges at once — a scene critics have likened to assembly-line justice.

After the new crackdown sparked bipartisan outrage, President Donald Trump signed a hastily-written executive order Wednesday that keeps most families together through the pendency of their cases. But there are divisions within the Trump administration about whether it's possible to continue pursuing every case of illegal entry.

Despite assurances that there are reunification plans in place, confusion and chaos reign on the ground about how families separated at the height of the zero tolerance policy will be put back together.

An MSNBC correspondent tweeted Sunday morning that a Homeland Security official said "separated parents were quickly given the option to sign paperwork leading to deportation. Many chose to do so."

Bob Etnyre, a Houston-based attorney and immigration law expert, said Carlos' case highlights a "particularly diabolical aspect" of the family separations — dangling reunification as an incentive to drop an asylum claim.

Carlos said his daughter was taken away from him on the day he went to the McAllen courthouse to plead guilty to illegal entry. He said officials at the detention facility he knew as "la hielera," or the "ice box," told him she would be taken to an aunt in California — "pure lies," he said.

"She's a prisoner," he told the Tribune through a plexiglass partition in the facility's visitation room. "She can't talk, she cries because she's locked up."

"The kids aren't to blame for what's going on," he added. "We only came because we can't live in our country. We are looking for somewhere to live where our children can have a better future. In our country we can't do it."

Carlos' mother, reached by phone in Honduras, said she hasn't been able to speak to her son or granddaughter since they were detained. She's been told her granddaughter was ill with an upper respiratory ailment. "We've been worrying and suffering over this," she said.

The aunt of 6-year-old Alison Jimena Valencia Madrid, another Central American girl separated from her parent and currently being held in an Arizona facility, said she can imagine the distress both Carlos and his daughter are feeling.

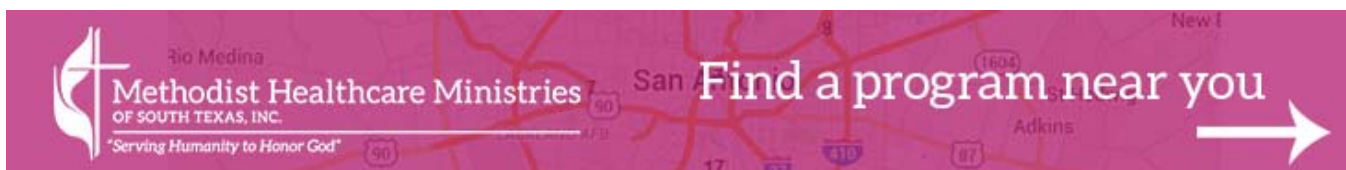
Madrid garnered national attention when she was heard on audio, surreptitiously recorded in a Customs and Border Protection facility and provided to ProPublica, persistently asking authorities to call her aunt – whose phone number she'd memorized. "Are you going to call my aunt so that when I'm done eating she can pick me up?" Madrid can be heard saying, as other Central American children weep and sob "Mami" and "Papá" in the background.

"It's inhumane for them to be separated," said the aunt, who lives in Houston and spoke to the Tribune on the condition of anonymity. "And that's a pain she will always have. That little creature will grow up with that forever. It's a psychological and emotional wound for both of them, because people don't come here to lose their children."

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# Exhibit 39

## The Washington Post

### Immigration

Sen. Warren visits detention center, says no children being returned to parents there

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by [Maria Sacchetti](#), [Michael E. Miller](#) and Robert Moore June 24 at 10:56 PM [✉Email the author](#)

LOS FRESNOS, Tex. — A visibly upset U.S. Sen. Elizabeth Warren visited the detention center where the Trump administration said separated migrant families would be reunited and deported and said she'd seen no evidence that the process was underway.

The Department of Homeland Security [said in a statement late Saturday](#) that U.S. Immigration and Customs Enforcement has “dedicated the Port Isabel Service Processing Center as the primary family reunification and removal center for adults in their custody.”

But Warren (D-Mass.) spent two hours inside the facility speaking with immigration officials and detained immigrant mothers Sunday night and said there were no reunifications to report. She said she spoke with nine women: “In every case, they were lied to. In every case, save one, they have not spoken with their children. And in every case, they do not know where their children are.”

“It’s clear,” Warren said. “They’re not running a reunification process here.”

Advocates interviewed outside the locked gates earlier in the day described desperate parents giving up their hopes of asylum to get their children back in their arms more quickly. They also noted that the Port Isabel facility is not set up to house minors.

“This is the most inefficient, preposterous system that I have ever encountered,” said Sirine Shebaya, a Washington-area civil rights lawyer who had flown to South Texas with a team that spent Friday and the weekend interviewing parents.

“We have people in there who are considering not continuing on with really strong asylum claims because they think they’ll get reunited with their kids faster if they give up their claim,” Shebaya said. “That’s just wrong.”

