

# U.S. Sen. Johnson: Majority staff report says court-mandated “catch and release” of apprehended families incentivized illegal immigration

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**WASHINGTON** — U.S. Sen. Ron Johnson (R-Wis.), chairman of the Senate Homeland Security and Governmental Affairs Committee, released a majority staff report Thursday that examines the root causes of the sharp increase in family migration and its implications, titled, “Judicial Rulings Ending the Obama Administration’s Family Detention Policy: Implications for Illegal Immigration and Border Security.”

According to data released Wednesday, the U.S. Border Patrol apprehended 27,518 illegal immigrants traveling in family units in December alone, the highest monthly total on record. More than 75,000 members of family units were apprehended in just the first quarter of fiscal year 2019, compared to 107,000 in all of fiscal year 2018.

**“This staff report explores how one legal loophole — a court decision reinterpreting the government’s 1997 Flores settlement agreement — has affected the border crisis by incentivizing families to make the dangerous journey to the border,”** Chairman Johnson stated. **“With this staff report, I**

**hope to shed more light on one of the problems bedeviling immigration enforcement. The humanitarian crisis at our southern border has evolved and changed over time, but it remains a crisis, and one that data about a wave of families and unaccompanied children shows is only getting worse.”**

The report can be found [here](#).

In 2014, the Obama administration initiated a policy to detain apprehended immigrants after they crossed the U.S. border to deter illegal immigration, and it defended the policy as necessary to address the “humanitarian situation” at the southern border following the influx of migrant children and families. 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.” Following the new policy, the number of family unit members crossing illegally decreased by 41.8 percent.

Subsequent legal challenges resulted in a Ninth Circuit Court ruling that the *Flores* Settlement Agreement, which had governed the treatment of apprehended children since the 1990s, applied to children arriving in family units. The court ruled that children must be released from detention within 20 days, even if they were detained with a parent or adult relative. In practice, the decision required the Department of Homeland Security (DHS) to choose whether to “catch and release” families or to separate children from their parents. Many migrant families now know that if they succeed in entering the United States with a child, they will be released quickly from custody while their case is heard in immigration court, a process that often takes years.

The Senate Committee on Homeland Security and Governmental Affairs held a hearing and staff conducted more than 20 briefings and interviews with current and former DHS officials and other experts to understand the implications of the reinterpretation of *Flores*. The key findings of the committee’s majority staff are:

- The *Flores* reinterpretation requires DHS to “catch and release” apprehended families at the southern border.
- Immigration and Customs Enforcement must release families (including male-headed families traveling with teenage girls) within days of apprehension and without sufficient screening for human trafficking and to ensure child welfare.

- Most of the apprehended and released family members will join the millions of people living illegally within the United States. From FY2015-FY2018, only 7 percent of non-detained illegal immigrant families were removed from the United States; conversely, 77 percent of detained illegal immigrant families were removed.
- Although most illegal aliens were determined to have a “credible fear” of returning home — halting their removal while their case proceeds — less than 21 percent of those who applied for asylum ultimately received it.