

U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
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Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

October 23, 2015

MEMORANDUM FOR: Field Office Directors, Deputy Field Office Directors, and
Assistant Field Office Directors

Chief Counsel and Deputy Chief Counsel

FROM: Thomas Homan
Executive Associate Director

Gwendolyn Keyes Fleming
Principal Legal Advisor

SUBJECT: Implementation of the August 21, 2015
Flores v. Lynch Order

Purpose

This memorandum sets forth further procedures applicable to U.S. Immigration and Customs Enforcement's (ICE) Family Residential Centers (FRCs) to ensure compliance with the August 21, 2015 order of the U.S. District Court for the Central District of California in *Flores v. Lynch*, No. 85-4544 (C.D. Cal. filed July 11, 1985), including by acting as expeditiously as possible in processing aliens detained in FRCs, and generally limiting the average time in detention for all accompanied minors in the credible or reasonable fear process to not more than 20 days.¹

Background

On January 17, 1997, the U.S. Department of Justice (DOJ), including the former Immigration and Naturalization Service, entered into a stipulated settlement agreement in *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997). The *Flores* Settlement Agreement (FSA) sets forth a nationwide policy for the detention, release, and treatment of minors in the custody of the U.S. Department of Homeland Security (DHS), including procedures and timeframes for the processing, transport, and detention of minors following apprehension.² On February 2, 2015, Plaintiffs filed a motion to enforce the FSA, contending that conditions at ICE's FRCs and U.S. Customs and Border Protection (CBP) Border Patrol Stations violate the FSA and that ICE is failing to minimize the detention of all minors, to take affirmative steps to release children to a parent or relative, and to house children in non-secure facilities that are licensed to care for dependent children. On July 24, 2015, the U.S. District Court for the Central District of

California granted Plaintiffs' motion to enforce the FSA, finding that: (1) the FSA applies to accompanied children; (2) under the FSA, Defendants "must release the accompanying parent so long as doing so would not create a [significant] flight risk or a safety risk;" (3) housing children, who are not released as expeditiously as possible, in secure and non-licensed facilities violates the FSA; and (4) conditions at CBP facilities were in breach of the FSA requirement that Defendants provide "safe and sanitary" holding cells.

On August 21, 2015, the district court entered an order requiring that DHS comply with the remedies included in its July 24, 2015 order, as amended, by October 23, 2015.³ A copy of the court's order is attached. For ICE purposes, implementation of the order will occur as outlined below.

Implementation Guidance

I. CBP Processing and Transfer to ICE FRCs

- A. Family units apprehended by CBP in its Rio Grande Valley Sector will be processed by CBP for immediate release, or transferred to ICE custody if they fall within the categories of family units who may be detained at FRCs.⁴ CBP has committed to transfer family units to ICE as quickly as possible but no longer than within 48 hours of apprehension. These family units transferred to ICE custody will be transported from the CBP Combined Processing Center (CPC), in McAllen, Texas to FRCs with appropriate ICE officer escorts or other ICE-approved escorts.
- B. After processing by CBP, family units apprehended by CBP in California, Arizona, and New Mexico will be processed for immediate release or transported via commercial air carriers to San Antonio, TX or Philadelphia, PA, with ground transportation to the designated FRC with appropriate ICE officer escorts or other ICE-approved escorts.

II. Family Units Who May be Detained at FRCs

Generally, only family units in which: (1) the child(ren) is (or are) subject to mandatory detention, or (2) the parent or legal guardian (hereinafter "Head of Household" (HoH)) is subject to mandatory detention or determined to pose a "significant flight risk" that cannot be mitigated by appropriate bond or other conditions of release and for whom no other parent or legal guardian is available, will be detained at FRCs. This group will generally be limited to family units in the expedited removal or reinstatement of removal process, including:

- A. Family units in which both the HoH and child(ren) are in the expedited removal process and are awaiting a credible fear interview before U.S. Citizenship and Immigration Services (USCIS) or a credible fear review before the Executive Office for Immigration Review (EOIR), or have been determined not to have established a credible fear and are therefore subject to removal;

