



State of California
Office of the Attorney General

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October 4, 2021

Via Federal eRulemaking Portal

The Honorable Xavier Becerra, Secretary
Cindy Huang, Director
Office of Refugee Resettlement
U.S. Department of Health and Human Services
330 C Street, S.W.
Washington, D.C. 20201

RE: Federal Licensing of Office of Refugee Resettlement Facilities Request for Information, Document Number 2021-19263, 86 Fed. Reg. 49549

Dear Secretary Becerra and Director Huang:

We, the Attorneys General of California, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, and Washington (States), write in response to the Federal Licensing of Office of Refugee Resettlement Facilities Request for Information, 86 Fed. Reg. 49549 (published Sept. 3, 2021) (“RFI”). The contemplated federal licensing regime for facilities providing care to unaccompanied children in the custody of the Office of Refugee Resettlement (ORR) intrudes on a traditional area of state sovereignty and expertise, risks lowering the standards of care for these children, and would create a risk of conflict between state and federal licensing regimes, including by sanctioning the operation of secure facilities and family detention facilities that the States have refused to license due to the harms they inflict on children.

For nearly twenty-five years, the stipulated settlement in *Flores v. Reno*, No. 85-cv-4544 (C.D. Cal. Jan. 17, 1997) has protected unaccompanied children in the custody of ORR by ensuring that, with certain limited exceptions, they are placed in facilities licensed by the States. This structure accords with the States’ longstanding responsibility to regulate child welfare and to care for the wellbeing of the children in our States. As State Attorneys General, we have a duty to protect the rights of our populations, safeguard their health and safety, and defend state laws. If implemented, a federal licensing regime would have significant negative impacts on the States; their respective child welfare licensing schemes; and their residents, including immigrant communities and children.

Protecting immigrant children is important to our States. As of July 2020, 88 facilities licensed in our States were caring for unaccompanied children in ORR custody.¹ Every year, thousands of children are released from immigration custody and reunified with family members or other adult sponsors who are residents of our States. These children become members of our communities, where they live in our neighborhoods, attend our schools, and in some cases, grow into adults raising their own families. Together, nearly half of all children who will be released from immigration custody by the federal government this year will come to our States.² Indeed, since Fiscal Year 2015, more than 40,000 unaccompanied children have been released to sponsors in California alone.³ Each of our States is committed to ensuring that all children who are cared for within our borders, including unaccompanied children, are provided with high standards of care in the least restrictive, most family-like conditions.

Ensuring child welfare, including establishing and enforcing standards of care and for licensing of residential placements for children, is a police power vested in the states.⁴ States accordingly have a long history of enacting child welfare laws that guide the care and protection of minor children who cannot remain safely at home. Massachusetts passed such a law in 1866.⁵ From the first emergence of child welfare systems in this country, the states have played an important role in licensing children’s residential placements. As historians have recognized, “[r]elated to the development of state systems of child care was the introduction of state policies and procedures for licensing and regulating child care facilities.”⁶ Accordingly, the states have licensed and monitored placements for over a century. By the 1890s, the states understood supervision over child caring agencies to encompass the principles that: (1) the state should know where its dependent children are; and (2) state agents should visit and inspect these institutions and agencies at regular intervals, and full reports should be made to the state.⁷

¹ Government Accountability Office, GAO-20-609, *Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities* 7 (2020), <https://www.gao.gov/assets/gao-20-609.pdf>.

² Office of Refugee Resettlement, *Unaccompanied Alien Children Released to Sponsors By State* (June 24, 2021), <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>. In Fiscal Years 2019 and 2020, our States received 43 percent and 46 percent, respectively, of all unaccompanied children released from immigration custody by the federal government. *See id.*

³ *Id.*

⁴ *See, e.g., Moore v. Sims*, 442 U.S. 415, 435 (1979) (“Family relations are a traditional area of state concern.”); *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000); *Schall v. Martin*, 467 U.S. 253, 265 (1984) (states must “play [their] part as *parens patriae*” where “parental control falters....”).

⁵ *See* An Act Concerning the Care and Education of Neglected Children, 1866 Mass. Acts ch. 283; *see also* Mass. Gen. Laws ch. 119, § 1.

