Case No. 25-6308

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES., *et al.,*
Plaintiffs-Appellees,
v.
PAMELA BONDI, ATTORNEY GENERAL OF THE UNITED STATES, *et al.,*
Defendants-Appellants.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF OF MORE THAN 160 IMMIGRATION LAWYERS, LAW PROFESSORS, SCHOLARS, AND FORMER IMMIGRATION JUDGES AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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INTRODUCTION AND STATEMENT OF AMICI[1]

Amici curiae are more than 160 leading lawyers, law professors, scholars, and former immigration judges who practice, write about, research, and teach immigration law.[2] *Amici* collectively have many centuries of experience representing individuals, including children and families, at all stages of their immigration proceedings and in federal court. Regardless of their differing views on this administration's immigration policies, *amici* are united (1) in concluding that the *Flores* Settlement Agreement is designed to be a critical safeguard that helps ensure immigrant children are not subject to indefinite detention in inhumane and degrading conditions during the pendency of their immigration court proceedings; and, (2) without the *Flores* Settlement Agreement, children would very likely be detained in deplorable conditions in unlicensed facilities for months or years.

Amici have a strong interest in the outcome of this case. Allowing the federal government to terminate the *Flores* Settlement Agreement will have devastating

[1] Plaintiffs and Defendants have consented to the filing of this brief. No party or its counsel had any role in authoring this brief. No person or entity—other than *amici* and their counsel—contributed money that was intended to fund preparing or submitting this brief.

[2] A list of *amici* is set forth in the Addendum. The positions taken in this brief are those of *amici* alone and should not be attributed to any institution with which *amici* are or have been affiliated.

effects on immigrant children and families, upend the practice of immigration law, and undermine fundamental due process protections.

ARGUMENT

The *Flores* Settlement Agreement is designed to be a critical safeguard that helps ensure immigrant children are not subject to indefinite detention in inhumane and degrading conditions during the pendency of their immigration court proceedings. A case for asylum or other form of humanitarian protection, such as withholding of removal or Convention Against Torture relief, can take months or years to resolve. Under the current administration, many immigrant children and their parents—even those who have lived in the United States for years—are highly likely to be detained throughout the pendency of their immigration court proceedings. The administration is claiming sweeping application of the mandatory detention provisions of 8 U.S.C. § 1225 to immigrants, including children, in the United States, an interpretation that has been rejected in hundreds of federal court decisions. The administration insists that asylum-seeking children and their parents are not eligible for release on bond once they are detained, despite federal court decisions ruling to the contrary. The administration also is denying detained children, even those with serious medical needs, the opportunity to be released on parole. In these circumstances, the *Flores* Settlement Agreement offers the only viable mechanism for release for many detained immigrant children. If the *Flores*

Settlement Agreement is terminated, children would very likely be detained in deplorable conditions in unlicensed facilities for months or years.

I. Without *Flores*, the Prolonged Detention of Immigrant Children Would Become Indefinite, Raising Serious Due Process Concerns.

Even with the *Flores* Settlement Agreement in place, immigrant children are routinely detained for several weeks or months. If the Agreement were terminated, their detention would become indefinite, raising serious due process concerns.

A. Even with *Flores* in Place, Immigrant Children, Including Those Who Have Lived in the United States for Years, Are Subjected to Prolonged Detention.

The *Flores* Settlement Agreement generally does not permit the detention of children in federal immigration custody for longer than twenty days. *See Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015), *aff'd in part, rev'd in part and remanded*, 828 F.3d 898 (9th Cir. 2016). But many children have been detained in federal immigration custody for far longer periods over the past year. From January to October 2025, at least 3,800 children under the age of eighteen, including twenty infants, were arrested and detained by U.S. immigration authorities.[3] More than 1,300 children were detained longer than twenty days from

[3] Anna Flagg & Shannon Heffernan, *ICE Threw Thousands of Kids in Detention, Many for Longer than Court-Prescribed Limit*, Marshall Proj. (Dec. 17, 2025), https://www.themarshallproject.org/2025/12/17/children-immigration-detention-dilley-ice.

January to October 2025.[4] In August and September 2025, ICE detained nearly 400 children for more than twenty days—the legal limit for children in immigration custody.[5] More than 150 of those children appear detained for more than thirty days.[6] By November 2025, five children had been detained for 168 days.[7]

The children subjected to immigration detention over the past year include those who have recently entered the United States and those who have been living in the United States for a year or longer. Indeed, some children had been living in the United States for years when they were arrested and detained at required ICE check-ins.[8] Other children were arrested when they appeared for their hearings in immigration court in connection with their asylum cases.[9] When these children

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[4] *Id.*

[5] Plaintiffs' Response to December 1, 2025 Supplemental ICE Juvenile Coordinator Report and Data at 2, Case No. CV 85-4544-DMG, Dkt. 1706 (C.D. Cal. Dec. 8, 2025) [hereinafter "*Flores* Plaintiffs' December 2025 Response"] (citing ICE JC Supplemental Report at 2; September census chart; August census chart), available at https://storage.courtlistener.com/recap/gov.uscourts.cacd.45170/gov.uscourts.cacd.45170.1706.0.pdf.

