Chapter 10

The *Flores* Settlement Agreement and the Evolution of the Rights of Unaccompanied Migrant Minors in the US

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INTRODUCTION

In January 2017, Donald Trump officially took office and became the forty-fifth President of the United States. The time he spent at the White House was marked by political and social tensions. Trump exercised his power to 'Make America Great Again' (his campaign slogan), and he assumed that restoring the power of the US required putting Americans first in his political and social agenda. This simply meant that in Trump's American society, there was no place for immigrants, who were "stealing jobs" from American citizens, benefitted from social programs that they were not entitled to, and were "criminals and rapists" who "came from shithole countries."[1] In line with his opinions on immigration and immigrants, President Trump introduced an immigration policy based on racial prejudice and xenophobic fears.

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[1] Massimiliano Demata, "'A Great and Beautiful Wall': Donald Trump's Populist Discourse on Immigration," *Journal of Language Aggression and Conflict* 5, no. 2 (2017): 274–94; Michael McCluskey, "Profanity and the President: News Use of Trump's Shithole Comment," *Newspaper Research Journal* 40, no. 4 (2019): 415–30; Robert Hartmann McNamara, *The Criminalization of Immigration: Truth, Lies, Tragedy, and Consequences* (Santa Barbara: ABC-CLIO, 2020), 5; Tony Platt, "Insecurity Syndrome. The Challenges of Trump's Carceral State," in *Crimmigrant Nations: Resurgent Nationalism and the Closing of Borders*, eds. Robert Koulish and Maartje van der Woude (Fordham: Fordham University Press, 2020), 56.

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American immigration policy and law have always raised concerns in society, but during the Trump administration, the changes he made brought more controversies than ever before. One of the reasons lies in the fact that the President hit the most vulnerable group of immigrants, minors. As a result of his "zero tolerance" policy and family separations at the border, it was children who suffered the most. Social and political activists raised the alarm about the violation of human and child rights, the treatment of minors with no respect for their human dignity, and the growing number of cases that resulted in asylum claims being rejected without a proper review. Despite the fact that the problem of children in immigration custody was nothing new in American immigration politics, the day-to-day practices of immigration agencies challenged standards that were settled in the past. The arrival of a huge migrant caravan in 2018, revealed the weakness of a system that was supposed to protect minors. The caravan started in Honduras with no more than 200 members, but by the time the group reached the US-Mexico border, it had grown in size to approximately 10,000 people.[2] The migrants who decided to join the caravan were mostly from the Northern Triangle countries (Honduras, El Salvador, Guatemala), and were fleeing gang violence, economic hardship, and political instability. Among the members of the group was a significant number of minors, both unaccompanied and accompanied.

Central American child migration to the United States has been an increasing problem for years. It started in the late 1980s when people started leaving the region and heading for the United States to reunite with relatives and find better economic opportunities for their families and themselves. The first significant "crisis" featuring unaccompanied minors appeared in 2014. Detentions of so-called UACs (unaccompanied alien children[3]) increased by 88% (2013 FY—35,200; 2014 FY—66,120). Between 2011 and 2016, US immigration agents apprehended almost 180,000 unaccompanied minors. It should be noted that this number does not include those who made it to the United States or those who only made it to Mexico.[4] Ninety-one percent of the more than 68,000 children detained in Mexico between 2016 and 2018 were deported and had no chance of arriving at the US port of entry. As with adults, minors on the move are exposed to a variety of potential risks like accidents, assaults, scams, kidnapping, trafficking, rapes, murders, detention and deportations.[5] Even if they reached the US-Mexican border, their situation did not

[2] Dara Lind, "The Migrant Caravan, Explained," Vox.com, October 25, 2018, https://bit.ly/2yz8jef; "Key Facts About the Migrant and Refugee Caravans Making Their Way to the USA," Amnesty International, November 16, 2018, https://bit.ly/3Nj9eot.

[3] An "alien" is the term that was used by Immigration and Customs Enforcement (ICE) for noncitizens. Today it is more often replaced by the terms 'noncitizen' and 'individual'. The language policy aiming to stop the use of offensive words referring to immigrants (e.g., "illegal immigrant") makes an exception for some such terms when necessary in legal paperwork, since some of the terms are language used in existing statutes.

[4] Michael Clemens and Kate Gough, "Child Migration from Central America," Center for Global Development June 20, 2018, https://bit.ly/3FAr8B4.

[5] Mark Isaacs, "Migrant Caravan," *Journal of Paediatrics and Child Health* 55, no. 10 (2019): 1280–82.

significantly improve. Detention in the US has become something to fear, and this is particularly true during the Trump administration. The presidential decision to criminally prosecute people crossing the border without a visa resulted in a widely criticized policy of family separations.[6] Even ending the zero-tolerance policy in June 2018, did not solve the problem, and federal data revealed that in 2019, still five migrant children per day continued to be separated from their parents at the US-Mexico border.[7] Minors were separated from their parents or legal guardians with whom they were migrating, and their cases were processed like those who were unaccompanied. The media reported on the so-called "missing children." The federal government lost control of 1,475 unaccompanied minors awaiting deportation hearings and was unable to make contact with them, a majority of them being minors who were released into the care of parents and other close relatives living in the US. But there is also a group of those whose parents were deported after being separated at the border and their location was unknown.[8] Due to the lack of records linking deported parents with separated children, they could not be reunited.

The increasing number of unaccompanied minors on the US-Mexican border, together with a lack of officers and complex, time-consuming procedures, resulted in a backlog that emerged at the border and in immigration courts. The media and activists reported that immigrant minors who barely spoke English or spoke only their native language were unable to express their needs or protect themselves. Thousands of children face immigration judges each year without appointed counsel. The analysis of asylum cases shows that only one out of ten claimants wins his or her case if he or she has no representation. With representation, asylum seekers have a five times greater chance of winning their case.[9] Furthermore, the huge increase in the number of minors detained in immigration facilities poses a significant challenge to the capacity of these buildings and the conditions they offer to young people. Despite the fact that standards of care had been known for years due to the *Flores* Settlement Agreement (FSA) and its subsequent changes, it transpired that the agencies responsible for detained minor migrants notoriously neglected those rules. Children were housed in prison-like facilities, often placed in cells with unrelated adults, or were detained for more than twenty days, as the 2016 ruling in *Flores v. Lynch* said.[10] This situation raised questions and concerns about the legacy

[6] It is worth noting that undocumented presence in the United States is not a criminal offense but a civil infraction.

