No. 25-6567

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, *et al.*,
Plaintiffs–Appellees,

v.

PAMELA BONDI, ATTORNEY GENERAL, *et al.*,
Defendants–Appellants.

On Appeal from the United States District Court
for the Central District of California
Case No. 2:85-cv-04544-DMG-AGR

DEFENDANTS–APPELLANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS–APPELLEES' MOTION TO DISMISS

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

WILLIAM C. SILVIS
Assistant Director

MICHAEL A. CELONE
KATELYN MASETTA-ALVAREZ
CHRISTINA PARASCANDOLA
Senior Litigation Counsel

JOSHUA C. MCROSKEY
Trial Attorney
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
(202) 305-1540
Joshua.C.McCroskey@usdoj.gov

Counsel for Defendants–Appellants

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INTRODUCTION

Defendants–Appellants (the "government") appeal from the district court's August 15, 2025 order granting in part Plaintiffs' motion to enforce the 1997 *Flores* Settlement Agreement ("FSA") as to U.S. Customs and Border Protection ("CBP"). *See* Plaintiffs-Appellees' Exhibits to Motion to Dismiss, Dkt. No. 15.2: Exhibit A, Order re Plaintiffs' Motion to Enforce ("August 15 Order"), and Exhibit B, Stipulated Settlement Agreement ("FSA"). This Court has appellate jurisdiction under 28 U.S.C. § 1291 because the August 15 Order is a final order as to the parties' disputes about temperature and lighting in certain CBP facilities. Alternatively, this Court has jurisdiction under 28 U.S.C. § 1292(a)(1) because, in the August 15 Order, the district court required CBP to take specific actions.

Plaintiffs move to dismiss this appeal for lack of jurisdiction, arguing that neither 28 U.S.C. § 1291 nor § 1292 applies. Plaintiffs-Appellees' Motion to Dismiss, Dkt. No. 15.1 ("Motion"). Prior appellate decisions in this case explain why the Court should deny Plaintiffs' Motion.

First, as to 28 U.S.C. § 1291, this Court has held that a "postjudgment order is final in the injunctive consent decree context" when the order does "not anticipate any further proceedings on the same issue" and has "some real-world significance." *Flores v. Garland*, 3 F.4th 1145, 1153 (9th Cir. 2021). The August 15 Order on appeal here does not anticipate further proceedings on the issues of temperature and

lighting. Although the district court contemplated further proceedings about the length of time that minors spend in custody, that issue is not the "same issue" as temperature and lighting. *Id.* In addition, the August 15 Order has "some real-world significance" because it "makes clear that the Agreement" (in the district court's view) compels CBP to do more to dim lights and maintain adequate temperatures in certain facilities and because the order "requires the government to comply with the Agreement as to" minors in those facilities. *Id.* "If the government complies with the [August 15] Order . . . it is unlikely to have any opportunity to appeal it unless [this Court] exercise[s] jurisdiction under section 1291." *Id.*

Second, the Court has exercised jurisdiction under 28 U.S.C. § 1292(a)(1) to review a district court order that "direct[ed] the government to take specific actions." *Flores v. Barr*, 934 F.3d 910, 914 n.5 (9th Cir. 2019) (discussing *Flores v. Lynch*, 828 F.3d 898, 905, 908 (9th Cir. 2016)). The district court's August 15 Order similarly requires the government to take specific actions. *See* August 15 Order 14–15. Thus, this Court has appellate jurisdiction under § 1292(a)(1).

Plaintiffs rely on *Flores v. Barr*, 934 F.3d at 914, but that decision is distinguishable. As the Court previously explained, the government in *Flores v. Barr* "never identified section 1291 as a basis for appellate jurisdiction, and [the Court] did not address that alternative." *Flores v. Garland*, 3 F.4th at 1150–51. As to § 1292, the "parties agree[d] that this [C]ourt ha[d] jurisdiction over the appeal of [that] post-

judgment order only if it modified the Agreement." *Flores v. Barr*, 934 F.3d at 912. The Court held that the district court order did not modify the FSA and, therefore, that § 1292(a)(1) did not provide jurisdiction. *Id.* at 915–17. Here, in contrast, the government is not exclusively arguing that the district court modified the FSA. Rather, the government argues that the district court effectively entered an injunction. *Flores v. Barr*, therefore, is inapplicable.

Plaintiffs thus have not shown that the Court lacks jurisdiction to review the August 15 Order.

