

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 the United States District Court
for the Central District of California**

No. 2:85-cv-4544-DMG (AGRx)
The Honorable Dolly M. Gee

**AMICUS CURIAE BRIEF OF THE STATES OF CALIFORNIA,
ARIZONA, COLORADO, CONNECTICUT, DELAWARE, DISTRICT
OF COLUMBIA, HAWAI'I, ILLINOIS, MAINE, MARYLAND,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW
JERSEY, NEW MEXICO, NEW YORK, OREGON, VERMONT, AND
WASHINGTON IN SUPPORT OF PLAINTIFFS-APPELLEES**

ROB BONTA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
VIRGINIA CORRIGAN
*Supervising Deputy Attorney
General*
REBEKAH A. FRETZ
KELLY M. BURNS
Deputy Attorneys General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6401
Rebekah.Fretz@doj.ca.gov
*Attorneys for State of California
(additional counsel listed on
signature page)*

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INTRODUCTION AND INTERESTS OF AMICI STATES

California, Arizona, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington (Amici States) submit this brief in support of Plaintiffs-Appellees pursuant to Federal Rule of Appellate Procedure 29(a)(2). Protecting the wellbeing of immigrant children is important to our States. As State Attorneys General, we have a duty to protect the rights of our most vulnerable populations and safeguard their health and safety. Terminating the *Flores* Settlement Agreement (Agreement) and lifting the injunction on the 2019 Department of Homeland Security (DHS) portion of the 2019 Rule, *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 Fed. Reg. 44392 (Aug. 23, 2019) (2019 DHS regulations) would eliminate key provisions favoring release of children from immigration custody and would drastically prolong the time accompanied children spend in family detention facilities. Further, terminating the Agreement would eliminate the Agreement’s state licensing requirement for facilities in which accompanied immigrant children are held and thereby undermine Amici States’ ability to enforce state laws governing the residential care of children within their borders. Amici States have a strong interest in opposing the termination of the Agreement, particularly given Appellants’ stated interest in

terminating the Agreement in order to expand family immigration detention in facilities not licensed by the states.

For almost 30 years, under the Agreement, Amici States have ensured the safety and wellbeing of children in immigration custody within their borders. They have done so through the enforcement of state child welfare laws that provide for the protection and care of children in state-licensed residential facilities. Amici States have a strong interest in maintaining their traditional sovereign role of providing for the welfare of children, which is satisfied in part through licensing facilities that house children, including immigrant children in federal custody, in Amici States. Many Amici States have repeatedly acted to vindicate this interest, including by submitting comment letters opposing the 2019 Rule issued by DHS and the Department of Health and Human Services (HHS) and addressing elements of the 2024 HHS Rule, *Unaccompanied Children Program Foundational Rule*, 89 Fed. Reg. 34384 (Apr. 30, 2024) (codified at 45 C.F.R. pt. 410) that removed the state licensing requirement in states that no longer license Office of Refugee Resettlement (ORR) facilities for unaccompanied children.

Terminating the Agreement and expanding family detention would also result in significant harm to accompanied children's emotional, mental, and physical well-being. The harms suffered by accompanied children and families resulting from expanded family detention with prolonged stays in harsh conditions will be

costly to Amici States, who provide needed educational, healthcare, and social services to all their residents, including adults and children who are released from federal immigration custody to Amici States.

ARGUMENT

The district court correctly denied Appellants' motion to terminate the Agreement. Amici States write to emphasize why this Court should affirm the district court's decision. First, terminating the Agreement and lifting the injunction on the 2019 DHS regulations would eliminate key provisions under the Agreement favoring release of children from immigration custody and would result in the prolonged detention of accompanied children in family detention centers. Second, state licensing of facilities where immigrant youth are held is a material provision of the Agreement, and the state licensing requirement appropriately ensures that such facilities abide by the evolving child welfare standards within the expertise and traditional police power of the states. Terminating the Agreement would eliminate this important protection and undermine Amici States' ability to provide for the welfare of accompanied children in immigration detention in their states. Third, the prolonged detention of children and families that would result from the termination of the Agreement will cause serious harm to children, and this harm will be costly to Amici States.

I. APPELLANTS SEEK TO ABANDON THE AGREEMENT’S PREFERENCE FOR RELEASING CHILDREN AND EXPAND FEDERAL FAMILY DETENTION

The “general policy favoring release” of children from federal immigration custody is a cornerstone of the Agreement. *Flores v. Sessions*, 862 F.3d 863, 866 (9th Cir. 2017) (citing Agreement at ¶ 14). In 2020, this Court held that the provisions of the 2019 DHS regulations limiting release of children and providing for family detention in ICE facilities “differ substantially” from the Agreement and “undermine the Agreement’s core ‘presumption in favor of releasing minors.’” *Flores v. Rosen*, 984 F.3d 720, 737 (9th Cir. 2020). In seeking to terminate the Agreement and lift the injunction on the 2019 DHS regulations, Appellants seek to end this presumption so that they can subject more immigrant children and families to detention for longer periods of time.¹ Indeed, Appellants’ practices, even with the Agreement in place, have resulted in longer stays for unaccompanied children in federal immigration custody in fiscal year 2025.²

Appellants state that they seek to terminate the Agreement to be free to follow policies that expand detention of children and that “discourage release,”

¹ See, e.g., Defendants-Appellants’ Opening Brief, at 28 (“New officials have determined that family detention is needed to enforce the immigration laws, and Congress has passed new statutes that provide for increased detention and discourage release.”).

