

The Flores settlement seeks to ensure that detained immigrant children receive appropriate services, care, and housing.

Flores Plaintiffs File Enforcement Motion to Protect Rights of Detained Immigrant Children

by **Katina Ancar**

Pursuant to the Homeland Security Act,¹ in March 2003, the Immigration and Naturalization Service (INS) transferred its operations to the newly created Department of Homeland Security (DHS). Like INS, the new agency supervises both immigration services (citizenship and permanent residency) and law enforcement functions (detention and deportation) for immigrants who enter the United States. Nonetheless, this transfer of power had a particularly significant impact upon immigrant children. Although DHS is responsible for children who enter the country with adult family members, the Act shifted the responsibility for care and custody of unaccompanied immigrant youth to the Office of Refugee Resettlement (ORR) and its Division of Unaccompanied Children's Services (DUCS).²

Unfortunately, to the disappointment of advocates, this promising transfer of authority has not resulted in a new era of collaboration and improvement of conditions for detained children. As a result, in January 2004, counsel in *Flores v. Ridge*

filed a motion to enforce the provisions of the *Flores* settlement agreement.³ This settlement, reached after years of litigation, seeks to ensure that detained immigrant children receive services, care, and housing appropriate to "the particular vulnerability" of children.⁴

Most disappointing has been the lack of cooperative spirit exhibited by the new agencies. Although initial signals were positive as the shift of responsibility to DHS and ORR neared, both agencies became unwilling to offer detailed information on how the agencies, either together or separately, intended to rectify violations of the *Flores* settlement. Worse, the agencies often denied the existence of violations, and failed to exhibit a commitment to work toward compliance. In addition, ORR, although it is the custodian of the vast majority of immigrant children, had few if any staff working with children in the field. Instead, DHS officers continued to be responsible for supervising day-to-day care. Finally, it appeared that DHS

was using its sizable strength to influence ORR's actions and attitudes toward *Flores* compliance.

These obstacles, coupled with repeated complaints from advocates regarding *Flores* violations, which included strip-searches, overuse of secure facilities, lack of less restrictive placements, and deficiencies in children's access to care and services, compelled the filing of the enforcement motion. The agencies' opposition to the motion contends that all alleged breaches have been rectified since March 2003. However, other than general statements denying any violations, they presented no affirmative evidence that *Flores* requirements are being met.

The current defendants' predecessor agreed to the *Flores* settlement in 1997. Seven years later, the defendants have not fulfilled their promises to children and, in fact, continue to delay working with *Flores* counsel and child advocates to protect the children in their care.

The brief in support of the motion to enforce the provisions of the Flores settlement agreement is available on the NCYL website, at <http://www.youth-law.org/downloads/Motion-ToEnforce-Filed.doc>

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¹Pub. L. No. 107-296, 116 Stat. 2135 (2002).

²The Office of Refugee Resettlement is a branch of the U.S. Dept of Health & Human Servs.

³For an overview of the *Flores* settlement agreement and the Homeland Security Act, see Alice Bussiere, Final Settlement in *Flores v. Reno* Offers Hope to Children in INS Custody, Youth Law News, 8-9 (May – June 1997) and Katina Ancar, Homeland Security Act Provisions Affect Flores Children, Youth Law News, 32-33 (Jan.–Mar. 2003). See also Katina Ancar & Karen Tumlin, Is INS Ready for Change? Youth Law News 18-21 (July – Sept. 2002).

⁴Settlement Agreement ¶ 12.A.