[7] Riane Roldan and Alana Rocha, "Migrant Children Are Still Being Separated from Parents, Data Shows," The Texas Tribune, July 12, 2019, https://bit.ly/2kyonJw.

[8] Ed Pilkington, "Parents of 545 Children Still Not Found Three Years after Trump Separation Policy," The Guardian, October 21, 2020, https://bit.ly/3DmFVN2.

[9] "Asylum Representation Rates Have Fallen Amid Rising Denial Rates," TRAC Syracuse University, November 28, 2017, https://bit.ly/3Npttkl.

[10] *Flores v. Lynch*, No. 15-56434 (9th Cir. 2016), US Court of Appeals for the Ninth Circuit, Justia. US Law, accessed November 2, 2022, https://bit.ly/3FEtG1g.

of FSA and the children's well-being. During the Trump administration, the problem was exacerbated due to the outbreak of the Covid-19 pandemic. Security measures taken to prevent the spread of the pandemic reduced the capacity of detention facilities and migrant shelters: the number of beds available was reduced by half in many of them. However, immigration advocates highlighted an issue that had a significant impact on migrant children. Following the idea that the virus accompanies migrants, the Trump administration announced the implementation of the so-called 'Title 42' to reduce the threat of spreading it. That policy allowed them to deny entry to any immigrant, including asylum seekers. It is believed that Title 42 "directly violates several domestic and international policies requiring the federal government to provide for the best interests of children in their care."[11] Furthermore, Title 42 allowed hotels to be used as detention facilities, despite standards established in the FSA that required licensed detention centers and family reunification programs.[12] This solution did not completely fail to meet the rules included in the original version of the agreement, as it stated that in emergency situations officials can place children in unlicensed programs. The sudden increase in the number of unaccompanied minors and the Covid-19 pandemic became an explanation for implementing unusual measures.

The paper presented here offers an in-depth analysis of the legacy of the *Flores* Settlement Agreement. It has been assumed that the issue of unaccompanied minors in American immigration policy has not been properly solved, despite a more than two-decade debate and several changes made on the basis of FSA in order to make it work better. Immigration policy is a sensitive, complex, and challenging area of American politics. American society and the US Congress have been divided in their opinion on immigration for decades. As a result, we have a system that is outdated and needs comprehensive reform, but the federal legislature cannot find a compromise. It is worth noting that the situation of legislative limbo created space for court activity. The case of the evolution of FSA standards of care for minors in immigration custody showed the significant role that courts played in this process. After discussing the reasons for the problem that resulted in an agreement being reached between the Immigration and Naturalization Service (INS) and activists, this paper focuses on the role of courts and analyzes the influence of the judiciary on the development of the idea of unaccompanied migrant minor rights in the United States. The last part of this discussion focuses on contemporary issues related to the problem that was exacerbated during Donald Trump's administration and asks whether Biden's policy has responded to the situation.

[11] Ennely Medina, "From Flores to Title 42: Unaccompanied Children in Detention," *Harvard Human Rights Journal* 35 (2022): online journal, April 20, 2022, https://bit.ly/3WnVywm.

[12] Jorge Barrera, "How a 35-Year-Old Case of a Migrant Girl From El Salvador Still Fuels the Border Debate," CBC Radio, June 28, 2019, https://bit.ly/2kTsj7E.

THE BATTLE OVER JENNY FLORES CASE

The introductory remarks given above present basic data showing that the problem of unaccompanied minors apprehended at the US-Mexican border has been increasing for decades. However, securing the best interests of a child and providing proper care for young detainees was not a highly debated issue until the 1980s. The lack of oversight over the INS as to whether its activity complied with child welfare laws and the lack of regulations and/or standards set forth for minors in immigration custody resulted in controversial situations that were ultimately questioned in court. Among the failures mentioned in public debates most often as regards minors' needs were strip searches, indefinite detention, limited family visits, no adequate educational instruction or recreation activity, the lack of proper medical care in immigration facilities, and sharing the space with unrelated adults. They were all included in the 1985 complaint (*Flores v. Meese*),[13] which significantly impacted later changes in American politics.[14]

The history of the evolution of the rights of migrant minors is inextricably linked with the name of the Salvadoran girl Jenny Flores, despite the fact that she was just one of the plaintiffs in this case. Jenny, a fifteen-year-old child, escaped from El Salvador to be reunited with her mother, an unauthorized immigrant living in the US but was detained by the US immigration authorities.[15] The girl complained that after apprehension she was handcuffed, strip-searched, and finally, she spent two months in immigration custody. At that time, the INS only released unaccompanied minors into their parents' custody, a practice which was believed to be planned in order to arrest and deport immigrant parents living in the US illegally. Fear of being deported stopped Jenny's mother from picking her daughter up in person from a juvenile detention center where she was awaiting her deportation hearing. Instead, she sent a girl's aunt, but the INS did not allow a young detainee to be released to a third-party adult, despite the family connection between them. Flores, like other detained unaccompanied minors, was placed in a facility that three decades earlier had been used to be a hotel. The INS adapted the building by putting a chain-link fence in front of it and installed a sally port and a concertina wire around it. In an interview for National Public Radio (NPR), Carlos Holguin, one of the original immigration lawyers who argued on behalf of Jenny Flores, explained: "When we began to look

[13] *Flores v. Meese*, US District Court for the Central District of California—681 F. Supp. 665 (C.D. Cal. 1988) March 7, 1988, Justia. US Law, accessed November 9, 2019, https://bit.ly/3zZHGyT. Meese is for Edwin Meese, the US attorney general at the time.

[14] Jasmine Aguilera, "Body Cavity Searches, Indefinite Detention and No Visitations Allowed: What Conditions Were Like for Migrant Kids Before the Flores Agreement," Time, August 21, 2019, https://bit.ly/2HmLzT0; Susan J. Terrio, *Whose Child Am I?: Unaccompanied, Undocumented Children in U.S. Immigration Custody* (Oakland: University of California Press, 2015), 11.

