

1 CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
2 Carlos R. Holguín (90754)
3 Peter A. Schey (58232)
4 256 South Occidental Boulevard
5 Los Angeles, CA 90057
6 Telephone: (213) 388-8693
7 Email: pschey@centerforhumanrights.org

8 *Attorneys for Plaintiffs*

9 *Additional counsel listed on following page*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,
Plaintiffs,
v.
WILLIAM BARR, Attorney General of
the United States, *et al.*,
Defendants.

Case No. CV 85-4544-DMG-AGR_x
PLAINTIFFS' RESPONSE TO JUVENILE
COORDINATORS' INTERIM REPORTS
Hearing: December 4, 2020
11:00 AM
[Hon. Dolly M. Gee]

1 NATIONAL CENTER FOR YOUTH LAW
2 Leecia Welch (Cal. Bar No. 208741)
3 Neha Desai (Cal. RLSA No. 803161)
4 Poonam Juneja (Cal. Bar No. 300848)
5 Freya Pitts (Cal. Bar No. 295878)
6 Mishan Wroe (Cal. Bar No. 299296)
7 Melissa Adamson (Cal. Bar No. 319201)
8 1212 Broadway, Suite 600 Oakland, CA 94612
9 Telephone: (510) 835-8098
10 Email: lwelch@youthlaw.org
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 On September 4, 2020, the Court ordered the ICE and ORR Juvenile
2 Coordinators to “maintain records and statistical information on minors held in
3 Title 42 custody pursuant to Paragraph 28A, and . . . monitor compliance with the
4 Agreement with respect to any minors held in Title 42 custody pursuant to
5 Paragraph 29.” Order re Plaintiffs’ Motion to Enforce Settlement as to “Title 42”
6 Class Members [Doc. # 976] (“Title 42 Order”), at 18.

7 By order dated October 26, 2020, the Court directed the ICE and ORR
8 Juvenile Coordinators to report regarding, inter alia, “the topics listed in the April
9 24, 2020 Order [Doc. # 784] and compliance with the Court’s order regarding
10 minors held under Title 42 authority [Doc. # 976].”¹ Order re October 23, 2020
11 Status Conference [Doc. # 1014] (“Oct. 26 Order”), at 3.

12 The Juvenile Coordinators’ Interim Reports fail to supply information
13 sufficient to show that Defendants are complying with the Settlement during the
14 COVID-19 pandemic. The Court should order the Coordinators’ reports to provide
15 the following information going forward.

- 16 1) The Juvenile Coordinators should report the reasons Defendants
17 detain children in unlicensed CBP facilities for more than 72 hours
18 pursuant to Title 42 or Title 8.

19 The Reports fail to provide adequate information regarding Defendants’
20 compliance with the Court’s order that “[a]ll minors detained in the legal custody
21 of DHS or ORR pursuant to Title 42 are Class Members as defined by Paragraph
22 10 of the *Flores* Agreement” and that Defendants must therefore “comply with the
23 Agreement with respect to such minors to the same degree as any other minors
24 held in their custody.” Title 42 Order at 17.

25 ICE’s Juvenile Coordinator reports “that ICE has included minors
26 _____

27 ¹ The ICE and ORR Juvenile Coordinator Interim Reports (“ICE Report” and
28 “ORR Report”) appear in the public record as Documents # 1029-1 and #1029-2,
respectively.

1 temporarily housed by ICE pursuant to Title 42 authorities over 72 hours pending
2 expulsion in its monthly Paragraph 28A reporting shared with Plaintiffs’ counsel
3 since March 2020 . . .” [Doc. # 1029-1] (“ICE Report”), at 8. The report adds that
4 ICE detained 19 class members in hotels for over two days “pending an expulsion
5 flight to their home country under Title 42 authorities.” *Id.* These children were
6 then transported back to “U.S. Customs and Border Protection for processing”
7 because the flights were delayed by Hurricane Eta. *Id.* According to the ICE
8 Report, “[T]hese 19 minors are currently in ORR custody,” *id.*, yet the report fails
9 to disclose how long CBP detained these class members or where it detained them
10 before ostensibly transferring them to a licensed placement.²

11 The Title 42 Order applies to DHS, and therefore covers both ICE *and* CBP.
12 *See, e.g.*, Title 42 Order at 17 ¶ 3 (“Under Paragraph 12.A, if a bed in a licensed
13 facility is immediately available, DHS shall generally make a licensed placement
14 of class members within 72 hours of arrest or apprehension.”). Yet the ICE Report
15 says nothing about children whom CBP has detained for more than 72 hours, nor
16 does it disclose the reasons for prolonged placement in unlicensed Border Patrol
17 facilities. If Defendants are detaining class members for extended periods in CBP
18 facilities instead of detaining them in hotels, this places children at no less risk than
19 hotel placement. The evidence Plaintiffs have independently collected warrants the
20 Juvenile Coordinators’ reporting on whether this is or may be the case.

21 According to its ¶ 29 data report, CBP detained 35 children for more than 72
22 hours during October 2020 alone. Ex. A, Declaration of Melissa Adamson,
23 November 23, 2020 (“Adamson Decl.”), at ¶ 6.³ Of these 35, CBP’s report
24

25 ² The ORR Report adds nothing to the ICE Report insofar as children designated
26 for Title 42 expulsion are concerned, stating only that “all minors entering ORR
27 custody have been referred under Title 8 provisions.” ORR Report at 1.

28 ³ Of these 35 children, ten children were listed as “Y” and 25 children were listed as
“N” in the “T42 (Y/N)” column. Adamson Decl. at ¶ 7.

1 indicates that at least 15 children spent five or more days in unlicensed Border
2 Patrol facilities, including —

- 3 • A 17-year-old child for approximately 18.3 days (438.87 hours)
- 4 • A 6-year-old child for approximately 11.4 days (272.95 hours)
- 5 • A 12-year-old child for approximately 11.4 days (272.95 hours)
- 6 • A 2-year-old held for approximately 11 days (264.87 hours)
- 7 • A 16-year-old held for approximately 8 days (193.00 hours)
- 8 • A 9-month-old held for approximately 7.4 days (177.50 hours)
- 9 • An 8-month-old held for approximately 7.2 days (171.90 hours)
- 10 • A 13-year-old held for approximately 7.2 days (171.88 hours)
- 11 • A 4-year-old held for approximately 7.1 days (170.03 hours)
- 12 • A 4-year-old held for approximately 6.5 days (156.08 hours)
- 13 • A 12-year-old held for approximately 6.5 days (156.08 hours)
- 14 • A 5-year-old held for approximately 6.1 days (145.55 hours)
- 15 • A 2-year-old held for approximately 5.7 days (136.40 hours)
- 16 • A 5-year-old held for approximately 5.3 days (127.52 hours)
- 17 • An 8-year-old held for approximately 5.3 days (127.52 hours)

18 *Id.* at ¶ 9.

19 The available evidence further indicates that CBP’s detaining class members
20 for such extended periods is exposing children to an unacceptably high risk of
21 contracting COVID-19.

22 According to class member E.J.L.A., as of November 18, 2020, CBP had
23 detained him at the Weslaco Station for three days. Ex. B, Declaration of E.J.L.A.,
24 November 18, 2020, at ¶¶ 2, 4. He describes conditions at the Weslaco Border
25 Patrol Station as follows:

26 When I got to the Weslaco station, there were many children. I was detained
27 _____
28

1 in a room with thirty other minors and we were cramped. . . . I had to sleep
2 in a sitting position because there were so many people in the room. I met
3 eight other boys who were detained with me who had been detained four
4 days. They have all left the facility. I met a Guatemalan minor who had been
5 detained at the Weslaco station for five days. . . . Currently, I am in a room
6 alone and isolated from others. . . . I have been given one disposable face
7 mask and I have to use the same face mask every day. I have not been
8 provided hand sanitizer since my arrival. I have not been provided gloves. I
do not have access to soap for handwashing. Another child asked for soap
and he was told no. . . . There is no social distancing here. When we are in
line for showers and food, we are not spaced six feet apart. We stand right
next to each other.

9 *Id.* at ¶ 7.

10 Another Weslaco detainee is 13-year-old K.J.M.B.. Ex. C, Declaration of
11 K.J.M.B., November 18, 2020, at ¶ 2. As of November 18, 2020, Defendants had
12 detained him at Weslaco for four days. *Id.* at ¶ 4. He corroborates key elements of
13 E.J.L.A.’s account: “I sleep on a cushion on the floor. I have a thin nylon blanket
14 that I use to sleep. *I do not have soap to wash my hands. I have not been given*
15 *hand sanitizer. I do not get my temperature checked regularly. I have not received*
16 *a face mask.* I am wearing the cloth mask that I arrived to the United States with.”

17 *Id.* at ¶ 8 (emphasis added).

18 Class member M.N.A.G. is eight years old. Ex. D, Declaration of M.N.A.G.,
19 November 18, 2020, at ¶ 2. He reports having arrived with his ill mother, whom
20 Defendants transferred separately to an unknown location, leaving they young boy
21 alone at the Weslaco Station. *Id.* at ¶ 3. He declares:

22 My mom is somewhere else. I think she is in the hospital because her back
23 hurts. I have not been able to talk to her because she is sick. They told me
24 that I cannot leave until she gets here. . . . I have been detained at this facility
25 for 2 days. I have been told . . . I have to wait here until my mother gets out
26 of the hospital. I have not been told when she will get out. I have not been
27 told how long I will have to wait at the facility. One boy had to wait five
28 days. I do not remember his name. He told me he had been here five days.

Id. at ¶¶ 3-5.

1 M.N.A.G., too, reports experiencing substandard and dangerous conditions
2 at the Weslaco Station:

3 I am alone in my room. I do not know why I am alone. It makes me feel
4 abandoned. I feel very alone. I have been completely alone for an entire day.
5 . . . It is very cold. It is always very cold. I get water often. When I want to
6 wash my hands, there is only water. There is no soap. I do not know why
7 there is no soap. I received one disposable mask when I arrived to Weslaco
8 station and I have had the same mask since then. I have not received a new
9 mask. My mask is dirty on the inside. Here, people do not practice social
10 distancing. Social distancing is when people do not get too close so that they
11 are not get sick from COVID. When we are in line, we sit or stand close
12 together. I think many people here will get sick from COVID. That makes
13 me feel scared.

14 *Id.* at ¶ 7.⁴

15 Defendants’ have steadfastly refused to disclose the reasons they detain
16 children for prolonged periods in unlicensed Border Patrol facilities.⁵ On October
17 13, 2020, Plaintiffs advised Defendants that CBP’s “August [2020] dataset reports
18 23 children held for over 72 hours in CBP facilities, eight of whom it appears were
19 detained for over a week in such facilities.” Ex. F, Declaration of Carlos Holguín,
20

21 ⁴ On November 18, 2020, Plaintiffs conducted a monitoring visit of the Weslaco
22 Border Patrol Station. Ex. E, Declaration of Denise Rosales, November 21, 2020.

