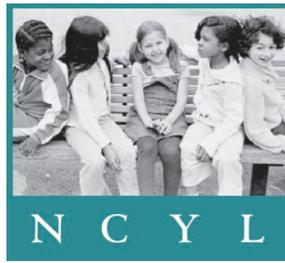




Tornillo, photo courtesy of Reuters

The Flores Settlement Agreement & Unaccompanied Children in Federal Custody



U.C. Davis Immigration Law Clinic

This briefing document was prepared by the National Center for Youth Law, co-counsel on *Flores*, along with the Center for Human Rights and Constitutional Law and the University of California Davis School of Law Immigration Clinic. For further information on the issues presented in this briefing, please contact Lewis Cohen, Communications Director at the National Center for Youth Law (email: lcohen@youthlaw.org; phone: (510) 835-8098, ext. 3045).

This briefing document is focused on issues relating to unaccompanied children in federal immigration custody. The *Flores* Settlement Agreement also applies to accompanied children in federal custody, who are not discussed in this document.

Assertions contained within this document are based on *Flores* counsel's conversations with numerous detained children, potential sponsors, and children's immigration attorneys over the past few years. Featured quotes are taken from statements by detained children and potential sponsors completed by *Flores* counsel over the past year.

Overview

Every year, thousands of unaccompanied children arrive in the United States to escape persecution in foreign countries. Children who arrive without a parent or legal guardian are classified as “unaccompanied” and transferred to the custody of the Office of Refugee Resettlement (ORR), where they remain detained until they are released to sponsors.¹

Over the course of 2018, the total population of children in ORR custody increased by more than 97 percent – reaching its highest level in history – even though the number of children arriving at the U.S. border remains comparable to years past. So many children are now languishing in ORR custody that the agency has begun detaining children at unlicensed, “influx” facilities. Recent changes in policy and practice have led to unnecessary delays and obstruction in the release of these children to their families. These policies and practices have increased the suffering of immigrant children and families, while increasing the burden on taxpayers as well.

The *Flores* Settlement Agreement, reached in 1997, applies child welfare protections to vulnerable immigrant children. The Settlement sets national standards for the detention and treatment, with a preference for prompt release, of all minors detained in the custody of the federal government, and is critical to the ongoing protection of these children. The Trump Administration has indicated that it aims to eliminate the Settlement Agreement.

This briefing is intended to provide a comprehensive overview of the current state of unaccompanied children in ORR custody, such that legislators can pursue solutions to protect the best interests of this vulnerable population.

To that end, this briefing addresses the following topics:

1. Background on the *Flores* Settlement Agreement
2. Current state of unaccompanied children in the United States
3. Solutions

“Being detained for such a long time has made me feel really bad. I never used to have such problems with depression or anxiety, but since I have been detained I have become much more frustrated. Being detained at Yolo makes me feel like I am going crazy.

I am always alone with my thoughts and bad memories of things that have happened to me run through my head all day. I don’t know how I can improve my mental health if I am kept in a cage.”

Child
Yolo Secure Detention Facility, CA

“I feel like I am a prisoner here, but I have not done anything wrong. Every morning I wake up crying because I want to be with my family. It is difficult for me to be here because I don’t know what is going to happen to me.

The staff members tell me what they are not allowed to treat us with any sort of affection. They are told that we are not their children, so they should not treat us with any affection.”

Child
Homestead, FL

Background: The Flores Settlement Agreement

The *Flores* lawsuit was filed in 1985 in order to address the mistreatment of immigrant children in federal custody. The case settled in 1997 and remains under the supervision of U.S. District Judge Dolly Gee in the Central District of California. The *Flores* Settlement Agreement sets national standards for the detention, treatment, and release of all minors detained in the custody of the federal government. Plaintiffs have filed multiple motions to enforce the Settlement against the government's violations of its terms.

The Settlement requires ORR to promptly release children to appropriate sponsors.

- Children must be released “without unnecessary delay” to a sponsor, which may be a parent, relative, designate of the parent, or responsible adult, as deemed appropriate.²

The Settlement was created to bring child welfare protections to children in immigration custody.

- Children must be held in the “least restrictive setting” appropriate, based on his or her age and needs.³

With limited exceptions, discussed below, the Settlement requires ORR to place unaccompanied minors in non-secure facilities that are licensed to care for dependent children.⁴

- Licensed facilities must “comply with all applicable state child welfare laws and regulations.”⁵
- Licensed facilities must be “licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children . . .”⁶
- Over the past few years, Judge Gee has issued orders reinforcing the Settlement’s requirement that class members be placed in non-secure, licensed facilities.
 - In 2015, the court found that the government’s placement of class members in secure, unlicensed ICE family detention centers breached the Settlement. The court stated, “according to the language of the Agreement, Defendants must house children who are not released in a non-secure facility that is licensed by an appropriate state agency to care for dependent children.”⁷

ORR may only deny children a licensed placement under narrow circumstances.⁸

- The Ninth Circuit has affirmed Judge Gee’s ruling that “in the event of an emergency or influx of minors into the United States,” minors may be held in unlicensed facilities for 20 days, “if 20 days is as fast as [ORR], in good faith and in the exercise of due diligence, can possibly go in screening family members”⁹
- ORR is not required to place a child in a licensed facility if the child has committed a violent crime or non-petty delinquent act, has threatened violence while in federal custody, is an unusual escape risk, or is so disruptive that secure confinement is necessary to ensure the welfare of the minor or others.¹⁰

The Settlement applies regardless of whether or not a facility is located on federal land.

- The Settlement protects “[a]ll minors who are detained in the legal custody of the INS” or its successors in interest, ICE, CBP, and ORR.¹¹ The Agreement thus covers all children without regard to the title-holder of the real property where ORR chooses to detain them.
- The Settlement requires ORR to house the general population of detained minors in facilities holding a valid license to care for dependent, as opposed to delinquent, children issued by the state in which the facility is located.¹² ORR must accordingly obtain a state dependent care license for facilities located on federal land, such as the Homestead facility. Regardless of the reason, if ORR cannot obtain a state license for a facility, it may place children in such a facility only temporarily: that is, ORR must transfer them to a licensed placement “as expeditiously as possible.”¹³
- As the federal court ruled regarding ICE’s professed inability to obtain state dependent care licenses for facilities in which it detains families, if a state deems such facilities ineligible for dependent care licensure, ICE simply may not confine children in such facilities, except temporarily.¹⁴

“The children should be home with their parents. The government makes lousy parents.”¹⁵

*Lynn Johnson
Assistant Secretary
HHS Admin. for Children & Families
Dec. 18, 2018*

The Settlement is critical to the safety and welfare of immigrant children.

- Decades of child welfare research establish that children separated from family should be placed in the least restrictive environment possible.
 - Children in foster care should only be placed in non-family settings (such as shelters, group care, or residential treatment centers) when such placements are therapeutically or medically necessary.¹⁶
 - Compared to children placed with foster families, children placed in non-family settings are more likely to experience further physical abuse, have poorer educational outcomes, and become involved in the juvenile justice system.¹⁷
- The requirement that ORR-contracted facilities be licensed by the state for the care of dependent children is a core component of the Settlement.
 - Every state child welfare system requires group homes and other facilities housing dependent children to be licensed.¹⁸
 - State child welfare licensing standards are designed to ensure that all child care programs meet minimum requirements in order to protect the health and wellbeing of children. Judge Gee has emphasized the importance of this Settlement requirement, stating that the “purpose of the licensing provision is to provide class members the essential protection of regular and comprehensive oversight by an independent child welfare agency.”¹⁹
 - For example, licensing standards in the state of Texas include detailed requirements regarding child/caregiver ratios, staff training and certification, education, medical care, nutrition and hydration, medication administration, discipline, emergency behavior intervention, safety and emergency practices, physical site safety, recreation activities, and transportation, among many others.²⁰

“The best place for a child is with a parent. That’s well established in society, under law, in social work practice . . .