[15] *Flores v. Meese*; J. J. Mulligan Sepúlveda, *No Human Is Illegal: An Attorney on the Front Lines of the Immigration War* (New York: Melville House, 2019), 91.

at the conditions that existed in the facilities in which the INS was placing these children, those conditions were completely inconsistent with any true concern for child welfare or their well-being. So the lawsuit basically argued two things. One is that the INS should screen other available adults and release children to them if they appeared to be competent and, you know, not molesters and things of that nature, and that—secondly, that the government needed to improve the conditions existing in facilities in which it held minors to meet minimum child welfare standards."[16]

The original suit was fundamentally two-fold. First, it claimed that the INS' release policy (UACs could only be released under the care of their parents or legal guardians) violated the rights of due process rights. The due process clause of the Fifth Amendment provides that "no person shall . . . be deprived of life, liberty or property, without due process of law" and it applies to aliens within the jurisdiction of the United States, even if their presence is unlawful.[17] Second, it claimed that the INS' detention policy regarding procedures upon arrest, as well as the deplorable conditions in its facilities, resulted in the mistreatment of minors and violated their rights. One of the core issues to be considered by the judge, Robert Kelleher,[18] was whether the INS policy of routinely strip-searching apprehended immigrant minors violated the Fourth Amendment of the United States Constitution that says: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."[19] The judge also had to decide whether the strip-searching practice used by immigration officers extended to "unreasonable searches" as described in the Fourth Amendment.[20] Note that the INS policy concerning procedures exercised by border agents varied and depended on the sector. In sectors where the number of juvenile apprehensions was not significant, strip searches were rarely used, but in the San Diego Sector or El Centro Sector Border Patrol it was often used. Considering that border patrol officers routinely used a pat-down search for weapons or contraband upon apprehension, it raised concerns about whether a strip search of minors in Border Patrol staging facilities was really necessary. Activists defending child rights stressed that the data confirmed that minors did not constitute a threat. Statistics showed that there were only twenty incidents of weapon or contraband discovery out of approximately

[16] "The History Of The Flores Settlement And Its Effects On Immigration," NPR, June 22, 2018, https://n.pr/2ETRxvZ.

[17] *Mathews v. Diaz*, 426 U.S. 67, 77, 96 S. Ct. 1883, 1890, 48 L. Ed. 2d 478 (1975), Casetext: Smarter Legal Research, accessed November 22, 2022, https://bit.ly/3Xn8VgU; *Wong Wing v. United States*, 163 U.S. 228, 238, 16 S. Ct. 977, 981, 41 L. Ed. 140 (1896), Casetext: Smarter Legal Research, accessed November 22, 2022, https://bit.ly/3XqCAWo.

[18] Robert Kelleher, a United States district judge of the United States District Court for the Central District of California.

[19] Fourth Amendment, Constitution Annotated, accessed November 22, 2022, https://bit.ly/3tf1JFQ.

[20] The Fourth Amendment's protections extend to undocumented aliens. *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982), Justia. US Law, accessed November 22, 2022, https://bit.ly/2AncdKL.

84,000 aliens searched in 1987. Interestingly, only four of them related to minors and only one was due to a strip search.[21]

A strip search is one of the most intrusive activities that significantly undermines human self-esteem and dignity and affects his or her sense of security. In the past, courts commented several times (e.g., *Bell v. Wolfish* (1979), *Mary Beth G. v. City of Chicago* (1983)) on using this procedure and described it as dehumanizing, humiliating, and terrifying.[22] The scope and character of the negative consequences of a strip search in the case of minors were significantly worse. In many cases, the embarrassing nudity enforced by immigration officers in the situation of dependency of minors caused trauma and seriously impacted the children's psychological well-being. Judge Kelleher stressed that the decision to use a strip search for minors should follow a solid justification for such action. At the same time, one cannot deny the government's interest in conducting the search to provide security in detention facilities. However, unlike jails or prisons, where adults charged with serious crimes were routinely strip-searched, detention facilities for migrant minors have never experienced serious problems with security. Judge Kelleher supported his opinion with a decision in *Giles v. Ackerman* (1984) that held that routinely strip-searching individuals arrested for minor offenses violated their constitutional rights and it could only be conducted if jail officials had "a reasonable suspicion" that an individual was carrying a concealed weapon or contraband and posed a security threat.[23] Reasonable suspicion became a key issue when making a decision on the legitimization of the strip search. The analysis of other court rulings in cases that questioned the right of enforcement officers to strip-search (e.g., *Stewart v. Lubbock County, Texas* (1985), *Logan v. Shealy* (1982), *Kirkpatrick v. City of Los Angeles* (1986), *United States v. Handy* (1986))[24] showed that judges agreed in their opinion that using such a procedure for minor offenders needed solid justification, otherwise it violated their rights. However, when it came to unaccompanied minor migrants, no standards concerning arrest, detention, or custody were established, because the court decisions in the cases cited above related to adults. The 1985 class-action

[21] Aguilera, "Body Cavity Searches, Indefinite Detention, and No Visitations Allowed: What Conditions Were Like for Migrant Kids Before the Flores Agreement"; Terrio, *Whose Child Am I?: Unaccompanied, Undocumented Children in U.S. Immigration Custody*.

[22] *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979); *Terry v. Ohio*, 392 U.S. 1, 18 n. 15, 88 S. Ct. 1868, 1878, n. 15, 20 L. Ed. 2d 889 (1968); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983), Casetext: Smarter Legal Research, accessed November 14, 2022, https://casetext.com/.

[23] *Giles v. Ackerman*, 746 F.2d 614 (9th Cir. 1984), cert. denied, 471 U.S. 1053, 105 S. Ct. 2114, 85 L. Ed. 2d 479 (1985), Casetext: Smarter Legal Research, accessed November 14, 2022, https://casetext.com/.

[24] *Stewart v. Lubbock County, Texas*, 767 F.2d 153 (5th Cir. 1985), cert. denied, 475 U.S. 1066, 106 S. Ct. 1378, 89 L. Ed. 2d 604 (1986); *Logan v. Shealy*, 660 F.2d 1007 (4th Cir. 1981), cert. denied, 455 U.S. 942, 102 S. Ct. 1435, 71 L. Ed. 2d 653 (1982); *Kirkpatrick v. City of Los Angeles*, 803 F.2d 485, 489 (9th Cir. 1986); *United States v. Handy*, 788 F.2d 1419, 1420-21 (9th Cir. 1986), Casetext: Smarter Legal Research, accessed November 14, 2022, https://casetext.com/.

lawsuit challenged the situation and aimed to change the INS policy. Judge Kelleher, in his opinion delivered three years later, noted that it was unconstitutional to strip-search children without establishing a plausible need to do it and that such a policy violated the Fourth Amendment. He also confirmed that detained minors could be released to an adult relative who was not in INS detention. Furthermore, in some unusual circumstances and under strict conditions, a UAC could be released to an unrelated adult, who was obliged to take care of the minor's well-being and to ensure his or her presence in future immigration proceedings.[25]

