



*Photo by Jenn Mishra at Wits End Photography*

# Correcting Course:

**Restoring the critical protection of  
placement in licensed facilities for  
children in federal immigration custody**

**April 2023**

**National Center  
for Youth Law**

# About the Authors

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## National Center for Youth Law

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The National Center for Youth Law (NCYL) is a non-profit law firm that has fought to protect the rights of children and youth for over fifty years. Headquartered in Oakland, California, NCYL leads high impact campaigns that weave together litigation, research, policy development, and technical assistance.

NCYL and its co-counsel represent the class of thousands of immigrant children in federal custody and are responsible for monitoring the Government's compliance with the *Flores* Settlement Agreement. The *Flores* Settlement guarantees basic protections for all children in federal immigration custody and authorizes *Flores* attorneys to visit and interview immigrant children in federal custody. NCYL also collaborates with public agencies to develop policies and practices to better support immigrant children and families. For further information on the full range of NCYL's campaigns and initiatives, please visit [www.youthlaw.org](http://www.youthlaw.org).

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## Data Methodology

Data visualizations provided in this resource were created with monthly *Flores* data reports provided by the U.S. Department of Justice between January 2019 and January 2023. The monthly *Flores* data reports provide certain information for each class member in the government's custody as of a specific date each month, providing a "snapshot" of the total census of children in federal immigration custody. Data on bed occupancy at different facility types is based on ORR Juvenile Coordinator Reports filed in federal court in *Flores v. Barr*, Case No. 85-4544 (C.D. Cal) and bed capacity reports provided by the U.S. Department of Justice in January 2023.

Featured quotes from detained unaccompanied children throughout this publication come from interviews conducted by NCYL attorneys representing children in federal custody.

## Acknowledgements

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# Introduction

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Children in government custody – whether in state or federal custody – are inherently vulnerable in that they are apart from family and placed into profoundly flawed systems that have long histories of abusive and dangerous practices. For over 80 years, there has been consensus within the child welfare field that facilities in which children are placed must be licensed by state authorities to ensure that such facilities at least meet fundamental health and safety requirements.

In 1997, this critical state-based licensing requirement made its way into protections for immigrant children in federal custody when the *Flores* Settlement was signed. The *Flores* Settlement establishes baseline standards for the custody, detention, and release of detained immigrant children. Over 25 years later, we have been witnessing a slow and steady erosion of the federal government’s adherence to state licensing mandates – an erosion that has gone largely unnoticed.

Licensing alone does not ensure the safety of children, but it is a prerequisite for ensuring a baseline of core requirements to which facilities must adhere and a basic structure for accountability. Far more must be done to ensure the well-being of children placed in these facilities, but all of it must be built upon the core infrastructure that state licensing provides.

This briefing provides an overview of:

- the modern child welfare consensus around family-based, state-licensed care,
- the state licensing requirement in the *Flores* Settlement, the federal government’s increased use of unlicensed placements, and
- the inappropriate continued reliance on unlicensed influx facilities.

Finally, this briefing provides recommendations to decrease the government’s reliance on unlicensed placements.

# I. The Modern Child Welfare Consensus On Family-Based, State-Licensed Care

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State child welfare practice has evolved over time to recognize the concrete harms of placing children in institutional, congregate care settings. Accordingly, states consistently prioritize placing children in family-like settings. Further, all states license and monitor childcare facilities to promote safe and appropriate environments for children.

## From Institutional Care to Foster Families

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Before the development of the modern child welfare system, states sent most children in government custody to large institutions that failed to meet their needs.<sup>1</sup> In the early nineteenth century, “[p]ublic almshouses, insane asylums, and even adult prisons came to house many poor children who had nowhere to go.”<sup>2</sup> Advocates expressed growing concern that these settings were inherently inappropriate for children.<sup>3</sup> This led private organizations, mostly religious groups, to develop orphanages.<sup>4</sup> Although orphanages represented an improvement on prior institutions, they still failed to provide children with the individualized adult attention needed to promote healthy development.<sup>5</sup>

In the twentieth century, child welfare reformers increasingly criticized traditional orphanages for their separation and stigmatization of children, among other issues.<sup>6</sup> These reformers argued that placing children in individual family settings would better support children’s development.<sup>7</sup> Accordingly, child welfare best practice increasingly focused on deinstitutionalization.<sup>8</sup>

The preference for family-based care over institutionalization reflects the modern understanding that living in institutional settings harms children. For example, studies have shown that children placed in institutions suffered developmental delays and experienced a lack of safety, permanence, and well-being.<sup>9</sup> Even group homes, while better for children than large institutions, are not a substitute for family care. As a 2011 University of Maryland study explained, “[i]n recent years, concerns about the use of group care appear to have increased. Group care has been labeled as costly, overused, overcrowded and overburdened and, sometimes, unsafe.”<sup>10</sup> The lack of a healthy attachment to a parental figure can cause behavioral and interpersonal difficulties for children and adolescents, including increased susceptibility to negative peer influence.<sup>11</sup>

Additional harmful effects of congregate care include impaired physical, social, and cognitive development.<sup>12</sup> Even for children who do not experience developmental issues, living in this type of setting may still cause psychological harm.<sup>13</sup> Furthermore, despite the strong consensus in favor of family-based care, children of color, particularly black children, are disproportionately likely to be placed in congregate care and overrepresented in the child welfare system generally.<sup>14</sup>

States have steadily decreased their use of group homes and other congregate care settings for children, while increasing community-based and family-like placements.<sup>15</sup> In 2015, the Government Accountability Office reported improved outcomes and costs savings in various states due to their reduction in congregate care.<sup>16</sup> Currently, family-based settings account for at least 79% of child welfare placements nationwide.<sup>17</sup>

Federal policy also strongly supports the prioritization of family-like settings over institutional placements. For example, the Family First Prevention Services Act (FFPSA), which passed into law in 2018, is intended to “help children remain at home, reduce the unnecessary use of congregate care, and build the capacity of communities to support children and families.”<sup>18</sup> The FFPSA limits federal funding for congregate care and has influenced states to decrease use of these placements.<sup>19</sup> As the Congressional Bill Report on the FFPSA explains, the Act “ensures more foster children are placed with families by limiting federal reimbursement to only congregate care placements that are demonstrated to be the most appropriate for a child’s needs....”<sup>20</sup> Furthermore, “to be eligible for federal payment, congregate care settings would be subject to licensing and accreditation standards to ensure they provide appropriate supervision and have the necessary clinical staff to address children’s needs.”<sup>21</sup>

## State Child Welfare Licensing

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Throughout the movement promoting deinstitutionalization, advocates also pushed for standardized requirements to ensure children’s safety in child welfare placements, both in institutions and with individual families. In the 1930s, state child welfare agencies began to be staffed by professional social workers who, among other things, ensured licensure of homes that boarded foster children.<sup>22</sup> By the end of 1939, every state in the U.S. had a statewide public child welfare agency and the majority of states also had a licensing scheme in place.<sup>23</sup>

Currently, all states require childcare facilities to be licensed, reflecting the widespread recognition that licensing is essential to ensure children’s safety.<sup>24</sup> Licensing serves a critical purpose by ensuring that childcare facilities are equipped to meet children’s needs and are not placing children in inherently dangerous environments.

States have developed extensive infrastructure to implement and monitor licensing requirements.<sup>25</sup> State licensing agencies review facilities’ policies, procedures, and program methods prior to approving a license.<sup>26</sup> Licensing requirements mandate that facilities provide certain services to children, such as regular medical, mental health, and dental care.<sup>27</sup> Additionally, licensing requirements contain measures to ensure children’s liberties are protected while placed in childcare facilities, such as restrictions on seclusion and restraint.<sup>28</sup> Licensing provisions can also protect children’s ability to access attorneys and submit complaints through grievance procedures established by the facilities.<sup>29</sup>

Staff in state-licensed facilities must pass background checks, which include checking fingerprints, the sex offender registry, and the state’s registry of child abuse and neglect.<sup>30</sup> Licensing requirements also establish certain parameters for the infrastructure of the facility itself, including by requiring compliance with local health and fire department regulations, as well as limiting facilities’ maximum occupancy.<sup>31</sup> State licensing also requires minimum staff qualifications and staffing ratios.<sup>32</sup>

Finally, state agencies regularly inspect licensed facilities, investigate complaints, and take enforcement action upon discovering violations.<sup>33</sup> These enforcement actions can include monetary actions, judicial actions, and revocation of the facility’s license.<sup>34</sup>

Even with state licensing systems in place, violations of licensing requirements still occur, sometimes resulting in appalling harm to the children housed in these facilities.<sup>35</sup> However, state licensing agencies and their accompanying investigatory and enforcement powers create mechanisms to hold facilities accountable for these offenses and increase the likelihood that these non-compliant facilities will be discovered and dealt with appropriately.

# II. State Licensing and the *Flores* Settlement

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## Origins of the *Flores* Settlement

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The *Flores* class-action lawsuit was filed in 1985 to remedy the egregious conditions in which immigrant children were detained.<sup>36</sup> At the time, there were no requirements as to the types of facilities that could be used as immigration detention centers and immigrant children did not receive any special accommodations.<sup>37</sup> For example, the government detained 15-year old Jenny Flores in a hotel surrounded by a chain link fence.<sup>38</sup> Children in the custody of the Immigration and Naturalization Service (INS) were not detained separately from adults and interacted with unrelated men and women daily.<sup>39</sup> Immigrant children were also routinely strip searched.<sup>40</sup>

The *Flores* class action, brought on behalf of Jenny Flores and other immigrant children, argued that the government must release children to sponsors and improve the conditions of facilities where it detains children to comply with minimum child welfare standards.<sup>41</sup> The plaintiffs and the government reached a settlement in 1997, which has governed the detention of immigrant children ever since.<sup>42</sup> The *Flores* Settlement Agreement outlines basic protections that the government must afford to detained immigrant children to ensure humane treatment and living conditions and expeditious release.