This is just another iteration of family separation. Children being kept away from their parents and family members, in an institutional setting, in the desert²¹

*Robert Carey
Former ORR Director
Nov. 29, 2018*

The detention and separation of children from their families causes profound and long-lasting mental and physical harm.

- A longstanding body of research has established that detaining children interferes with healthy development, exposes youth to abuse, undermines educational attainment, makes mentally ill children worse, and puts children at greater risk of self-harm.²²
 - Separation from adult caregivers, peer groups, and educational and work settings undermines youths' developmental processes and ability to gain skills needed to transition into adulthood.²³
 - Studies of immigrant children detained in the United States have discovered high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral challenges.²⁴
- The American Academy of Pediatrics has explained that “highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children.”²⁵
 - Toxic stress is associated with increased rates of physical illness such as diabetes, cancer, posttraumatic stress disorder (“PTSD”), and heart disease, as well as mental health issues and risky health behaviors.²⁶
 - These posttraumatic symptoms do not disappear when children are reunited with their families.²⁷ Children may experience developmental delays²⁸ and poor psychological adjustment, potentially affecting functioning in school.²⁹
- A primary factor in recovering from such trauma is reunification with a parent or other trusted adult. Without the presence of trusted caregivers, children are often unable to cope with the psychological trauma and stress associated with detention.

“For about my first six months at the shelter, I was doing okay. But, as time wore on, I got more and more depressed about being detained and not knowing when I would be released, and I began cutting myself.”

*Child
Shiloh Residential Treatment Center, TX*

“[E]xpert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children.”³⁰

*American Academy of Pediatrics
Policy Statement
2017*

Current State of Unaccompanied Children in the United States

Fewer sponsors are coming forward, leaving children in ORR detention without anywhere to go.

- Enhanced immigration enforcement and anti-immigrant rhetoric has made potential sponsors fearful of coming forward to take care of detained children.³¹
- ORR now shares sponsor information and fingerprints with Immigration and Customs Enforcement (ICE). Thus far, ICE has arrested at least 170 people who came forward to sponsor children.³²
 - In April 2018, ORR, ICE, and CBP signed a Memorandum of Agreement agreeing to vastly expand the information collected from sponsors and household members and to share that information between the agencies.³³
 - In May 2018, ICE promulgated regulations permitting it to use ORR sponsor information for immigration enforcement.
 - In June 2018, ORR began requiring fingerprint checks of all sponsors and their household members.³⁴ As detailed below, this policy has since been partially reversed.
- Due to these policy changes and arrests, potential sponsors are now afraid of being detained or deported as a result of coming forward to sponsor a child, leaving children without any viable sponsors to take care of them.

For the sponsors that are coming forward to take care of children, heightened ORR sponsor requirements result in applications being delayed for long periods of time or denied altogether with no opportunity to appeal. These requirements in no way further child safety.

1. New Fingerprinting Policies

- In June 2018, ORR dramatically changed the requirements for all adults, including parents, to sponsor children for release from ORR custody.³⁵
- ORR expanded fingerprinting requirements to include all sponsors and their household members, which significantly increased the number of people who were required to be fingerprinted as part of the release process. There was not a corresponding increase in the capacity of ORR to process these additional fingerprints.

“I want to live with my mom. My mom has done everything the government has asked her to do... My case manager has told me that they are waiting on the fingerprints for my brother to clear because he lives with my mother. It has been a month since they had the fingerprinting done.”

*Child
Shiloh Residential Treatment Center, TX*

1. New Fingerprinting Policies (cont.)

- Fingerprint checks can add weeks and months to the length of time children are detained. Family members have waited weeks for appointments to have their fingerprints taken at one of the limited sites ORR has set up, and then waited weeks longer – and in some cases months longer – for results to be processed. In some cases, sponsors have been told that their fingerprints have “expired” and they need to re-submit their fingerprints, restarting the entire process.
- In December 2018, federal officials announced a partial reversal in policy, admitting that the new fingerprinting requirements had not demonstrated any benefit to the safety of children in ORR custody.³⁶
- Following the partial reversal of the fingerprinting policy, more than 4,000 children were released from ORR custody within a span of four weeks – the largest decrease in the program’s history. After the policy change was implemented, the unlicensed tent city in Tornillo, Texas was finally shut down.³⁷

“Then, the shelter called to tell me that my fingerprints had expired, and I needed to take them again before they would release [my niece]. I was so surprised, confused, and upset. I didn’t know the fingerprints I took could expire . . .

The shelter has all the information they need, and they were just about to release [her] to me. Now we have to wait, again. This process has taken so long, and I don’t understand why . . . I am trying to comfort [my niece], but it is difficult because I am extremely sad too.”

Sponsor

“Since the implementation of this new policy five months ago, ORR has determined the additional steps required to fingerprint all household members has had an impact on the timely release of UAC without demonstrated benefit to the safety of children after their release from ORR care.”³⁸

*Dept. of Health & Human Services
Statement
Dec. 18, 2019*

2. Onerous Sponsor Reunification Requirements

- *Flores* counsel have interviewed hundreds of detained children and spoken to many of their potential sponsors and family members. Over the past few years, *Flores* counsel have documented examples of increasingly stringent release requirements for sponsors – requirements that are not reasonably related to the health and safety of children.
- **Sponsors have been told that children will not be released to their care unless:**
 - They move to a different neighborhood
 - They move to a larger apartment or house
 - They reduce the total number of children living in their home
 - They are able to identify additional sources of income to support the child
 - They can produce a photo establishing a prior relationship with the child (despite the fact that many families do not have access to this technology)
 - They can afford the psychotropic medications that the government has prescribed
 - They enroll the child in school before the child is released from ORR custody, when the school will not allow enrollment until the child is in the physical custody of the sponsor

“My case worker told me that the only reason that I haven’t been released to my [sponsor] is because I don’t have an official birth certificate. My mother died before she could register me for an official birth certificate . . . I don’t know what other documents I could provide to prove my relationship with [her].

My case worker once told me that my case was “perfect” and that I was “golden” to get released, but I’m still here.”

*Child
Shelter, TX*

“My case worker told me I needed pictures or messages from my sponsor to be able to go with her. I have no way of getting that information. I had never seen a cell phone before I came to the United States. I barely have any photos with my mother.”

*Child
Homestead, FL*

“My sister . . . ORR told me I couldn’t live with her. I don’t fully understand why ORR won’t let me live with my sister, but I think it is because ORR thinks she doesn’t have enough money. I would prefer to live with my sister or family over foster care, and I believe even poor families have the right to live together.”