*[Trump says undocumented immigrants should not get due process]*

The Trump administration said it was taking steps to return some 2,053 “separated minors” who had been taken into custody as part of Trump’s border crackdown, after the government elected to criminally prosecute all adults caught crossing the border. The statement said 522 children had been returned as of Saturday, and another 16 were expected to be with their parents within 24 hours.

The parents — many of whom say they are seeking asylum and fleeing gang violence or domestic abuse — have typically pleaded guilty to entering the country illegally and been transferred to adult immigration jails run by Immigration and Customs Enforcement to await deportation. Their children, meanwhile, are sent across the country to shelters run by the Department of Health and Human Services, or placed by the federal agency in foster care.

“The United States government knows the location of all children in its custody and is working to reunite them with their families,” the statement read. “This process is well coordinated.”

Shebaya said Port Isabel, a remote, 1,200-person facility surrounded by a wind farm, a wildlife refuge and miles of empty prairie crawling with coyotes, falcons and bull snakes, “seems to be at capacity” and is “not equipped to hold children.”

“That kind of begs the question,” she said. “Where are they going to put the children?”

A senior administration official, who declined to be identified, said officials never intended to send busloads of children to Port Isabel for a massive reunion.

Instead, the official said, they plan to reunite families on an individual basis once a parent has lost his or her deportation case. Parents may ask for their children to join them so that they can be deported together, the official said.

Shebaya said most migrants she interviewed were on a “fast-track” deportation process for recent border crossers, which is delayed only if they express a fear for their lives. Such a declaration triggers an interview to see whether they have a valid asylum claim. If they do, they could have a court hearing. If they don’t, they could be deported, with limited avenues to appeal that decision.

Eileen Blessinger, a Virginia immigration attorney, estimated that 25 percent of the roughly 100 parents she and two colleagues interviewed at Port Isabel had been able to speak to their children as of Sunday afternoon. Some parents had special-needs children they had not heard from in weeks, including a woman who said she had not heard from her deaf and mute child. When one woman finally heard from her 7-year-old, the child said, “You don’t love me, you left me,” the mother told Blessinger.

One father said in a telephone interview from inside Port Isabel that he hadn’t spoken to his 13-year-old daughter since they were separated almost two weeks ago. “I have no idea where she is, if she’s eating, if she’s scared,” said the 37-year-old, who asked to go by his middle name, Roel, because he faced death threats back in Honduras. “All of us parents here are so worried.”

“She is the only child I have,” he said. “I’ve cried many times in here. Many times.”

Sophia Gregg, another Washington-area immigration attorney working inside Port Isabel, said the group had spoken to parents who had experienced horrible trauma on the way to the United States, yet they were focused on the whereabouts of their children.

“We’ve heard stories of women being held captive, enslaved in cartel homes,” she said. “And that’s secondary to that they don’t know where their child is.”

Natasha Quiroga, another attorney in the group, said one father who hadn’t spoken to his daughter in more than a month became so desperate he wrote her a letter, telling her to self-deport.

One mother who said she had fled threats from drug traffickers in Honduras gave Blessinger a letter to deliver to her 7-year-old boy, with whom she hadn’t spoken to since they were separated two weeks ago. The handwritten letter is addressed to “My reason of my life.” “Be strong and fight. Don’t get sad,” it says. “Your mommy loves you and they will never separate us again.”

*[On U.S.-Mexico border, ‘zero-tolerance’ meets desperation]*

Ruby Powers, an immigration attorney from Houston, said a Honduran client of hers at a privately operated ICE facility in Livingston, Tex., was not allowed to speak to his 6-year-old daughter for three weeks.

Only after he signed a request for voluntary removal was he allowed to speak to the child, who has asthma and was being held in a shelter in Arizona. Powers, who is now trying to rescind his request, said the 24-year-old father had fled violence in Honduras, where his cousin had been killed.

The Saturday night statement, jointly issued by the Department of Homeland Security and HHS, said ICE will implement a system for tracking separated family members and reuniting them before their deportation as a unit. Parents will begin receiving more information about the whereabouts of their children and telephone operators will provide more frequent communication.

“There will be a small number of children who were separated for reasons other than zero tolerance that will remain separated,” it said. “Generally only if the familial relationship cannot be confirmed, we believe the adult is a threat to the safety of the child, or the adult is a criminal alien.”

In El Paso, a DHS bus pulled up outside Casa Vides, a shelter for migrants, on Sunday afternoon and disgorged about 30 people who had been held on misdemeanor immigration charges until the charges were dropped Thursday and Friday. The migrants will get access to legal help, focusing on finding their children, said Ruben Garcia, executive director of Annunciation House, the nonprofit that runs the shelter.

