*FLORES v. SESSIONS*

DETENTION SITE INSPECTIONS &

CLASS MEMBER INTERVIEWS

PROTOCOL

FOR TEAM MEMBERS AND COORDINATORS

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Center for Human Rights and Constitutional Law

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## Team Coordinator Overview

**The Day of the Inspection:** Team Coordinators will be responsible for coordinating with team members to ensure they all arrive in a timely manner to the facility they will be visiting.

**Upon Entry to a Facility:** the team coordinator would identify the people with them to Government counsel. They would speak with whoever was present to coordinate the visit for the Government. We may have already received or they might give at that time a list of all class members at that facility.

**During Class Member Interviews:** Team Coordinators will be in charge of delegating class members and/or their mother’s to team members for interviews, helping to decide whether team members should draft declarations based on completed questionnaires, receiving draft declarations from team members and printing them for further review by team members with class members or their parents, reprinting if changes are made, collecting signed declarations and insuring that for each an interpreter has signed certifying to having translated the declaration before it was executed. Interviews normally take 1 -2 hours per person.

**During Facility Inspections:** Team Coordinators will be responsible for attempting to collect contact information for all Government agents dealt with and collecting team member notes regarding conditions of the facilities

**After the Site Visit:** Team Coordinators will be responsible for scanning and emailing all declarations collected during the site visit and reporting to class counsel any conditions that would violate the Flores Settlement Agreement.

## What to Bring

Team Coordinator: Team Coordinators should have:

* Contact sheet for all their team members;
* a laptop (if visiting an ICE facility)
* a portable printer (to be provided by CHRCL) (if visiting an ICE facility)

If visiting an ICE facility, all team members should bring laptops and power cords and at least one thumb drive. The thumb drive will be used to transfer draft and final declarations to the Team Coordinator to print for sigatures.

For CBP facilities, all team members should bring pads of paper, pens/pencils, and copies of the interview questionnaire and template declaration.

## ICE and CBP Policies on Electronics

Volunteers assisting in site visits will have to conduct interviews and inspections in accordance with the existing procedures at the facility they are visiting. Paragraph 32 of the Flores Settlement states that, “[a]ll visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question.” Regardless of whether you will be assisting with site visits to CBP or ICE facilities, volunteers should leave cell phones, and cameras in their vehicles. Do not attempt to bring cell phones into facilities. People assisting with site visits will go through a metal detector. Volunteers may be able to bring in books, papers, pens/pencils, laptops, portable printers and charging cables depending on the type of facility.

ICE facilities allow the use of laptops and printers when interviewing clients. However, those who bring laptops will likely not have internet access.

CBP facilities do not allow laptops so volunteers will have to use paper and pens. People should have letter sized paper pads with lined paper. We will provide papers to team coordinators to distribute to their team.

## ICE/CBP Facility Inspections Pursuant to the Flores Settlement Agreement

Generally, paragraphs 32 and 33 and Exhibit 4 of the Flores Settlement Agreement outline the scope and procedures for conducting interviews with class members and inspections of DHS facilities used in the detention of class members. The full Settlement can be viewed [through this link](https://drive.google.com/file/d/1BogK8S-N02ym65diPjUJswknax66p6ys/view?usp=sharing). Paragraph 33 of the Settlement outlines facility inspections of licensed facilities in which minors are placed, including ICE and CBP facilities:

In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs’ counsel may request access to any licensed program’s facility in which a minor has been placed ... Plaintiffs’ counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs’ counsel by conveying the request to the facility’s staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 … except as may be otherwise agreed by Plaintiffs’ counsel and the facility’s staff.

Settlement ¶33.

Exhibit 4 of the Settlement further states:

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit. Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time. All visits with class members shall take place during normal business hours. No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders. The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare. No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

Settlement, Exhibit 4.

In most inspections, a DOJ lawyer has been present on behalf of the Government and that person's business card and information should be obtained by the team coordinator and included in their post-inspection report to class counsel.