² Off. of Refugee Resettlement, Unaccompanied Alien Children Data (as of Jan. 7, 2026), <https://acf.gov/orr/about/ucs/facts-and-data> (showing average lengths of care between FY 2015 and FY 2024 ranging from 27 to 69 days, and average length of care for FY 2025 of 117 days).

purportedly because restrictions on the detention of children compromises their ability to enforce immigration laws, Defendants-Appellants' Opening Brief at 24, 28, an argument this Court has previously found unpersuasive. *Flores v. Rosen*, 984 F.3d at 743 (noting that DHS had discontinued its successful Family Case Management Program, whose participants achieved a 100 percent attendance rate at immigration court and a 99 percent attendance rate at ICE appointments at lower cost than the cost of detention). Appellants cite the Laken Riley Act, which expands the grounds for mandatory detention but does not address the custody of children, as requiring the expansion of family detention.³ Appellants clearly wish to subject accompanied members of the *Flores* class to mandatory detention, despite lacking evidence that the prolonged detention of children will improve Appellants' ability to enforce immigration laws in cases involving children.

³ Defendants-Appellants' Opening Brief, at 62; Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025), 8 U.S.C. § 1226. Appellants further point to the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025), as evincing Congress's approval of family detention centers. Defendants-Appellants' Opening Brief, at 62-3. Appellants did not provide an explanation of how the Laken Riley Act or the One Big Beautiful Bill Act would conflict with the Agreement, and the District Court found no conflict. *Flores v. Bondi*, No. 85-cv-4544-DMMG (AGRx), 2025 WL 2633183 (C.D. Cal., Aug. 15, 2025) at *8, 8 n.8.

II. STATE LICENSING IS A MATERIAL PROVISION OF THE AGREEMENT AND AMICI STATES HAVE A SOVEREIGN INTEREST IN PROVIDING FOR CHILD WELFARE, REGARDLESS OF CHILDREN’S IMMIGRATION STATUS

A. State Licensing Is the Means by Which the Parties Established and Maintain Standards for Care and Custody of Immigrant Children

In order to ensure that children in immigration custody are treated “with dignity, respect and special concern for their vulnerability as minors” and placed in “the least restrictive setting,” the Agreement requires that children be placed in facilities that are “*licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children.*” Agreement at ¶¶ 6, 12A-C, 19, Exs. 1, 2, 3 (emphasis added). Both the district court and this Court have affirmed that the state licensing requirement is a material term of the Agreement, and that the Agreement applies to accompanied children. *Flores v. Johnson*, 212 F. Supp. 3d 864, 879-80 (C.D. Cal. 2015) (noting that “[t]he purpose of the licensing provision is to provide class members the essential protection of regular and comprehensive oversight by an independent child welfare agency”), *aff’d in part, rev’d in part sub nom. Flores v. Lynch*, 828 F.3d 898, 906-908, 910 (9th Cir. 2016) (affirming that the terms of the Agreement unambiguously apply to accompanied children in federal immigration custody and denying defendants’ request to modify the Agreement based on increased apprehensions of families at the border and changes in law). Moreover, Appellants explicitly agreed—in both the original

termination clause of the Agreement and the 2001 stipulation—that the state licensing requirement would remain a binding obligation, even upon termination of the Agreement.⁴

Despite this Court previously finding that state licensing is a material term of the Agreement and that the 2019 DHS regulations are inconsistent with the Agreement because they do not require state licensing, *Flores v. Rosen*, 984 F.3d at 740, Appellants argue that the Agreement should be terminated, and the injunction lifted on the 2019 DHS regulations so that they can expand family immigration detention. As this Court noted in *Flores v. Rosen*, one of the principal features of the 2019 DHS regulations was to facilitate the holding of accompanied children in non-state-licensed facilities, and the 2019 DHS Regulations would “dramatically increase the likelihood that accompanied minors will remain in government detention indefinitely, instead of being released while their immigration proceedings are pending.” *Flores v. Rosen*, 984 F.3d at 740. Terminating the Agreement and reinstating the 2019 DHS regulations would thus directly contravene the state licensing provisions of the Agreement and this Court’s previous holding in *Flores v. Rosen* finding the 2019 DHS regulations inconsistent with the Agreement.

⁴ Agreement at ¶ 40; Stipulation Extending Settlement Agreement and For Other Purposes; and Order Thereon, *Flores v. Reno*, No. 85-cv-4544 (C.D. Cal. Dec. 7, 2001).