⁶ Brenda G. McGowan, *Historical Evolution of Child Welfare Services*, in *Child Welfare for the Twenty-first Century: A Handbook of Practices, Policies, and Programs at 18-19* (2005), <http://www.garymallon.com/archive/spring2013/cw702/05.McGowanChildWelfareHistory.Final.02.25.2012.pdf>.

⁷ *Id.* (quoting Grace Abbot, *The Child and the State* 17-18 (1938)).

Leaders in the child welfare field have long recognized “the importance of strong regulatory systems, including licensing, service monitoring, and case accountability to protect the system.”⁸

Over decades of experience in administering their child welfare systems, the States have developed expertise in creating and enforcing standards for the care of youth in children’s residential facilities that reflect the States’ critical interest in protecting the physical, emotional, and psychological health of all children within their borders.⁹ As a result, each of the States has comprehensive standards and licensing procedures to ensure that residential placements for children provide the care and services necessary to support children’s healthy development in settings that further the best interests of the child.

For example, each of the States follows a policy of placing children in the least restrictive setting to meet their particular needs.¹⁰ Similarly, each State maintains a comprehensive licensing scheme for all placements used to house children.¹¹ Each State prohibits the operation of unlicensed children’s residential facilities.¹² And each State has a robust system for ensuring meaningful oversight, accountability and enforcement of these licensed placements.¹³

⁸ *Id.*

⁹ *See, e.g., Globe Newspaper Co. v. Super. Ct. for Norfolk Cty.*, 457 U.S. 596, 607 (1982) (holding that a State’s “interest” in “safeguarding the physical and psychological well-being of a minor ... is a compelling one”); *Ginsberg v. New York*, 390 U.S. 629, 640 (1968) (noting that a State “has an independent interest in the well-being of its youth,” and recognizing “‘society’s transcendent interest in protecting the welfare of children’” (citation omitted)).

¹⁰ *See, e.g.,* Cal. Welf. & Inst. Code §§ 706.6(c)(2)(B), (d)(2), 16501(d); Mass. Gen. Laws ch. 119 § 32; Del. Code Ann. tit. 29 § 9003(a)(4); D.C. Mun. Regs. tit. 29, § 6201.3; Mich. Comp. Laws § 722.958b(3)(h); Minn. Stat. § 260C.181, subd. 2; Nev. Rev. Stat. § 432B.390; N.J. Stat. Ann. § 9:6B-4(g); N.M. Stat. Ann. 1978, § 32A-6A-12 (2015); N.Y. Comp. Codes R. & Regs. tit. 18, § 430.11(d); Or. Admin. R. 413-070-0625(1)(g); Wash. Rev. Code 74.13.065; Va. Code Ann. §§ 16.1-281, 16.1-282; 22 Va. Admin. Code § 40-201-40; 11 P.S. § 2633(4); N.J. Admin. Code § 3A:12-1.7; 20 Ill. Comp. State. 505/7.3a(c)(2); 705 Ill. Comp. Stat. 405/2-27-405/2-27.2; 89 Ill. Admin. Code Part 301.60(b)(1).

¹¹ *See, e.g.,* Cal. Code Regs. tit. 22, div. 6; Conn. Gen. Stat. § 17a-145(a); D.C. Code § 4-1303.01a, *et seq.*; D.C. Code § 7-2101, *et seq.*; D.C. Mun. Regs. tit. 29, § 6201, *et seq.*; D.C. Mun. Regs. tit. 29, § 6301, *et seq.*; N.M. Stat. Ann. §§ 32A-4-8 (2019), 40-7a-1 *et seq.* (2011), 9-8-13 (2007); N.Y. Const. art. XVII; N.Y. Soc. Serv. Law §§ 34, 34-a; 62 P.S. §§ 901-922, 62 P.S. §§ 1001-1088, 55 Pa. Code ch. 3800; Mass. Gen. Laws ch. 15D, §§ 2(c), 6, 7; 606 Mass. Code Regs. 3, 5; Wash. Rev. Code ch. 74.15, ch. 388-145 Wash. Admin. Code; Va. Admin. Code tit. 22, Agcy. 40, Ch. 100; 22 Va. Admin. Code § 40-151; N.J. Stat. Ann. §§ 30:4C-27.6 to -27.25; N.J. Admin. Code §§ 3A:51-2.1 to 3A:56-10.25; 225 Ill. Comp. Stat. 10/7; 89 Ill. Admin. Code Parts 401-404.

