

April 25, 2020

**Stanford Human Rights in Trauma Mental Health Program:  
Submission to the United Nations' Special Rapporteur Mr. Felipe González Morales**

**Ending Immigration Detention of Children &  
Ensuring Adequate Reception & Care for Them**

Stanford University's Human Rights in Trauma Mental Health Program (HRTMHP) would like to thank the U.N. Special Rapporteur for the opportunity to share our concerns and recommendations for ending the detention of migrant children and for their adequate reception, care, and rehabilitation. We acknowledge the tireless efforts of the greater community of legal advocates, activists, health professionals, and researchers working holistically on this issue. Our submission highlights the acute and chronic psychological consequences of detention for migrant youth and provides concrete recommendations for reform and rehabilitation. We focus on the United States' immigration policy and practice and, in particular, the reception of children and families arriving at the U.S. southern border with Mexico. However, these concerns and recommendations have broader resonance worldwide.

The HRTMHP is an interdisciplinary collaboration that strives to advocate and promote justice for survivors of human rights abuses by elucidating the health and psychological impacts of human rights violations in judicial, human rights, and transitional justice processes. Our members consist of faculty and graduate students drawn from Stanford University's Schools of Law and Medicine (including the Department of Psychiatry and Behavioral Sciences), Stanford's Center for Human Rights and International Justice, and Palo Alto University. HRTMHP has applied its unique academic expertise, field experience, investigative methodologies, and advocacy efforts in cases of human rights violation in numerous international contexts around the world. These endeavors have entailed collaboration with, reporting to, and testimony before the United Nations, the International Criminal Court, the Extraordinary Chambers in the Courts of Cambodia, and U.S. District Courts.

Since early 2018, HRTMHP has engaged in monitoring, investigating, and reporting on the detention and mistreatment of migrant youth and families arriving on the U.S.- Mexico border. This effort to evaluate the impact of U.S. policy and practice—conducted to ensure U.S. government compliance with a prior legal settlement to protect migrant children—includes the inspection of multiple facilities that house migrant youth. HRTMHP experts have performed psychological evaluations of children and families impacted by U.S. immigration policies and practices aimed at deterring migration to the United States. HRTMHP observations and interviews with children and families in U.S. custody, as well as those waiting in Mexico to apply for asylum, have revealed acute harm to the physical and mental health of both children and their families. Our observations and recommendations have been published in academic journals,<sup>1</sup> cited in legal proceedings,<sup>2</sup> and submitted to the U.S. Senate and House of Representatives.<sup>3</sup>

This report will (1) review the lack of protections accorded to migrant youth detained in the U.S. (see Annex 1), (2) identify the pervasive and potentially enduring physical and

psychological health impacts of U.S. detention and deterrence policies, (3) make suggestions for advancing these protections, (4) outline recommendations for reparations and accountability, and (5) highlight the imperative of addressing these concerns during imminent public health crises, such as the current COVID-19 pandemic.

### **Mistreatment of Immigrant Children and Families in the United States: Background**

Under the Trump Administration, the number of migrant children in U.S. government custody—and their length of time in custody—have reached record levels. In a single year, the number of children in detention under the Office of Refugee Resettlement has nearly doubled—from approximately 10,600 to 19,100 (see Figure 1)—with a record nearly 70,000 children detained in US immigration custody in 2019.<sup>4</sup> In violation of legal standards requiring placement in “least restrictive settings,” the child care and shelter facilities housing children that are locked and guarded impose strict limitations on children’s freedom of movement, activities, and daily schedules. Furthermore, children have been detained in mass congregant care or unlicensed “influx” facilities that have housed over 1,000 child detainees. These facilities were not subject to state licensing requirements that require appropriate education or social supports for children as well as background checks of workers to reduce the risk of child abuse.<sup>5</sup> The amount of time children spend in detention has been significantly lengthened due to administrative delays and government practices, such as extensive background checks and the prosecution and deportation of potential sponsors. There have been multiple violations of children’s due process rights, including coercive administration of medication without consent, currently being litigated in *Lucas R. v. Azar*.<sup>6</sup>