BACKGROUND

A. *Flores* Settlement Agreement and Prior Appeals

This appeal arises out of the ongoing litigation about the 1997 FSA, which governs the "detention, release, and treatment of minors in the custody of the [Immigration and Naturalization Service]." FSA ¶ 9. This Court has exercised jurisdiction over appeals from post-judgment orders in this case several times. *See Flores v. Lynch*, 828 F.3d at 905; *Flores v. Sessions*, 862 F.3d 863, 867 (9th Cir. 2017); *Flores v. Rosen*, 984 F.3d 720, 726 (9th Cir. 2020); *Flores v Garland*, 3 F.4th at 1153–54.

The Court concluded it did not have appellate jurisdiction in one appeal. *See Flores v. Barr*, 934 F.3d at 912. In that appeal, the underlying district court order was unusual in that it mostly did not direct the government to take specific steps; it

merely noted whether Plaintiffs' motion to enforce was "granted" or "denied." *See Flores v. Sessions*, 394 F. Supp. 3d 1041, 1072–73 (C.D. Cal. 2017). On appeal, the parties agreed that the Court had jurisdiction over the appeal only if the district court order modified the FSA. *Flores v. Barr*, 934 F.3d at 912. Although the district court did order the government to submit the name of a proposed Juvenile Coordinator, the government explicitly did not appeal from that part of the order because appointing a Juvenile Coordinator was in a term of the FSA. *Id*. at 914–15. Holding that the district court did not modify the FSA, the Court dismissed the appeal. *Id.* The Court in that appeal never considered whether 28 U.S.C. § 1291 supplied a basis for jurisdiction. *Flores v. Garland*, 3 F.4th at 1150–51 (discussing *Flores v. Barr*).

B. August 15, 2025 Order on Plaintiffs' Motion to Enforce as to CBP

As relevant to this appeal, Plaintiffs moved to enforce the FSA as to CBP facilities. August 15 Order 6. Plaintiffs contended that CBP was holding children in custody for too long and was failing to ensure "prompt release." *Id.* at 6–7. Plaintiffs also argued that CBP facilities were not "safe and sanitary" in several respects. *Id.* at 6, 9.

On August 15, 2025, the district court granted in part and denied in part Plaintiffs' motion to enforce. The court denied the motion to enforce "insofar as [Plaintiffs] request new relief" on the issue of time in custody. *Id.* at 7–8. The district court found that the times in custody appeared to be decreasing. *Id.* at 7. The court

also noted that it had "already ordered the CBP Juvenile Coordinator to file a supplemental report providing: (1) a census of minors who were held in CBP custody for over 72 hours during the months of June and July 2025, and (2) the reason why each minor was held for over 72 hours." *Id.* (citing Order re July 2025 Status Conference at 1 [ECF No. 1614]). The court stated that it would be better able to assess times in custody once it had the supplemental reporting, due September 8, 2025. *Id.* at 7–8, 13.

The government had objected to providing that supplemental reporting because it is not contemplated by the FSA's provision for an annual report from the Juvenile Coordinators. *Id.* at 8. In the August 15 Order, the district court overruled the government's objections and confirmed that the supplemental reporting was required. *Id.* at 8, 13–14.

The district court granted Plaintiffs' motion to enforce regarding the allegations that certain CBP facilities in the Rio Grande Valley, in El Paso, and near San Diego had uncomfortably cold temperatures. *Id.* at 11. The district court reached this holding despite CBP's evidence that CBP facilities maintain temperatures in a reasonable range. *Id.* The district court denied the motion to enforce as to Plaintiffs' allegations about temperatures in other CBP facilities. *Id.*

The district court granted Plaintiffs' motion to enforce as to Plaintiffs' allegations that certain CBP facilities in El Paso and near San Diego did not dim

lights enough at night to help class members sleep, *id.* at 12, and ordered that CBP "shall" make reasonable efforts to turn off some of the lights to darken the pod areas in CBP's El Paso and San Diego Sectors, *id.* at 12 n.10. The district court denied the motion to enforce as to lighting in other facilities. *Id.* at 12.

The district court mentioned several of Plaintiffs' other allegations about conditions of custody but did not grant Plaintiffs' motion to enforce as to those issues. *Id.* at 12–13.