[6] *Id.*

[7] *Id.* at 9.

[8] Mica Rosenberg, et al., *ICE Sent 600 Immigrant Kids to Detention in Federal Shelters This Year. It's a New Record*, ProPublica (Nov. 24, 2025), https://www.propublica.org/article/ice-detentions-immigrant-kids-family-separations.

[9] Dan Katz, *ICE Arrested a 6-Year-Old Boy with Leukemia at Immigration Court. His Family is Suing*, Texas Public Radio (June 25, 2025), https://www.tpr.org/border-immigration/2025-06-25/ice-arrested-a-6-year-old-boy-with-leukemia-at-immigration-court-his-family-is-suing.

stepped out of the immigration courtrooms, masked ICE agents arrested them in courthouse hallways, detained them, and eventually transported them to the long-term immigration detention facility in Dilley, Texas.[10]

Among the immigrant children who have been arrested and detained after living in the United States for years are three high school students from Detroit.[11] Kerly Sosa Rivero had been a high school student active in her classes for two years who dreamed of going to college. Antony Peña Sosa, an academically ambitious violin player, had excelled in his Advanced Placement course. Santiago Zamora Perez, a student with excellent grades and a star baseball player, dreamed of playing in college.[12] Much younger children who had been living in the United States have also been detained, such as six-year-old Maria Paola,[13] a first grader from New York City; a seven-year-old second grader from Winooski, Vermont;[14]

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[10] *Id.*

[11] Letter from Mich. State Sens., Mich. State Reps., U.S. Congresswoman & Detroit City Councilmember to Kevin Raycraft, Field Dir., ICE & Miguel Vergara, Field Dir., ICE, Dec. 9, 2025, https://senatedems.com/wp-content/uploads/2025/12/MI-Leg-Letter-Urging-Release-of-Western-HS-student-and-family-members-25-12-9.pdf.

[12] *Id.*

[13] Ted Hesson & Kristina Cooke, *As Trump Misses Deportation Goals, ICE Pushes Migrants to Give up Their Cases*, Reuters (Dec. 11, 2025), https://www.reuters.com/world/us/ice-threatens-family-separation-indefinite-detention-satisfy-trump-deportation-2025-12-11/.

[14] Auditi Guha, *Winooski School District Rallies to Help 2nd-Grader Detained by ICE*, vtdigger (Dec. 1, 2025), https://vtdigger.org/2025/12/01/winooski-school-district-rallies-to-help-2nd-grader-detained-by-ice/.

and twelve-year-old and fifteen-year-old siblings who were arrested on their way to school in Durango, Colorado.[15] Other children had been living in the United States for a decade before their detention, having completed elementary school.[16] ICE has even detained children with Special Immigrant Juvenile status and deferred action status, who cannot lawfully be deported.[17]

Armed masked federal agents in tactical gear have arrested and detained children as young as three and eight years old in a public park. On September 28, 2025, eight-year-old Dasha and her three-year-old brother were eating Popsicles during a family outing on a Sunday afternoon in Millennium Park in Chicago.[18]

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[15] Olivia Prentzel, *Father Detained by ICE in Durango Will Be Transferred to Texas, Pending Immigration Proceedings*, Colo. Sun (Oct. 29, 2025), https://coloradosun.com/2025/10/29/fernando-jaramillo-solano-durango-ice-texas/.

[16] Jack Herrera, *The Immigrant Families Jailed in Texas*, New Yorker (Apr. 23, 2025), https://www.newyorker.com/news/the-lede/the-immigrant-families-jailed-in-texas?_sp=391f3eab-61b5-432b-98a0-89528f60fdd6.1767968916834.

[17] Mark Perrusquia & Erika Konig, *ICE Arrests Numbers of Young Immigrants Despite Protected Status*, Institute for Public Service Reporting Memphis (Nov. 5, 2025), https://www.psrmemphis.org/ice-arrests-numbers-of-young-immigrants-despite-protected-status; Kids in Need of Defense, *How the Administration's Enforcement Policies Are Separating Families and Harming Unaccompanied Children*, at 7 (Jan. 2026), https://supportkind.org/wp-content/uploads/2026/01/26_Family-Separation-Policy-Brief.pdf.

[18] Laura Rodríguez Presa and Madeline Buckley, *Mother and Children Detained in Millennium Park Released from ICE Custody, Father Flown to Texas Detention Center: 'We're Praying for a Miracle,'* Chicago Tribune (Oct. 2, 2025), https://www.chicagotribune.com/2025/10/02/millennium-park-arrest-ice-released; Andrew Carter, et al., *64 days in Chicago: The story of Operation Midway Blitz*, Chicago Tribune (Dec. 28, 2025), https://www.chicagotribune.com/2025/12/28/chicago-immigration-operation-midway-blitz-2.

