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**ADDENDUM D: THE FLORES SETTLEMENT AGREEMENT (UPDATED FEBRUARY 2026)**

This addendum supplements the Habeas Practice Advisory for Immigrant Children in Detention prepared for the ABA Section of Litigation, Children’s Rights Litigation Committee. This addendum is for educational and informational purposes only and is not legal advice. Habeas petitions are fact specific and must be tailored to the individual facts in a child’s case. Case law on these issues is rapidly evolving, and this template is only up to date as of February 2026. Those with questions about the contents of this template or about specific legal issues should consult with a qualified attorney.

**I. Key Takeaways**

1. The *Flores* Settlement Agreement (“FSA”) remains in full force and effect as to the Department of Homeland Security (“DHS”). All children in Customs and Border Protection (“CBP”) and Immigration and Customs Enforcement (“ICE”) custody are protected by the *Flores* Settlement Agreement.
2. The FSA is partially terminated as to the Department of Health and Human Services (“HHS”), which includes the Office of Refugee Resettlement (“ORR”), but is still in effect for children in restrictive (secure and medium-secure) and out-of-network placements, including residential treatment centers. The FSA’s key provisions that apply to other ORR placements are now enforceable through the Administrative Procedure Act. See [Appendix B](#) for more information.
3. An individual child in a facility still governed by the FSA can bring certain claims related to the settlement in an individual suit wherever they are being held.<sup>1</sup>
4. The FSA continues to provide the following key protections to children in restrictive and out-of-network ORR placements:
  - a. The FSA provides specific guidelines for when a child may be placed in a secure facility. FSA ¶¶ 6, 21. **If a child is placed in heightened supervision based on an isolated or petty offense, or solely because they are assessed as ready for step-down from a secure facility with no other justification, their placement can be challenged under the FSA.** *Id.* ¶¶ 21, 23. *Cf.* 45 C.F.R. § 410.1105(b) (setting out criteria for placing an unaccompanied child in a heightened supervision facility).
  - b. Even if a child meets secure criteria, the FSA mandates that ORR “shall not place an unaccompanied child in a secure facility ... if less restrictive alternatives in the best interests of the unaccompanied child are available and appropriate under the circumstances.” FSA ¶ 23; *see also* 45 C.F.R. § 410.1105(a)(2).
  - c. The FSA requires that the child be promptly placed in the “least restrictive setting that is in the best interest of the child.” FSA ¶ 23. *See also* 45 C.F.R. § 410.1003(f); the Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Publ. L. No. 110-457, 122 Stat. 5044, § 235(c)(2) (2008); 8 U.S.C. § 1232(c)(2)(A).

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<sup>1</sup> *Flores* Settlement Agreement, ¶ 24B. If such an action is brought, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

## II. *Flores* Settlement Agreement Background

In 1997, the U.S. government entered into the *Flores* Settlement Agreement. The FSA establishes national minimum standards for the treatment and placement of minors in immigration custody. Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 84-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997). It also provides for individual children to enforce its requirements as to their specific cases in the jurisdiction in which they are being held. FSA ¶ 24B. (“Any minor . . . may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge [their] placement determination or to allege noncompliance with the standards set forth in Exhibit 1” for licensed facilities and seek an order “solely affecting the individual claims of the minor bringing the action.”)

When the FSA was established, the Office of Juvenile Affairs in the former INS was responsible for the custody of unaccompanied immigrant children in the United States. However, in the Homeland Security Act of 2002, Congress dissolved the INS and transferred most of its functions to the DHS, while directing that ORR, a sub-department of HHS, should care for unaccompanied minors detained pursuant to the Immigration Nationality Act. Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002); 6 U.S.C § 279. As such, HHS and DHS share responsibility for children in immigration custody: HHS has responsibility for the care and custody of unaccompanied children, and DHS retains custody of children who arrive with a parent or legal guardian.<sup>2</sup> In 2016, the Ninth Circuit affirmed that the FSA applies equally to accompanied children held with a parent or legal guardian. *See Flores v. Lynch*, 828 F.3d 898, 908 (9th Cir. 2016) (holding that the FSA “unambiguously applies to accompanied minors”).

