



Written Statement of

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**For a Hearing of the
Full Senate Committee on Homeland Security and Government Affairs**

**“The Implications of the Reinterpretation of the Flores Settlement Agreement
for Border Security and Illegal Immigration Incentives”**

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1. Introduction

My name is William Canny. I am the Executive Director of the Department of Migration and Refugee Services (MRS) within the U.S. Conference of Catholic Bishops (USCCB). On behalf of USCCB/MRS, I would like to thank the Senate Homeland Security & Governmental Affairs Committee, Chairman Senator Ron Johnson (R-WI), and Ranking Member Senator Claire McCaskill (D-MO) for the opportunity to submit this written statement for the record.

USCCB/MRS has operated programs, working in a public/private partnership with the U.S. government, to help protect unaccompanied children from all over the world for nearly 40 years. Additionally, the Catholic Church in the United States has long worked to support immigrant families who have experienced immigrant detention, providing legal assistance and pastoral accompaniment and visitation within immigrant detention facilities, as well as social assistance upon release. Through this work, we have seen the importance of the protections set forth in the Flores Settlement Agreement of 1997 (Flores),¹ and we have worked to help implement and ensure government compliance with these requirements.

In this statement, I give context to what we are seeing as the primary factors leading to forced migration of children and families, share insights from our work serving unaccompanied and accompanied children and their families, and offer recommendations to: (1) address root causes of migration; (2) help ensure that immigrant children and families are protected and treated with dignity; and (3) ensure such children and families are in compliance with their immigration proceedings, while maintaining the existing protections of Flores.

2. Catholic Experience Assisting Immigrant Families and Children in Federal Custody

Since 1994, USCCB/MRS has operated the “Safe Passages” program. This program serves undocumented immigrant children apprehended by the Department of Homeland Security (DHS) and placed in the custody and care of the Office of Refugee Resettlement (ORR), within the Department of Health and Human Services (HHS). Through cooperative agreements with ORR, and in collaboration with community-based social service agencies, the Safe Passages program provides community-based residential care (foster care and small-scale shelter placements) to unaccompanied children in ORR custody, as well as family reunification services (pre-release placement screening and post-release social services for families). In fiscal year 2017, the USCCB/MRS Safe Passages program served 1,294 youth who arrived as unaccompanied children—1,042 through the family reunification program and 252 through the residential care programs.

In addition to providing programming and care for unaccompanied children, the Catholic Church has been a leading service provider for detained immigrant families, as well as a vocal opponent² against family

¹ Settlement Agreement, *Flores 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

² The Catholic Bishops addressed immigrant detention explicitly in *Responsibility Rehabilitation and Restoration, A Catholic Perspective on Crime and Criminal Justice*, stating: “We bishops have a long history of supporting the rights of immigrants. The special circumstance of immigrants in detention centers is of particular concern. [The government] uses a variety of methods to detain immigrants some of them clearly inappropriate.” USCCB, *Responsibility Rehabilitation and Restoration: A Catholic Perspective on Crime and Criminal Justice* (Nov. 15, 2000), available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/crime-and-criminal-justice.cfm> Additionally, Bishop Eusebio Elizondo, then-Chairman of the U.S. Conference of Catholic Bishops’ Committee on Migration, wrote to Department of Homeland Security (DHS) Secretary Jeh Johnson in 2015 opposing family detention, declaring that “it is inhumane to house young mothers with children in

detention. Immigrant detention, particularly the detention of families and children, is an explicit and long-standing concern of the Catholic Church. Each day, the Church witnesses the baleful effects of immigrant detention in ministry, including pastoral and legal work in prisons and detention centers. Catholic entities serve separated families that struggle to maintain a semblance of normal family life and host support groups for the spouses of detained and deported immigrants. We lament the growth of family detention centers, which undermine families and harm children. We have seen case after case of families who represent no threat or danger, but who are nonetheless treated as criminals and detained for reasons of enforcement. We further view immigrant detention from the perspective of Biblical tradition, which calls us to care for, act justly toward, and identify with persons on the margins of society, including newcomers and imprisoned persons.