Armed masked federal agents in tactical gear abruptly arrested and detained the family, including the children, as eight-year-old Dasha clung to her doll and wept.[19] The family had been living in the United States for nearly two years. More recently, on January 20, 2026, masked agents apprehended five-year-old Liam Conejo Ramos as he returned home from preschool, detained him, then transported him and his father to the detention center in Dilley, Texas.[20] Liam had been living in the United States for longer than a year.

B. If the *Flores* Settlement Agreement Were Terminated, Immigrant Children Would Face Indefinite Detention, Raising Serious Due Process Concerns.

The "One Big Beautiful Bill Act," signed into law on July 4, 2025, allocated an additional $45 billion to expand the detention of both single adults and families with children. Pub. L. No. 119-21, § 90003(a), 139 Stat. 358 (2025). This funding, which is available until September 30, 2029, *quadruples* ICE's annual detention budget by adding approximately $11.25 billion each year. Absent continued judicial enforcement of the *Flores* Settlement Agreement, nothing in the current statutory scheme limits the government's authority to detain children indefinitely.

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[19] *Id.*

[20] Nicholas Bogel-Burroughs and Sonia A. Rao, *Detention of 5-Year-Old by Federal Agents Incenses Minneapolis*, N.Y. Times (Jan. 22, 2026), https://www.nytimes.com/2026/01/22/us/liam-detention-ice-minneapolis.html.

Such prolonged immigration detention raises serious constitutional concerns under the Due Process Clause of the Fifth Amendment. Although the Supreme Court has recognized that Congress and the President have broad authority over immigration, the Court has consistently emphasized that civil detention must bear a reasonable relationship to a legitimate governmental purpose and may not become unlimited in duration. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (holding that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem"); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (civil detention cannot be punitive).

While the Court has upheld brief periods of mandatory detention during removal proceedings, it has done so only in contexts involving limited duration and strong governmental interests. See *Demore v. Kim*, 538 U.S. 510, 528–31 (2003) (upholding mandatory detention under 8 U.S.C. § 1226(c) based on the "brief" and "finite" duration of detention in the vast majority of cases). The Court later made clear that *Demore* does not authorize prolonged or indefinite detention without adequate procedural safeguards. *See Jennings v. Rodriguez*, 583 U.S. 281, 303–04, 312 (2018) (rejecting statutory time limits on detention but leaving open "as applied" due process challenges to prolonged detention). Following *Jennings*, the Ninth Circuit reaffirmed that due process requires individualized determinations of

necessity once immigration detention becomes prolonged. *See, e.g.*, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022).

These constitutional concerns are especially acute when detention involves children. The Supreme Court has long recognized that children possess distinct liberty interests and are uniquely vulnerable to the harms of confinement. *See Schall v. Martin*, 467 U.S. 253, 265 (1984) (acknowledging that juveniles have constitutionally protected liberty interests even in civil detention contexts). Indefinite or open-ended detention of children—particularly where it is authorized without individualized findings or temporal limits—pushes far beyond the narrow purposes historically recognized as constitutionally permissible.

The One Big Beautiful Bill Act's express authorization of the *indefinite* detention of children—coupled with the allocation of funds to detain more children for longer—signals the due process violations that will predictably follow if the *Flores* Settlement Agreement is terminated. Where Congress and the President have not only declined to impose meaningful temporal constraints, but are actually trying to lift them, continued judicial enforcement of the *Flores* Settlement Agreement provides an essential safeguard.

Detention also exacerbates other due process violations by systematically impairing a child's ability to participate meaningfully in removal proceedings. For example, the Ninth Circuit has repeatedly recognized that detention—often

compounded by language barriers and restricted access to calls and visits—frustrates a noncitizen's ability to obtain counsel and thereby undermines the fairness of removal proceedings. *Usubakunov v. Garland*, 16 F.4th 1299, 1305 (9th Cir. 2021); *see also Biwot v. Gonzales*, 403 F.3d 1094, 1099 (9th Cir. 2005) (recognizing that detention "increases the difficulty of contacting prospective attorneys" and that immigration judges "must provide [noncitizens] with reasonable time to locate counsel and permit counsel to prepare for the hearing").