The Agreement drew on the existing role that states have traditionally held in ensuring the safety of children who need out-of-home care. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158, 167 (1944) (“[T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare.”) In that role, Amici States have chosen to license only certain types of childcare facilities that can provide care in the least restrictive setting possible and that promote normal childhood experiences that are suited to meet the child’s individual needs. In furtherance of that goal, Amici States have enacted regulations to safeguard the health and safety of children in out-of-home care, including regulating the number of children to be cared for in each facility, staff and caregiver qualifications, and specific health and safety requirements designed to meet best interest of the child standards.⁵ Prolonged family detention is fundamentally incompatible with Amici States’ child welfare licensing schemes and policies because long-term detention is generally not in a child’s best interest. For that reason, Amici States do not license family detention facilities. Instead, Amici States’ child welfare laws prioritize home-based family care over group

⁵ *See, e.g.,* Cal. Welf. & Inst. Code §§ 16000-16014; Mich. Comp. Laws 722.112(4); Wash. Rev. Code § 74.15.090; Wash. Admin. Code §§ 110-145-1310 - 1885.

residential care,⁶ and Amici States seek to place children in the least restrictive setting to meet their particular needs.⁷

Moreover, federal family detention facilities lack the robust protections for children afforded by state licensing and oversight. Children in state-licensed residential care generally have the right to attend schools and participate in extra-curricular, recreational, religious, and cultural activities outside the facility; the right to engage in other meaningful interactions in the community; and the right to visits and contact with family members and relatives outside the facility.⁸ Amici States require that children be provided comprehensive individualized service plans, reviewed on a regular basis, to support each child's development.⁹ Other state licensing protections include more robust specifications as to size,

⁶ See, e.g., Cal. Welf. & Inst. Code §§ 16000(a)-(b), 16010.8; Mich. Comp. Laws § 722.123a(1)(a)(ii); Minn. Stat. § 260C.212, subd. 2; N.M. Stat. Ann. § 32A-1-3(A); Wash. Rev. Code § 13.34.136; Wash. Admin. Code § 110-145-1745.

⁷ See, e.g., Cal. Welf. & Inst. Code §§ 706.6(c)(3)(B), (d)(3), 16000(a); 16501(b), (c)(1)(C)(3); Md. Code Ann., Hum. Servs. § 8-102; Mich. Comp. Laws § 722.958b(3)(h); Minn. Stat. §§ 260C.181, subd. 2, 260C.212, subd. 1(c)(1); N.M. Stat. Ann. §§ 32A-4-9, 32A-4-21(B)(2); N.M. Code R. § 8.10.8.10 (E); Wash. Rev. Code § 13.34.130(4)(b); Wash. Admin. Code § 110-145-1745.

⁸ See, e.g., Cal. Welf. & Inst. Code §§ 16001.9(a)(12)(15)-(16), (27), 16501.1(g)(8); Mich. Comp. Laws § 722.958b(3), Mich. Admin. Code r. 400.9407, 400.9419; Minn. Stat. § 260C.212, subd. 1(c)(8); Minn. R. 2960.0050, subpt. 1; Minn. R. 2960.0080, subpt. 9; N.M. Code R. § 8.26.2.15; Wash. Admin. Code §§ 110-145-1700 - 1735.

⁹ See, e.g., Ariz. Admin. Code § R9-3-404; Cal. Code Regs. tit. 22, §§ 84068.2 - 84068.3; Mich. Admin. Code R 400.12419, 400.12420; Minn. Stat. § 260C.212, subs. 1 & 1a; Wash. Admin. Code § 110-145-1725.

maintenance, and inspections by outside oversight entities of living quarters and residential areas,¹⁰ and stricter oversight of the administration of psychotropic medications.¹¹ Amici States also generally closely monitor and limit the use of restraints for children in residential care.¹² By contrast, facility supervisors at United States Immigration and Customs Enforcement (ICE) family detention

¹⁰ See, e.g., Ariz. Rev. Stat. § 36-885 (mandating annual unannounced inspections of childcare centers); Ariz. Rev. Stat. § 46-807(B) (requiring childcare providers be fingerprinted); Ariz. Admin. Code § R9-3-501 (mandating size and other facility features for group homes); Cal. Code Regs. tit. 22, §§ 84087-84088.3 (indoor and outdoor space and other requirements for group home facilities); Md. Code Regs. 14.31.05.06 (providing for unannounced and announced site visits, examination of records, and interviews with staff and children); Minn. R. 2960.0110-.0120 (setting forth physical environment and equipment and physical plant standards for foster care and group residential facilities); N.M. Code R. § 8.26.6.15 (establishing health and safety requirements related to indoor and outdoor spaces).

¹¹ See, e.g., Cal. Welf. & Inst. Code § 369.5.

