

IMMIGRATION

# Family Separation Is Back

Not that it was ever really gone.

By LORELEI LAIRD

at 11:48 AM



TIMOTHY A. CLARY/AFP/Getty Images

Back in the summer of 2018, two years and approximately an eon ago, you might recall a little political kerfuffle about the Trump administration separating families. Elie Mystal put

name of deterring immigration because he clearly doesn't think Latinos are people.

Now, just in time for the anniversary of the original family separation scandal, we have what the American Immigration Council [calls Family Separation 2.0](#). This time, instead of literally



[screaming children from their parents' arms](#), they have framed it as a choice for s to make. Parents can allow the children be released without them, or they can all be detained by ICE together for as long as ICE wants. Spoiler alert: ICE wants to keep them so long that they give up and take voluntary deportation.

To understand why the Trump administration is expressing its racism in this particular way, you need a bit more background. The rights of minors in U.S. immigration custody are governed by the 1997 settlement of a case that was, at that time, called *Flores v. Reno*. (It's been reopened so many times, due to violations by the federal government, that most of the AGs of the past 30 years have been named at some point.)

The *Flores* settlement has been interpreted to protect minors accompanied by their parents as well as unaccompanied minors, and it requires (among many other things) that those minors be released “without unnecessary delay.” This is, obviously, directly contrary to the Trump administration policy of deterring immigration through abject cruelty. Unfortunately for them, binding contracts are binding [even when you don't like them](#), and the outright stealing of children turned out to be less popular than [Miller believed](#), even when the victims have the bad taste to be brown-skinned.

So they had to come up with something new, and that turns out to be “[binary choice](#)”: Give up your child or give up your child's rights. The administration has, in the past, argued in court that the mean old *Flores* settlement forced them to do this, an argument with a hole so big you can drive an ICE prisoner van through it. No law or rule or norm — literally nothing — is stopping them from releasing the parents with the children, as was routine for most asylum seekers under the Obama administration. But somehow, I doubt that possibility is going to make it into the briefs of whatever DOJ attorney has to defend this steaming turd in court.

Out of respect for the work the ACLU Immigrant Rights Project and other advocates are doing, I'd like to add that family separation never really went away. If you look through the

[minor or accused crime](#) by the parent, or [suspicions of trafficking](#) because the adult is an [extended family member](#). America's attention moved on, but the policy really didn't. It just adapted, like a [Borg drone](#).



what I think they're counting on now. I think they believe the pandemic is so  
tting that we're not going to notice them doing it all over again. Please notice.



*Lorelei Laird is a freelance writer specializing in the law, and the only person you know who still has an "I Believe Anita Hill" bumper sticker. Find her at [wordofthelaird.com](http://wordofthelaird.com).*



#### TOPICS

Immigration, Lorelei Laird, Stephen Miller

### EVOLVE THE LAW DIRECTORY

#### PRACTICE MANAGEMENT

##### Customers

Small Law Firms, Solo Practitioners



Capterra

#### INTELLECTUAL PROPERTY

##### Customers

Biglaw, Corporations,  
Small Law Firms



Featured Customers

#### LEGAL OPERATIONS

##### Customers

Biglaw, Small Law Firms, Solo  
Practitioners



Facebook



**Love ATL? Let's make it official.  
Sign up for our newsletter.**

News (daily updates)

Partner Issues

Small Law Firms

In-House Counsel

Legal Technology

Law Schools

ATL Trivia