Finally, the district court denied Plaintiffs' request for the appointment of an independent monitor. *Id.* at 13. The court noted, however, that it may reconsider the request after receiving the Juvenile Coordinators' supplemental reports on September 8, 2025, and the previously appointed Juvenile Care Monitor's final report about the El Paso and Rio Grande Valley Sectors of the U.S. Border Patrol on September 5, 2025. *Id.*

Although the district court granted Plaintiffs' motion to enforce on two issues, the court entered broad orders at the end of its decision. The district court requires CBP to abide by certain FSA provisions that CBP had argued do not apply to its operations. Specifically, the district court ordered CBP to "make and record prompt and continuous efforts on its part toward family reunification and the release of a minor upon taking the minor into custody," to provide "individualized bond determination[s]," and to effect transfers "expeditiously" if necessary. *Id.* at 14. The

district court also ordered that "the Department of Homeland Security ('DHS') shall not 'restart the clock' when it transfers a class member from one unlicensed, secure facility to another, regardless of which DHS component agency operates the facility." *Id.* In addition, the court ruled, "DHS shall hold minors in facilities that are safe and sanitary and are consistent with its concern for the particular vulnerability of minors, for the entirety of their detention in DHS custody." *Id.* The court further held that "[b]ecause CBP facilities are intended only for short-term use, CBP shall hold minors in its custody only for the amount of time DHS reasonably requires to process the minor for release and/or actively arrange for and complete transport of the minor to a more suitable facility." *Id.* at 14–15.

C. Other Proceedings in District Court

The district court held a status conference on September 22, 2025, at which it ordered limited further reporting from the CBP Juvenile Coordinator about times in custody. *See* Order re September 22, 2025 Status Conference, *Flores v. Bondi*, No. 2:85-cv-04544-DMG-AGR (C.D. Cal. Sept. 26, 2025), ECF No. 1672. The district court also required further reporting from the Juvenile Coordinator for U.S. Immigration and Customs Enforcement ("ICE") about matters not addressed in Plaintiffs' motion to enforce as to CBP. *Id.* at 2–3.

Following a status conference on December 15, 2025, the district court ordered further reporting from CBP's and ICE's Juvenile Coordinators. *See* Order re

December 15, 2025 Status Conference, *Flores v. Bondi*, No. 2:85-cv-04544-DMG-AGR (C.D. Cal. Dec. 15, 2025), ECF No. 1714. The court also ordered the parties to attend a meet and confer with a mediator about disputes concerning conditions of confinement in ICE facilities. *Id.* at 1. The court scheduled another status conference to be held on March 30, 2026. *Id.* at 2.

D. Proceedings in This Court

Six appeals in this case are pending in this Court.[1] Most importantly, the government's appeal from the district court's August 15, 2025 order denying the government's motion to terminate the FSA is fully briefed and awaiting oral argument. *See Flores v. Bondi*, No. 25-6308. Whether the FSA should exist at all is logically antecedent to whether the district court abused its discretion in granting a motion to enforce the FSA. Therefore, to promote judicial economy and preserve the parties' resources, the government moved to stay briefing in this appeal until sixty days after the decision in Appeal No. 25-6308. *See* Defendants-Appellants' Unopposed Motion to Hold Appeal in Abeyance (Feb. 9, 2026), Dkt. No. 10.1. This Court granted that motion. Order, Dkt. No. 12.1.

[1] Plaintiffs have argued that the government has forever forfeited arguments by failing to raise them in appeals. *See, e.g.*, Plaintiffs-Appellees' Answering Brief 18–20, *Flores v. Bondi*, No. 25-6308 (Jan. 21, 2026), Dkt. No. 17.1. Yet Plaintiffs now complain that the government has filed several appeals. Motion 7.

The Court also stayed briefing in two other appeals, *Flores v. Bondi*, No. 24-3656, and *Flores v. Bondi*, No. 25-7468. The government's appeal from the district court's order extending a separate settlement agreement as to CBP is also fully briefed and ready for oral argument. *See Flores v. Bondi*, No. 25-820. Finally, in another appeal, the parties are briefing whether the appeal should be dismissed. *See Flores v. Bondi*, No. 25-5443.

ARGUMENT

I. This Court has appellate jurisdiction under 28 U.S.C. § 1291 because the district court's August 15 Order is a final order on the temperature and lighting disputes.

This Court has appellate "jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. This Court must give finality "a practical rather than a technical construction." *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1064 (9th Cir. 2010) (citation modified). The "finality requirement is intended to prevent 'piecemeal litigation' rather than to vindicate some purely technical definition of finality." *Id.* "[S]ome cases involve more than one final decision," and "appeals courts have jurisdiction over post-judgment orders, such as a district court might enter pursuant to the jurisdiction it has retained to enforce a prior order." *Id.* The Court "has declared itself less concerned with piecemeal review when considering post-judgment orders, and more concerned with allowing some opportunity for review, because 'unless such post-

judgment orders are found final, there is often little prospect that further proceedings will occur to make them final.'" *Id.* (citation modified).