Empirical research confirms these constitutional concerns. A study by Ingrid Eagly, Steven Shafer, and Jana Whalley found that detained families were far less likely to obtain counsel, overwhelmingly subjected to remote video hearings, and significantly disadvantaged in their ability to pursue asylum and other forms of relief—conditions that correlated with poorer adjudicatory outcomes and diminished procedural engagement.[21] Field-based reporting likewise documents that prolonged detention often coerces immigrants into abandoning otherwise viable claims, in part due to the psychological toll and isolation of confinement.[22] These dynamics are especially acute for children, whose developmental limitations

[21] Ingrid V. Eagly, Steven Shafer & Jana Whalley, *Detaining Families: A Study of Asylum Adjudication in Family Detention*, 106 CALIF. L. REV. 785, 842–45 (2018).
[22] Southern Poverty Law Ctr., *No End in Sight: Why Migrants Give Up on Their U.S. Immigration Cases* 6–9 (2018).

and heightened vulnerability render detention a powerful magnifier of other procedural deficiencies.

Detained children rarely have a meaningful opportunity to pursue individual federal challenges to assert their constitutional rights. Continued enforcement of the *Flores* Settlement Agreement is therefore necessary to protect them from the constitutional violations that would inevitably occur if the Agreement is terminated.

II. The Administration Is Claiming That the Mandatory Detention Provisions of U.S.C. § 1225 Apply to Noncitizens Who Have Been Living in the United States—A Position Resoundingly Rejected by Federal Courts.

The administration's claimed justifications for arresting and detaining many immigrant children are the mandatory detention provisions of 8 U.S.C. § 1225. The administration's position is at odds with the plain reading of the statute, historical practice, and hundreds of federal court opinions.

For decades, when noncitizens entered the United States without inspection or admission, they were arrested, placed into removal proceedings, and generally subject to discretionary detention under 8 U.S.C. § 1226(a) (and its predecessor statute). This framework generally applied to children accompanied by a parent if the family unit entered the United States without inspection or admission. Under this framework, noncitizens, including accompanied children, could be considered for release on bond or conditional parole by the U.S. Department of Homeland

Security ("DHS"). At a bond hearing in immigration court, an immigration judge typically set a bond for an accompanied child after assessing flight risk and related considerations. Once the accompanied child paid the relevant bond amount, federal officials released the child from detention. In 2025, this long-established understanding of the law was upended by two decisions issued by the Board of Immigration of Immigration Appeals (BIA): *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

A. Under *Matter of Q. Li*, Immigrant Children Apprehended at the Border Who Were Paroled to Seek Asylum and Placed in Removal Proceedings Are Subject to Mandatory Detention.

On May 15, 2025, the BIA issued *Matter of Q. Li*, which held that anyone arrested or detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a). 29 I. & N. Dec. 66 (BIA 2025). The decision further held that anyone released from custody pursuant to DHS's grant of parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5), must be returned to custody once parole is terminated, which occurs automatically once a Notice to Appear is issued placing the person in removal proceedings. 29 I. & N. Dec. at 70; 8 C.F.R. § 212.5(e)(2)(i). Under this decision, children who ask for asylum at or near the border, and who are paroled

into the United States and then placed in removal proceedings, are subject to mandatory detention.

B. Under *Matter of Yajure Hurtado*, Even Children Who Have Been Living in the United States for Years Before Being Apprehended by ICE Are Subject to Mandatory Detention if They Entered Without Inspection.

On July 8, 2025, U.S. Immigration and Customs Enforcement (ICE), in coordination with the U.S. Department of Justice, announced as a categorical new policy that "the custody provisions at INA § 235(b)(1)(B)(ii) [8 U.S.C. § 1225(b)(1)(B)(ii)]. . . are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention."[23] In other words, ICE adopted the novel position that anyone who entered the United States without inspection or admission was ineligible for release on bond and could not challenge their detention at a bond hearing in immigration court, regardless of how long the individual had lived in the United States. The ICE memo included no exceptions or special guidance pertaining to immigrant children.

Then, on September 5, 2025, the Board of Immigration Appeals issued a precedential decision, binding on all immigration judges, purporting to strip

[23] *See* U.S. Immigr. & Cust. Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

immigration judges of their authority to hear bond requests or grant bond to immigrants who are present in the United States without admission or inspection. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). According to the Board of Immigration Appeals, individuals who entered the United States without inspection or admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on bond. The Board held:

> [J]ust as Immigration Judges have no authority to redetermine the custody of arriving aliens who present themselves at a port of entry, they likewise have no authority to redetermine the custody conditions of an alien who crossed the border unlawfully without inspection, even if that alien has avoided apprehension for more than 2 years.

Id. at 228. The *Yajure Hurtado* decision included no exceptions or special guidance pertaining to immigrant children.

Since the *Yajure Hurtado* decision, immigration judges in the Pearsall Immigration Court—which has jurisdiction over the immigration cases of accompanied children detained at the detention facility in Dilley, Texas—have generally refused to set bond for accompanied children in the United States who are present without admission or inspection. These immigration judges are refusing to set bond for children even after a federal district court entered a final judgment ruling, "*Yajure Hurtado* is no longer controlling; the legal conclusion underlying the decision is no longer tenable." *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, Dkt. 92, Order Granting in Part and Denying in Part Petitioners'

Ex Parte Application for Reconsideration or Clarification, at 6 (C.D. Cal. Dec. 19, 2025).