23 ⁵ Settlement ¶ 28A provides: “The INS, through the Juvenile Coordinator, shall also
24 collect information regarding the reasons for every placement of a minor in a
25 detention facility or medium security facility.” Settlement ¶ 29 provides: “[T]he
26 INS shall provide to Plaintiffs’ counsel the information collected pursuant to
27 Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS
28 employees regarding the implementation of this Agreement.”

29 Border Patrol facilities are indisputably “detention facilities,” and, even absent a
30 pandemic, Defendants should disclose the reasons they detain children in these
31 facilities. The case for transparency is all the more compelling now. Defendants’
32 keeping children for extended periods of time in Border Patrol facilities instead of
33 hotels is not consistent with the Court’s Title 42 Order and protracting children’s
34 detention in such facilities is no less dangerous than detaining them in hotels.

1 November 23, 2020 (“Holguín Decl.”), Attachment 1. Plaintiffs requested that
2 Defendants “disclose the reasons for children’s extended stays in CBP facilities . .
3 .” *Id.* Plaintiffs explained the requested information would allow them to monitor
4 whether Defendants are detaining class members in CBP facilities whom they
5 would have “hoteled” but for the Title 42 Order. *Id.* On November 19, the Parties
6 met and conferred, but failed to resolve their differences over CBP’s reporting
7 obligations.⁶

8 The Court should order the Juvenile Coordinators to report on class
9 members held for longer than 72 hours in Border Patrol stations. It should also
10 order CBP to report its reasons for failing to transfer class members to a licensed
11 placement within 72 hours of taking them into custody pursuant to Settlement
12 ¶¶ 28A and 29.

13 2) The Reports should disclose instructions and policies ORR has issued
14 to protect children from COVID-19 in ORR facilities.

15 The Court’s order of April 24, 2020, directs the ORR Juvenile Coordinator
16 to “[i]dentify the location of any ORR facility that has had any individual, whether
17 detainee or staff member, test positive for COVID-19, and provide a status report
18 and census of those infected at that facility during the reporting period.” Order re
19 Plaintiffs’ Motion to Enforce, April 24, 2020 [Doc. # 784], at 20. It further directs
20 the ORR Juvenile Coordinator to “[d]escribe any policies and/or practices aimed at
21 identifying and protecting minors who are at heightened risk of serious illness or
22 death should they contract COVID-19.” *Id.*

23 The Court’s order of October 26 directs Defendants to “provide their current
24 internal instructions and policies to Plaintiffs’ counsel, pursuant to Paragraph 29 of
25 the FSA.” Oct. 26 Order at 3.

26 _____
27 ⁶ The Court’s order of October 26, 2020, directs the Parties to meet and confer
28 regarding “provision of information of the reasons for placement of Class Members
in a particular detention facility.” Oct. 26 Order at 3 ¶ 4.

1 On October 30, 2020, Plaintiffs emailed Defendants requesting, “pursuant to
2 Settlement ¶ 29 and ¶ 5 of the Court’s order of October 26, 2020 [Doc. #1014],”
3 that Defendants “produce all policies and instructions not previously supplied
4 which they have issued to prevent, mitigate, or manage COVID-19 infection in
5 ORR facilities.” Holguín Decl., Attachment 2. On November 19, 2020, the Parties
6 met and conferred, but failed to resolve their differences over ORR’s obligation to
7 disclose such policies and instructions. Holguín Decl. at ¶ 4.

8 Although the Court’s order of April 24 does not squarely require the ORR
9 Juvenile Coordinator to report such policies or instructions, her doing so should
10 now be required to ensure Defendants’ compliance with their obligation to ensure
11 that conditions in detention facilities are safe, sanitary, and consistent with a bona
12 fide concern for vulnerable children during the pandemic.⁷

13 According to the ORR Report, ORR’s most recent policies or instructions
14 related to COVID-19 protocols date from approximately four months ago. ORR
15 Report at 6. Given the pandemic’s spread, it would be remarkable and disturbing
16 should these now-dated instructions reflect the sum total of ORR’s efforts to
17 protect children in its custody from COVID-19, yet Defendants have refused to
18 disclose any more recent guidance, or even to say whether ORR has or has not
19 issued has anything new.

20 ORR’s refusal to disclose its current policies and instructions has predictably
21 sown confusion and hindered legal service providers’ ability to advocate for their
22

23
24 ⁷ Settlement ¶ 12 provides: “Following arrest, the INS shall hold minors in facilities
25 that are safe and sanitary and that are consistent with the INS’s concern for the
26 particular vulnerability of minors.” Settlement Exhibit 1 requires ORR facilities to
27 provide children “[p]roper physical care . . .” and “[a]ppropriate routine medical
and dental care, family planning services, and emergency health care services . . .”

28 Settlement ¶ 29 requires Defendants to disclose “each INS policy or instruction
issued to INS employees regarding the implementation of this Agreement.”

1 clients. For example, ORR has refused to inform staff at The Door, a legal service
2 provider that represents class members in New York, “if anyone at The Children’s
3 Village has tested positive, has been exposed, has exhibited symptoms, or has been
4 denied entry to the site . . . even when our staff are visiting the site in person for
5 client meetings” Ex. G, Declaration of Hannah P. Flamm (“Flamm Decl.”),
6 November 23, 2020, at ¶ 6.

7 ORR’s reticence with respect to the health and safety of class members is
8 both inexcusable and potentially dangerous. *See id.* (“To protect our clients’ rights
9 and to further the best interests, health, and safety of our clients and our staff, we
10 need to be informed, with our clients’ consent, if any of our clients has tested
11 positive, has been exposed, or has developed symptoms of COVID-19.”). The
12 Court should order the ORR Juvenile Coordinator to disclose any policies or
13 instructions the agency has issued since July 2020, to mitigate the risks to class
14 members of COVID-19 infection.

15 3) Prolonged and unexplained detention of class members in “out-of-
16 network” facilities.

17 The Court’s order of April 24 directs the ORR Juvenile Coordinator to
18 report on “[m]easures taken to expedite the release of Class Members to suitable
19 custodians during the COVID-19 health emergency . . .” April 24 Order at 19.

20 In addition to the many licensed facilities ORR uses to detain class
21 members, the agency places children at a small number of “out-of-network” or
22 “OON” facilities. Among these facilities is the Nexus Children’s Hospital in
23 Houston, Texas (“Nexus”). Ex. H, Declaration of Leecia Welch, November 23,
24 2020 (“Welch Decl.”), at ¶ 2. The ORR Report provides no information regarding
25 children detained in OON facilities, which is especially problematic considering
26 the children ORR dispatches to OON facilities are among the most vulnerable
27 children in its custody. *See id.* at ¶ 5.

28 On November 13, 2020, Plaintiffs’ counsel visited the Nexus facility

1 pursuant to Settlement ¶ 32. *Id.* at ¶¶ 2, 6. Counsel there encountered six children
2 whom ORR had placed at Nexus, including four children who had been detained at
3 Nexus for six months or longer, and one child who had been detained there for
4 over a year. *Id.* at ¶¶ 3, 12, 15-17.⁸ Two of the class members currently placed at
5 Nexus described their experiences at the facility in sworn declarations. *See*
6 Exhibits I and J.

7 Disturbingly, one day prior to her visit, ORR provided Plaintiffs' counsel
8 with a roster of class members detained at Nexus that indicated the agency had
9 only three children there. Welch Decl. at ¶¶ 3-4. This was inaccurate. *Id.* ¶ 3. On
10 November 16, 2020, Plaintiffs emailed Defendants requesting information
11 regarding Defendants' failure to report all children placed in its out-of-network
12 facilities. Holguín Decl., Attachment 2. Plaintiffs met and conferred with
13 Defendants on November 19, 2020 regarding this issue but have not yet received
14 an explanation for this inaccurate reporting. Welch Decl., at ¶ 5.

15 ///

26
27 ⁸ As best as counsel could determine, ORR was providing these children little or no
28 education over the course of such protracted stays and several children appeared to
be overmedicated. *Id.* at ¶¶ 9-11, 14.

1 The ORR Report should disclose the reasons for children’s protracted
2 detention at Nexus and explain why half of the children ORR has placed at Nexus
3 fail to appear in the agency’s ¶ 29 reports.

4 Dated: November 23, 2020.

CENTER FOR HUMAN RIGHTS AND
CONSTITUTIONAL LAW
Carlos R. Holguín
Peter A. Schey

NATIONAL CENTER FOR YOUTH LAW
Leecia Welch
Neha Desai
Poonam Juneja
Freya Pitts
Melissa Adamson
Mishan Wroe

/s/ Carlos Holguín_____

Carlos Holguín

One of the Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos R. Holguín (Cal. Bar No. 90754)
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693
Email: crholguin@centerforhumanrights.org

NATIONAL CENTER FOR YOUTH LAW
Leecia Welch (Cal. Bar No. 208741)
Neha Desai (Cal. RLSA No. 803161)
Poonam Juneja (Cal. Bar No. 300848)
Freya Pitts (Cal. Bar No. 295878)
Mishan Wroe (Cal. Bar No. 299296)
Melissa Adamson (Cal. Bar No. 319201)
1212 Broadway, Suite 600
Oakland, CA 94612
Telephone: (510) 835-8098
Email: lwelch@youthlaw.org

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, ET AL.,

PLAINTIFFS,

v.

WILLIAM BARR, ATTORNEY GENERAL OF
THE UNITED STATES, ET AL.,

DEFENDANTS.

No. CV 85-4544-DMG-AGR_x

DECLARATION OF MELISSA ADAMSON

1 I, Melissa Adamson, declare as follows:

2
3 1. I am an attorney at the National Center for Youth Law and I represent
4 Plaintiffs in the above-titled action. I execute this declaration in support of Plaintiffs’
5 Response to Juvenile Coordinators’ Interim Reports.

6 2. This declaration is based on my personal knowledge, except as to those
7 matters based on information and belief, which I believe to be true. If called to testify
8 in this case, I would testify competently about these facts.

9 3. Pursuant to ¶¶ 28 and 29 of the *Flores* Settlement Agreement, the
10 Department of Homeland Security (“DHS”) and the Department of Health and Human
11 Services (“HHS”) provide class counsel with monthly statistical reports on class
12 members in its custody. DHS provides reports from Immigration and Customs
13 Enforcement (“ICE”) and Customs and Border Protection (“CBP”).

14 4. The monthly DHS CBP report (“CBP report”) lists children that were
15 detained for more than 72 hours in CBP custody (excluding transfers to Enforcement
16 and Removal Operations (“ERO”) or HHS). The CBP report provides each class
17 member’s “Alien Number,” “APP/Inadmissible Date,” “Sector/Field Office,” “Subject
18 Name,” “Date of Birth,” “Country of Birth,” “Most Recent Book Out Date,” “Most
19 Recent Book Out Location,” “Demographic,” “T42 (Y/N),” “Time in Custody (TIC)
20 Hours,” and “Component.”

21
22 October 2020

23 5. The October CBP report covers the time period from October 1, 2020 to
24 October 31, 2020.

25 6. The October CBP report lists 35 children in total, each of whom were
26 detained for longer than 72 hours in CBP custody.