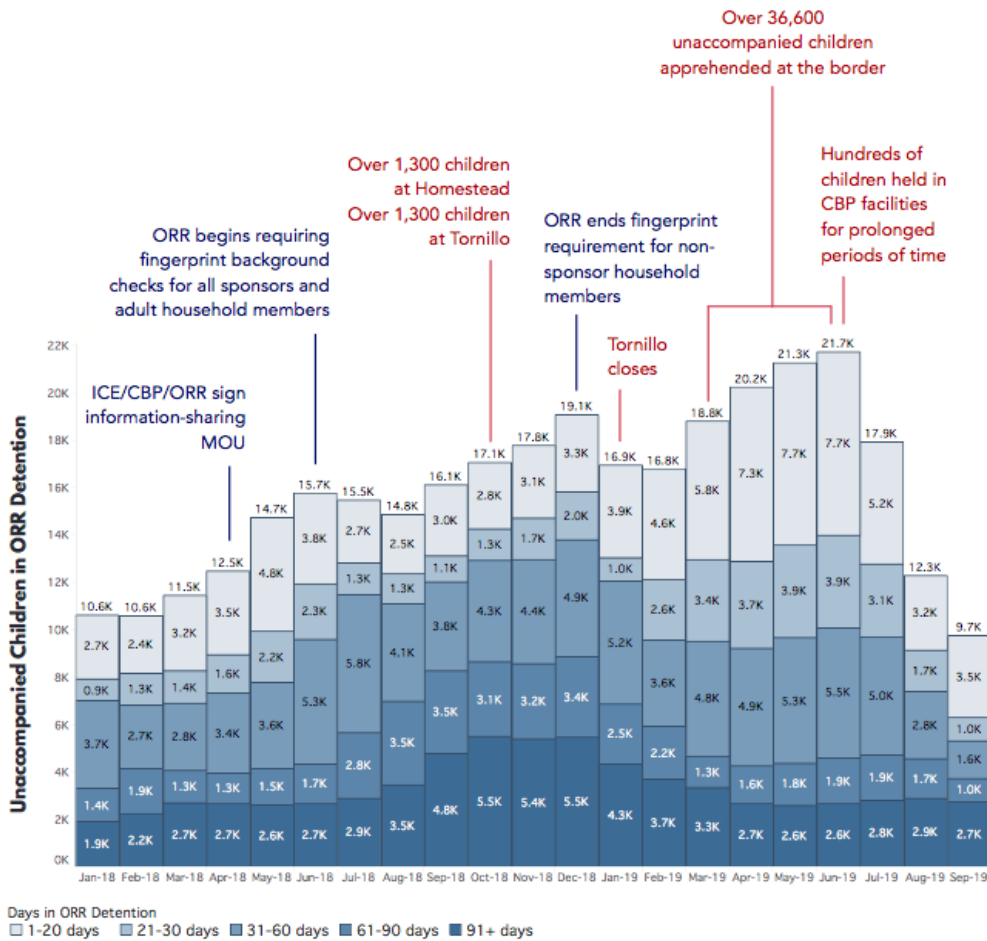


Figure 1: Trends in the care and custody of immigrant children in the United States.<sup>7</sup>

## Psychological and Health Impacts of U.S. Policy and Practice

There is a well-established and growing body of scientific literature detailing the harms caused to children by long-term detention and forcible family separation. This literature confirms that the detention of children and related experiences of forcible family separation exert a pervasive and long-term impact on children's health and psychological functioning. Child detention, family separation, and denial of access to safety constitute forms of trauma, child adversity, and toxic stress.<sup>8</sup> Children's responses and adaptations to these experiences manifest in serious health consequences as well as acute psychiatric disability and serious disruptions to healthy child development.<sup>9</sup> The scientific literature confirms that adverse childhood experiences are associated with long-term risk for developing chronic diseases (e.g., obesity, type II diabetes, chronic inflammation, and cardiovascular disease) all leading to reduced life expectancy.<sup>10</sup> Mental health outcomes that are specific to child detention and family separation include increased frequency and severity of psychiatric symptoms (e.g., depression, anxiety, posttraumatic stress disorder (PTSD), behavior problems); developmental regression; difficulties with cognition and learning;

somatic complaints; and short- and long-term health problems.<sup>11</sup> Detention has been shown to alter children's neurobiology, stress response, and immunity, as well as the associated functional outcomes in domains of independent living, interpersonal relationships, academic/vocational performance, and general health.<sup>12</sup> Of note, increased duration of detention is associated with poorer psychological outcomes and more severe symptoms.

HRTMHP interviews and observations with children who have been separated from their families, confined in U.S. detention centers, or sequestered in Mexico reveal extreme distress directly attributable to the circumstances of their reception. Consistent with the existing clinical literature, detained and sequestered children whom we have examined exhibit significant levels of psychological distress that manifests in feelings of hopelessness, helplessness, and desperation, as well as severe symptoms of depression, anxiety, and PTSD that worsen over time. Detention centers and shelter settings fail to provide the stable and nurturing social and emotional support systems that all children and youth require from their families and have the right to enjoy.