In *Maldonado Bautista*, the federal district court had certified the following class:

> Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista v. Santacruz, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The court granted declaratory relief to the entire class, holding that the administration is unlawfully subjecting class members to mandatory detention and that class members are eligible for release on bond. *Id.* The court had ordered that class members be able to request a bond hearing in immigration court and that an immigration judge must consider whether they are suitable for release on bond while their removal proceedings are pending. *Id.*

After the *Maldonado Bautista* court granted class certification and declared class members' eligibility for bond hearings, administration officials "counseled the noncompliance with the Court's orders" to set bond. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, Dkt. 92, Order Granting in Part and

Denying in Part Petitioners' Ex Parte Application for Reconsideration or Clarification, at 11. The *Maldonado Bautisa* court then entered a final judgment because the refusal of immigration judges to set bond hearings for individuals "where they are otherwise entitled to one" "present exigent circumstances that may cause irreparable harm to those detained without a bond hearing." *Id.* at 11. Even after the *Maldonado Baustista* final judgment, immigration judges in the Pearsall Immigration Court apparently continue to follow *Yajure Hurtado* and do not set bond for children who are part of the *Maldonado Bautista* class. Immigration judges in other parts of the country likewise continue to follow *Yajure Hurtado* and do not set bond for individuals who are part of the *Maldonado Bautista* class. As one federal district court recently found, "[d]espite the final judgment in Bautista, it appears that immigration judges continue to rely on legal interpretations that were expressly found unlawful." *Palomera Baltazar v. Janecka*, No. 5:36-cv-19-SSS-BFM, Order Granting Petitioner's Ex Parte Application for Temporary Restraining Order at 3 (collecting cases), ECF 9 (C.D. Cal., Jan. 16, 2026); *see also* Nate Raymond, *US Judge "Worried" About Immigration Courts Not Complying with Rulings Requiring Bond Hearings*, Reuters (Jan. 20, 2026), https://www.reuters.com/legal/government/us-judge-worried-about-immigration-courts-not-complying-with-rulings-requiring-2026-01-20.

Indeed, the administration continues to claim that the mandatory detention provisions of Section 1225 apply to noncitizens, including children, who have been living in the United States for long periods. Federal courts nationwide have resoundingly rejected the administration's position in hundreds of cases. By November 2025, more than 350 decisions issued by 160 different federal district judges sitting in about fifty different courts across the United States rejected the administration's sweeping and erroneous interpretations purporting to apply Section 1225's mandatory detention provisions to noncitizens who have been living in the United States. *See Barco Mercado v. Francis*, No. 1:25-cv-06582-LAK, 2025 WL 3295903, at *4 & n.22 (App. A collecting cases) (S.D.N.Y. Nov. 26, 2025). Since then, the only Court of Appeals to address this issue preliminarily, the Seventh Circuit, reached the same conclusion. *See Castanon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, 2025 WL 3552514, at *9 (7th Cir. Dec. 11, 2025).

By January 2026, an independent analysis of federal court dockets nationwide concluded that "[m]ore than 300 federal judges, including appointees of every president since Ronald Reagan, have now rebuffed the administration's six-month-old effort to expand its so-called 'mandatory detention' policy,"[24]

[24] Kyle Cheney, *Hundreds of Judges Reject Trump's Mandatory Detention Policy, with No End in Sight*, Politico (Jan. 5, 2026),

finding the administration's claimed sweep of Section 1225 illegal or unconstitutional. "Those judges have ordered immigrants' release or the opportunity for bond hearings in more than 1,600 cases."[25] Dozens more federal judges have ordered the release of noncitizens abruptly detained "off the street without due process or held for prolonged periods."[26] Each day, there are more than 100 new lawsuits challenging the administration's claim that nearly everyone facing removal proceedings is subject to mandatory detention.[27]

Shockingly, the administration has invoked the mandatory detention provisions of Section 1225 even against asylum-seeking children with serious medical conditions who had long been living freely in the United States. Among these children are a six-year-old boy with a leukemia diagnosis and a ten-year-old girl who was born with a congenital disorder that can involve potentially life-threatening symptoms if it is not closely monitored and managed. In both these cases, the administration invoked Section 1225 as the purported basis for subjecting these children to mandatory detention. *See N.M.Z. v. Rodriguez*, No. 5:25-CV-716-FB-RBF, Dkt. 17, Fed. Respondents' Response to Order to Show Cause, at 2-6 (W.D. Tex. July 1, 2025); *R. v. Rodriguez*, No. 5:25-cv-1818-OLG,

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https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494.

