

US Supreme Court**Case:** Reno v. Flores [507 U.S. 292]**Date:** March 23, 1993**Votes:** 7-2**Opinion:** Scalia**Concurrence:** O'Connor**Dissent(s):** Stevens, w/ Blackmun**Tags:** Immigration, INS, unaccompanied minors, detention, deportation, parole, bond, exclusion,**Question(s) Presented:** Do the Constitution and immigration laws require unaccompanied alien minors to be released from INS detention into the custody of responsible adults?**Holdings:** In favor of AG Reno; lower court is reversed.

- (1) INS regulation does not violate substantive due process.
- (2) INS regulation does not violate procedural due process.
- (3) INS regulation does not go beyond scope of AG's discretion to continue custody.

Rationale:

- (1) There is no constitutional right to not being held in custody in a decent & humane institution if you're a ward of the state.
- (2) Laws are different for aliens and for citizens; Due process is satisfied if juvenile alien is given *right* to a hearing, even if it's not automatic.
- (3) AG does not have the resources or expertise to determine appropriate custodial release to non-parent/guardian/relative adult.

Facts: Unaccompanied alien juveniles arrested and held in INS custody pending deportation hearings.**History, Prior Appeals & Trial Court Input:**

- **1984:** INS CA -- limited release policy
- **1985:** class action in Central District of CA – all aliens <18 detained by INS bcz no parent; challenged limited release policy & conditions of juveniles' detention. Why was this different from Exclusion policies, which permitted parole to persons other than parents and legal guardians?
- **1987:** District Court's summary judgment: equal protection claim upheld; INS started rewriting policy.
- **1987:** Alien Minors Care Program of DOJ—w/in 72 hours of arrest place unreleased juveniles "in a facility that meets or exceeds the standards established" by this program (298).
- **1988:** Deportation-Exclusion rule adopted [**53 Fed. Reg. 17449**] expanded possibilities of release somewhat—parent, legal guardian, adult relative not in INS. Legal hoops for other possible guardians. Those not released will be placed in a suitable facility w/in 72 hours of arrest.
- **1988: *Flores v. Meese*:** Dist. Court invalidated regulatory scheme, adding "or other responsible adult party"; also hearing before immigration judge provided soon after arrest.
- **1990: *Flores v. Meese*:** 9th Circuit court reversed.

- **1991: *Flores v. Meese*:** en banc 9th Circuit court affirmed District Court.
- **1992:** AG Reno brings this to SCOTUS; cert granted.

Attorneys' Arguments:

For Respondents:

- "First, they assert that alien juveniles suspected of being deportable have a 'fundamental' right to 'freedom from physical restraint,' ...and it is therefore a denial of '**substantive due process**' to detain them, since the Service cannot prove that it is pursuing an important governmental interest in a manner narrowly tailored to minimize the restraint on liberty." (299f.) [5th & 14th Amendments' guarantee of due process—substantive component re. liberty interests]
- Also violation of procedural due process—no provision for determining best interests of individual unaccompanied minors.
- Also exceeds AG's authority under **8 U.S.C. §1252 (a)(1)**.
- Challenge to INS regulation 242.24 is a facial challenge—it's wrong out of the starting gate; there's no factual history yet, though, to test it.

Appeals to Statute & Precedent:

- ***Matter of Patel* [15 1. & N. Dec. 666 (1976)]:** alien should not be detained or required to post bond except on a finding that he is a threat to national security or is a poor bail risk.
- **Title 8 U.S.C. §1252 (a)(1):** pending final determination of deportability, AG's discretion re. custody, bond, parole.
- ***Flores v. Meese* [934 F.2d 991 (CA9 1990)]:** limited policy of release to parents/other adults; vacated 1991.
- **INS regulation 242.24:** detention of juveniles; release of unaccompanied juveniles
- ***U.S. v. Salerno* [481 U.S. 739 (1987)]:** substantive due process; no infringement on liberty interests "unless the infringement is narrowly tailored to serve a compelling state interest." (302)
- ***Bowers v. Hardwick* [478 U.S. 186 (1986)]:** substantive due process
- ***Collins v. Harker Heights* [503 U.S. 115 (1992)]:** substantive due process
- ***Quilloin v. Walcott* [434 U.S. 246 (1978)]:** best interest, adoption, adequate parenting.
- ***Mathews v. Diaz* [462 U.S. 67 (1976)]:** immigration law doesn't match laws re. citizens.
- ***Carlson v. Landon* [342 U.S. 524 (1952)]:** re. detention of aliens prior to deportation hearings.
- ***Wong Wing v. U.S.* [163 U.S. 228 (1896)]:** immigration law re. custody & deportation
- ***The Japanese Immigrant Case* [189 U.S. 86 (1903)]:** 5th Amendment entitles aliens due process of law in deportation proceedings
- **8 U.S.C. § 1357(a)(2):** warrantless arrest of illegal aliens who are a flight risk
- **8 U.S.C. § 1252(b):** arrested aliens offered the choice of departing voluntarily
- **8 CFR § 242.24(g) (1992):** arrested juvenile must be given opportunity to consult with an adult before signing voluntary departure form
- **8 U.S.C. § 1252b(a)(3)(A):** describes form that notifies alien of deportation & custody, with box to check to request an immigration judge to redetermine the custody decision.

Relevant History:

- 1984 – increased flow of unaccompanied minors into CA: INS limited release policy. Changed 1991.

Dicta:

- “In the case of arrested alien *juveniles*, however, the INS cannot simply send them off into the night on bond or recognizance.” (295)
- “Juveniles placed in these facilities are deemed to be in INS detention. . . ‘Legal custody’ rather than ‘detention’ more accurately describes the reality of the arrangement, however, since these are not correctional institutions but facilities that meet ‘state licensing requirements for the provision of shelter care, foster care, group care, and related services to dependent children...’” (298)
- “the right at issue is the alleged right of a child who has no available parent, close relative, or legal guardian, and for whom the government is responsible, to be placed in the custody of a willing-and-able private custodian rather than of a government-operated or government selected child-care institution.” (302)
- If there’s a fundamental right to be released, “it would presumably apply to state custody over orphans and abandoned children as well, giving federal law and federal courts a major new role in the management of state orphanages and other child-care institutions.” (302f.)
- “We are unaware, however, that any court—aside from the courts below—has ever held that a child has a constitutional right not to be placed in a decent and humane custodial institution if there is available a responsible person unwilling to become the child’s legal guardian but willing to undertake temporary legal custody.” (303)
- Decent and humane custody doesn’t violate the Constitution.
- “Best interests of the child” – “it is not traditionally the sole criterion—much less the sole *constitutional* criterion—for other, less narrowly channeled judgments involving children, where their interests conflict in varying degrees with the interests of others.” (304)
- “...child-care institutions operated by the State in the exercise of its *parens patriae* authority...are not constitutionally required to be funded at such a level as to provide the *best* schooling or the *best* health care available; nor does the Constitution require them to substitute, wherever possible, private nonadoptive custody for institutional care.” (304)
- Minimum standards must be met—but alternative placement is not a constitutional imperative.
- “...narrow tailoring is required only when fundamental rights are involved.” (305)
- “reasonable fit” if not a constitutional right
- Also: rules that apply to aliens aren’t always going to match rules applied to citizens.
- Re. procedural due process: argument looks just like substantive, so we reject it on same grounds. (308)
- “The district Court and the en banc Court of Appeals concluded that the INS procedures are faulty because they do not provide for *automatic* review by an immigration judge of the initial deportability and custody determinations. . . We disagree.” (308f.)

- Because we're dealing with 16 and 17-year-olds, we think they can adequately waive their right to a hearing.
- INS regulations don't exceed AG's authority re. custody, because AG doesn't have the resources or expertise to make individual determinations in each case re. the safety of adults who are not on the presumptively appropriate list.
- "(Respondents' contention that the real purpose was to save money imputes not merely mendacity but irrationality, since respondents point out that detention in shelter-care facilities is more expensive than release.)" (311)
- "Finally, respondents claim that the regulation is an abuse of discretion because it permits the INS, once having determined that an alien juvenile lacks an available relative or legal guardian, to hold the juvenile in detention indefinitely. That is not so. The period of custody is inherently limited by the pending deportation hearing, which must be concluded with 'reasonable dispatch' to avoid habeas corpus. 8 U.S.C. §1252(a)(1)." (314)
 - **"It is expected that alien juveniles will remain in INS custody an average of only 30 days."**
 - This acc. to the Juvenile Care Agreement 178a.
- "We think the INS policy now in place is a reasonable response to the difficult problems presented when the Service arrests unaccompanied alien juveniles." (315)

