

Key Health Implications of Separation of Families at the Border (as of June 27, 2018)

Starting in Spring 2018, the Trump Administration implemented a new zero tolerance policy for individuals entering the U.S. without authorization. This policy resulted in the separation of children from their parents because the parents were criminally prosecuted for illegal entry into the country. On June 20, 2018, President Trump signed an Executive Order to generally detain immigrant families together while their criminal and immigration cases are being processed. However, a court ruling limits the length of time the federal government can hold children in detention to 20 days and the Executive Order did not address reunification of separated families. On June 26, 2017, a court issued a preliminary injunction to prohibit family separation except when a parent is determined to be unfit or presents a danger to a child and require reunification of families who have been separated. This fact sheet highlights key health implications of family separation and detention.

How did zero tolerance policy lead to family separations?

According to media reports, DHS separated over 2,342 children from parents under its zero tolerance policy between May 5 and June 9, 2018, an average of 65 children each day.¹ In early May 2018, after an initial pilot period in Texas, the Trump Administration implemented a new zero tolerance policy for individuals entering into the U.S. without authorization. Under this policy, the federal government criminally prosecutes any individual apprehended while crossing the border, which results in them being placed into criminal custody. When the federal government took adults into criminal custody, they separated them from their children since children cannot be held in jail or prison. The Department of Homeland Security (DHS) applied this zero tolerance policy broadly to individuals crossing the border without authorization, including those seeking asylum after entering the U.S. outside a port of entry. However, reports suggest it has become increasingly difficult for individuals to seek asylum through ports of entry,² and there have been reports that some children were separated from parents who entered through a port of entry to seek asylum.³

DHS designated children separated from their parents as “unaccompanied alien children” and transferred their care to the Office of Refugee Resettlement (ORR), which is within the Department of Health and Human Services (HHS). Historically, this program primarily cared for children who entered into the U.S. without an adult, who are a different group from the children separated from their parents.⁴ Children separated from their parents generally were placed in an ORR-funded facility, which includes over 100 shelters in 17 states. ORR facilities are responsible for providing children they house with education, health services, case management, and socialization and recreation. Some separated children were also placed into foster care; ORR may also place children with relatives residing in the U.S. DHS indicated that children could be reunited with their parent after the parent is released from custody by the

Department of Justice (DOJ) to be deported or begin the process of seeking asylum.⁵ However, reports suggest that there were no clearly established policies for reuniting families and that some parents were deported without their children or unable to reunite with their children after being released from custody.⁶

How does the Executive Order affect treatment of families?

On June 20, 2018, President Trump signed an Executive Order that maintains the zero tolerance policy but directs DHS to detain families together where appropriate and consistent with law and available resources for the duration of their criminal and immigration case proceedings.⁷ Because immigrant cases can take months or longer to process, under this order, families could be facing extended time in detention. However, under a previous court ruling, known as the *Flores* settlement agreement, the federal government cannot detain children in secure facilities for more than 20 days (Box 1).⁸ *Flores* also establishes minimum standards for facilities holding children, including requiring that they be state-licensed. As such, the Executive Order also directs the Attorney General to file a request with the court to modify the *Flores* settlement agreement. As directed by the Executive Order, on June 21, 2018, the DOJ filed a request that asked the court to modify *Flores* by allowing the government to detain children with their families for the duration of their criminal and immigration proceedings, beyond the 20-day limit, and to relieve the government of the obligation to hold children in state-licensed facilities.⁹

Box 1: What are key requirements for children under the *Flores* settlement agreement?

The *Flores* settlement agreement establishes nationwide policy for the treatment of minor children detained in federal custody.

Least restrictive setting and 20-day limit on detention. *Flores* requires that the federal government release children as soon as possible to a relative or other guardian and that those kept in custody should be placed in the least restrictive and appropriate setting possible, such as a non-secure licensed facility. Under *Flores*, the federal government should move children out of detention within several days of apprehension, although an exception allows that it may hold children in detention up to 20 days if there is an emergency or major influx of children into the U.S. This 20-day limit does not apply to parents. However, following a court ruling specifying that *Flores* applied to accompanied children, the previous administration generally complied with the 20-day limit for children by releasing the whole family under a bond, an order of supervision, or other alternatives to detention such as community-based case management and monitoring programs.

