



## Frequently Asked Questions on the Flores Agreement Settlement

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### 1) What is the [Flores Settlement Agreement](#)?

In 1997, a federal district court in California approved the [Flores Settlement Agreement](#) (*Flores*) after over a decade of litigation.<sup>1</sup> The underlying lawsuit, a class action filed on behalf of immigrant children against the legacy Immigration and Naturalization Service (INS), [challenged](#) the conditions of immigrant children in U.S. government custody.<sup>2</sup>

*Flores* sets forth foundational principles and critical protections regarding the care, custody, and release of immigrant children who are in federal custody.<sup>3</sup> Initially, *Flores* applied only to the INS, but, with its dissolution, the requirements of *Flores* presently extend to the Department of Homeland Security (DHS) (which oversees care for accompanied children) and the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) (which oversees care for unaccompanied children).<sup>4</sup>

### 2) Why is *Flores* important?

*Flores* ensures that the federal government adheres to basic standards regarding care for and release of immigrant children, both accompanied and unaccompanied, in federal custody. The agreement, which the federal government voluntarily entered into, requires that:

- Facilities provide children in their custody with access to sanitary and temperature-controlled conditions, water, food, medical assistance, ventilation, adequate supervision, and contact with family members;<sup>5</sup>
- Facilities ensure that children are not held with unrelated adults;<sup>6</sup>
- The government release children from detention without unnecessary delay to parents or other approved sponsors;<sup>7</sup> and
- If a child cannot be released from care, the child be placed in the “least restrictive” setting appropriate, based on his or her age and needs.<sup>8</sup>

### 3) Why should all protections under *Flores* remain in place?

The United States has a legal and moral obligation to ensure that all children in its custody are protected and treated with care. The *Flores* requirements were carefully crafted after over a decade of litigation to help ensure that the best interest of the child is a priority during government care of and placement decisions for unaccompanied children; these protections help prevent instances of abuse or neglect. Prior to the *Flores* requirements, the INS did not have set standards to which it adhered in regards to the detention of children. For instance, at the time in [Pasadena, CA](#), children were kept in makeshift detention centers where unrelated men, women, and children were being held together.<sup>9</sup> The children also did not have access to any type of schooling.<sup>10</sup> *Flores* improved such conditions, ensuring that children receive basic care.

### 4) How does *Flores* relate to the family separation crisis?

The Administration's Executive Order on family separation seeks to address the separation of families at the U.S./Mexico border by expanding family detention.<sup>11</sup> Specifically, the Order prompted Attorney General Jeff Sessions to file a request with Judge Dolly Gee in the District Court for the Central District of California to modify and limit *Flores* in a way that would permit the detention of families throughout the duration of their immigration proceedings and exempt the government from having to seek state licensing for family detention facilities.<sup>13</sup>

Currently, there are three family detention facilities: 1) Karnes County Residential Center, in Karnes City, Texas; 2) Berks Family Residential Center, in Leesport, Pennsylvania; and 3) South Texas Family Residential Center in Dilley, Texas. Together these three facilities operate 3,335 beds.<sup>1</sup> To learn more about family detention, see our [backgrounder](#).<sup>14</sup>

While these facilities are currently in operation, they are not licensed childcare facilities and, as such, fail to meet basic child welfare requirements. Accordingly, the federal government is limited in the amount of time it can detain an accompanied child in these facilities. Judge Gee has previously allowed that during times of influx or emergency, the government may detain children in unlicensed facilities for a period of 20 days and still meet its obligations under *Flores*;<sup>15</sup> however, in its latest petition to the court, the government sought to detain children in unlicensed facilities *indefinitely*.<sup>16</sup> Judge Gee rejected this request.<sup>17</sup>

While the judicial action around *Flores* continues, Congress has also looked to address *Flores*. [Several bills](#) that have been proposed in Congress seek to undermine these critical protections.<sup>18</sup> Such legislative efforts have been framed as efforts to address the family separation crisis by allowing families to be detained together for longer periods of time. This is very concerning given the proven long-term trauma of child detention and the [inhumane conditions of the detention centers](#).<sup>19</sup>

### 5) What happens if *Flores* is amended or altered?

If *Flores* is amended or limited, children fleeing to the United States from violence and instability in their home countries would encounter a bleak reality upon arrival here. Many of the accompanied children entering the country with their parents would face the possibility of being forced to remain in government custody (detention) through the duration of their immigration proceedings. Such changes would allow these children to be held for periods longer than 20 days and in detention facilities that are not licensed to care for them.

Holding children in family detention continues to be inhumane and has long-lasting negative consequences, as noted by the American Academy of Pediatrics (AAP).<sup>20</sup> For instance, the AAP [reported](#) that detained children experience developmental delay, poor psychological adjustment, post-traumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems. Even brief stints in detention can lead to psychological trauma and lasting mental health risks.<sup>21</sup>

### 6) Why is *Flores* important to the Church?

The Catholic Church believes that all people should be treated with human dignity and care. Through its work with unaccompanied children, USCCB has created the Safe Passages program, which serves the residential care needs of unaccompanied children in HHS custody and aids in the reunification of children with

their families.<sup>22</sup> Our direct service experiences reinforce the vital importance of the *Flores* protections.