In a prior appeal in this case, the Court explained that, to be appealable as a final order, a post-judgment order "should not anticipate any further proceedings on the same issue and should have some real-world significance." *Flores v. Garland*, 3 F.4th at 1153. In *Flores v. Garland*, the Court held that it had jurisdiction to review the district court's September 21, 2020 order concluding that the FSA applies to minors expelled under the Title 42 public health order. *Id.* at 1153–54. The Court determined that the district court did not contemplate further proceedings on that issue after the September 21 order, and the order had a "significant impact because it makes clear that the Agreement applies to minors expelled under the Title 42 Order and requires the government to comply with the Agreement as to those minors." *Id.* at 1153–54. The Court noted that, "[i]f the government complies with the September 21 Order, as apparently it has done, it is unlikely to have any opportunity to appeal it unless we exercise jurisdiction under section 1291." *Id.* Therefore, the Court held that it had jurisdiction under § 1291.

The August 15 Order is like the district court order in *Flores v. Garland*. The August 15 Order does not anticipate further proceedings on the issues of temperature and lighting. August 15 Order 10–12. Although the district court contemplated further proceedings about the time spent in custody, *id.* at 7–8, that issue is not the

"same issue" as temperature and lighting, *Flores v. Garland*, 3 F.4th at 1153. In addition, the August 15 Order has "some real-world significance" because it "makes clear that the Agreement" (in the district court's view) compels CBP to do more to dim lights and maintain adequate temperatures in certain facilities and because the order "requires the government to comply with the Agreement as to" minors in those facilities. *Id.* "If the government complies with the [August 15] Order . . . it is unlikely to have any opportunity to appeal it unless [this Court] exercise[s] jurisdiction under section 1291." *Id.*

Plaintiffs argue that the August 15 Order is not final because it "contemplates future orders dependent on the contents of government reports the court had previously ordered to be filed and a forthcoming status conference." Motion 11–12. However, as to CBP, the district court contemplated future orders about time in custody, not temperature and lighting. August 15 Order 7–8. Plaintiffs identify no ongoing proceedings as to temperature and lighting and do not explain when, in Plaintiffs' view, there would ever be an appealable order on those issues. Plaintiffs point to no reason why the government must wait to appeal the district court's final conclusions on temperature and lighting until the district court also makes findings as to time in custody.

Indeed, a future definitive order on time in custody may never come. Plaintiffs admit that, seven months later, "the [district] court has not yet issued further orders

to resolve this dispute." Motion 12. But the standard is not whether the district court has issued a further order on a different matter (a standard that would require predicting the future). It is uncontroverted that the district court did order relief as to temperature and lighting without mentioning future proceedings on those matters. So it is not clear that the August 15, 2025 holdings as to temperature and lighting would be appealable after a hypothetical future order on time in custody.

Plaintiffs also contend that the "the district court declined to appoint an independent monitor to help address the violations alleged by Plaintiffs, noting that CBP's internal monitor had already been ordered to file a report with the court." Motion 12. But the district court specifically stated that the CBP Juvenile Coordinator had been ordered to file a supplemental report "regarding the increase in the average length of time in custody for minors." August 15 Order 13. The district court did not suggest it would still be considering whether to appoint an independent monitor to assess temperature and lighting issues.

In addition, Plaintiffs maintain that the August 15 Order "imposes no new requirements on either party regarding the two detention conditions on which the court found violations." Motion 11. If Plaintiffs are arguing that the order granting their motion to enforce lacks "real-world significance," *Flores v. Garland*, 3 F.4th at 1153, they are incorrect. The order need not impose sanctions or modify the FSA to be appealable. *See id.* at 1151. As explained above, the August 15 Order has some

real-world impact because it clarifies that CBP's previous practices to dim lights and maintain reasonable temperatures were inadequate, in the district court's view, to comply with the FSA. The district court resolved a factual and legal dispute in which CBP maintained that it was in compliance while Plaintiffs alleged that CBP was not in compliance.