This ruling by Judge Kelleher provided a significant confirmation that the INS policy on juvenile detainees needed urgent reform. The standards used by immigration officers did not protect the interests and well-being of those who were especially vulnerable. Migrant minors were separated from their relatives and detained in immigration custody for weeks or months. Furthermore, children were often placed in prison-like facilities, despite the fact that they were subject to no criminal charges. Activists who defended their rights stressed that the fundamental constitutional right of due process for minors, including the right to be released to the custody of a "responsible adult," was violated and should be changed. Although Kelleher's ruling resonated with the expectations of activists and advocates, their optimism diminished when in 1990 a three-judge panel of the Ninth Circuit Court of Appeals reversed the decision.[26] The INS' victory was temporary, and a year later the Ninth Circuit *en banc*[27] in *Flores v. Meese* (1991) reinforced Kelleher's decision and ordered that minors awaiting their deportation hearings must be released to related or responsible unrelated adult parties.[28] The decision was based on the idea that detention could be justified only if the INS could prove that a minor would be a threat to the community or would pose a risk of flight. Furthermore, the Court required the INS to conduct mandatory hearings for detained minors before an immigration judge, who would establish the terms and conditions of their release. It also allowed the INS to make detention decisions on immigrant minors on a case-by-case basis. This policy was believed to best protect the interests of a child and the public.[29] The ruling of the Ninth Circuit Court confirmed that governmental detention of children should not be a standard procedure but a last resort. In cases where the institutional confinement of a minor is inevitable, it should be used only if other, less restrictive alternatives, are not possible.

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[25] Richard A. Karoly, "*Flores v. Meese*: INS' Blanket Detention of Minors Invalidated," *Golden Gate University Law Review* 22, no. 1 (1992).

[26] *Flores v. Meese*, US Court of Appeals for the Ninth Circuit—934 F.2d 991 (9th Cir. 1990), Justia. US Law, accessed November 22, 2022, https://bit.ly/3tR3BoE.

[27] A full eleven-judge court.

[28] *Flores by Galvez-Maldonado v. Meese*, US Court of Appeals for the Ninth Circuit—942 F.2d 1352 (9th Cir. 1991), Casetext: Smarter Legal Research, accessed November 22, 2022, https://bit.ly/3Vngtyh.

[29] *Flores v. Meese*.

FROM THE US SUPREME COURT HOLDING TO THE *FLORES* SETTLEMENT AGREEMENT

After a few years of extensive court battles, the agenda of the case eventually entered the United States Supreme Court. The hearing began in October 1992 and in March 1993, the Court delivered a win to the government and overturned two lower federal courts' rulings, stating that the INS should release children to other responsible adults or child-welfare organizations when possible.[30] Seven justices found that the INS' release procedures did not violate substantive or procedural due process rights. "Where a juvenile has no available parent, close relative, or legal guardian, where the government does not intend to punish the child, and where the conditions of governmental custody are decent and humane, such custody surely does not violate the Constitution. It is rationally connected to a governmental interest in 'preserving and promoting the welfare of thechild.' . . . We are . . . unaware, that any court . . . has ever held that a child has a constitutional right not to be placed in a decent and humane custodial institution if there is available a responsible person unwilling to become the child's legal guardian but willing to undertake temporary legal custody."[31] The Court held that the due process of law was satisfied with the right to a hearing before an immigration judge and therefore we could not speak of any violation of the Fifth Amendment. Justice Antonin Scalia, who wrote the majority opinion, also disagreed with calling arrangements made by the INS to take care of UACs "detention," and described it rather as "legal custody."[32] According to his explanation, the facilities where minors were waiting for their cases to be processed met state licensing requirements for the provision of shelter care, foster care, or any other related services to dependent children, which made them "legal custody." In his opinion, "detention" refers to correctional institutions.[33] Although Justice O'Connor and Justice Souter shared Scalia's opinion that INS' policy did not violate due-process clauses, they decided to stress the most important aspect of the case and wrote in their separate concurrence that children "have a core liberty interest in remaining free from institutional confinement."[34] Only two justices, John Paul Stevens and Harry A. Blackmun, did not agree with the majority. They believed that the core issue of the *Flores* case was not the right to be released to unrelated adults but the right to be freed from

[30] *Reno v. Flores*, 507 U.S. 292 (1993), Justia. US Law, accessed December 13, 2022, https://bit.ly/3Fs0gSl.

[31] *Reno v. Flores*.

[32] Chief Justice William H. Rehnquist and Associate Justices Byron R. White, Sandra Day O'Connor, Anthony M. Kennedy, David H. Souter, and Clarence Thomas joined Justice Scalia's majority opinion.

[33] Rebeca M. Lopez, "Codifying the Flores Settlement Agreement: Seeking to Protect Immigrant Children in U.S. Custody," *Marquette Law Review* 95, no. 4 (2012): 1635–78.

[34] Mark Walsh, "High Court Upholds I.N.S. Detention Of Suspected Illegal Alien Children," EducationWeek, March 31, 1993, https://bit.ly/3v2A4c8.

government confinement. Justice Stevens also pointed out that the "best interest of the child" could not be a criterion to judge the INS detention policy because it violated children's liberty: "So long as its cages are gilded, the INS need not expend its administrative resources on a program that would better serve its asserted interests and that would not need to employ cages at all."[35] According to the dissenting opinion, the reason why the litigation continued for many years in courts lay in the erroneous assumption that the core issues to be solved were detention conditions and the exclusion of unrelated adults as possible custodians. However, this class action lawsuit aimed to prove that minors held in detention facilities did not have "freedom from physical restraint" which the Constitution guaranteed to similarly situated citizens. They supported their opinion with Section 504 of the Juvenile Justice and Delinquency Prevention Act of 1974, which was believed to demonstrate the preference of Congress for juvenile release.[36]

Contrary to other justices, Stevens and Blackman considered the fundamental issue of the case to be "the freedom of physical restrictions." The majority opinion of the US Supreme Court held that the INS policy was constitutional because UACs could not be simply released on bond or on their own recognizance. The government's obligation was to provide adequate care and not release minors to unrelated adults.[37] Amanda V. Reis notes that "the lasting impact of the Reno decision was not the holding itself; instead, its lasting legacy was the *Flores* Agreement."[38]

Despite the fact that the final opinion of the US Supreme Court explained that the INS policy was correct and that the agency could detain minors instead of releasing them to unrelated adults, the standards of care in immigration custody were still called into question. Although existing regulations allowed temporarily placing UACs in facilities designed for other purposes in emergency situations or keeping them in immigration custody for weeks or even months, INS officials agreed that humanitarian concerns over children laid the basis for the agency's cooperation with activists that resulted in the signing of the *Flores* Settlement Agreement in 1997. Doris Meissner, then INS Commissioner, explained why her agency, which won the case in the US Supreme Court, decided to sign the FSA: "We have a responsibility to enforce the laws at the border. But for those who are especially vulnerable—young people and families—there are other measures that can be taken that, of course, enforce the law but are not so excessively harsh as to violate a principle so funda-

[35] *Reno v. Flores* (1993), No. 91–905, FindLaw, accessed December 19, 2022, https://bit.ly/2M5GMp6.