The Government's counsel will typically introduce the inspection team to the officer in charge of the facility or the assistant to that person (facility administrator). The team coordinator should get that person's name and title and, if possible, their contact information. Government's counsel may advise the facility administrator not to share contact information with the team coordinator. There is little we can do if the facility administrator declines to share their contact information. The facility administrator will normally escort the inspection team to all the areas of the facility, including for example living areas, eating areas, recreational areas, sick bay, etc. Team members may take notes but photographs are not permitted.

In prior inspections, government counsel has not objected to brief discussions with detainees or with class members. Exhibit 4 of the Settlement states that the purpose of site visits is to “interview class members ***and staff*** and to observe conditions at the facility.” Settlement, Exhibit 4 (emphasis added). Despite the language of the Settlement it is our experience that Government counsel present gets very uncomfortable when we initiate discussion with facility staff and generally tries to cut that off as promptly as possible. Nevertheless, inspection team members should feel free to take handwritten notes of questions and write down responses as appropriate. If so, the team member should let the team coordinator know of the person, the question, and their response.

Team members should also make note of any conditions they believe may be in violation of the settlement. With regards to conditions of detention, the Compliance Order of June 27, 2017 is limited to Rio Grande facilities[[1]](#footnote-1) but all ICE and CBP facilities are required to comply with the settlement.

## Standards to Look Out For

The Flores Settlement Agreement sets the minimum standards for the treatment and processing of both accompanied and unaccompanied minors in DHS custody. Paragraph 12A of the Agreement provides that class members shall be held in “safe and sanitary” facilities following arrest. Such CBP facilities, where class members spend one to several nights before transfer to a family residential center (accompanied minors) or to the Office of Refugee Settlement (unaccompanied minors), must “provide access to toilets and sinks, drinking water and food as appropriate, . . . [and] adequate temperature control and ventilation.” Agreement ¶ 12; see also 6 U.S.C. § 279. The conditions at these facilities must also be “consistent with the INS’s concern for the particular vulnerability of minors.” Agreement ¶ 12A. Order at 7.

Additionally, the CBP National Standards on Transport, Escort, Detention, and Search (“TEDS Manual”), lays out standards for the treatment of class members in detention. According to the CBP’s own standards:

* Minors “will be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot.” TEDS Manual § 5.6.
* The food provided “must be in edible condition (not frozen, expired, or spoiled)” and minors “must have regular access to snacks, milk, and juice.” Id. §§ 4.13, 5.6.
* “Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees.” TEDS Manual § 4.14.
* "All facilities or hold rooms used to hold detainees must be regularly and professionally cleaned and sanitized”;
* Detainees “must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs”;
* “Detainees using the restroom will have access to toiletry items, such as toilet paper and sanitary napkins,” and, whenever “operationally feasible,” soap; and minors would be provided with clean bedding. TEDS Manual §§ 4.6, 4.11, 4.12.
* CBP agents should enable detainees to shower where they are available, “perform bodily functions, and change clothing without being viewed by staff of the opposite gender . . . .” Id. § 4.6.
* CPB standards require Border Patrol officers to “maintain hold room temperature within a reasonable and comfortable range for both detainees and officers/agents,” TEDS Manual § 4.7.

As the Ninth Circuit has acknowledged, “[t]he [Flores] Settlement creates a presumption in favor of releasing minors and requires placement of those not released in licensed, non-secure facilities that meet certain standards.” Flores, 828 F.3d at 901 (emphasis added). Specifically, the Agreement requires ICE to (1) “release a minor from its custody without unnecessary delay” to a parent, a legal guardian, or other qualified adult custodian, except where the detention of the minor is required “either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor’s safety or that of others”; and (2) “[u]pon taking a minor into custody, . . . [to] make and record prompt and continuous efforts on its part toward family reunification and the release of the minor . . . .” Agreement ¶¶ 14, 18. Paragraphs 19 and 23 go on to state that when ICE does not release a minor pursuant to Paragraph 14, the minor shall be placed in a non-secure, licensed facility. See July 24, 2015 Order, 212 F. Supp. 3d at 877.