27 7. Of these 35 children, ten children were listed as “Y” and 25 children were
28 listed as “N” in the “T42 (Y/N)” column.

1 8. Of these 35 children, eight children were listed as “UAC / Single Minors”
2 and 27 children were listed as “Family Unit / Group” in the “Demographics” column.

3 9. Of these 35 children, 15 children spent five or more days in CBP custody,
4 including:¹

- 5 • **A 17-year-old child for approximately 18.3 days (438.87 hours).** Listed as “UAC
6 / Single Minors” in the “Demographic” column and “Y” in the “T42 (Y/N)” column.
- 7 • **A 6-year-old for approximately 11.4 days (272.95 hours).** Listed as “Family Unit
8 / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 9 • **A 12-year-old for approximately 11.4 days (272.95 hours).** Listed as “Family
10 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 11 • **A 2-year-old held for approximately 11 days (264.87 hours).** Listed as “Family
12 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 13 • **A 16-year-old held for approximately 8 days (193.00 hours).** Listed as “Family
14 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 15 • **A 9-month-old held for approximately 7.4 days (177.50 hours).** Listed as
16 “Family Unit / Group” in the “Demographic” column and “Y” in the “T42 (Y/N)”
17 column.
- 18 • **An 8-month-old held for approximately 7.2 days (171.90 hours).** Listed as
19 “Family Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)”
20 column.
- 21 • **A 13-year-old held for approximately 7.2 days (171.88 hours).** Listed as “Family
22 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 23 • **A 4-year-old held for approximately 7.1 days (170.03 hours).** Listed as “Family
24 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 25 • **A 4-year-old held for approximately 6.5 days (156.08 hours).** Listed as “Family
26 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.

27 ¹ Children’s ages were determined based on children’s listed “Date of Birth” and
28 “Inadmissible Date.”

- 1 • **A 12-year-old held for approximately 6.5 days (156.08 hours).** Listed as “Family
2 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 3 • **A 5-year-old held for approximately 6.1 days (145.55 hours).** Listed as “Family
4 Unit / Group” in the “Demographic” column and “Y” in the “T42 (Y/N)” column.
- 5 • **A 2-year-old held for approximately 5.7 days (136.40 hours).** Listed as “Family
6 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 7 • **A 5-year-old held for approximately 5.3 days (127.52 hours).** Listed as “Family
8 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 9 • **An 8-year-old held for approximately 5.3 days (127.52 hours).** Listed as “Family
10 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.

11
12 September 2020

13 10. The September CBP report covers the time period from September 1, 2020
14 to September 30, 2020.

15 11. The September CBP report lists 36 children in total, each of whom were
16 detained for longer than 72 hours in CBP custody.

17 12. Of these 36 children, 5 children were listed as “Y” and 31 children were
18 listed as “N” in the “T42 (Y/N)” column.

19 13. Of these 35 children, 5 children were listed as “UAC / Single Minors” and
20 31 children were listed as “Family Unit / Group” in the “Demographics” column.

21 14. Of these 35 children, 16 children spent five or more days in CBP custody,
22 including:²

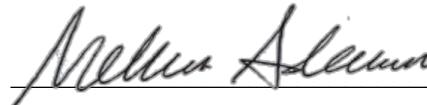
- 23 • **A 1-month-old held for approximately 16.4 days (394.47 hours).** Listed as
24 “Family Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)”
25 column.

26
27
28 ² Children’s ages were determined based on children’s listed “Date of Birth” and
“Inadmissible Date.”

- 1 • **A 3-month-old held for approximately 14.4 days (345.12 hours).** Listed as
2 “Family Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)”
3 column.
- 4 • **A 12-year-old held for approximately 14 days (336.47 hours).** Listed as “Family
5 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 6 • **A 15-year-old held for approximately 14 days (336.45 hours).** Listed as “Family
7 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 8 • **A 4-month-old held for approximately 13 days (311.65 hours).** Listed as “Family
9 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 10 • **A 15-year-old held for approximately 12.9 days (308.97 hours).** Listed as “UAC
11 / Single Minors” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 12 • **A 7-year-old held for approximately 7 days (167.90 hours).** Listed as “Family
13 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 14 • **A 2-year-old held for approximately 6.7 days (160.27 hours).** Listed as “Family
15 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 16 • **A 6-year-old held for approximately 6.7 days (155.23 hours).** Listed as “Family
17 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.
- 18 • **A 3-month-old held for approximately 6.4 days (152.98 hours).** Listed as
19 “Family Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)”
20 column.
- 21 • **A 17-year-old held for approximately 6.3 days (151.73 hours).** Listed as “UAC /
22 Single Minors” in the “Demographic” column and “Y” in the “T42 (Y/N)” column.
- 23 • **A 15-year-old held for approximately 5.9 days (142.62 hours).** Listed as “UAC /
24 Single Minors” in the “Demographic” column and “Y” in the “T42 (Y/N)” column.
- 25 • **A 17-year-old held for approximately 5.4 days (130.37 hours).** Listed as “UAC /
26 Single Minors” in the “Demographic” column and “Y” in the “T42 (Y/N)” column.
- 27 • **A 2-year-old held for approximately 5.4 days (129.77 hours).** Listed as “Family
28 Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)” column.

- 1 • **A 4-month-old held for approximately 5.2 days (124.83 hours).** Listed as
2 “Family Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)”
3 column.
- 4 • **A 5-month-old held for approximately 5.2 days (124.83 hours).** Listed as
5 “Family Unit / Group” in the “Demographic” column and “N” in the “T42 (Y/N)”
6 column.

7
8 I declare under penalty of perjury that the foregoing is true and correct. Executed this
9 23rd day of November, 2020 at San Mateo, California.

10
11 

12 _____
13 Melissa Adamson
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B

**REDACTED
VERSION OF
DOCUMENT
PROPOSED TO BE
FILED UNDER SEAL**

1 I, [REDACTED], declare as follows:

2
3 1. This declaration is based on my personal knowledge. If called to testify in this
4 case, I would testify competently about these facts.

5 2. I am 15 years old. I am from El Salvador. My A- number is [REDACTED].

6 3. I was apprehended by Border Patrol agents on or around [REDACTED] near
7 Brownsville, Texas. I lived in Matamoros, Tamaulipas, Mexico under the Migrant
8 Protection Protocols program. I was forced to cross the border by a drunk Mexican man.
9 He used me as a diversion so that immigration agents would arrest me. I surrendered
10 myself to immigration officials. Immigration officials threw away papers I had, which
11 included my mother and brother's phone numbers. An officer told me that they didn't
12 want people from my country in this country anymore. I told an officer that my right
13 wrist is tender due to an injury and I asked him to please be careful. The officer grabbed
14 my wrist roughly on purpose and caused me extreme pain. Then he put me in the car and
15 he kicked the other man that was arrested with me. I do not know why he kicked this
16 man. When I got to the "Hielera" it was very cold and I was wet. I asked for a blanket
17 and I was told that I could not have one. They would not give me a nylon blanket either.
18 An officer yelled at me in English and I did not understand what he was saying. It was
19 just me and the officer in the room. Another bald man started making fun of me when I
20 told him I wanted to be returned to Mexico. He was laughing at me. I spent three hours
21 in the hielera. Another man mocked me and said the group I would be deported with was
22 coming. I was then put on a bus and I thought I was being taken back to the migrant camp
23 in Matamoros but I was brought to Weslaco, Texas.

24 4. I have been detained at this facility for 3 days.

25 5. On Monday, I arrived to the Weslaco station. I was asked if I wanted to make a
26 phone call. I let the officers know that officers at the prior station had thrown away the
27 contact information I had. I asked the officers if they could please let me call my mom
28 because they had her phone number. I saw it on their screen when they asked me to

1 confirm that I was related to my mother and sister. They told me they would not give me
2 her phone number. After that, I was taken to the room where I was being housed. I got a
3 cushion and I sat near the bathroom. I was near another kid and we were playing.
4 Suddenly, I was violently grabbed on the shoulder by an officer. This man was chubby,
5 tall, and he had tan skin. This man's uniform was green. He grabbed my shoulder and he
6 put me in a separate room. If I crossed my legs, he would yell at me. I have pain in my
7 bones due to lack of calcium and nerve pain. I massage my body (arms, legs, and
8 shoulders) due to this pain to try and alleviate it. This officer would yell at me every time
9 I would do this. He would yell in Spanish. He would yell at me at tell me to stop moving.
10 An officer in black came, took my name and then half an hour later I was moved to a
11 room with other minors. There were about thirty minors in this room. I felt crowded
12 because there were so many people in the room. On Tuesday, I was in the crowded
13 room. Around midday, I was moved to an isolated room. I was told this was due to the
14 horse playing with the minor the previous day. I slept the entire day because I was
15 entirely alone. I asked permission to watch a movie with other minors. I was told that I
16 could not. On Wednesday, an officer yelled at me and told me to pick up trash that
17 another minor left behind. It made me feel sad but I am getting used to the officers
18 treating me this way. I do not know what is going to happen next. I have not been told
19 whether I am going to be deported. I am unsure what is happening next. I do not know
20 why I am still detained or when I will be released. I hope that I get to leave this place
21 soon like the other minors that have left.

22 6. On Tuesday, I was asked if I wanted to go back to my country of origin. I told the
23 officers that I did not want to go back to El Salvador because we were being threatened
24 and I feared returning to El Salvador. On Wednesday, I was told to review the paperwork
25 in front of me and to sign it. The documents were in Spanish. I signed asking to see an
26 immigration judge. I read the documents before I signed them. I somewhat understood
27 what the documents said. I was told I would get a list of free attorneys at a later time.
28

1 7. When I got to the Weslaco station, there were many children. I was detained in a
2 room with thirty other minors and we were cramped. I felt uncomfortable because there
3 were so many people in the room. I had to sleep in a sitting position because there were
4 so many people in the room. I met eight other boys who were detained with me who had
5 been detained four days. They have all left the facility. I met a Guatemalan minor who
6 had been detained at the Weslaco station for five days. I do not know why he was
7 detained for so many days. Currently, I am in a room alone and isolated from others.
8 Sometimes the room I am in is cold and other times it is a normal temperature. I have
9 been given one disposable face mask and I have to use the same face mask every day. I
10 have not been provided hand sanitizer since my arrival. I have not been provided gloves.
11 I do not have access to soap for handwashing. Another child asked for soap and he was
12 told no, that he would not be provided with soap. I only have water available for
13 handwashing. I have five minutes every day to shower. There is no social distancing here.
14 When we are in line for showers and food, we are not spaced six feet apart. We stand
15 right next to each other. At night, I sleep on a cushion on the floor and I have a nylon
16 blanket. There is a water jug that we can drink water out of freely but it tastes heavily
17 like bleach. We are only given bottled water during meal times and that is when I drink
18 water.

19
20 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
21 18th day of November, 2020, at Weslaco, Texas.

22
23
24 _____
25 _____
26
27
28

CERTIFICATE OF TRANSLATION

My name is Denise Adriana Rosales and I swear that I am fluent in both the English and Spanish languages and I translated the foregoing declaration from English to Spanish to the best of my abilities.