*Child
Shelter, CA*

3. Inappropriate Release Requirements for Children

- *Flores* counsel have spoken to ORR-contracted health providers, who state that they will not approve the release of a child to a sponsor unless the child is determined to be “stable.” The irony, of course, is that the child’s mental distress is overwhelmingly due to their detention and separation from family.
 - Studies of immigrant children detained in the United States have discovered high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems.³⁹ These health issues are exacerbated by continued detention and separation from caregivers.
- Children have been told that they will not be released unless they agree to take the psychotropic medications prescribed by ORR-contracted physicians. These medications, including strong anti-psychotics and anti-depressants, are routinely prescribed to children without the informed consent of the child’s parent or legal guardian.
- In 2017, ORR implemented a new policy requiring former ORR Director Scott Lloyd to personally review and approve the release of any detained immigrant child who was or had ever been in a heightened placement while in ORR custody.⁴⁰ In his deposition, Mr. Lloyd stated that he adopted the director-level review policy within hours of becoming ORR director without any analysis or a count of the children in his custody that would be impacted.⁴¹ In granting a preliminary injunction enjoining the policy, U.S. District Judge Paul Crotty noted, “This is at the zenith of impermissible agency actions.”⁴²

“My father is currently trying to sponsor my release. The case has been completed. He has completed the home studies and passed the fingerprinting and background checks. Despite this, I have been told that I need a recommendation from a psychologist in order to be released.”

Child
Yolo Secure Detention Facility, CA

“I just want my son to come and live with me. I think that if he is able to live with me, his mental health will improve and he will feel much better. [He] is desperate to get out of detention . . . Whenever I talk to him on the phone I am able to help him calm down and overcome his feelings of anxiety.”

Sponsor, Child’s Father

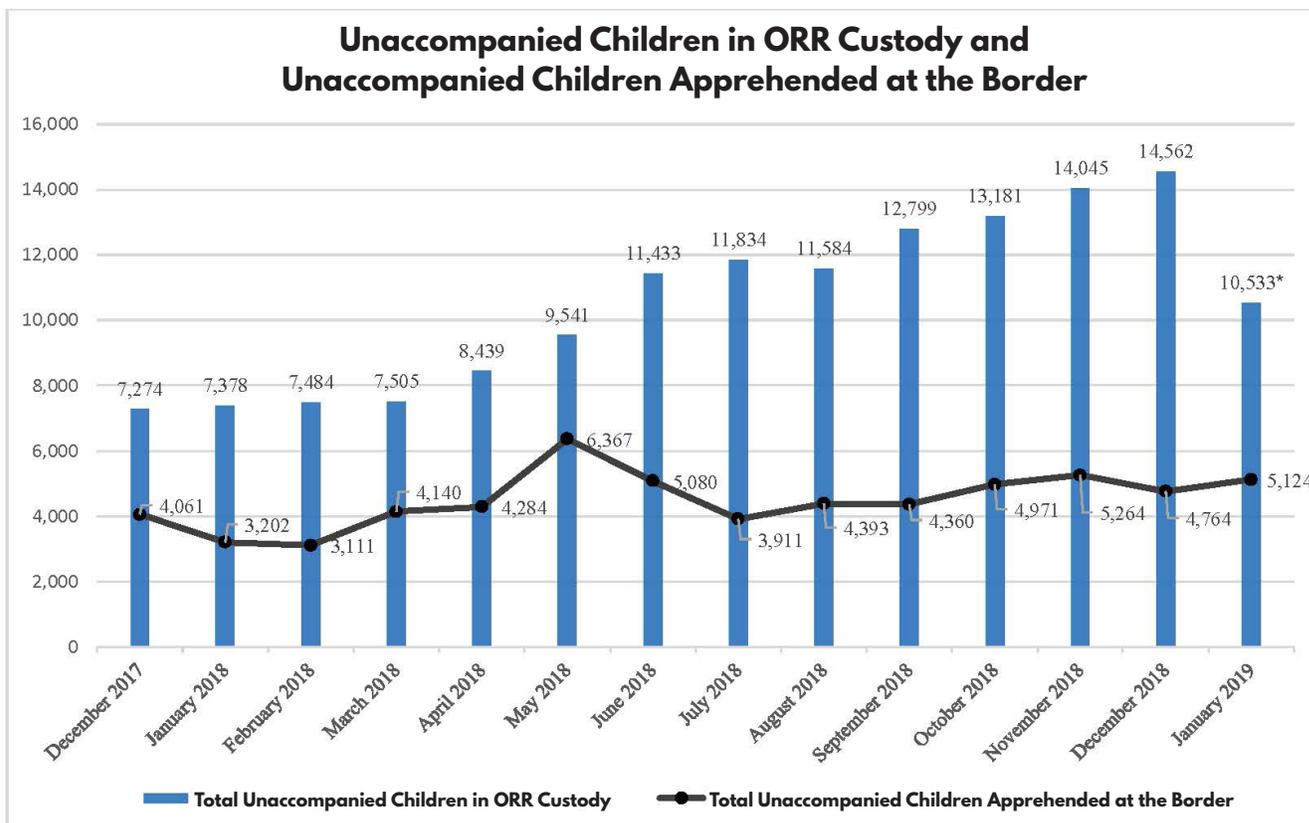
“All of us were angry because the staff forced us to take medication. We were told that the medication consisted of vitamins and that we had to take them in order to grow . . . The staff threatened to throw me on the ground and force me to take the medication. I also saw staff throw another youth to the ground, pry his mouth open and force him to take the medicine . . .

They told me that if I did not take the medicine I could not leave, that the only way I could get out of Shiloh was if I took the pills.”

Child
Shiloh Residential Treatment Center, TX

There is no “surge” at the border that accounts for the skyrocketing number of children in ORR custody.

While the number of unaccompanied children apprehended at the U.S. border has remained steady, the total population of children in ORR custody has continued to increase. If the federal government faithfully adhered to the terms of the Settlement, which require prompt release and licensed placement, then there would be fewer children in ORR custody and the children in ORR custody would be better protected.



*Note: The significant decrease between December 2018 and January 2019 occurred after the government’s partial rollback of the fingerprinting policy, which allowed more than 4,000 children to be released to their families.

Data Sources:

- “Total Unaccompanied Children in ORR Custody” – ORR data provided to *Flores* counsel, pursuant to the *Flores* Settlement Agreement.
- “Total Unaccompanied Children Apprehended at the Border” – CBP data (U.S. Customs and Border Patrol, *Southwest Border Migration FY2019*, available at <https://www.cbp.gov/newsroom/stats/sw-border-migration>).

ORR is distorting the Settlement’s emergency provisions to detain children in unlicensed facilities for extended amounts of time.

In 2018, the federal government placed unaccompanied children at two “emergency influx” facilities: a facility in Homestead, Florida, and a tent city in Tornillo, Texas. In contrast to the comprehensive requirements of state child welfare licensure, ORR requirements for “Influx Care Facilities” are extremely limited.⁴³

Homestead

- Although ORR describes Homestead as a “temporary emergency influx shelter,” ORR data show that children are being held there for far longer than 20 days: as of mid-January, more than 140 children had spent 100 days or more at Homestead, and 26 children had spent 200 days or more at Homestead. On February 13, 2019, HHS reported that the average length of stay for children held at Homestead is 67 days.⁴⁴
- According to the government, more than 1,600 children are detained at Homestead,⁴⁵ and the facility has been recently expanded to house 2,350 children.
- According to HHS, the average daily cost to care for a child at an “influx” facility such as Homestead is \$775 per day, about three times the cost of a licensed shelter placement.⁴⁶

“I also get huge headaches because I feel like I can’t cry here. I wish I could cry here but I can’t cry comfortably. I have to hold my tears because if not they send me to the clinician. I don’t want to go to the clinician because they don’t want to help my case I also want to try to hug my girlfriends when they are crying, but [staff] won’t let me.”