## State Licensing Requirement

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One of the central guarantees of the *Flores* Settlement is the requirement that, within three days of a child entering immigration custody, the government must generally transfer the child to a placement with a state license to care for dependent, as opposed to delinquent, children.<sup>43</sup> In the case of an “emergency or influx,” children must be placed in licensed facilities “as expeditiously as possible.”<sup>44</sup> Licensed facilities must “comply with all applicable state child welfare laws and regulations” and abide by other minimum standards set out in the Settlement.<sup>45</sup> The federal district court for the Central District of California and the Court of Appeals for the Ninth Circuit have both recognized that the Settlement’s state licensing requirement is a material term of the agreement.<sup>46</sup>

As the Ninth Circuit Court of Appeals explained, the purpose of the state licensing requirement is to “use the existing apparatus of state licensure to independently review detention conditions.”<sup>47</sup> State licensing agencies have the independence, administrative infrastructure, and specialized expertise to monitor facilities housing immigrant children and ensure they meet state child welfare standards. The district court noted that “[t]he purpose of the licensing provision is to provide [children in federal immigration custody] the essential protection of regular and comprehensive oversight by an independent child welfare agency.”<sup>48</sup>

State licensing is such an essential protection for children that it is the only requirement that both the plaintiffs and the government agreed should survive even after the termination of the Settlement. A 2001 amendment to the Settlement states that “[a]ll terms of this Agreement shall terminate 45 days following defendants’ publication of final regulations implementing this Agreement. Notwithstanding the foregoing, the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors.”<sup>49</sup>

# Office of Refugee Resettlement Licensed Network

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Under the Homeland Security Act of 2002, the functions of the former INS were transferred to other federal agencies. The Office of Refugee Resettlement (ORR) of the Department of Health and Human Services is now responsible for the care and custody of undocumented children who arrive in the United States without their parents.<sup>50</sup> ORR is required by federal law to promptly place these unaccompanied children “in the least restrictive setting that is in the best interest of the child.”<sup>51</sup>

As mandated by the *Flores* Settlement, ORR contracts with facilities licensed by state child welfare authorities to care for dependent children.<sup>52</sup> In contrast with state child welfare practice, however, most children in ORR custody are placed in congregate care shelters.<sup>53</sup> Although ORR contracts with temporary (TFC) and long-term foster care providers (LTFC), foster care placements are usually reserved for specific populations of children and far fewer foster care beds are available than shelter beds.<sup>54</sup> Some unaccompanied children are placed in facilities that are even more restrictive than shelters, including staff-secure facilities, residential treatment centers, and secure juvenile detention centers.<sup>55</sup>

In recent years, ORR has also increasingly relied on emergency and influx facilities that lack state licensing or oversight. As detailed in the following section, the use of such unlicensed placements has placed children at serious risk.



# III. 2020-2022: ORR's Increased Use of Harmful Unlicensed Placements

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Despite the importance of state licensing, and despite the clear mandate that ORR use state-licensed facilities to house detained immigrant children, ORR regularly places children in unlicensed facilities. These facilities are not monitored by state licensing authorities and have placed vulnerable children at serious risk.

The temporary use of unlicensed facilities can become necessary when the number of unaccompanied children entering the United States exceeds ORR's licensed network capacity, as occurred in 2021. However, the government has at times used unlicensed facilities even when licensed beds are available and increasingly appears to rely on unlicensed facilities as a permanent part of its network.

## COVID-19 Restrictions and Hotel Detention

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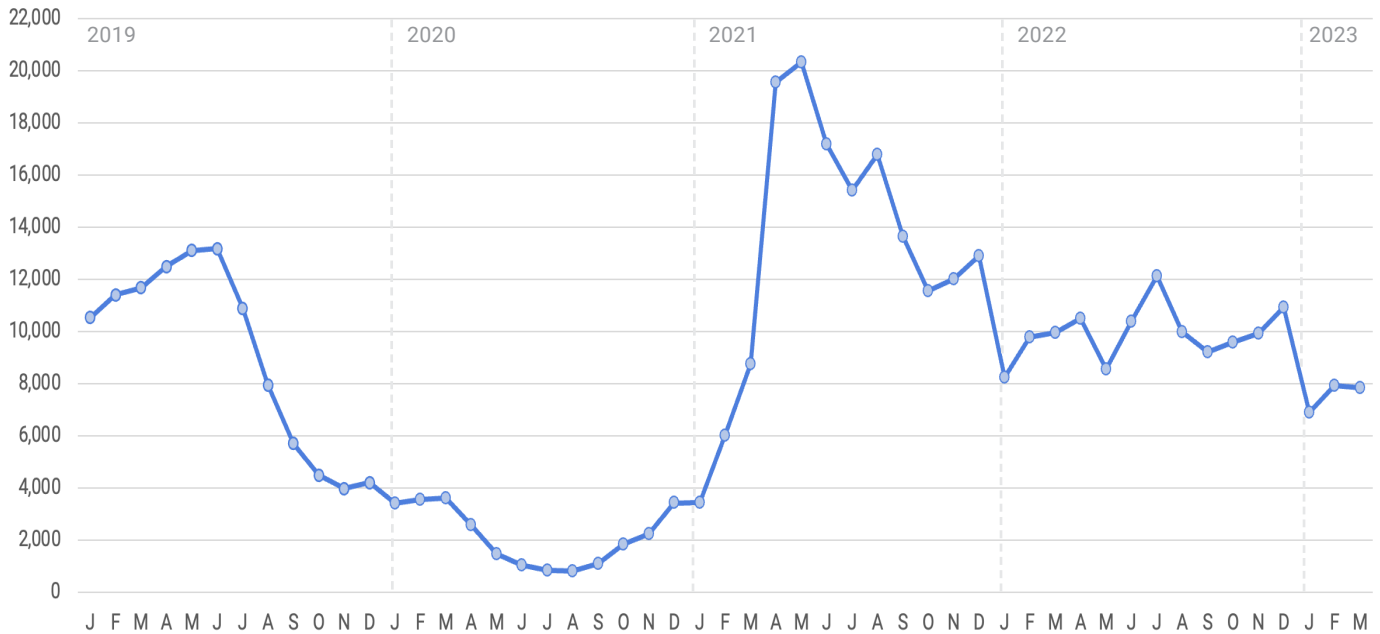
With the emergence of the COVID-19 pandemic in early 2020, ORR's use of licensed facilities to house unaccompanied children decreased dramatically for multiple reasons. ORR initially began restricting the number of available beds at licensed facilities to increase social distancing and respond to staffing shortages caused by the pandemic.<sup>56</sup> As a result, ORR had over 10,000 licensed shelter beds in early 2020 but reported less than 6,000 licensed shelter beds by January 2021.<sup>57</sup>

Most significantly, in March 2020 the Centers for Disease Control and Prevention (CDC) issued an order under Title 42 of the U.S. Code allowing border officials to immediately expel undocumented families and individuals who attempted to enter the United States, including asylum-seekers and children traveling alone.<sup>58</sup> At least 8,800 unaccompanied children were expelled under the CDC's Title 42 order, significantly reducing the total number of children in ORR custody in 2020.<sup>59</sup> As of August 22, 2020, ORR shelters were only three percent occupied.<sup>60</sup>

Instead of placing unaccompanied children in available licensed ORR placements, the government detained many children in hotels for days or weeks at a time before expelling them to their home countries to face the same dangerous conditions they had fled from.<sup>61</sup> In these hotels, children were supervised by employees of a private Immigration and Customs Enforcement (ICE) contractor, MVM, Inc.<sup>62</sup> The federal district court responsible for overseeing the *Flores* Settlement held in September 2020 that this hotel detention program violated the Settlement's licensing requirement.<sup>63</sup> The court further found that these hotel placements were unsafe because "[c]hildren as young as 10 are left alone with an adult who has no qualifications or training in childcare," the government "offer[ed] no formal protocols for how MVM Specialists are to adequately care for unaccompanied minors," and "oversight of the hoteling program is vague and minimal."<sup>64</sup> After this court order, the government began sending more unaccompanied children to ORR facilities.<sup>65</sup>

The rapid expulsion of children entering the U.S. alone finally ceased in November 2020 after a federal judge in Washington, D.C. found that the expulsions of unaccompanied children under Title 42 were likely illegal and therefore ordered an end to the practice.<sup>66</sup> The federal Court of Appeals for the D.C. Circuit later paused this order pending an appeal, but the Biden administration declined to resume expelling unaccompanied children. Children traveling with their parents, however, remained subject to Title 42 expulsions.

## Children in ORR Custody (2019-2023)



Data Source: Flores Reports<sup>67</sup>

## Opening of Emergency Intake Sites

A significant number of unaccompanied children entered the United States after crossing the southern border in 2021. Over 12,000 of these arrivals were children who were previously expelled with their families under Title 42 and then crossed the border alone in their subsequent attempt to enter, often in response to horrific conditions and dangers in Mexico.<sup>68</sup>

With the sudden increase of arrivals, the government faced severe overcrowding at Customs and Border Protection (CBP) holding facilities and a lack of available state-licensed ORR placements. CBP placements are not licensed childcare facilities and children endured appalling conditions in overcrowded facilities, including a lack of access to showers, highly limited communication with family, and no opportunity to go outside for fresh air.<sup>69</sup> Although both federal law and the *Flores* Settlement generally require that unaccompanied children be held in CBP custody for no more than 72 hours before being transferred to ORR custody, many children were detained by CBP for much longer.<sup>70</sup> More than 27,200 children spent longer than 3 days in CBP custody, over 7,400 children were held for 10 or more days, and more than 180 children spent 20 or more days in CBP holding facilities.<sup>71</sup>

In its first attempt to alleviate the overcrowding at CBP stations, ORR opened the Carrizo Springs Influx Care Facility (ICF) in Carrizo Springs, Texas in February 2021.<sup>72</sup> The following month, ORR began opening a new type of facility called “Emergency Intake Sites” (EISs). Between March and May 2021, ORR opened 14 EISs.<sup>73</sup> Thousands of children were placed in convention centers, military bases, oil worker camps, and other irregular locations across the country.<sup>74</sup>

EIS facilities were intended to be a short-term emergency response to a “severe shortage of residential state-licensed care providers, standard care providers or influx care facilities”.<sup>75</sup> However, thousands of children languished in EISs for over a month, with some detained in these makeshift facilities for approximately three months.<sup>76</sup> Like Influx Care Facilities, Emergency Intake Sites are unlicensed facilities and are therefore not subject to independent state monitoring or required to meet state child welfare standards and licensing requirements.<sup>77</sup> However, while ORR has internal, unenforceable standards requiring certain minimum services at ICFs, EISs were not required to meet even those standards.