Besides advocating for reform of the existing detention system, USCCB/MRS has operated several alternatives to detention programs to assist immigrant families and other vulnerable populations. From 1999 – 2002, INS (Immigration and Naturalization Service), the legacy DHS department, collaborated with Catholic Charities of New Orleans to work with 39 asylum seekers released from detention and 64 “indefinite detainees” who could not be removed from the United States. The court appearance rate for participants was 97%. From January 2014 to March 2015, the USCCB/MRS (in partnership with Immigration and Customs Enforcement (ICE)) ran a community support alternative to detention program through its Catholic Charities partners in Baton Rouge, Louisiana and in Boston, Massachusetts that utilized case management and served individuals who would have not been ordinarily released from detention. The program yielded an over 95% appearance rate and included four family units. Additionally, from 2015-2016, the Catholic Legal Immigration Network (CLINIC) provided direct legal service assistance to families held in the family detention facility in Artesia, New Mexico. CLINIC also currently provides direct legal assistance to families in the South Texas Family Residential Facility in Dilley, Texas through the CARA Pro Bono Project.³

3. Understanding the Root Causes That Are Forcing Children and Families to Flee

U.S. government officials have recently made public statements⁴ attempting to frame the Flores Settlement Agreement as a pull factor for arriving asylum-seeking families coming to the United States. The reality, however, is that violence and internal displacement continue within the Northern Triangle countries (El Salvador, Guatemala, and Honduras) unabated and that much of the violence is targeted at the vulnerable families and children who are subsequently forced to flee for safety. Through our work on the ground with Catholic partners, we know that entire families, not just children, are currently facing targeted violence and displacement. It is these realities - gang and domestic violence, impunity, and lack of opportunity related

restrictive detention facilities as if they are criminals.” *USCCB Chairman Decries Opening of Family Detention Center in Dilley, Texas, Proposes More Humane Alternatives to Detention for Vulnerable Families*, USCCB (December 16, 2004), <http://www.usccb.org/news/2014/14-201.cfm>

³ The CARA Pro Bono Project is a joint effort by the American Immigration Lawyers Association, American Immigration Council, Catholic Legal Immigration Network, and RAICES. It operates out of the South Texas Family Residential Facility in Dilley Texas, assisting with direct immigration services since 2015.

⁴ In its September 12, 2018 statement on the August U.S. Mexico Border numbers, DHS states: “Smugglers and traffickers understand our broken immigration laws better than most and know that if a family unit illegally enters the U.S. they are likely to be released into the interior. Specifically, DHS is required to release families entering the country illegally within 20 days of apprehension.” *Statement of DHS Press Secretary on August Border Numbers*, DEPARTMENT OF HOMELAND SECURITY (September 12, 2018), <https://www.dhs.gov/news/2018/09/12/statement-dhs-press-secretary-august-border-numbers>

to displacement and violence - that cause families to flee north for protection, not awareness of Flores and its legal litigation progeny. Due to conditions in the Northern Triangle, families face forced migration; and, many of these families are truly fleeing persecution. As such, they should not be held in detention facilities but instead be allowed to pursue their asylum claims in a more humane and cost-effective manner. Proposed changes to Flores will erode existing protections for such asylum-seeking children, while ignoring the larger holistic migration issue that must be addressed on a regional level.

The Church in Guatemala, Honduras and El Salvador is experiencing, publicly reflecting on, and responding to the escalation of violence in urban communities, in rural communities, and to family units. In his pastoral letter, "I See Violence and Strife in the City," Most Reverend José Luis Escobar Alas, Archbishop of San Salvador, stated: "[t]he faithful know that they are being monitored in their comings and goings in the communities. The same applies to pastoral agents who are constantly watched . . . The exodus of families is heartbreaking . . . It is truly unfortunate and painful that the Church cannot work because of this atmosphere of insecurity and anxiety that shakes our beloved country."⁵ The Archbishop describes one parish alone that in one year was "exposed to murder, persecution, exodus, and extortion," including the murder of six active parishioners by stabbing, dismemberment, or firearms.⁶

The presence of the gangs is widespread and continues to grow. Some studies assert there are 70,000 gang members in El Salvador alone, while others cite lower numbers for El Salvador but up to 22,000 members in Guatemala.⁷ Extortion is the driving force behind the gang growth and control. It represents a direct cost to businesses of \$756 million/year in El Salvador.⁸ Extortion is considered one of the leading causes of forced displacement of families in gang-controlled communities. In many cases, gang violence directed at a person involves threats to his or her whole family group and breaks down the social fabric of communities, as people are forced to flee with their families.

This targeting of entire families is a relatively newer element in the Northern Triangle and corresponds to the higher numbers of asylum-seeking families that the U.S. has apprehended in the last few years.⁹ Many Catholic and other civil society NGO service organizations that serve people affected by violence and forced displacement¹⁰ have attempted to attend to people who frequently leave their homes against their will to

⁵ Most Reverend Jose Luis Escobar Alas, *I See Violence and Strife in the City: A Pastoral Letter on the Occasion of the Feast of the Beloved Blessed Oscar Romero*, 18 (March 24, 2016).

⁶ *Id.* at 15.

⁷ INTERNATIONAL CRISIS GROUP, *MAFIA OF THE POOR: GANG VIOLENCE AND EXTORTION IN CENTRAL AMERICA 17* (2017), available at https://d2071andvip0wj.cloudfront.net/062-mafia-of-the-poor_0.pdf; United Nations Office of Drugs and Crime (UNODC) *Transnational Organized Crime in Central America and the Caribbean, a threat assessment*, 2012.