[36] Public Law 93-415, 93rd Congress, September 7, 1974, accessed December 19, 2022 https://bit.ly/3FHiaQU.

[37] Natalie Lakosil, "The Flores Settlement: Ripping Families Apart under the Law," *Golden Gate University Law Review* 48, no. 1 (2018): 31–62.

[38] Amanda V. Reis, "Codifying Flores: A Call to Congress to Protect Migrant Families from Deterrent Border Policies," *Roger Williams University Law Review* 7, no. 1 (2022): 140–58.

mental as young children being in detention for long periods of time."[39] The agreement established minimum standards for the treatment of minors in immigration detention. It required a "prompt" removal from immigration custody (but until 2015 the length of detention was not specified), allowed children to be released into the care of a qualified guardian, required that facilities, where minors were held, should be licensed to care for dependent children, and that juveniles should not be transported by the INS vehicles with detained adults. The FSA required immigration officials to provide minors with food and drinking water, medical assistance, adequate ventilation, and temperature control, access to toilets and sinks, and adequate supervision to protect minors from others.[40] Finally, the document restricted the time spent by UACs in Border Patrol facilities to seventy-two hours and allowed attorney-client visits in INS facilities. Parties signing FSA also agreed to its termination, five years from the date of the final court approval of this agreement or three years after the court determines that the INS is in substantial compliance with it.[41] The *Flores* Settlement Agreement was a milestone decision that prioritized humanitarian concerns, but it had a significant disadvantage: it was a court settlement, not a law. Although it had the force of the law until it was codified by Congress, any administration could decide how to implement that court decision. The FSA was not only criticized over whether the INS had fully implemented these regulations since its inception, but it was soon significantly challenged by changes in the George W. Bush administration.

NEW CENTURY, NEW CHALLENGES, OLD ISSUES

The last decades of the twentieth century boosted immigration advocates' hopes that the situation of minors detained by the INS could change. Since they were based on a temporary agreement reached in court and did not have a solid legislative base, the changes were believed to be uncertain and in effect made pro-immigration organizations more actively urge the Congress to act. After the 9/11 terrorist attacks, the Bush administration launched the War on Terror policy, supported by necessary pieces of legislation. What is important for the analysis of the evolution of detention policy of migrant minors was the fact that in the idea of the War on Terror, immigration policy was considered to be a national security issue. In parallel to the new policy and its goals, the US Congress enacted the Homeland Security Act in 2002. This piece of legislation introduced a reform of the federal

[39] "Barbershop: Border Separations," NPR, June 16, 2018, https://n.pr/3Gpi8il.

[40] William A. Kandel, *Unaccompanied Alien Children: An Overview*, CRS 2017, no. R43599, accessed December 30, 2022, https://bit.ly/3vrTU0A.

[41] *US District Court Stipulated Settlement Agreement in Flores v. Reno (1997)*, American Immigration Lawyers Association (AILA), accessed December 29, 2022, https://bit.ly/2Ei7t9m.

administration that changed the structure and the scope of the responsibilities of its agencies. First, immigration issues were transferred from the Department of Justice to the newly created Department of Homeland Security (DHS). Second, the INS no longer existed and its responsibilities for the processing and treatment of minors detained by immigration officers were divided between DHS, the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). The duties of the DHS were limited to the detention, transfer, and repatriation of minors, while ORR officers were required to provide appropriate care for UACs in custody.[42] The dispersion of duties and responsibilities between several DHS agencies raised concerns that it would be more difficult to screen their work and monitor whether their actions comply with the standards introduced by the FSA.[43] Additionally, immigration policy after September 11, 2001, was based on tougher enforcement, more restrictive controls, and broader expedited removal of illegal aliens. For immigration advocates, this moment of transformation in federal agencies puts standards set by the FSA at risk of being neglected or forgotten. The ORR expressed its positive commitment to the legacy of the FSA and in 2003 formed the Unaccompanied Alien Children (UAC) Program, which incorporated the provisions of the *Flores* Agreement.[44] However, in 2006, the ICE ended the catch-and-release policy, explaining that it had proved to be inefficient and did not ensure individuals appeared for hearings. The ICE also declared that the change was inspired by concerns that human traffickers could start "renting" children in an attempt to pass the groups off as families. This decision meant that detained families had to wait for their court hearings in immigration facilities rather than being released into the community. The conditions in the facilities dedicated to the detention of migrant families did not comply with the FSA standards. At that time, there were two family detention centers in the United States, in Berks County, Pennsylvania, and the Don T. Hutto Residential Center (Hutto) in Texas. Hutto was opened in an abandoned correctional institution and was operated by a private for-profit company, the Corrections Corporation of America. A report presented by the American Civil Liberties Union described conditions that were offered to minors as 'prison-like', where children were forced to wear prison uniforms, were

[42] Homeland Security Act of 2002, PUBLIC LAW 107–296—NOV. 25, 2002 116 STAT. 2135, Department of Homeland Security, accessed December 30, 2022, https://bit.ly/2t4j9p7.

[43] The managing of immigration processes after the enactment of the Homeland Security Act of 2002 was transferred to many specialized units. Customs and Border Protection (CBP) became responsible for processing UACs arrested along the border, Immigration and Custom Enforcement (ICE) physically transports them from CBP detention facilities to ORR custody and is responsible for returning those who were ordered to be removed. The ORR is responsible for detention of migrant minors from noncontiguous countries and for juveniles from Mexico and Canada who may be victims of trafficking or have asylum claims pending. US Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UACs. The Executive Office for Immigration Review (EOIR) (an agency in the Department of Justice) conducts immigration removal proceedings.

