



## **Statement for the Record**

### **Kids in Need of Defense (KIND)**

**on**

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

**U.S. Senate Committee on Homeland Security and Government Affairs**

**September 18, 2018**

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie, and is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with 526 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has received more than 16,000 child referrals since we opened our doors in 2009, and trained over 25,000 pro bono attorneys. KIND also helps children who are returning to their home countries through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through our reintegration pilot project in Guatemala and Honduras, we place children with our local nongovernmental organization partners, which provide vital social services, including family reunification, school enrollment, skills training, and counseling. KIND also advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico.

#### *Mistreatment of Migrant Children in Detention Before the Flores Settlement Agreement*

In 1985, a 15-year-old girl named Jenny Lisette Flores arrived in the United States. Jenny’s home country, El Salvador, was embroiled in a bitter civil war. She came to the United States in search of safety and with the hope of reuniting with her aunt. However, instead of being quickly reunited with her family, the government held Jenny in detention for months. During this time, Jenny was housed with adults and repeatedly strip-searched. The government refused to release Jenny to her aunt because she was not Jenny’s legal guardian. With the help of the American Civil Liberties Union, Jenny sued the government, challenging its detention and release practices. In 1997, the suit resulted in the Flores Settlement Agreement.

In the *Flores* settlement, the government agreed to adhere to at least a minimal level of care for children in federal immigration custody. The basic standards set out in the agreement

require the government to provide children in immigration custody with basic necessities, such as food, water, bathrooms, and emergency health services. The settlement also requires that children are placed in the least restrictive setting possible, with a prioritization for release. For unaccompanied children, this typically means placement in a licensed program operated through a contract with the Office of Refugee Resettlement (ORR). ORR then works to identify and place unaccompanied children with approved sponsors willing to care for them during their immigration court proceedings. These basic protections have allowed children to live in a more supportive and nurturing environment during their time of need.

Subsequent court rulings have clarified that while the *Flores* settlement requires the transfer of most children to licensed programs within 3 to 5 days, the government may in limited circumstances, such as an influx or emergency, hold children in unlicensed, secure facilities for longer periods. The court has held that the government may hold children in unlicensed, secure family detention facilities for approximately 20 days, if this period reflects the government's most expeditious efforts to transfer children to a more appropriate setting. The *Flores* settlement has stood for the past 20 years, underscoring the legitimacy and importance of the agreement.

Detention of children does not only cause unnecessary trauma and harm to children, but it hinders their ability to seek assistance with asserting a legal claim to humanitarian protection. Immigration detention makes it difficult for a child to recover from traumatic experiences children have faced in their home countries or en route to the United States. It makes it hard for them to recount past experiences of persecution or abuse, which are key to proving their claims for legal relief from deportation.

KIND believes it is important (1) for the government to preserve the minimum standards of care mandated in the *Flores* settlement and (2) for Congress to maintain its necessary oversight of DHS and HHS facilities that house migrant children. As explained below, strong oversight of these facilities is particularly important in light of ongoing reports of sexual and physical abuse, mistreatment, overuse of secure detention, and the denial of basic necessities and fair treatment in government custody.

### *Preserving Detention Limits and Other Basic Protections for Migrant Children*

The *Flores* settlement provides basic protections to children that reflect the broad understanding, embodied in domestic and international child welfare law, that detention poses significant consequences for children and should be generally avoided. The courts, as well as the general public, have rejected the Administration's forced separation of parents from their children. Indefinitely jailing migrant children is similarly unacceptable.

Detention traumatizes children and should be avoided at all costs. In 2017, the American Academy of Pediatrics explained that detention hinders child development and causes psychological issues. Some unaccompanied children suffer from depression and post-traumatic stress disorder. Other kids contemplate suicide. The potential harm detention poses for children underscores the ongoing importance of protections mandated by *Flores*, including restrictions on prolonged detention, whether or not a child is accompanied by a parent or legal guardian.

