

1 CHAD A. READLER  
 2 Acting Assistant Attorney General  
 3 AUGUST E. FLENTJE  
 4 Special Counsel to the Assistant Attorney General  
 5 Civil Division  
 6 WILLIAM C. PEACHEY  
 7 Director  
 8 COLIN KISOR  
 9 Deputy Director  
 10 SARAH B. FABIAN  
 11 Senior Litigation Counsel  
 12 U.S. Department of Justice  
 13 Office of Immigration Litigation  
 14 District Court Section  
 15 Box 868, Ben Franklin Station  
 16 Washington, DC 20442  
 17 Telephone: (202) 532-4824  
 18 Fax: (202) 616-8962

Attorneys for Defendants

16 **UNITED STATES DISTRICT COURT**  
 17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 18

19	JENNY LISETTE FLORES; <i>et al.</i> ,	)	Case No. CV 85-4544-DMG
20		)	
21	Plaintiffs,	)	<b>DEFENDANTS' MEMORANDUM OF</b>
22		)	<b>POINTS AND AUTHORITIES IN</b>
23	v.	)	<b>SUPPORT OF <i>EX PARTE</i></b>
24		)	<b>APPLICATION FOR RELIEF FROM</b>
25	JEFFERSON B. SESSIONS III,	)	<b>THE FLORES SETTLEMENT</b>
26	Attorney General of the	)	<b>AGREEMENT</b>
27	United States; <i>et al.</i> ,	)	
28		)	
	Defendants.	)	
		)	
		)	
		)	

1           **I. INTRODUCTION**

2           When the U.S. Department of Homeland Security (“DHS”) apprehends a  
3 family with minor children illegally entering the United States outside a port of  
4 entry, it traditionally has three options to choose from: (1) keep the family  
5 together by placing the family members at an appropriate residential facility during  
6 the pendency of their immigration proceedings; (2) separate the family by  
7 detaining the parents and transferring the children to U.S. Health and Human  
8 Services (“HHS”) custody; or (3) provide the family with a Notice to Appear for  
9 removal proceedings, release the family members from custody into the interior of  
10 the United States, and accept the now-common reality that families frequently fail  
11 to appear at the required proceedings, thus remaining illegally in the United States.  
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16           Only the first option accomplishes the dual goals of enforcing federal law  
17 and keeping families together. Accordingly, in 2015 the Government came to this  
18 Court to explain the importance of family detention to both enforcing the  
19 immigration laws while avoiding family separation. *See* Defendants’ Motion to  
20 Modify Settlement Agreement, ECF 120 (Feb. 27, 2015). Unfortunately, however,  
21 this Court’s construction of the Flores Settlement Agreement eliminates the  
22 practical availability of family detention across the nation, thus creating a powerful  
23 incentive for aliens to enter this country with children in violation of our criminal  
24 and immigration laws and without a valid claim to be admitted to the United  
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1 States, as the Government previously explained. *See* Declaration of Tae D.  
2 Johnson, ECF 120-1 at 2 ¶ 7 (Feb. 27, 2015).

3 Under current law and legal rulings, including this Court's, it is not possible  
4 for the U.S. government to detain families together during the pendency of their  
5 immigration proceedings. It cannot be done. One reason those families “decide to  
6 make the dangerous journey to illegally enter the United States is that *they expect*  
7 *to be released from custody.*” *Id.* (emphasis added). Following the July 2015  
8 ruling, there was a 3 to 5-fold increase in the number of illegal family border  
9 crossings. This surge is not a mere coincidence, it is the direct result of the  
10 message sent to those seeking illegal entry: we will not detain and deport you.  
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12 These realities have precipitated a destabilizing migratory crisis: tens of  
13 thousands of families are embarking on the dangerous journey to the United States,  
14 often through smuggling arrangements, and then crossing the border illegally in  
15 violation of our federal criminal law. And as the Government has previously  
16 stated, once these families are released into the interior, a vast segment fail to  
17 appear at their immigration hearings. *See* Declaration of Thomas Homan, ECF  
18 184-1, at 14 ¶ 30 (Aug. 6, 2015) (in 2014-2015, out of 41,297 cases involving  
19 families, 11,976 had already resulted in *in absentia* removal orders). This entire  
20 journey and ultimate crossing puts children and families at risk, and violates  
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1 criminal laws enacted by Congress to protect the border. Those illegal crossings  
2 must stop.