¹² *See, e.g.,* Cal. Health & Safety Code § 1509; Mass. Gen. Laws ch. 15D, § 6; Del. Code Ann. tit. 14, § 3004A; D.C. Code § 7-2102; 225 Ill. Comp. Stat. 10/3; Me. Rev. Stat. tit. 22, § 7801, 8101; Mich. Comp. Laws § 722.115m(2); Minn. Stat. § 245A.03, subd. 1; Nev. Rev. Stat. § 432A.131; N.Y. Soc. Serv. Law §§ 371, 460-a, 460-b; Or. Rev. St. § 418.990(3); 55 Pa. Code §§ 20.21, 20.51, 3800.11; R.I. Gen. Laws § 42-72.1-4(a); Va. Code Ann. § 63.2-1701.

¹³ *See, e.g.,* Cal. Health & Safety Code §§ 1550-1557; Mass. Gen. Laws ch. 15D; Del. Code Ann. tit. 14, § 3004A; D.C. Code §§ 7-2105 & 7-2108; D.C. Mun. Regs. tit. 29, § 6201, *et seq.*; D.C. Mun.

Each State’s comprehensive child welfare system also seeks to protect the personal rights, health, and safety of children in residential facilities. For example, California has long maintained a foster youth bill of rights, which ensures that children in residential facilities have, among other rights, the right to not be locked in any portion of their placement facility, to visit and contact siblings and family members, to have social contacts with individuals outside the child welfare system, to attend religious services, to participate in extracurricular activities, to be placed in out of home care in accordance with their gender identity, to attend school in the community, and to receive prompt, comprehensive medical care.¹⁴

The federal government has long relied on the States’ collective experience, expertise, and particular interest in maintaining standards of care for children within their borders to ensure that unaccompanied children in federal immigration custody are placed in facilities that are safe and healthy for children. Since 1997, the States’ licensing standards have governed residential placements for children in federal immigration custody within each of the States for children placed in state-licensed facilities pursuant to the *Flores* Agreement and federal law. See, e.g., *Flores v. Lynch*, 828 F.3d 898, 906 (9th Cir. 2016) (“obvious purpose” of requiring placement of unaccompanied immigrant children in state-licensed facilities is to “use the existing apparatus of state licensure to independently review detention conditions”). The HHS final rule published on August 23, 2019, which would, upon becoming effective, govern the placement and care of unaccompanied children by ORR, similarly recognizes that unaccompanied children should be placed in state-licensed facilities, with certain limited exceptions. See 84 Fed. Reg. 44,530 (Aug. 23, 2019) (to be codified at 45 C.F.R. §§ 410.100, .202).

The *Flores* Settlement Agreement and the proposed regulations reflect the long-existing apportionment of state and federal authority in the child welfare arena. In fact, given that

Regs. tit. 29, § 6301, *et seq.*; 10-148 Me. Code R. ch. 9 & 16, 10-144 Me. Code R. ch. 36; Mich. Comp. Laws §§ 722.123, 722.125; Minn. Stat. §§ 245A.04, subd. 1(h), 245A.04, subd. 5, 245A.075(a); Or. Rev. Stat. § 418.260; 55 Pa. Code ch. 20; 214-40 R.I. Code R. § 00-4.2.4(A); Wash. Rev. Code ch. 74.15, ch. 388-145 Wash. Admin. Code; N.J. Admin. Code §§ 3A:13-3.1 to -3.12; 225 Ill. Comp. Stat. 10/8, 10/18.

