



Child Migrants and Family Separation at the Border

July 11, 2018

This spring, as in 2014, a dramatic increase in Central American children and families arrived at the US southern border seeking asylum and economic opportunity. In response, the U.S. Justice Department established a new “zero tolerance” policy on April 6, 2018, prosecuting those entering illegally in an effort to deter migration. This zero tolerance policy replaced prosecutorial discretion which had been used to determine if people who crossed the border illegally should be charged criminally, or put through a civil process to determine if they qualify for asylum. Under the zero tolerance policy, more than 2,300 children of all ages were separated from their parents, all of whom are being held in immigration facilities. Legal challenges were brought to stop the separation of children from their parents. Due to public outcry, the President signed an Executive Order ending the policy on June 20, and on June 26 a judge ordered the Administration to reunite children with their parents.

When children are separated from their families after illegally crossing the border, or when children arrive without parents, Customs and Border Protection transfers them to the Office of Refugee Resettlement (ORR), part of the U.S. Department of Health and Human Services. ORR then places children in government facilities or short-term foster care while searching for their closest relative in the U.S. who can assume custody. Children from Mexico and Canada can either choose to leave voluntarily or be sent home within 48 hours under repatriation agreements. Under a 2008 anti-trafficking law, court review is required for children from countries other than Mexico and Canada. Currently there are 11,785 children in ORR custody.

Below is a timeline and links for additional information.

Timeline

April 6, 2018 – A [zero tolerance policy](#) was announced by Attorney General Jeff Sessions directing federal prosecutors to criminally prosecute all adult migrants entering the country illegally with the intent of deterring Central American migration. The policy change led to the separation of families because under a 1997 court settlement, *Flores v. Reno*, children cannot be held for more than 20 days and must be held in the “least restrictive setting appropriate to age and special needs.”

June 20, 2018 – The president issues an [Executive Order](#) that stops the separations. The Department of Homeland Security reported 2,342 children were separated at the border from 2,206 adults from May 5 to June 9.

June 21 – The Trump administration [files](#) a request to modify the *Flores* requirements that bar detention of minors for more than 20 days, and the requirement that children be held in facilities licensed as state-approved day care centers.

June 25 – A [Vermont Resolution](#) condemns the federal policy of separating children from their families at the southern international border and implores the Department of Homeland Security to reunite the separated families immediately.

June 26 - A federal judge in California [orders](#) U.S. immigration authorities to reunite children under 5 with their parents by July 10 and older children by July 26.

June 26 - 17 states [sue](#) arguing the policy harms state residents and interferes with the states' ability to protect children from abuse.

July 2 – A [CA Senate Resolution](#) calls for just and humane immigration proceedings that protect family units, ensure the welfare of children and domestic violence survivors, and provide for an accessible asylum process.

July 9 – CA judge [refuses](#) administration's request to modify *Flores*.

Resources

[Map](#) of where children are being held.

Children released [by state](#).

[ORR FAQ](#) July 9, 2018

[ORR data on Unaccompanied Alien Children](#)

[GAO](#) and the [HHS inspector general](#) will review the Office of Refugee Resettlement (ORR) and Department of Homeland Security (DHS) systems or processes tracking minors in their care.

NCSL brief "[Child Migrants to the United States](#)," Oct. 28, 2014

Contact:

Ann Morse Ann.Morse@NCSL.org

Ishanee Chanda Ishanee.Chanda@NCSL.org

202-624-5400