Further, the Church has long been opposed to the detention of children. The Vatican Dicastery on Migrants and Refugees has formally noted that holding children in facilities, particularly those that are unlicensed to care for children, is never in a child's best interest.<sup>23</sup> In his [20 Action Points for the Global Compacts](#), Pope Francis encourages States to adopt policies and practices which promote and preserve the well-being of the family structure, independent of their migratory status, which includes enacting laws that allow for the reunification of families.<sup>24</sup> We believe that families can be treated humanely and can comply with their immigration proceedings without being separated and without being indefinitely detained.

#### **7) How can Congress ensure that all children in the government's custody are adequately protected?**

- Reject proposals to undermine *Flores* and expand family detention;
- Request that regulations implemented by the Administration properly codify the existing *Flores Settlement Agreement*;
- Utilize congressional oversight authority to ensure that children are not held for prolonged periods in unlicensed family detention facilities; and
- Support proven and cost-effective [Alternatives to Detention](#) (ATDs)<sup>25</sup> for arriving families who are seeking protection.

## Endnotes

1. Settlement Agreement, *Flores, et al. v. Reno*, Case No. CV 85-4544-RJK (C.D. CA, 1997), available at [https://cliniclegal.org/sites/default/files/attachments/flores\\_v\\_reno\\_settlement\\_agreement\\_1.pdf](https://cliniclegal.org/sites/default/files/attachments/flores_v_reno_settlement_agreement_1.pdf).
2. Human Rights First, *The Flores Settlement A Brief History and Next Steps* (February 2016), <https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps>.
3. When the U.S. government began detaining family units together in 2014, the U.S. District Court for the Central District of California ruled that “accompanied” children were also protected under the principles of *Flores*, including those who were being held in family detention facilities. The Ninth Circuit Court affirmed this decision in 2016; and, in 2017, the District Court held that Immigration & Customs Enforcement (ICE), it obligated to minimize the detention of all minors.
4. See *Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al.*, Case No. 2:85-cv-04544, 11 (9th Cir. July 5, 2017), available at <https://www.aila.org/infonet/ca9-flores-v-sessions-07-05-17>.
5. *Flores*, supra note 1, at 7-8.
6. *Id.* at 8.
7. *Id.* at 6.
8. *Id.* at 4.
9. All Things Considered, *The History of the Flores Settlement and Its Effects on Immigration*, NPR (June 22, 2018), <https://www.npr.org/2018/06/22/622678753/the-history-of-the-flores-settlement-and-its-effects-on-immigration>.
10. *Id.*
11. Exec. Order No. 13841, 83 Fed. Reg. 29,435 (June 20, 2018).
12. *Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al.*, Case No. CV 85-4544, Dkt. No. 455, 1 (C.D. Cal. July 9, 2018), available at <https://www.aila.org/File/Related/14111359ac.pdf>.
13. Jacqueline Thomsen, *Family Immigration Detention Centers Could Be at Capacity Within Days: Report*, THE HILL (June 20, 2018), <http://thehill.com/latino/393394-family-immigration-detention-centers-could-be-at-capacity-within-days-report>.
14. Family Detention, JUSTICE FOR IMMIGRANTS (February 6, 2017), [https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/family-detention/#\\_edn3](https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/family-detention/#_edn3).
15. *Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al.*, Case No. CV 85-4544, Dkt. No. 363, 30-31 (C.D. Cal. June 27, 2017), available at <https://www.aila.org/File/Related/14111359v.pdf>.
16. *Flores v. Sessions*, supra note 12, at 3-4.
17. *Id.* at 7.
18. Legislation Impacting Family Separation at the U.S./Mexico Border, JUSTICE FOR IMMIGRANTS (June 29, 2018), <https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/family-separation/legislation-impacting-family-separation-at-the-us-mexico-border/>.
19. Nomaan Merchant, Hundreds of Children Wait in Border Patrol Facility in Texas, ASSOCIATED PRESS (Jun. 18, 2018), <https://apnews.com/9794de32d39d4c6f89fbefaea3780769/Hundreds-of-children-wait-in-Border-Patrol-facility-in-Texas>.
20. JULIE M. LINTON, ET AL., DETENTION OF IMMIGRANT CHILDREN, AMERICAN ACADEMY OF PEDIATRICS, 6 (APRIL 4, 2017), <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>
21. *Id.*
22. United States Conference of Catholic Bishops, Federal Government Grants to Support USCCB MRS Programs and Services, <http://www.usccb.org/about/migration-and-refugee-services/federal-government-grants-to-support-usccb-mrs-programs-and-services.cfm>.
23. Migrants and Refugees Section Integral Human Development, Towards the Global Compacts on Refugees 2018, 36 (2018), <https://migrants-refugees.va/wp-content/uploads/2018/03/Legal-size-ENG-2nd-Edition-Towards-the-Global-Compacts-2018-EMAIL.pdf>.
24. *Id.*
25. USCCB/MRS et al., The Real Alternatives to Detention, JUSTICE FOR IMMIGRANTS, available at <https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/real-alternatives-detention/> (last visited Aug. 16, 2018).