[25] *Id.*

[26] *Id.*

[27] *Id.*

Dkt. 15, Fed. Respondents' Resp. to Petition for Writ of Habeas Corpus, at 2, 4-10 (W.D. Tex. Jan. 14, 2026). The six-year-old boy with the leukemia diagnosis was eventually released from detention after federal court litigation, extensive media scrutiny, and mounting public outrage. The ten-year-old girl remains detained at Dilley where her health is deteriorating, despite expert medical testimony urging her release. *See R. v. Rodriguez*, No. 5:25-cv-1818-OLG, Dkt. 1, Pet. for Writ of Habeas Corpus (W.D. Tex. Dec. 19, 2025).

It bears noting that noncitizens, including immigrant children who the administration claims are subject to the mandatory detention provisions of Section 1225, are technically eligible for release on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). In practice, however, DHS—almost without exception—is no longer granting parole. Repeated requests for parole for the six-year-old boy with the leukemia diagnosis and the ten-year-old girl with the congenital disorder were ignored or denied.

Filing federal habeas petitions is nearly impossible for the overwhelming majority of immigrant children in detention. The barriers to accessing counsel, particularly pro bono counsel, for accompanied children detained at Dilley are almost insurmountable. The majority of these children do not even have access to counsel to assist them with their immigration cases. Finding counsel, particularly pro bono counsel, to file federal habeas petitions in the Western District of Texas is

extremely challenging. So few lawyers have the bandwidth to offer representation to children detained in Dilley, a town that has a population of just over 3000 people and that is located about 75 miles outside of San Antonio. The scarcity of pro bono federal habeas lawyers admitted to practice in the Western District of Texas—combined with language barriers that children face, phone calls that are prohibitively expensive for many detained children, fear of guards, lack of knowledge about the immigration system, and a prohibition on know-your-rights presentations at Dilley—puts seeking relief through federal habeas petitions out of reach for most immigrant children in detention at Dilley and elsewhere.

In these circumstances—where the administration is claiming to subject children to mandatory detention, where bond is not being set for immigrant children, where parole is being denied for even very sick immigrant children, and where filing federal habeas petitions is nearly impossible—the *Flores* Settlement Agreement provides a crucial safeguard that, if followed by the administration, should prevent children from being subject to indefinite detention during the pendency of their immigration court proceedings. The *Flores* settlement agreement prioritizes the prompt release of children from federal immigration custody and unambiguously establishes the right of children in federal immigration custody and in deportation or removal proceedings to "be afforded a bond redetermination hearing before an immigration judge in *every* case." *Flores* Settlement Agreement

at 14, ¶ 24A (emphasis added). These provisions are now more important than ever before. Stripping detained children of these protections now would lead to many more children being subject to prolonged detention for months or years during the pendency of their immigration cases.

III. Detention Is Harmful for Children and Unnecessary to Ensure Their Compliance With Immigration Court Proceedings.

There is a long-standing consensus among medical professionals that detention is harmful to children's physical and mental health. Doctors, mental health professionals, and other professionals have long documented the detrimental effects of immigration detention on children's physical and mental health. In 2017, the American Academy of Pediatrics (AAP) recommended that no child should be placed in detention,[28] a position the AAP reaffirmed in 2022. The AAP has condemned the government's reliance on detention for immigrant children accompanied by their parents, determining:

> [C]hildren in the custody of their parents should never be detained, nor should they be separated from a parent, unless a competent family court makes that determination. In every decision about children, government decision-makers should prioritize the best interest of the child.[29]

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[28] Julie M. Linton, et al., Am. Acad. of Pediatrics, Detention of Immigrant Children, 139 Pediatrics, May 1, 2017, at 6, https://publications.aap.org/pediatrics/article/139/5/e20170483/38727/Detention-of-Immigrant-Children (reaffirmed in 2022).

[29] *Id.* at 7.

The AAP reached this conclusion based on studies of detained immigrant children, which found negative physical and emotional symptoms among detained children. According to the AAP, detention can stunt child development, cause psychological trauma, and result in long-term mental health risks, including depression and posttraumatic stress disorder that persist beyond the length of detention.[30] The AAP further found that children in detention may experience developmental delays and poor psychological adjustment.[31] The AAP concluded that "even brief detention can cause psychological trauma and induce long-term mental health risks for children."[32]

Because of its harmful effects on children, the detention of immigrant families with children has likewise been condemned by the American Medical Association, the American Psychiatric Association, the American College of Physicians, DHS's own Advisory Committee on Family Residential Centers, and doctors employed by DHS.[33]

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[30] *Id.* at 6.
[31] *Id.*
[32] *Id.*
[33] *See* Letter from Scott Allen, MD & Pamela McPherson, MD, to U.S. Sen. Charles E. Grassley & U.S. Sen. Ron Wyden (July 17, 2018), Appendix (collecting statements from the AAP, American Medical Association, American Psychiatric Association, the American College of Physicians), https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf [hereinafter "Allen Letter"]; Report of the DHS Advisory Comm. on Family Residential Ctrs. (Sep. 30, 2016), https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf.