¹⁴ Cal. Welf. & Inst. Code § 16001.9. Other States likewise maintain foster youth bills of rights. See, e.g., Del. Code tit. 13 § 2522; Nev. Rev. Stat. §§ 432.525, 500.530, 500.535; N.J. Stat. Ann. § 9:6B-4; Or. Rev. Stat. § 418.202; 11 P.S. § 2633; R.I. Gen. Laws § 42-72-15. California’s foster youth bill of rights has been amended numerous times since its original enactment in 2001 to reflect evolving standards of practice and to build upon the State’s expertise. The rights guaranteed by California’s foster youth bill of rights are likely more expansive than the rights that a federal licensing system would guarantee. See, e.g., Richard Luscombe, *Inside America’s Biggest Facility for Migrant Teens*, *The Guardian* (Mar. 7, 2019), <https://www.theguardian.com/us-news/2019/mar/06/immigration-migrant-children-homestead-florida> (reporting that children at Homestead temporary influx facility had “no access to cellphones or the internet, and personal phone calls...[were] limited to two 10-minute calls a week”); Cal. Welf. & Inst. Code §§ 16001.9(12)–(16) (describing rights to visit and contact family members privately, to have social contacts with people outside the child welfare system, to make and receive confidential telephone calls and other electronic communication, and to have access to computer technology and the internet).

developing and enforcing child welfare standards generally, and residential licensing standards specifically, are squarely within the States' police power, HHS would require clear statutory authority to develop such a federal licensing regime. See *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944); *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972); *Troxel v. Granville*, 530 U.S. 57, 97 (2000) (Kennedy, J., dissenting) (“States have the authority to intervene to prevent harm to children.”) (citations omitted); *Moore v. Sims*, 442 U.S. 415, 429-30 (1992). Congress must be “explicit” if it wants to “readjust the balance of state and national authority.” *Bond v. United States*, 572 U.S. 844, 858 (2014) (quoting *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994)). It is not clear whether the statutes referenced in the RFI, which outline general responsibilities for implementing policies for the placement and care of unaccompanied children and for oversight of facilities in which unaccompanied children reside, but do not clearly provide for the creation of a federal licensing system for children’s residential facilities, provide such explicit authority to HHS. See 8 U.S.C. § 1232; 6 U.S.C. § 279(b).

Consistent with this landscape, the federal government has never—for immigration purposes or in any other child welfare context—licensed facilities for children. The States have developed their licensing and enforcement regimes over decades of experience. Any attempt by ORR, or any other component of HHS, to develop *ab initio* a full licensing and enforcement scheme for children’s residential facilities poses an unacceptable risk of creating a standard of care in such facilities that is lower than or incompatible with governing state licensing standards—and of putting children’s health and safety at risk.

Indeed, ORR has struggled in the past to provide consistent monitoring of its contracted, state-licensed facilities, underscoring the critical role that state licensing and enforcement regimes have played in conducting effective oversight of these facilities. For example, in 2016, the Government Accountability Office found that, although contracted state-licensed facilities were largely providing required services, ORR’s on-site monitoring visits had been inconsistent and ORR had not received complete case files for review.¹⁵ In September 2020, the Government Accountability Office found ongoing issues with ORR’s contracting and oversight of facilities for unaccompanied children, including failure to obtain and review state licensing citations, failure to conduct timely audits and site visits, and months-long delays in providing facilities with monitoring reports and required corrective actions.¹⁶

Moreover, ORR’s prior use of non-state-licensed facilities to house unaccompanied children has raised serious concerns about the health and safety of children detained in those facilities. In 2018 and 2019, HHS housed thousands of children in facilities, including in Tornillo, Texas, and Homestead, Florida, that were not licensed for the residential care of

¹⁵ Government Accountability Office, GAO-16-180, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care* 24-26 (2016), <https://www.gao.gov/assets/gao-16-180.pdf>.