Team members who observe violations should share them with the team coordinator. The coordinator will consolidate the observations of team members and share with class counsel promptly after the inspection.

## Attorney-Client Interviews

Paragraph 32 of the Settlement states that:

Plaintiffs’ counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location… Upon Plaintiffs’ counsel’s arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs’ counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs’ counsel, Plaintiffs’ counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs’ counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs’ counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility. Nothing in Paragraph 32 shall affect a minor’s right to refuse to meet with Plaintiffs’ counsel. Further, the minor’s parent or legal guardian may deny Plaintiffs’ counsel permission to meet with the minor.

Settlement ¶ 32.

## Conducting the Interview

During previous visits we have been provided a common area in which to conduct interviews. The Government usually agrees to post a notice about our visits so that class members and their mothers are willing to be interviewed shall identify to someone in the facility. On the other hand, the team coordinator. In any event the team coordinator can speak to any class member and his or her accompanying parent on the list provided by the Government of class members currently detained at that facility.

On several prior visits, the government has been willing to post notices of the visit usually on the date of the visit so that people could tell somebody at the facility if they want to be interviewed.

It is helpful if an initial group meeting can be held with all the class members and their accompanying parents  prior to the commencement of individual interviews so that the purpose of the interviews can be explained to them. Even if that does not happen, at the beginning of all individual interviews we explain why the interview is taking place. Please see the document "Explaining the Case to Class Members"

....Explain to people that I am going to be asking you a bunch of question and write your responses. I may then draft a short declaration for you to review and sign. The attorneys may share the declaration with the Judge in the case to explain your  or your child's situation to the Judge.......The purpose of these visits is to determine of the Government is complying with the court order. Do you have any questions

Team members will be divided up so that all team members team members are simultaneously interviewing class members or their accompanying parent. Generally, we often interview a parent without the class member being present because the parent can adequately describe the experiences of the class member and their apprehension. We generally do not interview younger children. We have not gathered declarations from children younger than about 12 years old. Children about 13 or older are often able to accurately describe their experiences in their own words. Interviewers should be aware that in many cases mothers would prefer to be interviewed not in the presence of their children so as not to re-traumatize them over recent bad experiences.

## Gathering Initial Information

Please use the form provided at [INSERT] to gather information during your interview. If it appears appropriate to do so, the information gathered on this form will be used by the interviewer to draft a declaration at the conclusion of the interview.

Record all responses accurately and in sufficient detail to use in a declaration if you believe a declaration may be appropriate. Interviewers should obtain details about policies or practices that appear to violate the Settlement.

Upon completion of the confidential interview form (CIF) the attorney may consult with others on the team and team coordinator to make a decision whether a declaration should be prepared.

## Preparing Declarations

Using the data gathered on the CIF, and using the declaration template the interviewer will prepare a draft declaration and name it with the date of the interview and the name of the person interviewed followed by the word declaration. Upon completion of the draft declaration, it should be saved on the interviewer’s laptop and then copied on to a thumb drive. The thumb drive should then be provided to the team coordinator who will print the draft declaration. The team coordinator should them review it and make corrections as necessary before printing. The printed draft declaration should then be interpreted to the declarant and any changes or corrections made to the document by the team member. The team member will answer any questions the declarant may have and ensure that the declaration is understood by declarant and that it's content is accurate.

If any changes are made, the team member will then save the revised declaration then again provide it on a thumb drive to the team coordinator for printing. The team coordinator will again review the declaration for printing. The declaration will then be printed by the team coordinator and interpreted to the declarant before it is signed by both the declarant and the interpreter. All declarations should be sent to class counsel promptly after the site visit.

During the pre-visit conference calls that will be scheduled prior to site visits, we will further discuss the process of gathering declarations.

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1. The Court notes that the overwhelming majority of them come from detainees who stayed at CBP stations located within the Rio Grande Valley Sector (“RGV Sector”)… As such, the Court limits its discussion of conditions and the scope of any resultant monitoring to those CBP facilities located within the RGV Sector, rather than the CBP facilities at the other sectors. Order at 7-8. [↑](#footnote-ref-1)