The U.S. government has a fundamental obligation under the FSA to “to treat [] all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors,” and to “make and record the prompt and continuous efforts on its part toward family reunification” and release of the child.” FSA ¶¶ 11, 18; *see also* 45 C.F.R. § 410.1203(a). The FSA also obligates the U.S. government to pursue a “general policy favoring release” of children unless continued detention is “required either to secure [their] timely appearance . . . or to ensure the minor’s safety or that of others.” FSA ¶¶ 11, 14.

## III. *Flores* Settlement Agreement in 2026

As of the date of this practice advisory, the FSA remains in full force and effect as to all children held in DHS custody. This is because under its terms, the FSA was to remain in effect only until 45 days after the U.S. government adopted regulations consistent with its substantive terms. FSA ¶ 9; FSA ¶ 40 (as amended Dec. 7, 2001). To date, however, the government has not fully met that requirement.<sup>3</sup> U.S. District Judge Dolly M. Gee in the Central District of California retains jurisdiction over the FSA.

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<sup>2</sup> The Homeland Security Act of 2002 (“HSA”) defines an “unaccompanied alien child” as “a child who (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” 6 U.S.C. § 279(g)(2).

<sup>3</sup> In August 2019, the U.S. government finalized DHS and HHS regulations aimed at sunseting the FSA and moved to terminate the FSA. *See Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien*

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**However, the FSA has been partially terminated as to HHS.** In 2024, ORR promulgated regulations to codify policies, standards, and protections for unaccompanied children, consistent with the Homeland Security Act and Trafficking Victims Protection Reauthorization Act, and to implement the substantive requirements of the FSA as they pertain to ORR. *Unaccompanied Children Foundational Rule*, 89 Fed. Reg. 34384, 34385 (Apr. 30, 2024) (codified at 45 C.F.R. pt. 410) (“The Foundational Rule”). Following the promulgation of the Foundational Rule, the U.S. government then moved to terminate the FSA with respect to HHS.

On June 28, 2024, the district court partially terminated the FSA as to children in HHS custody. *See Flores v. Garland*, No. CV 85-4544-DMG (AGRX), 2024 WL 3467715 (C.D. Cal. June 28, 2024). Specifically, the court granted termination except as to the FSA provisions governing secure, heightened supervision, and out-of-network facilities and provisions related to monitoring by plaintiffs’ counsel. *Id.* at \*5–6, \*9.

The court declined to terminate the FSA as to children placed in out-of-network facilities because the Foundational Rule exempts out-of-network facilities from the FSA’s minimum detention standards and the Rule’s monitoring provisions. 45 C.F.R. § 410.1302; *Garland*, 2024 WL 3467715, at \*6 (observing that “the [Foundational] Rule fails to provide *substantive* protections for the children placed at these [out-of-network] facilities”). The court further held that the Foundational Rule is inconsistent with the FSA because it expressly permits placement in a heightened supervision facility based on isolated or petty offenses or solely because a child “is assessed as ready for step-down from a secure facility.” *Id.* § 410.1105(b)(2). The district court held that these criteria cannot be the basis for heightened supervision placement and that children placed out-of-network remain fully protected by the minimum standards in the FSA. *Flores v. Garland*, 2024 WL 3467715, at \*6. The U.S. government did not appeal this decision, nor has HHS amended the Foundational Rule to resolve its remaining inconsistencies with the FSA. **As such, the FSA continues to protect children placed in secure, heightened supervision, and out-of-network facilities. Out-of-network placements must meet the minimum standards set out in Exhibit 1, which include basic services and protections against abusive disciplinary practices.**

Note that in May 2025, the U.S. government again moved to terminate the FSA in whole. The district court denied the government’s motion, and the government subsequently filed an appeal in the Ninth Circuit. *Flores v. Bondi*, No. CV 85-4544-DMG (AGRX), 2025 WL 2633183 (C.D. Cal. Aug. 15, 2025), *appeal docketed*, No. 25-6308 (9th Cir. 2025). As of February 12, 2026, the Ninth Circuit has yet to issue a decision on whether the district court abused its discretion in denying the government’s renewed motion to terminate the FSA.

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*Children*, 84 Fed. Reg. 44,392–535 (“2019 Regulations”). The district court denied the motion to terminate. *Flores v. Barr*, 407 F. Supp. 3d 909 (C.D. Cal. 2019). The Ninth Circuit upheld that denial. *Flores v. Rosen*, 984 F.3d 720 (9th Cir. 2020).