3           Since 2015, the number of families illegally crossing the southwest border  
4 has increased markedly, well beyond the high levels that led to the Government's  
5 request for modification in 2015. Undeniably the limitation on the option of  
6 detaining families together and the marked increase of families illegally crossing  
7 the border are linked. Illegal family crossings and apprehensions that were in the  
8 range of 1,000 to 3,000 per month in early 2015 dramatically increased to a range  
9 of 5,000 to 9,000 per month in the months after July 2015, when this Court ruled to  
10 prevent the Government from detaining families together.<sup>1</sup>  
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15           In the absence of congressional action addressing border security and  
16 immigration, the President has directed the Executive Branch to take three  
17 immediate steps to ameliorate the crisis. First, the President has directed the  
18 Secretary of Homeland Security to retain custody of family units through any  
19 criminal improper entry or immigration proceedings, to the extent permitted by  
20 law. Executive Order, Affording Congress an Opportunity to Address Family  
21 Separation §§ 1, 3, 2018 WL 3046068 (June 20, 2018).<sup>2</sup> Second, the President has  
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26 <sup>1</sup> See <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

27 <sup>2</sup> Available at <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>.

1 directed the Department of Justice to promptly seek relief from this Court from the  
2 provisions of the Flores Settlement Agreement that “would permit the Secretary [of  
3 Homeland Security] . . . to detain alien families together through the pendency of  
4 criminal proceedings for improper entry or any removal or other immigration  
5 proceedings.” *Id.* § 3(e). And the President has directed federal agencies to  
6 marshal resources to support family custody and to speed up the resolution time for  
7 immigration cases involving family units by “prioritiz[ing] the adjudication of  
8 cases involving detained families.” *Id.* §§ 3(c), 3(d), 4.

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12 This crisis at the border regarding illegal family crossings mandates that the  
13 Government take action. Accordingly, we ask for immediate interim relief from  
14 this Court that would permit family detention during immigration proceedings.  
15 This Court should provide limited emergency relief in two respects. *First*, the  
16 Court should provide a limited exemption from its construction of the Flores  
17 Settlement Agreement’s release provisions so that ICE may detain alien minors  
18 who have arrived with their parent or legal guardian together in ICE family  
19 residential facilities. *Second*, the Court should determine that the Agreement’s  
20 state licensure requirement does not apply to ICE family residential facilities.  
21 These changes are justified by several material changes in circumstances—chief  
22 among them the ongoing and worsening influx of families unlawfully entering the  
23 United States at the southwest border.  
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1 The Government requests that this Court provide a prompt hearing relating  
2 to its request. The government has moved expeditiously here given the President's  
3 direction, but is prepared to supplement this request with further factual  
4 information in advance of that hearing or at a time requested by the Court,  
5 including updating information submitted in connection with the Government's  
6 2015 request relating to the circumstances at ICE family residential centers. The  
7 Government is also open to promptly discussing other options with Plaintiffs and  
8 the Court that will permit families to be kept together at residential facilities during  
9 the time needed to complete immigration processing. This Court, given its  
10 ongoing exercise of jurisdiction over the Flores Settlement Agreement, has the  
11 authority and responsibility to resolve these growing concerns by immediately  
12 permitting family detention.  
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## 17 **II. BACKGROUND**