A perceived lack of personal agency is directly linked to the experience of trauma. Uncertainty and lack of understanding of immigration processes is also a significant source of anxiety and distress for migrating families that impairs healthy child development. While trying to navigate the U.S. administrative processes, children and families are stripped of agency and denied access to critical information about their migration status and the reunification process, leading to chronic anxiety, sadness, and emotional distress. These uncertain conditions propagate continuous trauma for those engaged in immigration proceedings or held in government custody due to fears associated with ongoing threats, maltreatment by officials, and concerns for the health and well-being of themselves and their families. Children in these settings have reported experiencing additional traumas including physical assault, sexual abuse, kidnapping, and physical and psychological neglect.

The many offenses occurring at the U.S.-Mexico the border compound harms of pre- and peri-migration traumas experienced by the vast majority of children and families seeking asylum and refuge. As such, the additional traumas associated with detention, separation, and sequestration increase vulnerability and exacerbate existing mental and physical suffering in children and their families. Concurrently, the synergistic effects of psychological stress and inadequate access to resources result in chronic psychiatric symptoms that can negatively affect children's development and health status well into adulthood.

It is well established that U.S. policies and practices involving child detention, family separation, and sequestration have been put in place to deter and discourage further migration. In order to be effective, such policies *by their very nature* inflict intentional harm upon migrant populations and refuge seekers, including children. Moreover, these policies are often differentially applied to specific groups of migrants (e.g., those physically presenting or entering the U.S. at its southern border versus other ports of entry). Based on the existing science, as well as the direct observation by HRTMHP principals and others, we know these harms to be significant, long-lasting, and pervasive. There is no lack of evidence-based information about the impact of deterrence measures such as child detention and family separation. In this light, the

harms of these deterrence policies result in “traumatization by design” and constitute a form of torture of migrant and refugee-seeking children and families.<sup>13</sup>

## **Recommendations for Policy and Practice**

First and foremost, it is clear that children should never be detained or separated from family or caregivers at any point during immigration processing. Efforts to ensure the adequate reception and care of child migrants as well as redress for the intentional harms they have experienced must involve: (1) protective measures to minimize harm or further traumatization, (2) avenues for adjudicating accountability for the intentional traumatization of migrant children and families, and (3) reparations and offers of psycho-social rehabilitation for harm deliberately inflicted.

- **The reception of migrant children should not entail forced detention, separation from family members or caregivers, or refusal of access to protective resources and support systems** in order to minimize risk for trauma exposure and psychological harm. As standard policy and practice, children should remain in the custody of family members, caregivers, or child- and family-approved sponsors at all times.
- **Only in extreme cases of risk to the child should measures of government/state custody be considered and only to the degree necessary** (i.e., when there is significant risk of self-harm, suicide, child abuse, or exploitation).
  - Determinations of risk should be made only by child welfare officials or licensed health professionals and not by immigration officials, administrative officials, and/or adjudicators, who typically lack training or background in child welfare. In rare cases of risk or failure to identify any family-approved sponsor, children should be placed in community-, family-, home-based, or rehabilitative care settings.
  - Migrant children should never be placed in large-scale congregant care or juvenile justice facilities.
- **Migrant children should be ensured appropriate legal representation with trauma-informed, evidence-based, and child-sensitive practices.** The provision of legal services should be part of any humanitarian and/or child welfare system.
  - Legal representatives and adjudicators should have training in developmentally-tailored and trauma-informed practices.
  - Psychological and medical evaluations must inform immigration processes.
- **Child and family agency should be maximized throughout the immigration process.**
  - Authorities must provide clear information about the immigration process, custody options, and care facilities. This may require employing translators who can explain the process in the migrants’ preferred language (including indigenous languages).
  - Children and families should have authority to determine a child’s placement, shelter, and care.

- Adequate contact and communication between children and their family members, caregivers, or sponsors must be guaranteed when they are not housed together or while in the process of reunification.
- **Children and their families should have access to appropriate health, educational, and social services** that impact both psychological and physical well-being.<sup>14</sup>
  - Appropriate treatment and care should be determined by medically-certified providers or licensed child health professionals, rather than immigration officials or border patrol agents.
  - To minimize the deleterious impacts of detention and shelter settings, and to maximize prevention of debilitating disease, children under custody must have ready access to holistic health and mental health services.
  - There must also be sufficient availability and capacity of healthcare workers in shelter and custody facilities to ensure regular monitoring of children’s physical and mental status.
  - Similarly, ensuring access to age-appropriate educational, vocational, and social service (e.g., case management) resources for children contributes to healthy child development and maximizes child agency and empowerment throughout the migration process.