[44] Medina, "From Flores to Title 42: Unaccompanied Children in Detention."

offered limited or no educational opportunities, and were threatened with separation from their families.[45] In March 2007, immigration advocates decided to file a lawsuit and accused Hutto of violating the FSA.[46] In response, the government argued that the FSA applied only to unaccompanied migrant minors but the court did not share that opinion. In particular, US District Judge Sam Sparks agreed that the detention of non-criminal migrant minors in a secure facility did not violate the FSA because this document only set forth standards of care and encouraged the use of alternative detentions but did not forbid detention. However, the FSA provided that a minor may be held in a "secure facility" only if he or she "is chargeable" with a crime. A year after the ACLU sued the government, the *Hutto* Settlement Agreement was signed. It bolstered the significance of the standards introduced by the FSA by stressing that they applied to all children in INS and then DHS custody. Following the Agreement, the ICE announced reforms aimed at improving standards in facilities like that at Hutto, including external oversight, installing monitoring systems overseeing everyday operations, allowing minors over the age of twelve to move freely around the facility, installing privacy curtains around toilets, providing full-time on-site medical care, and improving educational opportunities or nutritional value of food.[47] Although the *Hutto* Settlement Agreement updated the FSA standards, it was criticized for its limited usage. Although the FSA addressed systemic problems regarding the detention of migrant minors, the Hutto Agreement applied only to children in the Hutto facility. It did not extend the same standards to the Berk facility or any other facilities that the ICE would use to detain families in the future. Finally, under the pressure of public opinion, the Obama administration requested the DHS to review its policy and no longer use the secure facilities to detain families.

Since 1997, when the *Flores* Settlement Agreement was signed, there have been many other cases decided by the courts that illustrated how immigration agencies had problems with the FSA standards (e.g., *Fabian v. Dunn*, *Walding v. United States*). In all these cases, the same class of violations repeated: humiliation, sexual, physical, or emotional abuse, and improper punishments. This situation has not changed, despite the fact that Congress partially codified the terms of the FSA. To secure the best interests of the child and address concerns that the Border Patrol did not adequately screen UACs for reasons they should not be returned at the border and sent back to their home countries, in 2008 Congress passed the William Wilber-

[45] "Case Summary in the ACLU's Challenge to the Hutto Detention Center," ACLU, accessed December 30, 2022, https://bit.ly/3vyArez.

[46] *Bunikyte, ex rel. Bunikiene v. Chertoff*, No. A-07-CA-164-SS, 2007 WL 1074070 (W.D. Tex. Apr. 9, 2007), ACLU, accessed December 30, 2022, https://bit.ly/3jEZ1HY.

[47] Walsh, "High Court Upholds I.N.S. Detention Of Suspected Illegal Alien Children"; Bill O. Hing, *American Presidents, Deportations, and Human Rights Violations: From Carter to Trump* (Cambridge: Cambridge University Press, 2018), 96–97.

force Trafficking Victims Protection Reauthorization Act (TVPRA).[48] This was the first success of advocates fighting for unaccompanied minors' rights since signing the FSA. At least some of the issues they had been calling for became codified. The Act directed federal agencies to implement policies ensuring that UACs would be safely repatriated to their native countries or places of their last habitual residence. Minors from contiguous countries (Mexico and Canada) were to be returned without additional penalties. Juveniles from other countries than Mexico and Canada and UACs from those countries apprehended away from the border were to be placed in HHS custody and subject to removal proceedings. What is important, the TVPRA required that migrant children from contiguous states be screened within forty-eight hours of being apprehended in order to determine whether they should be returned or placed in HHS custody and removal proceedings.[49]

The situation regarding the conditions in detention facilities became an issue in 2014 when there was significant growth in the number of UACs and family units being apprehended. Undocumented, unaccompanied migrant minors and family units entered the USA from Mexico but originated mostly from Central America.[50] Many of them lodged asylum claims and could not be placed in regular removal proceedings, as usually happened with families apprehended near the border. At that time, there was only one family detention center, which had limited capacity, and therefore the government opened three more. In particular, two of these (in Karnes City and Dilley in Texas) operate under the ICE Family Residential Standards. Despite the "suggestion" from Congress that the ICE should look for alternatives to the detention of families and UACs, DHS Secretary Jeh Johnson announced that due to the unprecedented influx of migrant families and UACs, they would be detained instead of releasing them into the community after issuing the Notice to Appear for an immigration court hearing.[51] The goal of the policy was to deter other migrants, but its implementation was immediately questioned in court. In February 2015, litigation regarding *Flores* Settlement was brought to the District Court of California. The plaintiffs in the *Flores v. Lynch* case alleged that the detention and release policy implemented in the new detention centers opened by the government violated the FSA standards. Defendants argued that the FSA regulations were only designed for UACs and announced that they would file a motion amending the Agreement. However, the District Court judge, Dolly M. Gee, did not agree with the argument

[48] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, PUBLIC LAW 110–457—DEC. 23, 2008, 122 STAT. 5044, U.S. Government Information, accessed December 30, 2022, https://bit.ly/3Gb21Dw; Susan F. Martin, *A Nation of Immigrants* (Cambridge: Cambridge University Press, 2021), 342.

[49] *US District Court Stipulated Settlement Agreement in Flores v. Reno*.

[50] Laura Briggs, *Taking Children: A History of American Terror* (Oakland: University of California Press, 2021), 150.

[51] Julia Preston, "Detention Center Presented as Deterrent to Border Crossings," New York Times, December 14, 2014, https://nyti.ms/3Ck703C.

that the standards introduced in 1997 could not be applied to accompanied minors in immigration custody.[52] She also rejected the government's motion to modify the FSA. Judge Gee ordered defendants to make all possible efforts toward family reunification, detain class members in appropriate facilities, release class members without unnecessary delay, and release an accompanying parent when releasing a child (unless he or she is subject to mandatory detention or poses a safety risk). The court also held that compliance with detention conditions should be monitored and that the government should provide a class counsel with monthly statistical information.[53] The government appealed but found limited support for its arguments. The Ninth Circuit court upheld the District Court's opinion that "minors who arrive with their parents are as desirous of education and recreation, and as averse to strip searches, as those who come alone."[54] However, the Ninth District Court reversed the lower court judgement that the FSA also applied to parents accompanying minors. On the one hand, this decision strengthened the 1997 Agreement stressing that there is no difference between unaccompanied and accompanied minors and that all deserve the same standards of care. On the other, it weakened the release policy due to the narrow interpretation of the FSA, which in the court opinion did not provide for any rights to adults. Thus, despite the fact that a minor should be released as soon as possible into his or her parent's custody, it does not mean that the parent should experience preferential treatment in this situation and be released with a child.[55] Furthermore, the Ninth District Court stressed that the original litigation that ultimately led to the *Flores* Settlement Agreement dealt with releasing a minor into the custody of unrelated adults and that intent was clear enough to say that the lower court erroneously interpreted the document requiring the government to release the accompanying parent.[56] Furthermore, the Ninth District Court's judges noted that the parents were not plaintiffs in the *Flores* case nor members of the two certified classes and this is another reason why they cannot be afforded affirmative release rights.