- B. Family units in which the child(ren) is (or are) in the expedited removal process and is (or are) awaiting a credible fear interview before USCIS or a credible fear review before EOIR or has (or have) been determined not to have established a credible fear and is (or are) subject to removal, and the HoH is in the reinstatement of removal process, and is awaiting a reasonable fear interview before USCIS or a reasonable fear review before EOIR, or has been determined not to have established a reasonable fear and is subject to removal;
- C. Family units in which the child(ren) is (or are) in the expedited removal process and has (or have) been determined by USCIS to possess a credible fear and referred for removal proceedings, and the HoH is in the reinstatement of removal process and is awaiting a reasonable fear interview before USCIS or a reasonable fear review before EOIR, or has been determined not to have established a reasonable fear and is subject to removal, and has been determined to pose a significant flight risk (that cannot be mitigated by an appropriate bond or other conditions of release); and
- D. Family units in which both the HoH and child(ren) are subject to final orders of removal and have been determined to pose a significant flight risk (that cannot be mitigated by an appropriate bond or other conditions of release).

III. Intake Processing and Case Management

- A. Upon arrival of a family unit at an FRC, Enforcement and Removal Operations (ERO) FRC staff receiving the transfer will verify that all necessary documentation, based upon the type of case, is completed and properly served on the family unit. Charging documents should be served on all aliens who are 14 years of age or older. For minors under age 14, charging documents should be served on the HoH.
- B. After all charging documents have been reviewed to ensure proper service, ERO FRC staff will enter the family unit into the (b)(7)(E) utilizing the proper FRC facility code.
- C. In all cases, ERO FRC staff will begin efforts to identify sponsors and future release options as soon as practicable after a family unit is booked into an FRC. ERO FRC staff will interview the HoH to determine if the child(ren) has another parent or legal guardian residing in the United States to whom the child(ren) may be released.
- D. The alien files (A-files) for all members of the family unit will be forwarded to the appropriate ERO FRC staff according to the local Field Office's docket assignment system.
- E. The ERO FRC staff managing the case of the family unit will receive the A-files and create the cases (if not previously created) in the Enforce Alien Removal Module (EARM).

- F. The ERO FRC staff will review the A-files for each family unit on his or her docket and take all appropriate action to expedite the removal process, resulting in either removal or release of the family unit as expeditiously as possible, but generally within 20 calendar days from the date of apprehension by CBP or 15 days from the date the claim of fear is made, whichever is longer.
- G. The ERO FRC staff will ensure that EARM is properly and thoroughly documented during the course of the family unit's time in ICE custody, including a specific custody justification and, as appropriate, information regarding efforts to release and/or information regarding any processing delays attributable to the alien.

IV. Expedited Removal – Credible Fear Process

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(b)(7)(E)

V. Reinstatement of Removal – Reasonable Fear Process

(b)(7)(E)

(b)(7)(E)

VI. Case Oversight and Review

ERO will regularly monitor the cases of all family units detained in FRCs to ensure that the cases are moving properly through the removal process.

- A. In addition to daily case management, the ERO FRC staff and the OCC will jointly review every case no later than 15 days after the family unit's apprehension by CBP and every three days thereafter to ensure the case is proceeding appropriately for timely release or removal.⁵

(b)(7)(E)

- C. The ERO FRC staff will immediately notify the local OCC of any case in which the family unit delays or declines conditions of release to coordinate and assess expeditious processing options. The ERO FRC staff will also document and track these events in EARM.
- D. The ERO FRC staff will review any case involving a medical issue that may impact the appropriateness of continued detention with IHSC staff and the local OCC to coordinate and assess expeditious processing options.
- E. All reporting and statistical information prepared by the ERO Field Office with regard to implementation of this guidance will be coordinated with local OCC.
- F. In all cases in which the family unit has not been removed or released after 30 days, the

child(ren) and HoH shall be issued NTAs and processed for release pursuant to Section VII.C below, unless they are described in Section IX.A.ii or iii below, or there are other compelling reasons requiring continued detention.