Dated: November 18, 2020



Denise Adriana Rosales

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

**REDACTED
VERSION OF
DOCUMENT
PROPOSED TO BE
FILED UNDER SEAL**

1 I, [REDACTED], declare as follows:

2
3 1. This declaration is based on my personal knowledge. If called to testify in this
4 case, I would testify competently about these facts.

5 2. I am 13 years old. I am from Guatemala. My A number is pending.

6 3. I was apprehended by Border Patrol agents on or around [REDACTED]. I do
7 not know where I was when I was apprehended. I surrendered willingly to immigration.
8 Then I was loaded onto a truck. Then I was brought to the Weslaco station. This all
9 happened on the same day.

10 4. I have been detained at this facility for 4 days.

11 5. I have not been told where I am going next or what is going to happen. I have been
12 told I am going to be transferred but I do not know where. I have not been told I am
13 going to be deported. I do not know why I am here.

14 6. I have not received any documents from immigration officials. I have not signed
15 any documents.

16 7. There are one other boy in my cell. There are many kids detained inside. I do not
17 know how long other kids here have been detained.

18 8. I sleep on a cushion on the floor. I have a thin nylon blanket that I use to sleep. I do
19 not have soap to wash my hands. I have not been given hand sanitizer. I do not get my
20 temperature checked regularly. I have not received a face mask. I am wearing the cloth
21 mask that I arrived to the United States with.

22
23 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
24 18 day of November, 2020, at Weslaco, Texas.

25
26 _____
27 [REDACTED]

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF TRANSLATION

My name is Denise Adriana Rosales and I swear that I am fluent in both the English and Spanish languages and I translated the foregoing declaration from English to Spanish to the best of my abilities.

Dated: November 18, 2020



Denise Adriana Rosales

EXHIBIT D

**REDACTED
VERSION OF
DOCUMENT
PROPOSED TO BE
FILED UNDER SEAL**

1 I, [REDACTED], declare as follows:

2
3 1. This declaration is based on my personal knowledge. If called to testify in this
4 case, I would testify competently about these facts.

5 2. I am 8 years old. I am from Guatemala. My A- number is pending. My FMU/G#
6 is [REDACTED].

7 3. I was apprehended by Border Patrol agents on or around [REDACTED]. I do
8 not know where I crossed the border. The day I was apprehended, I surrounded willingly
9 to border patrol along with my mother. There was a man and woman who arrested us.
10 The man was nice. The woman was mean to my mom. She yelled "hurry up and get in"
11 when they were loading us to a vehicle. My mom was sick and she could barely walk.
12 Then we went down some stairs and we were separated. I got on a bus and my mom got
13 in an ambulance. I was loaded onto a bus with other people. I was the only child on the
14 bus. I was brought to the Weslaco station. My mom is somewhere else. I think she is in
15 the hospital because her back hurts. I have not been able to talk to her because she is sick.
16 They told me that I cannot leave until she gets here. That is what an officer with a green
17 shirt told me. The officer told me I would have to wait at the Weslaco station for her.

18 4. I have been detained at this facility for 2 days.

19 5. I have been told I am here because I have to wait here until my mother gets out of
20 the hospital. I have not been told when she will get out. I have not been told how long I
21 will have to wait at the facility. One boy had to wait five days. I do not remember his
22 name. He told me he had been here five days.

23 6. I have not received documents from here.

24 7. I am alone in my room. I do not know why I am alone. It makes me feel
25 abandoned. I feel very alone. I have been completely alone for an entire day.
26 I am sleeping on a cushion that is on the floor. I do not have a pillow but I do have a
27 think silver nylon blanket. I use my coat as a pillow. I am the only one in the room when
28 I sleep. It is very cold. It is always very cold. I get water often. When I want to wash my

1 hands, there is only water. There is no soap. I do not know why there is no soap. I
2 received one disposable mask when I arrived to Weslaco station and I have had the same
3 mask since then. I have not received a new mask. My mask is dirty on the inside. Here,
4 people do not practice social distancing. Social distancing is when people do not get too
5 close so that they are not get sick from COVID. When we are in line, we sit or stand
6 close together. When I see other children in their cells, some are very close to each other.
7 I think many people here will get sick from COVID. That makes me feel scared.
8 Sometimes, there are kids without masks on. Today I saw a soldier that did not have a
9 mask on. He had it on top of his head. I am afraid I will get COVID.

10
11 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
12 18th day of November, 2020, at Weslaco, Texas.

13 
14 _____
15 

16
17
18
19 CERTIFICATE OF TRANSLATION

20 My name is Denise Adriana Rosales and I swear that I am fluent in both the English and
21 Spanish languages and I translated the foregoing declaration from English to Spanish to
22 the best of my abilities.

23
24 Dated: November 18, 2020 
25 _____
26 Denise Adriana Rosales
27
28

Exhibit E

1 I, Denise A. Rosales, declare as follows:

2

3 1. This declaration is based on my personal knowledge. If called to testify in this
4 case, I would testify competently about these facts.

5 2. I am an attorney with Texas State Bar Number 24116992.

6 3. On Wednesday November 18, 2020, I served as a volunteer *Flores* monitor at the
7 Customs Border Patrol (“CBP”) substation at Weslaco, Texas. I interviewed various
8 unaccompanied minors.

9 4. The interviews took place outdoors next to a portable room shower station and a
10 driveway where white vans would pick up and drop off migrants. This is also where CBP
11 processed newly arrived migrants. I asked for a private meeting room and was told this
12 was not possible.

13 5. I arrived at the facility at 9:00 a.m. and I began conducting interviews shortly
14 thereafter. When I arrived at my interview table, about 20 feet from me, there was a
15 bench that had approximately fifteen children seated closely beside each other while they
16 waited for their turn for a shower. They appeared to be minors. There was no effort to
17 ensure the children were six-feet-apart. Next, a group of approximately ten female minors
18 came and were seated while it was their turn for a shower. They sat closely together on a
19 bench that was about twelve feet long. I again observed that there was no effort to make
20 sure the children were six-feet-apart.

21 6. I was escorted through the holding cell area. There was no social distancing
22 between the children or between staff and children.

23 7. A common complaint from the children I interviewed was the lack of soap for
24 handwashing. Every child I questioned regarding access to soap and hand sanitizer
25 indicated that they did not receive these items. The children indicated that they were
26 given one face mask upon entry. These were thin, surgical, disposable face masks. I
27 asked one child why he was wearing a cloth mask versus a surgical mask like the other
28 minors. He stated that CBP did not give him a surgical mask because he arrived at the

1 facility with the cloth mask. I interviewed other minors with cloth masks. One child, an
2 eight year old, showed me how dirty his mask was but said he could not get another one.

3 8. Children reported sharing a cell with 16-20 other children. When I asked if there
4 were social distancing measures being taken within the cells, the children told me there
5 were not. Many children reported that they were very cold. During an interview, one
6 child commented on how nice the sun was. She said she had not seen the sun in over two
7 days.

8 9. I asked every child I interviewed whether they were aware if they had been tested
9 for COVID-19. Only one child, a seventeen-year-old Guatemalan national, was able to
10 affirmatively state that he had been tested for COVID-19. He did not know the results of
11 his test. The rest of the minors were unsure if they had been tested. I asked these minors
12 if they had nasal or oral swabs done. They indicated they had oral swabs done but were
13 unsure why they had the oral swabs done and they had not received any results from
14 these swabs.

15 10. I asked children if they knew of other children who had been in the facility for
16 longer periods of time than two to three days. One child indicated that he knew children
17 who had been there four days or longer but that they had left the facility. This child was
18 reported by another minor to have been there the longest and also self-reported to me that
19 he had been there the longest, as of that morning. He indicated that another minor who
20 had been there longer than him had been loaded onto a white van in the early morning.
21 Others that had been there four to five days, had left the days prior.

22 11. I spoke with a Mexican national child who, with tears in his eyes, told me he was
23 going to be deported but he had been waiting two days and had not been removed. He
24 was anxious and unsure of what was to come.

25 12. While I was interviewing the children, many children were being loaded onto vans.
26 They were wearing the collared shirts, jeans, and slip on shoes typical of an Office of
27 Refugee Resettlement (“ORR”) shelter uniform. This was happening throughout the
28

1 duration of the interviews. Many children on the roll call were transferred before there
2 was an opportunity to interview them.

3 13. None of the children I spoke with knew what would happen after being processed
4 at the CBP Weslaco substation. Some were under the impression that they were going to
5 be sent directly to their sponsors. None were aware that they were going to be transferred
6 to a shelter under the custody of the Office of Refugee Resettlement. They only knew that
7 at some point they too would be given a change of clothes and would be loaded onto a
8 white bus.

9
10
11 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
12 21st day of November, 2020.

13
14
15 

16 Denise A. Rosales
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit F

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos R. Holguín (Cal. Bar No. 90754)
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693
Email: crholguin@centerforhumanrights.org

NATIONAL CENTER FOR YOUTH LAW
Leecia Welch (Cal. Bar No. 208741)
Neha Desai (Cal. RLSA No. 803161)
Poonam Juneja (Cal. Bar No. 300848)
Freya Pitts (Cal. Bar No. 295878)
Mishan Wroe (Cal. Bar No. 299296)
Melissa Adamson (Cal. Bar No. 319201)
1212 Broadway, Suite 600
Oakland, CA 94612
Telephone: (510) 835-8098
Email: lwelch@youthlaw.org

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, ET AL.,

PLAINTIFFS,

v.

WILLIAM BARR, ATTORNEY GENERAL OF
THE UNITED STATES, ET AL.,

DEFENDANTS.

No. CV 85-4544-DMG-AGR_x

DECLARATION OF CARLOS HOLGUIN

DECLARATION OF CARLOS HOLGUIN

I, Carlos Holguín, declare and say as follows:

1. I am one of the attorneys for Plaintiffs in the within action.

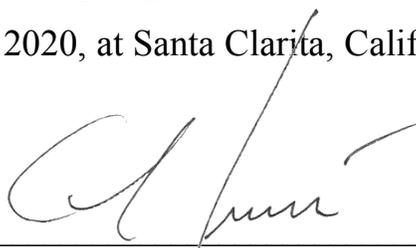
2. Annexed hereto as Attachment 1 is a print out of the Parties' email exchange preceding a meet-and-confer regarding, inter alia, Defendants' disclosing the reasons class members remain in unlicensed CBP detention facilities for 72 hours or more. Apart from the redaction of class members' A numbers, the print out is true and correct.

3. Annexed hereto as Attachment 2 is a true and correct print out of the Parties' email exchange preceding a meet-and-confer regarding Defendants' disclosing, inter alia, (1) the reasons class members remain in unlicensed CBP detention facilities for 72 hours or more; and (2) policies and instructions they have issued to prevent, mitigate, or manage COVID-19 infection in ORR facilities. Apart from the redaction of class members' names, A numbers, and dates of birth, the print out is true and correct.

