*Pierce v. Society of Sisters*

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| ***Pierce v. Society of Sisters*** | |
| [Seal of the United States Supreme Court](https://en.wikipedia.org/wiki/File:Seal_of_the_United_States_Supreme_Court.svg)  [**Supreme Court of the United States**](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) | |
| **Argued March 16–17, 1925 Decided June 1, 1925** | |
| **Full case name** | *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary* |
| **Citations** | 268 [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [510](https://supreme.justia.com/us/268/510/case.html) ([*more*](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_268))  45 S. Ct. 571; 69 [L. Ed.](https://en.wikipedia.org/wiki/L._Ed.) 1070; 1925 [U.S. LEXIS](https://en.wikipedia.org/wiki/U.S._LEXIS) 589; 39 [A.L.R.](https://en.wikipedia.org/wiki/A.L.R.) 468 |
| **Case history** | |
| **Prior** | 296 F. 928 ([D. Ore.](https://en.wikipedia.org/wiki/United_States_District_Court_for_the_District_of_Oregon) 1924) |
| **Holding** | |
| The [Oregon Compulsory Education Act](https://en.wikipedia.org/wiki/Oregon_Compulsory_Education_Act) that required attendance at public schools, forbidding private school attendance, was held unconstitutional under the [Due Process](https://en.wikipedia.org/wiki/Due_Process) Clause of the Fourteenth Amendment. | |
| **Court membership** | |
| **Chief Justice**  [William H. Taft](https://en.wikipedia.org/wiki/William_Howard_Taft)  **Associate Justices**  [Oliver W. Holmes Jr.](https://en.wikipedia.org/wiki/Oliver_Wendell_Holmes_Jr.) **·** [Willis Van Devanter](https://en.wikipedia.org/wiki/Willis_Van_Devanter) [James C. McReynolds](https://en.wikipedia.org/wiki/James_Clark_McReynolds) **·** [Louis Brandeis](https://en.wikipedia.org/wiki/Louis_Brandeis) [George Sutherland](https://en.wikipedia.org/wiki/George_Sutherland) **·** [Pierce Butler](https://en.wikipedia.org/wiki/Pierce_Butler_(justice)) [Edward T. Sanford](https://en.wikipedia.org/wiki/Edward_Terry_Sanford) **·** [Harlan F. Stone](https://en.wikipedia.org/wiki/Harlan_F._Stone) | |
| **Case opinion** | |
| **Majority** | McReynolds, joined by *unanimous* |
| **Laws applied** | |
| Compulsory Education Act (Act), 1922 Or. Laws § 5259; [U.S. Const. amend. XIV.](https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution) | |

***Pierce v. Society of Sisters***, 268 U.S. 510 (1925), was an early 20th-century [United States Supreme Court](https://en.wikipedia.org/wiki/United_States_Supreme_Court) decision striking down an Oregon statute that [required all children to attend public school](https://en.wikipedia.org/wiki/Compulsory_public_education_in_the_United_States).[[1]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-1) The decision significantly expanded coverage of the [Due Process Clause](https://en.wikipedia.org/wiki/Due_Process_Clause) in the [Fourteenth Amendment to the United States Constitution](https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution) to recognize personal civil liberties. The case has been cited as a precedent in more than 100 Supreme Court cases, including [*Roe v. Wade*](https://en.wikipedia.org/wiki/Roe_v._Wade), and in more than 70 cases in the [courts of appeals](https://en.wikipedia.org/wiki/United_States_court_of_appeals).



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Background[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=1)]

After World War I, some states concerned about the influence of immigrants and foreign values looked to public schools for help. The states drafted laws designed to use schools to promote a common American culture.[[2]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-2)

On November 7, 1922, under [Oregon Governor](https://en.wikipedia.org/wiki/Governor_of_Oregon) [Walter M. Pierce](https://en.wikipedia.org/wiki/Walter_M._Pierce), the voters of [Oregon](https://en.wikipedia.org/wiki/Oregon) passed an [initiative](https://en.wikipedia.org/wiki/Initiative) amending [Oregon Law](https://en.wikipedia.org/wiki/Oregon_Revised_Statutes) Section 5259, the [Compulsory Education Act](https://en.wikipedia.org/wiki/Oregon_Compulsory_Education_Act). The citizens' initiative was primarily aimed at eliminating [parochial schools](https://en.wikipedia.org/wiki/Parochial_school), including Catholic schools.[[3]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-3)[[4]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-pierce-4)[[5]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-oregon-5)

The Compulsory Education Act, before amendment, had required Oregon children between eight and sixteen years of age to attend [public school](https://en.wikipedia.org/wiki/Public_school_(government_funded)). There were several exceptions incorporated in this Act:

1. Children who were mentally or physically unable to attend school
2. Children who had graduated from eighth grade
3. Children living more than a specified distance by road from the nearest school
4. Children being [home-schooled](https://en.wikipedia.org/wiki/Homeschooling) or [tutored](https://en.wikipedia.org/wiki/Tutor) (subject to monitoring by the local [school district](https://en.wikipedia.org/wiki/School_district))
5. Children attending a state-recognized [private school](https://en.wikipedia.org/wiki/Private_school)

The Act was amended by the 1922 initiative,[[6]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-6) which would have taken effect on September 1, 1926, eliminated the exception for attendees of private schools. Private schools viewed this as an attack on their right to enroll students and do business in the state of Oregon. The act was promoted by groups such as the [Knights of Pythias](https://en.wikipedia.org/wiki/Knights_of_Pythias), the Federation of Patriotic Societies, and the Oregon Good Government League, as well as organizations that embodied anti-Catholic sentiment at the time such as the [Orange Order](https://en.wikipedia.org/wiki/Orange_Order) and the [Ku Klux Klan](https://en.wikipedia.org/wiki/Ku_Klux_Klan).[[7]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-FOOTNOTEKauffman1982282-7)

Two sorts of opposition to the law emerged. One was from [nonsectarian](https://en.wikipedia.org/wiki/Nonsectarian) private schools, such as the [Hill Military Academy](https://en.wikipedia.org/wiki/Hill_Military_Academy), which were primarily concerned with the loss of their [revenue](https://en.wikipedia.org/wiki/Revenue). This loss was felt almost immediately, as parents began withdrawing their children from private schools in the belief that these would soon cease to exist. The other was from [religious](https://en.wikipedia.org/wiki/Religious) private schools, such as those run by the [Society of Sisters of the Holy Names of Jesus and Mary](https://en.wikipedia.org/wiki/Sisters_of_the_Holy_Names_of_Jesus_and_Mary), which were concerned about the right of parents to send their children to parochial schools. [ACLU](https://en.wikipedia.org/wiki/ACLU) Associate Director [Roger Nash Baldwin](https://en.wikipedia.org/wiki/Roger_Nash_Baldwin), a personal friend of [Luke E. Hart](https://en.wikipedia.org/wiki/Luke_E._Hart), the then–Supreme Advocate and future [Supreme Knight of the Knights of Columbus](https://en.wikipedia.org/wiki/Supreme_Knight_of_the_Knights_of_Columbus), offered to join forces with the Knights to challenge the law. The Knights of Columbus pledged an immediate $10,000 to fight the law and any additional funds necessary to defeat it.[[8]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-FOOTNOTEKauffman1982283-8)

Facts of the case[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=2)]

The Sisters of the Holy Names and Hill Military Academy separately sued [Walter Pierce](https://en.wikipedia.org/wiki/Walter_M._Pierce), the [governor of Oregon](https://en.wikipedia.org/wiki/Governor_of_Oregon), along with [Isaac H. Van Winkle](https://en.wikipedia.org/wiki/Isaac_Homer_Van_Winkle), the [state attorney general](https://en.wikipedia.org/wiki/Oregon_Attorney_General), and Stanley Myers, [district attorney](https://en.wikipedia.org/wiki/District_attorney) of [Multnomah County](https://en.wikipedia.org/wiki/Multnomah_County,_Oregon) (of which [Portland](https://en.wikipedia.org/wiki/Portland,_Oregon) is the [county seat](https://en.wikipedia.org/wiki/County_seat), and where both the Sisters and the Academy were headquartered). The two cases, heard and decided together, were slanted along slightly different lines. The Sisters' case alleged that "the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession." (268 U.S. 510, 532).

The Sisters' case rested only secondarily on the assertion that their business would suffer based on the law. That is, its primary allegation was that the State of [Oregon](https://en.wikipedia.org/wiki/Oregon) was violating specific [First Amendment](https://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution) rights (such as the right to freely practice one's [religion](https://en.wikipedia.org/wiki/Religion)). Their case alleged only secondarily that the law infringed on [Fourteenth Amendment](https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution) rights regarding protection of property (namely, the school's [contracts](https://en.wikipedia.org/wiki/Contracts) with the families).

The Hill Military Academy, on the other hand, proposed this as their only [allegation](https://en.wikipedia.org/wiki/Allegation):

Appellee Hill Military Academy .... owns considerable real and personal property, some useful only for school purposes. The business and incident good will are very valuable. In order to conduct its affairs, long time contracts must be made for supplies, equipment, teachers, and pupils. Appellants, law officers of the state and county, have publicly announced that the Act of November 7, 1922, is valid and have declared their intention to enforce it. By reason of the statute and threat of enforcement appellee's business is being destroyed and its property depreciated .... The Academy's bill states the foregoing facts and then alleges that the challenged act contravenes the corporation's rights guaranteed by the Fourteenth Amendment.

— [*Pierce, Governor of Oregon, et al. v. Hill Military Academy*](https://en.wikipedia.org/wiki/Hill_Military_Academy)*,*[*companion case*](https://en.wikipedia.org/wiki/Companion_case)*, (268 U.S. 510, 532–533)*

The schools won their case before a three-judge panel of the Oregon District Court, which granted an [injunction](https://en.wikipedia.org/wiki/Injunction) against the Act. The defendants appealed their case directly to the [Supreme Court of the United States](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States). The Court heard the case on 16 and 17 March 1925.

Arguments[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=3)]

The [appellants](https://en.wikipedia.org/wiki/Appellant)' lawyers, Willis S. Moore for the state and [district attorneys](https://en.wikipedia.org/wiki/District_attorney), and George E. Chamberlain and Albert H. Putney, for the governor, argued that the state had an overriding interest to oversee and control the providers of [education](https://en.wikipedia.org/wiki/Education) to the children of Oregon. One of them even went so far as to call Oregonian students "the State's children". They contended that the State's interest in overseeing the education of citizens and future voters was so great that it overrode the parents' right to choose a provider of education for their child, and the right of the child to influence the parent in this decision. With respect to the appellees' claims that their loss of business infringed on [Fourteenth Amendment](https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution) rights, the appellants' lawyers countered that since [appellees](https://en.wikipedia.org/wiki/Appellee) were [corporations](https://en.wikipedia.org/wiki/Corporations), not [individuals](https://en.wikipedia.org/wiki/Individuals), the Fourteenth Amendment did not directly apply to them. In addition, they asserted, the [revenues](https://en.wikipedia.org/wiki/Revenue) of a corporation were not [property](https://en.wikipedia.org/wiki/Property), and thus did not fall under the [due process](https://en.wikipedia.org/wiki/Due_process) clause of the [Fourteenth Amendment](https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution). Finally, they argued that since the [law](https://en.wikipedia.org/wiki/Law) was not scheduled to take effect until September of the following year, the [suits](https://en.wikipedia.org/wiki/Lawsuit) were brought prematurely — to protect against a possible coming danger, not to rectify a current problem.

The [appellees](https://en.wikipedia.org/wiki/Appellee), represented by [Hall S. Lusk](https://en.wikipedia.org/wiki/Hall_S._Lusk), replied that they were not contesting the right of the state to monitor their children's [education](https://en.wikipedia.org/wiki/Education), only its right to absolute control of their choice of [educational system](https://en.wikipedia.org/wiki/Educational_system):

*No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.* (268 U.S. 510, 534)

Further, they replied that although the state had a powerful interest in their children's education, the interest was not so strong as to require the state's [mandate](https://en.wiktionary.org/wiki/mandate) of an educational choice of this sort. Barring a great emergency, they claimed, the state had no right to require their children to attend, or not to attend, any particular sort of school.

Decision[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=4)]

The Court deliberated for about 10 weeks before issuing their decision on June 1, 1925. The Court unanimously upheld the lower court's decision, and the injunction against the amended Act.

[Associate Justice](https://en.wikipedia.org/wiki/Associate_Justice_of_the_Supreme_Court_of_the_United_States) [James Clark McReynolds](https://en.wikipedia.org/wiki/James_Clark_McReynolds) wrote the opinion of the Court. He stated that children were not "the mere creature[s] of the state" (268 U.S. 510, 535), and that, by its very nature, the traditional American understanding of the term *liberty* prevented the state from forcing students to accept instruction only from [public schools](https://en.wikipedia.org/wiki/Public_school_(government_funded)). He stated that this [responsibility](https://en.wikipedia.org/wiki/Moral_responsibility) belonged to the child's parents or [guardians](https://en.wikipedia.org/wiki/Legal_guardian), and that the ability to make such a choice was a "liberty" protected by the Fourteenth Amendment.