The recommendations above must also provide mechanisms of oversight and accountability to ensure state compliance. Existing legal settlements (such as the Flores Settlement Agreement, see Annex 1) have been partially successful in preventing and reducing harm to migrant children by requiring specific standards for children’s custody and care, and by providing mechanisms of accountability through oversight and monitoring by legal representatives and state child care licensing authorities. While these protections have, in our view, reduced and mitigated psychological and physical harms to children, the U.S. government has been found to be operating in violation on numerous occasions. To date, efforts to convert the settlement into regulations have been unsuccessful. To ensure protections and reduce harm to migrant children, such settlements should be upheld and strengthened.<sup>15</sup>

## **Reparations**

U.S. child separation, immigrant detention, and sequestration policies have intentionally inflicted significant harm to children and families for the political purpose of deterrence. Simply reversing or ending these policies will not suffice. People who have been harmed deserve appropriate recompense. Reparations could include, but are not limited to:

- Public acknowledgment of, and an official apology for, the harms caused by government officials, policymakers, and immigration personnel;
- Executive and legislative safeguards and guarantees of non-repetition;
- Direct financial compensation for demonstrated harms;

- Access to publicly subsidized legal, medical, and mental health services to promote pathways to recovery (e.g., asylum advocacy, psychotherapy, prescription medications, hospitalization);
- Community-based support programs and other services necessary to support recovery;
- Administrative relief for immigration processes, such as immediate parole, expedited asylum processing, and free legal representation;
- Implementing other protective policies and pathways to citizenship for child migrants and their families, that include parole, special visa status, and ensure access to educational and vocational opportunities; and
- Official documentation and memorialization of harms, through governmental fact-finding, truth and justice commissions, museum exhibits, and monuments.

### **COVID-19 Urgency**

The concerns outlined above are increasingly urgent in the wake of the current COVID-19 pandemic. The risks to the health and well-being of migrant children are greatly elevated given the potential for viral transmission and outbreaks in overcrowded and unsanitary child detention facilities and migrant camps. Indeed, a growing number of children and staff members have tested positive for COVID-19 in U.S. immigration processing centers.<sup>16</sup> These conditions, combined with the continued threat of COVID-19, will significantly worsen the psychological and physical health of children in detention. As such, U.S. advocates are arguing for the immediate release of all detained children.<sup>17</sup>

### **Conclusion**

Despite the relative successes of protective policies and agreements in reducing harms, migrant children in the United States continue to experience significant exposure to trauma and adversity during immigration processing. These harms often stem from intentional deterrence efforts and result in adverse consequences on children's acute and long-term physical and mental health. Therefore, further efforts are required to uphold, strengthen, and advance existing protections. Of note, given children's specific vulnerabilities and associated risks to well-being, systems and procedures for receiving migrant children cannot simply replicate those for adults. Specialized, child-sensitive systems, programs, and protections are necessary.

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## **Annex 1: The United States Immigration Framework Under the Trump Administration**

This Annex provides background on the U.S. legal framework governing child migrants and policies implemented by the Trump Administration that significantly harm migrant children and their families. This includes policies implemented by the U.S. Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE), and Office of Resettlement and Refugee (ORR).

**The *Flores* Settlement.** The *Flores* Settlement Agreement (FSA) emerged from a 1997 U.S. Supreme Court case that established national standards regarding the care and treatment of all migrant children in U.S. government custody or detention in order “to treat all children in custody with dignity, respect, and special concern for their particular vulnerability as minors.”<sup>18</sup> The FSA states that children should be kept in the least restrictive settings possible and should be released to family members, sponsors, or child care facilities as expeditiously as possible. Specific FSA provisions include: mandates to house children in state-licensed facilities; minimum standards for licensed programs; instructions regarding the processing, treatment, and placement of minors in child welfare institutions (e.g., residential group homes or foster care); a contingency plan in case of emergency or influx; monitoring facilities; and notice of the right to judicial review of children’s cases. The FSA provides the legal foundation for monitoring the treatment, and litigating the rights, of immigrant children nationally. However, since taking office, the Trump Administration has introduced a number of measures that directly violate these legal standards and are actively trying to replace the FSA with regulations that undermine these standards. These efforts have significantly eroded the child-protective provisions of the FSA, which require due process, age-appropriate and humane treatment, habitable living conditions, and parental access.

