



Flores Settlement Agreement

Updated: October, 2020

In 1985, two organizations filed a class action lawsuit on behalf of immigrant children detained by the former Immigration and Naturalization Service (INS) challenging procedures regarding the detention, treatment, and release of children. After many years of litigation, the parties reached a settlement in 1997. The Flores Settlement Agreement imposed several obligations on the immigration authorities.

The government is required to release children from immigration *detention* in this priority of preference:

- Parents, other adult relatives as well as licensed programs willing to accept custody.
- Where a suitable placement is not immediately available, the government is obligated to place children in the “least restrictive” setting.

The Unaccompanied Alien Children program was transferred to the Office of Refugee Resettlement (ORR) by the Homeland Security Act of 2002, effective on March 1, 2003. Once the ORR assumed responsibility, the Flores Settlement was implemented.

Facts You Should Know

- **2014:** the federal government responded to an increase in the number of children seeking protection at the border by increasing the number of family detention beds from 90 to 3,700.
- **2015:** U.S. District Court for the Central District of California rules that the federal government’s family detention policy violated the terms of the Flores Settlement Agreement.
- **2016:** U.S. Court of Appeals for the Ninth Circuit affirms that the Flores Agreement applies to accompanied minors in addition to unaccompanied minors.
- **2017:** The District Court finds that the government is failing to comply with its obligations under Flores.
- **2018:** The Administration has sought to expand and entrench the use of family incarceration. Two executive orders by President Trump, issued in January 2017 and in June 2018, called for the incarceration of asylum seekers and migrants while awaiting their immigration cases, versus releasing for a future court date.
- **2019:** U.S. District Court Judge Dolly M. Gee issued a permanent injunction, blocking the government from implementing new regulations that would expand its ability to detain migrant children with their parents for indefinite periods of time.
- The Justice Department urged the judge to allow the Trump administration to withdraw from the Flores Settlement Agreement. Judge Gee’s decision was sent to the Ninth Circuit Court of Appeals.
- **2020:** the Ninth Circuit Court of Appeals cancelled (vacated) oral arguments that had been scheduled for April due to COVID-19.

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