¹² See, e.g., Ariz. Admin. Code § R9-3-405; Cal. Health & Safety Code § 1180.55; Mich. Admin. Code r. 400.9404, 400.12313; Minn. R. 2960.0050, subpt. 1(R); N.M. Stat. Ann. § 32A-6A-10; Wash. Admin. Code § 110-145-1820. Use of restraints and other invasive or coercive practices can particularly trigger distress in youth with prior trauma. See, e.g., Christopher Edward Branson et al., *Trauma-informed Juvenile Justice Systems: A Systematic Review of Definitions and Core Components*, 9 Psych. Trauma: Theory Rsch. Prac. & Pol’y 635 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664165/>; see also Michael A. Nunno et al., *A 26-Year Study of Restraint Fatalities Among Children and Adolescents in the United States: A Failure of Organizational Structures and Processes*, 51 Child & Youth Care Forum 661 (Aug. 11, 2021), <https://link.springer.com/article/10.1007/s10566-021-09646-w> (discussing how the use of restraints resulted in the deaths of 79 children in out-of-home care over 26 years).

centers can authorize the use of restraint equipment on children ages 13 and older.¹³

ICE's oversight likewise falls short of the protections provided by independent state oversight. Although the 2019 DHS regulations provide for the use of contractors to inspect family detention facilities, the regulations do not include the robust tools state licensing authorities use, such as announced and unannounced inspections of facilities and records, interviews with children and staff, procedures for investigating complaints and enforcing standards, and background checks on employees.¹⁴ The 2019 DHS regulations defeat the purpose of the Agreement by removing the core mechanism for ensuring the safety and well-being of children in immigration custody: independent state licensing and oversight. *See, e.g., Flores v. Lynch*, 828 F.3d at 906 (noting that the "obvious

¹³ *See* FAMILY RESIDENTIAL STANDARDS § 2.10, at 3-4 (ICE 2020), <https://www.ice.gov/detention-standards/family-residential>.

¹⁴ *See, e.g.*, Cal. Health & Safety Code §§ 1533-1534, Cal. Code Regs. tit. 22, § 80044 (authority to inspect without notice, privately interview children and staff, and inspect all facility records); Minn. Stat. §§ 142B.10, subd. 12, 245A.04, subd. 5 (authority to inspect without notice and have access to records and residents); Minn. Stat. §§ 245C.01 et seq. (background study requirements); Minn. Stat. §§ 260E.01 et seq. (reporting and investigation of reported maltreatment); N.M. Code R. §§ 8.26.5.29, 8.26.6.23 (authority to inspect and interview without notice and inspect facility records), 8.26.6.17 (staff background check requirements); Wash. Rev. Code § 74.15.080 (right of access and inspection of records); Wash. Admin. Code § 110-145-1350 (access to facility, staff, documents, and private interviews with children in care).

purpose” of state licensing requirements is to “use the existing apparatus of state licensure to independently review detention conditions”).

DHS’ longstanding inability to enforce its own detention standards further underscores the need for state licensing—and concomitant independent state oversight—of detention facilities that house immigrant children. DHS’ own Office of Inspector General, along with independent researchers, have acknowledged ICE’s continued failure to comply with its own detention standards and its history of providing substandard medical care, including medical care for children held for prolonged periods in family detention centers.¹⁵ Recent testimony provided by

¹⁵ See, e.g., DHS, Off. of Inspector Gen., *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019*, OIG-20-45 (July 1, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-45-Jul20.pdf> (unannounced inspections of four detention facilities identified violations of ICE detention standards, including living conditions that violated ICE standards and posed a health and safety risk to detainees); Shela Sridhar et al., *Child Migrants in Family Immigration Detention in the US: An Examination of Current Pediatric Care Standards and Practices*, FBX Center for Health and Human Rights at Harvard Univ. and Boston and MGH Asylum Clinic at the Center for Global Health (Jan. 11, 2024), <https://fxb.harvard.edu/wp-content/uploads/2024/01/Child-Migrants-in-Family-Immigration-Detention-in-the-US-2.pdf> (children detained for prolonged period in family immigration detention centers in Texas had limited access to basic healthcare, including key screenings and management of acute medical and mental health issues); Tom Dreisbach, *Government’s own experts found ‘barbaric’ and ‘negligent’ conditions in ICE detention*, NPR (Aug. 16, 2023), <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions> (in examining more than two dozen ICE detention facilities, expert inspectors found “negligent” medical care, “unsafe and filthy” conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill detainees, and other problems, that, in some cases, contributed to detainee deaths).

Appellees in this suit from families detained in the newly reopened family detention centers in Texas also reveals current substandard conditions at these facilities, including concerns about medical care, water quantity and quality, and inadequate education and recreational activities for children.¹⁶ Similarly, CBP facilities have consistently failed to comply with the Agreement and with the district court's orders providing clear guidelines for the minimum standards of conditions of confinement for children, and both accompanied and unaccompanied children are being held for prolonged times in harsh, jail-like conditions at these facilities.¹⁷ DHS' inability to ensure fidelity with its own detention standards and provide adequate care for detainees reinforces the need for the continued independent state licensing and oversight of facilities housing children in immigration custody.

B. The Amici States Have a Sovereign Interest in Providing for Child Welfare by Licensing Facilities for Children in Immigration Custody

Protecting the welfare of children is a core police power vested in the states, and Amici States exercise this power, in part, through the licensing of residential facilities for children in Amici States. Courts have long recognized the states'

¹⁶ See Pls.' Opp'n to Mot. to Terminate Settlement, Exs. 5 and 6, *Flores v. Bondi*, No. 85-cv-4544 (C.D. Cal. June 20, 2025).