¹⁶ Government Accountability Office, GAO-20-609, *Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities* 16-18, 32-36 (2020), <https://www.gao.gov/assets/gao-20-609.pdf>.

children.¹⁷ Conditions at these facilities were troubling, and were inconsistent with the standards required of state-licensed facilities. Advocates reported that these facilities lacked schooling and offered limited mental health and legal services. In Tornillo, “[c]hildren spent weeks crammed 20 to a tent, languishing in the desert, far away from sponsors and attorneys, and without adequate access to basic needs such as schools or a firm roof over their head.”¹⁸ Observers at the Tornillo facility noted that facility “felt like a prison or jail” and that the children held there were “effectively... incarcerated.”¹⁹ Similarly, “Homestead [had] the feel of a secure detention facility,” was “surrounded by tall perimeter walls” and had “a 24/7 security patrol”; “[c]hildren [were] not able to leave Homestead freely.”²⁰ At the Homestead facility, girls were required to submit service request forms to receive sanitary pads.²¹ Then-Senator Kamala Harris called conditions at the Homestead facility “a human rights abuse.”²²

More recently, whistleblowers have described mismanagement and dangerous conditions at the Fort Bliss Emergency Intake Site, including crowded conditions that made effective supervision of youth impossible, failure to provide clean bedding or clothing, and delays in providing medical or mental health care.²³ Children detained at Fort Bliss described crowded conditions, being served inedible food, and limited access to education and recreation.²⁴ Lengthy stays at the Fort Bliss facility in these conditions have caused deterioration in the mental health

¹⁷ *Unaccompanied Alien Children: An Overview*, Congressional Research Service, R43599, Sept. 1, 2021 at 20-22, <https://sgp.fas.org/crs/homsec/R43599.pdf>.

¹⁸ Senator Dianne Feinstein, *Letter to Dep’t of Homeland Security Re: DHS Docket No. ICEB-2018-0002, RIN 0970-AC42 1653-AA75, Comments in Response to Proposed Rulemaking: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children* (Nov. 6, 2018) at 2.

¹⁹ Margaret Hartmann, *Reporters Tour Texas Facility Where Migrant Children are Detained*, *New York Magazine* (June 14, 2018), <https://nymag.com/intelligencer/2018/06/reporter-migrant-children-incarcerated-in-texas-facility.html>.

²⁰ Amnesty International, *No Home for Children: The Homestead “Temporary Emergency” Facility 21* (2019), https://www.amnestyusa.org/wp-content/uploads/2019/07/Homestead-Report_1072019_AB_compressed.pdf.

²¹ *Id.* at 23.

²² Ben Smith, *Kamala Harris: The Waving Meme Moment was “Heartbreaking”*, *BuzzFeed News* (Aug. 15, 2019), https://www.buzzfeednews.com/article/bensmith/kamala-harris-the-waving-meme-moment-was-heartbreaking?bftwnews&utm_term=4ldqpgc#4ldqpgc.

²³ Government Accountability Project, *Letter to House of Representatives, Senate, Office of Special Counsel, and Office of Inspector General, Dep’t of Health & Human Services Re: Protected Whistleblower Disclosures of Gross Mismanagement by the Department of Health and Human Services at Fort Bliss, Texas Causing Specific Dangers to Public Health and Safety* (July 7, 2021) at 7-10, <https://whistleblower.org/wp-content/uploads/2021/07/070721-Fort-Bliss-Whistleblowers-Disclosure.pdf>.

²⁴ Declaration of K.A.C.J. at ¶¶ 15, 20-22, 25, *Flores v. Meese*, Case No. CV 85-4544-DMG (C.D. Cal. Aug. 9, 2021); Declaration of W.V.V. at ¶¶ 7-8, *Flores v. Meese*, Case No. CV 85-4544-DMG (C.D. Cal. Aug. 9, 2021); Declaration of O.V.P.C. at ¶¶ 15-18, 20-21, 26, *Flores v. Meese*, Case No. CV 85-4544-DMG (C.D. Cal. Aug. 9, 2021).

of unaccompanied children, including increased risk of self-harm.²⁵ Reports from the ORR Juvenile Coordinator indicated that during this same period, more than 1,700 spaces in licensed placements were available.²⁶