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19 In 2015, the Government filed a motion to modify the Flores Settlement  
20 Agreement in order to exclude accompanied minors from the Agreement and  
21 permit use of ICE family residential centers during immigration proceedings,  
22 which would have allowed the Government to exercise this option to keep families  
23 together to the greatest extent possible during removal proceedings. *See*  
24 Defendants' Motion to Modify Settlement Agreement, ECF 120 (Feb. 27, 2015).  
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26 In that filing, the Government explained that a "practice of general release  
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1 encourages parents to subject their children to this dangerous journey in order to  
2 avoid their own detention” and puts “unrelated children at increased risk of  
3 trafficking by smugglers who bring them across the border in an attempt to avoid  
4 detention by representing themselves as a family unit.” Declaration of Tae D.  
5 Johnson, ECF 120-1 at 5 ¶ 11 (Feb. 27, 2015).  
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8 In 2015, the Government apprised this Court that a result of not amending  
9 the Flores Settlement Agreement could be the separation of families. The  
10 Government explained that DHS required “additional, family-appropriate  
11 immigration detention capacity to hold families apprehended at the border, *without*  
12 *requiring separation of parents from their children.*” Defendants’ Opposition to  
13 Motion to Enforce, ECF 121 at 1 (Feb. 27, 2015) (emphasis added). The  
14 Government further explained that Plaintiffs’ opposition to family detention  
15 units—based on an agreement that arose out of litigation that was limited to  
16 *unaccompanied* children—“threatens family unity and ignores the significant  
17 growth in the number of children . . . apprehended while unlawfully crossing the  
18 southwest border” with and without parents. *Id.* at 2. The Government urged  
19 against an application of the Flores Settlement Agreement that would “mak[e] it  
20 impossible for ICE to house families at ICE family residential centers, and to  
21 *instead require ICE to separate accompanied children from their parents or legal*  
22 *guardians.*” *Id.* at 17 (emphasis added).  
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1 This Court denied that motion in July 2015, Order, ECF 177 (July 24, 2015),  
2 and the Ninth Circuit affirmed that denial on July 6, 2016, holding that this Court  
3 had not abused its discretion. *Flores v. Lynch*, 828 F.3d 898, 909-10 (9th Cir.  
4 2016). In so ruling, the Ninth Circuit concluded that the Government’s request “to  
5 exempt an entire category of migrants from the Settlement” was not “a ‘suitably  
6 tailored’ response to the change in circumstances.” *Id.* at 910. The Ninth Circuit  
7 acknowledged, however, that “relaxing certain requirements” might be appropriate  
8 where a showing of changed circumstances has been made. *Id.* And in the face of  
9 the Government’s warning that family separation could result from this Court’s  
10 decision, the Ninth Circuit specifically envisioned separating parents from their  
11 children under the terms of the Agreement – releasing the children while  
12 maintaining detention of their parents. *Flores*, 828 F.3d at 908-09; *see* Appellants  
13 Ninth Circuit Brief at 61, No. 15-56434 (Jan. 15, 2016).

19 The circumstances created by this application of the Agreement have  
20 become untenable. After a significant reduction in family units crossing the border  
21 in FY 2015 when the Government was holding families together, *see* ECF 184-1 at  
22 8 ¶ 17, family crossings away from legal ports of entry nearly doubled in FY 2016,  
23 as measured by apprehensions. Such apprehensions have only increased annually  
24 since that time, except for a brief drop at the start of 2017—including an increase  
25 this year that, when projected to cover the full year, represents a 17% increase over  
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1 the illegal family entries in 2017 and a 30% increase in illegal family entries in  
2 2014, the year that prompted the Government’s prior filing with this Court. And  
3 the increase in family entries over FY 2015 is 123%, from 39,838 in FY 2015 to a  
4 number that, when projected to cover the full year, is 88,670 for FY 2018.<sup>3</sup> The  
5 year-to-year data follows:  
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8 **SW Border Family Apprehensions:**

<u>Fiscal Year</u>	<u>Family Apprehensions</u>
2012	11,116
2013	14,885
2014	68,445
2015	39,838
2016	77,674
2017	75,622
2018 (8 months)	59,113 (12 month projection: 88,670). <sup>4</sup>

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18 The month-to-month figures show the sharp rise in family border crossings  
19 during 2015—from a figure in the range of 1,600 to 4,000 before this Court’s July  
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23 <sup>3</sup> The simple projection is based on the assumption that illegal crossers for the  
24 remaining four months will arrive at the same rate as in the prior eight months, a  
25 projection that does not account for seasonal variations.

26 <sup>4</sup> See <https://www.cbp.gov/newsroom/stats/sw-border-migration> (2018);  
27 <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017> (2017);  
28 <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (2012-2016). In addition, 34,650 family units who presented at ports of entry on the southwest border this fiscal year were determined to be inadmissible. *Id.*

2015 decision, to a figure ranging from 5,000 to nearly 9,000 in the months after the decision:<sup>5</sup>

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
1622	2041	2782	3087	3861	4042	4503	5159	5273	6025	6471	8973

### III. APPLICABLE LEGAL STANDARDS

The Government invokes Federal Rule of Civil Procedure 60(b)(5) and 60(b)(6) in support of its request to modify the Flores Settlement Agreement.