⁸ *Id.*

⁹ See, e.g., *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Statement on Fiscal Year 2013- 2016*, CUSTOMS AND BORDER PROTECTION (Oct. 18, 2016), <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

¹⁰ The issue of forced internal displacement is especially troublesome in El Salvador and Honduras. In 2016, El Salvador was second in the world in terms of the number of new displacements relative to population size, exceeding countries such as Libya, South Sudan, and Afghanistan. There are an estimated 220,000-400,000 internally displaced persons (IDPs) in El Salvador, many displaced by violence but not officially recognized by the government. The Salvadoran government's inability to publicly acknowledge the issue of IDPs who are displaced due to violence prevents larger measures to address protection frameworks from being implemented to assist with this migration phenomenon. In Honduras, UNHCR estimates that there are 174,000 IDPs. A recent study estimates that from 2004 - 2014, approximately 41,000 households within 20 municipalities were internally displaced because of violence or

save their own and their families' lives. Many families initially seek safety in other areas within their home countries. As these families have been victimized to the point of being forced to move and be displaced from their homes, they then often struggle to acclimate to the new communities in which they are living. Facing hardships relating to finding employment and securing safety (given the widespread gang networks), families begin to feel increasingly desperate to migrate to find safe and secure living conditions. As such they begin to look to leave their home countries and migrate internationally in search of protection. This was the case for Reyna¹¹ and her family:

Reyna and her two daughters lived in El Salvador in a neighborhood that was contested gang territory. The dangers of the area were evidenced by the murders of her children's fathers. Reyna lived near a house that gang members would bring women they kidnapped. One evening, eight gang members came and informed Reyna that she knew too much about the gang's involvement; they informed her that she must join the gang as a girlfriend or be killed. Reyna and her daughters fled her community and moved to another town in El Salvador. For a short time, Reyna was able to prosper, but the gangs quickly found her. This time, they threatened her and demand that both she and her daughter join the gang as girlfriends. Reyna fled north immediately with no possessions. Reyna was detained at the South Texas Family Residential Facility in Dilley, Texas, in 2016 with her two daughters. She was assisted by the CARA Pro Bono Project and passed her credible fear interview and was subsequently released from family detention. She is currently applying for asylum.

Reyna and her family have experienced extreme trauma with mental health consequences. When interviewed about her experience, Reyna, like many asylum-seeking parents who make the dangerous journey with their children, spoke of the desire to stay in El Salvador, her efforts to relocate prior to migrating north, and her desire to find safety and protection for her daughters.

Amending the Flores Settlement Agreement will not stop mothers like Reyna from coming and seeking protection in the United States. Rather, it will ensure that more families like Reyna and her daughters experience the long-lasting consequences of prolonged detention.

4. Altering Flores to Expand Family Detention Would Harm Both Children and Taxpayers

The Flores Settlement Agreement was the result of over a decade of litigation. Flores sets forth foundational principles and critical protections regarding the care, custody, and release of immigrant children – both accompanied and unaccompanied – who are in federal custody.¹² The agreement, which the federal government voluntarily entered into, requires (in part) 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;¹³ facilities ensure that children are not held with

insecurity. INTERNAL DISPLACEMENT MONITORING CENTRE, 2016 GLOBAL REPORT INTERNAL DISPLACEMENT IN 2016 (2017), available at <http://internal-displacement.org/global-report/grid2017/>; UNHCR HONDURAS FACT SHEET (March 2017), available at <http://reporting.unhcr.org/sites/default/files/UNHCR%20Honduras%20Fact%20Sheet%20-%20March%202017.pdf>; INTERINSTITUTIONAL COMMISSION FOR PROTECTION OF DISPLACED PEOPLE DUE TO VIOLENCE, CHARACTERIZATION OF INTERNAL DISPLACEMENT IN HONDURAS 12 (2015).

¹¹ Name and identifying information changed to protect client confidentiality.

¹² 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.

¹³ Flores, *supra* note 1, at 7-8.

unrelated adults;¹⁴ the government release children from detention without unnecessary delay to parents or other approved sponsors;¹⁵ 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.¹⁶ As it relates to the custody of children, Flores also mandates that the government typically transfer immigrant children to facilities that are licensed by the state for childcare.¹⁷

The three family detention facilities - Karnes County Residential Center, Berks Family Residential Center, and South Texas Family Residential Center - currently operate a combined 3,326 beds.¹⁸ These facilities are not licensed for childcare in their respective states and, as such, fail to meet basic child welfare requirements set forth in Flores. Further, because the family detention centers are unlicensed, the federal government is limited in the amount of time it can detain an accompanied child in these facilities. The District Court for the Central District of California 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;¹⁹ however, in its latest petition to the court, the government sought to detain children in unlicensed facilities indefinitely.²⁰ The court rejected this request.²¹ Nevertheless, the Administration continues to suggest that amending this requirement is necessary.²²