***Family separation.*** Announced in May 2018, the “Zero Tolerance Policy” (ZTP) of the Trump administration separated migrant and refuge-seeking children from their primary caregiver(s) upon arrival at the U.S.-Mexico border in an effort to deter migration.<sup>19</sup> Despite exercising their lawful right to seek asylum, children have been held in custody apart from their parents or adult caregivers and have been reclassified as “unaccompanied,” while their parents are detained in adult facilities and prosecuted for illegal entry into the United States.<sup>20</sup> Thousands of children and families have been adversely impacted by ZTP.<sup>21</sup> Despite a federal court order issued in June 2018 requiring the children be promptly reunified with their families, the government did not comply, and many children currently remain unaccounted for, as family separation practices continue.<sup>22</sup>

***Metering.*** The Trump administration has implemented a number of policies at the border that effectively put asylum out of the reach of the vast majority of individuals who would otherwise apply for asylum, in violation of established international norms and treaties, including the 1951 Refugee Convention and its prohibition against *refoulement*. A “metering” policy implemented in



2018 limits the number of asylum requests CBP processes per day at U.S. ports of entry. As queues of asylum seekers grew in border cities, Mexican authorities and civil society created informal waitlists for asylum seekers that left thousands of people waiting in Mexican border cities for months (numbers peaked at 26,000 in August 2019 and totaled 14,000 as of April 2020).<sup>23</sup> The metering policy specifically obstructs children’s ability to claim asylum in the United States, as unaccompanied minors are prevented from placing their names on most asylum waitlists and are unable to access ports of entry or request asylum.<sup>24</sup>

**Migrant Protection Protocols/Remain in Mexico.** In late January 2019, DHS began to implement Migrant Protection Protocols (MPP, or “Remain in Mexico”) to return non-Mexican asylum seekers to Mexico where they must remain pending their U.S. immigration proceedings. As of April 2020, almost 63,000 asylum seekers have been returned to Mexico through MPP<sup>25</sup>, including pregnant women<sup>26</sup>, and at least 16,000 children and 500 infants.<sup>27</sup> As a result of metering and MPP, children and families wait for months in precarious conditions, often living in temporary shelters, makeshift camps or on the streets without access to basic necessities or medical care. They face grave and widely documented dangers of homelessness, food insecurity, illness, exploitation, abduction, torture, and predation by human traffickers and smugglers.<sup>28</sup> Human rights monitors have documented over 1,000 cases of violent assaults, kidnappings, and murder of asylum seekers in MPP.<sup>29</sup> Children and families have taken extreme measures to seek refuge from these threats and dangers that in some instances have resulted in their death.<sup>30</sup> Policies such as the Transit-Country Asylum Ban and the Safe Third Country agreement with Guatemala—that hinder movement, redirect and/or deport children and families seeking refuge in the U.S. to Central American countries—represent additional efforts to restrict access to the asylum system.

**Covid-19 Response.** Even prior to the advent of the pandemic, reports emerged regarding unsanitary conditions that include lack of personal protective equipment and hygiene products such as soap, sanitizer, paper towels, masks and gloves.<sup>31</sup> Due to COVID-19, CBP stopped processing asylum requests and started expelling all Mexican and some Central American families and unaccompanied minors seeking asylum to Mexican border cities. In addition, MPP court hearings have been postponed. These changes, which effectively end the availability of asylum in the United States in a violation of domestic and international legal obligations, signify that families and children will be exposed to dangerous conditions and additional health risks for a long period of time.

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<sup>2</sup> E.g., *Flores v. Sessions* ; *Lucas R. v. Azar*, 2018 U.S. Dist. (United States District Court for the Central District of California, December 27, 2018, Filed).

<sup>3</sup> Coalition for the Custody and Care of Children at the Border. *Expert Recommendations Regarding Custody and Care of Children at the Border*. White paper policy recommendations briefing book prepared for congressional briefings with the United State Senate and House of Representatives. Available upon request; 2019.

