

**From:** [Burghard, Christina \(EOIR\)](#)  
**To:** [All of OCIJ HDQ and Courts \(EOIR\)](#)  
**Cc:** [Cicchini, Daniel \(EOIR\)](#)  
**Subject:** Flores v. Sessions (On behalf of CIJ Keller)  
**Date:** Friday, July 21, 2017 4:38:28 PM  
**Attachments:** [Interim Guidance on Flores v. Sessions Final 7 20 17.doc](#)  
[Flores v. Sessions.pdf](#)

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Immigration Judges and Court Administrators:

On July 5, the Ninth Circuit issued a decision affirming the Central District of California's Order that the Government was in breach of the *Flores* Settlement Agreement. *Flores v. Sessions*, No. 17-55208, 2017 WL 2855813 (9th Cir. July 5, 2017); Order re Pls' Mot. to Enforce, *Flores v. Sessions*, 2:85-cv-04544 (C.D. Cal. Jan. 20, 2017). As a result, EOIR must begin making bond hearings available, nationwide, to (1) children in the custody of ORR at a staff-secure or secure facility and (2) pursuant to discussions with counsel, any other child in ORR custody who affirmatively requests a bond hearing with ORR or before the immigration court.

The Office of General Counsel has prepared the attached guidance to explain the *Flores* decision and the process for conducting these hearings. In addition, OCIJ would like to highlight the following key points:

- 1) Attorneys from HHS/ORR, and NOT DHS, will represent the government. As a result:
  - a. There will be limited resources available for counsel to appear in person for these hearings, and we expect that there will be frequent requests for telephonic appearances. In order to comply with the Ninth Circuit's order, Immigration Judges should grant requests for telephonic appearances absent specific, articulable reasons not to on a case-by-case basis.
  - b. Immigration Judges should allow HHS wide latitude in setting deadlines to submit any documentation or information to the court.
  - c. IJs should instruct all parties that documents related to these proceedings, including appeals, should be served on (1) the Unaccompanied Minor, (2) his/her attorney, if any, and (3) HHS/ORR (not DHS), at the following address:

Director Scott Lloyd  
Office of Refugee Resettlement  
330 C. Street, S.W.  
Washington D.C. 20201

- 2) Immigration Judges should continue to use the same standard bond order form used in traditional bond proceedings.
- 3) At any bond hearing for a UC under *Flores*, the Immigration Judge should NOT set a bond dollar amount. Instead, if release is appropriate, the IJ should simply grant the child's release subject to HHS/ORR Identifying, evaluating, and approving an appropriate sponsor.
- 4) HHS/ORR may not have information available on the UC's sponsor at the time of the bond hearing. However, any order granting release is not automatically enforced and instead subject to HHS/ORR locating a suitable sponsor as outlined above.

A copy of the Ninth Circuit's order is also attached to this email. You may begin to see motions filed by ORR for bond hearings in the next week, and any child in HHS custody appearing in court may request a bond hearing. If you have any questions about conducting these bond hearings pursuant to *Flores*, please contact your Assistant Chief Immigration Judge and/or Court Administrator and Dan Cicchini with OGC.

Thank you.

Best regards,  
MaryBeth Keller  
Chief Immigration Judge