In January 2017, Donald Trump was sworn into office and became the forty-fifth President of the United States. He held very restrictionist, anti-immigrant views that quickly resulted in multiple decisions targeting immigrants in a variety of aspects. The issue that aroused both domestic and international criticism was the policy of immigrant family separations and the standards of care for minors in immigration custody. In May 2017, President Trump announced that every parent crossing the border illegally would be prosecuted and if migrating with a child or children, they

[52] Helen T. Boursier, *Desperately Seeking Asylum: Testimonies of Trauma, Courage, and Love* (Lanham, Boulder, New York, London: Rowman & Littlefield, 2019), 59.

[53] *Flores v. Lynch*, 212 F. Supp. 3d 907 (C.D. Cal. 2015), 21.08.2015, Casetext, Smarter Legal Research, accessed January 6, 2023, https://bit.ly/3ItBDaQ.

[54] *Flores v. Lynch*.

[55] Reis, "Codifying Flores: A Call to Congress to Protect Migrant Families from Deterrent Border Policies," 44.

[56] *Flores v. Lynch*.

would be separated and minors would be processed as UACs. The effect of this policy was unfortunate. About 5,000 children were separated from their parents with no records that would allow the parents to reunite with their children. Public and international pressure to end the policy of family separations resulted in President Trump's decision to keep detained families together, but it soon transpired that the solution proposed by the President could conflict with the FSA regulations. Immigration courts were overloaded with cases and migrants were waiting weeks and often months for their hearings. This meant that children who stayed with detained parents would spend more time in detention than the FSA's regulation allowed. The federal courts' interpretation of the 1997 Agreement said that minors could not be detained for more than twenty days.[57] The Trump administration sought to modify this and filed a request in the federal district court to change the terms of the FSA, proposing a new standard that would allow minors to be held with their parents throughout the pendency of their immigration proceedings. That case, known as *Flores v. Sessions*, was decided by Judge Dolly M. Gee, who supported the FSA standards in the ruling in *Flores v. Lynch* (2015). On July 9, 2018, she issued an order denying the request to change FSA standards and commented on the government's action as "a cynical attempt . . . to shift responsibility to the judiciary for over 20 years of Congressional inaction and ill-considered executive action that have led to the current stalemate. . . . In summary, defendants have not shown that applying the *Flores* Agreement 'prospectively is no longer equitable,' or that 'manifest injustice' will result if the Agreement is not modified."[58] The government response, announced by the spokesman of the US Department of Justice, Devin O'Malley, shifted the responsibility for the prolonged detention of minors to their parents, as they are the ones who have to decide whether they want their children to be separated and then released to a sponsor or remain together in detention.[59]

Along with the growing number of immigrant families and UACs apprehended by Border Patrol, the problem of adhering to the FSA regulations increased. There was insufficient personnel nor the necessary infrastructure to process these cases on time. Although the government had some "flexibility to reasonably exceed the standard five-day requirement so long as the minor is placed with an authorized adult or in a non-secure licensed facility, in order of preference under Paragraph 14, 'as expeditiously as possible.' . . . especially if the brief extension of time will permit

[57] Laurie Collier Hillstrom, *Family Separation and the U.S.-Mexico Border Crisis* (Santa Barbara: ABC-CLIO, 2020), 43; Nancy Kassop, "Legal Challenges to Trump Administration Policies: The Risks of Executive Branch Lawmaking That Fails to 'Take Care,'" in *Presidential Leadership and the Trump Presidency: Executive Power and Democratic Government*, eds. Charles M. Lamb and Jacob R. Neiheisel (Cham: Springer, 2019), 68.

[58] *Flores v. Sessions*, No. 17-55208 (9th Cir. 2017), United States District Court, Central District of California, accessed January 4, 2023, https://politi.co/2L3zF0t.

[59] Andrew Hay, "Judge Rejects Trump Request for Long-Term Detention of Immigrant Children," Reuters, July 10, 2018, https://reut.rs/2KXfyEk.

the DHS to keep the family unit together,"[60] the situation at the border and in detention facilities seriously challenged these regulations designed for emergency issues. The media reported on overcrowded facilities called "influx shelters," created ad hoc when the standard network was at or near capacity. The *Flores* Settlement Agreement allowed such a solution to be used in an emergency, despite the fact that they were not licensed and did not fully meet the required standards. The ORR could only place minors in influx facilities who were thirteen–seventeen years old, had no known medical or behavioral issues, spoke English or Spanish, and were expected to be released to a sponsor within thirty days. Since 2019, the ORR has changed its policy and required influx facilities to meet at least the minimum standards of the FSA and to comply to the greatest extent possible with applicable state child welfare laws and regulations.[61] Despite their bad reputation, influx shelters were still used by immigration officials.

The Covid-19 pandemic significantly challenged the standards of care in immigration facilities. Due to health measures, the number of beds in already overcrowded facilities was reduced by half. Trump's new law, known as Title 42, announced in March 2021 to prevent the spread of Covid-19 not only limited essential travel but also suspended asylum processing for refugees and unaccompanied minors and expelled them immediately to the country of the last transit, usually Mexico.[62] The Mexican authorities sent them back to their home countries despite their expressed fears of torture and abuse upon their return. In some cases, desperate families decided to cross the US-Mexico border illegally, which most often resulted in their deaths. To protect minors, parents who were denied asylum often decided to self-separate from their children and made them cross the border alone. They hoped that minors, as UACs, would be released into sponsor's custody and granted asylum. However, the policy of immediate expulsion without proper asylum screening resulted in situations where children were not placed in ORR custody but were isolated in hotel rooms waiting for their removal.[63] The immigration advocates expressed alarm that this violated not only the FSA standards but also the regulations of the TVPRA. Once again, Judge Dolly M. Gee of the US District Court for the Central District of California was required to decide whether immigration officials were correct in claiming that the FSA did not preclude the detention of UACs in

[60] *Flores v. Sessions*.

[61] "'Influx' Facilities for Unaccompanied Immigrant Children: Why They Can Be Needed & How They Can Be Improved," Justice for Immigrants, accessed January 4, 2023, https://perma.cc/9RFH-YEL7.

