



## Flores: Why a lawsuit filed in 1985 is relevant to the church today



### History:

In 1985, Jenny Lisette Flores fled violence in El Salvador and entered the U.S. hoping to reunite with her aunt. Instead, Immigration and Nationality Services (INS) strip-searched Jenny and detained her in facilities where she shared living quarters and bathrooms with unrelated adults of both genders. She was only fifteen years old. Jenny's aunt wanted custody of her; but at the time, INS policy restricted the release of a child either to her parent or guardian, but not to another adult relative. So Jenny remained imprisoned. The [Center for Human Rights and Constitutional Law](#)<sup>1</sup>, National Center for Youth Law, ACLU Foundation of Southern California, and the law offices of Streich Lang brought a class-action lawsuit against INS on behalf of Jenny and other detained migrant children.

Following more than a decade of litigation, the parties entered into a [Settlement Agreement in 1997](#)<sup>2</sup>. In the settlement, the government agreed to the following standards when housing migrant children.

- The general policy regarding migrant children is to release them.
- Children are to be released from custody without unnecessary delay to a parent, a legal guardian, an adult relative, an individual specifically designated by the parent, a licensed program, or an adult seeking custody deemed appropriate by the responsible government agency.
- Children are to be held in the least restrictive setting appropriate to their age and special needs.
- When children must remain in custody, they are to be held in a non-secure facility licensed to care for dependent minors.

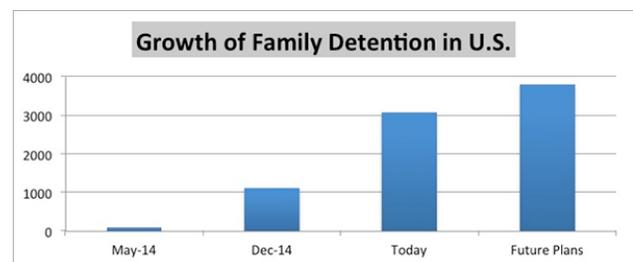
<sup>1</sup> [http://immigrantchildren.org/Flores\\_Case.html](http://immigrantchildren.org/Flores_Case.html)

<sup>2</sup> <https://www.aclu.org/legal-document/flores-v-meese-stipulated-settlement-agreement-plus-extension-settlement>

These standards were widely utilized by the, now, Department of Homeland Security (DHS) for seventeen years.

### Current Situation:

During 2014, an increasing number of children and families sought asylum by crossing the Mexico-U.S. border. These asylum-seeking families were fleeing from armed conflict, gang warfare, and pervasive instability in Guatemala, Honduras, and El Salvador. The U.S. government, in response, increased its capacity to detain families from 85 detention beds to 3,000.



DHS defended its actions by claiming that the standards in the 1997 Flores Settlement Agreement were not triggered as these children being detained today are with their parent(s), not alone like Jenny Flores.

On February 2, 2015, attorneys representing the Flores plaintiffs filed suit to enforce the 1997 Settlement Agreement for children in DHS Customs and Border Protection (CBP) custody and children detained with parents in DHS Immigration and Customs Enforcement (ICE) detention. On [July 24, 2015, U.S. District Judge Gee found](#)<sup>3</sup> that the government's detention of children in CBP facilities and ICE family detention centers was in breach of the Flores Settlement Agreement. The judge reiterated this finding in a [second order on August 21, 2015](#)<sup>4</sup> and ordered the government to implement the following by October 23, 2015:

<sup>3</sup> <https://www.scribd.com/doc/272828755/Judge-Gee-Order-Flores>

<sup>4</sup> <http://aila.org/File/Related/14111359p.pdf>

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- To release children that are in detention;
- To release children, as a first priority to a parent, which includes the parent that accompanied the child and was also detained;
- To never detain children in an unlicensed or secured facility (“secured” meaning the children are not free to leave);
- To release the parent with the child unless the parent poses a significant flight risk or the parent poses a danger to the community or national security.

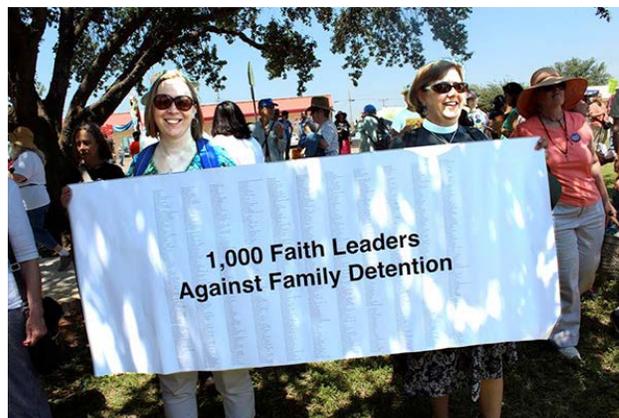
Many congregations and migrant rights organizations were pleased at the judge’s ruling and hoped that families would be quickly released from detention and that the U.S. would finally end the practice of detaining asylum-seeking families.

Unfortunately DHS, through the U.S. Attorney General, filed a notice of appeal, if DHS persists, the Ninth Circuit Court of Appeals will hear the case. If the parties are not pleased with the ruling in the Ninth Circuit, this case could be appealed to the U.S. Supreme Court. Should this happen, the U.S. Supreme Court is unlikely to rule on the matter until June of 2017. Meanwhile, the government appears to be intent on maintaining three family detention centers to confine families seeking protection in the U.S.

### Congregations and Family Detention:

As persons of faith, we are called, “to loose the bonds of injustice, to undo the thongs of the yoke, to let the oppressed go free.”<sup>5</sup> We are to call upon our country to abide by its laws that respect human dignity and rectify those that do not. In the case of family detention, the law is on the side of migrant families. Eighty-seven percent of families in detention pass a [credible fear interview](#)<sup>6</sup>, the first step in the asylum pro-

cess. The U.S. is a signatory to the [Protocol on the Status of Refugees, which incorporates Article 31 of the Convention on the Status of Refugees](#)<sup>7</sup>, as such we have promised the world that this country will not penalize those seeking protection within our borders. The U.S. [Immigration and Nationality Act](#)<sup>8</sup> contemplates and creates a legal avenue for people to enter the U.S., regardless of status, and ask for protection. How then, can our government incarcerate those who utilize this method? Finally, the U.S. has agreed, in *Flores*, to only detain migrant children as a last resort. The U.S. is not only ignoring its legal agreement in *Flores*, but its national and international duties to asylum seekers with the practice of family detention. It is time to “*let the oppressed go free.*”<sup>9</sup>



To learn more about family detention, view our [webpage](#)<sup>10</sup> for films and resources.

Stay up-to-date on the Flores case and other developments by following us on Facebook at: [Presbyterians for Just Immigration](#). Email the Office of Immigration Issues with questions: [Teresa.Waggener@pcusa.org](mailto:Teresa.Waggener@pcusa.org) or [Laura.Polk@pcusa.org](mailto:Laura.Polk@pcusa.org)

<sup>5</sup> Isaiah 58:6, NRSV

<sup>6</sup><http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-family-facilities-FY2015Q2.pdf>

<sup>7</sup> [www.unhcr.org/3b66c2aa10.html](http://www.unhcr.org/3b66c2aa10.html)

<sup>8</sup> <https://www.law.cornell.edu/uscode/text/8/1158>

<sup>9</sup> Isaiah 58:6, NRSV

<sup>10</sup> [www.pcusa.org/familydetention](http://www.pcusa.org/familydetention)