*Child
Homestead, FL*

“I feel very desperate because my case with my sponsor to get me out of here is moving very slowly. I have never seen my case worker since I arrived here. . . . When I feel really sad, I want to leave running. I get very desperate.”

*Child
Homestead, FL*

Tornillo

- When Tornillo was open, it held nearly 3,000 children in white canvas tents in the Texas desert.⁴⁷
- ORR waived FBI background checks for all staff at Tornillo.⁴⁸
- Visits to Tornillo by U.S. Senators and Representatives were instrumental in calling public attention to the dire situation.
- After the government partially reversed the fingerprint policy, ORR was able to close the facility.⁴⁹

“There are about 31 girls in the tent with me. There is no privacy. We aren’t allowed to hug each other or touch in any way.

Every day I feel sad. I don’t have freedom to leave here. All I want is to be with my family.”

*Child
Tornillo, TX*

The protections provided by the Flores Settlement Agreement are under attack.

- **Dismantling the *Flores* Settlement Agreement is a key goal of this administration's immigration agenda.**
 - In a letter to Congress on January 4, 2019 about border security, President Trump listed “[t]erminate the *Flores* Settlement Agreement” as the most pressing legal change desired by his Administration.⁵⁰ In his State of the Union Address, President Trump described immigrant children as violent gang members who “took advantage of glaring loopholes in our laws to enter the country as unaccompanied alien minors.”⁵¹
- **The Department of Homeland Security and Department of Health and Human Services published a notice of proposed rulemaking and regulations to replace the *Flores* Settlement.**⁵²
 - As written, the proposed rule is inconsistent with the settlement and would completely dismantle the current *Flores* standards – allowing federal agencies to expand family detention centers, increase the length of time that children spend in detention, and create an alternative licensing process that undermines state child welfare laws and basic protections for children.
 - As of mid-February, the final regulations had not yet been published.
- **Members of Congress have introduced multiple bills aimed at undermining the Settlement's requirements.**

Solutions

The fundamental principles established by the *Flores* Settlement Agreement are critical to providing basic protections for detained immigrant children and must be defended. Congress has the ability to intervene and protect these vulnerable children by taking the following action.

- 1. Protect and codify the principles established by the *Flores* Settlement Agreement.**
 - Reject legislative proposals that undermine or eliminate the *Flores* Settlement Agreement.
 - Support legislative proposals that codify the requirements of the *Flores* Settlement Agreement.

- 2. Ensure ORR adheres to the *Flores* Settlement Agreement.**
 - Use congressional oversight authority to ensure that:
 - Policies and practices do not interfere with timely release.
 - Children are not held for prolonged periods of time in unlicensed detention facilities.
 - Children are placed in the least restrictive setting and are provided with needed services and supports.
 - In the event of a true emergency, ensure that ORR does not use influx facilities to detain children any longer than is truly necessary before transferring them to licensed dependent care facilities.
 - In the event that there is no true emergency, ensure that the government does not open up influx facilities.

- 3. Support policies that encourage sponsors in coming forward to take custody of detained children.**
 - Eliminate the sharing of information between ORR and ICE for immigration enforcement purposes.
 - Encourage legislative proposals that explicitly provide potential sponsors with protection against immigration enforcement.
 - Encourage legislative proposals that provide sponsors and released children with needed services and supports.

- 4. Support policies that streamline the reunification process for children and sponsors and reflect reasonable requirements for release.**
 - Require ORR to standardize sponsor requirements, such that individual facilities may not impose requirements that are unnecessarily burdensome and do not protect the safety of children.
 - Require ORR to standardize requirements for children to be released, such that children are not detained indefinitely in order to ensure that they have been “stabilized” prior to release.
 - Require ORR to evaluate a proposed sponsor’s fitness with reasonable dispatch. State and local child protective services routinely conclude investigations into custodians’ fitness within two or three weeks. From the standpoint of child welfare, there is no reason for ORR to take several months to evaluate available sponsors, during which the trauma detention inflicts on children only compounds.

Solutions

5. **Increase ORR's capacity to expeditiously reunite families.**
 - Require ORR to maintain reasonable ratios between youth and Federal Field Specialists. Where necessary, hire more Federal Field Specialists to oversee the release process.
 - Require ORR to maintain reasonable ratios between youth and Case Management Specialists. Where necessary, hire more Case Management Specialists to facilitate the release process.
 - Require ORR to improve training for Case Management Specialists to allow for more expeditious processing of reunification applications.

6. **Protect unaccompanied children by legislating due process protections that support the *Flores* Settlement Agreement.**
 - Develop legislative solutions that create meaningful due process protections for potential sponsors who are denied custody of an unaccompanied child.
 - Develop legislative solutions that create meaningful due process protections for detained children who are “stepped-up” to higher-security ORR facilities.

Conclusion

The *Flores* Settlement Agreement plays a critical role in protecting the safety and welfare of unaccompanied children in federal immigration custody. Recently, the government has violated the Settlement repeatedly – and the Trump Administration has indicated that it wants to get rid of the Settlement entirely. While *Flores* Counsel and other legal organizations will continue to bring actions to enforce the letter and spirit of the *Flores* Agreement, it is vital that Congress play its role to ensure that the government of the United States lives up to its legal and moral obligations to the children in its care.

Attachments

1. The *Flores* Settlement Agreement
2. Relevant Media
 - *Caregivers for 3,600 Migrant Teens Reportedly Lack Complete Abuse Checks*, CBS NEWS, Dec. 8, 2018, available at <https://www.cbsnews.com/news/caregivers-for-3600-migrant-teens-reportedly-lack-complete-abuse-checks/>.
 - *Florida Shelter Is Scrutinized For The Way It Handles Migrant Children*, NATIONAL PUBLIC RADIO, Feb. 13, 2019, available at <https://www.npr.org/2019/02/13/694175061/florida-shelter-is-scrutinized-for-the-way-it-handles-migrant-children>.
 - *12-year-old immigrant prescribed antidepressants in shelter due to distress over family separation, lawsuit alleges*, WASHINGTON POST, June 29, 2018, available at https://www.washingtonpost.com/investigations/immigrant-minor-distraught-over-family-separation-is-prescribed-antidepressants-in-us-shelter-lawsuit-alleges/2018/06/29/4386420a-7ba7-11e8-93cc-6d3becdd7a3_story.html?utm_term=.3c51febe2666.
 - *Thousands of Migrant Children Could Be Released with Trump's Major Policy Reversal*, TEXAS MONTHLY, Dec. 18, 2018, available at <https://www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo/>.