¹⁷ See Pls.' Resp. to December 1, 2025 Suppl. Juvenile Coordinator CBP Report and Data [Doc. #1692-1], *Flores v. Bondi*, No. 85-cv-4544 (C.D. Cal. Dec. 8, 2025).

sovereign interest and power over child welfare. *See Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972) (“States [may] exercise . . . their undoubted power to promote the health, safety, and general welfare . . .”); *Troxel v. Granville*, 530 U.S. 57, 97 (2009) (“States have the authority to intervene to prevent harm to children”) (citations omitted); *Moore v. Sims*, 442 U.S. 415, 435 (1979) (“Family relations are a traditional area of state concern.”).

For nearly 30 years, the Agreement has protected children in immigration detention by ensuring, with certain limited exceptions, that they are placed in facilities licensed by the states.¹⁸ This structure accords with Amici States’ longstanding responsibility to regulate child welfare and to care for the wellbeing of the children in our states. Maintaining the Agreement, including the state licensing provisions, is critical for protecting Amici States’ ability to act in support

¹⁸ For example, the Agreement permits children to be temporarily held in unlicensed facilities for a limited time following initial apprehension. Agreement, at ¶ 12.A. When ORR sought a modification of the state licensing requirement in May 2024, they did so based on the 2024 HHS regulations that require facilities for unaccompanied children located in states that do not allow state licensing of programs for unaccompanied children to provide the same protections offered by state licensing, in recognition of the importance of those protections. *See* Defs.’ Motion to Terminate the Flores Settlement Agreement as to the U.S. Dep’t of Health and Human Services at 21-23, *Flores v. Garland*, No. 85-cv-04544 (C.D. Cal. May 10, 2024); *see also* 45 C.F.R. § 410.1302(b).

of the rights and well-being of its child residents, regardless of their immigration status.¹⁹

Amici States have consistently acted to vindicate their sovereign interest in regulating child welfare in this sphere. In 2018, a group of states, including some of the Amici States, commented in opposition to the proposed 2019 DHS regulations, explaining that ensuring child welfare, which is accomplished in part through licensing residential placements for children, is a police power vested in the states, and that the federal government lacks authority to intrude into this area of law traditionally reserved to the states.²⁰ These Amici States also expressed concern that the proposed rule would eliminate key protections in the Agreement requiring release of children from immigration custody, and would drastically prolong the time children spend in immigration detention with significant harm to

¹⁹ Defendants argue that the Supreme Court’s decision in *Horne v. Flores*, 557 U.S. 433 (2009) requires termination of the Agreement because the Agreement violates separation of powers by indefinitely entangling the judiciary in overseeing immigration policy, which is a subject particularly committed to the political branches. However, the Court in *Horne* affirmed the importance of ensuring that areas of core state responsibility remain in the hands of state officials when circumstances warrant. *Horne*, 557 U.S. at 448 (noting heightened federalism concerns where litigation involves “areas of core state responsibility”). Here, the Agreement appropriately balances areas of traditional federal and state responsibilities by recognizing and respecting the states’ core sovereign interests in child welfare through the state licensing provisions.

²⁰ See, Comment submitted by Xavier Becerra, State of California, Office of the Attorney General (Nov. 6, 2018), Apprehension, Processing Care, and Custody of Alien Minors and Unaccompanied Alien Children, Docket No. ICEB-2018-0002, <https://www.regulations.gov/document/ICEB-2018-0002-75641>.

their emotional, mental, and physical well-being. Following its publication on August 23, 2019, a group of states, including some of the Amici States, filed a lawsuit challenging the 2019 Rule as *ultra vires* and a violation of the Administrative Procedure Act, 5 U.S.C. §§ 702-706, and of the Due Process Clause of the Fifth Amendment.²¹ In 2020, some of the Amici States filed an amicus brief in this Court in support of the district court's order enjoining the 2019 DHS regulations.²² Some of the Amici States have also filed multiple comment letters highlighting the importance of the Agreement's state licensing requirement for facilities providing care to children in immigration custody and opposing proposals by the federal government to establish an alternative federal licensing scheme.²³ As demonstrated by their consistent actions to uphold their sovereign interests in child welfare, Amici States have a profound interest in ensuring that the Agreement and the injunction on the 2019 DHS regulations are maintained.

²¹ Complaint for Declaratory and Injunctive Relief, *California v. McAleenan*, No. 19-cv-07390 (C.D. Cal. Aug. 26, 2019). The states later dismissed their lawsuit against DHS in reliance on this Court's ruling in *Flores v. Rosen* enjoining the 2019 DHS regulations.

²² Amicus Curiae Brief of the State of California et al., *Flores v. Barr*, No. 19-56326 (9th Cir. Jan. 28, 2020)

²³ See Comment submitted by the Attorneys General of California et al. (Oct. 4, 2021), Federal Licensing of Office of Refugee Resettlement Facilities Request for Information, Docket No. ACF-2021-0001, <https://www.regulations.gov/comment/ACF-2021-0001-0022>; Comment submitted by the Attorneys General of California et al. (Dec. 4, 2023), Unaccompanied Children Program Foundational Rule, Docket No. ACF-2023-0009, <https://www.regulations.gov/comment/ACF-2023-0009-60113>.