DHS is well aware that detention is generally inappropriate for children. In October 2016, the ICE Advisory Committee on Family Residential Centers, organized under the authority of DHS, determined that “detention or the separation of families for the purposes of immigration enforcement or management are never in the best interest of children.” Accordingly, the advisory committee recommended that “DHS should discontinue the general use of family detention, reserving it for rare cases . . .” It cannot become the norm for children to be indefinitely held in conditions the government knows to be against their best interests.

### *Oversight of DHS and HHS Facilities Holding Migrant Children*

KIND believes it is completely inappropriate to house children in detention centers designed for adults. Accordingly, it appreciates that Congress wisely decided to grant ORR authority for the care and custody of unaccompanied children. Still, all government facilities housing migrant children, whether operated by HHS or DHS, require strict and consistent oversight. The need for strong oversight across the board is especially pressing considering the troubling stories that have come to light regarding the conditions and management of facilities in which children are held.

To be blunt: migrant children have suffered physical, verbal, and sexual abuse while housed in government facilities. A Southwest Key guard sexually abused a young girl in the middle of the night.<sup>1</sup> Another guard from the Southwest Key Casa Kokopelli facility was recently convicted of abusing multiple boys, including a child who was “in medical isolation.”<sup>2</sup> Children in other facilities have been shackled for days on end.<sup>3</sup> They have been pepper sprayed.<sup>4</sup> They have been “strapped into chairs, and [had] bags placed over their heads.”<sup>5</sup> These abuses cannot and should not be accepted or ignored.

Select government facilities are committing horrific healthcare violations. Some children at the Shiloh Residential Treatment Center are forcibly injected with sedatives, while others are required to take large amounts of pills every day.<sup>6</sup> As a result, children suffer from rapid weight

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<sup>1</sup> Nina Golgowski, *Employee at Migrant Children’s Shelter Accused of Sexually Abusing Girl*, HUFFINGTON POST (Aug. 2, 2018), [https://www.huffingtonpost.com/entry/sexual-abuse-migrant-children-facility\\_us\\_5b62f265e4b0fd5c73d6bec9](https://www.huffingtonpost.com/entry/sexual-abuse-migrant-children-facility_us_5b62f265e4b0fd5c73d6bec9).

<sup>2</sup> Bree Burkitt, *Jury Finds Southwest Key Employee Guilty of Molesting Unaccompanied Minors at Mesa Shelter*, AZ CENTRAL (Sept. 10, 2018), <https://www.azcentral.com/story/news/politics/immigration/2018/09/10/southwest-key-worker-convicted-abusing-minors-arizona-migrant-shelter/1258594002/>.

<sup>3</sup> Roque Planas and Hayley Miller, *Migrant Children Report Physical, Verbal Abuse in at Least 3 Federal Detention Centers*, HUFFINGTON POST (June 21, 2018), [https://www.huffingtonpost.com/entry/migrant-children-abuse-detention-centers\\_us\\_5b2bc787e4b0040e2740b1b9](https://www.huffingtonpost.com/entry/migrant-children-abuse-detention-centers_us_5b2bc787e4b0040e2740b1b9); Brief for Plaintiff at 6, *Flores v. Sessions*, No. CV 84-4544-DMG (AGRx) (C.D. Cal. May 18, 2018), ECF No. 409-1, [https://www.centerforhumanrights.org/PDFs/ORR\\_MTE2\\_Brief%5bDkt409-1%5d041618.pdf](https://www.centerforhumanrights.org/PDFs/ORR_MTE2_Brief%5bDkt409-1%5d041618.pdf).

<sup>4</sup> Planas and Miller, *supra* note 3; Brief for Plaintiff, *supra* note 3, at 6.

<sup>5</sup> Planas and Miller, *supra* note 3; Brief for Plaintiff, *supra* note 3, at 6.