The prolonged stays and inconsistent and abysmal quality of care provided to children held in EISs raised urgent concerns, as detailed in the 2022 NCYL briefing “Unregulated & Unsafe: The Use of Emergency Intake Sites to Detain Immigrant Children.”<sup>78</sup> For example, children in several EISs slept in rows of cots in massive tents or convention halls with hundreds of other children and no privacy. Children in some EISs reported receiving inedible or undercooked food and a lack of clean clothes and underwear. Many children suffered serious mental distress because they received little to no information about their progress toward release and lacked access to adequate mental health services.<sup>79</sup>

“

Every day, I wake up and feel very sad. I am frustrated because I see other kids leave before me. Some kids have been here for five days and get to go home. I don't know what else to do when our uncle has done everything for our case.

15-year-old child, Pecos EIS<sup>80</sup>

I was not allowed to go outside the tent the entire time I was there. I did not receive any kind of education until I was about to leave. Then they taught us a few words in English. But day-to-day there was no education.

17-year-old child, Fort Bliss EIS<sup>81</sup>

I am hungry all the time.

16-year-old child, Starr Commonwealth EIS<sup>82</sup>

They did not cook the food well because they were cooking for so many thousands of kids at the emergency shelter . . . The food was very bad, not good to eat. The chicken was raw, everything was raw. I ate it because I had no choice. I got sick from it. Even if I was hungry sometimes I did not want to eat it.

17-year-old child, Fort Bliss EIS<sup>83</sup>

I'm so scared here. A large man with glasses, a blue shirt and a cap told me that if I ever spoke harshly or hit a child, then I would be deported. I am terrified of being deported because the gangs are trying to kill me.

13-year-old child,  
Fort Bliss EIS<sup>85</sup>

I have switched case managers three different times – I think that they just abandoned my case. No one has explained why I have had so many different case managers.

16-year-old child, Pecos EIS<sup>84</sup>

The chicken they served us was bloody and raw.

16-year-old child,  
Fort Bliss EIS<sup>87</sup>

I did not have privacy. It was way too crowded. I slept in a very large tent with many other youth. The beds were bunked and were very small. You couldn't turn while you were sleeping because if you did you would fall out of the bed.

17-year-old child, Fort Bliss EIS<sup>86</sup>

My anxiety attacks have been abnormal here – they have gotten worse since I arrived at Pecos. I have had about 3 or 4 anxiety attacks since I have been here.

16-year-old child, Pecos EIS<sup>88</sup>

Some of us have decided to stop sending our clothes to the laundry because we do not want to lose our clothes. We just wash our clothes in our dorm room bathrooms. We don't have anything to clean the clothes with – we just use water and hang them up to dry.

17-year-old child, Pecos EIS<sup>89</sup>

Conditions in the EISs were most egregious during the initial months of their opening. While the conditions at EISs improved over time, these egregious conditions would not have been permissible for even a day under any state licensing scheme. There was no immediate recourse for the harms that children experienced in EISs because these facilities were unlicensed and lacked any required – and moreover, enforceable – set of standards.

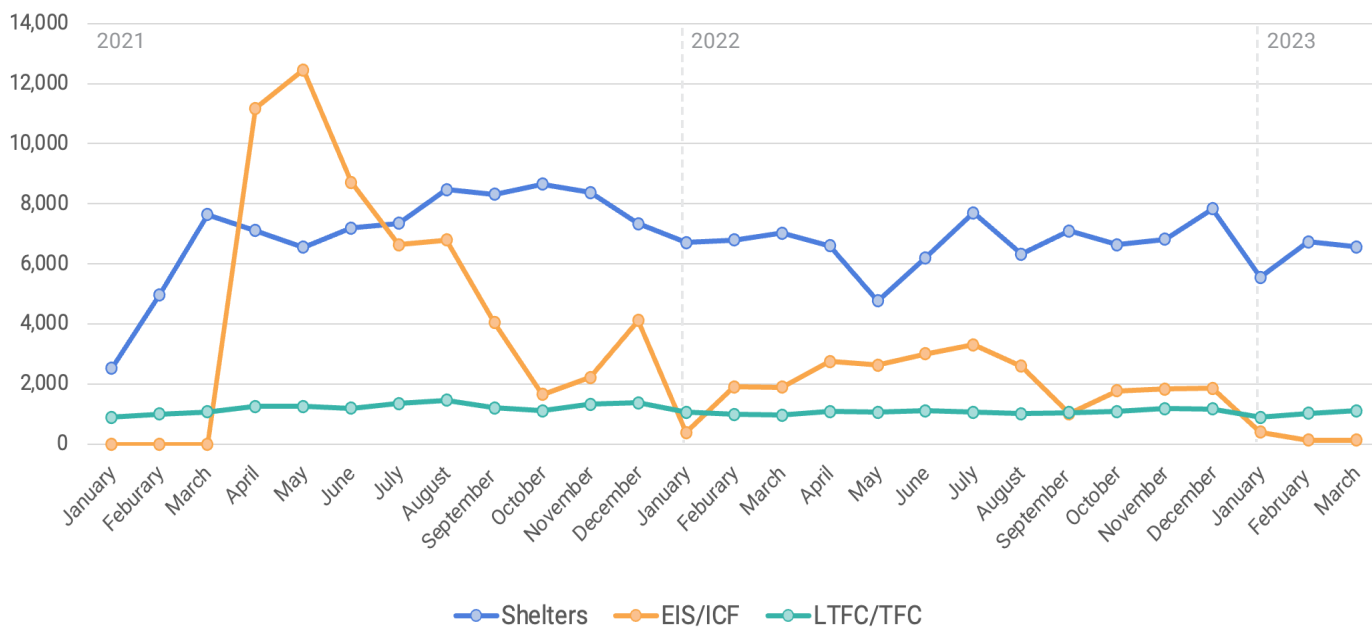
The DHHS Office of Inspector General (OIG) investigated the Fort Bliss EIS and published its findings in September 2022.<sup>90</sup> OIG reported that ORR filled many of the case manager positions at Fort Bliss with federal volunteers and contract staff who lacked relevant experience.<sup>91</sup> Case managers reported being improperly trained and unprepared to assist children.<sup>92</sup> Due to the importance of releasing children quickly to appropriate sponsors, one ORR leader explained that “bringing on inexperienced case management staff rapidly ‘is something that should never occur.’”<sup>93</sup>

The overall disorganization and chaos at Fort Bliss exacerbated case management issues, leading to disastrous results.<sup>94</sup> By the end of May, at least 700 children had not seen a case manager for approximately 60 days.<sup>95</sup> This lack of communication resulted in “a pervasive sense of despair, among children at the facility, who reportedly experienced distress, anxiety, and in some cases, panic attacks.”<sup>96</sup> A youth care worker detailed one incident in which a young girl began hitting and cutting herself in front of a group of other children upon “learning that her mother had not yet been contacted by a case manager as part of the sponsor screening process.”<sup>97</sup>

In August 2021, *Flores* counsel filed a motion to enforce the *Flores* Settlement, asking the federal district court to order faster release of children from the most dangerous EISs and to require the government to adopt mandatory standards of care in these facilities. *Flores* counsel and the government eventually reached a settlement to establish stricter standards at EISs, which was approved by the court in September 2022.<sup>98</sup>

Although the majority of EISs closed by November 2021, two facilities, Fort Bliss in El Paso, TX and Pecos Children’s Center in Pecos, TX, remained operational and continued to house thousands of children through spring 2022. In late May and early June 2022, ORR converted these two EISs to ICFs.<sup>99</sup> Although these facilities are now required to meet somewhat higher standards of care than when they were classified as EISs, they remain mass congregate care settings that are inherently inappropriate for children. Notably, as ICFs, they are still not subject to state licensing requirements or independent state monitoring.

## Population in ORR Shelters, EIS/ICF, and LTFC/TFC Programs



Data Source: *Flores* Reports<sup>100</sup>

# IV. ORR's Inappropriate Continued Reliance on Unlicensed Influx Facilities

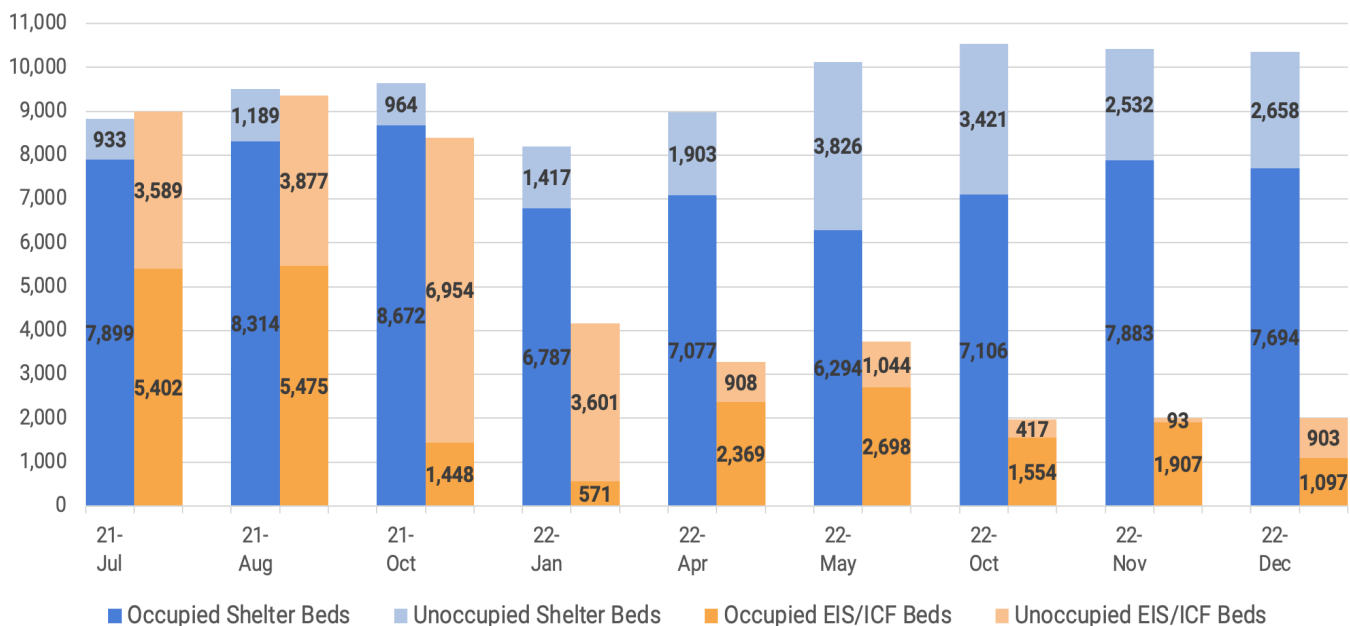
The number of children in ORR custody decreased substantially in 2022 from the first half of 2021. In May 2022 there were a total of 8,550 children in ORR custody, compared to 20,321 children in May 2021.<sup>101</sup> Yet even as the emergency situation that led to the opening of EISs passed, ORR has continued to rely on expensive largescale influx facilities to detain children.

