



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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VIA EMAIL AND FIRST CLASS MAIL

Scott Lloyd
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Federal Field Specialist Supervisor for N.Y. Region
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Timothy D. Sini
Police Commissioner
Suffolk County Police Department
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Re: ORR's Practice of Placing Minors in Highly Restrictive Settings Based on Untested Allegations of Gang Membership.

Dear Director Lloyd, Mr. Fink, and Commissioner Sini:

On behalf of the New York Civil Liberties Union, we write in advance of President Trump's upcoming visit to Suffolk County and in response to reports that Immigration and Customs Enforcement will be conducting raids to seize minors allegedly connected to gangs operating in the County. Based on information the NYCLU has collected from numerous sources about recent ICE seizures of youth from Suffolk County, we believe children are being falsely labeled as gang members and, as a result, are being hastily transported to distant high-security facilities without notice to their lawyers or family members, all in violation of a federal court order and a federal statute. We therefore write to demand that you promptly take all steps necessary to assure compliance with the important legal protections to which these children are entitled.

Minors Are Entitled to Certain Federal Protections Because They Are More Vulnerable Than Adults.

During the 1980s, immigrant children with no criminal background were routinely locked up for months in hot, crammed jail cells, in remote facilities across the country.¹ These egregious conditions prompted a federal lawsuit, *Flores v. Reno*, which resulted in a 1997 consent decree that set national standards for the detention, release, and treatment of all undocumented minors and that remains fully in effect to this day.²

In 2002, Congress took further action to protect unaccompanied minors by passing the Homeland Security Act (“HSA”), which transferred the care and custody of unaccompanied children to the Office of Refugee Resettlement to incorporate child welfare values into the care and placement of undocumented children.³ Building on the *Flores* consent decree’s protections, Congress later passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), which likewise protects children like those in Suffolk County who have been recently detained and those who face the prospect of imminent detention.⁴

While the *Flores* consent decree and the two statutes contain many protections, we are most concerned with three in particular:

- Before any minor is transferred to detention, the child’s lawyer must be given advance notice of the transfer;⁵
- All minors must be placed in the “least restrictive setting that is in the best interest of the child,” and no minor may be placed in a secure detention facility unless ORR determines the minor “poses a danger to self or others or has been charged with having committed a criminal offense”;⁶
- ORR must notify every minor it places in a secure or medium-secure facility of the reasons for the placement, must afford the minor an opportunity to contest that placement, and must notify the minor of *pro bono* counsel available to assist them.⁷

ORR Is Violating Federal Law in Its Handling of Minors Seized in Suffolk County.

Over the last few weeks, we have spoken with minors living in Suffolk County, their relatives, their immigration attorneys, and other advocates. When the minors initially entered the country, ORR determined they were not a safety risk, as it is required to do under the TVPRA, and decided it would be in their best interest to place them with relatives in Suffolk County. Since then, they have lived and attended school there for months or, in some cases, years. But recently, some

¹ HUMAN RIGHTS WATCH CHILDREN’S PROJECT, *SLIPPING THROUGH THE CRACKS: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service* (1997), at 5, 64.
<https://www.hrw.org/sites/default/files/reports/us974.pdf>.

² The Flores Settlement Agreement, *Flores v. Reno*, Case No. CV 85-4544-RJK(Px) (C.D. Cal.1997),
<http://www.centerforhumanrights.org/PDFs/FloresStpultdSetlmt%20AGMT.pdf>.

³ OFFICE OF REFUGEE RESETTLEMENT, *Unaccompanied Alien Children’s Services*, U.S. DEP’T OF HEALTH & HUMAN SERV.’S ADMIN. FOR CHILDREN & FAMILIES, <https://www.acf.hhs.gov/orr/programs/ucs> (last visited July 27, 2017).

⁴ 8 U.S.C. § 1232(c)(2)(A).

⁵ The Flores Settlement Agreement, *supra* note 2, ¶ 27.

⁶ *Id.* ¶¶ 11, 23; 8 U.S.C. § 1232(c)(2)(A).

⁷ The Flores Settlement Agreement, *supra* note 2, ¶ 24(D).

report being falsely labeled as gang members for wearing a black t-shirt to school, for playing soccer with suspected gang members, or for wearing clothing with the Chicago Bulls logo. This false labeling appears to be the first step in a process that results in minors being summarily seized and whisked away to distant jails.

In violation of the TVPRA and the *Flores* consent decree, ORR is failing to adequately consider the least restrictive setting for minors and instead is routinely placing them in high-security facilities. We are aware of at least nine children that ORR recently placed in secure detention based on unconfirmed allegations of gang affiliation that originated with Suffolk police. ORR has admitted in legal proceedings that it places children in secure detention without any inquiry into the accuracy of information submitted by law enforcement and without any notice to the child, their attorneys, or their parents of the information upon which the determination is being made. Moreover, most of these children have previously been in ORR's custody and ORR has released them to their parents or other relatives pursuant to sponsorship agreements. Particularly in light of those ongoing familial relationships, ORR cannot simply defer to law enforcement's claims that a child is a gang member to place them in the most restrictive possible setting. By conducting no independent investigation, ORR is unnecessarily placing children in jail-like conditions in violation of federal law.

We also have serious concerns that ORR is violating the procedural protections afforded to minors under the *Flores* decree and the TVPRA. Many of the minors already seized in Suffolk County have counsel, yet none of them received notice of the minor's transfer before the child was sent to a distant high-security facility. Minors are not being informed of the reason for their placement, are not being given notice of their right to contest the placement, and are not being given information about counsel who could assist them.

* * *

For the above reasons, ORR must take immediate steps to assure compliance with its legal obligations under the *Flores* decree and the TVPRA. Specifically, ORR must take immediate steps (1) to give advance notice to counsel of any minor from Suffolk County before the minor is transferred out of New York to a detention facility; (2) to halt its practice of placing minors in high-security facilities based on unsubstantiated claims of gang affiliation and to assure that each minor is placed in the least-restrictive setting appropriate; and (3) to promptly provide all minors with notice of the reasons for their placement, an opportunity to contest that placement, and information about counsel who can assist them.

Sincerely,



Philip Desgranges, Staff Attorney
Kristen Burzynski, Legal Fellow
Irma Solis, Suffolk County Chapter Director
Christopher Dunn, Associate Legal Director