

Chairman Johnson's Opening Statement
"The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"
Tuesday, September 18, 2018

As prepared for delivery:

In 2014, the Obama Administration began detaining family units in response to a significant increase in the number of families crossing the Southern border – 68,684 in fiscal year 2014 compared to 15,056 in fiscal year 2013 — a 356 percent increase. Then-Homeland Security Secretary Jeh Johnson explained that decision this way: “Frankly, we want to send a message that our border is not open to illegal migration, and if you come here, you should not expect to simply be released.”

In response to a lawsuit challenging the new policy of family detention, courts reinterpreted the 1997 *Flores* settlement agreement more broadly than the parties to that agreement had ever intended: for the first time, it was interpreted to require DHS to release minors even if they were apprehended with their parents.

The *Flores* reinterpretation has basically left the Department of Homeland Security with only two options — both of them bad: release children and detain their parents, or go back to the failed policy of “catch and release” for illegal immigrant families apprehended at the border. This policy is well known in Central America, due to social media, the press, and smugglers, and creates an incentive for increased illegal family migration — and it is a policy that is being widely exploited. Since the 2015 court decision, United States Border Patrol has apprehended more than 254,000 family units attempting to cross our border illegally.

“Catch and release” not only exacerbates illegal immigration, it creates an obvious threat of child trafficking. This is particularly true for children arriving with adult men, as the Department does not have enough time to verify parentage in the 20-day detention limit set by *Flores*. One publicized example describes the circumstances of a man who trafficked a young girl into the United States, claiming she was his daughter. DHS released him with a notice to appear, under the terms of *Flores*. The Huron Police Department in California later arrested him on charges that include two counts of forcible lewd acts upon and two counts of sexual penetration of a victim with mental or physical disabilities. These acts allegedly occurred after the victim and suspect were released from federal custody.

The Administration's recent decision to withdraw from the *Flores* settlement agreement will probably face legal challenge, further underscoring that it is well past time for Congress to act. Our action should be guided by facts and the reality of the current situation, relying heavily on what experts on the ground tell us will and won't work. To that end, Committee staff have held 21 bipartisan briefings and phone calls to gather information and inform our legislation.

Today we welcome representatives from the Department of Homeland Security, Department of Justice, and the Government Accountability Office to provide further information about the effects the reinterpretation of the *Flores* settlement agreement has had, and address any open questions. I am grateful to the witnesses for being here.