They are free on their own recognizance while their immigration court proceedings continue, and some will probably wear ankle monitors. It remains unclear how the reunification process the federal government announced Saturday night will be implemented for this group. Garcia said he had been told the parents had to call an 800 number that the government has provided in recent days. Taylor Levy, the group's legal services director, said if people get through at all, they are told that someone will get back to them several days later.


Garcia and Levy said the reunification process is further clouded by a new agreement that calls for the Office of Refugee Resettlement, which cares for and attempts to place minors apprehended at the border, to share information with ICE and Customs and Border Protection. Anyone seeking to take custody of a child from ORR must agree to submit fingerprints of all adults in the household to ICE, a frightening prospect for many undocumented immigrants.


Levy criticized President Trump for his tweet earlier Sunday that said when somebody arrives at the border, they should be immediately deported without legal proceedings.

"That is not what our country stands for," she said. "These people are fleeing for their lives, they are refugees, they are not economic migrants. The vast majority of them are coming here because they have no other option and they want to survive, and they want their children to survive. And they have every right under United States laws and under international treaties to fight their cases and be given the process that is due."

*Sacchetti reported from Port Isabel. Moore reported from El Paso. Nick Miroff contributed to this report.*

 **391 Comments**

Maria Sacchetti covers immigration for The Washington Post. She previously reported for the Boston Globe.  Follow @mariasacchetti

Michael E. Miller is a reporter on the local enterprise team. He joined The Washington Post in 2015 and has also reported from Afghanistan.  Follow @MikeMillerDC



# Exhibit 40

## The New York Times

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# *Trump Calls for Depriving Immigrants Who Illegally Cross Border of Due Process Rights*

By Katie Rogers and Sheryl Gay Stolberg

June 24, 2018

President Trump unleashed an aggressive attack Sunday on unauthorized immigrants and the judicial system that handles them, saying that those who cross into the United States illegally should be sent back immediately without due process or an appearance before a judge.

“We cannot allow all of these people to invade our Country,” Mr. Trump tweeted while on the way to his golf course in Virginia. “When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”

It was another twist in a head-spinning series of developments on immigration since the administration announced a “zero tolerance” policy two months ago, leading to the separation of children from parents who cross the border illegally and an outcry from Democrats and many Republicans.

Mr. Trump signed an executive order to end the separations last week, but the sudden shifts have led to confusion along the border about how children and parents will be reunited and to turmoil in Congress as the House prepares to vote on a sweeping immigration bill this week.

Still, the president, who has always dug his heels in when criticized, has not backed back down from his hard-line talk, even amid a national outcry over a detainment policy that has resulted in the separation of more than 2,300 children from their families.

He has instead gone on the offensive, complaining to aides about why he could not just create an overarching executive order to solve the problem, according to two people familiar with the deliberations. Aides have had to explain to the president why a comprehensive immigration overhaul is beyond the reach of his executive powers.

And privately, the president has grouched that he should not have signed the order undoing separations.

“Our system is a mockery to good immigration policy and Law and Order,” Mr. Trump tweeted Sunday, adding, “Our Immigration policy, laughed at all over the world, is very unfair to all of those people who have gone through the system legally and are waiting on line for years! Immigration must be based on merit.”

But Mr. Trump’s call to ignore due process faced both constitutional questions and dissension from Republicans in Congress, some of whom have insisted that the number of judges be increased so migrant families can have their cases heard more quickly. Federal immigration courts faced a backlog of more than 700,000 cases in May, and cases can take months or years to be heard.

Senator Ted Cruz, Republican of Texas, has proposed doubling the number of judges to roughly 750, while Senator Ron Johnson, Republican of Wisconsin and chairman of the Senate Homeland Security Committee, said Sunday on CNN’s “State of the Union” that he believes an additional 225 judges are needed. He noted that only 74 of the current immigration judges are serving at the border.

“We need to increase that,” Mr. Johnson said. “The Trump administration is going to try and come up with another 15,000 beds for family units. But none of this is easy.”

The House bill up for a vote this week would beef up border security and provide a path to citizenship for the young undocumented immigrants known as Dreamers, while also effectively codifying Mr. Trump’s executive order by allowing migrant families to be detained together indefinitely.

Many on Capitol Hill believe legislation is necessary to deal with the order, since it allows indefinite detentions. Under a 1997 consent decree known as the Flores settlement, migrant families can be detained for no more than 20 days, leaving the order's status in court in doubt.

But the president's conflicting statements are complicating legislative efforts, said Senator Jeff Flake, Republican of Arizona.

"It makes it very difficult," Mr. Flake said on ABC's "This Week," continuing, "It's difficult in any event, right, in an election year where the president has decided to have this at the forefront of the Republican election strategy to paint the Democrats as soft on immigration."