[62] Jo-Anne Wilson-Keenan, *Children at the Border: An American Human Rights Crisis* (Jefferson: McFarland & Company, Inc., Publishers, 2021), 147; Denise Gilman, "Barricading the Border: COVID-19 and the Exclusion of Asylum Seekers at the U.S. Southern Border," in *Migration in the Time of COVID-19: Comparative Law and Policy Responses*, eds. Jaya Ramji-Nogales and Iris Goldner Lang (Lausanne: Frontiers Media SA, 2021), 54–56.

[63] Richard Vadasy, "The Trump Administration's War on the Flores Settlement Agreement Renewed Amid COVID-19 Pandemic," *Children Legal Rights Journal* 41, no. 11 (2021).

hotel rooms. In addition, the Covid-19 pandemic made it difficult to find places in ORR-licensed facilities and therefore they had to find alternative ways of detention that complied with the FSA.[64] The court ordered that the ICE and ORR must strictly follow the Covid-19 protocols to ensure sanitary conditions, social distancing, masking, and enhanced testing. It also ordered the ICE to transfer migrant children held in ICE Family Residential Centers (FRCs) to their families or sponsors by July 17, 2020. Before that date, the ICE appealed to the US Court of Appeals for the Ninth Circuit (on June 23, 2020). In *Flores v. Barr* (a complaint filed on March 26, 2020), immigration advocates argued that detaining UACs in hotels for a prolonged period of time violated their best interests and that unaccompanied minors should be excluded from Title 42 because immigration officials could not provide proper care for detained children.[65] The Ninth Circuit Court held that the district court appropriately interpreted it as consistent with both the INA and this court's prior interpretation of the Agreement.[66] In November 2020, another court's decision strengthened the FSA. In *P.J.E.S. v. Wolf*, when the plaintiff's attorneys sought to receive a preliminary injunction to halt the expulsion of children pursuant to Title 42, United States District Judge Emmet G. Sullivan agreed that the detention of children in hotel facilities violated the standards of care set forth in the FSA.[67]

CONCLUSIONS

Thanks to *Flores v. Barr* and *P.J.E.S. v. Wolf*, Trump's Title 42 no longer applies to unaccompanied minors but it does not solve the problem of the lack of comprehensive legislation securing the best interests of a child apprehended for illegally crossing the American border. The history of Flores litigations clearly proved that the document was weak, which is not surprising, since settlement agreements are generally not supposed to be long-term solutions. The FSA did not provide oversight that would prevent immigration officials from implementing the 'self-interpreting' policy of its standards. It resulted in lawsuits brought to the courts which confirmed that despite the critics of DHS' policy towards UACs, it did not violate their constitutional rights. The detention of minors was interpreted as 'legal custody' of an administrative and civil character, and the procedure should not be considered criminal, as the children were not placed in correctional institutions.

[64] Barrera, "How a 35-Year-Old Case of a Migrant Girl from El Salvador Still Fuels the Border Debate."

[65] *Flores v. Barr*, No. 17-56297 (9th Cir. 2019), Justia. US Law, accessed January 12, 2023, https://bit.ly/3XBpy7F.

[66] *Flores v. Barr*.

[67] *P.J.E.S. v. Wolf*, 502 F. Supp. 3d 492 (D.D.C. 2020), Casetext, Smarter Legal Research, accessed January 12, 2023, https://bit.ly/3Xw7VpZ.

Furthermore, the issue with the family separations policy showed that children's rights are not well protected and depend on the vagaries of a given presidential administration. As with immigration policy, the policy addressing children migrating without authorization is created on a day-to-day basis. Until recently, courts have been the most active part of this process. Congress remains idle despite the fact that the history of the Flores litigations clearly showed that the need for action is urgent. Codifying the provisions of the FSA would ensure the best interest of the child. Immigration advocates also note that such legislation should also address the United Nations Convention on the Rights of the Child, which the United States has yet to ratify, despite the fact that they are the only member of the UN not to have done so.

Since 1997, when the *Flores* Agreement was settled, the United States has come a long way in terms of the policy regarding the treatment of minors in immigration custody. Thanks to the court battles fought over recent decades, children in immigration custody are no longer treated as adults. The standards of detention have been established and require immigration officials to treat minors' detention as the last resort and to place those whose release is pending (or no release option is available) in the least restrictive setting. It is required that a stay at the border facilities does not exceed seventy-two hours and twenty days in federal detention. The government's obligations include following nutrition guidelines, providing appropriate educational services, full-time health care, or supplying toys and books.

Unfortunately, the Biden administration had to deal with the situation of the growing number of UACs apprehended at the US-Mexican border. His critics blamed that significant increase on his liberal stance on immigration and excluding unaccompanied minors from Title 42. In order to process cases of detained children more effectively, the Biden administration opened previously closed facilities and new temporary shelters. In particular, these new facilities raised concerns about the standard of care they offered to minors. They were often run by private contractors who hired personnel with very limited or no Spanish language skills and/or were not adequately trained to take care of children. Again, the FSA and its standards became an issue. It is worth noting that this situation will probably repeat until Congress proposes legislation addressing the problem in a comprehensive manner. Although its members debated the issue of increasing the number of UACs crossing the border without authorization on several occasions, so far no significant legislation proposal has been introduced. Immigration advocates remark that there is no political interest in challenging that situation due to the fact that UACs and their parents do not vote and thus do not represent a valuable electorate.

Summary: The United States of America has been one of the most popular destinations for migrants. American immigration policy has to face many challenges, and one of the most difficult is illegal immigration. This issue becomes even more complicated when there are

minors among unauthorized immigrants apprehended by Border Patrol. Current migration trends show that the number of detained migrant children, mainly from Central America, is growing constantly. Insecurity, poverty, violence, abuse, and gang activity are the main reasons that make them flee. The increasing number of minors, especially unaccompanied, apprehended by immigration officials revealed the weakness of the existing American immigration policy. Procedures, detention facilities, and immigration personnel were not adjusted as appropriate to secure the best interest of the child. The *Flores* Settlement Agreement (1997) was the first step taken on a bumpy road to introduce a set of regulations securing the rights of unauthorized migrant children. Despite critical voices condemning the policy of federal immigration agencies, Congress did not act, and little progress has been made to protect the rights of detained minors we owe courts. The judges consequently widened the interpretation of standards settled in the *Flores* Agreement and blocked attempts by executive power to narrow the meaning of the document. This paper explains the evolution of the rights of unaccompanied migrant minors and shows the role of courts in shaping immigration policy. The author concludes that no significant progress has been made, despite efforts by immigration advocates to change the situation for decades.

Keywords: unaccompanied minors, illegal immigration, the rights of a child, American immigration policy, detention facilities

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