VII. Processing Release

- A. In all cases in which the child(ren) is (or are) not subject to mandatory detention, as soon as practicable after intake into an FRC, ERO FRC staff will interview the HoH to determine if the child(ren) has (or have) another parent or legal guardian residing in the United States to whom the child(ren) may be released. Where such a parent or legal guardian is available, the child(ren) should generally be released to the parent or legal guardian and the HoH transferred to an adult detention facility.⁶
- B. In the case of family units in which the child(ren) is (or are) not subject to mandatory detention and the HoH has had his or her final order of removal reinstated, ERO FRC staff will work as expeditiously as possible with the HoH to process release. In cases in which the HoH cannot provide a verifiable address, ERO FRC staff will work with available non-governmental organizations (NGOs) to assist in identifying a sponsor. ERO FRC staff will begin efforts to identify a sponsor and future release options as soon as practicable after a family unit is booked into an FRC. In cases in which releasing the parent or legal guardian and child together may create a risk to safety of both the parent or legal guardian and the child, including where they lack a place to stay in the United States, they may be continued in detention while release options are pursued.
- C. If a family unit does not fall within one of the categories of aliens who may be detained at an FRC, set forth in Section II above, the members of the family unit will be served with NTAs, released subject to enrollment in an Alternatives to Detention (ATD) program or other reasonable conditions, and instructed to report to their designated ERO Field Office within a specified timeframe.⁷
 - i. In order to ensure such families arrive in the city in which they intend to reside upon release, and to improve compliance with reporting requirements, before transferring the family unit to bus stations, airports, or other transportation hubs, ERO FRC staff will coordinate with available local NGOs after arrangements have been coordinated with sponsoring family members.
 - ii. Those family units released from the Karnes County Residential Center or South Texas Family Residential Center who have not arranged transportation directly from the facility will be released at the appropriate transportation hub.
- D. Family units determined by USCIS to have established a positive credible or reasonable fear of removal will generally be released subject to enrollment in an ATD program or other reasonable conditions as expeditiously as possible, but not later than 20 days from the date of apprehension by CBP or 15 days from the date the claim of fear is made,

whichever is longer.

- E. A family unit in the reinstatement process, determined by USCIS not to have established a reasonable fear, unless determined to pose a significant flight risk (that cannot be mitigated by an appropriate bond or other conditions of release), generally will be removed or otherwise released subject to enrollment in an ATD Program or other reasonable conditions as expeditiously as possible, but not later than 20 days from the date of apprehension by CBP or 15 days from the date the claim of fear is made, whichever is longer.
- F. For all cases in which a family unit is offered release subject to enrollment in an ATD program or other reasonable conditions, ERO FRC staff will inform the alien of the available processes to request amelioration of the conditions of release, including removal of the ankle monitor, from the IJ or ERO, as applicable. For aliens subject to removal proceedings under Section 240 of the Immigration and Nationality Act (INA), including positive credible fear cases, the ERO FRC staff will inform the HoH that if he or she accepts the conditions of release and is released from ICE custody, he or she may be eligible to seek amelioration of the conditions of release (i.e., a bond hearing) if a request is filed with EOIR within seven days of release, and that he or she may also request a change in the conditions of release from ERO in the receiving field office.⁸ For all other aliens, the ERO FRC staff will inform the subject that he or she may request a change in the conditions of release from ERO in the receiving field office.
- G. For those aliens determined to be released:
 - i. Once a sponsor has been identified, ERO FRC staff will coordinate with the HoH and the sponsor to safely release the family unit from the FRC.
 - ii. ERO FRC staff will serve the HoH with the appropriate release documentation prior to release from the FRC.
 - iii. All detention actions will be properly documented and tracked in EADM.
 - iv. After verification of all travel arrangements to the city in which the family unit intends to reside, ERO will escort the family unit to the appropriate form of transportation to their designated sponsor.
 - v. For cases in which the family unit will be referred for removal proceedings or withholding only proceedings before EOIR, ERO FRC staff will serve the charging documents on the family unit at the FRC prior to release, but will forward the charging documents to the receiving ERO Field Office. The receiving ERO Field Office will file the charging documents with EOIR.
- H. The ERO FRC staff will send the A-files to the ERO Field Office responsible for the

location in which the family unit will be residing.

