



## Binary Choice: Separation or Indefinite Detention

Credit: Vatican/Migrants-Refugees Section

There are reports that attempts to separate families are again happening at immigrant detention centers. Is this accurate?

Yes. According to legal service providers, immigrants parents held in all three family detention centers: in Karnes City and Dilley, Texas as well as Berks, Pennsylvania, have been presented by Immigration and Customs Enforcement (ICE) with the decision to either: (1) separate from their children by allowing them be released to family, sponsors or the custody of Department of Health and Human Services as an unaccompanied child or (2) continue to face indefinite detention together.<sup>1</sup>

When did this start happening?

ICE began distributing a [form](#) on May 14 to detained mothers at the family detention facilities that would offer parole for children held in family detention centers but would not apply to their parents who would remain detained without their children.<sup>2</sup>

Why is this occurring now?

The ICE form states that it is in compliance with the [Flores Settlement Agreement](#) (Flores), a court decision from the 1990s that sets legal standards for the detention of immigrant children. The introduction of this new policy comes after a [recent ruling](#) by a federal judge that found ICE's detention of migrant children during the COVID-19 pandemic was not compliant with *Flores*.<sup>3</sup> It is possible that given the timing, this new policy is the Trump Administration's attempts to comply with the requirements of *Flores* by making the continued detention of children appear to be the family's "choice."<sup>4</sup>

# What is the Flores Settlement Agreement and how is it related to family separation?

In 1997, a federal district court in California approved the [Flores Settlement Agreement](#) (Flores) after over a decade of litigation. Flores ensures that the federal government adheres to basic standards regarding care for and release of immigrant children, both accompanied and unaccompanied, in federal custody. The agreement, which the federal government voluntarily entered into, requires that:

- a. Facilities provide children in their custody with access to sanitary and temperature-controlled conditions, water, food, medical assistance, ventilation, adequate supervision, and contact with family members
- b. Facilities ensure that children are not held with unrelated adults
- c. The government release children from detention without unnecessary delay to parents or other approved sponsors
- d. If a child cannot be released from care, the child be placed in the “least restrictive” setting appropriate, based on his or her age and needs.
- e. For more information on the Flores Settlement Agreement see our backgrounder.

## Do the three existing family detention facilities comply with Flores?

No. None of the three family detention centers are licensed childcare facilities and, as such, fail to meet basic child welfare requirements of *Flores*, according to a 2017 ruling by a federal court.<sup>5</sup> Accordingly, the federal government is limited in the amount of time it can detain an accompanied child in detention facilities. The court has previously allowed that during times of influx or emergency, the government may detain children in unlicensed facilities for a period of 20 days and still meet its obligations under *Flores*.<sup>6</sup>

## Do these families need to be detained?

No they do not. In place of mass detention, the government should use a long-existing spectrum of alternatives to detention (ATD), including release, affordable bond, or other tools of support such as community support and case management. Many immigrants and asylum seekers already have strong community ties and robust incentives to appear in immigration court, and for certain populations, release to the community during their asylum case processing is appropriate. Individualized case management services provided by experienced not-for-profit organizations in the community have been shown to preserve family unity and human dignity while ensuring compliance with court-imposed obligations.

## Why is family detention and family separation important to the Catholic Church?

Both the family detention and separation violate the core principles of Catholic Social teaching. Immigrant detention is an explicit and longstanding concern of the Catholic Church. The U.S. Catholic Bishops have addressed immigrant detention in [Responsibility Rehabilitation and Restoration, A Catholic Perspective on Crime and Criminal Justice](#), stating: “We bishops have a long history of supporting the rights of immigrants. The special circumstance of immigrants in detention centers is of particular concern. [The government] uses a variety of methods to detain immigrants some of them clearly inappropriate.” Additionally, Bishop Eusebio Elizondo, then-Chairman of the U.S. Conference of Catholic Bishops’ Committee on Migration, wrote to former Department of Homeland Security (DHS) Secretary Jeh Johnson in 2015 opposing family detention, declaring “it is inhumane to house young mothers with children in restrictive detention facilities as if they are criminals.” Other Bishops have spoken out against proposed expansion of family detention facilities in South Texas—Archbishop Gustavo Garcia-Siller of San Antonio stated that “[c]onfining children and their mother in such detention centers has proven to be damaging to them. Many of these women are fleeing violence, in fear of their lives and the safety of their children. They need mercy and compassion, not derision and detention.”<sup>7</sup>

The Catholic Bishops have been [outspoken](#) about the cruelty of family separation. Daniel Cardinal DiNardo and Bishop Joe Vásquez issued a [statement](#) criticizing the practice saying, “Our government has the discretion in our laws to ensure that young children are not separated from their parents and exposed to irreparable harm and trauma. Families are the foundational element of our society and they must be able to stay together. While protecting our borders is important, we can and must do better as a government, and as a society, to find other ways to ensure that safety. Separating babies from their mothers is not the answer and is immoral.” Additionally, Bishop Thomas A. Daly, Diocese of Spokane, spoke out saying, “The unity of the family is a foundational element of Catholic social teaching... These institutions are undermined when children are unnecessarily separated from their parents. This practice is contrary to our Catholic values.”<sup>8</sup>

## What can I do about this?

- Educate your community about family detention and family separation by sharing this backgrounder and hosting an event at your parish to discuss family separation and detention during the COVID-19 pandemic.
- Contact your federal [Representative](#) and [Senators](#) and urge them to increase funding for ATDs rather than family detention.
- Pray for migrant families. See our prayer [here](#).
- Give support agencies that are helping families and children impacted by the crisis. [Support Catholic Charities USA](#).
- Read our Backgrounder [The Real Alternatives to Detention](#) and [Family Detention](#)

## Endnotes

1 Amanda Holpuch “Indefinite detention or family separation? US forced immigrants to choose, lawyers say,” The Guardian (5/15/2020) available at <https://www.theguardian.com/us-news/2020/may/15/us-immigration-family-separations-detained>

2 Julia Ainsley, “Family separation is back for migrants at the U.S./Mexican border, say advocates” NBC News (5/15/2020) available at <https://www.nbcnews.com/politics/immigration/family-separation-back-migrants-u-s-mexican-border-say-advocates-n1208186>

3 Dennis Romero, “Judge orders release of migrant children despite challenges presented by pandemic,” NBC News (4/25/2020) available at <https://www.nbcnews.com/news/us-news/judge-orders-release-migrant-children-despite-challenges-presented-pandemic-n1192456>

4 Julia Ainsley, “Family separation is back for migrants at the U.S./Mexican border, say advocates” NBC News (5/15/2020) available at <https://www.nbcnews.com/politics/immigration/family-separation-back-migrants-u-s-mexican-border-say-advocates-n1208186>

5 Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al., Dolly M. Gee United States District Judge (6/27/2017) available at <https://www.aila.org/File/Related/14111359v.pdf>

6 ibid

7 “Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice” (11/15/2000)

8 “U.S. Catholic Bishop Quotes on Family Separation,” Justice for Immigrants available at <https://justiceforimmigrants.org/wp-content/uploads/2018/06/Family-Separation-Quotes.pdf>



*we are one family under God*