4. On November 19, 2020, the Parties met and conferred regarding, inter alia, Defendants' disclosing the reasons class members remain in unlicensed CBP detention facilities for 72 hours or more and policies and instructions they have issued to prevent, mitigate, or manage COVID-19 infection in ORR facilities. Defendants declined to make the required disclosures on much the same rationale as appears in the annexed email exchanges.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23rd day of November, 2020, at Santa Clarita, California.



Carlos Holguín

Attachment 1

From: Fabian, Sarah B (CIV) Sarah.B.Fabian@usdoj.gov

Subject: RE: Data missing from August ¶ 29 reports

Date: October 14, 2020 at 10:22 AM

To: Peter Schey pschey@centerforhumanrights.org, Carlos Holguín crholguin@centerforhumanrights.email

Cc: Silvis, William (CIV) William.Silvis@usdoj.gov, Murley, Nicole (CIV) Nicole.Murley@usdoj.gov, Andrea Sheridan Ordin aordin@strumwooch.com, Melissa Adamson madamson@youthlaw.org

SF

Notwithstanding Defendants' position that Plaintiffs failed to properly raise this issue, Defendants have looked into the reporting issue related to MVM and have developed a system to resolve it going forward.

Defendants are considering your other request and will respond shortly.

Best,
Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
(202) 532-4824

From: Peter Schey <pschey@centerforhumanrights.org>

Sent: Wednesday, October 14, 2020 1:01 PM

To: Carlos Holguín <crholguin@centerforhumanrights.email>

Cc: Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>; Silvis, William (CIV) <WSilvis@civ.usdoj.gov>; Murley, Nicole (CIV) <NMurley@civ.usdoj.gov>; Andrea Sheridan Ordin <aordin@strumwooch.com>; Melissa Adamson <madamson@youthlaw.org>

Subject: Re: Data missing from August ¶ 29 reports

Sarah, as a follow up to Carlos's email below, as I mentioned in my email of October 8, 2020:

"One other concern we have based on the most recent report is that no information is provided regarding where minors are detained when in the custody or care of NVM Transport."

This issue should be promptly addressed and resolved, as should the issue Plaintiffs have raised since February 2020 that Defendants' reports fail to explain why Class Members are placed in particular facilities.

Peter A. Schey
President
Center for Human Rights and Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
(213) 388-8693 x.304 (v)
(323) 251-3223 (direct)
(213) 386.9484 (fax)
<http://www.centerforhumanrights.org>

--

CONFIDENTIALITY NOTICE: This communication, including any attachments, is for the

CONFIDENTIALITY NOTICE: This communication, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. Any unauthorized interception, review, use, distribution, or disclosure not authorized by the intended recipient(s) is prohibited and may violate applicable laws, including the Electronic Communications Privacy Act of 1986, Pub. L. 99-508, 100 Stat. 1848, codified at 18 U.S.C. §§ 2510 et seq. If you are not the intended recipient, please contact the sender and destroy all copies of the original communication.

On Wed, Oct 14, 2020 at 9:40 AM Carlos Holguín
<crholguin@centerforhumanrights.email> wrote:

Sarah,

First, Defendants' failing to disclose the facilities in which MVM Transport is holding class members was not among the reporting deficiencies that were the subject of the Court's earlier meet-and-confer order. And as you know, that data gained new salience following district court's and the Ninth Circuit's rejecting Defendants' bid to use the pandemic as a pretext to violate the Settlement.

Next, Defendants' failing to identify the facilities in which MVM Transport holds children in its September and subsequent reports would be new violations of the Settlement. The Court's meet-and-confer order no more precludes Plaintiffs from objecting to new violations than it would their objecting to Defendants' refusing to provide ¶ 29 reports going forward at all.

As for DHS's failing to disclose the reasons it detains children in CBP facilities for more than 72 hours, as Mr. Schey's email of October 8 points out, Plaintiffs have been raising this "since about February that the reports should include the reasons for placement in facilities." In any event, these data, too, have attained greater salience in the wake of Defendants' failed Title 42 program. Plaintiffs are clearly entitled to monitor whether DHS is extending class members' detention in unlicensed CBP facilities in an effort to evade the Court's order enjoining routine "hoteling."

Finally, the Court's meet-and-confer order aims to foster good faith cooperation between the Parties. Your suggesting that the order now shields Defendants against wholly reasonable requests for complete data does palpably violence to the objective and spirit of the Court's directive. If Defendants, in good faith, have some practical reason they cannot comply with Plaintiffs' request, we are more than happy to discuss that with you. Otherwise, Defendants should provide the data without further ado.

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
(213) 290-1642 (direct)
213.386.9484 (fax)
<http://www.centerforhumanrights.org>

On Oct 14, 2020, at 7:35 AM, Fabian, Sarah B (CIV) <Sarah.B.Fabian@usdoj.gov> wrote:

Carlos – as you're likely aware, the Court ordered Plaintiffs to meet and confer regarding any remaining data issues related to the monthly reporting in advance of the parties' joint status report that was filed this past Friday. Is there a reason you disregarded the Court's deadline and are only now raising these issues?

Best,
Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
(202) 532-4824

From: Carlos Holguín <crholguin@centerforhumanrights.org>
Sent: Tuesday, October 13, 2020 6:02 PM
To: Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>; Silvis, William (CIV) <WSilvis@civ.usdoj.gov>; Murley, Nicole (CIV) <NMurley@civ.usdoj.gov>
Cc: Peter Schey <pschey@centerforhumanrights.org>; Andrea Sheridan Ordin <aordin@strumwooch.com>; Melissa Adamson <madamson@youthlaw.org>
Subject: Data missing from August ¶ 29 reports

Dear Counsel,

DHS's August ¶ 29 data report lists multiple children detained at "MVM Transport [name of city]" for extended stays.

For example, 14-year-old J.A.C. () was reportedly held at "MVM Transport Phoenix" for 11 days, then "MVN Transportation, SNA" for 2 days, then transferred to a hotel on 8/27 (no book-out date listed); 7-year-old A.F.P.H. () and 15-year-old Y.I.P.H. () were held at "MVN Transportation" for 11 days, then transferred to "Rio Grande Valley Staging" on 8/12/20 (no book-out date listed); and 17-year-old K.A.G. () was held at "MVN Transportation, SNA" for 9 days, then transferred to "Rio Grande Valley Staging" for one day before she was transferred to ORR.

The August report does not disclose the name or type of facility in which these children were housed during MVM Transport custody. We request that data reports disclose the facilities where children are actually housed during MVM Transport custody, as they do with respect to children placed in FRCs,

shelters, RTCs, juvenile halls, and OON facilities.

Additionally, the August dataset reports 23 children held for over 72 hours in CBP facilities, eight of whom it appears were detained for over a week in such facilities. We request the data reports disclose the reasons for children's extended stays in CBP facilities, as ICE is required to do with respect to accompanied class members.

Thank you,

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
(213) 290-1642 (direct)
213.386.9484 (fax)
<http://www.centerforhumanrights.org>

Attachment 2



From: Carlos Holguín crholguin@centerforhumanrights.email

Subject: Re: Flores - September Data (HHS and CBP)

Date: November 18, 2020 at 5:32 PM

To: Fabian, Sarah B (CIV) Sarah.B.Fabian@usdoj.gov

Cc: Deane.Dougherty@ice.dhs.gov, [Miranda-Maese, Aurora \(ACF\) \(CTR\) Aurora.Miranda-maese@acf.hhs.gov](mailto:Miranda-Maese,Aurora(ACF)(CTR)@acf.hhs.gov), [Andrea Sheridan Ordin aordin@strumwooch.com](mailto:Andrea.SheridanOrdin@strumwooch.com), [Paul H. Wise pwise@stanford.edu](mailto:Paul.H.Wise@stanford.edu), [Alex Harten aharten@strumwooch.com](mailto:Alex.Harten@strumwooch.com), [Peter Schey pschey@centerforhumanrights.org](mailto:Peter.Schey@centerforhumanrights.org), [Murley, Nicole \(CIV\) Nicole.Murley@usdoj.gov](mailto:Murley,Nicole(CIV)@usdoj.gov), [Silvis, William \(CIV\) William.Silvis@usdoj.gov](mailto:Silvis,William(CIV)@usdoj.gov), [Melissa Adamson madamson@youthlaw.org](mailto:Melissa.Adamson@youthlaw.org)

Please see answers below.

—

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
(213) 388-8693 x.309 (v)
(213) 290-1642 (direct)
(213) 386.9484 (fax)
<http://www.centerforhumanrights.org>

--

CONFIDENTIALITY NOTICE: This communication, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. Any unauthorized interception, review, use, distribution, or disclosure not authorized by the intended recipient(s) is prohibited and may violate applicable laws, including the Electronic Communications Privacy Act of 1986, Pub. L. 99-508, 100 Stat. 1848, codified at 18 U.S.C. §§ 2510 et seq. If you are not the intended recipient, please contact the sender and destroy all copies of the original communication.

On Nov 18, 2020, at 10:49 AM, Fabian, Sarah B (CIV) <Sarah.B.Fabian@usdoj.gov> wrote:

Please see my follow up questions in blue below.

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
(202) 532-4824

From: Carlos Holguín <crholguin@centerforhumanrights.email>

Sent: Wednesday, November 18, 2020 12:01 PM

To: Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>

Cc: Deane.Dougherty@ice.dhs.gov; [Miranda-Maese, Aurora \(ACF\) \(CTR\) Aurora.Miranda-maese@acf.hhs.gov](mailto:Miranda-Maese,Aurora(ACF)(CTR)@acf.hhs.gov); [Andrea Sheridan Ordin aordin@strumwooch.com](mailto:Andrea.SheridanOrdin@strumwooch.com); [Paul H. Wise pwise@stanford.edu](mailto:Paul.H.Wise@stanford.edu); [Alex Harten aharten@strumwooch.com](mailto:Alex.Harten@strumwooch.com); [Peter Schey pschey@centerforhumanrights.org](mailto:Peter.Schey@centerforhumanrights.org); [Murley, Nicole \(CIV\) NMurley@civ.usdoj.gov](mailto:Murley,Nicole(CIV)@usdoj.gov); [Silvis, William \(CIV\) WSilvis@civ.usdoj.gov](mailto:Silvis,William(CIV)@usdoj.gov); [Melissa Adamson madamson@youthlaw.org](mailto:Melissa.Adamson@youthlaw.org)

Subject: Re: Flores - September Data (HHS and CBP)

(205) 825-9165

No access code required.

Please see responses below.

Thank you.

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
(213) 290-1642 (direct)
213.386.9484 (fax)
<http://www.centerforhumanrights.org>

On Nov 18, 2020, at 8:02 AM, Fabian, Sarah B (CIV)
<Sarah.B.Fabian@usdoj.gov> wrote:

Carlos – my initial responses to your complaints are below. I can meet and confer at 11am ET on Thursday – please circulate a dial-in. Please send me your responses to the below asap so that I can circle back to my clients in advance of our call.

Peter – I do not have time on Thursday to meet about the below as well as the HHS reporting I had discussed with you. I will need to schedule our call on those issues on Monday 11/23 instead, assuming you still want to talk about that issue. If that is the case please let me know your availability to talk about that on Monday.