With respect to the discussion of whether the schools' contracts with parents constituted property protected by the Fourteenth Amendment, McReynolds agreed that since the schools were corporations, they were not technically entitled to such protections. However, he continued,

*they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action.* (268 U.S. 510, 535)

McReynolds also agreed that businesses are not generally entitled to protection against loss of business subsequent to "exercise of proper power of the state" (268 U.S. 510, 535). However, citing a number of relevant [business](https://en.wikipedia.org/wiki/Business_law) and [property law](https://en.wikipedia.org/wiki/Property_law) cases, he concluded that the passage of the revised Act was not "proper power" in this sense, and constituted unlawful interference with the freedom of both schools and families.

In response to the claims by the [appellants](https://en.wikipedia.org/wiki/Appellant) that the suits were premature, attempting to prevent rather than to rectify a problem, Justice McReynolds simply referred them to the [evidence](https://en.wikipedia.org/wiki/Evidence_(law)) provided by the appellees showing that the schools were already suffering falling enrollments.

Legacy[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=5)]

*Main article:*[*Substantive due process*](https://en.wikipedia.org/wiki/Substantive_due_process)

This decision marked the start of the [Supreme Court](https://en.wikipedia.org/wiki/United_States_Supreme_Court)'s recognition that [due process](https://en.wikipedia.org/wiki/Due_process) protected individual liberties; specifically, the Court recognized consciously that the [Fourteenth Amendment](https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution) applies to entities other than individuals, and recognized the scope of liberties or rights which it protected included personal civil liberties. Over the course of the next half century, that list would come to include the right to marry, to have children, to marital privacy or to have an [abortion](https://en.wikipedia.org/wiki/Abortion).

Because the statute struck down by *Pierce v. Society of Sisters* was primarily intended to eliminate [parochial schools](https://en.wikipedia.org/wiki/Parochial_schools), Justice Anthony Kennedy has suggested that the case could have been decided on First Amendment grounds.[[9]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-9) Indeed, as mentioned, that was the primary legal argument advanced by the lawyers representing the Sisters. Seven days later, in the case of [*Gitlow v. New York*](https://en.wikipedia.org/wiki/Gitlow_v._New_York), the Supreme Court confirmed that the First Amendment was applicable against the states.

The right of parents to control their children's education without state interference became a "cause célèbre" following the case, and religious groups proactively defended this right from state encroachment. [R. Scott Appleby](https://en.wikipedia.org/wiki/R._Scott_Appleby) wrote in the [*American Journal of Education*](https://en.wikipedia.org/wiki/American_Journal_of_Education) that this led to a "remarkably liberal" education policy wherein religious schools are not subjected to state accreditation but only to "minimal state health and safety" laws.[[10]](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_note-10)

See also[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=6)]

* [List of Oregon ballot measures](https://en.wikipedia.org/wiki/List_of_Oregon_ballot_measures)

References[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=7)]

**Footnotes**[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=8)]

* 1. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-1) *Pierce v. Society of Sisters*, [268](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_268) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [510](https://supreme.justia.com/cases/federal/us/268/510/) (1925).
  2. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-2) [*"Why We Still Need Public Schools"*](https://files.eric.ed.gov/fulltext/ED503799.pdf)*(PDF). Center on Education Policy. p. 9. Retrieved 27 September 2019.*
  3. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-3) *Howard, J. Paul (2001).*[*"Cross-Border Reflections, Parents' Right to Direct Their Children's Education Under the U.S. and Canadian Constitutions"*](https://web.archive.org/web/20081029102538/http:/www.shibleyrighton.com/pdf/Howard/CEAArticleApril2001.pdf)*(PDF). Education Canada.****41****(2): 36–37. Archived from*[*the original*](http://www.shibleyrighton.com/pdf/Howard/CEAArticleApril2001.pdf)*(PDF) on 2008-10-29.*
  4. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-pierce_4-0) [268](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_268) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [510](https://supreme.justia.com/cases/federal/us/268/510/) (1925)
  5. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-oregon_5-0) [*"Pierce v. Society of Sisters"*](https://www.oyez.org/cases/1901-1939/1924/1924_583)*. University of Chicago Kent School of Law. Retrieved 28 June 2013.*
  6. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-6) See the [text](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=268&invol=510#t1) of the amended Act at FindLaw.com (accessed 20 December 2005)
  7. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-FOOTNOTEKauffman1982282_7-0) [Kauffman 1982](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#CITEREFKauffman1982), p. 282.
  8. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-FOOTNOTEKauffman1982283_8-0) [Kauffman 1982](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#CITEREFKauffman1982), p. 283.
  9. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-9) [*Troxel v. Granville*](https://en.wikipedia.org/wiki/Troxel_v._Granville), [530](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_530) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [57, 95](https://supreme.justia.com/cases/federal/us/530/57/#95) (2000): "*Pierce* and *Meyer*, had they been decided in recent times, may well have been grounded upon First Amendment principles protecting freedom of speech, belief, and religion" (Kennedy, J., dissenting).
  10. [**^**](https://en.wikipedia.org/wiki/Pierce_v._Society_of_Sisters#cite_ref-10) *Appleby, R. Scott (November 1989). "Keeping Them out of the Hands of the State: Two Critiques of Christian Schools".*[*American Journal of Education*](https://en.wikipedia.org/wiki/American_Journal_of_Education)*.****98****(1): 65.*[*ISSN*](https://en.wikipedia.org/wiki/ISSN_(identifier))[*0195-6744*](https://www.worldcat.org/issn/0195-6744)*.*[*JSTOR*](https://en.wikipedia.org/wiki/JSTOR_(identifier))[*1084931*](https://www.jstor.org/stable/1084931)*.*

**Bibliography**[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=9)]

*Kauffman, Christopher J. (1982).*[*Faith and Fraternalism: The History of the Knights of Columbus, 1882–1982*](https://archive.org/details/faithfraternalis00kauf)*. Harper and Row.*[*ISBN*](https://en.wikipedia.org/wiki/ISBN_(identifier))[*978-0-06-014940-6*](https://en.wikipedia.org/wiki/Special:BookSources/978-0-06-014940-6)*.*

Further reading[[edit](https://en.wikipedia.org/w/index.php?title=Pierce_v._Society_of_Sisters&action=edit&section=10)]

* Abrams, Paula. (2009). [*Cross Purposes: Pierce v. Society of Sisters and the Struggle over Compulsory Public Education.*](http://press.umich.edu/titleDetailDesc.do?id=192896) University of Michigan Press. [ISBN](https://en.wikipedia.org/wiki/ISBN_(identifier)) [978-0-472-11700-0](https://en.wikipedia.org/wiki/Special:BookSources/978-0-472-11700-0).
* *Alley, Robert S. (1999).*[*The Constitution & Religion: Leading Supreme Court Cases on Church and State*](https://archive.org/details/constitutionreli0000unse/page/41)*. Amherst, NY: Prometheus Books. pp.*[*41–44*](https://archive.org/details/constitutionreli0000unse/page/41)*.*[*ISBN*](https://en.wikipedia.org/wiki/ISBN_(identifier))[*1-57392-703-1*](https://en.wikipedia.org/wiki/Special:BookSources/1-57392-703-1)*.*
* *Bernstein, David (2011).*[*Rehabilitating Lochner: Defending Individual Rights against Progressive Reform. Chapter 6*](https://archive.org/details/activelibertyint00brey)*. Chicago: University of Chicago Press.*[*ISBN*](https://en.wikipedia.org/wiki/ISBN_(identifier))[*978-0-307-26313-1*](https://en.wikipedia.org/wiki/Special:BookSources/978-0-307-26313-1)*.*
* Donald P. Kommers and Michael J. Wahoske, eds. "Freedom and Education: Pierce V. Society of Sisters Reconsidered," (Center for Civil Rights, University of Notre Dame Law School, 1978) 111 pages

*Moore v. City of East Cleveland*

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| ***Moore v. City Of East Cleveland, Ohio*** | |
| [Seal of the United States Supreme Court](https://en.wikipedia.org/wiki/File:Seal_of_the_United_States_Supreme_Court.svg)  [**Supreme Court of the United States**](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) | |
| **Argued November 2, 1976 Decided May 31, 1977** | |
| **Full case name** | *Inez Moore, Appellant, v. City of East Cleveland, Ohio* |
| **Citations** | 431 [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [494](https://supreme.justia.com/us/431/494/case.html) ([*more*](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_431))  97 S. Ct. 1932; 52 [L. Ed. 2d](https://en.wikipedia.org/wiki/L._Ed._2d) 531; 1977 [U.S. LEXIS](https://en.wikipedia.org/wiki/U.S._LEXIS) 17 |
| **Holding** | |
| An East Cleveland, Ohio zoning ordinance that prohibited a grandmother from living with her grandchild was unconstitutional | |
| **Court membership** | |
| **Chief Justice**  [Warren E. Burger](https://en.wikipedia.org/wiki/Warren_E._Burger)  **Associate Justices**  [William J. Brennan Jr.](https://en.wikipedia.org/wiki/William_J._Brennan_Jr.) **·** [Potter Stewart](https://en.wikipedia.org/wiki/Potter_Stewart) [Byron White](https://en.wikipedia.org/wiki/Byron_White) **·** [Thurgood Marshall](https://en.wikipedia.org/wiki/Thurgood_Marshall) [Harry Blackmun](https://en.wikipedia.org/wiki/Harry_Blackmun) **·** [Lewis F. Powell Jr.](https://en.wikipedia.org/wiki/Lewis_F._Powell_Jr.) [William Rehnquist](https://en.wikipedia.org/wiki/William_Rehnquist) **·** [John P. Stevens](https://en.wikipedia.org/wiki/John_Paul_Stevens) | |
| **Case opinions** | |
| **Plurality** | Powell, joined by Brennan, Marshall, Blackmun |
| **Concurrence** | Brennan, joined by Marshall |
| **Concurrence** | Stevens |
| **Dissent** | Burger |
| **Dissent** | Stewart, joined by Rehnquist |
| **Dissent** | White |
| **Laws applied** | |
| [U.S. Const. amend. XIV](https://en.wikipedia.org/wiki/Fourteenth_Amendment_of_the_United_States_Constitution) | |

***Moore v. City of East Cleveland***, 431 U.S. 494 (1977), was a [United States Supreme Court](https://en.wikipedia.org/wiki/United_States_Supreme_Court) case in which the Court ruled that an [East Cleveland, Ohio](https://en.wikipedia.org/wiki/East_Cleveland,_Ohio) [zoning ordinance](https://en.wikipedia.org/wiki/Zoning_ordinance) that prohibited a grandmother from living with her grandchild was unconstitutional. Writing for a plurality of the Court, [Justice](https://en.wikipedia.org/wiki/Associate_Justice_of_the_United_States_Supreme_Court) [Lewis F. Powell, Jr.](https://en.wikipedia.org/wiki/Lewis_F._Powell,_Jr.) ruled that the East Cleveland zoning ordinance violated [substantive due process](https://en.wikipedia.org/wiki/Substantive_due_process) because it intruded too far upon the "sanctity of the family."[[1]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-1) Justice [John Paul Stevens](https://en.wikipedia.org/wiki/John_Paul_Stevens) wrote an opinion concurring in the judgment in which he agreed that the ordinance was unconstitutional, but he based his conclusion upon the theory that the ordinance intruded too far upon the Moore's ability to use her property "as she sees fit."[[2]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-Moore520-2) Scholars have recognized *Moore* as one of several Supreme Court decisions that established "a constitutional right to family integrity."[[3]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-Frankel311-3)



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Background[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=1)]

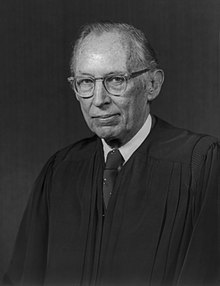
**East Cleveland zoning ordinance**[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=2)]

In 1966, [East Cleveland](https://en.wikipedia.org/wiki/East_Cleveland,_Ohio), [Ohio](https://en.wikipedia.org/wiki/Ohio) passed a [zoning ordinance](https://en.wikipedia.org/wiki/Zoning_ordinance) that limited the occupancy of a housing unit to "members of a single family."[[4]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-4) The ordinance contained "an unusual and complicated" definition of "family," which only recognized a few narrowly defined categories of individuals as a family unit.[[5]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-5) Specifically, the ordinance defined a "family" as "the head of a household, his or her spouse, the couple's childless unmarried children, at most one child of the couple with dependent children, and one parent of either the head of the household or his or her spouse."[[6]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-6)

**Initial lawsuit**[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=3)]

Inez Moore lived in East Cleveland, Ohio with her son, Dale Moore, Sr., his son, Dale Moore, Jr., as well as John Moore Jr., a grandson who was the child of one of Inez Moore's other children.[[7]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-7) In early 1973, Inez Moore received a citation from the City, which informed her that John Moore, Jr. was an "illegal occupant" in violation of the city's zoning ordinance because he did not fit within the statute's definition of a "family" unit.[[8]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-ReferenceA-8) When Inez Moore refused to remove John Moore, Jr. from the home, the City filed criminal charges.[[8]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-ReferenceA-8) At trial, Moore argued that the ordinance was facially unconstitutional, but the court sentenced her to five days in jail and ordered her to pay a $25 fine.[[9]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-9) The [Ohio Court of Appeals](https://en.wikipedia.org/wiki/Ohio_Court_of_Appeals) affirmed the decision of the trial court, and the [Ohio Supreme Court](https://en.wikipedia.org/wiki/Supreme_Court_of_Ohio) denied review.[[10]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-10) In 1976, the Supreme Court of the United States granted [*certiorari*](https://en.wikipedia.org/wiki/Certiorari) to review the case.[[11]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-11) Moore was represented by [Legal Aid Society of Cleveland](https://en.wikipedia.org/wiki/Legal_Aid_Society_of_Cleveland).