Concurrence: O'Connor

- INS regulation is fine, because it complies with the requirement of due process.
- "'Freedom from bodily restraint' means more than freedom from handcuffs, straitjackets, or detention cells. A person's core liberty interest is also implicated when she is confined in a prison, mental hospital, or some other form of custodial institution, even if the conditions of confinement are liberal. This is clear beyond cavil, at least where adults are concerned." (315f.)
- ***In re Gault* [387 U.S. 1 (1967)]**: child's constitutional right is not to liberty but to custody. (Children in delinquency proceedings must have procedural due process protections when institutional confinement is in the offing.)
- "...the purpose of heightened scrutiny is not to prevent government from placing children in an institutional setting, where necessary. Rather, judicial review ensures that government acts in this sensitive area with requisite care." (318)

Dissent: Stevens, joined by Blackmun

- "Possibly because of the implausibility of the INS' claim that it has made a reasonable judgment that detention in government-controlled or government-sponsored facilities is 'better' or more 'appropriate' for these children than release to independent *responsible* adults, the Court reaches out to justify the INS policy on a ground not only not argued, but expressly disavowed by the INS, that is, the tug of 'other concerns that compete for public funds and administrative attention,' *ante*, at 305." (321)
- "I cannot share my colleagues' eagerness for that aggressive tack in a case involving a substantial deprivation of liberty." (321)

- He thinks this policy & SCOTUS decision is a train wreck no matter what angle you look at it—no precedent, no admin proceedings, no statutory or constitutional justification for Court’s decision.
- Also, there’s “custody” that’s familial, and “custody” that’s institutional. These are not fungible.
- Also, there’s really no time limit in the INS regulation.
- There shouldn’t be a need for an extensive “home study” to determine the qualifications of “other responsible adults.” (Unfortunately this was proved wrong over time.)
- Also, it’s unconstitutional to have a rule “providing for the wholesale detention of juveniles for an indeterminate period without individual hearings.” (333)
- “The flaw in the INS’ policy is not that it prefers parents and close relatives over unrelated adults, but that it prefers government detention over release to responsible adults.” (336n24)
- You can’t impute generally to all aliens a presumption that they’ll be detrimental to the U.S.; likewise, you can’t impute generally the unsuitability of all unrelated adults who might take custody of an unaccompanied minor.
- “The particular circumstances facing these juveniles are too diverse, and the right to be free from government detention too precious, to permit the INS to base the crucial determinations regarding detention upon a mere presumption regarding ‘appropriate custodians.’” (338)
- **“The detention of juveniles on the basis of a general presumption as to the suitability of particular custodians without an individualized determination as to whether that presumption bears any relationship at all to the facts of a particular case implicates an interest at the very core of the Due Process Clause, the constitutionally protected interest in freedom from bodily restraint.”** (340)
- “...the Court holds that even if detention is not really *better* for these juveniles than release to responsible adults, so long as it is ‘good enough,’ *ante*, at 305, the INS need not spend the time and money that would be necessary to actually serve the ‘best interests’ of these children. *Ante*, at 304-305. In other words, so long as its cages are gilded, the INS need not expend its administrative resources on a program that would better serve its asserted interests and that would not need to employ cages at all.” (345)
- “As I read our precedents, the omission of any provision for individualized consideration of the best interests of the juvenile in a rule authorizing an indefinite period of detention of presumptively innocent and harmless children denies them precisely that liberty.” (348)
- NOTE: there are a lot of footnotes to his dissent. I did not read them all.

Commentary:

- The part about the length of stay in custody is part of the dicta, says “average 30 days,” and refers to another law (the Juvenile Care Agreement). It’s not like this opinion MADE this rule.