#### A. Federal Rule of Civil Procedure 60(b)(5)

Under Federal Rule of Civil Procedure 60(b)(5), the Court may relieve a party from “a final judgment, order, or proceeding [if] applying [the prior action] prospectively is no longer equitable.” Fed. R. Civ. Proc. 60(b)(5); *see Frew ex. rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004); *McGrath v. Potash*, 199 F.2d 166, 167-68 (D.C. Cir. 1952). The party seeking relief “bears the burden of establishing that a significant change in circumstances warrants revision of the decree.” *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 383 (1992). That burden may be met by showing “a significant change either in factual conditions or in law.” *Id.* at 384; *see also Horne v. Flores*, 557 U.S. 433, 447 (2009) (“[T]he passage of time frequently brings about changed circumstances—changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts,

<sup>5</sup> See <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

1 and new policy insights—that warrant reexamination of the original judgment.”).

2 A motion under this section must be brought “within a reasonable time.” Fed. R.

3 Civ. Proc. 60(c)(1).

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5 The Flores Settlement Agreement is an example of what the Supreme Court

6 has termed “institutional reform litigation.” *Horne*, 557 U.S. at 447 (quoting *Rufo*,

7 502 U.S. at 380). A district court’s ability to modify a decree in response to

8 changed circumstances is heightened in institutional reform litigation. *Rufo*, 502

9 U.S. at 380. “Because such decrees often remain in place for extended periods of

10 time, the likelihood of significant changes occurring during the life of the decree is

11 increased.” *Id.* And “the public interest is a particularly significant reason for

12 applying a flexible modification standard in institutional reform litigation because

13 such decrees ‘reach beyond the parties involved directly in the suit and impact on

14 the public’s right to the sound and efficient operation of its institutions.’” *Id.* at

15 381 (quoting *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989)).

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21 **B. Federal Rule of Civil Procedure 60(b)(6)**

22 Federal Rule of Civil Procedure 60(b)(6) allows a Court to relieve a party

23 from “a final judgment, order, or proceeding for . . . any other reason that justifies

24 relief.” Fed. R. Civ. Proc. 60(b)(6). The rule generally is “used sparingly as an

25 equitable remedy to prevent manifest injustice.” *United States v. Alpine Land &*

26 *Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). The frustration of

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1 performance of a settlement agreement may provide reason to grant a motion under  
2 this Rule. *Stratman v. Babbitt*, 42 F.3d 1402, 1994 WL 681071, at \*4 (9th Cir.  
3 Dec. 5, 1994). A motion under this section must be brought “within a reasonable  
4 time.” *Alpine*, 984 F.2d at 1049 (quoting *In re Pacific Far East Lines, Inc.*, 889  
5 F.2d 242, 249 (9th Cir. 1989)).  
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#### 7 **IV. ARGUMENT**

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9 This Court should provide limited emergency relief to enable the  
10 Government to keep alien families together. *First*, the Court should provide a  
11 limited exemption from its interpretation of the Flores Settlement Agreement’s  
12 release provisions so that U.S. Customs and Immigration Enforcement (ICE) may  
13 detain alien minors who have arrived with their parent or legal guardian together in  
14 ICE family residential facilities. *Second*, the Court should exempt ICE family  
15 residential facilities from the Agreement’s state licensure requirement. These  
16 changes are justified by several material changes in circumstances—including the  
17 worsening influx of families unlawfully entering the United States at the southwest  
18 border.  
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23 The Government does not, at this time, ask to be relieved from the  
24 Agreement’s substantive requirements on the conditions of detention in these  
25 facilities. And it does not, at this time, ask to be relieved from any other provision  
26 of the Flores Settlement Agreement that otherwise affects accompanied (or  
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1 unaccompanied) minors. Instead, in this motion, the Government asks for limited  
2 relief that would promote an important, widely shared goal that has spanned  
3 administrations: keeping families together while effectively carrying out removal  
4 proceedings required by immigration law.  
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6 This Court has clear authority to grant these exemptions. It should exercise  
7 that authority to help keep families together. The Government seeks this  
8 emergency relief on an *ex parte* basis, to enable the Government both to maintain a  
9 secure southwest border while also avoiding family separations.  
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12 **A. Significant Changes in Circumstances—Including the Ongoing,**  
13 **Worsening Influx of Family Units on the Southwest Border—**  
14 **Show that this Court Should Modify the Flores Settlement**  
15 **Agreement.**