Proposals such as these are deeply troubling and would have severe implications for accompanied children, their families, and the U.S. taxpayer. If Flores is amended or limited, many of the accompanied children entering the country with their parents would face the possibility of being forced to remain in 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. Licensing requirements are vital to ensure that facilities meet basic child welfare standards and children are protected from abuse. Further, holding children in family detention has been proven to have long-lasting negative consequences. For instance, the American Academy of Pediatrics has 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.²³

Additionally, detaining families that do not present a flight or safety risk is an unnecessary use of limited DHS resources. Costs in FY 2019 are anticipated to be \$319 per individual/per day for those in family

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5-6.

¹⁸ Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Fed. Reg. 45,486, 45,512 (Sept. 7, 2018).

¹⁹ *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>.

²⁰ *Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al.*, Case No. CV 85-4544, Dkt. No. 455, 3-4 (C.D. Cal. July 9, 2018), available at <https://www.aila.org/File/Related/14111359ac.pdf>.

²¹ *Id.* at 7.

²² 83 Fed. Reg. at 45,494.

²³ JULIE M. LINTON, ET AL., AMERICAN ACADEMY OF PEDIATRICS, DETENTION OF IMMIGRANT CHILDREN 6 (2017), available at <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>.

detention.²⁴ In comparison, alternative programs such as the Family Case Management Program cost only \$36 per individual/per day and had a 99% compliance rate.²⁵ Proposals to alter Flores consistently ignore the fact that DHS has a spectrum of humane, proven, and cost-effective alternatives to detention that it can utilize (and is utilizing in some cases) to monitor released families.

5. Recommendations to Maintain Existing Flores Protection While Ensuring Humane Enforcement

In light of these concerns and vulnerabilities, we recommend the following ways in which we can provide humane care to immigrant children and families in accordance with Flores and still ensure compliance with our immigration laws and fairness to U.S. taxpayers:

- **Invest Robustly in a Variety of Alternatives to Detention.** Congress should more robustly fund alternatives to detention in the DHS budget. Congress should also ensure that DHS is working to undertake and pilot diverse alternatives to detention programming - in the form of the Intensive Supervision Appearance Program (ISAP) as well as alternatives to detention programming that utilize case management and, in some cases, NGO civil society participation. Congress should instruct DHS to publicly report on the outcomes of these programs and ensure that a continual pilot period is undertaken to secure transparent and viable data on the effectiveness of such programs.
- **Create Greater Capacity for Effectuating Legal Outcomes for Asylum-Seeking Families.** Congress should further invest in augmenting the capacity of the immigration courts by hiring more judges and providing additional funding for new courtroom facilities. Additionally, Congress should ensure robust funding for legal information programs such as the Legal Orientation Program and the Information Help Desk, which do not fund immigration counsel but help provide information to detained and released immigrants to ensure they know more about compliance requirements.
- **Address Root Causes of Migration with Trauma-Informed Responses.** More interdisciplinary programming and funding needs to be implemented to address root causes of migration in the Northern Triangle. Programming must address the actual social service needs of vulnerable children and families who are currently in forced migration situations. Special consideration should be given to funding initiatives like safe repatriation services, home country needs assessments and referrals, and aid that strengthens educational and work opportunities.
- **Maintain Existing Protections for Unaccompanied and Accompanied Children.** Given the long-lasting physical and mental consequences of detention on children, proposals seeking to alter existing safeguards relating to such detention must be firmly rejected. Immigrant children should be viewed as children first and foremost.
- **Augment Existing Trafficking Training and Prevention Tools to Ensure Customs and Border Protection (CBP) Can Adequately Screen and Identify Trafficking Situations.** To the extent there

²⁴ DEP'T OF HOMELAND SECURITY, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT BUDGET OVERVIEW CONGRESSIONAL JUSTIFICATION, FISCAL YEAR 2018, 128 (2018), *available at* https://www.dhs.gov/sites/default/files/publications/CFO/17_0524_U.S._Immigration_and_Customs_Enforcement.pdf.

²⁵ GEO CARE, SUMMARY REPORT: FAMILY CASE MANAGEMENT PROGRAM 2 (2017).

are concerns about traffickers using children to enter the U.S. and avoid detention, Congress should ensure that appropriate funding and resources are dedicated to the training of CBP officers on this topic. In particular, CBP should utilize NGOs with experience and expertise in anti-trafficking in their training efforts.

Conclusion

As always, USCCB/MRS stands ready to offer our assistance to Congress and the Administration to address the root causes of forced migration and ensure families are treated with dignity but also understand and comply with their immigration requirements.