## Unused Shelter and Foster Care Capacity

Congress has explicitly instructed ORR to use unlicensed facilities only when necessary and on a temporary basis.<sup>102</sup> However, ORR has placed children in unlicensed emergency and influx facilities even when shelter beds were available for those children.

**ORR's Policy Guide provides that ORR may open an influx facility only when its operational capacity of state-licensed shelter and transitional foster care beds exceeds 85 percent.<sup>103</sup> As the data in the Appendix shows, however, since May 2022 ORR has consistently used less than 80 percent of its available shelter and transitional foster care beds, and at times closer to 60 percent.** During most of 2022, the number of available and unoccupied shelter beds exceeded the number of children placed at EISs and ICFs.<sup>104</sup> For example, on May 31, 2022, 2,501 children were detained in EISs and 197 children were detained at ICFs, despite ORR reporting 3,826 available and unoccupied shelter beds. On December 31, 2022, 1,097 children were detained in ICFs despite ORR having 2,658 available and unoccupied shelter beds.

### ORR Shelter and EIS/ICF Bed Occupancy



Data Source: Flores Reports<sup>105</sup>

In the past, ORR used influx facilities on a temporary basis to respond to a sudden increase in the number of children in custody. For example, the influx facility in Homestead, Florida, was initially operational from June 2016 to March 2017 and then again from March 2018 to August 2019.<sup>106</sup> The influx facility in Tornillo, Texas, was operational from June 2018 to January 2019.<sup>107</sup> Although ORR has posted Notice of Funding Opportunities (NOFOs) for additional shelter and foster care facilities,<sup>108</sup> it appears to have no plans to close the ICF facility at Fort Bliss or to phase out the use of ICFs altogether. To the contrary, in a July 2022 court filing ORR announced its intention to open two additional ICFs.<sup>109</sup> As of January 27, 2023, ORR had secured a new ICF facility in Greensboro, North Carolina with a capacity of up to 800 beds, although this facility has no set opening date.<sup>110</sup> On March 17, 2023, ORR announced that there were no children at Pecos Children’s Center ICF. ORR stated that Pecos had been placed in “warm status, which means a facility is not fully staffed and there are only minimal onsite facility management services” and that it does not have a reactivation date.<sup>111</sup>

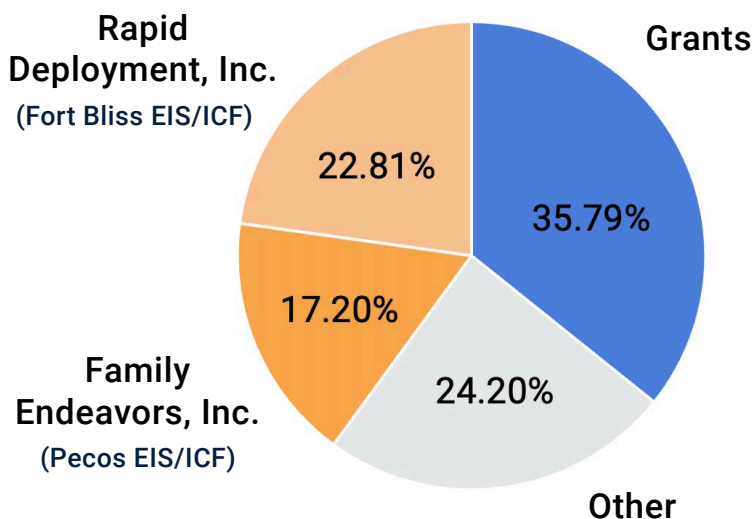
## Cost of Unlicensed Facilities

In addition to the child welfare concerns associated with unlicensed emergency and influx facilities operating without state oversight, these facilities are extremely expensive to operate. In March 2021, the government contracted with a disaster-relief company, Rapid Deployment, Inc. (RDI), to establish and operate the Fort Bliss EIS. Between March 2021 and December 2022, the government awarded RDI over \$3.2 billion to operate the facility, \$1 billion of which were awarded after the facility’s conversion from an EIS to an ICF.<sup>112</sup> The Pecos Children’s Center facility is run by Family Endeavors Inc., also a disaster-relief company, which operated Pecos under a \$707.8 million no-bid government contract between March 2021 and May 2022. Family Endeavors was then awarded another \$1.1 billion contract to operate the facility between May 2022 and May 2023.<sup>113</sup>

In fiscal year 2022, the cost of contracting with RDI and Family Endeavors accounted for approximately 40 percent of ORR’s \$7.8 billion budget for its Unaccompanied Children’s program.<sup>114</sup> By contrast, ORR spent just 35.7 percent of its FY 2022 budget on grants, which is how the licensed facilities serving the vast majority of children in ORR custody receive funding.<sup>115</sup>

Further, the government awarded two contracts worth \$261.2 million and \$177.1 million to Deployed Resources LLC to operate the new Greensboro ICF.<sup>116</sup> This facility has not yet opened but as of March 2023 the government had committed \$181.1 million and \$37.7 million on those contracts.<sup>117</sup> The government also entered a \$50.4 million contract with the American Hebrew Academy to lease the property for the Greensboro ICF for five years.<sup>118</sup>

**FY 2022  
ORR Unaccompanied  
Children’s Program  
Spending  
\$7.8 billion total**

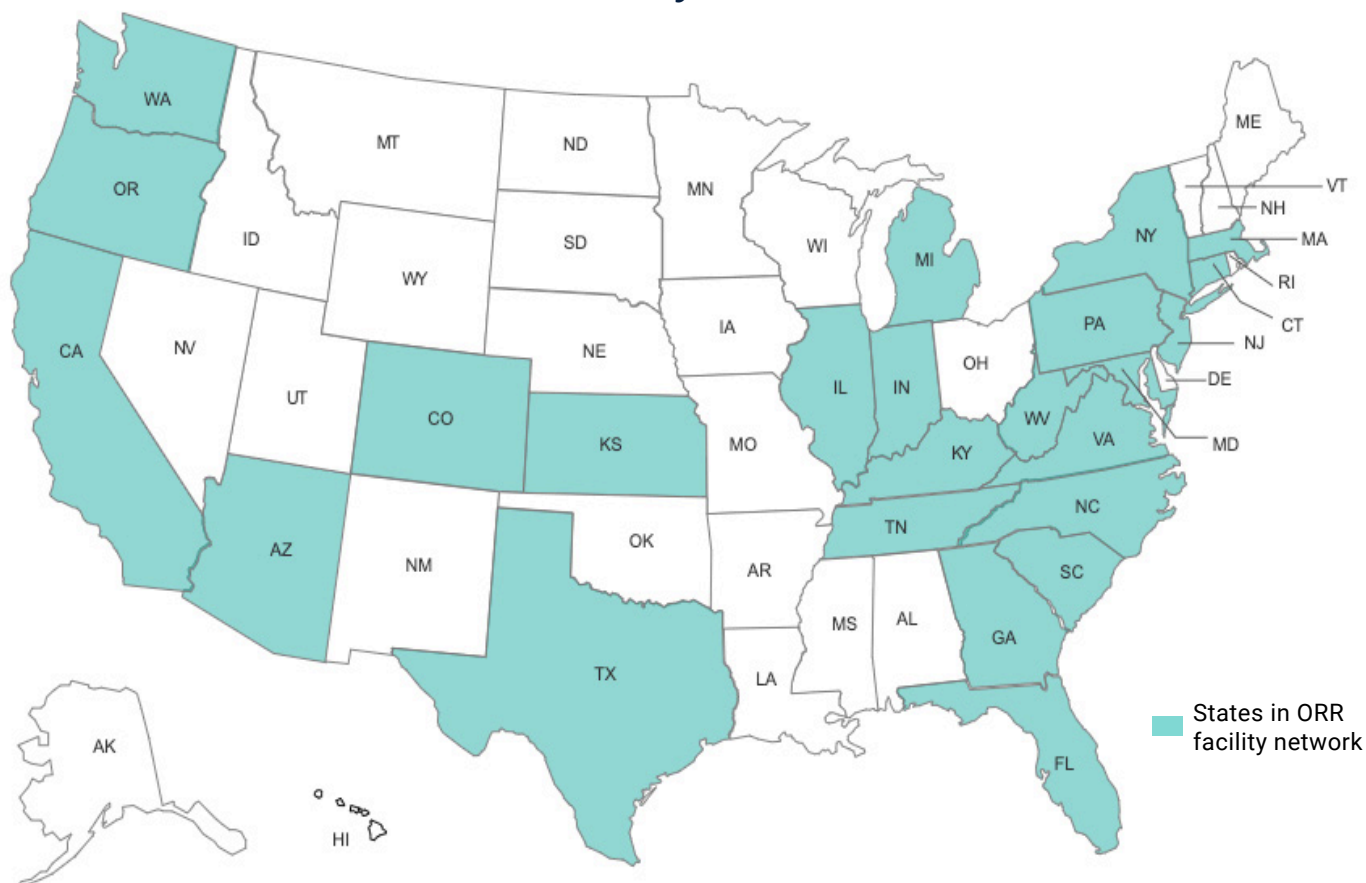


# V. Additional Obstacles to State-Licensed Placements: State De-Licensing in Texas and Florida

Independently of ORR's opening of new influx and EIS facilities, numerous ORR shelters were stripped of their state licensing in 2021 because of actions by Texas Governor Greg Abbott and Florida Governor Ron DeSantis to cease licensing ORR facilities operating in their respective states. As of March 6, 2023, ORR had at least 38 shelters and six long term foster care (LTFC)/transitional foster care (TFC) programs in Texas and at least nine shelters in Florida.<sup>119</sup>

ORR has informed care providers in both states that they can continue operating without state licensure or oversight.<sup>120</sup> The federal government has also indicated that it will issue proposed rulemaking for a federal licensing scheme in the coming months.<sup>121</sup> It is unlikely that the federal government will be able to fulfill all of the functions that states have historically played in licensing, given that they lack the independence, expertise, and infrastructure of state licensing agencies. With the prospect of federal licensing on the horizon, there is even greater cause for concern for the broader undermining of state licensing requirements across the ORR network.