III. TERMINATING THE AGREEMENT AND EXPANDING FAMILY DETENTION WOULD HARM CHILDREN AND AMICI STATES' EFFORTS TO PROVIDE CRITICAL SERVICES TO IMMIGRANT RESIDENTS

Appellants' proposed expansion of family detention will cause significant harm to children, families, and Amici States. Detention of children causes them physical, developmental, emotional, educational, and social harm. When those children are released to Amici States, those harms result in costs to the Amici States that welcome them.

Prolonged time in immigration custody is harmful for children's physical and mental health and disrupts their development. In a comment expressing concern about the 2019 DHS regulations, pediatric associations including the American Academy of Pediatrics warned that "even short periods of detention can cause psychological trauma and long-term mental health risks for children," with negative outcomes including anxiety, depression, and posttraumatic stress disorder.²⁴ The American Psychological Association commented that "[s]tudies of health difficulties of detained children found that most of them reported symptoms of depression, sleep problems, loss of appetite, and somatic complaints, such as

²⁴ Comment submitted by American Academy of Pediatrics, at 7 (Nov. 5, 2018), Apprehension, Processing, Care, and Custody of Alien Minors, Docket No. ICEB-2018-0002, <https://www.regulations.gov/document/ICEB-2018-0002-73758>; *see also* Comment submitted by Texas Pediatric Society, at 2-3 (Nov. 6, 2018), Apprehension, Processing, Care, and Custody of Alien Minors, Docket No. ICEB-2018-0002, <https://www.regulations.gov/comment/ICEB-2018-0002-30282>.

headache and abdominal pains.”²⁵ ORR facilities housing unaccompanied children have reported that longer lengths of stay in ORR custody resulted in deteriorating mental health for some children, and that children with longer stays experienced more stress, anxiety, hopelessness, and behavioral issues, along with more instances of self-harm and suicidal ideation.²⁶

Parents of children who have been subjected to family detention likewise describe its impact. Detained parents report observing mental health impacts on their children during periods of family detention, including developmentally regressive behaviors such as bedwetting or clinginess, lack of appetite and associated weight loss, sleep disturbance, suicidal or self-harming behavior,

²⁵ Comment submitted by American Psychological Association, at 2 (Nov. 6, 2018), Apprehension, Processing, Care, and Custody of Alien Minors, Docket No. ICEB-2018-0002, <https://www.regulations.gov/document/ICEB-2018-0002-30400>. An expert child psychologist who interviewed families in family detention facilities also found “regressions in children’s behavior; suicidal ideation in teenagers; nightmares and night terrors; and pathological levels of depression, anxiety, hopelessness, and despair.” Comment submitted by Los Angeles Center for Law and Justice, at 96 (Nov. 6, 2018), Apprehension, Processing, Care, and Custody of Alien Minors, Docket No. ICEB-2018-0002, <https://www.regulations.gov/document?D=ICEB-2018-0002-30287>.

²⁶ HHS, Off. of Inspector Gen., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, OEI-09-18-00431 (Sept. 2019), <https://oig.hhs.gov/reports/all/2019/care-provider-facilities-described-challenges-addressing-mental-health-needs-of-children-in-hhs-custody/>. ORR facilities participating in this 2019 study attributed longer stays for children to ORR policy changes.

aggression, or withdrawal.²⁷ Parents themselves experience mental health symptoms as well, which in turn impacts their ability to parent their children.²⁸ The prison-like environment of family detention also undermines parenting. In family detention the facility, not the parent, makes important parenting choices: when and what a child will eat, a child's sleep schedule, opportunities for learning and play, and methods of discipline.²⁹

Children and families in detention also experience difficulties accessing health care, risking exacerbating known conditions or failing to detect new ones, such that children released to Amici States require support for a higher level of health needs than they would have absent detention. Routine screening for health issues in federal immigration detention is not adequate, and available health providers have particular problems identifying comorbid conditions requiring

²⁷ Human Rights First, *Family Detention: Still Happening, Still Damaging*, at 3, 8-9 (2015), <https://humanrightsfirst.org/wp-content/uploads/2018/08/HRF-family-detention-still-happening.pdf>.

²⁸ Julie M. Linton et al., *Detention of Immigrant Children*, 139 PEDIATRICS 4, 6 (Apr. 2017, reaffirmed Nov. 2022), <https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf>.

²⁹ The experience of Japanese Americans civilly detained during World War II illustrates the harm family detention causes to familial roles and parental authority. See Comment submitted by Xavier Becerra, State of California, Office of the Attorney General (Nov. 6, 2018), Apprehension, Processing, Care, and Custody of Alien Minors, Docket No. ICEB-2018-0002, <https://www.regulations.gov/document?D=ICEB-2018-0002-75641>.

complex care.³⁰ An evaluation of health care access at the Karnes County Family Residential Center revealed lapses including inadequate screening and follow up for chronic health conditions and for mental health conditions, delayed dental procedures, and higher likelihood of infectious diseases such as tuberculosis and influenza coupled with testing and follow up failures.³¹

Amici States have similar concerns about the educational harms that detained children experience. When unaccompanied children are in ORR custody, they face numerous issues with respect to the educational services they receive, including insufficient hours of educational time, lack of access to educational materials and instruction in their native languages, lack of routine evaluations for educational disabilities, and difficulty accessing special education services, among other challenges.³² To provide educational services in some existing family detention

³⁰ Janine Young, MD et al., *Health Risks of Unaccompanied Immigrant Children in Federal Custody and in US Communities*, 114 AM. J. PUB. HEALTH 340, 341 (Mar. 2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10882381/>.

