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Subject: FRC Family Custody Reviews - Flores v. Sessions Court Order
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Importance: High

Good afternoon,

The June 27, 2017, U.S. District Court order in *Flores v. Sessions*, requires ICE to individually assess whether a minor in ICE custody, who is in expedited removal (ER) proceedings under section 235(b) of the Immigration and Nationality Act (INA) or has a final ER order, is eligible for parole pursuant to 8 C.F.R. § 212.5(b). This is separate from the parole consideration that would normally be done on a case-by-case basis pursuant to 8 C.F.R. § 235.3(b)(2)(iii) (requiring that there be a medical emergency or legitimate law enforcement purpose). In accordance with the court order, we are now required to conduct parole custody determinations for minors processed under the ER provisions pursuant to the broader criteria under 8 C.F.R. § 212.5(b).

Significantly, the court did not dictate an expected outcome for the parole custody reviews. Therefore, you are to continue to use your discretion in determining whether parole is appropriate on a case-by-case basis. In making such determinations, the criteria set forth in INA § 212(d)(5) (urgent humanitarian reasons or significant public benefit), 8 C.F.R. § 212.5(b) (also requiring that alien be “neither a security risk nor risk of absconding”), and paragraph 14 of the *Flores* Settlement Agreement (assessing whether detention is required to secure the minor’s timely appearance before ICE or the immigration court, or to ensure the minor’s safety or that of others) when making parole decisions. Additional factors for consideration may include, but are not limited to: (1) information about family ties in the United States and the alien’s intended destination; (2) manner of entry and prior immigration history; (3) any prior arrests, convictions, or records of nonappearance at court hearings or DHS appointments; (4) proof of identify; and (5) any medical concerns. Parole custody reviews should be conducted at the time a minor resident is taken into custody by ERO and every 90 days thereafter. If new pertinent information is received from any source outside of the timeframe in which the 90-day review is being completed, a custody determination should be done. If you decide to release a minor after a parole custody determination, continue your past practice regarding the release of such minors.

Your office should continue to follow existing processes when conducting parole custody determinations, except your office should include the language below as the preliminary statement in your parole decisions:

“Pursuant to a June 27, 2017, U.S. District Court order in *Flores v. Sessions*, No. 85-4544 (C.D. Cal. filed July 11, 1985), ICE is required to individually assess whether a minor, who is in expedited removal proceedings under section 235(b) of the Immigration and Nationality Act or has a final expedited removal order, is eligible for parole pursuant to 8 C.F.R. § 212.5(b). ICE’s decision whether to grant parole is discretionary. Ordinarily, minors in expedited removal proceedings or with a final expedited removal order will be considered for parole on a case-by-case basis under the heightened standards found in 8 C.F.R. § 235.3(b)(2)(iii) (requiring a medical emergency or legitimate law enforcement purpose); however, the court has ordered the parole evaluation be conducted pursuant to 8 C.F.R. § 212.5(b) (requiring that there be urgent humanitarian reasons or significant public benefit, provided the minor presents

neither a security risk nor a risk of absconding). Accordingly, your parole review will be conducted under the requirements of 8 C.F.R. § 212.5(b).”

If you have any questions regarding this guidance, please contact your respective Deputy Assistant Director for Domestic Operations.

Thank you.

Dave

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