There were also significant concerns that these facilities operated without the kinds of oversight and protections that are provided by state licensing processes. The HHS Office of Inspector General reported in November 2018 that the facility at Tornillo was not performing Federal Bureau of Investigation background checks for staff, creating a “risk that an individual with a criminal history could have direct access to children in ORR care.”²⁷ Nor was the facility performing child abuse or neglect background checks.²⁸ The Office of Inspector General also concluded that the Tornillo facility did not “employ a sufficient number of staff clinicians to provide adequate mental health care for” unaccompanied children.²⁹ The Office of Inspector General concluded that these failures were “serious health and safety vulnerabilities” that “could significantly compromise the safety and wellbeing” of unaccompanied children.³⁰ Amnesty International reported that Homestead had likewise received a waiver from ORR allowing the facility to hire staff without performing a child abuse and neglect background check.³¹ By contrast, California law requires that all staff at licensed children’s residential facilities undergo a stringent background check that includes checks of the Federal Bureau of Investigation’s and the California Department of Justice’s criminal records, the California Child Abuse Central Index, and the state child abuse registry of any state in which a prospective staff member has resided in the past five years. *See* Cal. Health & Safety Code §§ 1522, 1522.1. Other states follow similar procedures regarding background checks for facility staff.³²

In addition to these overarching concerns, there are a number of practical concerns about implementing a federal licensing scheme where the States have already exercised their police

²⁵ Camilo Montoya-Galvez, *Migrant Children Endure “Despair and Isolation” Inside Tent City in the Texas Desert*, CBS News (June 22, 2021), <https://www.cbsnews.com/news/immigration-migrant-children-fort-bliss-tent-city-texas/>.

²⁶ July 23, 2021 ORR Juvenile Coordinator Report, *Flores v. Meese*, Case No. CV 85-4544-DMG (C.D. Cal. July 23, 2021).

²⁷ Office of Inspector General, Dep’t of Health & Human Services, *The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinician on Staff* (Nov. 27, 2018) at 1, <https://oig.hhs.gov/oas/reports/region12/121920000.pdf>.

²⁸ *Id.* at 6.

²⁹ *Id.*

³⁰ *Id.* at 1, 7.

³¹ Amnesty International, *No Home for Children: The Homestead “Temporary Emergency” Facility 21-22* (2019), https://www.amnestyusa.org/wp-content/uploads/2019/07/Homestead-Report_1072019_AB_compressed.pdf.

³² *See, e.g.*, Mass. Gen. Laws ch. 15D, § 7(a); Del. Code Ann. tit. 14, § 3004A; 10-148 Me. Code R. ch. 16, at § 2(H); Mich. Comp. Laws § 722.115d; Nev. Rev. Stat. § 432A.175; N.J. Admin. Code §§ 3A:55-5.1(b)(1), 3A:55-5.6 to -5.9; N.M. Stat. Ann. § 32A-15-3; N.Y. Soc. Serv. Law § 378-a; 55 Pa. Code § 3800.51; R.I. Gen. Laws § 42-72.1-3(e)(9); Wash. Admin. Code § 110-145-1510.

power to develop standards for the care of children within their borders. Given the exhaustive licensing standards that the States have developed, it is inevitable that conflicts would arise between state and federal standards, and that some facilities may obtain federal licensure while being denied state licensure. Such conflicts create a risk of federal intrusion on core state police powers to impose standards of care and licensing requirements for child residential facilities, and a risk of confusion that could have detrimental effects on children’s health and safety.

A particular concern along these lines is that the federal government may seek to license types of facilities that the States have made a considered policy decision not to license. For example, States generally do not permit “secure” or locked children’s residential facilities, except as necessary for the child’s safety or the safety of others, or in connection with a juvenile offense.³³ State licensing standards generally require that children in residential facilities have freedom of egress from these facilities, the independence appropriate to their age, maturity, and capability, and the ability to participate in activities in the community.³⁴ The creation of a federal licensing scheme raises serious concerns that the federal government may seek to license facilities for the detention of families in the States—as the federal government has attempted to do before. *See Flores v. Rosen*, 984 F.3d 720, 739-40 (9th Cir. 2020) (enjoining proposed regulations that would have permitted family detention in states that did not license family detention facilities). The harms such facilities inflict on children is well documented,³⁵ and for that reason, the States have uniformly declined to license such facilities. Any plan to grant federal licenses to secure facilities, which children are not allowed to leave, including family detention facilities, would harm the States, not only as to their sovereign interest in enforcing their duly-enacted laws and regulations, but also in their compelling interest of protecting the welfare of the States’ children.