## ORR Facility Network





# Conclusion and Recommendations

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The factors that have led to ORR's increased reliance on unlicensed facilities have not been entirely within the federal government's control. These factors include the COVID-19 pandemic, increased arrivals of unaccompanied children, and anti-immigrant political actors stripping licensing for facilities serving unaccompanied children. But a commitment to restoring adherence to this critical requirement is within the federal government's control. It is a question of will. It requires a willingness to recommit to this decades old, critical protection for children's well-being. It requires judiciousness in determining if and for how long to rely on unlicensed beds. The government has recently moved in the right direction by closing Emergency Intake Sites, and placing one Influx facility on warm status, but the fact remains that for over two years, the government has relied on unlicensed beds and has demonstrated no plans to cease this reliance.

In order to course correct, the federal government should:

- **Cease placement of youth in Influx Care Facilities if beds are available in shelter or foster care programs.**

Although a small number of shelter or foster care beds should be kept in reserve to allow for immediate placement of particularly vulnerable children (defined as children ages 12 and younger, pregnant and parenting, with a known disability or medical or mental health issue, not proficient in English or Spanish, or at enhanced risk because of LGBTQI identification)<sup>122</sup> the number of reserved beds must be determined using evidence-based projections of the beds actually needed to accommodate particularly vulnerable populations.

- **Place Influx Care Facilities on inactive status** and keep them on inactive status unless at least 85 percent of shelter and transitional foster care bed space is occupied.

- **Aggressively work to expand licensed bed capacity, especially in states that are welcoming to unaccompanied immigrant children.**

For example, in a letter to ORR in 2021, the California Department of Social Services noted that its current licensed programs had interest and capacity to serve over a thousand additional unaccompanied children and that several providers were interested in opening new ORR programs.<sup>123</sup>

- **Enhance case management services at licensed programs to support a safe and swift release to sponsors.**

For example, in the past, Influx Care Facilities have successfully accelerated the pace of safe releases by substantially increasing case management resources. If licensed facilities had enhanced case management resources, children could be safely released to families more swiftly, which in turn would open up more licensed beds for arriving children.

The erosion of the right be placed in state licensed facilities is neither inevitable nor acceptable. It is time for ORR to recommit to placing youth in licensed facilities, and for stakeholders to hold ORR accountable in doing so.

# Appendix

## ORR Bed Occupancy Data<sup>124</sup>

ORR Program Type	July 2021 JC Report As of 7/21/21			September 2021 JC Report As of 8/31/21			October 2021 JC Report As of 10/15/21		
	Total Beds	# of Beds Occupied	# of Beds Unoccupied	Total Beds	# of Beds Occupied	# of Beds Unoccupied	Total Beds	# of Beds Occupied	# of Beds Unoccupied
Shelter	8,832	7,899 (89%)	933 (11%)	9,503	8,314 (87%)	1,189 (13%)	9,636	8,672 (90%)	964 (10%)
Transitional Foster Care	1,550	1,062 (69%)	488 (31%)	1,600	957 (60%)	643 (40%)	1,779	749 (42%)	1,030 (58%)
Long Term Foster Care	518	295 (57%)	223 (43%)	527	363 (69%)	164 (31%)	497	368 (74%)	129 (26%)
Influx Care Facility	897	824 (92%)	73 (8%)	923	117 (13%)	806 (87%)	1,037	357 (34%)	680 (66%)
Emergency Intake Site	8,094	4,578 (57%)	3,516 (43%)	8,425	5,358 (64%)	3,071 (36%)	7,365	1,091 (15%)	6,274 (85%)
Secure	161	44 (27%)	117 (73%)	161	36 (22%)	125 (78%)	123	45 (37%)	78 (63%)
<b>Total</b>	<b>20,045</b>	<b>14,702</b> (73%)	<b>5,350</b> (27%)	<b>21,139</b>	<b>15,145</b> (72%)	<b>5,998</b> (28%)	<b>20,437</b>	<b>11,282</b> (55%)	<b>9,155</b> (45%)

ORR Program Type	July 2021 JC Report As of 7/21/21			September 2021 JC Report As of 8/31/21			October 2021 JC Report As of 10/15/21		
	Total Beds	# of Beds Occupied	# of Beds Unoccupied	Total Beds	# of Beds Occupied	# of Beds Unoccupied	Total Beds	# of Beds Occupied	# of Beds Unoccupied
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ORR Program Type	October 2022 Flores Data As of 10/31/22				November 2022 Flores Data As of 11/30/22				December 2022 Flores Data As of 12/31/22			
	Total Funded Beds	Total Available Beds	# of Available Beds Occupied	# of Beds Unoccupied	Total Funded Beds	Total Available Beds	# of Available Beds Occupied	# of Beds Unoccupied	Total Funded Beds	Total Available Beds	# of Available Beds Occupied	# of Beds Unoccupied
Shelter	12,889	10,527	7,106 (68%)	3,421	12,606	10,415	7,883 (76%)	2,532 (24%)	12,708	10,352	7,694 (74%)	2,658 (26%)
Transitional Foster Care	2,846	1,280	731 (57%)	549 (43%)	2,024	1,305	823 (63%)	482 (37%)	2,033	1,129	588 (52%)	541 (48%)
Long Term Foster Care	607	484	422 (87%)	62 (13%)	604	469	405 (86%)	64 (14%)	740	489	400 (82%)	89 (18%)
Influx Care Facility	2,000	1,971	1,554 (79%)	417 (21%)	2,000	2,000	1,907 (95%)	93 (5%)	2,000	2,000	1,097 (55%)	903 (45%)
Emergency Intake Site	-	-	-	-	-	-	-	-	-	-	-	-
Secure	206	143	40 (28%)	103 (72%)	206	142	30 (21%)	112 (79%)	212	150	30 (20%)	120 (80%)
<b>Total</b>	<b>18,548</b>	<b>14,405</b>	<b>9,853 (68%)</b>	<b>4,552 (32%)</b>	<b>17,440</b>	<b>14,331</b>	<b>11,048 (77%)</b>	<b>3,283 (23%)</b>	<b>17,693</b>	<b>14,120</b>	<b>9,809 (69%)</b>	<b>4,311 (31%)</b>

# Endnotes

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<sup>1</sup> Richard P. Barth, *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate*, CHAPEL HILL, NC: UNC, SCHOOL OF SOCIAL WORK, JORDAN INSTITUTE FOR FAMILIES. (2002, June 17). <https://ahum.assembly.ca.gov/sites/ahum.assembly.ca.gov/files/hearings/062811-BarthInstitutionsvFosterHomes.pdf> (explaining that “Concerns about the role of institutional care for children are as old as the institutions.”)

<sup>2</sup> CATHERINE E. RYMPH, *RAISING GOVERNMENT CHILDREN: A HISTORY OF FOSTER CARE AND THE AMERICAN WELFARE STATE*, 19 (2018).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 28.; see also *Transforming Congregate Care*. LEADERSHIP FOR A NETWORK WORLD & LUTHERAN SERVICES IN AMERICA. pp. 5-6 (2021, Oct.). <https://lutheranservices.org/wp-content/uploads/2022/05/Final-Transforming-Congregate-Care-Oct-2021.pdf>; Nuria K. Mackes, et. al, *Early childhood deprivation is associated with alterations in adult brain structure despite subsequent environmental enrichment*, NIH NATIONAL LIBRARY OF MEDICINE (2020, Jan. 7), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6955353/> (finding that “early childhood deprivation” through living in nonfamilial institutions “is related to alternations in adult brain structure” even when children were later “adopted into nurturing families”).

<sup>6</sup> Rymph, *supra* note 2 at 28.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See Marinus H. van IJzendoorn, et. al. *Children in Institutional Care: Delayed Development and Resilience*. NIH NATIONAL LIBRARY OF MEDICINE. (2014, Aug. 12). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4130248/>; *Away From Home*, THINK OF US, <https://www.thinkof-us.org/case-studies/away-from-home>; Annie E. Casey Foundation, *Reconnecting Child Development and Child Welfare: Evolving Perspectives on Residential Placement*, 3 (2013) (summarizing the findings of an international team of experts convened by the Annie E. Casey Foundation and the Youth Law Center); Center on the Developing Child, *The Science of Neglect*, *InBrief* (2013), <https://developingchild.harvard.edu/resources/inbrief-the-science-of-neglect/>.

<sup>10</sup> Lee et. al., *Outcomes of Group Care for Youth: A Review of Comparative Studies*, SAGE JOURNALS, <https://journals.sagepub.com/doi/10.1177/1049731510386243> (internal citations omitted).

<sup>11</sup> Mary Dozier, et. al., *Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association*, 84 AM. J. ORTHOPSYCHIATRY 219 – 25 (2014), <https://www.apa.org/pubs/journals/features/ort-0000005.pdf>.

<sup>12</sup> See e.g., Mary Dozier, et al. *Institutional care for young children: Review of literature and policy implications*. 6 Social Issues & Policy Rev. 1–25 (2012), <https://doi.org/10.1111/j.1751-2409.2011.01033.x>. Manius H. van IJzendoorn, et. al. *Children in institutional care: Delayed development and resilience*, 76 Monographs for the Society for Research in Child Development 8–30 (2011), <https://doi.org/10.1111/j.1540-5834.2011.00626.x>.

<sup>13</sup> Dozier, et. al., *Consensus Statement on Group Care for Children and Adolescents*, *supra* note 11.

<sup>14</sup> John E. B. Myers, *A Short History of Child Protection in America*, [https://us.sagepub.com/sites/default/files/upm-binaries/35363\\_Chapter1.pdf](https://us.sagepub.com/sites/default/files/upm-binaries/35363_Chapter1.pdf); *What are the outcomes for youth placed in group and institutional settings?* CASEY FAMILY PROGRAMS. (2022, June 29). <https://www.casey.org/group-placement-impacts/>; *Keeping Children Out of Group Placements: Strategies and Alternatives*. THE ANNIE E. CASEY FOUNDATION. (2022 Jan. 18). <https://www.aecf.org/blog/keeping-children-out-of-group-placements-strategies-and-alternatives>; *Families Over Facilities*. CHILDREN’S RIGHTS. p. 5. (2021). <https://www.childrensrights.org/wp-content/uploads/2021/03/CR-Families-Over-Facilities-Report.pdf>; *Transforming Congregate Care*, *supra* note 5 at pp. 4,6.

