



Executive Order on Family Separation

What Does the Executive Order “EO” Do?

- *LIMITS FAMILY SEPARATION.* Halts widespread separation of families arriving at the border.
- *CONTINUES CRIMINAL PROSECUTIONS.* Continues to prosecute all adults, including parents, for illegal entry, if they are apprehended between ports of entry.¹
- *INCREASES FAMILY DETENTION.* Instructs the Department of Homeland Security (DHS) to keep detained families together during the pendency of any criminal entry or immigration case.²
- *LOOKS TO BUILD NEW FAMILY DETENTION FACILITIES.* Instructs the Secretary of Defense, and other agencies, to provide or construct additional facilities to detain families.³
- *SEEKS TO UNDERMINE EXISTING CHILD PROTECTIONS.* Instructs the Attorney General to seek court modification of the Flores Settlement Agreement, which currently governs care, custody, and release of immigrant children detained by the government.⁴

What Doesn't the EO Do?

- *FACILITATE WIDESPREAD FAMILY SEPARATION.* Reduces family separation, in most instances, by increasing family detention.⁵

What About the Children Who Have Already Been Separated From Their Parents?

- The EO does not give instructions on how to ensure that all of the estimated 2,300 separated children can be reunified with their families.⁶ However, Customs and Border Protection have stated that they will be attempting to reunify certain children who are currently in the Border Patrol processing centers.

What is the Flores Settlement, and Why Is It Important?

- The Flores Settlement Agreement was voluntarily entered into by the U.S. government in 1997, after years of litigation regarding the detention of immigrant children.
- The agreement provides critical protections for accompanied and unaccompanied immigrant children in government custody. It outlines standards of care that must be met, requires children be kept in the least restrictive setting appropriate, and provides requirements relating to release.⁷

What Are Real and Humane Solutions to Prevent Family Separation?

- Rather than detaining these families, the Administration should increase use of humane and cost-effective alternatives that ensure due process. A few Alternatives to Detention (ATD) programs are highlighted below; to learn more, see our [backgrounder](#).⁸
- [Family Case Management Program \(FCMP\)](#). This community-support ATD model used caseworkers to help enrollees meet their legal obligations. The FCMP was highly successful, with compliance rates of over 99% with immigration court appearances, at a fraction of the cost of family detention.⁹
- [Intensive Supervision Appearance Program \(ISAP\)](#). This program currently relies on electronic ankle monitors, telephone checkups, unannounced home visits, employer verification, and in-person reporting to supervise enrollees. The program has rates of over 99% success with court appearances and over 91% compliance with court orders.¹⁰
- [Bonds](#). Bonds are common in many ATD programs and generally function like bonds in the rest of the criminal justice system. Bonds are only available to migrants who are not considered public safety threats. In 2016, studies show that over 83% of those released on bonds appeared at their court hearings.¹¹

Endnotes

1. President Donald J. Trump, Executive Order on Affording Congress an Opportunity to Address Family Separation, §1 (June 20, 2018); *but see* Nick Miroff, *Border Patrol Will Stop Referring Migrant Parents Who Cross Into the U.S. Illegally with Children for Prosecution, Officials Say*, THE WASHINGTON POST (JUNE 21, 2018), [HTTPS://WWW.WASHINGTONPOST.COM/WORLD/NATIONAL-SECURITY/US-WILL-STOP-PROSECUTING-PARENTS-WHO-CROSS-THE-BORDER-ILLEGALLY-WITH-CHILDREN-OFFICIAL-SAYS/2018/06/21/4902B194-7564-11E8-805C-4B67019FCFE4_STORY.HTML?UTM_TERM=.8F846CBF6935](https://www.washingtonpost.com/world/national-security/us-will-stop-prosecuting-parents-who-cross-the-border-illegally-with-children-official-says/2018/06/21/4902b194-7564-11e8-805c-4b67019fcfe4_story.html?utm_term=.8f846cbf6935) (NOTING THAT CUSTOMS AND BORDER PROTECTION WILL SUSPEND PROSECUTIONS OF ADULTS TRAVELING WITH FAMILIES UNTIL IMMIGRATION AND CUSTOMS ENFORCEMENT HAS CAPACITY TO MAINTAIN CUSTODY OF THE FAMILY TOGETHER PENDING PROCEEDINGS).
2. Executive Order at §3(a).
3. *Id.* at §3(c)-(d).
4. *Id.* at §3(e).
5. *See id.*
6. *See id.*
7. Settlement Agreement, *Flores v. Reno*, Case No. CV 85-4544-RJK (C.D. CA, 1997), available at https://cliniclegal.org/sites/default/files/attachments/flores_v_reno_settlement_agreement_1.pdf.
8. *The Real Alternatives to Detention*, JUSTICE FOR IMMIGRANTS (2017), [HTTPS://JUSTICEFORIMMIGRANTS.ORG/WHAT-WE-ARE-WORKING-ON/IMMIGRANT-DETENTION/REAL-ALTERNATIVES-DETENTION/](https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/real-alternatives-detention/).
9. *Id.*
10. Alex Nowrasteh, *Alternatives to Detention Are Cheaper than Universal Detention*, CATO (June 20, 2018) <https://www.cato.org/blog/alternatives-detention-are-cheaper-indefinite-detention>.
11. *Id.*



we are one family under God