Opinion of the Court[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=4)]

[](https://en.wikipedia.org/wiki/File:US_Supreme_Court_Justice_Lewis_Powell_-_1976_official_portrait.jpg)

In his plurality opinion, Justice [Lewis F. Powell, Jr.](https://en.wikipedia.org/wiki/Lewis_F._Powell,_Jr.) argued that "the tradition of uncles, aunts, cousins, and especially grandparents sharing a household" deserved "constitutional recognition."[[12]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-12)

Writing for a plurality of the Court, [Justice](https://en.wikipedia.org/wiki/Associate_Justice_of_the_United_States_Supreme_Court) [Lewis F. Powell, Jr.](https://en.wikipedia.org/wiki/Lewis_F._Powell,_Jr.) ruled that the East Cleveland zoning ordinance violated substantive due process and was therefore unconstitutional.[[13]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-13) Justice Powell noted that this case was distinguishable from the Court's prior zoning law jurisprudence by virtue of the fact that earlier cases like [*Euclid v. Ambler Realty Co.*](https://en.wikipedia.org/wiki/Euclid_v._Ambler_Realty_Co.) and [*Village of Belle Terre v. Boraas*](https://en.wikipedia.org/wiki/Village_of_Belle_Terre_v._Boraas) did not restrict the ability of family members to live together.[[14]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-14) Because the East Cleveland ordinance "[chose] to regulate the occupancy of its housing by slicing deeply into the family itself" and imposed an "intrusive regulation on the family," neither *Euclid* nor *Belle Terre* were applicable in this case.[[15]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-15) Likewise, Justice Powell ruled that deference to the legislature was inappropriate.[[16]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-16)

Justice Powell cited a long line of cases in which the Supreme Court recognized that "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."[[17]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-17) Additionally, Justice Powell ruled that the ordinance did not advance the City's goals of preventing overcrowding, minimizing traffic, and not overburdening the City's school system because the ordinance would have allowed for Moore to live with "a dozen school-age children" from one son while John Moore, Jr. would be forced to live elsewhere.[[18]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-18) Although Justice Powell noted that that substantive due process "has at times been a treacherous field" for the Supreme Court, he ruled that the Court's precedent establishes "that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."[[19]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-19)

**Concurring opinions**[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=5)]

Justice [William J. Brennan, Jr.](https://en.wikipedia.org/wiki/William_J._Brennan,_Jr.) wrote a concurring opinion in which he emphasized that "the zoning power is not a license for local communities to enact senseless and arbitrary restrictions which cut deeply into private areas of protected family life."[[20]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-20) He stated that he wrote "only to underscore the cultural myopia of the arbitrary boundary drawn by the East Cleveland ordinance in the light of the tradition of the American home," which he argued "displays a depressing insensitivity toward the economic and emotional needs of a very large part of our society."[[21]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-21) Justice Brennan argued that the Constitution cannot be interpreted "to tolerate the imposition by government upon the rest of us of white suburbia's preference in patterns of family living."[[22]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-22)

Justice [John Paul Stevens](https://en.wikipedia.org/wiki/John_Paul_Stevens) wrote an opinion concurring in the judgment, in which he argued that the "critical question presented by this case is whether East Cleveland's housing ordinance is a permissible restriction on appellant's right to use her own property as she sees fit".[[23]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-23) After reviewing the history of the Court's zoning jurisprudence, Justice Stevens concluded that "[t]here appears to be no precedent for an ordinance which excludes any of an owner's relatives from the group of persons who may occupy his residence on a permanent basis."[[2]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-Moore520-2) Additionally, Justice Stevens concluded that the East Cleveland ordinance did not bear a substantial relationship "to the public health, safety, morals, or general welfare" of East Cleveland.[[2]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-Moore520-2) Because the ordinance "cuts so deeply into a fundamental right normally associated with the ownership of residential property," Justice Stevens also concluded that the ordinance constituted a taking under the [Fifth Amendment of the United States Constitution](https://en.wikipedia.org/wiki/Fifth_Amendment_of_the_United_States_Constitution).[[24]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-24)

**Dissenting opinions**[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=6)]

[Chief Justice](https://en.wikipedia.org/wiki/Chief_Justice_of_the_Supreme_Court_of_the_United_States) [Warren Burger](https://en.wikipedia.org/wiki/Warren_Burger) wrote a dissenting opinion in which he argued that the constitutional question was foreclosed by the fact that Inez Moore did not exhaust "a plainly adequate administrative remedy."[[25]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-25) He wrote that Moore's lawyers "made no effort to apply to the Board for a variance to exempt her from the restrictions of the ordinance, even though her situation appears on its face to present precisely the kind of 'practical difficulties and unnecessary hardships' the variance procedure was intended to accommodate."[[26]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-Moore522-26) Although Chief Justice Burger noted that the Supreme Court had not yet established that appellants must "utilize available state administrative remedies as a prerequisite to obtaining federal relief," he argued that "such a requirement is imperative if the critical overburdening of federal courts at all levels is to be alleviated."[[26]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-Moore522-26) Consequently, Chief Justice Burger argued that the Court "should now make clear that the finite resources of this Court are not available unless the litigant has first pursued all adequate and available administrative remedies."[[27]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-27)

Justice [Potter Stewart](https://en.wikipedia.org/wiki/Potter_Stewart) and Justice [Byron White](https://en.wikipedia.org/wiki/Byron_White) also filed dissenting opinions. Justice Stewart argued that the court's earlier decision in *Belle Terre* should determine the outcome in this case and that Moore's claims regarding associational freedom and privacy should not invoke constitutional protections.[[28]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-28) Justice White emphasized that the "substantive content of the [Due Process] Clause is suggested neither by its language nor by pre constitutional history" and concluded that "the interest in residing with more than one set of grandchildren" is not "one that calls for any kind of heightened protection under the Due Process Clause."[[29]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-29) Additionally, Justice White concluded that "the normal goals of zoning regulation are present here and that the ordinance serves these goals by limiting, in identifiable circumstances, the number of people who can occupy a single household."[[30]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-30)

Analysis and commentary[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=7)]

Analysts have observed that *Moore* is one of several cases have established "a constitutional right to family integrity."[[3]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-Frankel311-3) Some commentators have also noted that the *Moore* decision lies at the intersection between the competing goals of controlling population density and maintaining family integrity, but in their rush to overturn "traditional-family ordinances," the Court may have "burn[ed] the house to roast the pig."[[31]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-31) Other commentators have observed that opinions like *Moore* have "a Trojan-Horse quality" because the Court's decision to recognize rights only for an extended biological family "is itself a potent form of state regulation of family life."[[32]](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_note-32)

See also[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=8)]

* [List of United States Supreme Court cases, volume 431](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_431)
* [List of United States Supreme Court cases](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases)
* [Lists of United States Supreme Court cases by volume](https://en.wikipedia.org/wiki/Lists_of_United_States_Supreme_Court_cases_by_volume)
* [List of United States Supreme Court cases by the Burger Court](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases_by_the_Burger_Court)

References[[edit](https://en.wikipedia.org/w/index.php?title=Moore_v._City_of_East_Cleveland&action=edit&section=9)]

* 1. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-1) *Moore v. City of East Cleveland*, [431](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_431) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [494, 503](https://supreme.justia.com/cases/federal/us/431/494/#503) (1977) (plurality opinion).
  2. ^ [Jump up to:***a***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-Moore520_2-0) [***b***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-Moore520_2-1) [***c***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-Moore520_2-2) *Moore*, 431 U.S. at 520 (Stevens, J., concurring).
  3. ^ [Jump up to:***a***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-Frankel311_3-0) [***b***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-Frankel311_3-1) Kevin B. Frankel, [*The Fourteenth Amendment Due Process Right to Family Integrity Applied to Custody Cases Involving Extended Family Members*](http://www.columbia.edu/cu/jlsp/pdf/Spring2007/Frankel.pdf), 40 Colum. J.L. & Soc. Probs. 301, 311 (2007).
  4. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-4) *Moore*, 431 U.S. at 495-96 (plurality opinion) (citing E. Cleveland, Ohio, Housing Ordinances, § 1341.08 (1966)).
  5. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-5) *Moore*, 431 U.S. at 496 (plurality opinion).
  6. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-6) Kevin B. Frankel, [*The Fourteenth Amendment Due Process Right to Family Integrity Applied to Custody Cases Involving Extended Family Members*](http://www.columbia.edu/cu/jlsp/pdf/Spring2007/Frankel.pdf), 40 Colum. J.L. & Soc. Probs. 301, 313 (2007).
  7. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-7) Kevin B. Frankel, [*The Fourteenth Amendment Due Process Right to Family Integrity Applied to Custody Cases Involving Extended Family Members*](http://www.columbia.edu/cu/jlsp/pdf/Spring2007/Frankel.pdf), 40 Colum. J.L. & Soc. Probs. 301, 313 (2007); see also *Moore*, 431 U.S. at 497 n.4 (plurality opinion) (noting that John's father, John Moore, Sr., had apparently lived with the family since the time of the trial, but that his presence in the home also likely violated the ordinance).
  8. ^ [Jump up to:***a***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-ReferenceA_8-0) [***b***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-ReferenceA_8-1) *Moore*, 431 U.S. at 497 (plurality opinion).
  9. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-9) *Moore*, 431 U.S. at 497 (plurality opinion) (noting that Moore filed a motion in the trial court challenging the constitutionality of the ordinance).
  10. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-10) *Moore*, 431 U.S. at 497-98 (plurality opinion).
  11. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-11) *Moore*, 431 U.S. at 498 (plurality opinion).
  12. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-12) *Moore*, 431 U.S. at 504 (plurality opinion).
  13. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-13) *Moore*, 431 U.S. at 499, 503-04, 506 (plurality opinion).
  14. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-14) *Moore*, 431 U.S. at 498-99 (plurality opinion) (citing [*Euclid v. Ambler Realty Co.*](https://en.wikipedia.org/wiki/Euclid_v._Ambler_Realty_Co.) [272](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_272) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [365](https://supreme.justia.com/cases/federal/us/272/365/) (1926); [*Village of Belle Terre v. Boraas*](https://en.wikipedia.org/wiki/Village_of_Belle_Terre_v._Boraas) [416](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_416) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [1](https://supreme.justia.com/cases/federal/us/416/1/)(1974)) (noting that *Belle Terre* was distinguishable because the ordinance in that case "only unrelated individuals").
  15. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-15) *Moore*, 431 U.S. at 498-99 (plurality opinion).
  16. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-16) *Moore*, 431 U.S. at 499 (plurality opinion).
  17. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-17) *Moore*, 431 U.S. at 499 (plurality opinion) (quoting [*Cleveland Board of Education v. LaFleur*](https://en.wikipedia.org/wiki/Cleveland_Board_of_Education_v._LaFleur), [414](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_414) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [632, 639-40](https://supreme.justia.com/cases/federal/us/414/632/#639-40) (1974).
  18. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-18) *Moore*, 431 U.S. at 500 (plurality opinion).
  19. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-19) *Moore*, 431 U.S. at 503 (plurality opinion).
  20. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-20) *Moore*, 431 U.S. at 507 (Brennan, J., concurring).
  21. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-21) *Moore*, 431 U.S. at 507-08 (Brennan, J., concurring).
  22. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-22) *Moore*, 431 U.S. at 508 (Brennan, J., concurring).
  23. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-23) *Moore*, 431 U.S. at 513 (Stevens, J., concurring).
  24. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-24) *Moore*, 431 U.S. at 520-21 (Stevens, J., concurring).
  25. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-25) *Moore*, 431 U.S. at 521 (Burger, C.J., dissenting).
  26. ^ [Jump up to:***a***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-Moore522_26-0) [***b***](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-Moore522_26-1) *Moore*, 431 U.S. at 522 (Burger, C.J., dissenting).
  27. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-27) *Moore*, 431 U.S. at 531 (Burger, C.J., dissenting).
  28. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-28) *Moore*, 431 U.S. at 534-35 (Sewart, J., dissenting).
  29. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-29) *Moore*, 431 U.S. at 543, 549 (White, J., dissenting).
  30. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-30) *Moore*, 431 U.S. at 550-51 (White, J., dissenting).
  31. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-31) J. Gregory Richards, [*Zoning for Direct Social Control*](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2819&context=dlj), 1982 Duke L.J. 761, 796 (1982) (internal citations and quotations omitted).
  32. [**^**](https://en.wikipedia.org/wiki/Moore_v._City_of_East_Cleveland#cite_ref-32) David D. Meyer, *The Paradox of Family Privacy*, 53 Vand. L. Rev. 527, 565-66 (2000).