Health standards for facilities holding children. *Flores* establishes safety and sanitation standards for government detention facilities holding children and minimum standards for non-secure facilities where minors may be placed. For example, non-secure facilities must offer health care, dental care, family planning services, prescribed medications, special diets, mental health interventions, daily recreation activities, and weekly individual counseling. In addition, facilities must be state licensed to provide residential, group, or foster care services for dependent children.

What are the key health implications of family separation and detention?

Family separation or detention often compounds existing trauma and stress that children and families have already experienced in their home country or on their journey to the U.S. Many families seeking entry to the U.S. are fleeing dangerous environments where children may have witnessed or experienced violence or gone without basic needs.

Separating children from their parents exposes them to trauma and toxic stress that can have lifelong negative impacts on their mental and physical health. As noted by the American Academy of Pediatrics (AAP), exposing children to traumatic events and prolonged or toxic stress such as separation from a parent disrupts a child's healthy development and can lead to physiologic changes that result in short- and long-term negative effects on physical, mental, and behavioral health (Box 2).^{10 11} Children in families in which a parent has been detained and deported experience significant behavior changes including changes in eating and sleeping, frequent crying, increased fear and anxiety, and/or withdrawal or anger.¹² In addition, some children experience speech and developmental difficulties, including regression and reversal of developmental milestones.¹³

Detention, for even brief periods, has short- and long-term negative effects on the health of parents and children. Studies show high levels of psychiatric distress, including depression and post-traumatic stress, among detained asylum seekers, even after short detention periods, and that symptoms worsen over time.¹⁴ Global studies also show significant effects for children held in detention, including depression, post-traumatic stress, suicidal thoughts and behaviors, developmental delays, and behavioral issues.¹⁵ In a policy statement, the AAP notes that research documents negative physical and emotional symptoms among detained children and adults and also shows negative impacts on the parent-child relationship.¹⁶

Box 2: Short- and Long-Term Effects of Trauma and Toxic Stress on Children

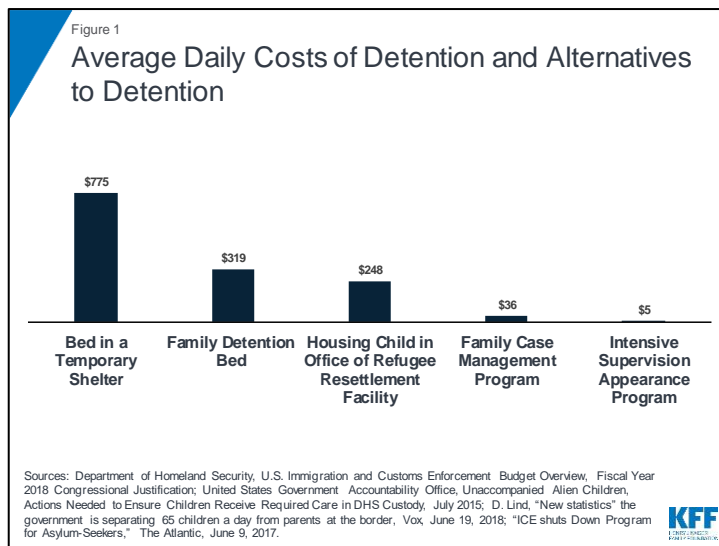
In the short term, toxic stress can increase the risk and frequency of infections in children as high levels of stress hormones suppress the body's immune system. It can also result in developmental issues due to reduced neural connections to important areas of the brain. Toxic stress is associated with damage to areas of the brain responsible for learning and memory.

Over the long term, toxic stress may manifest as poor coping skills and stress management, unhealthy lifestyles, adoption of risky health behaviors, and mental health issues, such as depression. Toxic stress is also associated with increased rates of physical conditions into adulthood, including chronic obstructive pulmonary disease, obesity, ischemic heart disease, diabetes, asthma, cancer, and post-traumatic stress disorder.

What are the cost implications of these policies?