Endnotes

1. Unaccompanied children are children under 18 who arrive at the border without a parent or guardian or who have no parent or legal guardian in the U.S. available to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2).
2. Settlement ¶ 14.
3. Settlement ¶ 11.
4. Settlement ¶ 19.
5. Settlement, Exhibit I.
6. Settlement ¶ 6.
7. Order Re: Plaintiff's Motion to Enforce Settlement, *Flores v. Lynch*, at 12 (C.D. Cal. July 24, 2015).
8. Settlement ¶ 21.
9. *See Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015), *aff'd in part, rev'd in part and remanded*, 828 F.3d 898 (9th Cir. 2016).
10. Settlement ¶ 21.
11. Settlement ¶ 10.
12. Settlement Definition 6; ¶ 19.
13. Settlement ¶ 12B(3).
14. Order Re: Plaintiff's Motion to Enforce Settlement, *Flores v. Johnson*, 212 F. Supp. 3d 864, 877 (C.D. Cal. 2015).
15. Robert Moore, *Thousands of Migrant Children Could Be Released with Trump's Major Policy Reversal*, TEXAS MONTHLY, Dec. 18, 2018, available at <https://www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo/>.
16. *See* National Conference of State Legislatures, *The Child Welfare Placement Continuum: What's Best for Children?*, Jan. 5, 2016, available at <http://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>.
17. Casey Family Programs, *What are the Outcomes for Youth Placed in Congregate Care Settings?*, Feb. 5, 2018, available at <https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/>.
18. *See* U.S. Dep't of Health & Human Servs., *State Licensing Specialists*, available at https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspList&rolType=Custom&RS_ID=157&rList=RCL.
19. Order Re: Plaintiff's Motion to Enforce Settlement, *Flores v. Lynch*, at 14 (C.D. Cal. July 24, 2015) (emphasis added).
20. *See* Tex. Child Care Licensing, Health & Human Serv. Comm'n, *Minimum Standards for General Residential Operations*, July 29, 2019, available at https://www.dfps.state.tx.us/Child_Care/documents/Standards_and_Regulations/748_GRO.pdf.
21. Joshua Barajas & Amna Nawaz, *The Tornillo Shelter for Migrant Children was Supposed to Close After 30 Days. Here's why it's still open*, PBS NEWS HOUR, Nov. 29, 2018, available at <https://www.pbs.org/newshour/nation/the-tornillo-shelter-for-migrant-children-was-supposed-to-close-after-30-days-heres-why-its-still-open>.
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al, Plaintiffs

v.

JANET RENO, Attorney General of the United States, et al., Defendants

Case No. CV 85-4544-RJK(Px)

STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.
2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.
3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.
4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.
5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.
6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall

initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of the Agreement attached hereto as Exhibit 2.

III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 (i) within three (3) days, if the minor

was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this Paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;**
- B. a legal guardian;**
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);**
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;**
- E. a licensed program willing to accept legal custody; or**
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.**

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;
- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this Paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian in writing seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or

the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);

ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

A. the minor is currently under a final order of deportation or exclusion;

B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770; (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services providers compiled pursuant to INS regulation (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause (B) minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date

record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1) biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

XI ATTORNEY-CLIENT VISITS

32. A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minor in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

XV RESERVATION OF RIGHTS

36. Nothing in this agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that defendants have violated the terms of this Agreement shall be served on plaintiffs addressed to:

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

Carlos Holguín

Peter A. Schey

256 South Occidental Boulevard

Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere

James Morales

114 Sansome Street, Suite 905

San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson
Assistant United States Attorney
300 N. Los Angeles St., Rm. 7516
Los Angeles, CA 90012

Allen Hausman
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

XVIII ATTORNEYS FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of \$_____, in full settlement of all attorneys' fees and costs in this case.

XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years from the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with the Agreement, except the following: the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors.

XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on

behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

EXHIBIT 1
Minimum Standards for Licensed Programs

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.
4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with

appropriate reading materials in languages other than English for use during the minor's leisure time.

5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.

9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

10. Whenever possible, access to religious services of the minor's choice.

11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.

12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

Exhibit 2
Instructions to Service Officers re:
Processing, Treatment, and Placement of Minors

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

(a) Minors. A minor is a person under the age of eighteen years. However, individuals who have been "emancipated" by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

(b) General policy. The INS treats and shall continued to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

(c) Processing. The INS will expeditiously process minors and will provide them a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS's concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the minor cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

(d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others.

Minors shall be released in the following order of preference, to:

(i) a parent;

(ii) a legal guardian;

(iii) an adult relative (brother, sister, aunt, uncle, or grandparent);

(iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;

(v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or

(vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

(e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

(i) provide for the minor's physical, mental, and financial well-being;

(ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;

(iii) notify the INS of any change of address within five (5) days following a move;

(iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;

(v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

(vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

(f) Suitability assessment. An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

(g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue so long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

(h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential group, or foster care services for dependent children, including a program operating group homes, foster homes or facilities for special needs minors. Exhibit 1 of the Flores v. Reno Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

(i) the minor is an escape risk or delinquent, as defined in Paragraph (l) below;

(ii) a court decree or court-approved settlement requires otherwise;

(iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or

(iv) where the minor must be transported from remote areas for processing or speaks an unusual language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

(i) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor -

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

"Chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

- (a) the minor is currently under a final order of deportation or exclusion;
- (b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;
- (c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility must be reviewed and approved by the regional Juvenile Coordinator.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case in which he either affirmatively requests, or fails to request or refuse, such a hearing on the Notice of Custody Determination. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review in the form attached, and (2) the list of free legal services providers compiled pursuant to 8 C.F.R. § 292a.

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The Service may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. All INS district offices and Border Patrol stations must report to the Juvenile Coordinator statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration status, and (f) hearing dates. The Juvenile Coordinator must also be informed of the reasons for placing a minor in a medium security facility or detention facility as described in paragraph (i).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit lawyers for the *Reno v. Flores* plaintiff class to visit minors even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement,, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

EXHIBIT 3 Contingency Plan

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in licensed programs licensed by an appropriate state agency as expeditiously as possible. An emergency is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An influx is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the list. The Emergency Placement List will include the facility name; the number of beds at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.
2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, and (3) date placed in INS custody.
3. Within one business day of the emergency or influx the Juvenile Coordinator, or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their

availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year, the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

EXHIBIT 4 Agreement Concerning Facility Visits Under Paragraph 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

Exhibit 5

List of Organizations to Receive Information re: Settlement Agreement

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

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Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

Exhibit 6
Notice of Right to Judicial Review

"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."



Caregivers for 3,600 migrant teens reportedly lack complete abuse checks

UPDATED ON: DECEMBER 8, 2018 / 8:25 AM / AP

Nearly every adult working with children in the U.S. -- from nannies to teachers to coaches -- has undergone state screenings to ensure they have no proven history of abusing or neglecting kids. One exception: thousands of workers at two federal detention facilities holding 3,600 migrant teens in the government's care, The Associated Press has learned.

The staff isn't being screened for child abuse and neglect at a Miami-based emergency detention center because Florida law bans any outside employer from reviewing information in its child welfare system. Until recently at another facility holding migrant teens in Tornillo, Texas, staff hadn't even undergone FBI

fingerprint checks, let alone child welfare screenings, a government report found.

The missing screening at both sites involves searching child protective services systems to see whether potential employees had a verified allegation of abuse, neglect or abandonment, which could range from having a foster child run away from a group home to failing to take a sick child to the hospital. These allegations often are not criminally prosecuted and therefore wouldn't show up in other screenings.

Tornillo has 2,100 staff for about 2,300 teens; Homestead has 2,000 staff for about 1,300 teens.