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* Text of *Moore v. East Cleveland*, [431](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_431) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) 494 (1977) is available from: [CourtListener](https://www.courtlistener.com/opinion/109670/moore-v-east-cleveland/)  [Findlaw](https://caselaw.findlaw.com/us-supreme-court/431/494.html)  [Google Scholar](https://scholar.google.com/scholar_case?case=2901986314146432010)  [Justia](http://supreme.justia.com/us/431/494/case.html)  [Library of Congress](http://cdn.loc.gov/service/ll/usrep/usrep431/usrep431494/usrep431494.pdf)  [Oyez (oral argument audio)](https://www.oyez.org/cases/1976/75-6289)

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**Smith v. Organization of Foster Families, 431 U.S. 816 (1977)**

* [**Opinions**](https://supreme.justia.com/cases/federal/us/431/816/#tab-opinion)

* [Audio & Media](https://supreme.justia.com/cases/federal/us/431/816/#tab-audio-and-media)
* [**Syllabus**](https://supreme.justia.com/cases/federal/us/431/816/#tab-opinion-1952268)

* [Case](https://supreme.justia.com/cases/federal/us/431/816/#tab-opinion-1952269)

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* [**Syllabus**](https://supreme.justia.com/cases/federal/us/431/816/#tab-opinion-1952268)

* [Case](https://supreme.justia.com/cases/federal/us/431/816/#tab-opinion-1952269)

**U.S. Supreme Court**

**Smith v. Organization of Foster Families, 431 U.S. 816 (1977)**

**Smith v. Organization of Foster Families for Equality & Reform**

**No. 76-180**

**Argued March 21, 1977**

**Decided June 13, 1977\***

**431 U.S. 816**

*Syllabus*

In this litigation appellees, individual foster parents and a foster parents organization, sought declaratory and injunctive relief against New York State and New York City officials, alleging that the statutory and regulatory procedures for removal of foster children from foster homes violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Under the New York Social Services Law the authorized placement agency has discretion to remove the child from the foster home, and regulations provide for 10 days' advance notice of removal. Objecting foster parents may request a conference with the Social Services Department where the foster parent may appear with counsel to be advised of the reasons for removal and to submit opposing reasons. Within five days after the conference the agency official must render a written decision and send notice to the foster parent and agency. If the child is removed after the conference the foster parent may appeal to the Department of Social Services, where a full adversary administrative hearing takes place, and the resultant determination is subject to judicial review. Removal is not stayed pending the hearing and judicial review. New York City provides additional procedures (SSC Procedure No. 5) to the foregoing statewide scheme, under which, in lieu of or in addition to the conference, the foster parents are entitled to a full trial-type pre-removal hearing if the child is being transferred to another foster home. An additional statewide procedure is provided by N.Y.Soc.Serv.Law § 392 whereby a foster parent may obtain pre-removal judicial review of an agency

Page 431 U. S. 817

decision to remove a child who has been in foster care for 18 months or more. The District Court held that the State's pre-removal procedures are constitutionally defective, and that,

"before a, foster child can be peremptorily transferred . . . to another foster home or to the natural parents . . . The is entitled to [an administrative] hearing at which all concerned parties may present any relevant information. . . ."

Such a hearing would be held automatically, and before an officer free from contact with the removal decision who could order that the child remain with the foster parents. Appellees contended that, when a child has lived in a foster home for a year or more, a psychological tie is created between the child and the foster parents that constitutes the foster family the child's "psychological family," giving the family a "liberty interest" in its survival as a unit that is protected by the Fourteenth Amendment. The District Court, avoiding the "novel" question of whether the foster home is entitled to the same constitutional deference as the biological family, held that the foster child had an independent right to be heard before being condemned to suffer "grievous loss."

*Held:*

1. The District Court erred in finding that the "grievous loss" to the foster child resulting from an improvident removal decision implicated the due process guarantee, as the determining factor is the nature of the interest involved, rather than its weight. *Meachum v. Fano,* [427 U. S. 215](https://supreme.justia.com/cases/federal/us/427/215/case.html), [427 U. S. 224](https://supreme.justia.com/cases/federal/us/427/215/case.html#224); *Board of Regents v. Roth,* [408 U. S. 564](https://supreme.justia.com/cases/federal/us/408/564/case.html), [408 U. S. 570](https://supreme.justia.com/cases/federal/us/408/564/case.html#570)-571. Pp. [431 U. S. 840](https://supreme.justia.com/cases/federal/us/431/816/case.html#840)-841.

2. The challenged procedures are constitutionally adequate even were it to be assumed that appellees have a protected "liberty interest" under the Fourteenth Amendment. The procedures employed by the State and New York City satisfy the standards for determining the sufficiency of procedural protections, taking into consideration the factors enumerated in *Mathews v. Eldridge,* [424 U. S. 319](https://supreme.justia.com/cases/federal/us/424/319/case.html), [424 U. S. 335](https://supreme.justia.com/cases/federal/us/424/319/case.html#335): (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Pp. [431 U. S. 847](https://supreme.justia.com/cases/federal/us/431/816/case.html#847)-856.

[418 F. Supp. 277](https://supreme.justia.com/cases/federal/district-courts/FSupp/418/277/1603064/), reversed.

BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined. STEWART, J., filed an opinion concurring in the judgment, in which BURGER, C.J., and REHNQUIST, J., joined, *post,* p. [431 U. S. 856](https://supreme.justia.com/cases/federal/us/431/816/case.html#856).

Page 431 U. S. 818

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**Quilloin v. Walcott, 434 U.S. 246 (1978)**

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* [**Syllabus**](https://supreme.justia.com/cases/federal/us/434/246/#tab-opinion-1952446)

* [Case](https://supreme.justia.com/cases/federal/us/434/246/#tab-opinion-1952447)

[**Opinions**](https://supreme.justia.com/cases/federal/us/434/246/#tab-opinion)[**Audio & Media**](https://supreme.justia.com/cases/federal/us/434/246/#tab-audio-and-media)

* [**Syllabus**](https://supreme.justia.com/cases/federal/us/434/246/#tab-opinion-1952446)

* [Case](https://supreme.justia.com/cases/federal/us/434/246/#tab-opinion-1952447)

**U.S. Supreme Court**

**Quilloin v. Walcott, 434 U.S. 246 (1978)**

**Quilloin v. Walcott**

**No. 76-6372**

**Argued November 9, 1977**

**Decided January 10, 1978**

**434 U.S. 246**

*Syllabus*

Under Georgia law no adoption of a child born in wedlock is permitted without the consent of each living parent (including divorced or separated parents) who has not voluntarily surrendered rights in the child or been adjudicated an unfit parent. In contrast, §§ 74-403(3) and 74-203 of the Georgia Code provide that only the mother's consent is required for the adoption of an illegitimate child. However, the father may acquire veto authority over the adoption if he has legitimated the child pursuant to § 74-103 of the Code. These provisions were applied to deny appellant, the father of an illegitimate child, authority to prevent the adoption of the child by the husband of the child's mother. Until the adoption petition was filed, appellant had not attempted to legitimate the child, who had always been in the mother's custody and was then living with the mother and her husband, appellees. In opposing the adoption, appellant, seeking to legitimate the child but not to secure custody, claimed that §§ 74-203 and 74-403(3), as applied to his case, violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The trial court, granting the adoption on the ground that it was in the "best interests of the child" and that legitimation by appellant was not, rejected appellant's constitutional claims, and the Georgia Supreme Court affirmed.

*Held:*

1. Under the circumstances, appellant's substantive rights under the Due Process Clause were not violated by application of a "best interests of the child" standard. This is not a case in which the unwed father at any time had, or sought, custody of his child, or in which the proposed adoption would place the child with a new set of parents with whom the child had never lived. Rather, the result of adoption here is to give full recognition to an existing family unit. Pp. [434 U. S. 254](https://supreme.justia.com/cases/federal/us/434/246/case.html#254)-255.

2. Equal protection principles do not require that appellant's authority to veto an adoption be measured by the same standard as is applied to a divorced father, from whose interests appellant's interests are readily distinguishable. The State was not foreclosed from recognizing the difference in the extent of commitment to a child's welfare between that of appellant., an unwed father who has never shouldered any significant responsibility for the child's rearing, and that of a divorced father who

Page 434 U. S. 247

at least will have borne full responsibility for his child's rearing during the period of marriage. Pp. [434 U. S. 255](https://supreme.justia.com/cases/federal/us/434/246/case.html#255)-256.

238 Ga. 230, 232 S.E.2d 246, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.

**Parham v. J.R., 442 U.S. 584 (1979)**

* [**Opinions**](https://supreme.justia.com/cases/federal/us/442/584/#tab-opinion)

* [Audio & Media](https://supreme.justia.com/cases/federal/us/442/584/#tab-audio-and-media)
* [**Syllabus**](https://supreme.justia.com/cases/federal/us/442/584/#tab-opinion-1953232)

* [Case](https://supreme.justia.com/cases/federal/us/442/584/#tab-opinion-1953233)

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* [**Syllabus**](https://supreme.justia.com/cases/federal/us/442/584/#tab-opinion-1953232)

* [Case](https://supreme.justia.com/cases/federal/us/442/584/#tab-opinion-1953233)

**U.S. Supreme Court**

**Parham v. J.R., 442 U.S. 584 (1979)**

**Parham v. J.R.**

**No. 75-1690**

**Argued December 6, 1977**

**Reargued October 10, 1978**

**Decided June 20, 1979**

**442 U.S. 584**

*Syllabus*

Appellees, children being treated in a Georgia state mental hospital, instituted in Federal District Court a class action against Georgia mental health officials. Appellees sought a declaratory judgment that Georgia's procedures for voluntary commitment of children under the age of 18 to state mental hospitals violated the Due Process Clause of the Fourteenth Amendment, and requested an injunction against their future enforcement. Under the Georgia statute providing for the voluntary admission of children to state regional hospitals, admission begins with an application for hospitalization signed by a parent or guardian and, upon application, the superintendent of the hospital is authorized to admit temporarily any child for "observation and diagnosis." If, after observation, the superintendent finds "evidence of mental illness" and that the child is "suitable for treatment" in the hospital, the child may be admitted "for such period and under such conditions as may be authorized by law." Under Georgia's mental health statute, any child who has been hospitalized for more than five days may be discharged at the request of a parent or guardian, and the hospital superintendent, even without a request for discharge, has an affirmative duty to release any child

"who has recovered from his mental illness or who has sufficiently improved that the superintendent determines that hospitalization of the patient is no longer desirable."

The District Court held that Georgia's statutory scheme was unconstitutional because it failed to protect adequately the appellees' due process rights and that the process due included at least the right after notice to an adversary-type hearing before an impartial tribunal.

*Held:* The District Court erred in holding unconstitutional the State's procedures for admitting a child for treatment to a state mental hospital, since, on the record in this case, Georgia's medical factfinding processes are consistent with constitutional guarantees. Pp. [442 U. S. 598](https://supreme.justia.com/cases/federal/us/442/595/case.html#598)-621.

(a) Testing challenged state procedures under a due process claim requires a balancing of (i) the private interest that will be affected by

Page 442 U. S. 585

the official action; (ii) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (iii) the state's interest, including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail. *Cf. Mathews v. Eldridge,* [424 U. S. 319](https://supreme.justia.com/cases/federal/us/424/319/case.html), [424 U. S. 335](https://supreme.justia.com/cases/federal/us/424/319/case.html#335); *Smith v. Organization of Foster Families,* [431 U. S. 816](https://supreme.justia.com/cases/federal/us/431/816/case.html), [431 U. S. 848](https://supreme.justia.com/cases/federal/us/431/816/case.html#848)-849. Pp. [442 U. S. 599](https://supreme.justia.com/cases/federal/us/442/595/case.html#599)-600.

(b) Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment, and assuming that a person has a protectible interest in not being erroneously labeled as mentally ill, parents -- who have traditional interests in and responsibility for the upbringing of their child -- retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse. However, the child's rights and the nature of the commitment decision are such that parents do not always have absolute discretion to institutionalize a child; they retain plenary authority to seek such care for their children, subject to an independent medical judgment. *Cf. Pierce v. Society of Sisters,* [268 U. S. 510](https://supreme.justia.com/cases/federal/us/268/510/case.html); *Wisconsin v. Yoder,* [406 U. S. 205](https://supreme.justia.com/cases/federal/us/406/205/case.html); *Prince v. Massachusetts,* [321 U. S. 158](https://supreme.justia.com/cases/federal/us/321/158/case.html); *Meyer v. Nebraska,* [262 U. S. 390](https://supreme.justia.com/cases/federal/us/262/390/case.html). *Planned Parenthood of Central Missouri v. Danforth,* [428 U. S. 52](https://supreme.justia.com/cases/federal/us/428/52/case.html), distinguished. Pp. [442 U. S. 600](https://supreme.justia.com/cases/federal/us/442/595/case.html#600)-604.

(c) The State has significant interests in confining the use of costly mental health facilities to cases of genuine need, in not imposing unnecessary procedural obstacles that may discourage the mentally ill or their families from seeking needed psychiatric assistance, and in allocating priority to the diagnosis and treatment of patients as soon as they are admitted to a hospital, rather than to time-consuming pre-admission procedures. Pp. [442 U. S. 604](https://supreme.justia.com/cases/federal/us/442/595/case.html#604)-606.

(d) The risk of error inherent in the parental decision to have a child institutionalized for mental health care is sufficiently great that some kind of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission are satisfied, *see Goldberg v. Kelly,* [397 U. S. 254](https://supreme.justia.com/cases/federal/us/397/254/case.html), [397 U. S. 271](https://supreme.justia.com/cases/federal/us/397/254/case.html#271); *Morrissey v. Brewer,* [408 U. S. 471](https://supreme.justia.com/cases/federal/us/408/471/case.html), [408 U. S. 489](https://supreme.justia.com/cases/federal/us/408/471/case.html#489), and to probe the child's background. The decisionmaker must have the authority to refuse to admit any child who does not satisfy the medical standards for admission. The need for continuing commitment must be reviewed periodically. Pp. [442 U. S. 606](https://supreme.justia.com/cases/federal/us/442/595/case.html#606)-607.

