



Photo: CNS/Sedat Suna

10 Things You Should Know about the New Flores Regulations

What is the Flores Settlement Agreement? What does Flores do?

The Flores Settlement Agreement (“Flores”) is an agreement that the federal government reached in 1997 with immigration advocates over the care of immigrant children in their custody. 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. 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. Further, Flores states that facilities must ensure that children are not held with unrelated adults, that the government release children from detention without unnecessary delay to parents or other approved sponsors, and that 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. 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.

What is the latest news on Flores?

On August 23rd, the Administration issued final regulations [titled](#)¹, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” which would alter the way the federal government implements Flores.

How do the new regulations change Flores?

The Administration’s rule would in part:

- Create a separate approval process for family detention facilities that could bypass state licensing requirements;
- Allow for prolonged detention of immigrant children and families; and
- Expand existing “emergency” exceptions to Flores protections.

Isn’t Flores settled law? How can the Government do this?

Flores did envision that the federal government would issue regulations to implement the agreement. Under the agreement, within 45 days of the regulations being implemented, Flores would no longer be valid. While the government has the right to propose such rules, the rulemaking that was issued on August 23rd does not adequately incorporate and reflect the key protections that Flores provides to children.

When will this new rule go into effect?

The Administration hoped to have the new rule take effect on October 22, 2019, however, litigation has currently halted the rule's implementation.²

Who is challenging this rule in court?

The rule has been [reviewed](#) by Judge Dolly M. Gee in the U.S. District Court for the Central District of California, as she presides over implementation of and ongoing litigation surrounding the original Flores Settlement Agreement.³ On September 27th, Judge Gee issued a permanent injunction, blocking the implementation of the rule.⁴ The government will likely appeal this decision.

Did USCCB/Migration and Refugee Services (USCCB/MRS) submit a comment on this rule when it was initially being proposed?

Yes. In addition to having serious consequences relating to family detention, these proposed regulations directly affect the work that USCCB/MRS and our partner Catholic Charities agencies provide assisting children and families. As such, USCCB opposed this rule when it was initially proposed by DHS and HHS by submitting [comments](#)⁵ detailing our concerns and urging that the rule be rescinded.

I also submitted a comment on the proposed rule. Where can I find a response?

While agencies must consider all relevant comments, they are not required to respond to each comment individually. You can, however, see the agencies' general responses to topics and objections raised in the comments in Section V of the [final rule](#).⁶

Has USCCB's Committee on Migration spoken out against the new rule?

Yes. On August 23rd, Bishop Joe S. Vásquez of Austin, Chairman of the United States Conference of Catholic Bishops' (USCCB) Committee on Migration, [condemned the new rule](#),⁷ stating: "This rule will jeopardize the well-being and humane treatment of immigrant children in federal custody and will result in children suffering long-lasting consequences of being held for prolonged periods in family detention. We oppose this rule that we believe is unlawful and inhumane."

How can I learn more?

For more information about the Flores Settlement Agreement, see our [Frequently Asked Questions](#) backgrounder.⁸

Endnotes

¹ "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children," 84 Fed. Reg. 44,392 (Aug. 23, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-08-23/pdf/2019-17927.pdf>.

² See *Jenny L. Flores, et al. v. William P. Barr, et al.*, Case No. 2:85-cv-045440DMG-AGR, Dkt. No. 688, 24 (C.D. Cal. Sept. 27, 2019), available at <https://www.documentcloud.org/documents/6433136-Flores-settlement-Gee-permanent-injunction.html>.

³ Maria Sacchetti, *California Leads Effort to Block Trump Move to Detain Migrant Children Longer*, THE WASHINGTON POST (Aug. 26, 2019), available at https://www.washingtonpost.com/immigration/california-leads-effort-to-block-trump-move-to-detain-migrant-children-longer/2019/08/26/463debee-c820-11e9-a1fe-ca46e8d573c0_story.html.

⁴ See *Flores v. Barr*, *supra* note 2.

⁵ U.S. Conference of Catholic Bishops, Comments in Response to Proposed Rulemaking on "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children" (Oct. 23, 2018), available at <http://www.usccb.org/about/general-counsel/rulemaking/upload/NPRM-MRS-Flores-Comments-DHSDocketNo-ICEB-2018-0002-10-12-FINAL.pdf>.

⁶ 84 Fed. Reg. 44,392, *supra* note 1.

⁷ USCCB News Release, *Chair of USCCB's Committee on Migration Denounces New Rule Undermining Existing Protections for Immigrant Children* (Aug. 23, 2019), <http://www.usccb.org/news/19-154.cfm>.

⁸ Frequently Asked Questions on the Flores Settlement Agreement, JUSTICE FOR IMMIGRANTS (2018), <https://justiceforimmigrants.org/wp-content/uploads/2018/08/Flores-Agreement-Settlement-1.pdf>.