

From: USDOJ-Office of Public Affairs [<mailto:USDOJ-OfficeofPublicAffairs@public.govdelivery.com>]
Sent: Thursday, June 21, 2018 2:25 PM
To: Patricia Zapor <pzapor@cliniclegal.org>
Subject: DEPARTMENT OF JUSTICE FILES FLORES MODIFICATION MEMORANDUM



Pursuant to President Trump's [Executive Order: Affording Congress an Opportunity to Address Family Separation](#), the Department of Justice today filed its request to modify the Settlement Agreement in Flores v. Sessions. Please find that filing [HERE](#).

Statement from a Justice Department spokesman:

"Irrespective of the Court's decision in Flores, it is incumbent for Congress to finally act to keep families together, end catch and release, and create the foundation for an immigration system that serves the national interest."

Key Excerpts from Filing:

- "In 2015, the Government filed a motion to modify the Flores Settlement Agreement in order to exclude accompanied minors from the Agreement and permit use of ICE family residential centers during immigration proceedings, which would have allowed the Government to exercise this option to keep families together to the greatest extent possible during removal proceedings." You can read that filing [here](#) (of significant interest: p. 1, 2, 3, 17).
- In 2015, "[t]he Government urged against an application of the Flores Settlement Agreement that would "mak[e] it impossible for ICE to house families at ICE family residential centers, and to instead require ICE to separate accompanied children from their parents or legal guardians."
- **"Following the July 2015 ruling, there was a 3 to 5-fold increase in the number of illegal family border crossings.** This surge is not a mere coincidence, it is the direct result of the message sent to those seeking illegal entry: we will not detain and deport you."
- **"The circumstances created by this application of the Agreement have become untenable...**family crossings away from legal ports of entry nearly doubled in FY 2016, as measured by apprehensions. Such apprehensions have only increased annually since that time...including an

increase this year that, when projected to cover the full year, represents a 17% increase over the illegal family entries in 2017 and a 30% increase in illegal family entries in 2014..."

- **"These realities have precipitated a destabilizing migratory crisis:** tens of thousands of families are embarking on the dangerous journey to the United States, often through smuggling arrangements, and then crossing the border illegally in violation of our federal criminal law. And as the Government has previously stated, once these families are released into the interior, a vast segment fail to appear at their immigration hearings.
- *"This entire journey and ultimate crossing puts children and families at risk, and violates criminal laws enacted by Congress to protect the border. Those illegal crossings must stop."*
- **"In the absence of congressional action addressing border security and immigration,** the President has directed the Executive Branch to take three immediate steps to ameliorate the [crisis at the southwest border]."
- "This Court should provide limited emergency relief in two respects. First, the Court should provide a limited exemption from its construction of the Flores Settlement Agreement's release provisions so that ICE may detain alien minors who have arrived with their parent or legal guardian together in ICE family residential facilities."
- "Second, the Court should exempt ICE family residential facilities from the Agreement's state licensure requirements. These changes are justified by several material changes in circumstances--including the ongoing and worsening influx of families unlawfully entering the United States at the southwest border."
- "Under current law and legal rulings, including this Court's, **it is not possible for the U.S. government to detain families together during the pendency of their immigration proceedings. It cannot be done.** One reason those families "decide to make the dangerous journey to illegally enter the United States is that they expect to be released from custody."

Helpful Statistics:

- [Southwest border family apprehensions](#) have increased 125% from 39,838 in FY 2015 to 88,670 in FY 2018 (when projected to cover the full year). In [FY 2013](#), this number was approximately 15,000.
- As the Administration has repeatedly mentioned, many illegal aliens fail to show up at their immigration court hearings--a major weakness of catch and release that is exploited by many. **40,579 removal orders** were issued because the alien respondent **did not appear for their hearing**

last fiscal year. That number **totals 24% of total case completions for FY 2017.** (Date found [here](#); fourth chart and second chart).

- **90%** of removal orders for UACs were issued because the UAC **failed to show up for their hearing.** This is up 1,700% from 572 in FY 2009 to 6,654 in FY 2017.
- Catch and release also leads to serious issues with asylum seekers. As of April 30, 2018, **15% of cases with a prior positive credible fear finding actually filed an application in FY 2018.**
- **Total [asylum grant rates](#) were at approximately 20% in FY 2017,** suggesting that claims for asylum are not meritorious.
- Importantly, given the Administration's request of the court and of Congress, the [median completion time](#) in immigration court for a detained case is 40 days. This is down from it's peak of 44 days in FY 2016.

Relevant Smuggling Stories:

- [Alien Smuggling Ring Dismantled](#) – August 23, 2017 Manuela Cedillo-Hernandez, 59, of La Feria, was the leader and organizer of the ring. She and her husband - Javier Aranda Velez, 51 - harbored aliens who had entered the United States unlawfully and conspired to transport them farther north into the nation's interior. Cedillo-Hernandez employed associates in the alien smuggling scheme including her own children.
- [Two Alien Smugglers Head to Federal Prison](#) – May 15, 2017 On Dec. 21, 2016, both arrived at the CBP checkpoint on Texas Hwy 77 south of Santa driving a four-door Chevrolet Silverado pickup truck with their three young children in the back seat. Reyes was driving and Contreras was located in the front passenger seat. Officers observed a large lump on the backseat floorboard covered with a blanket. At that time, a canine service agent alerted to the vehicle, which prompted them to refer the vehicle to the secondary inspection area.
- [Alien Smuggling Ring Dismantled](#) – April 25, 2018 Soto-Lopez and Soto coordinated or were involved in the unsuccessful transport of 48 undocumented aliens, including a 13-year-old child and other minor children, on at least seven different occasions between Feb. 10, 2014, and May 10, 2016 in Brooks, Jim Hogg, Webb and Starr Counties. On four of the seven occasions, load vehicles involved in the smuggling of the undocumented aliens either crashed or resulted in a vehicle bail-out to avoid law enforcement.

Additional Flores Court Filings & Orders:

[US District Court \(CDCA\) - Order re: Plaintiffs' Motion to Enforce \(July 24, 2015\)](#)

[US District Court \(CDCA\) - Order re: Response to Order to Show Cause \(August 21, 2015\)](#)

[Ninth Circuit Court of Appeals - Brief for Appellants \(January 15, 2016\)](#)

[Ninth Circuit Court of Appeals - Reply Brief for Appellants \(March 8, 2016\)](#)

[Ninth Circuit Court of Appeals Opinion in Flores \(July 6, 2016\)](#)

Please reach out to Devin O'Malley at the Department of Justice with any questions.

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