- CBS News gains access to Homestead, Florida, detention center
- "Tent City" for unaccompanied migrants to expand, remain open through the end of the year

The two facilities can operate unlicensed and without required checks because they are located on federal property and thus don't have to comply with state child welfare laws. Tornillo is on Customs and Border Protection land along the U.S.-Mexico border, and Homestead is on a former Labor Department Jobs Corps site.

Last week, bipartisan lawmakers from Texas and beyond called for swift reforms and public hearings after the AP reported that the government put thousands of teens at risk at Tornillo by waiving the security screenings and having fewer mental health workers than needed. And on Tuesday, two members of Congress called for the immediate shutdown of Tornillo.

The government report said the screenings were waived at Tornillo because the agency was under pressure to open the camp quickly and the federal government erroneously assumed staff members already had FBI fingerprint checks.

Except for Homestead, every child shelter and foster care facility in Florida --

including two others holding migrant children -- runs employees' names through child protective services records.

- Some detention centers for migrant children not subject to state inspections

State law prohibits the Florida Department of Children and Families from sharing results of those checks more widely due to concerns that child protective services might be reluctant to flag an individual, and thereby avoid providing services such as parenting classes for them, if it could put the person's job in jeopardy.

Health and Human Services Department spokesman Mark Weber said Homestead didn't need the extensive background screenings.

"Child abuse and neglect checks were waived because of the limitations in the state of Florida and the fingerprint background checks conducted on employees would show relevant information," he said.

Tornillo launched a month-long program to run staff through FBI fingerprint checks last week in response to a wave of public pressure prompted by the government memo and media reports about the lack of staff screening there.

Child welfare experts say child abuse and neglect background screenings are typically required because some people who hurt children may never be convicted of criminal charges serious enough to warrant an FBI red flag but could be charged civilly, which would appear only in state registries.

"An FBI background check doesn't provide a full and complete picture of that

individual's criminal history," said Alonzo Martinez, associate counselor for compliance at HireRight, a private employer background check service. Local police departments aren't required to enter fingerprints of offenders in the FBI database and deeper checks - including reviewing state and county child abuse registries - can turn up different information about potential applicants, Martinez said.

During his time serving as the director of the Office of Refugee Resettlement, Scott Lloyd granted screening waivers for both Homestead and Tornillo, which was allowed under federal rules since the shelters were opened on a temporary basis. Homestead has been open for eight months and Tornillo for five, however, with no indication they will close.

In August, Lloyd wrote a letter to the Washington Post defending the shelters, saying, "The same standard of care we expect for your kids and mine we expect for the kids in Office of Refugee Resettlement care."

The contractors for both detention centers -- Comprehensive Health Services for Homestead, and BCFS Health and Human Services for Tornillo -- deferred to HHS for comment. HHS said it is working to safely care for all children referred to the agency.

The Obama administration opened Homestead as a temporary shelter for up to

800 migrant teens for 10 months in 2016. Since then, the federal government has budgeted more than \$330 million for the for-profit company to operate the facility, according to an AP review of federal contracts. The review found that Tornillo could cost taxpayers as much as \$430 million this year.

A memo obtained by the AP shows the ORR director at the time, Robert Carey, also waived child abuse and neglect background checks for Homestead staff during the Obama administration.

Children at Homestead wear government-issued clothes and live in dormitory-style bedrooms in a tightly guarded compound surrounded by chain-link fence. At Tornillo, they sleep in bunk beds inside canvas tents; outside temperatures near 100 in the summer and are below freezing on winter nights.

The 13- to 17-year-olds held at Homestead and Tornillo weren't separated from their families at the border this summer. They remain in government custody in part because new federal requirements mandating more stringent background checks on their families have slowed their reunifications, filling shelter beds around the country to capacity. Almost all the teens at both facilities entered the U.S. on their own, hoping to join relatives or friends.

Neha Desai, immigration director at the Oakland-based National Center for Youth Law, said that the federal government is required to hold children in licensed facilities when they are detained for more than a short period of time.

"Homestead's failure to perform child abuse and neglect checks on its staff is just another reason that the government in no circumstances should be holding children there for more than a few days at a time," said Desai. "Yet, we know that numerous children are languishing there for months on end."

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LATIN AMERICA

Florida Shelter Is Scrutinized For The Way It Handles Migrant Children

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February 13, 2019 · 5:10 AM ET

Heard on Morning Edition

JOHN BURNETT

Hundreds of migrant children are housed at a South Florida shelter, which is under scrutiny because it's the only one to be run by a for-profit corporation and is not overseen by state regulators.

RACHEL MARTIN, HOST:

Thousands of migrant children are still arriving at the southern border every month without their parents. And many of them are housed at an emergency intake shelter in South Florida. That facility has come under scrutiny because it's the only child shelter for immigrants that is run by a for-profit corporation and the only one that isn't overseen by state regulators. NPR's John Burnett got a rare look inside.

JOHN BURNETT, BYLINE: The Homestead facility is the biggest and most controversial shelter for migrant children in the country. Critics say the government is warehousing kids in a makeshift prison camp. But on a recent tour, the shelter director took pains to show me a different perspective. The kids live in sand-colored dormitories, amid palm trees and bougainvillea, inside a fenced campus next to Homestead Air Reserve Base south of Miami. The tour included the soccer field, the

phone-home room, the medical clinic and the classrooms. I'm told about the talent shows and the pizza and ice cream for good behavior. There is one youth care worker for every 12 immigrants. The teenagers walk past in an orderly single file, smiling and singing out hola to a visitor's greeting.

But that's all a reporter ever hears. On these stage-managed walk-throughs, journalists are not permitted to record anything, to take photographs or speak to the children. It's for their privacy and protection, we're told. After the tour, I sit down with a group of attorneys who have been granted access to the children by a federal court to oversee their welfare while in federal custody. I caught up with them after they met with two dozen youngsters inside Homestead.

LEECIA WELCH: We see a very different picture. We see extremely traumatized children, some of whom sit across from us and can't stop crying over what they're experiencing.

BURNETT: Leecia Welch is director of legal advocacy at the National Center for Youth Law.

WELCH: We hear stories of children who are told from the first day of their orientation at the facility that under no circumstances can they touch another child in the facility - even their own sibling, even friends who they're saying goodbye to after many months of shared intense experience. They can't hug them goodbye. If they do, they're told they will be written up, and it could affect their immigration case. We see a very different picture than the reporters see.

BURNETT: Homestead is like no other federal children's shelter in America. Not only is it the biggest - it can receive up to 2,350 kids - but it's the only for-profit facility. The operator is Comprehensive Health Services. The Florida-based company dispatched medical teams to the Gulf Coast after Hurricane Katrina and to Balad Air Base in Iraq. And in 2016, it got into the shelter business. The current Homestead contract is worth up to \$220 million. The burn rate is \$1.2 million a day, according to the Department of Health and Human Services. Immigrant advocates fear America's prison-industrial complex has now expanded into federal child custody. Maria Rodriguez is director of the Florida Immigrant Coalition.

MARIA RODRIGUEZ: From what I understand, it's the first for-profit child detention center. So just let that sink in.