<sup>15</sup> See e.g., *Tiered Foster Care*. OHIO DEPT. JOB & FAMILY SERVICES. <https://jfs.ohio.gov/ocf/TieredFosterCare/>; *What Works in Child Welfare Reform: Reducing Reliance on Congregate Care in Tennessee*, CHILDREN'S RIGHTS, [https://ncwwi.org/files/What\\_Works\\_in\\_Child\\_Welfare\\_Reform\\_-\\_Reducing\\_Reliance\\_on\\_Congregate\\_Care\\_in\\_Tennessee.pdf](https://ncwwi.org/files/What_Works_in_Child_Welfare_Reform_-_Reducing_Reliance_on_Congregate_Care_in_Tennessee.pdf); *Congregate Care*. CONNECTICUT STATE DEPT. CHILDREN & FAMILIES. <https://portal.ct.gov/DCF/Congregate-Care/Home>. It is also worth noting that Casey Family Programs, the Annie E. Casey Foundation, and other partners such as Lutheran Services in America have developed an initiative seeking to end the use of congregate care. See *Ending the Need for Group Placements*. CASEY FAMILY PROGRAMS. (2022, May 20). <https://www.casey.org/ending-need-for-group-placements/>; *Transforming Congregate Care*, *supra* note 5 at p. 7.

<sup>16</sup> *Foster Care: HHS Could Do more to Support States' Efforts to Keep Children in Family-Based Care*. U.S. GOVERNMENT ACCOUNTABILITY OFFICE. (2015 Oct.). <https://www.gao.gov/assets/gao-16-85.pdf>.

<sup>17</sup> *State-level Data for Understanding Child Welfare in the United States*. CHILDTRENDS. (2022, Feb. 28). <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states> (showing that "non-relative" placements account for 45% and "relative" placements for 34% of child welfare placements in the US).

<sup>18</sup> *Family First Prevention Services Act (FFPSA)*, CHILD WELFARE CAPACITY BUILDING COLLABORATIVE, <https://capacity.childwelfare.gov/about/cb-priorities/family-first-prevention#:~:text=The%20Family%20First%20Prevention%20Services,communities%20to%20support%20children%20and>; *Public Law 115-123, the Family First Prevention Services Act: Implementation of Title IV-E Plan Requirements*, U.S. DEPT. HEALTH & HUMAN SERVICES, ADMIN. CHILDREN & FAMILIES. (2018, July 9). <https://www.acf.hhs.gov/sites/default/files/documents/cb/pi1807.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Family First Prevention Services Act of 2016 Report 114-628, 114th Cong.* (2016).

<sup>21</sup> *Id.*

<sup>22</sup> Rymph, *supra* note 2 at 46-47.

<sup>23</sup> *Id.* at 64.

<sup>24</sup> See e.g., *National Database of Childcare Licensing Regulations*. CHILD CARE TECHNICAL ASSISTANCE NETWORK. <https://licensingregulations.acf.hhs.gov/>.

<sup>25</sup> Throughout this section, citations to relevant statutes in California, Florida and Texas are included to provide examples of what licensing requirements encompass.

<sup>26</sup> 26 T.A.C. §§ 745.211; 243; 211; 605; 748.1101(b)(6); 22 CCR § 101173.

<sup>27</sup> 26 T.A.C. §§ 748.1225; 1223; 1531; 1501

<sup>28</sup> Fla. Admin. Code Ann. R. 65C-4.009; 26 T.A.C. §§ 748.2451(a)(4); 2451(b); 2501.

<sup>29</sup> Fla. Admin. Code Ann. R. 65C-46.003(5)(a), (d).

<sup>30</sup> *Child Care Regulation Handbook: 3300, Process for Determining Whether to Issue or Deny a Permit*. TEX. HEALTH & HUM. SERVS. <https://www.hhs.texas.gov/handbooks/child-care-regulation-handbook/3300-process-determining-whether-issue-or-deny-a-permit>; Fla. Admin. Code Ann. R. 65C-46.011; 22 CCR § 101170.2.

<sup>31</sup> 22 CCR § 101171; Fla. Admin. Code Ann. r. 65C-46.004; 26 T.A.C. § 748.3357.

<sup>32</sup> 26 T.A.C. §§ 748.1003; 1007; 681; 563.

<sup>33</sup> *Child Care Regulation Handbook: 3300, Process for Determining Whether to Issue or Deny a Permit*. TEX. HEALTH & HUM. SERVS., <https://www.hhs.texas.gov/handbooks/child-care-regulation-handbook/3300-process-determining-whether-issue-or-deny-a-permit>; Tex. Hum. Res. Code § 42.044(a), (b), (b-1); 40 T.A.C. § 745.8407; *Reports, Inspections & Enforcement Actions*. TEX. HEALTH & HUM. SERVS. <https://www.hhs.texas.gov/services/safety/child-care/frequently-asked-questions-about-texas-child-care/reports-inspections-enforcement-actions>; *Case-Specific Question and Complaint Form*. TEX. DEPT. OF FAM. & PROTECTIVE SERVS. [https://www.dfps.state.tx.us/Contact\\_Us/Questions\\_and\\_Complaints/complaints.asp](https://www.dfps.state.tx.us/Contact_Us/Questions_and_Complaints/complaints.asp); *Child Care Regulation Handbook*. TEX. HEALTH & HUM. SERVS. <https://www.hhs.texas.gov/handbooks/child-care-regulation-handbook/6200-receiving-assessing-processing-intake-reports>; Fla. Stat. § 409.175(8)(a)-(b) (2021).

<sup>34</sup> 26 T.A.C. § 745.8603; Fla. Admin. Code R. 65C-46.014.

- <sup>35</sup> See *M.D. v. Abbott* – Overview. CHILDREN’S RIGHTS. [https://www.childrensrights.org/class\\_action/texas/](https://www.childrensrights.org/class_action/texas/) (suit on behalf of all children in Texas “permanent managing conservatorships” in the child welfare system alleging, among other things, the state’s failure to enforce compliance with licensing standards).
- <sup>36</sup> Jorge Barrera, *How a 35-year-old case of a migrant girl from El Salvador still fuels the border debate*, CBC, June 28, 2019, <https://www.cbc.ca/radio/day6/detained-migrant-children-resident-orcas-stranger-things-stonewall-at-50-and-more-1.5192640/how-a-35-year-old-case-of-a-migrant-girl-from-el-salvador-still-fuels-the-border-debate-1.5192662>.
- <sup>37</sup> *The History of the Flores Settlement and its Effects on Immigration*, NPR, June 22, 2018, <https://www.npr.org/2018/06/22/622678753/the-history-of-the-flores-settlement-and-its-effects-on-immigration>.
- <sup>38</sup> *Id.*
- <sup>39</sup> *Id.*
- <sup>40</sup> Complaint for Injunctive and Declarative Relief, *Flores v. Meese*, No. 85-4544 (C.D. Cal. July 11, 1985), [https://youthlaw.org/sites/default/files/wp\\_attachments/Flores-Complaint.pdf](https://youthlaw.org/sites/default/files/wp_attachments/Flores-Complaint.pdf).
- <sup>41</sup> *Id.*
- <sup>42</sup> Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997), [https://youthlaw.org/sites/default/files/wp\\_attachments/Flores\\_Settlement-Final011797.pdf](https://youthlaw.org/sites/default/files/wp_attachments/Flores_Settlement-Final011797.pdf) [“*Flores* Settlement Agreement”].
- <sup>43</sup> *Flores* Settlement Agreement ¶¶ 12.A, 19, Exhibit 1.
- <sup>44</sup> *Flores* Settlement Agreement ¶¶ 12.A.
- <sup>45</sup> *Flores* Settlement Agreement ¶¶ 12.A, 19, Exhibit 1.
- <sup>46</sup> *Flores v. Johnson*, 212 F. Supp. 3d 864, 879-80 (C.D. Cal. 2015), *aff’d in part, rev’d in part sub nom.; Flores v. Lynch*, 828 F.3d 898, 906, 910 (9th Cir. 2016).
- <sup>47</sup> *Lynch*, 828 F.3d at 906.
- <sup>48</sup> *Flores v. Johnson*, 212 F. Supp. 3d at 878.
- <sup>49</sup> *Flores v. Barr*, 407 F. Supp. 3d 909, 915 (C.D. Cal. 2019).
- <sup>50</sup> 6 U.S.C. § 279
- <sup>51</sup> 8 U.S.C. § 1232(c)(2)(A).
- <sup>52</sup> *ORR Unaccompanied Children Program Policy Guide: Introduction*. (2022, July 19). Office of Refugee Resettlement. <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-introduction>; *ORR Unaccompanied Children Program Policy Guide: Section 3*, (2022, Dec. 23). Office of Refugee Resettlement. <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-3>. (“ORR Policy Guide Section 3”).
- <sup>53</sup> See Section V, Chart 1.
- <sup>54</sup> *ORR Standards for Transfer and Placement Decisions: Section 1, 1.2.2, 1.2.6*. (2022. Oct. 31). Office of Refugee Resettlement. <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.2.2> (“ORR Policy Guide Section 1”); see also Section V, Chart 1.
- <sup>55</sup> ORR Policy Guide Section 1, 1.1, 1.2.4, 1.4.6.
- <sup>56</sup> ORR Juvenile Coordinator Report at 4, *Flores v. Meese*, No. 85-4544 (C.D. Cal. Jan. 15, 2021) [Doc. # 1060-1].
- <sup>57</sup> Compare ORR Juvenile Coordinator Interim Report at 2, *Flores v. Meese*, No. 85-4544 (C.D. Cal. May 15, 2020) [Doc. # 788-2], with ORR Juvenile Coordinator Report at 3, *Flores v. Meese*, No. 85-4544 (C.D. Cal. Jan. 15, 2021) [Doc. # 1060-1].
- <sup>58</sup> Montoya-Galvez, Camilo. (2023, Jan. 3). *What is Title 42, the COVID border policy used to expel migrants?* CBS News. <https://www.cbsnews.com/news/title-42-immigration-border-biden-covid-19-cdc/>.
- <sup>59</sup> Merchant, N. (2020, Nov. 18). *Judge orders US to stop expelling children who cross border*. Associated Press. <https://apnews.com/article/pandemics-coronavirus-pandemic-latin-america-immigration-michael-pence-e17396b7587b49d-9630b7c70dcfb5b23>. (“Merchant, November 2020”).