Detaining immigrant children is not necessary to ensure their compliance with immigration proceedings. Under prior administrations, immigrant children have participated in highly successful Alternatives to Detention (ATD) programs, such as the Family Case Management Program.[34] According to ICE, for families enrolled in the Family Case Management Program, "overall program compliance for all five regions is an average of 99 percent for ICE check-ins and appointments, as well as 100 percent attendance at court hearings."[35] In other words, ICE has recognized that immigrant families in this program overwhelmingly comply with all aspects of their immigration proceedings.

The cost of Alternatives to Detention programs is far less than the cost of detention. In 2022, ICE itself published a now-archived press release stating that the "daily cost per ATD participant is less than $8 per day versus the cost of detention, which is approximately $150 per day."[36] Another now-archived ICE website about an Alternatives to Detention program called the Intensive Supervision Appearance

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[34] U.S. Dep't of Homeland Sec. Off. of Inspector Gen., *U.S. Immigration and Customs Enforcement's Award of the Family Case Management Program Contract* (Nov. 30, 2017), https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf?inline=1.

[35] *Id.* at 5.

[36] Press Release, U.S. Immigr. & Cust. Enf't, ICE Hosts Alternatives to Detention Program Symposium (Dec. 2, 2022), https://www.ice.gov/news/releases/ice-hosts-alternatives-detention-program-symposium#:~:text=ATD%20is%20currently%20available%20in,communication%20with%20the%20case%20specialist. [https://perma.cc/5QPD-BQ7Q].

Program (ISAP) likewise touts the program's cost effectiveness: "The daily cost per ATD-ISAP participant is less than $4.20 per day—a stark contrast from the cost of detention, which is around $152 per day."[37] The cost differential between the Family Case Management Program and family detention is even more stark. The Family Case Management Program costs about $36 per day for a family compared with the more than $900 per day it costs to detain an immigrant parent with two children.[38] During the first Trump administration, detaining just one unaccompanied immigrant child had cost $750 to $775 per day.[39]

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[37] U.S. Immigr. & Cust. Enf't, Alternatives to Detention, https://www.ice.gov/features/atd [https://perma.cc/9FGW-THDU].

[38] Sonia Nazario, *There's a Better, Cheaper Way to Handle Immigration*, N.Y. Times (June 22, 2018), https://www.nytimes.com/2018/06/22/opinion/children-detention-trump-executive-order.html.

[39] During the first Trump administration, unaccompanied children were detained at the unlicensed influx facility in Homestead, Florida. The facility was run by Comprehensive Health Services, a subsidiary of Caliburn International, at an average daily cost to taxpayers of about $750 to $775 per day per child or $1.2 million a day. *See* John Burnett, *Inside the Largest and Most Controversial Shelter for Migrant Children in the U.S.*, NPR (Feb. 13, 2019), https://www.npr.org/2019/02/13/694138106/inside-the-largest-and-most-controversial-shelter-for-migrant-children-in-the-u- ("The average daily cost to care for a child at an influx facility is about $775 a day, according to Evelyn Stauffer, press secretary at the U.S. Department of Health and Human Services. With nearly 1,600 children at Homestead, that puts the burn rate at over $1.2 million a day."); Gabriela Resto-Montero, *Democratic Candidates Demand Closure of For-Profit Child Detention Facility*, Vox (June 30, 2019), https://www.vox.com/policy-and-politics/2019/6/30/20074048/democratic-2020-candidates-homestead-child-detention-facility-florida ("The Homestead facility costs US taxpayers $1 billion a year to run, which breaks down to roughly $750 per child per day.").

IV. Federal Courts Have Concluded That ICE Is Detaining Immigrants in Degrading, Inhumane, and Punitive Conditions, Which Would Only Worsen for Children Without the *Flores* Settlement Agreement.

Detention conditions independently raise serious constitutional concerns. The Due Process Clause prohibits conditions that are punitive, degrading, or incompatible with basic human dignity. See *Bell v. Wolfish*, 441 U.S. 520, 535–37 (1979) (holding that civil detainees may not be subjected to conditions that amount to punishment); *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015) (due process protects pretrial detainees from objectively unreasonable conditions of confinement). The Ninth Circuit has repeatedly applied these principles to immigration detention, recognizing that civil detainees are entitled to conditions of confinement superior to those imposed on convicted prisoners and that conditions lacking a reasonable relationship to a legitimate governmental objective violate due process. *See Jones v. Blanas*, 393 F.3d 918, 932–33 (9th Cir. 2004); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070–71 (9th Cir. 2016) (en banc).

When imposed on children, constitutionally deficient detention conditions are especially troubling. Conditions such as inadequate medical care, exposure to unsanitary environments, and restricted contact with family or counsel pose even graver risks to children's health, development, and well-being. Where children are held for extended periods in facilities ill-equipped to meet their developmental and

medical needs, detention ceases to be regulatory and instead becomes objectively unreasonable and/or punitive, in violation of due process.

