

Protection for Unaccompanied Children: Understanding the Flores Settlement & the Foundational Rule

What is the *Flores* Settlement Agreement (FSA)?

The *Flores* Settlement Agreement (FSA)¹, established in 1997 in response to litigation regarding custodial treatment of unaccompanied minors in the United States, sets national standards for the federal government’s treatment and care of immigrant children in the custody of the U.S. Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR).

Why is the FSA Important?

The FSA ensures DHS and ORR treat children in federal custody humanely and that their basic rights and needs are met. Key protections of the FSA include: (a) safe and sanitary conditions; (b) use of the least restrictive setting; (c) prioritization of release to family members; (d) use of licensed facilities when possible; (e) access to legal services; (f) regular review of custody; and (g) robust monitoring and compliance practices. Through its monitoring capacity, the FSA has been the primary tool for oversight and accountability, ensuring facilities uphold minimum standards of care and treatment for immigrant children in government custody.

What is the Foundational Rule?

In 2024, the Biden administration published [Unaccompanied Children Program Foundational Rule](#), a set of final regulations known as the “Foundational Rule” to codify in regulation the portion of the FSA related to ORR’s custodial responsibilities.² The Foundational Rule aims to formalize and expand the protections outlined in the FSA as they relate to ORR, setting higher standards regarding the treatment of children in ORR custody.

Are there elements of the FSA that are not in the Foundational Rule?

Yes. The Foundational Rule does *not* replace the entirety of the FSA. Some protections, such as the requirement of state licensing and certain ORR oversight requirements, are not included in the Foundational Rule. For example, under the Foundational Rule, ORR facilities located in states that refuse to grant them licenses can continue to operate without state licenses—and therefore, without state oversight—relying on ORR’s internal oversight mechanisms instead.

¹ *Flores v. Reno*, 1:85-cv-04544-DMG (C.D. Cal. 1997)

² Federal Register. (2024). Unaccompanied children program: Foundational rule. Retrieved July 15, 2024, from <https://www.federalregister.gov/documents/2024/04/30/2024-08329/unaccompanied-children-program-foundational-rule>

What is the Intersection of FSA and the Foundational Rule?

The Foundational Rule was drafted and published to function as a regulatory replacement for the ORR-related portions of the FSA. While the Foundational Rule does expand on the ORR protections established by the FSA, ending the FSA could result in the end of oversight of ORR facilities provided by *Flores* counsel. Currently, the court modified the settlement to terminate provisions of the FSA as they relate to ORR but maintained—for now—the ability of *Flores* counsel to conduct oversight on ORR facilities and certain other provisions.

What is Global Refuge’s perspective on the Foundational Rule?

As one of the largest and oldest social service providers of unaccompanied children, Global Refuge constantly advocates for child-friendly practices and standards that implement a “best interest of children” lens. We view the Foundational Rule as an important first step with requiring greater standards for ORR to fulfill for children in their care. We appreciate the positive advancements in the Foundational Rule, such as improved language access and more stringent standards for influx facilities, we recognize that more can be done. We will continue our work engaging ORR and other stakeholders to provide greater oversight and care for children.

For more information regarding this resource, the Foundational Rule, or the *Flores* settlement agreement, please contact Ashley Feasley at Ashley.Feasley@globalrefuge.org.