(e) Due process does not require that the neutral factfinder be law-trained or a judicial or administrative officer; nor is it necessary that the admitting physician conduct a formal or quasi-formal adversary hearing or that the hearing be conducted by someone other than the admitting physician. While the medical decisionmaking process may

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not be error-free, nevertheless the independent medical decisionmaking process, which includes a thorough psychiatric investigation followed by additional periodic review of a child's condition, will identify children who should not be admitted; risks of error will not be significantly reduced by a more formal, judicial-type hearing. Pp. [442 U. S. 607](https://supreme.justia.com/cases/federal/us/442/595/case.html#607)-613.

(f) Georgia's practices, as described in the record, comport with minimum due process requirements. The state statute envisions a careful diagnostic medical inquiry to be conducted by the admitting physician at each regional hospital. Georgia's procedures are not "arbitrary" in the sense that a single physician or other professional has the "unbridled discretion" to commit a child to a regional hospital. While Georgia's general administrative and statutory scheme for the voluntary commitment of children is not unconstitutional, the District Court, on remand, may consider any individual claims that the initial admissions of particular children did not meet due process standards, and may also consider whether the various hospitals' procedures for periodic review of their patients' need for institutional care are sufficient to justify *continuing* a voluntary commitment. Pp. [442 U. S. 613](https://supreme.justia.com/cases/federal/us/442/595/case.html#613)-617.

(g) The differences between the situation where the child is a ward of the State of Georgia and the State requests his admission to a state mental hospital, and the situation where the child's natural parents request his admission, do not justify requiring different procedures at the time of the child's initial admission to the hospital. Pp. 442 U.S. 617-620.

[412 F. Supp. 112](https://supreme.justia.com/cases/federal/district-courts/FSupp/412/112/2368317/), reversed and remanded.

BURGER, C.J., delivered the opinion of the Court, in which WHITE BLACKMUN, POWELL, and REHNQUIST, JJ., joined. STEWART, J., filed an opinion concurring in the judgment, *post,* p. [442 U. S. 621](https://supreme.justia.com/cases/federal/us/442/595/case.html#621). BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and STEVENS, JJ., joined, *post,* p. 442 U.S. 625.

Page 442 U. S. 587

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**Santosky v. Kramer, 455 U.S. 745 (1982)**

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* [**Syllabus**](https://supreme.justia.com/cases/federal/us/455/745/#tab-opinion-1954462)

* [Case](https://supreme.justia.com/cases/federal/us/455/745/#tab-opinion-1954463)

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* [**Syllabus**](https://supreme.justia.com/cases/federal/us/455/745/#tab-opinion-1954462)

* [Case](https://supreme.justia.com/cases/federal/us/455/745/#tab-opinion-1954463)

**U.S. Supreme Court**

**Santosky v. Kramer, 455 U.S. 745 (1982)**

**Santosky v. Kramer**

**No. 80-5889**

**Argued November 10, 1981**

**Decided March 24, 1982**

**455 U.S. 745**

*Syllabus*

Under New York law, the State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected." The New York Family Court Act (§ 622) requires that only a "fair preponderance of the evidence" support that finding. Neglect proceedings were brought in Family Court to terminate petitioners' rights as natural parents in their three children. Rejecting petitioners' challenge to the constitutionality of § 622's "fair preponderance of the evidence" standard, the Family Court weighed the evidence under that standard and found permanent neglect. After a subsequent dispositional hearing, the Family Court ruled that the best interests of the children required permanent termination of petitioners' custody. The Appellate Division of the New York Supreme Court affirmed, and the New York Court of Appeals dismissed petitioners' appeal to that court.

*Held:*

1. Process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding. Pp. [455 U. S. 752](https://supreme.justia.com/cases/federal/us/455/745/case.html#752)-757.

(a) The fundamental liberty interest of natural parents in the care custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. Pp. [455 U. S. 752](https://supreme.justia.com/cases/federal/us/455/745/case.html#752)-754.

(b) The nature of the process due in parental rights termination proceedings turns on a balancing of three factors: the private interests affected by the proceedings; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure. *Mathews v. Eldridge,* [424 U. S. 319](https://supreme.justia.com/cases/federal/us/424/319/case.html), [424 U. S. 335](https://supreme.justia.com/cases/federal/us/424/319/case.html#335). In any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the public and

Page 455 U. S. 746

private interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants. The minimum standard is a question of federal law which this Court may resolve. Retrospective case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard. Pp. [455 U. S. 754](https://supreme.justia.com/cases/federal/us/455/745/case.html#754)-757.

2. The "fair preponderance of the evidence" standard prescribed by § 622 violates the Due Process Clause of the Fourteenth Amendment. Pp. [455 U. S. 758](https://supreme.justia.com/cases/federal/us/455/745/case.html#758)-768.

(a) The balance of private interests affected weighs heavily against use of such a standard in parental rights termination proceedings, since the private interest affected is commanding, and the threatened loss is permanent. Once affirmed on appeal, a New York decision terminating parental rights is *final* and irrevocable. Pp. [455 U. S. 758](https://supreme.justia.com/cases/federal/us/455/745/case.html#758)-761.

(b) A preponderance standard does not fairly allocate the risk of an erroneous factfinding between the State and the natural parents. In parental rights termination proceedings, which bear many of the indicia of a criminal trial, numerous factors combine to magnify the risk of erroneous factfinding. Coupled with the preponderance standard, these factors create a significant prospect of erroneous termination of parental rights. A standard of proof that allocates the risk of error nearly equally between an erroneous failure to terminate, which leaves the child in an uneasy *status quo,* and an erroneous termination, which unnecessarily destroys the natural family, does not reflect properly the relative severity of these two outcomes. Pp. [455 U. S. 761](https://supreme.justia.com/cases/federal/us/455/745/case.html#761)-766.

(c) A standard of proof more strict than preponderance of the evidence is consistent with the two state interests at stake in parental rights termination proceedings -- a *parens patriae* interest in preserving and promoting the child's welfare and a fiscal and administrative interest in reducing the cost and burden of such proceedings. Pp. [455 U. S. 766](https://supreme.justia.com/cases/federal/us/455/745/case.html#766)-768.

3. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence. A "clear and convincing evidence" standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process. Determination of the precise burden equal to or greater than that standard is a matter of state law properly left to state legislatures and state courts. Pp. [455 U. S. 768](https://supreme.justia.com/cases/federal/us/455/745/case.html#768)-770.

75 App.Div.2d 910, 427 N.Y.S.2d 319, vacated and remanded.

BLACKMUN, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, POWELL, and STEVENS, JJ., joined. REHNQUIST, J., filed a

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dissenting opinion, in which BURGER, C.J., and WHITE and O'CONNOR, JJ., joined, *post,* p. [455 U. S. 770](https://supreme.justia.com/cases/federal/us/455/745/case.html#770).

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*Reno v. Flores*

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|  |  |
| --- | --- |
| ***Reno v. Flores*** | |
| [Seal of the United States Supreme Court](https://en.wikipedia.org/wiki/File:Seal_of_the_United_States_Supreme_Court.svg)  [**Supreme Court of the United States**](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) | |
| **Argued October 13, 1992 Decided March 23, 1993** | |
| **Full case name** | *Janet Reno, Attorney General, et al. v. Jenny Lisette Flores, et al.* |
| **Citations** | 507 [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [292](https://supreme.justia.com/us/507/292/case.html) ([*more*](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_507))  113 S. Ct. 1439; 123 [L. Ed. 2d](https://en.wikipedia.org/wiki/L._Ed._2d) 1; 1993 [U.S. LEXIS](https://en.wikipedia.org/wiki/U.S._LEXIS) 2399; 61 U.S.L.W. 4237; 93 Cal. Daily Op. Service 2028; 93 Daily Journal DAR 3628; 7 Fla. L. Weekly Fed. S 73 |
| **Case history** | |
| **Prior** | 942 [F.2d](https://en.wikipedia.org/wiki/F.2d) [1352](https://law.justia.com/cases/federal/appellate-courts/F2/942/1352/282325/) ([9th Cir.](https://en.wikipedia.org/wiki/9th_Cir.) 1991); [cert](https://en.wikipedia.org/wiki/Certiorari). granted, [503](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_503) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) 905 (1992). |
| **Holding** | |
| INS regulation—which provides that alien juveniles detained on suspicion of being deportable may be released only to a parent, legal guardian, or other related adult—accords with both the Due Process Clause and the Immigration and Nationality Act. | |
| **Court membership** | |
| **Chief Justice**  [William Rehnquist](https://en.wikipedia.org/wiki/William_Rehnquist)  **Associate Justices**  [Byron White](https://en.wikipedia.org/wiki/Byron_White) **·** [Harry Blackmun](https://en.wikipedia.org/wiki/Harry_Blackmun) [John P. Stevens](https://en.wikipedia.org/wiki/John_Paul_Stevens) **·** [Sandra Day O'Connor](https://en.wikipedia.org/wiki/Sandra_Day_O%27Connor) [Antonin Scalia](https://en.wikipedia.org/wiki/Antonin_Scalia) **·** [Anthony Kennedy](https://en.wikipedia.org/wiki/Anthony_Kennedy) [David Souter](https://en.wikipedia.org/wiki/David_Souter) **·** [Clarence Thomas](https://en.wikipedia.org/wiki/Clarence_Thomas) | |
| **Case opinions** | |
| **Majority** | Scalia, joined by Rehnquist, White, O'Connor, Kennedy, Souter, and Thomas |
| **Concurrence** | O'Connor, joined by Souter |
| **Dissent** | Stevens, joined by Blackmun |
| **Laws applied** | |
| [8 U.S.C.](https://en.wikipedia.org/wiki/Title_8_of_the_United_States_Code) [§ 1252(a)(1)](https://www.law.cornell.edu/uscode/text/8/1252#a_1) | |

***Reno v. Flores***, 507 U.S. 292 (1993), was a [Supreme Court of the United States](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) case that addressed the detention and release of [unaccompanied minors](https://en.wikipedia.org/wiki/Unaccompanied_minor).

The Supreme Court ruled that the [Immigration and Naturalization Service](https://en.wikipedia.org/wiki/Immigration_and_Naturalization_Service)'s regulations regarding the release of alien unaccompanied minors did not violate the [Due Process Clause](https://en.wikipedia.org/wiki/Due_Process_Clause) of the [United States Constitution](https://en.wikipedia.org/wiki/United_States_Constitution).[[1]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-1) The Court held that "alien juveniles detained on suspicion of being deportable may be released only to a parent, legal guardian, or other related adult." The legacy for which *Reno v. Flores* became known was the subsequent 1997 court-supervised stipulated settlement agreement which is binding on the defendants (the federal government agencies)[[2]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-clearinghouse_FloresVReno_19970117-2)—the *Flores v. Reno Settlement Agreement* or Flores Settlement Agreement (FSA) to which both parties in *Reno v. Flores* agreed in the [District Court for Central California (C.D. Cal.)](https://en.wikipedia.org/wiki/United_States_District_Court_for_the_Central_District_of_California).[[3]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cliniclegal_FloresVMeese_SSA_199701-3)[[Notes 1]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-4) The Flores Settlement Agreement (FSA), supervised by C.D. Cal., has set strict national regulations and standards regarding the detention and treatment of minors by federal agencies for over twenty years. It remains in effect until the federal government introduces final regulations to implement the FSA agreement. The FSA governs the policy for the treatment of unaccompanied alien children in federal custody of the legacy INS and its successor—[United States Department of Homeland Security](https://en.wikipedia.org/wiki/United_States_Department_of_Homeland_Security) (DHS) and the various agencies that operate under the jurisdiction of the DHS. The FSA is supervised by a U.S. district judge in the District Court for Central California.[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5)

The litigation originated in the class action lawsuit *Flores v. Meese* filed on July 11, 1985 by the Center for Human Rights and Constitutional Law (CHRCL) and two other organizations on behalf of immigrant minors, including Jenny Lisette Flores, who had been placed in a detention center for male and female adults after being apprehended by the former [Immigration and Naturalization Service](https://en.wikipedia.org/wiki/Immigration_and_Naturalization_Service) (INS) as she attempted to illegally cross the [Mexico–United States border](https://en.wikipedia.org/wiki/Mexico%E2%80%93United_States_border). Under the Flores Settlement and current circumstances, DHS asserts that it generally cannot detain alien children and their parents together for more than brief periods.[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5) In his June 20, 2018 executive order, President Trump had directed then-Attorney General [Jeff Sessions](https://en.wikipedia.org/wiki/Jeff_Sessions) to ask the [District Court for the Central District of California](https://en.wikipedia.org/wiki/United_States_District_Court_for_the_Central_District_of_California), to "modify" the Flores agreement to "allow the government to detain alien families together" for longer periods, which would include the time it took for the family’s immigration proceedings and potential "criminal proceedings for unlawful entry into the United States".[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5):2 On July 9, Judge Gee of the Federal District of California, ruled that there was no basis to amend the 1997 Flores Settlement Agreement (FSA) that "requires children to be released to licensed care programs within 20 days."[[5]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-NYT_Jordan_20180709-6)

In 2017, U.S. District Judge Dolly Gee found that children who were in custody of the U.S. Customs and Border Protection lacked "food, clean water and basic hygiene items" and were sleep-deprived. She ordered the federal government to provide items such as soap and to improve the conditions.[[6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-latimes_Dolan_20190815-7) The federal government appealed the decision saying that the order forcing them to offer specific items and services exceeded the original Flores agreement. The June 18, 2019 hearing became infamous[[7]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cbsnews_Kates_20190815-8) and caused nation-wide outrage when a video of the Department of Justice senior attorney arguing against providing minors with toothbrushes and soap went viral. The federal government lost their appeal when a three-judge panel of the [United States Court of Appeals for the Ninth Circuit](https://en.wikipedia.org/wiki/United_States_Court_of_Appeals_for_the_Ninth_Circuit) upheld Judge Gee's order on August 15, 2019.[[6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-latimes_Dolan_20190815-7)



