



The Flores Settlement Agreement, Explained

By Jennifer G. Hickey | July 2019

What is the Flores Settlement Agreement?

In 1985, a number of class action lawsuits were filed related to the detention of minor aliens, including Jenny Flores, a 15-year old unaccompanied minor who was detained after attempting to enter the country illegally.

Her case resulted in a series of judicial rulings and policy decisions, culminating in a March 1993 Supreme Court decision in which the 7-2 majority ruled that unaccompanied minors do not have a constitutional right to be released to anyone other than a parent or close relative.

In 1997, the U.S. government entered into a consent decree, the Flores Settlement Agreement, which established immigration detention standards for unaccompanied alien children, including how long they may be detained and to whom they may be released (parent, guardian, relative, etc.).

How Does It Contribute To The Current Crisis?

At the time the U.S. government agreed to the Flores Settlement, it was viewed as necessary to ensure the humane treatment of migrant children, including imposing a 20-day limit of federal detention as a way to encourage placement with an adult family member. However, in 2015, federal district court Judge Dolly Gee expanded Flores to include children who were detained at the border with their families.

That decision forced upon the U.S. government a Hobson's choice – either detain a parent and an adult but separate them by releasing the child after 20 days or release the entire family. In 2016, the Ninth Circuit Court of Appeals upheld Gee's ruling.

The reinterpretation of Flores requires the Department of Homeland Security (DHS) to “catch-and-release” families apprehended at the southern border and has created an incentive for thousands of family units to head north in the hope of being released.

So, *Flores* in its [current](#) interpretation means the government cannot hold either an accompanied or an unaccompanied migrant child more than 20 days.

What Can Be Done To Fix Flores?

Two words: Congress. Action. Legislative fixes proposed in both the House and Senate over the years have been stymied by pro-amnesty special interests, but that has to end.

Congress must pass legislation which supersedes the Flores v. Reno consent decree making it clear that DHS *can* detain family units, in appropriate facilities. Lastly, Congress must ensure federal immigration agencies have both the funding and resources needed to hire additional immigration judges.