

# Protecting Detained Immigrant Children and Families from COVID-19: FAQs on *Flores v. Barr* and *O.M.G. v. Wolf*

## How does the COVID-19 pandemic affect the detention of immigrant children in the United States?

The Coronavirus Disease 2019 (COVID-19) is a highly contagious and potentially lethal virus that poses particularly significant risks for children held in the involuntary congregate setting of immigration detention. Thousands of children are detained across the U.S., whether as unaccompanied children in the custody of the Office of Refugee Resettlement (ORR) or as accompanied children with their parents in the custody of Immigration and Customs Enforcement (ICE). The inherent structure of these facilities makes precautionary measures to protect from COVID-19 — such as social distancing, frequent hand-washing, and medical isolation — extremely difficult, if not impossible, to implement.

## What is the *Flores* Settlement?

The 1997 *Flores* Settlement Agreement (*Flores*) sets national standards regarding the detention, release, and treatment of all children — both unaccompanied and accompanied — in immigration detention and underscores the principle of family unity. It requires that children be released from custody without delay. While children remain in custody, the government must ensure safe and sanitary conditions, as well as appropriate medical care and living accommodations.

## What does *Flores* require the government to do to protect immigrant children from COVID-19?

In a [March 28, 2020](#) order, federal Central District of California judge Dolly Gee found that *Flores* requires ORR to protect detained unaccompanied children and ICE to protect detained accompanied children from COVID-19 in the following ways:

1. Provide safe and sanitary conditions and appropriate medical care and living accommodations.
2. Promptly release children to suitable custodians.
3. Make and record continuous efforts toward the children's release.

## Is the government under any obligation to protect immigrant parents detained with their children from COVID-19?

Yes. In issuing his March 30, 2020 order, federal district court judge for the District of Columbia James Boasberg [recognized](#) that the due process clause of the Fifth Amendment requires ICE to maintain safe and sanitary conditions of confinement. Judge Boasberg also extended the same *Flores* procedures and protocols ordered for immigrant children by Judge Gee in her March 28 order to adults detained with those children in family detention centers.

## Is the government complying with its obligations under the Constitution and *Flores*?

No. While both *O.M.G. v. Wolf* and the COVID-related enforcement action in *Flores v. Barr* are in their preliminary stages, both judges' orders find a significant likelihood that ICE and ORR are violating at least some of their legal obligations to protect detained immigrant children and their parents from COVID-19. These obligations carry special weight when, as Judge Gee notes, "medical experts agree that [congregate settings] are hotbeds for contagion" where the "rapid spread of COVID-19 in ICE and ORR facilities" is a near-certainty, "even if ORR and ICE take more urgent preventative measures."

### *Flores v. Barr*

- ICE is failing to ensure the following for accompanied children in family detention: safe and sanitary conditions; appropriate medical care; and appropriate living accommodations.
- ICE and ORR are failing to promptly release children to suitable custodians and make continuous efforts toward children's release.

### *O.M.G. v. Wolf*

- ICE is failing to comply with Centers for Disease Control (CDC) [COVID-19 guidelines](#) for detention facilities, in violation of its obligations under the Constitution and *Flores*.
- ICE is failing to make efforts to release families when circumstances do not warrant their ongoing detention and in spite of the extraordinary risk posed by COVID-19.

## What is next for *Flores v. Barr* and *O.M.G. v. Wolf*?

- **April 6:** ICE must provide information to both courts on conditions in its family detention centers, including in *O.M.G. v. Wolf* its compliance with CDC guidelines for congregate facilities, as well as its efforts to release children and families. ICE must also provide video of living conditions in its family detention centers to the *O.M.G. v. Wolf* court. ORR must provide information to the *Flores* court on conditions in facilities in states with at least 3,000 confirmed COVID-19 cases and efforts to release children.
- **April 9:** Juvenile coordinators overseeing ICE and ORR facilities must provide the *Flores* court a report on capacity levels and the status of implementation of CDC-compliant guidelines. Video of living conditions at any facility chosen by the court-appointed Special Monitor, as well as any guidance protocols being followed, must also be provided.
- **April 10:** Hearing on preliminary injunction in *Flores v. Barr*.
- **TBD:** Further hearing in *O.M.G. v. Wolf* sometime after April 6.

The Women's Refugee Commission has long opposed ICE's use of family detention and advocates for the prompt and safe release of children. We share the grave concerns of the Plaintiffs for the health and safety of detained immigrant children and families and welcome robust oversight by the federal courts. We call on ICE and ORR to fulfill their obligations — and fully comply with the courts' orders — to ensure the protection of these vulnerable populations from COVID-19.

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April 6, 2020