<sup>60</sup> ORR Juvenile Coordinator Interim Report at 2, *Flores v. Meese*, No. 85-4544 (C.D. Cal. Aug. 24, 2020) [Doc. # 932-2]; *Flores v. Barr*, No. 85-4544, 2020 WL 5491445, at \*8 (C.D. Cal. Sept. 4, 2020).

<sup>61</sup> Merchant, N. (2020, July 20). *AP Exclusive: Migrant kids held in US hotels, then expelled*. Associated Press. <https://apnews.com/article/weekend-reads-c9b671b206060f2e9654f0a4eaeb6388> ("Merchant, July 2020"); *Flores v. Barr*, 2020 WL 5491445, \*2 (C.D. Cal. Sept. 4, 2020).

<sup>62</sup> *Flores v. Barr*, No. 85-4544, 2020 WL 5491445, at \*2 (C.D. Cal. Sept. 4, 2020).

<sup>63</sup> *Flores v. Barr*, No. 85-4544, 2020 WL 5491445, at \*7-8 (C.D. Cal. Sept. 4, 2020).

<sup>64</sup> *Flores v. Barr*, No. 85-4544, 2020 WL 5491445, at \*8-9 (C.D. Cal. Sept. 4, 2020).

<sup>65</sup> ORR Juvenile Coordinator Interim Report at 1-2, *Flores v. Meese*, No. 85-4544 (C.D. Cal. Nov. 16, 2020) [Doc. # 1029-2]

<sup>66</sup> Merchant, November 2020.

<sup>67</sup> This graph is based on the monthly Flores data reports, which provide a "snapshot" of the ORR network on a particular date each month. The monthly Flores data reports used for this graph were collected on the following dates: Jan. 15, 2019; Feb. 19, 2019; Mar. 15, 2019; Apr. 15, 2019; May 15, 2019; June 17, 2019; July 15, 2019; Aug. 15, 2019; Sept. 16, 2019; Oct. 15, 2019; Nov. 8, 2019; Dec. 16, 2019; Jan. 14, 2020; Feb. 11, 2020; Mar. 13, 2020; Apr. 10, 2020; May 11, 2020; June 10, 2020; July 10, 2020; Aug. 10, 2020; Sept. 9, 2020; Oct. 9, 2020; Nov. 16, 2020; Dec. 10, 2020; Jan. 13, 2021; Feb. 10, 2021; Mar. 12, 2021; Apr. 12, 2021; May 14, 2021; June 1, 2021; July 12, 2021; Aug. 13, 2021; Sept. 13, 2021; Oct. 13, 2021; Nov. 12, 2021; Dec. 13, 2021; Jan. 11, 2022; Feb. 10, 2022; Mar. 8, 2022; Apr. 8, 2022; May 9, 2022; June 6, 2022; July 7, 2022; Aug. 8, 2022; Sept. 7, 2022; Oct. 6, 2022; Nov. 8, 2022; Dec. 6, 2022, Jan 11, 2023, Feb. 7, 2023, March 6, 2023.

<sup>68</sup> Montoya-Galvez, C. (2022, May 20). *12,212 migrant children reentered U.S. border custody alone in 2021 after being expelled*. CBS News. <https://www.cbsnews.com/news/immigration-migrant-children-us-border-custody-unaccompanied-minors-2021/?intcid=CNM-00-10abd1h>. (Montoya-Galvez, 2022).

<sup>69</sup> Montoya-Galvez, C. (2021, March 12). *"They never saw the sun": Lawyers describe overcrowded conditions for children in Border Patrol custody*. CBS News. <https://www.cbsnews.com/news/migrant-children-detained-in-overcrowded-conditions/>.

<sup>70</sup> 8 U.S.C. 1232(b)(3); Desai, N., de Gramont, D., & Miller, A. (2022, June). *Unregulated & Unsafe: The Use of Emergency Intake Sites to Detain Immigrant Children*. <https://youthlaw.org/unregulated-unsafe-emergency-intake-sites>. (Desai, de Gramont, Miller, 2022).

<sup>71</sup> Desai, de Gramont, Miller, 2022.

<sup>72</sup> Foster-Frau, Silvia. (2021, Feb. 22). *First migrant facility for children opens under Biden*. The Washington Post. [https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117\\_story.html](https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117_story.html).

<sup>73</sup> Desai, de Gramont, Miller, 2022.

<sup>74</sup> *Id.*

<sup>75</sup> *Field Guidance #13 – Emergency Intakes Site (EIS) Instructions and Standards* at 2. (2022, Oct. 24). Office of Refugee Resettlement, Administration for Children and Families. <https://www.acf.hhs.gov/sites/default/files/documents/orr/FG-13%20EIS%20Instructions%20and%20Standards%202021%2004%2030.pdf>.

<sup>76</sup> Desai, de Gramont, Miller, 2022.

<sup>77</sup> Desai, de Gramont, Miller, 2022.

<sup>78</sup> Desai, de Gramont, Miller, 2022.

<sup>79</sup> Desai, de Gramont, Miller, 2022.

<sup>80</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. N, Declaration of A.H.C., ¶ 14, July 27, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-18].

<sup>81</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. I, Declaration of O.V.P.C., ¶ 12, July 30, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-13].

<sup>82</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. S, Declaration of A.G.L., ¶ 10, May 12, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-23].

<sup>83</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. I, Declaration of O.V.P.C., ¶ 20, July 30, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-13].

<sup>84</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. Q, Declaration of A.F.H., ¶ 7, July 27, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-21].

<sup>85</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. R, Declaration of A.R.R., ¶¶ 16–18, April 28, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-22].

<sup>86</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. M, Declaration of W.V.V., ¶ 7, July 28, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-17].

<sup>87</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. T, Declaration of J.F.A.A., ¶ 20, July 29, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-24].

<sup>88</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. Q, Declaration of A.F.H., ¶ 14, July 27, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-21].

<sup>89</sup> Notice of Motion and Motion to Enforce Settlement re Emergency Intake Sites, Ex. M, Declaration of W.V.V., ¶ 20, July 28, 2021, *Flores v. Barr*, No. 85-4544 (C.D. Cal. Aug. 9, 2021) [Doc. # 1161-17].

<sup>90</sup> *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children* (2022 Sept.) U.S. Department of Health and Human Services Office of Inspector General, <https://oig.hhs.gov/oei/reports/OEI-07-21-00251.pdf>.

<sup>91</sup> *Id.* at 11.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 14.

<sup>95</sup> *Id.* at 13.

<sup>96</sup> *Id.* at 14.

<sup>97</sup> *Id.*

<sup>98</sup> Order Granting Final Approval Of Settlement Agreement, *Flores v. Garland*, No. 85-4544 (C.D. Cal. Sept. 23, 2022) [Doc. # 1284]; see also National Center for Youth Law (2022, Oct. 6). *Judge approves settlement establishing standards of care for youth held in Emergency Intake Sites*. <https://youthlaw.org/news/judge-approves-settlement-establishing-standards-care-youth-held-emergency-intake-sites>.

<sup>99</sup> ORR Juvenile Coordinator Report at 4. *Flores v. Meese*. No. 85-4544 (C.D. Cal. July 1, 2022) [Doc. # 1259-3] (“July 2022 Juvenile Coordinator Report”).

<sup>100</sup> This graph is based on the monthly Flores data reports, which provide a “snapshot” of the ORR network on a particular date each month. The monthly Flores data reports used for this graph were collected on the following dates: Jan. 13, 2021; Feb. 10, 2021; Mar. 12, 2021; Apr. 12, 2021; May 14, 2021; June 1, 2021; July 12, 2021; Aug. 13, 2021; Sept. 13, 2021; Oct. 13, 2021; Nov. 12, 2021; Dec. 13, 2021; Jan. 11, 2022; Feb. 10, 2022; Mar. 8, 2022; Apr. 8, 2022; May 9, 2022; June 6, 2022; July 7, 2022; Aug. 8, 2022; Sept. 7, 2022; Oct. 6, 2022; Nov. 8, 2022; Dec. 6, 2022, Jan. 11, 2023, Feb. 7, 2023, March 6, 2023. (“Flores data reports”).

<sup>101</sup> *Flores* data reports.

<sup>102</sup> Consolidated Appropriations Act, H.R. 2617, sec. 231 & 232 (2023) <https://www.appropriations.senate.gov/imo/media/doc/JRQ121922.PDF> (requiring that, prior to opening an influx facility, ORR provide an analysis that shows that if children are not placed in an influx facility, “the likely outcome is that the unaccompanied alien children will remain in the custody of the Department of Homeland Security for longer than 72 hours or that unaccompanied alien child will be otherwise placed in danger.”).

<sup>103</sup> ORR Policy Guide § 7.2.2, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-7#7.2.2>. The same provision provides that ORR ceases “placements at an influx care facility if operational capacity drops below 85 percent for a period of at least seven consecutive days” and transfers children “from an influx care facility provided operational capacity is below 75 percent and the transfer [] from influx care facilities into ORR’s licensed permanent network does not raise operational capacity above 75 percent.”



<sup>104</sup> See Appendix ORR Bed Occupancy Data.

<sup>105</sup> This graph is based on the Juvenile Coordinator Reports that were publicly filed in *Flores v. Barr*, Case No. 85-4544 (C.D. Cal) and *Flores* bed capacity data reports. The Juvenile Coordinator and *Flores* data reports used for this graph were collected on the following dates: July 21, 2021 [Doc. # 1148-1]; Aug. 31, 2021 [Doc. # 1172-3]; Oct. 15, 2021 [Doc. # 1192-2]; Jan. 19, 2022 [Doc. # 1220-1]; Apr. 5, 2022 [Doc. # 1240-3]; May 31, 2022 [Doc. # 1259-3]; Oct. 31, 2022; Nov. 31, 2022; Dec. 31, 2022.

<sup>106</sup> Disability Rights Florida. (2019, April 25). *Monitoring Report: Homestead Emergency Temporary Shelter for Unaccompanied Children*. [https://disabilityrightsflorida.org/documents/Homestead\\_Monitoring\\_Report\\_4-12-19.pdf](https://disabilityrightsflorida.org/documents/Homestead_Monitoring_Report_4-12-19.pdf); Kumpf, K. (2019, Nov. 1). *What it means that we shut down Homestead detention center*. American Friends Service Committee. <https://www.afsc.org/blogs/news-and-commentary/what-it-means-we-shut-down-homestead-detention-center>.