16 This Court should modify the Flores Settlement Agreement in light of  
17 “significant change[s] in circumstances.” *Rufo*, 502 U.S. at 383 (modification of a  
18 consent decree is appropriate when “a significant change in circumstances warrants  
19 revision of the decree”). This changed-circumstances standard is met where there  
20 have been “changes in circumstances that were beyond the defendants’ control and  
21 were not contemplated by the court or the parties when the decree was entered.”  
22 *Id.* at 380-81 (discussing *Philadelphia Welfare Rights Org. v. Shapp*, 602 F.2d  
23 1114, 1119-21 (3d Cir. 1979)). Several significant changes satisfy these standards.  
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1           *First*, since the Agreement was entered, the number of persons illegally  
2 crossing the border in family units has dramatically increased and has materially  
3 changed from what the parties or Court could reasonably have contemplated. That  
4 increase has consisted in significant measure of children who are accompanied by  
5 their parents. Although the Ninth Circuit previously found that the parties  
6 “expressly anticipated an influx” when the Agreement was signed, *Flores*, 828  
7 F.3d at 909, nothing suggests that the parties anticipated that this increase would  
8 consist largely of children who were accompanied by their parents. Indeed, the  
9 Agreement arose from litigation solely about *unaccompanied* minors. A  
10 modification is warranted to account for the important, widely shared interest in  
11 keeping families together.

12           The current situation is untenable. As the Government explained in 2015,  
13 aliens cross the border illegally relying on promises from traffickers that “they will  
14 not be detained but instead will be released.” Declaration of Tae D. Johnson, ECF  
15 120-1 at 2 ¶ 7. (Feb. 27, 2015). Such an incentive structure increases the chances  
16 that an alien without a valid claim for relief in the United States will be able to  
17 remain here illegally or during lengthy removal proceedings. As the Government  
18 explained in 2015, “detaining these individuals dispels such expectations, and  
19 deters others from unlawfully coming to the United States.” *Id.* at 4 ¶ 8..  
20 Moreover, many of these aliens are smuggled for “significant fees” and those  
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1 “payments are then used by cartels to fund additional illicit and dangerous  
2 activities in the United States and Mexico.” *Id.* ¶ 9. The more constrained DHS’s  
3 ability to detain families together during the period necessary to promptly conduct  
4 immigration proceedings, the more likely it is that families will attempt illegal  
5 border crossing. As the Government explained in 2015, a “practice of general  
6 release encourages parents to subject their children to this dangerous journey in  
7 order to avoid their own detention” and puts “unrelated children at increased risk  
8 of trafficking by smugglers who bring them across the border in an attempt to  
9 avoid detention by representing themselves as a family unit.” *Id.* at 5 ¶ 11.

13 *Second*, neither the parties nor the Court anticipated that, when the  
14 Government first began applying the Agreement to accompanied minors, as  
15 required by this Court’s order, that shift in practice would lead to the current  
16 situation that incentivizes a dangerous journey by family units with young  
17 children, risky illegal entry attempts by families with children, and trafficking of  
18 families through Mexico in a manner contrary to the intent of asylum treaties. As  
19 explained above, the number of family units crossing the border illegally has  
20 increased dramatically since the Government sought relief in 2015—by 30% since  
21 the 2014 influx that led the Government to seek relief from this Court. Without the  
22 option to keep families together during the pendency of removal proceedings, the  
23 Government must choose between acquiescing to and incentivizing illegal  
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1 immigration by releasing all family groups, or detaining the parents but separating  
2 the family (as a result of the Agreement, as interpreted). These are precisely the  
3 sorts of changes that warrant “relax[ation] [of] certain requirements” of the  
4 Agreement. *Flores*, 828 F.3d at 910.

