

Trump Faces Long-Shot Bid to Jail Migrant Families Indefinitely

By [Erik Larson](#)

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- ▶ New rule faces immediate court challenge, migrants lawyer says
 - ▶ Flores changes to end ‘incentives’ for immigrants, U.S. says
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The U.S. Border Patrol Central Processing Center in McAllen, Texas. *Photographer: The Washington Post/Getty Images*

President Donald Trump’s plan to scrap a 22-year-old agreement that governs the treatment of detained migrant children is doomed to fail in court but may energize his supporters as he seeks re-election, legal experts say.

The government says it expects to publish a final rule by Friday to replace the 1997 Flores settlement, which Trump has often derided. The new regulations would allow authorities to detain migrant families

indefinitely while their cases are processed instead of abiding by a current 20-day limit on detaining children.

Peter Schey, the lead lawyer representing immigrant children in the Flores case, said he'll challenge the new rule within a week of it being published, and that he expects U.S. District Judge Dolly Gee in Los Angeles to reject it.

The terms of the Flores settlement only allow for its termination if the final rule mirrors that agreement. Instead, Schey says, the new rule violates its "central pillars," which require that migrant children be treated humanely and released as quickly as possible.

"It's possible that the Trump administration is trying to set up a legal challenge that will ultimately be decided by the Supreme Court, but more likely I think this is simply a part of the president's re-election campaign," Schey said Wednesday in an interview. "I think this will become part of his anti-immigrant re-election platform more than anything else."

In a notice to the judge Wednesday, the government said it intended to post the final regulations for public inspection Thursday, and publish them on Friday. The government and lawyers representing the immigrant children would then have until Aug. 30 to file their positions on the termination of the Flores agreement, according to the filing.

'Address the Crisis'

"This action by the administration is just one part of our overall effort, but it's an essential one that will do a great deal to address the crisis we are facing," acting Homeland Security Secretary Kevin McAleenan said at a news conference Wednesday. On Twitter, he added that the rule implements the commitments of the Flores agreement.

According to U.S. Customs and Border Protection statistics, more than 400,000 families have been apprehended on the southwestern border since October. McAleenan said the new rule will help address that.

Under the Flores settlement, migrant kids, unless they're deemed a threat to themselves or others, are to be sent to licensed child-care facilities within 20 days, or to family members in the U.S. -- a process Trump has criticized as failing to deter migrants from crossing the border illegally.

"From the start of this process, the Trump administration has made it clear they have no intention to implementing the settlement -- they wish to override the settlement," Schey said.

While legal experts say the new rule is likely to fail, Trump's attempt to implement it follows through on his campaign promise to crack down on the flow of undocumented immigrants crossing into the U.S. from

Mexico.

The new rule could deter some of those migrants, Stephen Yale-Loehr, a professor of immigration law at Cornell Law School, said in an interview Wednesday. And regardless how legal challenges play out, Trump can turn it to his advantage, he said.

“President Trump can claim that he tried to fix our broken asylum system, but that those liberal judges in California prevented him from doing so,” Yale-Loehr said. “This will be a win for Trump, even if he loses in court.”

Senate Minority leader Chuck Schumer called on the courts to block the rule.

Beth Werlin, executive director of the American Immigration Council, said the rule will traumatize children who were facing violence and danger at home.

Irena Sullivan, an immigration policy lawyer at the Tahirih Justice Center, agreed and said those fleeing such dangers need better care and treatment.

“Survivors of violence need access to trauma-informed care, not indefinite incarceration,” she said.

The case is Flores v. Barr, 85-cv-4544, U.S. District Court, Central District of California (Los Angeles).

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