Best,
Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
(202) 532-4824

From: Carlos Holguín <crholguin@centerforhumanrights.org>
Sent: Monday, November 16, 2020 6:29 PM
To: Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>
Cc: Deane.Dougherty@ice.dhs.gov; Miranda-Maese, Aurora (ACF) (CTR) <Aurora.Miranda-maese@acf.hhs.gov>; Andrea Sheridan Ordin <aordin@strumwooch.com>; Paul H. Wise <pwise@stanford.edu>; Alex Harten <aharten@strumwooch.com>; Peter Schey <pschey@centerforhumanrights.org>; Murley, Nicole (CIV) <NMurley@civ.usdoj.gov>; Silvis, William (CIV) <WSilvis@civ.usdoj.gov>; Melissa Adamson <madamson@youthlaw.org>
Subject: Re: Flores - September Data (HHS and CBP)

Sarah,

When CBP detains a child in an unlicensed facility longer than 72 hours such detention obviously exceeds custody “immediately following apprehension,” and the reasons Defendants are denying the child a licensed placement should be reported. Both ORR and ICE have been reporting this information without objection, and there is no reason CBP should not do the same.

Pursuant to Settlement ¶ 37, Plaintiffs give notice that Defendants are in breach of Settlement by refusing to report their reasons for detaining class members in CBP facilities in lieu of transfer to licensed placement.

This is the third time you have rephrased your request for additional reporting from CBP, but it still is not consistent with the reporting requirement that is actually contained in the Agreement which requires reporting on “the reasons for every placement of a minor in a detention facility or medium security facility.” Defendants’ offer in that regard remains as stated in my email below.

I do not understand your assertion that ORR and ICE are reporting this information. In fact, what you are seeking appears to be the same information you asked the Court to order ICE and ORR to report to you and the Court declined to order such reporting because she recognized that the Agreement contained no such requirement. In any event, Defendants’ position remains that you are asking CBP to report information that is not required by the Agreement and CBP declines to do so.

As stated in my email of Oct. 30, “ICE’s reports, though persistently wanting in detail, include a column entitled “Detention Criteria” that supplies at least some explanation for unlicensed placement. CBP’s reports should do the same.”

As I stated before, the reasons for CBP custody (the “detention criteria”) would be limited to noting whether the minor was encountered by Border Patrol or encountered by OFO at a port of entry. CBP is willing to add a column noting those reasons for placement if that would satisfy your concerns. Please confirm if that will resolve this issue for Plaintiffs.

No, it will not.

In addition, ORR is likewise in breach of the Settlement by failing to disclose its reasons for denying class members licensed placement. It, too, should do so.

In accordance with ¶ 37 of the Settlement and Rule 7-3 of the Rules of the United States District Court for the Central District of California, Plaintiffs request that Defendants meet with Plaintiffs telephonically on Thursday, November 19, at whatever hour may be convenient for Defendants, in a good faith effort to settle the aforementioned breach, as well as the following:

- Defendants’ failure to produce policies and instructions they have issued to prevent, mitigate, or manage COVID-19 infection in ORR

facilities.

This is not a reporting requirement contained anywhere in the Agreement, and Defendants therefore decline to produce this information.

Plaintiffs disagree insofar as what the Settlement requires is concerned. In any event, Defendants' position directly violates ¶ 5 of the Court's order of October 26, 2020 [Doc. #1014].

Is it your position then that policies related to prevention, mitigation, or management of COVID-19 are in fact policies or instructions "implementing the Agreement"? If so can you please explain the basis for this position? Defendants' position is that such policies would not meet this definition.

Yes, that is Plaintiffs' position, but there is presently no need to explain it: Defendants are under court order to produce the requested information, and they should do so forthwith.

- ICE's producing data reports for March-August, 2020, to disclose the actual placement of children in "MVM Transport."

It is unclear what you are looking for here. The MVM Transport notations in these reports correspond with periods of transport, and location information is otherwise provided. Please clarify what you are claiming is missing from these reports

Defendants did not disclose the actual locations of children in MVM Transport in ICE's September, 2020, reports, yet DHS's "hoteling" policy began with the issuance of the border closure order in March. Plaintiffs require complete and accurate data for March through August, 2020.

I looked at the March through August reports as did ICE, and we believe that the information you are asking for is in those reports. If you are saying that you want something else I am going to need you to give me specific examples from those reports of what you think is missing.

There are numerous instances in the March-August data reports of children held in MVM/MVN custody for extended periods, but their actual locations are undisclosed: e.g., —

In the August ICE data report, K.A.G. () is listed as held at "MVN Transportation, SNA" for 9 days (8/2/20-8/11/20), and C.Z.O. () and J.Z.O. () are listed as held at "MVM Transport, El Paso" for 8 days (8/10/20-8/18/20).

In the July ICE data report, S.V. () and APV () are listed as located at "MVM Transport, San Antonio Proper" for 22 days (6/9/20-7/1/20), and A.M.B. () and F.B. () are listed as located at "MVN Transportation, SNA" for 12 days (7/19/20-7/31/20).

In the June ICE data report, D.R.C. () is listed as located at "MVN Transportation, SNA" for 7 days (6/10/20-6/17/20), and K.J.D.P. (), and A.D.L.C. () are listed as located at "MVM Transport, San Antonio Proper" for 7 days (6/10/20-6/17/20).

In the May ICE data report, E.B.Q. (), O.C.T. (), B.F.R. (), C.I.G. (), L.O.R. (), R.P.M. (), M.J.G.T. (), and J.C.T. () are listed as located at "MVN Transportation, SNA" for 3 days (5/15/20-5/18/20).

You may recall that, at Plaintiffs' insistence, ICE corrected its September data report to disclose the actual locations where children in "MVM Transport" were detained. For example, F.V.L. () was initially listed as held at "MVM

Transport, El Paso" for 12 days (8/14/20-8/26/20) in the August ICE Report, but now the September report lists him as held at four hotels during that time period (Chase Ste Hotel Elp (8/14-8/17), Hilton Garden Inn San Antonio Airport (8/17-8/23), Holiday Inn Exp San Antonio (8/23-8/25), and Drury Inn & Stes SNA AP (8/25-8/26)). But that correction covered children included in the September report only.

Defendants have not similarly corrected their earlier data reports listing children at MVN/MVM transportation for extended periods. They should amend these data reports to reflect the locations where children in "MVM Transport" were actual held.

- Defendants' failure to report all children ORR places in out-of-network facilities.

ORR is reporting children placed in OON facilities in its monthly reports. Please provide the basis for your claim or explain what you believe is missing from the reports.

The "Out-of-Network" tab in the HHS data reports fails to report children Plaintiffs independently located in at least one out-of-network facility. On November 13, Plaintiffs' counsel visited the Nexus Children's Hospital and there found multiple children who had been detained at Nexus for several months yet were not ben listed in the "Out-of-Network" tab on the HHS data reports for the corresponding period: *e.g.*, —

J [REDACTED] D [REDACTED] S [REDACTED] S [REDACTED] ([REDACTED], DOB [REDACTED]) was admitted to ORR on 9/9/19 and transferred to CC Houston LTFC on 7/31/20. He has never been listed in the OON tab as being located at Nexus. According to the Nexus staff, [REDACTED] has been at Nexus for several months.

A [REDACTED] S [REDACTED] Z [REDACTED] C [REDACTED] ([REDACTED], DOB [REDACTED]) was admitted to ORR on 8/23/19 and admitted to the CHSI Los Fresnos Shelter on 8/27/19. She has never been listed in the OON tab as being at Nexus. According to the Nexus staff, [REDACTED] has been located at Nexus for "a very long time."

S [REDACTED] I [REDACTED] N [REDACTED] M [REDACTED] ([REDACTED], DOB [REDACTED]) was admitted to ORR on 3/12/20 and initially placed at St. PJ's Shelter. She was transferred to Nexus on 3/21/20 and was listed at Nexus in the OON tab for April, May, June, and July. However, in the August report (captured Sept. 9) and September report (captured Oct. 9), S [REDACTED] was listed at SWK Casa Houston in the Census tab and no longer at Nexus Children's Hospital on the OON tab. S [REDACTED] reported having been detained continuously at Nexus for about seven months.

ORR is looking into these cases to see if they should have been reported, and if so, why they were not reported. If there was an error in the reporting then ORR will supplement. What else are you asking Defendants to do?

Defendants need to explain why these children were not included in prior OON reports, confirm that no other children are currently or have been detained in OON facilities, and provide corrected data reports disclosing accurate data for each child placed in a OON facility.

- Defendants' failure to produce quality-checked data for September 2020.

Defendants have provided final reporting for September 2020 in all respects except for the ICE report which was produced subject to the disclaimer

except for the ICE report which was produced subject to the disclaimer included in my email. As stated in the email, as soon as the work that is being conducted on ICE's database is completed, if there are any changes to the spreadsheets then ICE will provide those to you. Please clarify what else it is you are asking Defendants to do.

Your earlier email from today resolved this issue. Thank you.

Defendants should end their delay and produce final reports.

As stated, ICE will produce final reports when they are able to run them from the database. If there are specific portions of the existing reports about which you have questions or need more information please let me know. Otherwise there is nothing more that Defendants can do regarding your request.

Thank you.

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
(213) 290-1642 (direct)
213.386.9484 (fax)
<http://www.centerforhumanrights.org>

On Nov 3, 2020, at 10:36 AM, Fabian, Sarah B (CIV)
<Sarah.B.Fabian@usdoj.gov> wrote:

Carlos – I have asked for an update on the ICE reporting.

Regarding your request for additional CBP reporting, Defendants ask that you clarify your statement—with which Defendants disagree—that there is not a functional difference between “the reasons for placement” and “the reasons class members spend more than 72 hours in Border Patrol facilities.” The former is the requirement that is contained in the Agreement, and the latter appears nowhere in the Agreement and contemplates an entirely different set of information. Therefore it is difficult to see how there is no functional difference between the two requests.

In any event, the requirement for Defendants to collect and report “the reasons for every placement of a minor in a

detention facility or medium security facility” must be read to be consistent with the remainder of the Agreement. The Agreement makes clear that the placement of a minor into a detention facility is a specific determination that is made by Defendants in accordance with Paragraph 21, and contemplates an alternative to placement into a licensed facility. Custody by CBP immediately following apprehension is not the type of placement contemplated by Paragraph 21, and therefore is not the type of placement that would require such reporting. In any event, even if such reporting was required, the reasons for CBP custody are going to be limited to noting whether the minor was encountered by Border Patrol or encountered by OFO at a port of entry. Although Defendants do not think it is required, CBP is willing to add a column so noting if that is what you are requesting. If that is your request please let me know and I will ask CBP to add that column to the next report.