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* [3Flores Settlement Agreement (FSA)](https://en.wikipedia.org/wiki/Reno_v._Flores#Flores_Settlement_Agreement_(FSA))
  + [3.1Subsequent history](https://en.wikipedia.org/wiki/Reno_v._Flores#Subsequent_history)
  + [3.2Trump administration family separation policy](https://en.wikipedia.org/wiki/Reno_v._Flores#Trump_administration_family_separation_policy)
* [4See also](https://en.wikipedia.org/wiki/Reno_v._Flores#See_also)
* [5Notes](https://en.wikipedia.org/wiki/Reno_v._Flores#Notes)
* [6References](https://en.wikipedia.org/wiki/Reno_v._Flores#References)
* [7External links](https://en.wikipedia.org/wiki/Reno_v._Flores#External_links)

Background and lower court cases[[edit](https://en.wikipedia.org/w/index.php?title=Reno_v._Flores&action=edit&section=1)]

In 1985, Jenny Lisette Flores, an unaccompanied 15-year-old girl from [El Salvador](https://en.wikipedia.org/wiki/El_Salvador), was apprehended by the [Immigration and Naturalization Service](https://en.wikipedia.org/wiki/Immigration_and_Naturalization_Service) (INS) after illegally attempting to cross the [Mexico–United States border](https://en.wikipedia.org/wiki/Mexico%E2%80%93United_States_border).[[8]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-MarqLRev12-9):1648 The [unaccompanied minor](https://en.wikipedia.org/wiki/Unaccompanied_minor) was taken to a detention facility where she was held among adults of both sexes, was daily strip searched, and was told she would only be released to the custody of her parents, who, INS suspected, were illegal immigrants.[[9]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-10)

On July 11, 1985, the Center for Human Rights and Constitutional Law and two other organizations, filed a [class action](https://en.wikipedia.org/wiki/Class_action) lawsuit *Flores v. Meese*, No. 85-4544 (C.D. Cal.) on behalf of Flores and "all minors apprehended by the INS in the Western Region of the United States",[[3]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cliniclegal_FloresVMeese_SSA_199701-3):1 against U.S. Attorney General [Edwin Meese](https://en.wikipedia.org/wiki/Edwin_Meese), challenging the conditions of juvenile detention and alleging that the "defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region" were unconstitutional.[[3]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cliniclegal_FloresVMeese_SSA_199701-3):1 Lawyers for the plaintiffs said that government's detention and release policies were in violation of the children's rights under the [Equal Protection Clause](https://en.wikipedia.org/wiki/Equal_Protection_Clause) and the [Due Process Clause](https://en.wikipedia.org/wiki/Due_Process_Clause) of the [United States Constitution](https://en.wikipedia.org/wiki/United_States_Constitution).[[8]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-MarqLRev12-9):1648[[10]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-clearinghouse_FloresVMeese_19850711-11) The plaintiffs originally directed their complaint at the newly released policy introduced by then director of Western Region of the Immigration and Naturalization Service (INS), Harold W. Ezell. Under the new policy—83 Fed. Reg. at 45489—which was introduced on September 6, 1984, a detained immigrant minor "could only be released to a parent or legal guardian". This resulted in minors, such as Flores, being detained in poor conditions for "lengthy or indefinite" periods of time.[[11]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-AG_NY_20181106-12):33

In late 1987, the C.D. Cal District Court had "approved a [consent decree](https://en.wikipedia.org/wiki/Consent_decree) to which all the parties had agreed, "that settled all claims regarding the detention conditions".[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13)

In 1988, INS issued a new regulation— [8 CFR](https://en.wikipedia.org/wiki/Title_8_of_the_Code_of_Federal_Regulations) 242.24—that amended the 8 [Code of Federal Regulations](https://en.wikipedia.org/wiki/Code_of_Federal_Regulations) (CFR) parts 212 and 242 regarding the Detention and Release of Juveniles. The new INS regulation, known as 242.24, provided for the "release of detained minors only to their parents, close relatives, or legal guardians, except in unusual and compelling circumstances."[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13) The stated purpose of the rule was "to codify the [INS] policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings."[[13]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-FR_DHS_HHS_20180907-14)

On May 25, 1988, soon after the 8 CFR 242.24 regulation took effect, C.D. Cal District Judge Kelleher in *Flores v. Meese*, No. CV 85-4544-RJK (Px) rejected it and removed limitations regarding which adults could receive the minors. Judge Kelleher held that all minors have the right to receive a hearing from an immigration judge.[[14]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-justia_FloresVMeese_19880525-15)[[15]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-16) Judge Kelleher held that 8 CFR 242.24 "violated substantive due process, and ordered modifications to the regulation."[[13]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-FR_DHS_HHS_20180907-14) He ruled that "INS release and bond procedures for detained minors in deportation proceedings fell short of the requirements of procedural due process." He ordered the INS to provide the minors with an "administrative hearing to determine probable cause for his arrest and the need for any restrictions placed upon his release."[[13]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-FR_DHS_HHS_20180907-14) The court granted [summary judgment](https://en.wikipedia.org/wiki/Summary_judgment) to the plaintiffs regarding the release conditions.[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13)[[16]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-GGUL_Lakosil_201801-17):35 This "invalidating the regulatory scheme on due process grounds" and ordered the INS to "release any otherwise eligible juvenile to a parent, guardian, custodian, conservator, or "other responsible adult party". The District Court also required that the juvenile have a hearing with an immigration judge immediately after their arrest, even if the juvenile did not request it.[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13)[[14]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-justia_FloresVMeese_19880525-15)

In *Flores v. Meese*, 681 F. Supp. 665 (C.D. Cal. 1988), U.S. District Judge [Robert J. Kelleher](https://en.wikipedia.org/wiki/Robert_J._Kelleher) found that the INS policy to strip search children was unconstitutional.[[17]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-clearinghouse_FloresVMeese_19880307-18)[[Notes 2]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-19)

In June 1990, in *Flores v. Meese*, 934 F.2d 991 (9th Cir. 1990), in the Ninth Circuit Court of Appeals, Judges [John Clifford Wallace](https://en.wikipedia.org/wiki/John_Clifford_Wallace) and [Lloyd D. George](https://en.wikipedia.org/wiki/Lloyd_D._George), reversed Judge Kelleher's 1988 ruling. Judge [Betty Binns Fletcher](https://en.wikipedia.org/wiki/Betty_Binns_Fletcher) dissented.[[18]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-courtlistener_FloresVMeese_1990-20)[[19]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-scholar_google_FloresVMeese_1990-21) In the Ninth Circuit Court of Appeals, the judges concluded that the INS did not exceed its statutory authority in promulgating 242.24. They ruled that 242.24 did not violate substantive due process, under the Federal Constitution's Fifth Amendment. They ruled that a [remand](https://en.wikipedia.org/wiki/Remand_(court_procedure)) was necessary with respect to a procedural due process claim (934 F2d 991).

On August 9, 1991, the Ninth Circuit 11-judge *[en banc](https://en.wikipedia.org/wiki/En_banc" \o "En banc)* majority in *Flores v. Meese*, overturned its June 1990 panel opinion and affirmed Judge Kelleher's 1988 ruling against the government citing federal constitutional grounds including due process.[[Notes 3]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-22)[[20]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Cornell_FloresVMeese_1991-23) They vacated the panel opinion and affirmed the District Court's order in all respects (942 F2d 1352).[[Notes 4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-24)[[21]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-courtlistener_FloresVMeese_19910809-25) According to Judge Gee's ruling in Flores v. Sessions, the Ninth Circuit affirmed the district court's grant of plaintiffs' motion to enforce [Paragraph 24A of] the Flores Agreement, holding that nothing in the text, structure, or purpose of the [Homeland Security Act](https://en.wikipedia.org/wiki/Homeland_Security_Act) (HSA) or [Victims of Trafficking and Violence Protection Act of 2000](https://en.wikipedia.org/wiki/Victims_of_Trafficking_and_Violence_Protection_Act_of_2000) (TVPRA) renders continued compliance with Paragraph 24A, as it applies to unaccompanied minors, "impermissible."[[22]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Justia_FloresVSessions_20190705-26)

On March 23, 1993, the [Supreme Court](https://en.wikipedia.org/wiki/United_States_Supreme_Court) announced judgment in favor of the government, in *Janet Reno, Attorney General, et al. v. Jenny Lisette Flores, et al.*[[23]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Cornell_USSC_RenoVFlores_Syllabus_1993-27)[[24]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-NYT_Greenhouse_19930424-28) Justice [Antonin Scalia](https://en.wikipedia.org/wiki/Antonin_Scalia), joined by Chief Justice [William Rehnquist](https://en.wikipedia.org/wiki/William_Rehnquist), and Justices [Byron White](https://en.wikipedia.org/wiki/Byron_White), [Sandra Day O'Connor](https://en.wikipedia.org/wiki/Sandra_Day_O%27Connor), [Anthony Kennedy](https://en.wikipedia.org/wiki/Anthony_Kennedy), [David Souter](https://en.wikipedia.org/wiki/David_Souter), and [Clarence Thomas](https://en.wikipedia.org/wiki/Clarence_Thomas), held that the unaccompanied alien children had no constitutional right to be released to someone other than a close relative, nor to automatic review by an immigration judge.[[25]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-harv1-29)

On January 17, 1997 both parties signed the class action settlement agreement in *Flores v. Reno*, *The Flores Settlement Agreement* (FSA), which is binding on the defendants—the federal government agencies.[[2]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-clearinghouse_FloresVReno_19970117-2)

USSC Reno v. Flores 1993[[edit](https://en.wikipedia.org/w/index.php?title=Reno_v._Flores&action=edit&section=2)]

..."Where a juvenile has no available parent, close relative, or legal guardian, where the government does not intend to punish the child, and where the conditions of governmental custody are decent and humane, such custody surely does not violate the Constitution. It is rationally connected to a governmental interest in `preserving and promoting the welfare of the child,' ...and is not punitive since it is not excessive in relation to that valid purpose." ...Because this is a facial challenge, the Court rightly focuses on the Juvenile Care Agreement. It is proper to presume that the conditions of confinement are no longer " `most disturbing,' ...and that the purposes of confinement are no longer the troublesome ones of lack of resources and expertise published in the Federal Register...but rather the plainly legitimate purposes associated with the government's concern for the welfare of the minors. With those presumptions in place, "the terms and conditions of confinement...are in fact compatible with [legitimate] purposes," ...and the Court finds that the INS program conforms with the Due Process Clause."

[507](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_507) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) 292 (1993) 1993[[23]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Cornell_USSC_RenoVFlores_Syllabus_1993-27)

In *Reno v. Flores*, the Supreme Court ruled on March 23, 1993 that while "detained children in question had a constitutionally protected interest in freedom from institutional confinement", the Court reversed the Court of Appeals' 1991 decision in *Flores v. Meese* because the Immigration and Naturalization Service (INS) regulation [8 CFR](https://en.wikipedia.org/wiki/Title_8_of_the_Code_of_Federal_Regulations) 242.24 in question, complied with the requirements of due process. The INS regulation—8 CFR 242.24—"generally authorized the release of a detained alien juvenile, in order of preference, to a parent, a legal guardian, or specified close adult relatives of the juvenile, unless the INS determined that detention was required to secure an appearance or to ensure the safety of the juvenile or others".[[23]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Cornell_USSC_RenoVFlores_Syllabus_1993-27)[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13) This "meant that in limited circumstances" juveniles could be released "to another person who executed an agreement to care for the juvenile and to ensure the juvenile's attendance at future immigration proceedings". Juveniles who are not released would "generally require" a "suitable placement at a facility which, in accordance with the [1987] consent decree, had to meet specified care standards."[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13)[[Notes 5]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-30)[[Notes 6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-31)