³¹ Massachusetts General Hospital et al., *Child Migrants in Family Immigration Detention in the US: An Examination of Current Pediatric Care Standards and Practices* (2024), <https://fxb.harvard.edu/wp-content/uploads/2024/01/Child-Migrants-in-Family-Immigration-Detention-in-the-US-2.pdf>.

³² Kate Rheame, *Unaccompanied, Unnoticed, and Undereducated: An Analysis of the Administrative Challenges of Educating Unaccompanied Children in Federal Custody*, 34 GEORGETOWN IMMIGR. L. J. 159, 164-65 (2019) <https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2020/01/GT-GILJ190048.pdf>; see also Melissa Adamson et al., *Educational Advocacy for Unaccompanied Immigrant Youth in California*,

(continued...)

facilities, DHS appears to have contracted with a for-profit education company that is already the subject of complaints and lawsuits alleging failure to provide adequate education along with fraud and other legal violations.³³

Appellants themselves have previously recognized the harms caused by detention of children, including family detention. DHS' Office of Civil Rights and Civil Liberties' own subject matter experts, reporting their impressions from ten investigations of family detention centers over a four-year period, highlighted the “fundamental flaw” of family detention as being that “there is no amount of

Nat'l Ctr. for Youth Law, at 9 (May 2024)

<https://youthlaw.org/sites/default/files/attachments/2024-05/Toolkit-%20Educational%20Advocacy%20for%20Unaccompanied%20Immigrant%20Youth%20in%20California.pdf>; Disability Rights California, *The Detention of Immigrant Children with Disabilities in California: A Snapshot*, at 20-23 (2019) <https://www.disabilityrightsca.org/system/files/file-attachments/DRC-ORR-Report.pdf>.

³³ Whitney Curry Wimbish, *For-Profit School Opening in For-Profit ICE Family Prison*, *The American Prospect* (Dec. 10, 2025), <https://prospect.org/2025/12/10/for-profit-school-opening-in-for-profit-ice-family-prison/>; see also, e.g., Complaint, *Bd. of Educ. for the Gallup-McKinley Cnty. Schools v. Stride, Inc.*, No. 25-cv-00890-MLG-DLM (D.N.M., Sept. 15, 2025) (alleging intentional blocking of teacher hiring and cutting of staff despite being out of compliance with State-mandated student-teacher ratios, falsifying number of students to obtain public funds, not meeting special education requirements, and other state law violations); California Dep't of Justice, *Attorney General Kamala D. Harris Announces \$168.5 Million Settlement with K12 Inc., a For-Profit Online Charter School Operator* (Jul. 8, 2016), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-1685-million-settlement-k12-inc> (announcing settlement of lawsuit alleging falsifying student attendance to obtain public funds, misleading families as to education quality, and other state law violations).

programming that can ameliorate the harms created by the very act of confining children to detention centers.”³⁴ And DHS’ Advisory Committee on Family Residential Centers reported that “detention is never in the best interest of children.”³⁵

These harms to children and families in turn harm Amici States. Although data about the destinations of children released from family detention are not available, in the last fiscal year, sponsors in Amici States received 42% of children released from ORR custody.³⁶ Amici States dedicate significant resources to providing services promoting the well-being of children and families and have an interest in preventing long-term harms to individuals who will reside in Amici States after release. The harm to children and families from their detention experiences will impact their ability to thrive in their new communities, leading

³⁴ Letter from Scott Allen, MD, and Pamela McPherson, MD, to Charles E. Grassley, Chairman, and Ron Wyden, Vice Chairman, Senate Whistleblowing Caucus, at 2 (July 17, 2018), <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>.

³⁵ Report of the DHS Advisory Committee on Family Residential Centers, at 2 (Sept. 2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.

³⁶ Off. of Refugee Resettlement, Unaccompanied Alien Children Released to Sponsors by State (Jan. 5, 2026), <https://acf.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>.

them to require mental health and healthcare services from Amici States at greater rates.

Amici States have an interest in limiting the long-term physical and mental health consequences of prolonged detention of children because of Amici States' interest in a thriving healthy population and because these health consequences result in costs to Amici States. Inadequate access to care while in detention can result in exacerbated health symptoms and costly health complications that could have been avoided with the early detection and treatment that detention precludes. This concern is particularly acute for children, as physical and mental health concerns arising at key developmental periods can have lasting effects when untreated.³⁷

The educational harms suffered by children in immigration custody will also result in costs to Amici States. Children who do not receive a needed education intervention when it will be most developmentally helpful risk falling behind,

³⁷ Nat'l Scientific Council on the Developing Child, *Connecting the Brain to the Rest of the Body: Early Childhood Development and Lifelong Health Are Deeply Intertwined*, Working Paper 15 (June 2020), <https://developingchild.harvard.edu/resources/working-paper/connecting-the-brain-to-the-rest-of-the-body-early-childhood-development-and-lifelong-health-are-deeply-intertwined/>; V.J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREV. MED. 245 (1998), <https://www.ajpmonline.org/action/showPdf?pii=S0749-3797%2898%2900017-8> (finding dose-response relationship between adverse childhood experiences and health risk factors later in life).

requiring additional support and resources from Amici States to recover the lost opportunity.³⁸ Amici States and the local school districts within them provide services through newcomer education programs that focus on addressing the impact of gaps in education along with the language access barriers and other challenges that new immigrant students face; expansion in the detention of children will increase the needs of students accessing these services.³⁹ The cost of educational neglect in detention will thus fall on Amici States, who are committed to providing quality educational services to all of their students.