Detaining families and children is more expensive than alternative community-based supervision and monitoring programs (Figure 1). According to the 2018 budget request for U.S. Immigration and Customs Enforcement (ICE), the average daily rate for a family bed in a detention center is \$319.¹⁷ Costs for housing a child separately in an ORR-funded facility were \$248 on average per day in 2014.¹⁸

However, daily costs for recently constructed temporary or tent-based shelters are estimated to be substantially higher, at \$775 per person per night.¹⁹ The cost of monitoring individuals in the community through alternatives to detention is much lower. Specifically, the 2018 ICE budget request notes that the daily cost of community supervision and monitoring is \$4.50.²⁰ The average daily cost was \$36 for the Family Case Management Program, a community-based program for families seeking asylum, which the Trump Administration ended in 2017.²¹



Looking ahead

After President Trump signed his Executive Order, U.S. Customs and Border Protection issued a statement indicating that family unity will be maintained for families apprehended crossing the border without authorization.²² It remains unclear how the inconsistency between the Executive Order's requirement for family detention for the duration of criminal and immigration proceedings and the *Flores* agreement, which establishes a 20 day limit on the length of time a child can be detained, will be resolved. As of June 26, 2018, the court has not yet ruled on the DOJ's June 21 request for modifications to the *Flores* agreement that would allow for children to be detained for the duration of their parent's criminal and immigration proceedings. On June 25, 2018, U.S. Customs and Border Protection indicated that, although the zero tolerance policy is still in effect, they have halted referrals of adult immigrants to criminal prosecution for crossing the border.²³

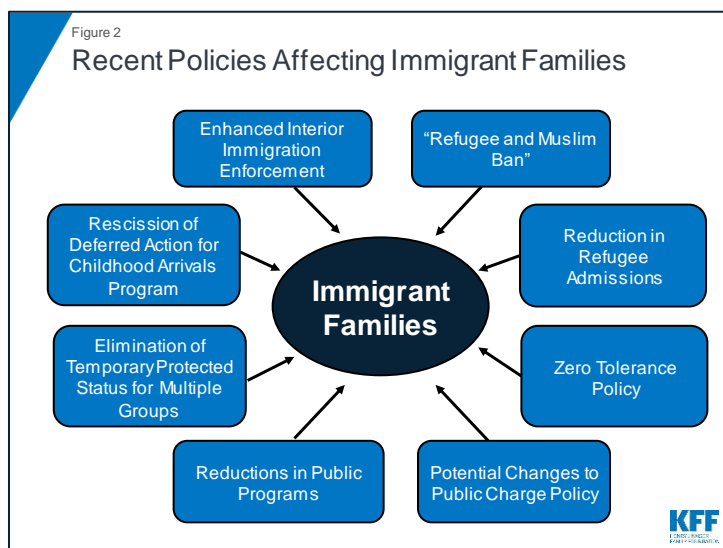
DHS has released information on the process to reunify families separated under the zero tolerance policy, but did not specify how long it would take to reunify all separated children. DHS reports that it has established a process to "ensure that family members know the location of their children and have regular communication after separation to ensure that those adults who are subject to removal are reunited with their children for the purposes of removal."²⁴ DHS also notes that it knows the location of all children in custody and is working to reunite the children with their families, although it does not specify the timing and process for reuniting parents released from detention but seeking asylum to stay in the U.S. As of June 23, 2018, DHS reports that it has reunited 522 of the over 2,300 children who

were separated from adult under the zero tolerance policy. DHS did not provide an estimate of how long it will take to reunite the remaining families.

On June 26, 2018, a federal judge ordered a preliminary injunction to halt the separation of families and require reunification of separated families within designated timeframes.²⁵ This injunction was in response to a class action suit filed on behalf of all adult parents who have been or will be detained in immigration custody and have a minor child who is or will be separated from them and detained in DHS or ORR custody. Specifically, the preliminary injunction bars the federal government from detaining parents separate from their children, requires that children be reunited with their parents when the parents are released from custody, and prohibits the removal of parents from the country without their children. The court allows for an exception from these requirements if there is a determination that the parent is unfit or presents a danger to the child or the parent voluntarily declines to be reunited with the child. The court further requires that the federal government reunite all children under age five with their parents within 14 days of the order and all children age five and older within 30 days of the order. Moreover, it requires the federal government to immediately take all steps necessary to facilitate regular communication between separated parents and their children and ensure all parents have telephone contact with their children within 10 days of the order. In a separate case, 17 states have filed suit against the Administration challenging family separation.

It remains unclear if Congress will act to address family separation or detention and broader immigration policy. Following implementation of the zero tolerance policy and prior to the President's Executive Order, Congress introduced multiple bills to address family separation along with broader changes in immigration policy. Following the Executive Order, President Trump indicated that Congress should halt legislative efforts to address immigration policy. On June 21, 2018, a House vote on the proposed Goodlatte immigration bill failed. It remains unclear what action Congress will take on immigration policy moving forward.