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- <sup>5</sup> Kates G. Migrant Children in U.S. Are Being Held in Unlicensed Shelters, Lawyers Say. CBS News. <https://www.cbsnews.com/news/migrant-children-in-u-s-are-being-held-in-unlicensed-shelters-lawyers-say/> Published January 24, 2019; Burke G, Mendoza M. Trump administration waived FBI fingerprint checks for staff at growing detention camp for migrant kids. Chicago Tribune. <https://www.chicagotribune.com/nation-world/ct-detention-camp-for-migrant-children-20181127-story.html>. Published November 28, 2018; US Department of Health and Human Services. Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges in Hiring, Screening, and Retaining Employees. <https://oig.hhs.gov/oas/reports/region12/121920001.asp>. Published September 3, 2019; Office of Inspector General, Management Alert—DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley. [https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19\\_.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf). Published July 2, 2019; Office of Inspector General. Concerns about ICE Detainee Treatment and Care at Four Detention Facilities. DigitalCommons@University of Nebraska - Lincoln. <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1000&context=dhspapers>. Published June 3, 2019.
- <sup>6</sup> Lucas R. v. Azar, 2018 U.S. Dist. (United States District Court for the Central District of California, December 27, 2018, Filed).
- <sup>7</sup> Desai, N, Adamson, M, Pirorrotta, E, Cohen, L, & Wang, NE. 2019. "Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policymakers."
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<sup>15</sup> Examples of protective legislation that has positively impacted the psychological health of immigrants include the Deferred Action for Childhood Arrivals (DACA) program established in 2012. DACA allows children brought to the U.S. renewable 2-year periods of deferred action from deportation, as well as eligibility for educational supports and work permits in the U.S. Research demonstrates that DACA improves (1) the employment and economic status of DACA-eligible individuals, and (2) the mental health status of American-born children of DACA-eligible mothers. See Pope NG. The Effects of DACAmentation: The Impact of Deferred Action for Childhood Arrivals on Unauthorized Immigrants. *Journal of Public Economics*. 2016; 143:98-114. doi:10.1016/j.jpubeco.2016.08.014; Hainmueller J, Lawrence D, Martén L, et al. Protecting unauthorized immigrant mothers improves their children's mental health. *Science*. 2017;357(6355):1041-1044. doi:10.1126/science.aan5893.

<sup>16</sup> Sanchez, M. At Least 19 Children at a Chicago Shelter for Immigrant Detainees Have Tested Positive for COVID-19. ProPublica. <https://www.propublica.org/article/at-least-19-children-at-a-chicago-shelter-for-immigrant-detainees-have-tested-positive-for-covid-19>. Published April 13, 2020.

<sup>17</sup> Kingkade T. Coronavirus in juvenile detention is a 'nightmare scenario,' doctors and advocates say. NBC News. <https://www.nbcnews.com/news/us-news/coronavirus-juvenile-detention-nightmare-scenario-doctors-advocates-say-n1170256>. Published March 27, 2020; National Center for Youth Law. Flores April 10 Order TRO COVID-19. <https://youthlaw.org/wp-content/uploads/1997/05/Flores-April-10-Order-TRO-Covid-19.pdf>. Published April 10, 2020; Miller L. Youths in detention should be released to reduce coronavirus risk, advocates say. Los Angeles Times. <https://www.latimes.com/california/story/2020-03-17/fearing-harmful-effects-of-virus-juvenile-justice-attorneys-push-for-clients-release>. Published March 17, 2020; Gerstein, J. Suit seeks release of immigrant families due to virus risk. Politico. <https://www.politico.com/news/2020/03/22/suit-release-immigrant-families-coronavirus-142485>. Published March 22, 2020.

<sup>18</sup> *Flores v. Barr*, 934 F.3d 910, 2019 U.S. App. (United States Court of Appeals for the Ninth Circuit. August 15, 2019, Filed). The FSA also requires that “Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS’s concern for the particular vulnerability of minors” and “such minor shall be placed temporarily in a licensed program...at least until such time as release can be effected...or until the minor’s immigration proceedings are concluded, whichever occurs earlier.” *Flores v. Meese*, 681 F. Supp. 665, 1988 U.S. Dist. (United States District Court for the Central District of California. March 7, 1988, Filed); *Flores v. Barr*, 934 F.3d 910, 2019 U.S. App. (United States Court of Appeals for the Ninth Circuit August 15, 2019, Filed); *Flores v. Barr*, 2020 U.S. Dist. (United States District Court for the Central District of California. April 10, 2020, Filed). See also Human Rights First. The Flores Settlement: A Brief History and Next Steps. <https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps>. Published February 19, 2016.

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<sup>20</sup> Congressional Research Service, 2019. Unaccompanied Alien Children: An Overview. <https://fas.org/sgp/crs/homesecc/R43599.pdf>

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