VIII. Removal Processing

- A. Family units in which the HoH has a final order of removal and is housed in ICE custody due to a significant flight risk (that cannot be mitigated by an appropriate bond or other conditions of release) will be immediately processed for removal if members of the family unit have not claimed a fear of return.
- B. Family units that are ordered removed, determined by USCIS not to possess a credible or reasonable fear, and determined to pose a significant flight risk (that cannot be mitigated by an appropriate bond or other conditions of release) will be processed for removal as expeditiously as possible.
 - i. In cases in which a travel document is not required for removal – i.e., citizens of Mexico – or in which ERO already has possession of a valid unexpired travel document, within 24 hours of the final order of removal, the ERO FRC staff will coordinate with ICE Air Operations to schedule the family unit for a charter or commercial flight for removal, and removal should occur within 48 hours of scheduling.
 - ii. In cases in which a travel document is required for removal, within 24 hours of receiving the final order of removal, the ERO FRC staff will submit a travel document request to the appropriate country of citizenship, consistent with standard procedures. The ERO FRC staff will work expeditiously to obtain the travel document and coordinate with ICE Air Operations to schedule the family unit for a charter or commercial flight for removal. Removal should occur within 72 hours of scheduling.
 - iii. The ERO FRC staff will track the travel document process to ensure that the family unit is removed as expeditiously as possible.
 - iv. ERO will transport the family unit to the airport for removal.
- C. Consistent with standard procedures, for those family units removed via ICE Air Operations, ICE Air Operations will notify the ERO Field Office upon successful completion of removal by returning the fully executed Form I-205 (Warrant of Removal) to the ERO Field Office.
- D. The ERO Field Office with docket control over the case will update EARM and close out the case as a removal.

IX. Transfers to the Berks Family Residential Center (BFRC)⁹

- A. The following family units will generally be transferred to the BFRC or released subject to enrollment in ATD or other reasonable conditions as expeditiously as possible, unless removal is imminent:

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- ii. Family units subject to reinstatement of removal, who have not asserted a fear claim; and
 - iii. Family units in removal proceedings under section 240 of the INA or who are awaiting execution of final removal orders.
- B. ERO will use an existing contract or commercial air carrier, with appropriate ERO officer escorts or other ERO-approved escorts, to transport families to the BFRC from other FRCs, as appropriate.

X. Reporting

- A. In order to ensure the completeness and accuracy of data required by the district court's order to be reported, the ERO FRC staffs will timely update cases in the EID Graphic for Law Enforcement (EAGLE), EADM, and EARM.
- B. ERO will provide routine reporting on the data items listed below:
- i. FRC weekly intakes, releases, and removals by FRC;
 - ii. HoH population and HoH fear claims asserted;
 - iii. Average length of stay in FRCs for those booked out of FRCs; and
 - iv. For the current population in FRCs, the number of individuals in FRCs delineated by length of time in custody.
- C. ERO Headquarters will coordinate collection and data quality review of the information listed in Section X.B above, and will provide consolidated reports of such information to OPLA Headquarters on the second Monday of each month. OPLA Headquarters will transmit the information to DOJ.

XI. No Private Right Statement

This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create or diminish any rights, substantive or procedural, enforceable at law or equity by any party in any criminal, civil, or administrative matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of DHS.

XII. Attachments

Attached are copies of the relevant pages of the district court's August 21, 2015 order and a reference flow chart showing the general course that family unit cases will take under this implementation guidance.¹⁰