The zero tolerance policy at the border adds to a range of other recent policies negatively affecting the health and well-being of immigrant families, including families with U.S. born citizen children already residing in the U.S. Since President Trump has taken office, he has implemented a number of policies to enhance immigration enforcement and restrict legal immigration (Figure 2). [Focus groups](#) conducted in Fall 2017 found that these policies, along with rising anti-immigrant sentiment, are leading to resounding levels of fear and uncertainty among



immigrant families, including those with lawful status. Further, this fear and uncertainty are having significant negative effects on the health and well-being of children in immigrant families already present in the U.S., who are largely U.S.-born citizens.

The Administration is considering other potential policy changes that would negatively affect the health and well-being of immigrant families, including their citizen children. Notably, the Administration is pursuing changes that, for the first time, would allow the federal government to take into account use of Medicaid, CHIP, subsidies for Marketplace coverage and other health, nutrition, and non-cash programs when making public charge determinations. Under these changes, use of these programs, including Medicaid, CHIP, and subsidies for Marketplace coverage, by an individual or family member, including a citizen child, could result in the federal government denying an individual a “green card” or adjustment to lawful permanent status or entry into the U.S. These changes would likely [result in reduced participation in Medicaid, CHIP](#), Marketplace coverage, and other programs by immigrant families, including citizen children, even though they would remain eligible. Decreases in Medicaid and CHIP enrollment would increase the number of uninsured and reduce access to care, increase financial strains on families, and widen disparities in coverage.

ENDNOTES

- ¹ Dara Lind, “New statistics: the government is separating 65 children a day from parents at the border,” Vox, (June 19, 2018), <https://www.vox.com/2018/6/19/17479138/how-many-families-separated-border-immigration>
- ² On July 12, 2017, the American Immigration Council, along with the Center for Constitutional Rights and Latham and Watkins, LLP, filed a class action lawsuit challenging Customs and Border Protection’s (CBP) unlawful practice of turning away asylum seekers who present themselves at ports of entry along the U.S.-Mexico border. “Challenging Customs and Border Protection’s Unlawful Practice of Turning Away Asylum Seekers,” (Washington, DC: American Immigration Council, July 12, 2017), <https://www.americanimmigrationcouncil.org/litigation/challenging-customs-and-border-protections-unlawful-practice-turning-away-asylum-seekers>
- ³ For example, the American Civil Liberties Union has filed a lawsuit on behalf of a Congolese woman who entered the U.S. legally with an asylum claim and was separated from her child. *Ms. L; et al. v. U.S. Immigration and Customs Enforcement (“ICE”); et al.*, No. 18cv0428 DMS (MDD), (United States District Court, Southern District of California., June 6, 2018), https://www.aclu.org/sites/default/files/field_document/71_mtd_order.pdf
- ⁴ Administration for Children and Families, “Fact Sheet: Unaccompanied Alien Children Program,” Department of Health and Human Services, (June 15, 2018) https://www.acf.hhs.gov/sites/default/files/orr/orr_fact_sheet_on_unaccompanied_alien_childrens_services_0.pdf
- ⁵ “Myth vs. Fact: DHS Zero-Tolerance Policy,” Department of Homeland Security, (June 18, 2018), <https://www.dhs.gov/news/2018/06/18/myth-vs-fact-dhs-zero-tolerance-policy>
- ⁶ Dara Lind, “The Trump administration’s separation of families at the border, explained,” Vox, (June 15, 2018), <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>;
- ⁷ “Affording Congress an Opportunity to Address Family Separation,” Executive Order, (June 20, 2018), <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>
- ⁸ ⁸ *Flores v. Reno*, No. CV-85-4544-RJK(Px), Stipulated Settlement Agreement (C.D. Ca. 1997), <http://www.aila.org/File/Related/14111359b.pdf>. After the Obama Administration began holding detained families with children in facilities that did not meet the *Flores* standards, the 9th Circuit Court of Appeals affirmed the lower court’s ruling that *Flores* applies to accompanied minors, as well as unaccompanied minors, but also held that *Flores* does not create any affirmative right to release for their parents. *Flores v. Lynch*, No. 15-56434 (9th Cir. Jan. 2016), <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/07/06/15-56434.pdf>.
- ⁹ *Flores v. Sessions*, No. CV-85-4544-DMG, Defendants’ Memorandum of Points and Authorities in Support of *Ex Parte* Application for Relief from the *Flores* Settlement Agreement (C.D. Ca. June 21, 2018), <http://www.aila.org/File/Related/14111359z.pdf>.
- ¹⁰ Colleen Kraft, MD, MBA, FAAP, “AAP Statement Opposing the Border Security and Immigration Reform Act,” American Academy of Pediatrics, (June 15, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPStatementOpposingBorderSecurityandImmigrationReformAct.aspx>
- ¹¹ Center on the Developing Child, NGA Center for Best Practices, and National Conference on State Legislatures, *In Brief: The Impact of Early Adversity on Children’s Development*, (Cambridge, MA: Center on the Developing Child, Harvard University, 2015), <https://46y5eh11fhgw3ve3ytpwxt9r-wpengine.netdna-ssl.com/wp-content/uploads/2015/05/inbrief-adversity-1.pdf>; Hillary A Franke, “Toxic Stress: Effects, Prevention and Treatment,” *Children* 1 (2014):390-402; Sara B Johnson, Anne W Riley, Douglas A Granger, and Jenna Riis, “The Science of Early Life Toxic Stress for Pediatric Practice and Advocacy,” *Pediatrics* 131, 2 (February 2013):319-327; Jack P Shonkoff, Andrew S Garner, et. al., “The Lifelong Effects of Early Childhood Adversity and Toxic Stress,” *Pediatrics* 129, 1 (2012):e232-e246; Committee on Psychosocial Aspects of Child and Family Health, et. al., “Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science into Lifelong Health,” *Pediatrics* 129, 1(2012):e224-e231; National Scientific Council on the Developing, *Child Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development: Working Paper No. 9*, (Cambridge, MA: National Scientific Council on the Developing Child, 2010), <http://www.developingchild.net>; Jack P Shonkoff, W Thomas Boyce and Bruce S McEwen, “Neuroscience, Molecular Biology, and the Childhood Roots of Health Disparities: Building a New Framework for Health Promotion and Disease Prevention,” *Journal of the American Medical Association* 301, 201 (2009):2252-2259; Jennifer S Middlebrooks and Natalie C Audage, *The Effects of Childhood Stress on Health Across the Lifespan*, (Atlanta, GA: Centers for Disease Control and Prevention (CDC), 2008), [Key Health Implications of Separation of Families at the Border](http://health-</p></div><div data-bbox=)