6 *Third*, class-action litigation has been filed challenging the legality of family  
7 separation. In one case, the plaintiffs seek class-wide relief requiring DHS to  
8 discontinue family separation. *See Ms. L. v. U.S. Immigration and Customs*  
9 *Enforcement*, Motion, No. 18-428, ECF No. 48-1, at 26 (S.D. Cal.); *see also*  
10 *Mejia-Mejia v. ICE*, No. 18-1445, Complaint ¶ 4 (D.D.C. filed June 19, 2018) (“If,  
11 however, the government feels compelled to continue detaining these parents and  
12 young children, it should at a minimum detain them together in one of its  
13 immigration family detention centers”). Yet in declining the Government’s  
14 previous request to amend the Flores Settlement Agreement, the Ninth Circuit held  
15 that family separation is permissible under the Agreement, and reversed this  
16 Court’s holding that the Agreement required the release of both the parents and  
17 children to maintain family unity. *See Flores*, 828 F.3d at 910 (Flores Settlement  
18 Agreement “provides no affirmative release rights for parents”). It cannot be the  
19 case—nor is it consistent with immigration law—that the Government’s only  
20 option, when facing a crisis of illegal border crossings, is simply to permit such  
21 illegality by releasing all aliens after apprehension with full knowledge that later  
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1 voluntary appearance for removal proceedings is increasingly rare. This point was  
2 true when the Government made it in 2015, and it remains true today.

3 *Finally*, the President has identified this issue as a significant problem  
4 warranting focused attention throughout the Executive Branch. *See* Executive  
5 Order, Affording Congress an Opportunity to Address Family Separation (June 20,  
6 2018). In doing so, he has directed significant resources to provide adequate  
7 facilities where families can be together, and the prioritization of their immigration  
8 proceedings to minimize the amount of detention. *Id.* § 4 (the “Attorney General  
9 shall, to the extent practicable, prioritize the adjudication of cases involving  
10 detained families”). Those efforts justify renewed consideration of family custody  
11 under the Flores Settlement Agreement.  
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16 **B. Two Narrow Modifications to the Flores Settlement Agreement**  
17 **Are Warranted to Address the Significant Changes in**  
18 **Circumstances.**

19 Given the circumstances set forth above, two “tailored” modifications to the  
20 Agreement are warranted at this time. *Rufo*, 502 U.S. at 383 (once the moving  
21 party has established that modification is warranted, “the court should consider  
22 whether the proposed modification is suitably tailored to the changed  
23 circumstance”).  
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26 *First*, the Court should provide the Government an exemption from  
27 Paragraph 14 of the Agreement so that children may be placed in ICE custody with  
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1 their parent or guardian, rather than be released to another individual or placed into  
2 HHS custody. *See* Flores Agreement ¶ 14 (requiring INS to “release a minor from  
3 its custody” in certain circumstances). So long as paragraph 14 of the Agreement  
4 is applied as written to accompanied children, ICE is required to separate parents  
5 or guardians from their children in situations where the law requires detention or  
6 ICE or an immigration judge determines that a parent or guardian should be  
7 detained to prevent flight or danger to the community during removal proceedings.  
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9 Exempting ICE family residential centers from this requirement on the limited  
10 basis proposed by the Government will permit DHS to more effectively prevent  
11 large numbers of alien families from illegally entering the United States through  
12 the southwest border, while also allowing families to stay together in specially  
13 designed facilities during their criminal and removal proceedings.  
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18 *Second*, the Court should provide an exemption for ICE family residential  
19 centers from the licensing provisions of the Agreement. Those provisions require  
20 that minors “be placed temporarily in a licensed program.” Agreement ¶ 19;  
21 Exhibit 1 (laying out the minimum standards for conditions in facilities holding  
22 minors). A “licensed program” is one “that is licensed by an appropriate State  
23 agency to provide residential, group, or foster care services for dependent  
24 children.” Agreement ¶ 6. This exemption is necessary because of ongoing and  
25 unresolved disputes over the ability of States to license these types of facilities that  
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1 house both adults and children. Exemption from this requirement is tailored to  
2 address the immediate influx with which the Government is currently dealing,  
3 while providing time for ongoing efforts in Congress to address these issues. And  
4 the Government does not now object to the requirement that ICE family residential  
5 facilities would continue to meet the standards laid out in Exhibit 1 to the  
6 Agreement.  
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9         These are narrow, targeted requests aimed at addressing a specific and  
10 growing problem. Notably, while the Government continues to believe that it was  
11 incorrect to hold that the Flores Settlement Agreement applies to accompanied  
12 minors, the Government does not seek here to “exempt an entire category of  
13 migrants from the Settlement.” *Flores*, 828 F.3d at 910. Rather, at this time, the  
14 Government seeks only to permit family detention under the Agreement given the  
15 ongoing severe influx of family units at the border.<sup>6</sup> The Government does not  
16 seek through this motion to exempt accompanied minors—or any other group—  
17 from all of the settlement provisions. The two requested exemptions are the sort of  
18 “relax[ation] [of] certain requirements” of the Agreement that the Ninth Circuit  
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26 <sup>6</sup> The Government continues to disagree that the Flores Settlement Agreement  
27 covers accompanied minors and with other aspects of this Court’s rulings  
28 interpreting the Agreement, and preserves its arguments in the event of further  
review .