Finally, children and families in detention have more difficulty accessing legal services than they do when free to explore legal contacts and communicate with and provide information to counsel in the community.⁴⁰ This obstacle also harms Amici States. Amici States have an interest in the family and community

³⁸ See Harper et al., *Science of Adolescent Learning: How Body and Brain Development Affect Student Learning*, Alliance for Excellent Education (Aug. 2018), <https://all4ed.org/wp-content/uploads/2018/08/Science-of-Adolescent-Learning-How-Body-and-Brain-Development-Affect-Student-Learning.pdf>.

³⁹ Sam Finn, *Newcomer Education in California*, Policy Analysis for California Education, at 12 (May 2023), https://edpolicyinca.org/sites/default/files/2023-05/r_finn-may2023.pdf; see also California Dep't of Educ., *Newcomer Students*, <https://www.cde.ca.gov/sp/ml/newcomerstudnts.asp> (providing guidance to teachers to support immigrant students who have had gaps in education).

⁴⁰ The California Coal. for Universal Representation, *California's Due Process Crisis: Access to Legal Counsel for Detained Immigrants*, at 7-10 (June 2016), <https://www.nilc.org/wp-content/uploads/2016/06/access-to-counsel-Calif-coalition-report-2016-06.pdf>.

stability that results when family units—often including people who are already citizens and residents of Amici States—are permitted to remain intact and to fully participate in their communities. Children represented by counsel are far more likely to achieve positive outcomes in their immigration proceedings and to remain or reunite with their families in Amici States. According to data from the Congressional Research Service, only 0.3% of unrepresented children receive grants of relief in immigration proceedings, while 7.2% of represented children—a 24-fold increase—achieve these positive outcomes.⁴¹ Another study indicated that nearly all children who were granted relief in immigration court—almost 98%—were represented by counsel.⁴²

Children represented by immigration counsel also have improved access to educational, health, and other social services, which in turn helps limit or avoid the negative outcomes already described in these areas and the corresponding harm resulting to Amici States. For example, counsel may help youth with learning disabilities understand a new education system and access special education

⁴¹ William A. Kandel, CONG. RSCH. SERV., R43599, *Unaccompanied Alien Children: An Overview*, at 40 (2024) <https://sgp.fas.org/crs/homsec/R43599.pdf>.

⁴² Chiara Galli & Tatiana Padilla, *New Data on Unaccompanied Minors in US Immigration Court (2009-2023)*, INT’L MIGRATION REV., at 22 (2025), <https://journals.sagepub.com/doi/full/10.1177/01979183251316528>.

supports.⁴³ Amici States have a strong interest in children who will eventually become residents having early access to supportive resources promoting their development into active members of our communities.

CONCLUSION

For the foregoing reasons, Amici States urge this Court to affirm the Order below.

Dated: January 28, 2026

Respectfully submitted,

s/Rebekah Fretz

Rob Bonta
Attorney General of California
Michael L. Newman
Senior Assistant Attorney General
Virginia Corrigan
Supervising Deputy Attorney General
REBEKAH A. FRETZ
KELLY M. BURNS
Deputy Attorneys General

⁴³ See, e.g., Adamson et al., *supra*, note 32, at 72 (describing actions advocates can take to support unaccompanied children with disabilities, including making a written referrals for special education assessments).

KRISTIN K. MAYES
Attorney General
State of Arizona
2005 N. Central Ave.
Phoenix, AZ 85004

PHILIP J. WEISER
Attorney General
State of Colorado
Office of the Attorney General
Colorado Department of Law
1300 Broadway, 10th Floor
Denver, CO 80203

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Avenue
Hartford, CT 06106

KATHLEEN JENNINGS
Attorney General
State of Delaware
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th Street, NW, Suite 8100
Washington, D.C. 20001

ANNE E. LOPEZ
Attorney General
State of Hawai‘i
Department of the Attorney General
425 Queen Street
Honolulu, Hawai‘i 96813

KWAME RAOUL
Attorney General
State of Illinois
115 South LaSalle Street
Chicago, IL 60603

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333-0006

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, Michigan 48909

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther
King Jr. Blvd.
St. Paul, MN 55155

AARON D. FORD
Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

JENNIFER DAVENPORT
Acting Attorney General
State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

RAÚL TORREZ
Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504-1508

LETITIA JAMES
Attorney General
State of New York
28 Liberty Street
New York, NY 10005

DAN RAYFIELD
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301

CHARITY R. CLARK
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

NICHOLAS W. BROWN
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504

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