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¹² Ajay Chaudry, et al., *Facing Our Future Children in the Aftermath of Immigration Enforcement*, (Washington, DC: The Urban Institute, February 2010), <https://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF>

¹³ Ibid.

¹⁴ Janet Cleveland, Cecile Rousseau, and Rachel Kronick, *The harmful effects of detention and family separation on asylum seekers' mental health in the context of Bill C-31*, April 2012, https://csssdelamontagne.qc.ca/fileadmin/csss_dlm/Publications/Publications_CRF/brief_c31_final.pdf; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, and Council on Community Pediatrics, "Detention of Immigrant Children," *Pediatrics*, March 13, 2017,; <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>, Wendy Cervantes, *Family Detention: The Harmful Impact on Children*, (Washington, DC: First Focus, December 8, 2015), <https://firstfocus.org/resources/fact-sheet/family-detention-the-harmful-impact-on-children>.

¹⁵ Ibid.

¹⁶ Julie M. Linton, Marsha Griffin, Alan J. Shapiro, and Council on Community Pediatrics, "Detention of Immigrant Children," *Pediatrics*, March 13, 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

¹⁷ Department of Homeland Security, "U.S. Immigration and Customs Enforcement Budget Overview, Fiscal Year 2018 Congressional Justification," <https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf>.

¹⁸ Ibid.

¹⁹ Julia Ainsley, "Trump Admin's 'tent cities' cost more than keeping migrant kids with parents," NBC News, June 20, 2018, <https://www.nbcnews.com/storyline/immigration-border-crisis/trump-admin-s-tent-cities-cost-more-keeping-migrant-kids-n884871>.

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²¹ Aria Bendix, "ICE Shuts Down Program for Asylum-Seekers," *The Atlantic*, June 9, 2017, <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>.

²² U.S. Customs and Border Protection, "CBP's Statement on Implementing the President's Executive Order Affording Congress the Opportunity to Address Family Separation," June 21, 2018, <https://www.cbp.gov/newsroom/speeches-and-statements/cbps-statement-implementing-presidents-executive-order-affording>.

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