Finally, Plaintiffs rely on inapposite cases, *Plata v. Brown*, 754 F.3d 1070, 1074–75 (9th Cir. 2014), and *Bogard v. Wright*, 159 F.3d 1060, 1063 (7th Cir. 1998). Motion 13. The district court's August 15 Order definitively resolved the parties' disputes as to two issues. Thus, the order was more than the mere "scheduling" or "case management order" at issue in *Plata*. *See Plata*, 754 F.3d at 1074–75. In addition, the Seventh Circuit's decision in *Bogard* is not persuasive because the Seventh Circuit expressly rejected the "pragmatic" approach to finality that the Ninth Circuit takes. *Bogard*, 159 F.3d at 1063 (disagreeing with *Stone v. City & County of San Francisco,* 968 F.2d 850, 855 (9th Cir. 1992)).

The August 15 Order is a final order on temperature and lighting, and thus is a final decision within the meaning of § 1291.

II. This Court has appellate jurisdiction under 28 U.S.C. § 1292(a)(1) because the district court's August 15 Order effectively is an injunction.

This Court has appellate jurisdiction of interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1). The district court's August 15 Order

requires the government to take specific actions. *See* August 15 Order 14–15. The district court ordered CBP and DHS to take particular actions to comply with the substance of the FSA's requirements. *See id.* The district court also ordered CBP's and ICE's Juvenile Coordinators to provide supplemental reporting to the court that the FSA does not require. *Id.* at 13–14. The August 15 Order thus functions as an order granting an injunction.

Plaintiffs incorrectly contend that the Court's decision in *Flores v. Barr*, 934 F.3d at 912, requires dismissal here. Motion 13–14. In *Flores v. Barr*, the underlying district court order was unusual in that it mostly did not direct the government to take specific steps; it merely noted whether Plaintiffs' motion to enforce was "granted" or "denied." *See Flores v. Sessions*, 394 F. Supp. 3d at 1072–73. On appeal, the parties agreed that the Court had jurisdiction over the appeal only if the district court order modified the FSA. *Flores v. Barr*, 934 F.3d at 914 ("The parties agree that the district court's Order did not grant, continue, refuse, dissolve, or refuse to dissolve an injunction."). Holding that the district court did not modify the FSA, the Court dismissed the appeal. *Id.* Notably, the Court in that appeal did not consider whether 28 U.S.C. § 1291 supplied a basis for jurisdiction. *Flores v. Garland*, 3 F.4th at 1150–51 (discussing *Flores v. Barr*).

The August 15 Order is not like the order considered in *Flores v. Barr*. The district court here did not simply note whether Plaintiffs' motion to enforce was

granted or denied. Rather, the district court ordered CBP and DHS to take actions. August 15 Order 14–15. While the district court repeated some of the FSA's requirements, it also added specific new mandates. *See, e.g.*, *id.* at 14 ("If prompt and continuous effort toward release and reunification requires transfer to another facility, CBP must effect any such transfer expeditiously."); *id.* (DHS "shall not 'restart the clock' when it transfers a class member from one unlicensed, secure facility to another, regardless of which DHS component agency operates the facility."); *id.* at 12 n.10 (ordering that CBP shall make reasonable efforts to turn off some of the lights to darken the pod areas in CBP's El Paso and San Diego Sectors). In this respect, the August 15 Order is like the district court order in *Flores v. Lynch*, 828 F.3d at 905. *See Flores v. Lynch*, 212 F. Supp. 3d 907, 916–17 (C.D. Cal. 2015).

Plaintiffs argue that the August 15 Order did not modify the FSA, but Plaintiffs overlook that the August 15 Order itself is an appealable injunction. Because the August 15 Order acts as an injunction, this Court has jurisdiction.

CONCLUSION

For these reasons, this Court should deny Plaintiffs' motion to dismiss.

Dated: March 16, 2026

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General,
Civil Division

WILLIAM C. SILVIS
Assistant Director

MICHAEL A. CELONE
KATELYN MASETTA-ALVAREZ
CHRISTINA PARASCANDOLA
Senior Litigation Counsel

/s/ Joshua C. McCroskey
JOSHUA C. MCCROSKEY
Trial Attorney
U.S. Department of Justice
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
(202) 305-1540
Joshua.C.McCroskey@usdoj.gov

Attorneys for Defendants-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I certify that Appellants' foregoing response complies with the type-volume limitation for papers submitted under Rule 27(d)(2)(A) and Ninth Cir. R. 27-1. Appellants' response is 15 pages and contains 3,705 words, with no words contained in any visual images, and its size and typeface comply with Rule 27(d)(1)(E).

DATED: March 16, 2026

/s/ Joshua C. McCroskey
JOSHUA C. MCCROSKEY