In recent months, federal district courts nationwide have repeatedly found that ICE is detaining noncitizens in degrading and inhumane conditions that likely violate the U.S. Constitution. *See, e.g.*, *Barco Mercado v. Noem*, 800 F. Supp. 3d 526, 542 (S.D.N.Y. 2025) (holding "the class plaintiff represents is very likely to succeed on the merits of the claims that the conditions of confinement at the 26 Fed Hold Rooms [in New York City] violate the First and Fifth Amendments and that they have been seriously and irreparably injured and/or face a clear threat of imminent serious and irreparable injury absent judicial relief"); *Gonzalez v. Noem*, No. C 13323, 2025 WL 3204602, at *1 (N.D. Ill. Nov. 17, 2025) (granting class certification to plaintiffs "who are detained and will be detained at the Broadview ICE facility ("Broadview") at 1930 Beach Street, Broadview, Illinois, on claims that the conditions of their confinement and associated denial of access to counsel violate the Administrative Procedure Act and the First and Fifth Amendments"); *Gonzalez v. Noem*, No. C 13323, 2025 WL 3204602, at *1 (N.D. Ill. Nov. 17, 2025) (granting temporary restraining order "to address the serious conditions demonstrated to exist at the . . . [ICE] Broadview, Illinois facility" that are likely unconstitutional and harmful); *Pablo Sequen v. Albarran*, No. 25-cv-6487-PCP, Dkt. 138, Order Provisionally Certifying Classes, Granting Preliminary Injunction, and Denying

Stay (N.D. Cal. Nov. 25, 2025) (granting class certification and preliminary injunction for plaintiffs challenging conditions at 630 Sansome Street in San Francisco because "conditions depriving detainees of sleep," "unsanitary conditions and denial of basic hygiene resources," and "the denial of medical intakes, medicate, and medical attention" are each "likely punitive"); *Perdomo v. Noem*, No. 2:25-cv-5605-MEMF-SP, 2025 WL 3192939 (C.D. Cal. Nov. 13, 2025) (granting preliminary injunction requiring federal government to provide consistent access to legal visitation for noncitizens detained at 300 North Los Angeles Street after finding extensive evidence of federal agents hindering attorneys from communicating with detained individuals in violation of the Fifth Amendment); *Florence Immigrant and Refugee Rights Project v. U.S. Dep't of Homeland Security*, 2025 WL 2844538, at *6 (D.D.C. Oct. 6, 2025) (denying government's motion to dismiss where plaintiff "adequately alleged that attorney-access conditions at Florence [i.e., the Central Arizona Florence Correctional Complex] are more restrictive than those in which prisoners serving criminal sentences are held, both at the very same facility and similarly situated facilities" in violation of the Fifth Amendment).

These federal courts have found that ICE is detaining noncitizens in overcrowded and dirty settings where it is difficult to sleep as lights remain on all night, and people are denied access to adequate food and water, basic hygiene, and necessary medical care for serious needs. *See, e.g.*, *Barco Mercado*, 800 F. Supp. 3d

at 569-573 (concluding that "inhumane conditions of confinement" at 26 Fed constitute an "objective deprivation" and that the government "at a minimum, recklessly failed to act with reasonable care to mitigate the risk"); *Gonzalez*, 2025 WL 3204602, at *1 (noting that "witnesses testified as to the deplorable conditions at Broadview"); *Pablo Sequen v. Albarran*, No. 25-cv-6487-PCP, Dkt. 138, Order at 7 (finding "ICE deprives detainees at 630 Sansome of adequate sleep, hygiene, medical care, and access to counsel"). ICE is subjecting individuals to detention in these conditions for days and even weeks. *See, e.g.*, *Barco Mercado*, 800 F. Supp. 3d at 541.

In the absence of the *Flores* Settlement Agreement, detention conditions for children in federal immigration custody would very likely deteriorate. As DHS and ICE have demonstrated in the context of adult detention over the past year, these agencies and this administration cannot be trusted to ensure that people—including children—are treated with the basic human dignity that law and morality require. Even with the *Flores* Settlement Agreement in place, Respondents insisted before this Court on June 18, 2019, that it is "safe and sanitary" to detain immigrant children for days in detention facilities without soap and toothbrushes and to make them sleep on concrete floors under bright lights without blankets.[40] If the *Flores* Settlement

[40] Oral Argument, *Flores v. Barr*, 17-56297 (9th Cir. June 18, 2019), https://www.youtube.com/watch?v=Z2GkDz9yEJA.

Agreement is terminated, the most likely result would be the indefinite detention of children in dangerous, unlicensed facilities for months or years until they are deported from the United States.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court opinion denying the Respondents' motion to terminate the *Flores* Settlement Agreement.

January 28, 2026

Respectfully submitted,

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