



DHS/ICE SEEKS COURT RULINGS TO ALLOW FOR INDEFINITE DETAINMENT OF CHILDREN

Report Prepared by the PA10th District Network Research Team - 2/17/2026

In May of 2025, the Trump administration filed a motion, their second attempt, to terminate the Flores Settlement, a 1997 legal landmark that serves as the primary defense against the indefinite and inhumane detention of immigrant children in the United States.

Under the Flores Settlement, the federal government is prohibited from holding children in "secure" (jail-like) facilities for more than **20 days**. After that limit, the government is legally required to release the child to a parent, relative, or a **non-secure, state-licensed child care facility**.

In August, 2025, Judge Dolly M. Gee of the U.S. District Court for the Central District of California rejected that motion, saying that neither the Homeland Security Department nor the Department of Health and Human Services, which are responsible for migrant children, were in "sufficiently substantial compliance to warrant termination of the Flores Settlement Agreement." In 2019, during the first attempt to terminate the settlement, the Trump administration argued that it should

not be required to provide soap, showers, towels or toothbrushes to detained children, which stunned a panel of Ninth Circuit judges.

Reports of unsafe and unsanitary conditions in detention centers have continued. Recent reporting and on site inspections confirm firsthand accounts of children who described being confined for days in frigid, windowless rooms without access to showers, or private toilets. Recent visits by legislators to a family detention facility in Dilley, Texas, have found inadequate medical care, as well as prolonged detentions that are taking a toll on mental health. Despite the Flores Agreement mandating child detentions of less than 21 days, some children have been held for 120 days and more.

As of February 2026, DHS (ICE and CBP) is waging a third attempt at terminating the Flores Settlement, with its appeal of the District Court's ruling. The case (Flores v. Bondi, formerly Flores v. Reno) is currently before the Ninth Circuit Court of Appeals, and the government has filed a "Motion to Expedite Oral Argument" (*January 23, 2026*) in an attempt to dissolve the Settlement as quickly as possible. Based on the Ninth Circuit's recent calendar updates for San Francisco (James R. Browning Courthouse) and Pasadena hubs, this case is expected to be calendared for late March or April 2026.

The administration is arguing that the \$45 billion congressional appropriation for "detention capacity" signals a legal shift toward long-term family detention. Opponents argue that a budget bill cannot silently strip children of their constitutional and human rights.

On January 28, 2026, a massive coalition of medical, legal, and political entities filed "Amicus Curiae" (Friend of the Court) briefs to urge the Ninth Circuit to keep the Flores protections in place. Key supporters include: (these can be found at <https://youthlaw.org/cases/flores-v-reno/>)

- **Medical Experts:** The American Academy of Pediatrics and other medical groups argued that terminating Flores would lead to irreversible physical and psychological trauma for children.
- **State Governments:** Attorneys General from 20 states (including California, Maryland, and Illinois) filed in support of the children, citing the risk of state-level harm. **(Pennsylvania is NOT among the twenty.)**

- **Political Leaders:** U.S. Senators and Members of Congress filed a brief arguing that the administration is overstepping its legal authority. (**Senator Fetterman is NOT among the signers of this brief.**)
- **Legal Scholars:** Over 160 immigration lawyers and former judges signed a brief highlighting how the administration's "warehouse" model violates the fundamental principles of the 1997 agreement.

The School Licensure Loophole

In the event that the Flores Settlement is not terminated, the government is attempting to reclassify and license these warehouses as "schools" or "residential childcare centers." If a warehouse is officially "licensed," the government can argue that it meets the legal requirements of the Flores Settlement, effectively allowing them to keep children and families detained there **indefinitely** while their immigration cases proceed.

Compliance with Flores is generally overseen by the states in which the facilities are located, and state child-welfare agencies often refuse to license detention centers as "schools" or "childcare centers." **The administration is using the "One Big Beautiful Bill" (passed in mid-2025) to create its own internal standards for licensing.** The Department of Homeland Security (DHS) has proposed a rule for **"Alternative Licensing,"** which would allow DHS to write its own safety and educational standards and hire its own external auditors to "license" these facilities, rather than relying on state child-welfare agencies. This is a direct attempt to circumvent the Ninth Circuit's previous rulings that state-level licensing is the only valid way to comply with Flores.

This strategy is officially pursued through a **Notice of Proposed Rulemaking (NPRM)** and bolstered by provisions in the "One Big Beautiful Bill" (the 2025 Reconciliation Act). A revised version of the proposed rule, **"Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,"** was re-issued in **late 2025** to align with the funding provided in the July 2025 Reconciliation Bill.

Additionally, the **DHS/ICE Policy Memo "National Detention Standards 2025" (NDS 2025)**, published by ICE, outlines the shift toward "Non-Dedicated

Intergovernmental Service Agreement Standards," which provides the framework for these warehouse-to-school conversions.

The most prominent example of this is occurring at the **South Texas Family Residential Center in Dilley, Texas**. In December 2025, reports emerged that **Stride Learning Solutions** (a for-profit education provider) was opening a school site inside the Dilley facility. By establishing a school on-site, the administration argues the facility now meets the "educational and care" requirements of a licensed setting, which would theoretically allow for **indefinite family detention**.

Legal challenges to block this "alternative licensing" scheme have been filed by advocacy groups like RAICES and the ACLU, arguing that "going to school in jail" does not constitute a valid state-licensed child care environment as required by the 1997 decree. And in **January 2026**, a coalition of 20 state Attorneys General filed a motion in the Ninth Circuit, arguing it violates state sovereignty over child welfare.

QUESTIONS TO CONSIDER:

1. How long does DHS anticipate holding children and families under a policy of "long term detention?" To what end?
2. How much public money would be funneled to for-profit schools under these contracts?
3. Would this set a legal precedent for the federal government to act as licensing authority for federally established schools, whether in detention centers or not, thereby bypassing all state licensing and oversight authority?

ADDITIONAL READING:

[Daily Number of Kids in ICE Detention Jumps 6x Under Trump](#)

[Trump Administration Moves to End Settlement that Protects Immigrant Children; Flores Counsel Vow to Defend Vital Safeguards](#)

[National Center for Youth Law: Flores v. Reno/Flores v. Bondi](#)

[Notice of Proposed Rulemaking \(NPRM\) "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children."](#)