In sum, the States are deeply concerned about any plan to implement a federal licensing regime that would permit child residential facilities to operate within the States under different,

³³ *See, e.g.*, Del. Code Ann. tit. 10 § 1007, id. tit. 16, §§ 5001-5011; D.C. Code § 2–1515.01, et seq.; Ill. Admin. Code tit. 89 §§ 411.10, 411.110(g); Mich. Comp. Laws § 712A.15(4); N.Y. Comp. Codes R. & Regs. tit. 9, §§ 180-1.1–180.1.21, 180-3.1–180-3.32, and id. tit. 18 §§ 450.1–450.10; 2019 Or. Laws, ch. 362; 55 Pa. Code §§ 3800.271–3800.283.

³⁴ *See, e.g.*, Del. Code Ann. tit. 13, §§ 2502, 2522; 20 Ill. Comp. State. 505/7.3a(c)(2), Ill. Admin. Code tit. 89 § 404.34; Mich. Comp. Laws § 722.958b; N.Y. Comp. Codes R. & Regs. tit. 18, § 441.25; Or. Admin. R. 413-215-0554(2).

³⁵ Children who are detained in family detention facilities experience increased Post-Traumatic Stress Disorder (PTSD), elevated emotional problems, increased problems with peers, high rates of anxiety, depression, suicidal behavior, and other behavioral problems, and regressive behavioral changes, including decreased eating, sleep disturbances, clinginess, withdrawal, self-injurious behavior, and aggression. Rhitu Chatterjee, *Lengthy Detention of Migrant Children May Cause Lasting Trauma*, *Say Researchers*, NPR (Aug. 23, 2019), <https://www.npr.org/sections/health-shots/2019/08/23/753757475/lengthy-detention-of-migrant-children-may-create-lasting-trauma-say-researchers>; Julie M. Linton et al., *Detention of Immigrant Children*, 139(5) *Pediatrics* e20170483 (2017), <https://pediatrics.aappublications.org/content/139/5/e20170483>.

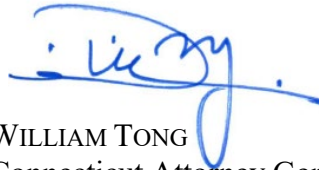
and potentially less protective, standards than the States themselves have determined necessary to protect the health and wellbeing of children within their borders. The States would vigorously oppose any federal licensing regime that would purport to permit children's residential facilities to operate without state licenses, or to permit the operation of types of facilities that the States have determined are incompatible with their child welfare policies, such as family detention facilities or secure facilities. It is critical that no federal licensing or accreditation regime be imposed that would conflict with or undermine the States' sovereign authority to create and enforce their own standards for facilities that care for children.

In lieu of seeking to implement a federal licensing and oversight regime, the States urge ORR to work directly with the States to collaboratively to address this issue and to expand capacity in state-licensed facilities to care for unaccompanied children. Such a course would be consistent with the *Flores* Settlement Agreement, with HHS's proposed regulations for the care of unaccompanied children, and with the best interests of unaccompanied children. Protecting the health, safety, and wellbeing of children within our borders is something we must work together to accomplish. For the reasons set forth above, the States urges ORR to reconsider its plan to develop a federal licensing scheme or accreditation program for facilities caring for unaccompanied children.

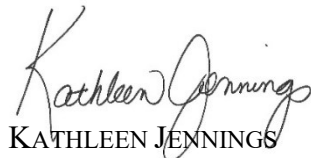
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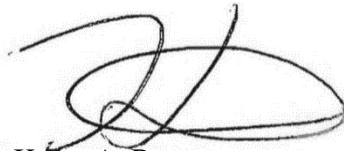
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California Attorney General



WILLIAM TONG
Connecticut Attorney General



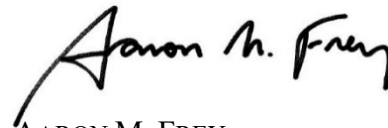
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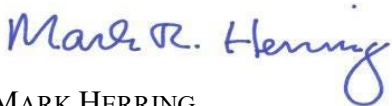
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