Best,
Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
(202) 532-4824

From: Carlos Holguín
<crholguin@centerforhumanrights.email>
Sent: Friday, October 30, 2020 11:29 PM
To: Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>
Cc: Deane.Dougherty@ice.dhs.gov; Miranda-Maese, Aurora (ACF) (CTR) <Aurora.Miranda-maese@acf.hhs.gov>; Andrea Sheridan Ordin <aordin@strumwooch.com>; Paul H. Wise <pwise@stanford.edu>; Alex Harten <aharten@strumwooch.com>; Peter Schey <pschey@centerforhumanrights.org>; Murley, Nicole (CIV) <NMurley@civ.usdoj.gov>; Silvis, William (CIV) <WSilvis@civ.usdoj.gov>; Melissa Adamson <madamson@youthlaw.org>
Subject: Re: Flores - September Data (HHS and CBP)

Sarah,

Plaintiffs have been patient, but Defendants have now delayed beyond what they required last year to produce September reports. Please provide a date certain by which the reports will be supplied.

Regarding class members who remain in CBP facilities longer than 72 hours, there is no functional difference between “the reasons for placement” and “the reasons class members spend more than 72 hours in Border Patrol facilities.”

ICE’s reports, though persistently wanting in detail, include a column entitled “Detention Criteria” that supplies at least some explanation for unlicensed placement. CBP’s reports should do the same.

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
(213) 290-1642 (direct)
213.386.9484 (fax)
<http://www.centerforhumanrights.org>

On Oct 30, 2020, at 9:06 AM, Fabian, Sarah B (CIV) <Sarah.B.Fabian@usdoj.gov> wrote:

Carlos – I did understand your request and was simply confirming that you received the documents that I already sent. I am pleased that you did receive those, and as I noted I will send the remaining spreadsheets as soon as ICE is able to get them done given the backlog in reporting from its end-of-year processing. Defendants appreciate your patience.

To clarify then, are you requesting “the reasons for placement” into CBP facilities, or “the reasons class members spend more than 72 hours in Border Patrol facilities”? If it is the latter then I do not read your explanation below to support your request.

Best,
Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court
Section
(202) 532-4824

From: Carlos Holguín
<crholguin@centerforhumanrights.email>
Sent: Friday, October 30, 2020 11:23 AM
To: Fabian, Sarah B (CIV)
<sfabian@CIV.USDOJ.GOV>
Cc: Deane.Dougherty@ice.dhs.gov; Miranda-Maese, Aurora (ACF) (CTR) <Aurora.Miranda-maese@acf.hhs.gov>; Andrea Sheridan Ordin <aordin@strumwooch.com>; Paul H. Wise <pwise@stanford.edu>; Alex Harten <aharten@strumwooch.com>; Peter Schey <pschey@centerforhumanrights.org>; Murley, Nicole (CIV) <NMurley@civ.usdoj.gov>; Silvis, William (CIV) <WSilvis@civ.usdoj.gov>; Melissa Adamson <madamson@youthlaw.org>
Subject: Re: Flores - September Data (HHS and CBP)

Sarah,

Yes, we did receive Defendants' incomplete set of reports; hence my request for "*complete* reports" without further delay.

As for the reasons CBP detains class members in unlicensed placements, Settlement ¶ 28A provides: "The INS, through the Juvenile Coordinator, shall also collect information regarding *the reasons for every placement of a minor in a detention facility or medium security facility.*" Settlement ¶ 29 provides: "[T]he INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement."

Border Patrol facilities are indisputably "detention facilities," and the reasons Defendants detain children in them must therefore be reported.

Relatedly, pursuant to Settlement ¶ 29 and ¶ 5 of the Court's order of October 26, 2020 [Doc. #1014], Plaintiffs request Defendants produce all policies and instructions not previously supplied which they have issued to prevent, mitigate, or manage COVID-19 infection in ORR facilities.

Thank you.

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
(213) 290-1642 (direct)
213.386.9484 (fax)
<http://www.centerforhumanrights.org>

On Oct 30, 2020, at 7:46 AM, Fabian,
Sarah B (CIV)
<Sarah.B.Fabian@usdoj.gov> wrote:

Carlos. I sent 3 of the 5 reports (CBP and HHS w/corresponding CBP) several days ago – please let me know if you did not receive those. ICE tells me that their data system was locked due to processing related to the end of the fiscal year and was only unlocked a few days ago. I have followed up with them and I know they are working on the reports and I will send them as soon as they are available.

Can you please clarify if you are requesting the reason for placement into CBP, or are you requesting something else? And relatedly, can you please explain the basis from the Agreement why you believe that the information you are requesting is required to be produced.

Best,
Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation –
District Court Section
(202) 532-4824

From: Carlos Holguín
<crholguin@centerforhumanrights.org>
>
Sent: Thursday, October 29, 2020 7:34 PM
To: Fabian, Sarah B (CIV)
<sfabian@CIV.USDOJ.GOV>
Cc: Andrea Sheridan Ordin
<aordin@strumwooch.com>; Paul H. Wise
<pwise@stanford.edu>; Alex Harten
<aharten@strumwooch.com>; Peter Schey
<pschey@centerforhumanrights.org>; Murley, Nicole (CIV)
<NMurley@civ.usdoj.gov>; Silvis, William (CIV)
<WSilvis@civ.usdoj.gov>; Melissa Adamson
<madamson@youthlaw.org>
Subject: Re: Flores - September Data (HHS and CBP)

Sarah,

Last year Defendants produced ¶ 29 reports on October 29. Please forward complete reports for this September without further delay.

Plaintiffs reiterate their request that CBP's reports for September and going forward provide the reasons class members spend more than 72 hours in Border Patrol facilities. According to CBP's September 2020 data report, at least 36 children were held in CBP facilities for more than 72 hours during the reporting period, including 16 children detained in Border Patrol stations for five or more days, among whom were several very young children, including W.K.P.M. (██████████), a 6-month-old infant held for approximately 13 days (311.65 hours); E.A.V.J. (██████████), a 5-month-old infant held for approximately 15 days (345.12 hours); and N.T.S. (██████████), a 2-month-old infant held for approximately 16 days (394.47 hours).

Please advise.

Thank you.

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional
Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
(213) 290-1642 (direct)
213.386.9484 (fax)
<http://www.centerforhumanrights.org>

On Oct 23, 2020, at 2:24
PM, Fabian, Sarah B (CIV)
<Sarah.B.Fabian@usdoj.gov
> wrote:

All – I am told that the ICE
data (and corresponding
CBP report) will be
available next week.
Attached please find the
reports for CBP and HHS
(with corresponding CBP
report).

Have a nice weekend all.

Best,
Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration
Litigation – District Court
Section
Department of Justice
PO Box 868, Ben Franklin
Station
Washington, DC 20044
(202) 520-4884

(LUL) 002-4024

<CBP NON-ToT Children
with TIC greater than 72
hours_SEP2020.xlsx>
<CBP_September
2020_Corresponds to HHS
September 2020 Data.xlsx>
<HHS Flores Data-
September 2020.xlsx>

Exhibit G

DECLARATION OF HANNAH P. FLAMM, ESQ.

I, Hannah P. Flamm, declare as follows:

1. This declaration is based on my personal knowledge. If called to testify in this case, I would testify competently about the following facts.

2. My name is Hannah P. Flamm, and I am an attorney licensed to practice law in the State of New York.

Experience Serving Youth in ORR Custody

3. Since December 2019, I have been a Managing Attorney at The Door’s Legal Services Center, a legal service provider that works primarily with immigrant youth. Since December 2019, The Door has served unaccompanied children in the legal custody of the Office of Refugee Resettlement (“ORR”) who have been placed by ORR at several care providers within the ORR network, including The Children’s Village in New York. Over the last 11 months, The Door has served over 450 youth in ORR custody. Although the majority of these youth come from Mexico, Honduras, Guatemala, and El Salvador, youth placed at these facilities may come from all over the world.

4. As the legal service provider for The Children’s Village, our attorneys and staff maintain regular contact with the youth at the facilities. We provide ongoing consultations and presentations concerning the legal rights of detained minors, as well as direct legal representation to youth.

ORR COVID-19 Guidance and Policy

5. The last ORR guidance pertaining to COVID-19 that we received was from the summer of 2020 and only pertained to “Verbal Screening and Temperature Check for Staff and Visitors.” We have not received any guidance directly from ORR since April 2020 regarding testing or any other COVID-19 protocols. We understand that ORR does

1 not have any protocols or policies regarding contact tracing. We do not believe that ORR
2 is conducting any contact tracing.

3 6. ORR has not informed us of any ORR policy requiring ORR or care providers to
4 notify legal service providers, attorneys of record, or other visitors if anyone at the care
5 provider's site has tested positive for COVID-19, has been exposed to COVID-19, or has
6 developed symptoms of COVID-19. Instead, ORR has declined to inform us if anyone at
7 The Children's Village has tested positive, has been exposed, has exhibited symptoms, or
8 has been denied entry to the site based on ORR's "Verbal Screening and Temperature
9 Check for Staff and Visitors," even when our staff are visiting the site in person for client
10 meetings. ORR has not informed us whether it is an ORR policy for providers not to
11 provide this information or if it is at individual providers' discretion. To protect our
12 clients' rights and to further the best interests, health, and safety of our clients and our
13 staff, we need to be informed, with our clients' consent, if any of our clients has tested
14 positive, has been exposed, or has developed symptoms of COVID-19; or if anyone at the
15 care provider's site has not passed the "Verbal Screening and Temperature Check for
16 Staff and Visitors."

17 7. Since July 2020, 10 minors have arrived at The Children's Village. At least three
18 of their ORR records do not reflect their having received a COVID-19 test upon arrival
19 (one who arrived in August 2020 as a transfer from another ORR facility in Texas; one
20 who arrived in September 2020 as a direct transfer from ICE custody; and one who
21 arrived in October 2020 as a transfer from another ORR facility in Texas). The Door has
22 no formal means to learn if clients receive COVID-19 tests aside from their ORR records.

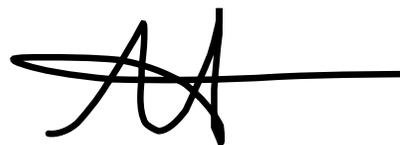
23 8. In July and August 2020, The Door learned inadvertently that two of our clients,
24 both of whom had been detained at The Children's Village for months before the
25 pandemic began, had tested positive for COVID-19. In neither case did ORR or The
26 Children's Village staff inform The Door that the clients had tested positive, despite our
27 requests that we be informed if a client ever received a positive test result. Instead, in
28 one case, The Door learned that our client had tested positive only via unofficial sources,

1 including through another client living in the same placement. In another case, The Door
2 learned that our client had tested positive only after The Door advocated for her prompt
3 repatriation and discovered that her medical clearance was a source of the delay.

4 9. During remote, video-conference meetings since August 2020 and in-person
5 meetings at The Children’s Village since October 2020, The Door has observed minors
6 apparently not in quarantine or wearing masks despite having arrived at the care provider
7 within the previous two weeks and in some instances within the previous few days. On
8 multiple occasions between August and November 2020, The Door staff have observed
9 minors not wearing masks or not wearing masks properly, including while being within
10 six feet of staff. The Door has observed that some minors lack understanding of COVID-
11 19, quarantine, personal protective equipment, and their rights. The Door staff have
12 observed laptops, pens, and other high-touch surfaces not being wiped prior to use and
13 have not observed routine use of hand sanitizer. Of course it is unknown to The Door
14 staff what happens off-camera and what may cause a newly arrived minor not to need to
15 be in quarantine.