BURNETT: Company executives declined to be interviewed. But a Comprehensive Health Care vice president said in an email that the safety and welfare of unaccompanied minors at the Homestead facility is a top priority and that they follow all laws. And the no-touching rule - officials say fist bumps are allowed. In filings with the Securities and Exchange Commission, the parent company, Caliburn International, states that border enforcement and immigration policy is driving significant growth. The company also warns investors that the, quote, "challenging and politically charged environment could adversely impact our share price." Kevin Connor is director of the Public Accountability Initiative, a watchdog research group.

KEVIN CONNOR: Caliburn's SEC filings make it clear that they understand the controversial nature of the policies that they are benefiting from.

BURNETT: The Border Patrol reports a continuing surge of unaccompanied minors seeking asylum. Five-thousand children were apprehended crossing the border in January alone. Once in federal custody, they're sent to Homestead or to one of the 130 smaller permanent shelters. The Office of Refugee Resettlement, ORR, which is in charge of the shelter network, insists that its mission is child welfare, not detention. Jonathan Hayes, acting director of the agency, says the shelter facilities are better than the austere holding cells that you find at the border.

JONATHAN HAYES: The main mission is to ensure that kids are not stuck in true detention facilities in cages and border patrol stations. That's the goal of all of us here at ORR and our grantees. We want to get these kids into our shelters as quickly and as safely as possible without delay.

BURNETT: But critics say the kids are kept at those shelters for too long, an average of 67 days at Homestead, before they're released to live with a sponsor and wait for a court date. And they want the facility closed. Now Democrats have introduced legislation in Congress that would do just that. It's called the Shut Down Child Prison Camps Act. Another large emergency shelter closed last month amid incendiary criticism. It was a tent camp in Tornillo in the West Texas desert. Neha Desai is

director of immigration at the National Youth Law Center. She was in the group that interviewed children at Homestead.

NEHA DESAI: There is absolutely no basis for detaining children at an influx facility for months and months on end.

BURNETT: Homestead is unique because it's a temporary overflow facility on federal property. That means the shelter doesn't have to be licensed by the state and follow Florida child care standards, though it does have to comply with federal regulations. Being on federal land also means the shelter doesn't have to be part of the local public school system. The shelter director says the children receive a good education, but Alberto Carvalho, superintendent of Miami-Dade County Public Schools, disagrees.

ALBERTO CARVALHO: For me, this is personal.

BURNETT: Carvalho says he came to this country himself as an unaccompanied immigrant from Portugal at the age of 17. Now he's angry the federal government is telling him he can't inspect Homestead's classrooms.

CARVALHO: For me to now be running a school system and not take a position and fight for the educational rights of kids regardless of immigration status would be the equivalent of me turning my back on myself.

BURNETT: But all the criticism hasn't hurt business. In the past two weeks, Comprehensive Health Services has been issued new state licenses for three shelters in South Texas to hold 500 migrant children for the U.S. government. John Burnett, NPR News, Miami.

(SOUNDBITE OF DOGS' "BEWARE OF SAFETY")

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Investigations

12-year-old immigrant prescribed antidepressants in shelter due to distress over family separation, lawsuit alleges

By [Aaron C. Davis](#)

June 29, 2018

After U.S. authorities detained a 12-year-old boy crossing the U.S.-Mexico border by himself in February, government contractors wrote in his file that he went from being calm and cooperative to showing signs of depression brought on by “being kept from his family,” which had entered the country before him, according to a new court case.

The boy’s condition deteriorated further in the care of shelters funded by the U.S. Office of Refugee Resettlement, which now holds over 2,000 children separated more forcefully from their parents under an abandoned policy of the Trump administration, the lawsuit alleges. He has been transferred to a psychiatric facility in Texas and placed on a regimen of antidepressants, it says, and the U.S. government is refusing to release him to an adult sister in Los Angeles, saying her home may not be suitable and that the boy is not yet “psychologically sound” for release.

The complaint, filed Friday in federal court in California, illustrates the difficulties the Trump administration faces in complying with a federal judge’s order to reunify all 2,000 children and their parents within a month. Many of those children — perhaps “hundreds,” the lawsuit estimates — are already caught up in a bureaucratic tangle of medical determinations and assessments of family members to which they could potentially be released. In several cases documented in the suit, those issues have taken a year or more to be resolved.

The lawsuit alleges that delays in releasing minors amount to violations of their constitutional rights.

“Basic due-process rights for these children are really being trampled on right now by the Trump administration,” said Leecia Welch, an attorney for the National Center for Youth Law, one of the groups that brought the case. “Child after child has told us the same story of being awoken at 4 a.m., and flown across the country to be detained without being told why, let alone a judicial determination as to why. What ORR is doing is saying it can incarcerate children and throw away the key for as long as it likes.”

The Department of Health and Human Services declined to comment.

But in court filings in a separate case, the federal government has asserted that it has the right and responsibility to have doctors at shelters administer drugs to minors when needed. It has relied largely on authority courts have said it has in emergency situations to do so. In May, the Justice Department also pushed

back on allegations that it was moving too slowly in discharging children to sponsors, saying it has a responsibility to adequately review and vet the conditions immigrants will live in.

Welch said the Justice Department all but invited advocates for immigrant children to file the suit during a recent court exchange over whether the government has the authority to prescribe psychotropic medications and whether it is violating previous legal agreements to release children as quickly as possible.

“To the extent Plaintiffs wish to challenge the sufficiency of constitutionality of the process ... they should do so in separate litigation,” the Justice Department wrote in a court filing in May.

The group bringing the suit includes the same core group of attorneys and advocacy organizations that filed a 1985 complaint that led to a landmark document called the *Flores* settlement.

That agreement ultimately forced the U.S. government to stop housing children in austere detention centers run by Border Patrol officers and to instead direct children to more shelter-like conditions with education and exercise facilities run by ORR, a division of the U.S. Department of Health and Human Services.

The new case, *Lucas R. v Azar*, for Alex Azar, current HHS secretary, claims the policies and practices of ORR are “causing grave harm to children detained for alleged civil violations” of crossing the border.

Lucas R. is the pseudonym that attorneys assigned to the 12-year-old from Guatemala detained in February.

The suit alleges the boy was placed in Hacienda del Sol, a shelter in Arizona run by the government contractor Southwest Key. When he arrived, the lawsuit says, staff noted that Lucas “appeared cooperative, calm, and alert, and showed ‘no behavioral concerns.’”

“As his confinement wore on, however, Lucas became depressed, fearing that ORR would never release him to his family,” the case alleges, and without seeking consent of his closest relative in the United States, the “ORR administered Lucas psychotropic drugs, ostensibly to control ‘moderate’ depression.”

Meanwhile, the boy’s adult sister, who lives in Los Angeles with her infant daughter, brother and a roommate, had applied to be his sponsor and take custody of him from Hacienda del Sol.

But when investigators arrived to inspect her apartment, a friend of the roommate was visiting, the suit alleges. Agents said everyone in the home, including the friend would have to be fingerprinted for Lucas to be released to his sister’s custody.

The friend’s roommate did not show up for fingerprinting, and ORR informed the sister that Lucas would not be released to her.

For Lucas, the situation was deteriorating, the lawsuit alleges. The medication Zoloft was causing him stomach pain, and he began refusing to take the antidepressant. That led to his transfer to Shiloh Treatment Center in

Texas. At that facility, a doctor who has signed off on many recent treatment plans has been operating on an expired state license, according to the [Center for Investigative Reporting](#).

