



The Trump Administration and the Flores Settlement Agreement: An Attempt to Undermine Decades-Old Protections for Vulnerable Children

The *Flores* settlement followed nearly a decade of litigation challenging the poor and dangerous conditions in which children were held at length. The agreement sets forth national standards for the treatment of all children in federal immigration custody, prioritizes the release of children from detention to care in the community, and is consistent with international and domestic child welfare law.

On September 7, 2018, the federal government released proposed regulations with the goal of terminating the *Flores* settlement to expand its ability to detain children for longer periods in family detention facilities and to lessen the standards it is required to meet in detaining unaccompanied children. The proposed regulations mark a dramatic shift away from the terms of *Flores* and its focus on the best interests of children and instead would:

- **Allow the government to detain children indefinitely in family detention facilities.** Consistent with the *Flores* settlement agreement, the court has placed limits on the time in which migrant and refugee children may be held in unlicensed, secure facilities. The proposed regulations would expand the government’s ability to hold children in family detention beyond the 20 days referenced in the court’s ruling through the creation of an alternative federal licensing scheme. This would enable the government to select an auditor for its own family detention facilities—effectively self-licensing them to hold children for the duration of their immigration cases. Medical and mental health professionals have underscored the significant developmental and psychological consequences of detaining children for even short periods of time, including with their parents.
- **Give the government broad latitude to erode the conditions in which children are held and to delay the transfer of children to child-appropriate facilities.** The proposed regulations would allow the government to suspend or delay certain procedures and protections for children, including meals and snacks, and children’s placement in safer, licensed facilities in an “emergency.”
- **Allow the government to strip unaccompanied children of child-appropriate procedures and protections, including in the middle of a child’s case.** The proposed regulations would allow DHS and ORR to re-determine a child’s status as an unaccompanied child on an ongoing basis, for example, if a child turns 18 or a parent or legal guardian is located to care for the child. As a result, children may be stripped of critical child-appropriate procedures, such as the opportunity to first present their asylum

claims in a non-adversarial setting, rather than immigration court, even after their cases have begun. This not only creates systemic inefficiencies, but poses serious barriers to due process and humanitarian protection.

- **Undermines critical oversight of detention conditions for children.** The proposed regulations, if promulgated as final regulations, could terminate the *Flores* settlement and curb the critical role of *Flores* counsel in accessing and monitoring the conditions in which children are held and the treatment to which they are exposed. Recent reports of abuse, mistreatment, and poor conditions in federal facilities, including more than 200 declarations filed by *Flores* counsel, underscore the ongoing timeliness and importance of monitoring and oversight beyond that undertaken by the agencies themselves.