



ABA strongly opposes DHS request to detain families longer and deport minors without a hearing

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The Department of Homeland Security asked Congress last week for the right to imprison immigrant families for longer than the law currently permits, as well as the right to deport non-Mexican immigrant minors without due process of law. On Monday, ABA President Robert Carlson strongly opposed that request.

“Such a proposal is contrary to the American rule of law,” Carlson’s statement says. “Our nation places a high priority on the welfare of children, and the government should not undercut the rights of asylum-seeking children—particularly unaccompanied children—to consult with legal counsel and to be heard by an immigration judge.”

The statement comes four days after—as NBC news reported at the time—DHS Secretary Kirstjen Nielsen asked both houses of Congress for more money and more legal authority, citing a surge in immigrant arrivals. Her letter says the increase in non-Mexican arrivals—largely Central Americans seeking asylum from gang violence that their home countries can’t or won’t control—has overwhelmed the ability of the immigration agencies to detain them. Photos have also come out of people being held in an open-air fenced area under an overpass in El Paso, the Guardian reports.

In addition asking Congress for the right to deport non-Mexican immigrant minors without a hearing and the right to detain families indefinitely, Nielsen requested more funding for permanent and temporary detention facilities and more personnel for all parts of the immigration enforcement system.

Carlson’s statement noted that the ABA has long called for more resources for the immigration adjudication system, including law enforcement and asylum officers as well as immigration judges and support staff, who are not part of DHS.

However, Carlson opposed Nielsen’s other requests. He said her request for the authority to detain families pending their immigration court hearings contradicts the Flores settlement, a 1997 federal court settlement that governs much of how immigrant minors are treated.

“The ABA opposes the detention of immigrants and asylum-seekers except in cases of flight risk or danger to the community,” Carlson’s statement says. “The use of cost-effective and humane alternatives, such as family case management, has been effective to ensure families appear for their immigration court hearings.”

Detention is not mandatory for most immigrants, but Nielsen writes that most immigrants do not show up for their hearings, a belief that appears to be contradicted by the government’s own

data released by the Executive Office for Immigration Review. Another controversial claim in Nielsen's letter is that the government's "Alternatives to Detention" program is too expensive; this claim also does not appear to be supported by the evidence, NPR and the Cato Institute report.

Historic CBP statistics, which were removed from CBP's website about a year ago but are archived by the Wayback Machine, show that apprehensions of immigrants crossing between official ports of entry are down substantially from their peak around 2000, though apprehensions increased slightly in the fiscal year ending September 30. However, as Nielsen's letter notes, the composition of the arriving immigrants has changed from largely single Mexican males who can be deported without a hearing to Central American families, who have a right to hearings and limited detention.

President Trump has threatened to close the border entirely in response to the increase in asylum seekers, as the Washington Post reported Sunday.