On March 23, 1993, on [certiorari](https://en.wikipedia.org/wiki/Certiorari) the Supreme Court ruled in favor of the government, voting 7–2 to reverse the lower court—the Court of Appeals.[[24]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-NYT_Greenhouse_19930424-28):A19 Justice [Antonin Scalia](https://en.wikipedia.org/wiki/Antonin_Scalia), joined by Chief Justice [William Rehnquist](https://en.wikipedia.org/wiki/William_Rehnquist), and Justices [Byron White](https://en.wikipedia.org/wiki/Byron_White), [Sandra Day O'Connor](https://en.wikipedia.org/wiki/Sandra_Day_O%27Connor), [Anthony Kennedy](https://en.wikipedia.org/wiki/Anthony_Kennedy), [David Souter](https://en.wikipedia.org/wiki/David_Souter), and [Clarence Thomas](https://en.wikipedia.org/wiki/Clarence_Thomas), held that the unaccompanied alien children had no constitutional right to be released to someone other than a close relative, nor to automatic review by an immigration judge.[[25]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-harv1-29) In an opinion by Scalia, joined by Rehnquist, White, O'Connor, Kennedy, Souter, and Thomas, it was held that the INS policy—242.24—did not violate substantive due process under the Fifth Amendment. While lawyers for the plaintiffs alleged in a "novel" way that children have a fundamental right to liberty, in which a child who has "no available parent, close relative, or legal guardian, and for whom the government was responsible" has the right "to be placed in the custody of a willing and able private custodian rather than the custody of a government-operated or government-selected child care institution." The Court ruled that if that fundamental right existed, "it would presumably apply to state custody over orphaned and abandoned children as well." They ruled that "under the circumstances" "continued government custody was rationally connected to a government interest in promoting juveniles' welfare and was not punitive" and that "there was no constitutional need to meet even a more limited demand for an individualized hearing as to whether private placement would be in a juvenile's "best interests," so long as institutional custody was good enough." The Court held that the INS "did not violate procedural due process, under the Fifth Amendment, through failing to require the INS to determine in the case of each alien juvenile that detention in INS custody would better serve the juvenile's interests than release to some other "responsible adult," not providing for automatic review by an immigration judge of initial INS deportability and custody determinations, or failing to set a time period within which an immigration judge hearing, if requested, had to be held." The Court also held that this was not "beyond the scope of the Attorney General's discretion" because the INS 242.24 "rationally pursued the lawful purpose of protecting the welfare of such juveniles."[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13)[[Notes 7]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-32)[[26]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-33)[[Notes 8]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-34) It held that the juveniles could be "detained pending deportation hearings pursuant" under 8 CFR § 242.24 which "provides for the release of detained minors only to their parents, close relatives, or legal guardians, except in unusual and compelling circumstances."[[23]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Cornell_USSC_RenoVFlores_Syllabus_1993-27)

The Supreme Court justices said that in *Reno v. Flores*, most of the juveniles detained by INS and the Border Patrol at that time [1980s - early 1990s] were "16 or 17 years old", and had "telephone contact with a responsible adult outside the INS--sometimes a legal services attorney". They said that due process was "satisfied by giving the detained alien juveniles the right to a hearing before an immigration judge" and that there was no proof at that time "that all of them are too young or too ignorant to exercise that right when the form asking them to assert or waive it is presented."[[27]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Cornell_USSC_RenoVFlores_19930323-35)

Stevens, joined by Blackmun, dissented, expressing the view that the litigation history of the case at hand cast doubt on the good faith of the government's asserted interest in the welfare of such detained alien juveniles as a justification for 242.24, and demonstrated the complete lack of support, in either evidence or experience, for the government's contention that detaining such juveniles, when there were "other responsible parties" willing to assume care, somehow protected the interests of those juveniles; an agency's interest in minimizing administrative costs was a patently inadequate justification for the detention of harmless children, even when the conditions of detention were "good enough"; and 242.24, in providing for the wholesale detention of such juveniles for an indeterminate period without individual hearings, was not authorized by 1252(a)(1), and did not satisfy the federal constitutional demands of due process.[[12]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-refworld_USSC_Reno_v._Flores_Opinion_19930323-13)

Flores Settlement Agreement (FSA)[[edit](https://en.wikipedia.org/w/index.php?title=Reno_v._Flores&action=edit&section=3)]

On January 28, 1997, during the administration of President [Bill Clinton](https://en.wikipedia.org/wiki/Bill_Clinton), the Center for Human Rights and Constitutional Law (CHRCL) and the federal government signed the *Flores v. Reno Settlement Agreement*, which is also known as *The Flores Settlement Agreement* (FSA), *Flores Settlement*, *Flores v. Reno Agreement*.[[28]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-DHS-36)[[29]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-agreement1996-37)[[30]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Selby-38)[[31]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-politifactsummary-39) Following many years of litigation which started with the July 11, 1985 filing of class action lawsuit, *Flores v. Meese*, and included the Supreme Court case *Reno v. Flores* which was decided in 1993, the [consent decree](https://en.wikipedia.org/wiki/Consent_decree) or [settlement](https://en.wikipedia.org/wiki/Settlement_(litigation)) was reached in the [United States District Court for the Central District of California](https://en.wikipedia.org/wiki/United_States_District_Court_for_the_Central_District_of_California) between the parties. The court-supervised settlement, *The Flores Settlement Agreement* (FSA), continues to overseen by the [District Court for the Central District of California](https://en.wikipedia.org/wiki/United_States_District_Court_for_the_Central_District_of_California). The Flores Agreement has set strict national regulations and standards regarding the detention and treatment of minors in federal custody since then. Among other things, the federal government agreed to keep children in the least restrictive setting possible and to ensure the prompt release of children from immigration detention.[[8]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-MarqLRev12-9):1650

According to September 17, 2018 [Congressional Research Service](https://en.wikipedia.org/wiki/Congressional_Research_Service) (CRS) report, the FSA was "intended as a temporary measure".[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5):7 By 2001, both parties agreed that the FSA "would remain in effect until 45 days following [the] defendants' publication of final regulations" governing the treatment of detained, minors."[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5):7 By 2019, the federal government had "not published any such rules or regulations" so the FSA "continues to govern those agencies that now carry out the functions of the former INS."[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5):7 With the Flores Settlement in place, the executive branch maintains that it has two options regarding the detention of arriving family units that demonstrate a credible fear of persecution pending the outcome of their removal proceedings in immigration court: (1) generally release family units; or (2) generally separate family units by keeping the parents in detention and releasing the children only.[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5)

The Flores Agreement sets nationwide policies and "standards for the detention, release and treatment of minors in the custody of the [Immigration and Naturalization Service](https://en.wikipedia.org/wiki/Immigration_and_Naturalization_Service) (INS)[[31]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-politifactsummary-39) by prioritizing them for release to the custody of their families and requiring those in federal custody to be placed in the least restrictive environment possible," according to a 2018 [*NBC News*](https://en.wikipedia.org/wiki/NBC_News) article.[[32]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nbc20180619-40)

According to the legal nonprofit [Human Rights First](https://en.wikipedia.org/wiki/Human_Rights_First), the FSA required that immigration authorities "release children from immigration detention without unnecessary delay in order of preference beginning with parents and including other adult relatives as well as licensed programs willing to accept custody". If a suitable placement is not "immediately available, the government is obligated to place children in the "least restrictive" setting appropriate to their "age and any special needs".[[33]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-humanrightsfirst_20160219-41) The settlement agreement also required that the government "implement standards relating to the care and treatment of children in immigration detention.[[33]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-humanrightsfirst_20160219-41)

The FSA required immigration officials to provide detained minors with "food and drinking water as appropriate", "medical assistance if minor is in need of emergency services", "toilets and sinks", "adequate temperature control and ventilation", "adequate supervision to protect minors from others", "contact with family members who were arrested with the minor and separation from unrelated adults whenever possible."[[34]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Kandel_20170118-42):3–4[[29]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-agreement1996-37)

Under the settlement agreement, immigration officials agreed to release minors "without unnecessary delay" when detention isn't required to protect the safety and well-being of the minor or to secure the timely appearance of the minor at a proceeding before immigration authorities, that is, when officials release the minor to a parent or guardian who agree to appear, and the minor is not a flight risk.[[31]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-politifactsummary-39)

The FSA set a "preference ranking for sponsor types" with parents, then legal guardians as first choices then an "adult relative", an "adult individual or entity designated by the child’s parent or legal guardian", a "licensed program willing to accept legal custody", an "adult or entity approved" by [Office of Refugee Resettlement](https://en.wikipedia.org/wiki/Office_of_Refugee_Resettlement) (ORR).[[34]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Kandel_20170118-42):8[[3]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cliniclegal_FloresVMeese_SSA_199701-3):10 or sent to a state-licensed facility.[[31]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-politifactsummary-39)[[35]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-wapo20180620-43)[[36]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cnn20180618-44)

Immigration officials agreed to provide minors with contact with family members with whom they were arrested, and to "promptly" reunite minors with their families. Efforts to reunify families are to continue as long as the minor is in custody.[[31]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-politifactsummary-39)[[30]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Selby-38)[[Notes 9]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-45)[[37]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Snopes_LaCapria_20180618-46)

The Flores settlement does, however, require that "Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors" and "...such minor shall be placed temporarily in a licensed program ... at least until such time as release can be effected ... Or until the minor's immigration proceedings are concluded, whichever occurs earlier".[[*citation needed*](https://en.wikipedia.org/wiki/Wikipedia:Citation_needed)]

**Subsequent history**[[edit](https://en.wikipedia.org/w/index.php?title=Reno_v._Flores&action=edit&section=4)]

The parties agreed the litigation would terminate once the government finalized regulations complying with the settlement. Because the government has not yet finalized any such regulations, the litigation is ongoing. Compliance with the settlement has been the subject of criticism and litigation, resulting in extensions and modifications.[[34]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Kandel_20170118-42)[[38]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-dojoig20010920-47) In 2001 the [United States Department of Justice Office of the Inspector General](https://en.wikipedia.org/wiki/United_States_Department_of_Justice_Office_of_the_Inspector_General) concluded "Although the INS has made significant progress since signing the *Flores* agreement, our review found deficiencies with the implementation of the policies and procedures developed in response to *Flores*."[[38]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-dojoig20010920-47)

In November 2002, President [George W. Bush](https://en.wikipedia.org/wiki/George_W._Bush) signed into law the [Homeland Security Act](https://en.wikipedia.org/wiki/Homeland_Security_Act), which abolished the INS and removed responsibility for unaccompanied alien minors from the Justice Department.[[34]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Kandel_20170118-42) The new [United States Department of Homeland Security](https://en.wikipedia.org/wiki/United_States_Department_of_Homeland_Security) was given responsibility for the apprehension, transfer, and repatriation of illegal aliens while the [Office of Refugee Resettlement](https://en.wikipedia.org/wiki/Office_of_Refugee_Resettlement) inside the [United States Department of Health and Human Services](https://en.wikipedia.org/wiki/United_States_Department_of_Health_and_Human_Services) was given responsibility for the unaccompanied alien minors' care, placement, and reunification with their parents.[[34]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Kandel_20170118-42) In 2005 the Bush administration launched [Operation Streamline](https://en.wikipedia.org/wiki/Operation_Streamline), which referred all illegal immigrants for prosecution, but exempted those traveling with children.[[39]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-punditfact20180619-48)

In 2008, President Bush signed into law the [William Wilberforce Trafficking Victims Protection Reauthorization Act](https://en.wikipedia.org/wiki/Victims_of_Trafficking_and_Violence_Protection_Act_of_2000), a reauthorization of the [Victims of Trafficking and Violence Protection Act of 2000](https://en.wikipedia.org/wiki/Victims_of_Trafficking_and_Violence_Protection_Act_of_2000), which codified some of the standards in the Flores Agreement. The Act provided for the expedited [repatriation](https://en.wikipedia.org/wiki/Repatriation) of unaccompanied alien minors to contiguous nations Mexico and Canada, while exempting unaccompanied children from [El Salvador](https://en.wikipedia.org/wiki/El_Salvador), [Guatemala](https://en.wikipedia.org/wiki/Guatemala) and [Honduras](https://en.wikipedia.org/wiki/Honduras) from expedited repatriation in order to provide some protection to victims of [human trafficking](https://en.wikipedia.org/wiki/Human_trafficking).[[34]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Kandel_20170118-42)[[35]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-wapo20180620-43)[[40]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-49)[[36]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cnn20180618-44)

Attempting to comply with the Agreement while keeping families together and coping with the [2014 American immigration crisis](https://en.wikipedia.org/wiki/2014_American_immigration_crisis), a surge of refugees fleeing violence in [Central America](https://en.wikipedia.org/wiki/Central_America), the [Department of Homeland Security](https://en.wikipedia.org/wiki/United_States_Department_of_Homeland_Security) under President [Barack Obama](https://en.wikipedia.org/wiki/Barack_Obama) built family detention centers in Pennsylvania and Texas.[[41]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20180614-50)[[42]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nbc20150803-51)[[39]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-punditfact20180619-48)

On July 24, 2015, in [*Flores v. Johnson*](https://en.wikipedia.org/w/index.php?title=Flores_v._Johnson&action=edit&redlink=1) 2015 C.D. Cal., District Judge [Dolly M. Gee](https://en.wikipedia.org/wiki/Dolly_Gee) ruled found that the consent decree applied equally to accompanied and [unaccompanied minors](https://en.wikipedia.org/wiki/Unaccompanied_minor) and that immigration officials violated the consent decree by refusing to release accompanied minors held in a family detention facility.[[16]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-GGUL_Lakosil_201801-17)[[43]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20150823-52)[[44]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-politifact20180621-53)[[36]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cnn20180618-44) The government said an average of 20 days was required for adjudication of "credible fear" and "reasonable fear" claims, among the grounds for [asylum in the United States](https://en.wikipedia.org/wiki/Asylum_in_the_United_States), and on August 21, 2015 Judge Gee clarified the "without unnecessary delay" and "promptly" language in the Flores settlement, ruling that holding parents and children for up to 20 days "may fall within the parameters" of the settlement.[[43]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20150823-52)[[45]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-54)[[46]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-55) Judge Gee ruled that detained children and their parents who were caught crossing the border illegally could not be held more than 20 days, saying that detention centers in Texas, such as the [GEO Group](https://en.wikipedia.org/wiki/GEO_Group)'s privately run Karnes County Residential Center (KCRC) in [Karnes City, Texas](https://en.wikipedia.org/wiki/Karnes_City,_Texas), and the [T. Don Hutto Residential Center](https://en.wikipedia.org/wiki/T._Don_Hutto_Residential_Center), in [Taylor, Texas](https://en.wikipedia.org/wiki/Taylor,_Texas), had failed to meet Flores standards. Gee expanded Flores to cover accompanied and unaccompanied children.[[47]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-NYT_Preston_20150726-56) Judge Gee ruled that Flores calls on the government to release children "without unnecessary delay", which she held was within 20 days.[[48]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-NYT_Davis_20190616-57)[[49]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Dee_20150724-58) The court ordered the release of 1700 families that were not flight risks.[[42]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nbc20150803-51)[[50]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-59)[[51]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-60)