1 invited the Government to seek. *Id.* Relaxing these requirements would permit  
2 family units to be kept together in appropriate facilities.

3           The equities and human considerations strongly support this narrow relief.  
4  
5 Family detention during the pendency of removal proceedings has been a  
6 continuing goal of DHS for a considerable time, and across administrations. DHS  
7 has viewed this authority as critical to addressing the growing influx of family  
8 units illegally crossing the southwest border. The inability to employ this option  
9 creates a continued incentive for parents to bring their children on the dangerous  
10 journey to the United States and to enter the country illegally, rather than at ports  
11 of entry. Entering illegally provides two opportunities to remain in the United  
12 States for a family with no valid asylum claim—either if the family evades  
13 detection entirely or if the family is caught and then released, the family unit  
14 disappears. Proposed legislation in Congress seeks to address the issues created by  
15 the limitations that the Agreement, as it has been interpreted, places on the  
16 Government’s ability to use ICE family residential centers. This process is fluid,  
17 but the emergency currently existing on the southwest border requires immediate  
18 action. This Court can take such action to help address this urgent problem.

19                               \*      \*      \*

20           The Government is prepared to make a more thorough showing, if  
21 necessary, in support of this request to amend the Flores Settlement Agreement.  
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1 The Government respectfully requests a prompt hearing on its request for  
2 immediate relief, together with any additional proceedings the Court believes  
3 appropriate.  
4

5 **V. CONCLUSION**

6 For the above reasons, the Government respectfully asks this Court to grant  
7  
8 limited emergency relief that would: (1) exempt DHS from the Flores Settlement  
9 Agreement's release provisions so that ICE may detain alien minors who have  
10 arrived with their parent or legal guardian together in ICE family residential  
11 facilities; and (2) exempt ICE family residential facilities from the Agreement's  
12 state licensure requirement. The Government is not asking to be relieved from the  
13 substantive language of the Agreement on the conditions of detention in these  
14 facilities. The Government asks for immediate relief, along with a schedule to  
15 allow the parties to more fully address the issues raised by this request.  
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19  
20 DATED: June 21, 2018

Respectfully submitted,

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22 CHAD A. READLER  
Acting Assistant Attorney General

23  
24 /s/ August E. Flentje  
25 AUGUST E. FLENTJE  
26 Special Counsel to the Assistant Attorney  
27 General  
28 Civil Division

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WILLIAM C. PEACHEY  
Director  
COLIN KISOR  
Deputy Director

/s/ Jeffrey S. Robins  
JEFFREY S. ROBINS  
Assistant Director

SARAH B. FABIAN  
Senior Litigation Counsel  
U.S. Department of Justice  
Office of Immigration Litigation  
District Court Section  
Box 868, Ben Franklin Station  
Washington, DC 20442  
Telephone: (202) 532-4824  
Fax: (202) 616-8962

*Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2018, I served the foregoing pleading on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ August E. Flentje  
August E. Flentje  
Attorney for Defendants

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