

**Prepared Statement by Senator Chuck Grassley of Iowa**  
**Chairman, Senate Judiciary Committee**  
**For a hearing on “Oversight of the Administration’s Immigration Enforcement and**  
**Family Reunification Efforts”**  
**July 31, 2018**

I want to thank the government witnesses for being here today. Originally, this hearing was solely going to be focused on our annual oversight of U.S. Immigration and Customs Enforcement (ICE). However, it quickly became evident that more oversight of the Administration’s entire family separation and reunification efforts were needed, so I expanded the hearing to provide oversight of that specific issue as well.

In April of this year, Attorney General Sessions announced a “zero tolerance” policy at the southwest border. This policy directed federal prosecutors to enforce our longstanding immigration laws and prosecute all individuals who crossed the border illegally. After all, when the laws on the books are enforced, it protects not only American citizens, but those who seek shelter and protection here too.

Remember, the Attorney General implemented this policy after the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011. The Attorney General’s policy was well-intentioned and simple: enforce our nation’s border security laws so that people would stop migrating illegally. We must remember that border security is national security.

However, like with many well intentioned policies there were unintended consequences. As a result of the administration’s “zero-tolerance” policy more than 2,500 illegal immigrant children were separated from their parents. As of last Thursday, 1,442 of those children have been reunited directly with their parents. An additional 378 have been released to other individuals under appropriate circumstances. But, almost one third of the children—approximately 711— are still in government custody and are unable to be reunited with their parents.

Of that 711, some were ineligible for reunification with their families for very legitimate reasons. According to the Administration, 120 were ineligible because their parents waived the right to reunify. 67 were not released because of red flags—including child abuse and serious felonies—that were raised during background checks of parents.

Of course, some adults were found to have not been related to the children with whom they were traveling. Over the last five months, federal authorities saw a 314 percent increase in adults and children arriving at the border fraudulently claiming to be a family unit. This is dangerous, and any policy we have that encourages this perilous practice should be revised immediately. No child should be used as a pawn, subjected to sexual assault, extreme heat, or other criminal behavior by smugglers or traffickers seeking to make a buck on behalf of the most vulnerable.

Now, 431 children, the largest number of the 711 who haven't been reunified, were ineligible because their parents had already been deported. The administration claims that all of these parents elected to be deported without their children but public reports indicate that many of them may have not made an informed choice to leave their children behind. Some of these reports suggest these parents weren't presented this information in a language they could even understand. I'm disturbed by these allegations and I hope our witnesses are prepared to give us thorough answers.

Although the Administration has mishandled the family separations, it's important to remember that this institution—Congress—also deserves its fair share of blame. For years, Congress has failed to take one simple step which could have prevented the family separations we now decry: repealing the *Flores v. Reno* consent decree as it relates to families. In 1997, as a result of years of litigation, the federal government entered into a settlement agreement known as *Flores v. Reno*. When the U.S. government first entered into the *Flores* consent decree it was a much-needed step towards ensuring the humane and dignified treatment of unaccompanied illegal immigrant children—children often thousands of miles from their parents.

The settlement agreement provided that illegal immigrant children without their parents could only be kept in federal custody for a maximum period of twenty days. It also required the government to treat these children humanely and ensure the type of quality care we would expect any child—illegal or otherwise—to receive. No one—Democrat or Republican—disagrees with that principle. However, in 2015, a single federal district court in California dramatically expanded the scope of the *Flores* consent decree by applying it to illegal immigrant children who arrive with their families, a move even the Obama Administration opposed.

Under this single interpretation of *Flores*, the federal government faces a stark, Hobson's choice: enforce the law and separate families by releasing only the children after 20 days or keep families together by engaging in the past Administration's "catch and release" policies. As Senators Cruz, Tillis, and I wrote in an op-ed on Sunday, neither of those options are good choices. That's why we believe the best way to ensure this crisis never happens again is to repeal the *Flores* agreement, but only as it relates to the time limitations governing accompanied illegal immigrant children.

Some of my colleagues will claim that we would end all protections for minor children and just allow the government to detain families indefinitely. Nothing could be further from the truth. No one on our side of the aisle wants to end the humane standards of care required by *Flores*. If anything, given recent news reports, we are more than willing to statutorily enhance those protections. We also don't want to see families kept in federal custody indefinitely, or even long periods of time.

As Director McHenry is going to testify, when families are placed on the "detained" docket their cases are usually resolved in 40 days. In contrast, when families are released into the interior, they are given a notice to appear at a future immigration court hearing, with little incentive to

attend. That hearing occurs, on average, 700 days after their release—assuming they even show up. And that’s just the first hearing. According to information provided to every single member of this committee during a closed door briefing, cases can take anywhere from seven to ten years to complete. Worse still, almost 80% of asylum cases are ultimately denied. It just doesn’t make sense to release families in mass and hope they’ll show up to a future court date where they will more than likely be denied the right to remain in this country.

But, and I’ll say this again, if families and children are going to be kept in federal custody they must be kept in facilities where they will be treated humanely, and with the basic dignity that all people—no matter what their immigration status—deserve. Unfortunately, recent media reporting I’ve seen suggests the federal government is failing miserably at this task.

Over the last few months, multiple news reports have surfaced describing how illegal immigrant children and, in the case of family units, their mothers, have suffered unimaginable physical, mental, emotional, and sexual abuse while in federal custody. This is unacceptable, and the American people expect better.

To be clear, this isn’t a new issue. Some of the abuse dates back to at least 2012, and several of the most horrific incidents occurred in 2015 and 2016, under the previous administration. Now, I don’t say that to imply that this is all the Obama Administration’s fault. It isn’t. But clearly, there is a larger systemic issue that needs to be addressed. Again, no one—no matter what their immigration status—should have to suffer such abuse.

As a consistent advocate for victims of domestic violence and sexual assault, I’m troubled by these reports. That’s why Senator Feinstein and I have sent a letter to the inspectors general of the Departments of Homeland Security and Health and Human Services asking them to open an investigation into these allegations. We’ve also asked the inspectors general to look into the practices, procedures, and policies that are in place regarding the custody of illegal immigrant families and children and to make recommendations to both us and the agencies regarding potential improvements to those practices.

I also hope that our government witnesses are prepared to answer questions regarding these incidents and describe, in detail, steps that are being taken to ensure no person suffers these indignities again. I won’t accept anything less.