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Trump Is Legalizing Concentration Camps for Immigrant Families

The administration's new rules will eviscerate key features of the landmark 1997 Flores decision, which mandates protections for immigrant children.

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On Wednesday, the Trump administration announced that it would be fundamentally changing how undocumented immigrant children are to be treated by the federal government. If the new rules—due to be officially published today—are allowed to stand, we will have entered a new era. From now on, the full might of the US government will be devoted to indefinitely detaining immigrant children in facilities that, to all intents and purposes, are concentration camps—places as bleak and lacking in human dignity as one of the original concentration camps, in which the British held tens of thousands of Boer families during the South African wars of the late 19th century.

As with last week's rewrite of the "public charge" rules, the nativists have turned to regulatory "reform" to shred existing law and legal precedent, and to eviscerate the rights and protections of immigrants. And, as with public charge, they will certainly run into a barrage of lawsuits to stop the implementation of these new regulations.

For the past 22 years, how the federal government treats detained immigrant children has been guided by the terms of the *Flores* settlement.

Flores began as a class-action lawsuit in California in 1985 and was settled 12 years later. The agreement that the federal immigration agency (at the time called the Immigration and Naturalization Service) entered into in 1997 established a set of rules to protect children. These included standards on how and where kids could be detained, and also limits on the length of time that they could be kept incarcerated. The rules made it clear that children had to be released from detention facilities "without unnecessary delay," which, following subsequent litigation, came to mean 20 days. If no parent, legal guardian, or adult relative could be found, the rules required that children be placed in a facility licensed by the states and held to the same standards as foster care and group homes, providing access to education, safe food and water, decent bedding, outdoor exercise, suitable clothing, English language classes, medical care, and so on.

Anti-immigrant groups have long held up *Flores* as a bugbear, arguing that it provides an incentive for undocumented migrants to use children as get-out-of-jail-free cards.

The new regulations, which would result in the sunsetting of the *Flores* agreement 45 days after their publication (though the government says the regulations won't go into effect for 60 days), will take away state licensing authority over family detention facilities and hand that power over to ICE. At the same time, it will remove the ability of designated lawyers, who have a mandate under *Flores* to monitor the conditions children are kept in, to even set foot in the detention centers.

All of this, as we have seen in recent actions, is unlikely to result in anything good. After all, confronted with stories of hungry, sick, immigrant children sleeping on concrete floors, federal attorneys dared to go to court recently to argue that they weren't obligated to provide them with soap, toothpaste, toothbrushes, bedding, and even food fit for human consumption. Compounding the shameful

behavior, earlier this week it was revealed that Customs and Border Protection will not be vaccinating inmates in its facilities—despite the fact that three children have died of flu in detention centers this year, and despite the fact that, as I reported for *The Nation* earlier this year, volunteer doctors and nurses working with immigrants released from these centers report an alarming incidence of flu and other dangerous pulmonary and infectious diseases.

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The ghastly new rules will also enable indefinite family detention, thus utterly gutting the central feature of *Flores* and further fueling the creation of an archipelago of immigrant concentration camps.

Not surprisingly, as the assault against *Flores* has picked up steam, the courts have responded scathingly. Only last week, a panel of judges on the US Court of Appeals for the Ninth Circuit filed a ruling against an attempt by the Department of Homeland Security to prevent enforcement of *Flores*. The summary read, "These findings were based on evidence that minors in United States Customs and Border Protection's custody were held in conditions that deprived them of sleep and did not provide adequate access to food, clean water, and basic hygiene items. The court also found that the government was violating the Agreement by failing to consider minors for release as specified in the Agreement and by detaining minors in detention facilities not licensed for the care of minors."

A normal administration would have hit the pause button after such a ruling. Not so this one. In announcing the new regulations, Trump's nativists have pressed on the accelerator, daring the courts to once again intervene.

The courts are almost certain to oblige; after all, the *Flores* settlement says that the agreement cannot be terminated unless the government puts in place regulations that are in accord with the court-mandated terms. The *Flores* attorneys argue that these new regulations do not fit that bill in any way, shape, or form.

Imagine, for a moment, a convicted sex offender granted parole on the condition that he not come within a certain distance of schools; then imagine that sex offender deciding unilaterally to rewrite the terms of his parole such that he can come as close as he wants to any school in the country. No court on earth would accept that such a rewrite met the spirit of the original sentence, and no court on earth would uphold the legitimacy of it.

What the Trump administration is proposing is really no different. *Flores* was put in place to protect children from agencies that were clearly damaging their physical and mental well-being. Now Trump is proposing giving those agencies unlimited power over children, shredding the state licensing authority aimed at providing a modicum of protection to them, and barring the outside monitors required under *Flores* from interviewing inmates about the conditions of their imprisonment.

For Holly Cooper, codirector of the Immigration Law Clinic at UC Davis and one of the lead attorneys in the ongoing *Flores* litigation, the new rules are a disaster waiting to happen. "The bottom line is that [the purpose of] *Flores* was to minimize detention times and hold children in the least restrictive environment," she argues. "The issue will be that the facilities permitted to hold children will not

have been licensed by child welfare agencies. You'll have education, health protocols, that don't meet child licensing standards. And the other main focus point of the proposed regulations is that they want to maximize detention times for family units. The fundamental underpinnings of the *Flores* settlement will be eliminated. That's our concern."

Last November, after the new regulations were proposed, *Flores* attorneys filed a motion in California federal district court to enjoin the Trump administration from subverting the agreement. Judge Dolly Gee put the case on hold because the regulations at that point hadn't yet been published. In one week, those attorneys will be returning to court with a supplement to the November motion, asking the judge to keep *Flores* in place. And an array of groups, from pediatricians to child welfare advocates, are likely to file amicus briefs urging the courts to block implementation of the new rules.

Day by day, Trump's team is finding newer and ever uglier ways to lock down America, to make us all complicit in acts that ought to be considered crimes against humanity. Putting children in cages in border camps for indefinite periods of time is not simply a regulatory "tweak"; it is a monstrous and criminal violation of basic rights and human dignity. We all—you, me, and everyone who cares for human rights and the rule of law—have a moral obligation to stand up against this new policy abomination and say Not in Our Name. We simply will not stand for this cruelty, this deliberate punishing of children as a way to terrorize would-be-immigrants from making the journey north.

Clarification: The fourth paragraph of this article has been updated to reflect more accurately the rules required under the Flores decision and subsequent litigation. 

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