<sup>107</sup> Sacchetti, M. (2019, Jan. 11). *Trump administration removes all migrant teens from giant Tornillo tent camp*. The Washington Post. [https://www.washingtonpost.com/local/immigration/trump-administration-to-shutter-texas-tent-city-for-migrant-teens/2019/01/11/c914356e-1510-11e9-b6ad-9cfd62dbb0a8\\_story.html](https://www.washingtonpost.com/local/immigration/trump-administration-to-shutter-texas-tent-city-for-migrant-teens/2019/01/11/c914356e-1510-11e9-b6ad-9cfd62dbb0a8_story.html)

<sup>108</sup> *Residential (Secure) Services for Unaccompanied Children Department of Health and Human Services Administration for Children and Families – ORR* (2023, Jan. 12). <https://www.grants.gov/web/grants/search-grants.html?keywords=unaccompanied%20children%27s%20program>; *Residential (Long Term Foster Care) Services for Unaccompanied Children Department of Health and Human Services Administration for Children and Families – ORR* (2023, Jan. 11). <https://www.grants.gov/web/grants/search-grants.html?keywords=unaccompanied%20children%27s%20program>; *Residential (Staff Secure) Services for Unaccompanied Children Department of Health and Human Services Administration for Children and Families – ORR* (2023, Feb. 23). <https://www.grants.gov/web/grants/search-grants.html?keywords=unaccompanied%20children%27s%20program>

<sup>109</sup> July 2022 Juvenile Coordinator Report at 5; *Full-Service Influx Care Facility* (2022, Dec. 7). <https://sam.gov/opp/f0686dff47574332ac33da8893f16c83/view>; *Expressions of interest to lease space for an unaccompanied children influx care facility in Greensboro, NC*. (2021, Dec. 22). <https://sam.gov/opp/9ad66b3fed684e99bf83e3a5d8dfc69f/view>.

<sup>110</sup> *ORR Influx Care Facilities for Unaccompanied Children Fact Sheet* (2023, Jan. 20). Office of Refugee Resettlement. <https://www.acf.hhs.gov/sites/default/files/documents/orr/icf-uc-fact-sheet.pdf>

<sup>111</sup> *ORR Influx Care Facilities for Unaccompanied Children Fact Sheet* (2023, Mar. 17). Office of Refugee Resettlement. <https://www.acf.hhs.gov/sites/default/files/documents/orr/icf-uc-fact-sheet.pdf>

<sup>112</sup> This number was calculated by totaling the number of federal contract awards identified on <https://govtribe.com/award/federal-contract-award>. Relevant federal contract awards were identified by filtering the search results to the “Funding Agency” of “Administration for Children and Families” and using the following search criteria: “Fort Bliss”. See Rapid Deployment Inc. Definitive Contract 75ACF121C00020. Department of Health and Human Services. Administration for Children and Families. <https://govtribe.com/award/federal-contract-award/definitive-contract-75acf121c00020> (last visited 3/8/23); Hamilton, K. (2021, May 24). *Biden’s giant tent city for migrant kids relies on Alabama’s ‘master of disaster.’* Vice. <https://www.vice.com/en/article/m7eg98/bidens-giant-tent-city-for-migrant-kids-relies-on-alabamas-master-of-disaster>. (Describing early contract).

<sup>113</sup> This number was calculated by totaling the number of federal contract awards identified on <https://govtribe.com/award/federal-contract-award>. Relevant federal contract awards were identified by filtering the search results to the “Funding Agency” of “Administration for Children and Families” and using the following search criteria: “Pecos”. See Family Endeavors, Inc. Purchase Order 75ACF121P00005. Department of Health and Human Services, Administration for Children and Families. <https://govtribe.com/award/federal-contract-award/purchase-order-75acf121p00005> (last visited 3/8/23); Family Endeavors, Inc. Definitive Contract 75ACF122C00016. Department of Health and Human Services, Administration for Children and Families. <https://govtribe.com/award/federal-contract-award/definitive-contract-75acf122c00016> (last visited 3/8/23); Villagran, L. (2021, April 20). *Biden administration converts oil field ‘man camp’ into shelter for migrant children*. El Paso Times. <https://elpasomatters.org/2021/04/30/biden-administration-converts-oil-field-man-camp-into-shelter-for-migrant-children/>

<sup>114</sup> ORR's total budget for Unaccompanied Children was gathered from <https://www.usaspending.gov/explorer/agency> after searching the FY 2022 budget function for the following breakdown: Department of Health and Human Services ("Agency") -> Refugee and Entrant Assistance, Administration for Children and Families, Health and Human Services ("Federal Account") -> Unaccompanied Children ("Program Activity"). The percentage was calculated by dividing the sum of RDI and Family Endeavors, Inc.'s budget to the total ORR Unaccompanied Children budget.

<sup>115</sup> This data was gathered from <https://www.usaspending.gov/explorer/agency> after searching the FY 2022 budget function for the following breakdown: Department of Health and Human Services ("Agency") -> Refugee and Entrant Assistance, Administration for Children and Families, Health and Human Services ("Federal Account") -> Unaccompanied Children ("Program Activity").

<sup>116</sup> This number was calculated by totaling the number of federal contract awards identified on <https://govtribe.com/award/federal-contract-award>. Relevant federal contract awards were identified by filtering the search results to the "Funding Agency" of "Administration for Children and Families" and using the following search criteria: "Greensboro." See Deployed Services. Definitive Contract 140D0422C0013. Department of Health and Human Services. Administration for Children and Families. <https://govtribe.com/award/federal-contract-award/definitive-contract-140d0422c0013> (last visited 3/8/23); Deployed Services. BPA Call 75ACF121A00009-75ACF122F59002. Department of Health and Human Services, Administration for Children and Families. <https://govtribe.com/award/federal-contract-award/bpa-call-75acf121a00009-75acf122f59002> (last visited 3/8/23); Caranna, K. (2022, July 22). *Another contract, this one for \$177 million, awarded for services at Greensboro site for unaccompanied migrant children.* News and Record. [https://greensboro.com/news/local/govt-and-politics/another-contract-this-one-for-177-million-awarded-for-services-at-greensboro-site-for-unaccompanied/article\\_4b7da404-09eb-11ed-a005-83bfc9fe680e.html](https://greensboro.com/news/local/govt-and-politics/another-contract-this-one-for-177-million-awarded-for-services-at-greensboro-site-for-unaccompanied/article_4b7da404-09eb-11ed-a005-83bfc9fe680e.html)

<sup>117</sup> *Id.*

<sup>118</sup> See American Hebrew Academy Definitive Contract 75ACF122L00001. Department of Health and Human Services, Administration for Children and Families. <https://govtribe.com/award/federal-contract-award/definitive-contract-75acf122l00001> (last visited 3/8/23); Caranna, K. (2022, July 8). *US to pay nearly \$50 million to lease former American Hebrew Academy in Greensboro to house unaccompanied minors.* Greensboro News and Record. [https://greensboro.com/news/local/govt-and-politics/us-to-pay-nearly-50-million-to-lease-former-american-hebrew-academy-in-greensboro-to/article\\_5db8538a-fec4-11ec-ad02-d7eeb2ff03f8.html](https://greensboro.com/news/local/govt-and-politics/us-to-pay-nearly-50-million-to-lease-former-american-hebrew-academy-in-greensboro-to/article_5db8538a-fec4-11ec-ad02-d7eeb2ff03f8.html).

<sup>119</sup> Flores data report, 3/6/23.

<sup>120</sup> News Service of Florida. (2022, Feb. 24). *Feds say state licenses not needed for migrant children shelters to stay open.* Tampa Bay Times. <https://www.tampabay.com/news/florida-politics/2022/02/24/feds-say-state-licenses-not-needed-for-migrant-children-shelters-to-stay-open/>; LaGrone, K. (2022, Nov. 15). *Shelter for unaccompanied migrant kids challenges new DCF rule after being denied a license.* ABC Action News. [https://www.abcactionnews.com/news/florida-investigative-team/shelter-for-unaccompanied-migrant-kids-challenges-new-dcf-rule-after-being-denied-a-license?utm\\_medium=email&utm\\_source=govdelivery](https://www.abcactionnews.com/news/florida-investigative-team/shelter-for-unaccompanied-migrant-kids-challenges-new-dcf-rule-after-being-denied-a-license?utm_medium=email&utm_source=govdelivery); Villagran, L. (2021, Aug. 31). *Following Abbott order, Texas revokes licenses for unaccompanied migrant children's shelters.* El Paso Times. <https://www.elpasotimes.com/story/news/2021/08/31/abbott-order-texas-removes-licenses-migrant-kids-shelters/5663862001/>.

<sup>121</sup> Office of Management and Budget. Federal Licensing of Office of Refugee Resettlement Facilities. <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=0970-AC94>.

<sup>122</sup> Order Granting Final Approval Of Settlement Agreement, *Flores v. Garland*, No. 85-4544 (C.D. Cal. Sept. 23, 2022) [Doc. # 1284]; Proposed Settlement, *Flores v. Garland*, No. 85-4544 (C.D. Cal. June 22, 2022) [Doc. # 1256-1], <https://youthlaw.org/sites/default/files/2022-10/1256-1%20Proposed%20Settlement.pdf>.

<sup>123</sup> Letter from Marcela Ruiz to Toby Biswas re ACF-2021-0001 – REQUEST FOR INFORMATION (RFI) FROM NON-FEDERAL STAKEHOLDERS: FEDERAL LICENSING OF ORR FACILITIES. (2021, Oct. 1). California Department of Social Services. <https://www.regulations.gov/comment/ACF-2021-0001-0010>

<sup>124</sup> This table is based on the Juvenile Coordinator Reports that were publicly filed in *Flores v. Barr*, Case No. 85-4544 (C.D. Cal) and Flores bed capacity data reports. The JC and Flores data reports used for this graph were collected on the following dates: July 21, 2021 [Doc. # 1148-1]; Aug. 31, 2021 [Doc. # 1172-3]; Oct. 15, 2021 [Doc. # 1192-2]; Jan. 19, 2022 [Doc. # 1220-1]; Apr. 5, 2022 [Doc. # 1240-3]; May 31, 2022 [Doc. # 1259-3]; Oct. 31, 2022; Nov. 31, 2022; Dec. 31, 2022.