He added: "I don't know how in the world we're going to fix this in the short term, given the Flores decision and given the lack of infrastructure, judges to process these claims. It's really a big mess."

Mr. Trump's tweets on Sunday threw new legal questions into the puzzle. Laurence H. Tribe, a constitutional law professor at Harvard, said in an email that the Supreme Court has repeatedly held that "the due process requirements of the Fifth and 14th Amendments apply to all persons, including those in the U.S. unlawfully."

"Trump is making the tyrannical claim that he has the right to serve as prosecutor, judge and jury with respect to all those who enter our country," Mr. Tribe said. "That is a breathtaking assertion of unbounded power — power without any plausible limit."

The Fifth Amendment mandates the due process of law, and the 14th Amendment, in part, expanded due process rights for immigrants, with case law asserting those rights dating back to 1886. But Justice Department lawyers under both Democratic and Republican administrations have argued that noncitizens apprehended at the border lack due process protections, said Adam Cox, a law professor at New York University, and the Supreme Court has never clearly resolved the dispute.

Since Mr. Trump was elected, his administration has been working to expand the terms of a 1996 statute that allows immigration officials to quickly deport undocumented immigrants as well as those whose papers are believed to be fraudulent. The Trump

administration has the ability to expand the statute to encompass the entire country and apply it to any noncitizen who has not been in the country for more than two years, Mr. Cox said.

“One of the things that is being considered is an expanded expedited removal to the full statutory limit,” he said, adding that “it is already true that a lot of people show up at the border get removed with no access to immigration courts or the judicial process.”

Mr. Cox said the president could be reacting to seeing a high number of people held in detention centers claiming they face harm back home. The White House did not immediately respond to a request for comment on whether the president knew the legal ins and outs of his demand.

“Many members of the administration seem to think that the high rate necessarily means a lot of fraud,” Mr. Cox said of asylum claims, “so what they could like to do is remove that process.”

Attorney General Jeff Sessions, who has made illegal immigration a focus of his career, has moved to back up the president’s words with action in recent months. In April, Mr. Sessions announced a “zero tolerance” immigration policy, which set off the mass separation of families that the president sought to end with his executive order last week.

Criminal prosecutions for illegally crossing the southwestern border jumped to 8,298 in April, the month Mr. Sessions announced the zero-tolerance policy, an increase of 30 percent from March, according to data from the Transactional Records Access Clearinghouse, a research institute at Syracuse University. Last week, the Defense Department lent 21 lawyers to the Justice Department to focus on prosecuting a backlog in border crossing cases. And on Sunday, the defense secretary, Jim Mattis, said the Pentagon was looking at using two bases to hold an unknown number of migrants, though he would not comment on their location or whether they would house children.

Omar Jadwat, director of the Immigrants' Rights Project at the American Civil Liberties Union, called the president's demand to dispense with due process illegal. "Any official who has sworn an oath to uphold the Constitution and laws should disavow it unequivocally," he said.

Mr. Trump's call to end due process is not a total surprise — he has alluded to taking similar measures for weeks. While in Las Vegas on Saturday, Mr. Trump told supporters that he thought the immigration system needed fewer judges. Mr. Trump also suggested last week that he opposed adding judges because many of them could be corrupt.

He has long been a critic of immigration judges, saying they were not effective in stopping the flow of people coming into the country, sometimes using incorrect numbers to make his point.

"We have thousands of judges. Do you think other countries have judges?" Mr. Trump said during a round-table discussion in May. "We give them, like, trials. That's the good news. The bad news is, they never show up for the trial. O.K.?"

There are actually fewer than 400 judges dedicated to such work, according to the website PolitiFact.

Mr. Trump also tweeted on Friday that Republicans should "stop wasting their time" on the broad House immigration bill, but Representative Michael McCaul, Republican of Texas and chairman of the House Homeland Security Committee, said on "Fox News Sunday" that he had spoken to the White House, which had assured him that Mr. Trump was "still 100 percent behind us."

Mr. Trump's careening from one extreme to another has been a staple of his campaign and presidency, allowing people to hear what they want in what he says — and leaving his White House to sort through a messy pile of conflicting directives and Congress to grasp for clues about which bills he might support.

The prospects for the House bill are iffy at best; some conservatives are balking at the citizenship provisions, which critics regard as "amnesty." If it fails, Mr. McCaul said the House may be forced to consider a narrower measure — a so-called skinny bill — that would address only the issues surrounding detention of migrant families.

“I think we at a minimum have to deal with the family separation,” Mr. McCaul said.  
“I’m a father of five. I think this is inhumane and I think the pictures that we have seen — that’s not the face of America.”

Katie Benner, Maggie Haberman and Thomas Gibbons-Neff contributed reporting.

A version of this article appears in print on June 24, 2018, on Page A1 of the New York edition with the headline: Trump Wants No Due Process At U.S. Border