Endnotes

- ¹ For purposes of this memorandum, in order to limit further litigation risk, time in detention will be calculated from the date of apprehension by CBP to the date of release from an FRC. This is a strategic legal decision that should not be construed as acquiescence to the district court's order or a concession that such an approach is the only permissible reading of the order. Also, although aliens detained in FRCs should generally be released within 20 days, for cases in which a claim of fear is not raised until five or more days after apprehension by CBP, such individuals should be released or removed as expeditiously as possible, but generally no more than 15 days from the date on which the claim of fear is raised.
- ² Although DHS takes the position that the FSA applies only to unaccompanied minors, the district court ultimately found that the FSA applies to all minors in DHS custody. Pending the outcome of any appeal of this finding, ICE will abide by the court's decision.
- ³ The Government filed a Notice of Appeal with the U.S. Court of Appeals for the Ninth Circuit on September 18, 2015.
- ⁴ For purposes of this guidance, the term "family unit" is used to refer collectively to a minor child(ren) and his or her parent or legal guardian who is over the age of 18.
- ⁵ While EADM will only track length of stay based upon the FRC book-in date, ERO Field Office staff must be aware of the CBP apprehension date of each family unit case.
- ⁶ To ensure the safety of the child(ren), documentation establishing the parental or guardianship relationship should be provided and maintained in the A-file. For non-parent legal guardians, ERO Field Office staff should consult with their respective OCC in determining whether documentation provided is sufficient to establish the claimed relationship.
- ⁷ In cases in which ICE exercises its discretion to cease the expedited removal or reinstatement of removal process, and instead initiate removal proceedings under Section 240 of the Immigration and Nationality Act, *see Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011), the family unit will be processed in accordance with this paragraph.
- ⁸ *See* 8 C.F.R. § 1236.1(d)(1); *see also Matter of Garcia-Garcia*, 25 I&N Dec. 93 (BIA 2009).
- ⁹ The reason for transferring family units from other FRCs to the BFRC is that the BFRC has been licensed by the State of Pennsylvania. The FSA requires that minors detained in ICE custody be transferred to a licensed program. Should other ICE FRCs become state-licensed, this guidance may be updated.
- ¹⁰ Please note that the reference flow chart is a general guide and does not address every possible permutation a family unit case could present. ERO and OPLA should confer closely in their handling of family unit cases to ensure compliance with the court's August 21, 2015 order.

Attachment A

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- 1 The Court orders Defendants to implement the following remedies by no later than
2 October 23, 2015:
- 3 1. As required by Paragraph 18 of the Agreement, Defendants, upon taking an
4 accompanied class member into custody, shall make and record prompt and
5 continuous efforts toward family reunification and the release of the minor
6 pursuant to Paragraph 14 of the Agreement.
 - 7 2. Unless otherwise required by the Agreement or the law, Defendants shall
8 comply with Paragraph 14A of the Agreement by releasing class members
9 without unnecessary delay in first order of preference to a parent, including a
10 parent who either was apprehended with a class member or presented herself or
11 himself with a class member. Class members not released pursuant to
12 Paragraph 14 of the Agreement will be processed in accordance with the
13 Agreement, including, as applicable, Paragraphs 6, 9, 21, 22, and 23.
 - 14 3. Subject to Paragraph 12A of the Agreement, accompanied class members shall
15 not be detained by Defendants in unlicensed or secure facilities that do not meet
16 the requirements of Paragraph 6 of the Settlement or, in appropriate cases, as set
17 forth in the Agreement, in facilities that do not meet the requirements of
18 Paragraphs 12A, 21, and 23. Defendants shall not selectively apply the "influx"
19 provision of Paragraph 12C of the Agreement to house class members
20 apprehended with a parent in facilities that do not comply with the Agreement.
 - 21 4. To comply with Paragraph 14A of the Agreement and as contemplated in
22 Paragraph 15, a class member's accompanying parent shall be released with the
23 class member in accordance with applicable laws and regulations unless the
24 parent is subject to mandatory detention under applicable law or after an
25 individualized custody determination the parent is determined to pose a
26 significant flight risk, or a threat to others or the national security, and the flight
27 risk or threat cannot be mitigated by an appropriate bond or conditions of
28 release.
 5. As contemplated in Paragraph 28A of the Agreement, Defendants or their
Regional Juvenile Coordinator shall monitor compliance with their
acknowledged standards and procedures for detaining class members in
facilities that are safe and sanitary, consistent with concern for the particular

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vulnerability of minors, and consistent with Paragraph 12 of the Agreement, including access to adequate drinking water and food, toilets and sinks, medical assistance if the minor is in need of emergency services, temperature control, ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. In the alternative, the parties may stipulate to the appointment of a special monitor for this purpose.

6. Defendants shall monitor compliance with the Agreement and this Order and shall provide Class Counsel on a monthly basis statistical information collected pursuant to Paragraph 28A of the Agreement.

IT IS SO ORDERED.

DATED: August 21, 2015


DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

Attachment B
General DHS Process Flow for Family Unit (FAMU) Processing Under the August 21, 2015 Court Order in *Flores v. Lynch*