This was a major change to Flores. Gee was an Obama-appointed federal district court judge.[[52]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-pacificcitizen_20100402-61)[[53]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CAPAC_201105-62) Judge Gee said that the defendants' "blanket no-release policy with respect to minors accompanied by their mothers is a material breach of the Agreement."[[49]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Dee_20150724-58)

In 2016, in *Flores v. Lynch*, Ninth Circuit Judge [Andrew Hurwitz](https://en.wikipedia.org/wiki/Andrew_Hurwitz), joined by Judges [Michael J. Melloy](https://en.wikipedia.org/wiki/Michael_J._Melloy) and [Ronald M. Gould](https://en.wikipedia.org/wiki/Ronald_M._Gould), reversed in part, finding that the Agreement applied to all detained children but that it did not give their parents any affirmative right of release.[[54]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-63)[[16]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-GGUL_Lakosil_201801-17)[[36]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cnn20180618-44)[[55]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-vox20180620-64)

District Judge Gee next issued an enforcement order against the government and, on July 5, 2017, in *Flores v. Sessions*, Ninth Circuit Judge [Stephen Reinhardt](https://en.wikipedia.org/wiki/Stephen_Reinhardt), joined by Judges [A. Wallace Tashima](https://en.wikipedia.org/wiki/A._Wallace_Tashima), and [Marsha Berzon](https://en.wikipedia.org/wiki/Marsha_Berzon), affirmed, finding that Congress had not abrogated the Agreement through subsequent legislation.[[22]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Justia_FloresVSessions_20190705-26)[[56]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Hastings_Lincoln_20171018-65):181 Judge Gee ruled that "Congress did not terminate Paragraph 24A of the Flores Settlement with respect to bond hearings for unaccompanied minors" by "[e]nacting the Homeland Security Act (HSA) and the Trafficking Victims Protection Reauthorization Act (TVPRA)."[[22]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Justia_FloresVSessions_20190705-26) Judge Gee said that the *Flores v. Sessions* appeal had stemmed from the Flores Settlement Agreement "between the plaintiff class and the federal government that established a nationwide policy for the detention, release, and treatment of minors in the custody of the INS" and that Paragraph 24A of the Flores Agreement provides that a "minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge." The Ninth Circuit affirmed Judge Gee's motion to enforce the Flores Agreement, saying that there was "nothing in the text, structure, or purpose of the HSA or TVPRA" that rendered "continued compliance with Paragraph 24A, as it applies to unaccompanied minors, "impermissible."[[22]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Justia_FloresVSessions_20190705-26) Because of the ruling in *Flores v. Sessions*, ORR is required to "inform all unaccompanied children in staff-secure and secure placements of their right to a bond hearing, and schedule one if requested."[[56]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Hastings_Lincoln_20171018-65):184

In her July 2017 ruling, U.S. District Judge Dolly Gee found that children who were in custody of the U.S. Customs and Border Protection were sleep-deprived because of inadequate conditions and that their food and water was inadequate, and they lacked "basic hygiene items" which was in violation of the Flores Settlement Agreement.[[6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-latimes_Dolan_20190815-7) She ordered to federal government to provide an itemized list and improve the conditions.[[6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-latimes_Dolan_20190815-7) The federal government appealed the decision saying that 1997 Flores Agreement did not mention "allowing children to sleep or wash themselves with soap".

"Assuring that children eat enough edible food, drink clean water, are housed in hygienic facilities with sanitary bathrooms, have soap and toothpaste, and are not sleep-deprived are without doubt essential to the children’s safety."

Judge Marsha S. Berzon. August 15, 2019. 9th U.S. Circuit Court of Appeals[[6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-latimes_Dolan_20190815-7)

In June 2019, three judges of the Ninth Circuit court of appeals heard the case, *17-56297 Jenny Flores v. William Barr*, in which Sarah Fabian, the senior attorney in the Department of Justice's [Office of Immigration Litigation](https://en.wikipedia.org/wiki/United_States_Department_of_Justice_Civil_Division) requested the Court to overturn Judge Gee's 2017 order "requiring the government to provide detainees with hygiene items such as soap and toothbrushes in order to comply with the "safe and sanitary conditions" requirement set forth in Flores Settlement. During the June 20, 2019 proceedings, Ninth Circuit Judge William Fletcher said it was "inconceivable" that the United States government would consider it "safe and sanitary" to detain child migrants in conditions where it was "cold all night long, lights on all night long, sleeping on concrete and you've got an aluminium foil blanket?"[[57]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-BBC_20190620-66)[[58]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-theatlantic_Escobar_20190714-67) Fabian said that the *Flores agreement* mandating "safe and sanitary" conditions for detained migrant children was "vague" which let the federal agencies determine "sanitation protocols."[[7]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-cbsnews_Kates_20190815-8) It was not compulsory for the government to provide toothbrushes, soap or adequate bedding to the minors in their care.[[59]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-68) Videos of the hearing were widely circulated on social media.[[60]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-FloresVBarr_20190618-69) One of the justices, Judge A. Wallace Tashima, was detained in an internment camp as a child. According to the *Los Angeles Times*, the "case stirred nationwide outrage" when videos of the hearing went viral.[[6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-latimes_Dolan_20190815-7)

On August 15, 2019 the three-judge panel of the federal 9th U.S. Circuit Court of Appeals upheld an Judge Gee's 2017 "order requiring immigration authorities to provide minors with adequate food, water, bedding, toothbrushes and soap."[[6]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-latimes_Dolan_20190815-7)

**Trump administration family separation policy**[[edit](https://en.wikipedia.org/w/index.php?title=Reno_v._Flores&action=edit&section=5)]

*Main article:*[*Trump administration family separation policy*](https://en.wikipedia.org/wiki/Trump_administration_family_separation_policy)

As Presidential candidate, [Donald Trump](https://en.wikipedia.org/wiki/Donald_Trump) had promised to end what he called the Obama administration's policy of "catch and release". It was the second of his top priorities for immigration reform, after walling off Mexico.[[61]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-70)[[62]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-71) In the first 15 months of the administration of President Trump, nearly 100,000 immigrants apprehended at the United States-Mexico border were released, including more than 37,000 unaccompanied minors and 61,000 family members.[[63]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-wapo20180619-72)[[64]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-73)

On May 26, 2018 Trump tweeted, "Put pressure on the Democrats to end the horrible law that separates children from there [[*sic*](https://en.wikipedia.org/wiki/Sic)] parents once they cross the border into the U.S."[[65]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20180529-74) On May 29, 2018 [White House](https://en.wikipedia.org/wiki/White_House) senior policy advisor [Stephen Miller](https://en.wikipedia.org/wiki/Stephen_Miller_(political_advisor)) told reporters, "A nation cannot have a principle that there will be no civil or criminal immigration enforcement for somebody traveling with a child. The current immigration and border crisis, and all of the attendant concerns it raises, are the exclusive product of loopholes that Democrats refuse to close,"[[65]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20180529-74) such as the Flores Settlement Agreement and the [William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008](https://en.wikipedia.org/wiki/Victims_of_Trafficking_and_Violence_Protection_Act_of_2000).[[35]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-wapo20180620-43)

By June 2018, the Flores Agreement received increased public attention when Trump, his administration, and supporters cited the FSA and [Democratic](https://en.wikipedia.org/wiki/Democratic_Party_(United_States)) recalcitrance as justification for the [Trump administration family separation policy](https://en.wikipedia.org/wiki/Trump_administration_family_separation_policy), in which all adults detained at the [U.S.–Mexico border](https://en.wikipedia.org/wiki/Mexico%E2%80%93United_States_border) were prosecuted and sent to federal jails while children and infants were placed under the supervision of the [U.S. Department of Health and Human Services](https://en.wikipedia.org/wiki/United_States_Department_of_Health_and_Human_Services) (DHHS).[[66]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-horwitz12-75) In June 2018 [Vox Media](https://en.wikipedia.org/wiki/Vox_Media) summarized the administration's interpretation of the settlement as since the government "cannot keep parents and children in immigration detention together, it has no choice but to detain parents in immigration detention (after they've been criminally prosecuted for illegal entry) and send the children to" DHS as "unaccompanied alien children."[[55]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-vox20180620-64) Despite the wording of *Flores v. Reno*, human rights advocates asserted that no law or court order mandated the separation of children from their families.[[65]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20180529-74)[[63]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-wapo20180619-72)[[41]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20180614-50)[[44]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-politifact20180621-53) On June 11, 2018 Republican Senator from Texas [Ted Cruz](https://en.wikipedia.org/wiki/Ted_Cruz) said in a [Dallas](https://en.wikipedia.org/wiki/Dallas,_Texas) public radio interview "There's a court order that prevents keeping the kids with the parents when you put the parents in jail." [PolitiFact](https://en.wikipedia.org/wiki/PolitiFact) fact-checked Cruz's statement, concluding it was "mostly false."[[30]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-Selby-38) On June 14, 2018, [White House](https://en.wikipedia.org/wiki/White_House) press secretary [Sarah Huckabee Sanders](https://en.wikipedia.org/wiki/Sarah_Huckabee_Sanders) told reporters, "The separation of illegal alien families is the product of the same legal loopholes that Democrats refuse to close. And these laws are the same that have been on the books for over a decade. The president is simply enforcing them," Republican Representative from [Wisconsin](https://en.wikipedia.org/wiki/Wisconsin) and [Speaker of the House](https://en.wikipedia.org/wiki/Speaker_of_the_United_States_House_of_Representatives) [Paul Ryan](https://en.wikipedia.org/wiki/Paul_Ryan) told reporters "What's happening at the border in the separation of parents and their children is because of a court ruling," and Republican Senator from [Iowa](https://en.wikipedia.org/wiki/Iowa) [Chuck Grassley](https://en.wikipedia.org/wiki/Chuck_Grassley) tweeted "I want 2 stop the separation of families at the border by repealing the Flores 1997 court decision requiring separation of families." [*The New York Times*](https://en.wikipedia.org/wiki/The_New_York_Times) said "there is no decades-old law or court decision that requires" separating migrant children from their parents.[[41]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nyt20180614-50)

On June 19, 2018 [White House](https://en.wikipedia.org/wiki/White_House) Legislative Affairs Director [Marc Short](https://en.wikipedia.org/wiki/Marc_Short) told reporters the Trump administration had sought legislative relief from Congress on the Flores Settlement, saying "In each and every one of our negotiations in the last 18 months, all the immigration bills, we asked for resolution on the Flores settlement that is what we view requires 20 days before you have to release children and basically parents been released with children into society."[[32]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-nbc20180619-40) According to the [Congressional Research Service](https://en.wikipedia.org/wiki/Congressional_Research_Service) (CRS) report, President Trump's June 20, 2018 executive order, had directed then-[United States Attorney General](https://en.wikipedia.org/wiki/United_States_Attorney_General) [Jeff Sessions](https://en.wikipedia.org/wiki/Jeff_Sessions) to ask the Judge [Dolly M. Gee](https://en.wikipedia.org/wiki/Dolly_M._Gee) of [District Court for the Central District of California](https://en.wikipedia.org/wiki/United_States_District_Court_for_the_Central_District_of_California) in [Los Angeles](https://en.wikipedia.org/wiki/Los_Angeles), which oversees the Flores Agreement Settlement, to "modify the agreement" to "allow the government to detain alien families together throughout the duration of the family’s immigration proceedings as well as the pendency of any criminal proceedings for unlawful entry into the United States.[[4]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-CRS_Peck_20180917-5) The executive order reversed the family separation policy, directing the [United States Armed Forces](https://en.wikipedia.org/wiki/United_States_Armed_Forces) to make room available on military bases for family detention and requested that the District Court for the Central District of California be flexible on the provisions of the settlement requiring state licensing of family detention centers and limiting detention of immigrant children to 20 days, in order to detain families for the duration of their immigration court proceedings.[[67]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-76)[[68]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-77)[[69]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-78) On July 9, 2018, Gee rejected the request, citing that there was no basis to modify the agreement and pointing out that it is an issue the legislative branch has to solve instead.[[70]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-79)

On September 7, 2018 federal agencies published a [notice of proposed rulemaking](https://en.wikipedia.org/wiki/Notice_of_proposed_rulemaking) that would terminate the FSA "so that ICE may use appropriate facilities to detain family units together during their immigration proceedings, consistent with applicable law."[[71]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-FR_ICE_20180907-80)

On August 23, 2019, the administration issued a rule allowing families to be held in humane conditions while their U.S. immigration court cases were decided. On September 27, Judge Gee blocked the rule, stating: “This regulation is inconsistent with one of the primary goals of the Flores Agreement, which is to instate a general policy favoring release and expeditiously place minors ‘in the least restrictive setting appropriate to the minor’s age and special needs’”.[[72]](https://en.wikipedia.org/wiki/Reno_v._Flores#cite_note-81)

See also[[edit](https://en.wikipedia.org/w/index.php?title=Reno_v._Flores&action=edit&section=6)]

* [List of United States Supreme Court cases, volume 507](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases,_volume_507)
* [Unaccompanied Alien Children](https://en.wikipedia.org/wiki/Unaccompanied_Alien_Children)