

Flores Settlement Agreement

August 2019

What is the Flores Settlement Agreement

The Flores Settlement Agreement **set a nationwide standard** for the detention, release, and treatment of all minors in the custody of federal immigration authorities in the U.S. The 1997 agreement settled a class action lawsuit filed against the federal government on behalf of unaccompanied minors being held in custody.¹ Under the agreement, the federal government is bound by certain minimum standards designed to **ensure that all children in immigration custody** are treated “with dignity, respect and special concern for their particular vulnerability as minors.”

The terms of Flores apply to all migrant children – those who arrive by themselves or with a parent. Under Flores, children are required to be **released from immigration detention within 20 days**, and if no suitable placement is available to them, must be housed in the least restrictive setting appropriate for their age and needs. With the Flores agreement in place, if a parent comes to the United States with a child, the government has one of two choices: to separate the parents from their children; or to release the child along with the parent to ensure the child is not detained beyond the 20-day period. Flores does not require the release of parents.

The Flores settlement is not a legal loophole. Families released from immigration detention are still placed in removal proceedings and are expected to appear before an immigration judge. **Flores was implemented to protect children** by giving families who have a credible fear of return the opportunity to live in the community instead of in detention and to send their children to school while proceeding with their asylum or other claims.

Evolving over the years

With the elimination of the Immigration and Naturalization Service, the Department of Homeland Security (DHS) became charged with implementing and following the regulations set out in Flores for accompanied minors, while the Department of Health and Human Services (HHS) was given custodial responsibility for all unaccompanied children.

In 2003, Congress passed a law requiring that unaccompanied migrant children be placed in the care of the federal Office of Refugee Resettlement (ORR), an agency meant to prioritize child welfare, as a way of distancing children from the adult detention model. The law marked a big step in protecting

¹ https://cliniclegal.org/sites/default/files/attachments/flores_v._reno_settlement_agreement_1.pdf

this population, because ORR was equipped to place children in less-restrictive settings, provide case management, and send kids to school.

In 2015, **the settlement was strengthened and expanded.**² New requirements were placed on the government to:

- promptly and expeditiously make efforts to reunify families and release children from detention;
- release children to parents or release families together, when possible;
- require that if a child must be detained, that they are detained in a non-secure facility;
- end the state licensing process that allowed family detention facilities to exist;
- improve conditions where children and families are held; and monitor compliance with Flores.

Efforts to end the Flores Settlement Agreement

The Flores settlement is not law, but rather an agreement from the government to ensure that migrant children are adequately protected. In September 2018, the Department of Homeland Security issued a proposed rule aimed at terminating the Flores Settlement Agreement.

On August 23, 2019, a final rule change was published that would end the vital protections outlined in the settlement.³ Under the new rule, children could be held in unlicensed facilities for indefinite periods of time. Before it can go into effect, the new regulation will require approval from a Federal judge - the same judge who last year declined their request to avoid compliance with the settlement. It is expected that if the rule is blocked from going into effect, the government's court case could continue indefinitely.⁴

² <https://www.humanrightsfirst.org/blog/flores-ruling-and-possible-end-family-detention>

³ <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-17927.pdf>

⁴ <https://www.dhs.gov/news/2019/08/21/dhs-and-hhs-announce-new-rule-implement-flores-settlement-agreement>