



Family Separation: Myth v. Fact
June 2018

Myth: Parents and children are quickly reunited after only a brief separation.

FACT: Families are not immediately reunited once a parent is transferred to ICE custody.

Once separated at the border under the “zero tolerance” policy, parents are generally sent to U.S. Marshals Service custody to await prosecution and then to custody of Immigration and Customs Enforcement (ICE) for immigration removal proceedings. Children, now rendered “unaccompanied,” are transferred to the custody of the Office of Refugee Resettlement (ORR), often to shelters several states away.

Families are *not* immediately reunited once a parent is transferred to ICE custody. While a parent’s prosecution and transfer to ICE custody may happen rapidly, the involvement of multiple federal agencies and insufficient tracking systems means that parents and children may be unable to locate each other within the immigration system once separated. Communication between facilities relies on coordination that is not always available. KIND is currently serving many children whose parents were deported while the child was still in ORR custody.

Myth: The government must release children from federal custody within 20 days.

FACT: Limits on detaining children in secure, unlicensed facilities do not apply to ORR facilities licensed for the care of children.

The *Flores* Settlement Agreement sets forth national standards related to the treatment, custody, and placement of migrant children in the immigration system. Among these are requirements that facilities housing migrant children meet childcare licensing requirements. Courts have stated that these standards also apply to family detention facilities housing children with their parents. Courts have held that in limited emergency or influx circumstances, the government has some flexibility to hold *accompanied* children in secure, *unlicensed* facilities (for a period of approximately 20 days) while working in good faith to identify placements in licensed facilities or to release the child.

Limits on the time in which children can be detained in secure, unlicensed facilities do not apply to ORR shelters and facilities, which are licensed for the care of children. (*Flores* does, however, apply to the conditions of ORR facilities as well as the process for releasing children to sponsors.) ORR may hold a child in custody as long as needed to ensure a child’s safe placement and reunification with an appropriate “sponsor” while awaiting immigration proceedings. A parent’s participation in asylum or criminal proceedings is unrelated to how long the government is permitted to detain an unaccompanied child.

Myth: The separation of children would not be a problem if Congress would work quickly to terminate the *Flores* settlement.

FACT: Any changes to *Flores*—a court-approved settlement agreement—likely would need to be approved by the court.

The *Flores* Settlement Agreement is a court-approved settlement to which the government is a party. Any legislative change to *Flores* likely has to be approved by the judge. Congress cannot simply eliminate basic standards for detaining children.

Myth: An influx of unaccompanied children has filled facilities to capacity.

FACT: Administration policies are separating families, rendering children unaccompanied in significant numbers, and slowing the release of children from ORR custody.

Space in ICE and ORR detention facilities is not currently overwhelmed by the number of unaccompanied children arriving at the border, which remains in the range of previous years. Instead, ORR facilities are nearing full capacity as a result of new ORR policies that delay the release of some unaccompanied children already in care and new and significant numbers of children who, despite arriving accompanied by parents, have been rendered “unaccompanied” as a result of the “zero tolerance” prosecution policy.

Myth: Many families arriving at the border are engaged in asylum fraud, which is on the rise.

FACT: The Administration has published no evidence that fraud is increasing.

Despite repeated claims regarding fraud, Customs and Border Patrol (CBP) has published no evidence that fraud is increasing. CBP lacks a standardized means of training officers and agents interviewing arriving children to ensure that officers are correctly assessing and obtaining information about children’s need for humanitarian protection. The Government Accountability Office and UN High Commissioner for Refugees (UNHCR) have criticized CBP’s ability to adequately screen children for trafficking concerns. Many cases in which CBP separates families for “fraud” involve parents and children who speak languages other than English or Spanish and who require an interpreter, which CBP may not provide to them.

Myth: To avoid separation and ensure the safety of children, parents should travel alone to the border and simply send money to children in their home countries.

FACT: Families arriving with children are often fleeing for their lives; money alone is insufficient to address children’s protection needs.

Parents traveling with their children are often fleeing life-threatening conditions and circumstances in their home countries and travel with their children out of a desperate need to protect them from harm or even death. Money sent by parents in the U.S. to children remaining in the home country will not alone make the children safer, and in fact, may increase the incentive for gangs and criminal organizations to target the children.