

U.S. Senate Homeland Security and Governmental Affairs Committee

“The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives”

September 18, 2018

Ranking Member Claire McCaskill

Opening Statement

Thank you. I want to recognize the witnesses before us today first and applaud the work you do. I know from my time as a prosecutor that law enforcement officials go to work each day not thinking about themselves, and frankly, sometimes not even thinking about their families. But rather, how do we keep our communities safe, and how do we keep each other safe. That’s true of law enforcement officers of both CBP, Customs and Border Patrol, and ICE. The selflessness of service is also true of the immigration judges, public servants who work at DOJ and the independent auditors, analysts, and watchdogs at GAO.

I know firsthand that our federal law enforcement officers face real challenges in carrying out their jobs. I’ve seen the ingenuity of our border patrol agents as they built their own night vision surveillance vehicle by literally duct taping a surplus night vision goggles they got from the Department of Defense to a pole in the back of a pickup truck. I know that even though officers at ports of entry are the ones that are seizing the majority of the fentanyl and other opioids,

they are still understaffed by CPB's own guidelines. I know our immigration court judges face a tremendous backlog.

I also know that while overall illegal border crossings are at their lowest level in over 30 years, for the past few years these agents and officers have been facing an increasing number of immigrant families trying to cross the border.

There are a lot of different proposals for dealing with these families. But I think there is one thing we can all agree on, on a bipartisan basis, is we cannot lose sight that they are families. And that they need to be dealt with as families. No one should be separating children from their parents.

Beyond that, this is a complex problem. And as the Chairman likes to say, "we need to get that facts, we need to get the facts." I think any action on legislation at this point is premature because we don't have all the facts. Let's face it, if this were easy, we would have gotten this done a long time ago. I want to talk about, focus on, the *Flores* decision today. That it does not allow DHS to detain families for long enough. I will say this unequivocally, we do not have enough facts to even consider indefinite detention of families. Even if it were the right thing to do, which I do not think it is. We don't know enough. We don't know what it would cost. We don't know how many beds would be needed. We don't know how long the average detention would be. There is simply not enough

information to consider indefinite detention. We've learned that Flores is not the only thing standing in the way. We've learned there aren't enough detention facilities. It would be incredibly expensive to add more. According to the briefings we've received, ICE would need an additional 15,000 beds just to house the immigrant families for 30 days, at a cost of over \$1.3 billion per year. This doesn't include the cost of additional personnel or the cost of construction. And frankly, it takes an average, a median of 128 days to process an asylum case in detention. If that is even close to how long the families will remain in detention, that \$1.3 billion only represents a fraction of the cost of what we would actually pay.

We also know that it costs \$320 a day per person to keep a family unit detained. It only costs \$8.50 to monitor them electronically. If both programs or some other alternatives result in families showing up at their immigration hearing, let's just say there's a lot of other border security needs that we could be spending that money on. As a former prosecutor, I understand the balance we need to strike. This is all about securing appearance at court, and when people appear at court, being efficient and ready for deportation if that's the decision of the court. If you look at the facts around this issue, there may have been some electronic monitoring projects that were abandoned, but there is no reason to believe they don't work.

The majority of people that are arrested for crimes in the United States of America are released pending their appearance at court.

I have a great deal of experience with this. When I was the Jackson County prosecutor, we were under a federal court order about how many people we could have in our jail. So every day I had to make a decision as to who we let out of jail and who we kept in jail. And I guarantee you we spent a lot of time on figuring out we monitored those people that got out, and how we secured their appearance.

We know how to secure people's appearance at court. There is technology and there is oversight. And both of them are less expensive than building billions of dollars of beds to hold families indefinitely because our system is so inefficient. How effective is the monitoring? It is very effective in this country. How efficient is the system? Our system on asylum determination and removal couldn't be more inefficient. We should be starting with a bill that requires electronic records. Do you know if they have to do a hearing in Texas and the file is in California they have to FedEx the file? No system in this country is still all paper. Except this one. It is absolutely unbelievable to me that we are this inefficient.

And we've been securing people's appearances at hearings, but the last hearing, when asylum is determined, for some reason after they've determined that they don't get asylum, we're not monitoring them anymore. We need to be

prepared at that last hearing. We need to have preparations, and the people coming need to know that if the case goes against them on asylum, they're going to be deported. Immediately. It is about efficiencies in the system, it is not about imprisoning families indefinitely in this country.

So I think what we have to do, is we have to deal with the shortage of immigration judges. We have to deal with the inefficiency in the system and how long it's taking to have these claims heard. That doesn't mean we should short change people on their claims. We should give them adequate opportunity to have their claims heard. But we're not willing to even hire the number of judges that have been funded. We don't even have enough judges now to fill the number of judges we have given the Department of Justice for asylum claim determination. So we're putting the cart before the horse.

We are defaulting to the most expensive and nonsensical way to secure appearance when there is all kinds of ways in this country that we can secure appearance and make this system more efficient. And I stand ready and willing to work with the Chairman of this committee and any Republican making sure that we secure people's appearance at court. But we don't have to separate their families and we don't, for the first time in our country's history, go on a building program of family prisons. That is not the right answer. And I look forward to the witnesses' testimony and discussion about these issues as we move forward.