<sup>6</sup> Blake Ellis et. al., *Handcuts, Assaults, and Drugs Called “Vitamins”*: *Children Allege Grave Abuse at Migrant Detention Facilities*, CNN (June 21, 2018), <https://www.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html>; Roque Planas, *Migrant Children Drugged Without Consent at Federal Centers, Court Documents Show*, HUFFINGTON POST (June 20, 2018),

gain and other side effects.<sup>7</sup> A young girl recently died after leaving an ICE facility.<sup>8</sup> Her death may have resulted in part from negligent care while in government detention.<sup>9</sup> Strong oversight of DHS and HHS facilities would help to recognize and address these troubling practices.

The living conditions in certain border facilities are shocking and unacceptable. Children have been served rotten food.<sup>10</sup> Baby formula is out of date.<sup>11</sup> Mothers and children are packed into small cells with other migrants.<sup>12</sup> In 2015, federal Judge Dolly M. Gee characterized certain facilities as having “widespread and deplorable conditions.”<sup>13</sup> These failures demonstrate the need for rigorous and consistent oversight. Although these abuses are sadly not necessarily new, they still must be stopped. Therefore, we need greater oversight of *any* entity that holds children, not greater leeway for the government to avoid compliance with existing standards and child welfare practice.

## Conclusion

In order to best protect the health and safety of young children, it is vital to preserve detention limits and other protections embodied in the *Flores* settlement. Additionally, it is critical that Congress continue to monitor DHS and HHS’ policies and actions related to childhood detention. The recent incidents of abuse, mistreatment, and inexcusable conditions demonstrate the need for vigilant oversight.

Children and families seeking asylum in the United States are often escaping dangerous and violent conditions in their home countries. Detention will not effectively deter these asylum seekers from seeking refuge. Instead of focusing on policies of deterrence, it is important to remember the purpose behind the *Flores* settlement: the protection of vulnerable children.

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[https://www.huffingtonpost.com/entry/migrant-children-drugged-without-parental-consent-at-government-institutions-court-documents-show\\_us\\_5b2a9e87e4b0321a01cd4dd3](https://www.huffingtonpost.com/entry/migrant-children-drugged-without-parental-consent-at-government-institutions-court-documents-show_us_5b2a9e87e4b0321a01cd4dd3).

<sup>7</sup> Planas, *supra* note 6.

<sup>8</sup> Maria Sacchetti, *Migrant Child Died After Release from Detention, Attorney Group Alleges*, WASHINGTON POST (Aug. 1, 2018), [https://www.washingtonpost.com/local/immigration/migrant-child-reportedly-dies-after-release-from-ice-family-detention-facility/2018/08/01/6a9515ea-95a8-11e8-a679-b09212fb69c2\\_story.html?utm\\_term=.9866b8ba7320](https://www.washingtonpost.com/local/immigration/migrant-child-reportedly-dies-after-release-from-ice-family-detention-facility/2018/08/01/6a9515ea-95a8-11e8-a679-b09212fb69c2_story.html?utm_term=.9866b8ba7320).

<sup>9</sup> *Id.*

<sup>10</sup> Patricia Hurtado, *Migrant Children Describe Abuse, Hunger in U.S. Detention Facilities*, BLOOMBERG (July 24, 2018), <https://www.bloomberg.com/news/articles/2018-07-24/migrant-children-detail-rough-reality-as-judge-weighs-monitoring>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Julia Preston, *Judge Orders Release of Immigrant Children Detained by U.S.*, N.Y. TIMES (July 25, 2015), <https://www.nytimes.com/2015/07/26/us/detained-immigrant-children-judge-dolly-gee-ruling.html>; Civil Minutes - General at 18, *Flores v. Johnson*, No. CV 85-4544-DMG (AGR<sub>x</sub>) (C.D. Cal. July 24, 2015), EFC No. 177, <http://graphics8.nytimes.com/packages/pdf/us/FloresRuling.pdf>.