16 10. ORR has informed us that ORR defers to state and local policies governing each
17 ORR network care provider. We are unaware of any ORR written policies or procedures
18 that instruct care providers to comply with state and local policies. Additionally, we have
19 received no information from ORR as to how care providers should reconcile conflicts
20 across multiple policies from different jurisdictions (e.g. where children are transferred
21 from Texas to New York).

22
23 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
24 23rd day of November 2020 at New York, New York.

25
26
27
28


Hannah P. Flamm

Exhibit H

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos R. Holguín (Cal. Bar No. 90754)
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693
Email: crholguin@centerforhumanrights.org

NATIONAL CENTER FOR YOUTH LAW
Leecia Welch (Cal. Bar No. 208741)
Neha Desai (Cal. RLSA No. 803161)
Poonam Juneja (Cal. Bar No. 300848)
Freya Pitts (Cal. Bar No. 295878)
Mishan Wroe (Cal. Bar No. 299296)
Melissa Adamson (Cal. Bar No. 319201)
1212 Broadway, Suite 600
Oakland, CA 94612
Telephone: (510) 835-8098
Email: lwelch@youthlaw.org

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, ET AL.,

PLAINTIFFS,

v.

WILLIAM BARR, ATTORNEY GENERAL OF
THE UNITED STATES, ET AL.,

DEFENDANTS.

No. CV 85-4544-DMG-AGR_x

DECLARATION OF LEECIA WELCH

1 November 19, and are awaiting an explanation as to why these children were not
2 included in prior out of network data reports.

3 **General Impressions of Nexus Children’s Hospital**

4 6. On November 13, 2020, I arrived at Nexus and was provided a brief tour. A Nexus
5 staff person and I discussed who I would be interviewing, and I indicated I would like to
6 interview all of the children in ORR custody. At that point, based on communications
7 with legal service providers, it was my understanding that there were five such children
8 currently placed at Nexus. We discussed the fact that one of the children was only two
9 years old and had been placed at Nexus due to very serious medical needs. Given that his
10 mother was there with him every day (including that day), I indicated that I would meet
11 with him if his mother was interested in speaking with me. The Nexus staff person
12 agreed to speak to the child’s mother on my behalf while I met with the other four
13 children. She subsequently informed me that the child’s mother was not interested in
14 speaking with me, and I decided to follow up with this mother another time out of respect
15 for her wishes and so as not to interfere with her time visiting her medically fragile child.

16 7. During my brief tour of the hospital, I found it to be a typical medical facility.
17 Various children’s wings were connected by long hallways with secure double doors.
18 Personnel were dressed in hospital scrubs and stationed at various points in the hallways.
19 Walls in some of the children’s wings were brightly colored and there was a playground
20 for outdoor recreation, but otherwise the facility was a traditional, sterile hospital
21 environment.

22 8. While at Nexus, I met with three children in the behavioral health wing, one child
23 who I believe was in a separate wing for children with behavioral and physical health
24 needs, and one child who was in the wing for patients with more intensive physical health
25 needs.

26 **Overmedication of Children Placed at Nexus Children’s Hospital**

27 9. As a children’s attorney, I have interviewed hundreds of children in government
28 custody over the last twenty years, including children living in group homes, residential

1 treatment centers, psychiatric hospitals, juvenile facilities, and prisons. I have met with
2 enough children and youth over the years to assess whether a facility appears to be
3 overmedicating its young patients. At Nexus, there were clear indications that the three
4 children I met with in the behavioral health wing were on excessive medications based
5 both on their physical appearance and their complaints about the effects of the
6 medication, e.g. drowsiness during the day, agitation, shaky hands, slurred speech, and
7 sleep interference at night.

8 10. Two youth, in particular, appeared to be on extremely high doses of medication. A
9 sixteen-year-old youth was able to track our conversation and engage with me to some
10 degree but had a glazed over, vacant expression much of the time and reported to me that
11 he takes somewhere between fourteen to twenty pills a day. Although I do not know
12 exactly how many pills he takes each day, I know it is too many. Two independent child
13 psychiatrists have reviewed his medication regimen at Nexus and made this
14 determination. These pills make him feel tired during the day; yet he wakes up in the
15 middle of the night and is unable to fall back asleep. In his six months at Nexus, they
16 have forcibly injected him around five times. After he gets an injection, he sleeps for a
17 day and wakes up feeling desperate.

18 11. A fifteen-year-old youth I met with appeared to be so overmedicated he could
19 barely talk or maintain eye contact. I observed his hands shaking and his speech was
20 slurred. He fell asleep repeatedly over a 20-minute period. When he was awake, he did
21 nothing but lay in bed drooling and staring blankly at his TV. Despite his difficulty
22 tracking my questions, he did look at me intensely for one brief moment and asked when
23 he could go home. He said he had been asking for voluntary departure for seven months.

24 **Excessive Lengths of Stay at Nexus Children's Hospital**

25 12. In addition to my concerns regarding overmedication, the excessive length of time
26 children are staying at Nexus is also disturbing. Three of the children I spoke with have
27 been there for six months or longer. For the children with behavioral health needs, this
28 was particularly perplexing because the primary mental health intervention appeared to

1 be psychotropic medications. While youth shared that they had individual and group
2 therapy, these modalities can be provided in a much less restrictive setting. It was not
3 apparent from my conversations with youth that the treatment they were receiving could
4 possibly justify keeping them in a highly restrictive hospital setting for such a long period
5 of time. Youth shared that they spent the better part of their days confined in their
6 hospital rooms with limited outside time and little to no education.

7 13. One fifteen-year-old youth I spoke to was sent to Nexus due to her weight, diabetes
8 and issues with her knees. She has been there for over seven months. She would rather
9 go back to the hielera than stay at Nexus because of how staff treat the children. When
10 she arrived at Nexus, she was told that once she met the doctor's weight loss goal, she
11 could leave. But – once that weight goal had been met, she was told she would still have
12 to stay. Although I have not been able to assess the extent of her medical needs, I did
13 observe her moving around with a cane with no difficulty and checking her own blood
14 sugar levels. In our time together, there were no indications that her medical needs
15 continued to require her to live at a hospital.

16 **Lack of Educational Services at Nexus Children's Hospital**

17 14. Children in ORR custody at Nexus are also not receiving adequate educational
18 services. Several reported that they received no education at all. It would be one thing if
19 a child were there for a week, stabilized, and then returned to their placement—but
20 children are staying for six months or longer with no educational services and little else
21 to do. According to my conversation with a Nexus staff person, the onus for setting up
22 an educational plan appears to be on the child's designated ORR "shelter". Nexus views
23 the shelter as the child's guardian for purposes of arranging educational services through
24 the local school district. Youth who don't have a designated local shelter, appear to get
25 no education. Youth who do receive educational services through the local district,
26 apparently get 1.5 hours a week of instruction and are given homework packets for the
27 rest of the week.

Concerns about Separated Child

1
2 15. After finishing my interviews with the four children in ORR custody, I checked in
3 with the Nexus staff point of contact to let her know I was wrapping up for the day. I
4 asked her if there were any additional children in ORR custody we had not
5 discussed. She then noted that there was one additional child but that she was
6 “nonverbal” and wouldn’t be able to be interviewed. I said that wasn’t a problem, and
7 that I would just meet with her briefly. The Nexus staff person then led me to another
8 part of the hospital with patients who appeared to have more intensive physical health
9 needs. She couldn’t remember exactly how long the child had been at Nexus but
10 mentioned it had been a very long time.

11 16. Upon entry into the room, I observed a small child with perfectly coifed pigtails
12 under a pink Minnie Mouse blanket. She was connected to machines and was unable to
13 move or establish eye contact. An occupational therapist was standing next to her bed
14 and about 5 other health care workers were standing to the side of the room—I believe
15 receiving training on the child’s individualized needs.

16 17. Hospital staff left me with the impression that the child’s father had abandoned
17 her. However, I have since learned that this child was separated from her father in August
18 2019 after they crossed the border together. He was deported before his daughter was in
19 a position to safely return to home country with him; they remain separated and without
20 any direct contact.

21 18. Based on my observation and subsequent fact gathering, the child appears to be
22 well cared for. She has an independent Child Advocate who is appointed to advocate for
23 her best interests, and who is in contact with the child’s medical team, ORR staff, other
24 independent medical experts, and the child’s father.

25 19. What is most disturbing and cruel is that this child’s father, who came here
26 seeking help and protection, has now been separated from his daughter for more than a
27 year. Although this child has now lived far longer than her predicted life expectancy, her
28

1 long-term prognosis remains poor and without swift intervention, she and her father may
2 never see one another again.

3
4
5 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
6 23rd day of November, 2020 at Boca Grande, Florida.

7
8  _____

9 Leecia Welch

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT I

REDACTED

VERSION OF

DOCUMENT

PROPOSED TO BE

FILED UNDER SEAL

1 11. I have school once a week on Wednesdays. A teacher comes in for an hour and a
2 half and we go over math, English, and language arts. I do my homework on Tuesdays
3 and it takes me most of the day.

4 12. I was told about long term foster care and that is where I would like to go. I don't
5 feel good here.

6 13. I would like to be a gynecologist someday. I like kids and would love to help
7 bring kids into the world.

8
9 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
10 13th day of November, 2020 at Houston, Texas.

11
12 [Redacted Signature] _____
13 [Redacted Name]

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF TRANSLATION

I, Soraya Morales Nuñez, hereby certify that I am proficient in both Spanish and English, and that I accurately translated the foregoing statement and read it back to [REDACTED], in its entirety in Spanish on November 13, 2020.



Soraya Morales Nuñez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT J

**REDACTED
VERSION OF
DOCUMENT
PROPOSED TO BE
FILED UNDER SEAL**

1 10:15 we go outside for an hour and then they move us to the activity room. I return to
2 my room at 12. We then eat lunch and go back to our rooms for about two hours. Around
3 2:15 we have more activities.

4 10. I do not have school here. I have not had any school at Nexus the entire time I have
5 been here.

6 11. At Nexus I have therapy and group therapy. I don't have other therapies.

7 12. Each day, I take about twenty pills. In the morning, there are about 7 and in the
8 afternoon they give me two, and at night they give me five. The pills make me tired
9 during the day. I don't know why I wake up in the middle of the night. In Mexico, I slept
10 well. I don't know why I can't sleep well here in the United States.

11 13. I will be happy when they give me the good news that I'm leaving this place.

12 14. My dream is to be a firefighter. It's my dream to help people.

13
14 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
15 13th day of November, 2020 at Houston, Texas.

16
17
18
19
20
21
22
23
24
25
26
27
28

[Redacted Signature]

[Redacted Name]

CERTIFICATE OF TRANSLATION

I, Soraya Morales Nuñez, hereby certify that I am proficient in both Spanish and English, and that I accurately translated the foregoing statement and read it back to [REDACTED], in its entirety in Spanish on November 13, 2020.



Soraya Morales Nuñez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28