The lawsuit says: “Shiloh personnel have now diagnosed Lucas with ‘major depressive disorder.’ Among Lucas’ ‘major stressors,’ Shiloh personnel identify his ‘[b]eing kept from family and in ORR custody.’ Shiloh staff have nonetheless told Lucas that ORR will not release him until Shiloh medical personnel declare him psychologically sound.”

In addition to the Center for Youth Law, other plaintiffs are the Center for Human Rights and Constitutional Law, University of California Davis School of Law Immigration Law Clinic, and Cooley LLP.

“We don’t know what process ORR is using currently to reunite these children with their families and what we’re seeing is that parents of children are going through the ringer trying to get their kids out of these detention facilities,” Welch said. “There is no reason to think it is going to get any better.”

Aaron C. Davis

Aaron Davis is an investigative reporter who has covered local, state and federal government, as well as the aviation industry and law enforcement. Davis shared in winning the Pulitzer Prize for Investigative Reporting in 2018. [Follow](#) 

NEWS

Thousands of Migrant Children Could Be Released With Trump's Major Policy Reversal

Federal officials have reversed course and announced they will reduce fingerprint requirements of potential sponsors for detained children.

BY **ROBERT MOORE**

DATE **DEC 18, 2018**

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NOTES **5 COMMENTS**



The undated photo released by U.S. Department of Health and Human Services shows detainees walk in a line at the HHS' unaccompanied alien children program facility at Tornillo, Texas.

U.S. Department of Health and Human Services/AP

In a major reversal, the Trump administration is changing the way it reviews sponsors who want to care for migrant children in government custody, officials announced Tuesday. The changes could lead to thousands of children being released from government shelters to family members, as well as the closure of a controversial West Texas tent facility currently housing 2,700 children.

The policy change involving migrant children was the second major concession Tuesday by the Trump administration on border and immigration issues. Press Secretary Sarah Sanders told Fox News earlier in the day that Trump was backing away from his vow to shut down parts of the government if Congress did not provide \$5 billion for a border wall.

The most visible result of the policy change may be the closure of a controversial 3,800-bed tent facility in Tornillo, Texas, that opened in June. It originally had 400 beds, but that was expanded to 500 in August and 3,800 in September as the government had custody of an exploding number of what it calls “unaccompanied alien children,” those who are apprehended at the border without a parent or guardian. The government now has custody of almost 15,000 such children, up from 9,000 when the fingerprint policy began in June and 3,000 at the beginning of the Trump administration.

“The children should be home with their parents. The government makes lousy parents,” Lynn Johnson, assistant secretary at Health and Human Services’ Administration for Children and Families, said in an interview with National Public Radio. She was echoing what critics of the administration’s policies have been saying for months.

One of the most controversial aspects of the Trump policy—sharing fingerprints of potential sponsors with ICE, which can use them for immigration enforcement—will remain in effect, said Representative Rosa DeLauro of Connecticut, the ranking Democrat on the House Appropriations subcommittee overseeing HHS funding. “The latest news from HHS is a positive step toward beginning to unravel its misguided fingerprinting policy, which has prolonged the trauma thousands of children in its custody face. Still, the heart of this harmful policy is still in place,” DeLauro said. “HHS should focus on providing the best care for these children, not be used as an immigration enforcement tool by fingerprinting sponsors when there are no red flags and then sharing that information with ICE. This process endangers children and will perpetuate their detention in HHS shelters.”

Mark Greenberg, who oversaw the unaccompanied migrant children program in the Obama administration, said the continued sharing of fingerprints with ICE could mean that the release of children could still move slowly because some potential sponsors may feel they’re risking deportation by stepping forward. Prior administrations collected

more limited fingerprint data from potential sponsors, and those fingerprints weren't shared with ICE or used for immigration enforcement. "This is likely to reduce some of the pressure, but we don't have a way of knowing how much of a difference it's going to make because the fundamental problems that stem from ORR cooperating in immigration enforcement are going to remain in place," he said.

The future of the Tornillo tent facility located outside El Paso wasn't specifically addressed in the HHS announcement. HHS has a contract with the operator, BCFS Health and Human Services, that expires December 31. But Representative Will Hurd, a Republican from Helotes whose district includes Tornillo, said the bulk of the children there could be quickly released under the new policy and if the administration clears a huge backlog of sponsors who've already submitted fingerprints and other background materials but have been left waiting for final word. "My understanding is its 1,300 kids whose sponsors have already done everything that's needed to get reviewed, if the kid can get released to them. Then there's 1,100 who have a sponsor that has come forward that are waiting for the fingerprinting and this process to start," Hurd said. The remaining children could be moved to permanent shelters elsewhere in the country while the government searches for a sponsor or works with their home country for possible return, he said.

The government will no longer require that all adults in potential sponsor households submit fingerprints that are reviewed by Immigration and Customs Enforcement, which has used the fingerprints to arrest at least 170 people. "In June 2018, (the Office of Refugee Resettlement) put into place a new policy that required all proposed (unaccompanied alien children) sponsors and household members be fingerprinted to enhance the safety checks on residents of the UAC's prospective home. Since the implementation of this new policy five months ago, ORR has determined the additional steps required to fingerprint all household members has had an impact on the timely release of UAC without demonstrated benefit to the safety of children after their release from ORR care," the Department of Health and Human Services said in a statement Tuesday afternoon.

Going forward, only potential sponsors will be required to submit fingerprints. Before June, parents and guardians weren't required to submit fingerprints except when background checks raised "red flags" that suggested risks to children. Other potential sponsors were required to submit their fingerprints, but not those of other household adults. Prior to June, fingerprints weren't shared with ICE.

"The fingerprints will continue to be cross-checked with the Federal Bureau of Investigation's (FBI) national criminal history and state repository records and also includes a search of DHS arrest records. ORR will continue to do public records checks

on all adult household members to ensure child safety,” the HHS statement said. Nothing in the statement precludes the use of fingerprints for immigration enforcement.

Critics warned that the new policy of providing fingerprints to ICE would make it more difficult to place children with sponsors, who are usually parents or other family members already in the United States. Many sponsors are themselves undocumented immigrants or have household members who are. Their immigration status doesn't preclude them from sponsoring children, but providing fingerprints to ICE would put them at risk for deportation.

Texas Monthly reported on Saturday that BCFS was asking the Trump administration to back off the fingerprint requirements in exchange for extending the contract to keep Tornillo open. The contract expires December 31, and the government had limited options because BCFS, a San Antonio-based nonprofit, owns all the infrastructure at Tornillo and is likely the only organization equipped to run a mass shelter for children. BCFS officials did not immediately respond to a request for comment on Tuesday.

BCFS CEO Kevin Dinnin told a congressional delegation that visited Tornillo on Saturday that the facility could close within weeks if the administration changed the fingerprint policy.

Costs have mounted as the number of children in government custody rapidly expanded. BCFS officials have said the government spent \$144 million—about \$1 million a day—to operate Tornillo between June and November. HHS Secretary Alex Azar in September authorized the transfer of \$446 million from other programs—such as cancer research and Head Start—to cover the unbudgeted costs of caring for migrant children in fiscal year 2018, which ended September 31. Congress budgeted \$1.3 billion for care of migrant children in fiscal year 2019, but the administration asked for another \$190 million as part of funding to avert a government shutdown. DeLauro vowed that any additional funding would come “over my dead body.”

5

COMMENTS

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