
No. 20-55951

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, et al.
Plaintiffs-Appellees,

v.

WILLIAM P. BARR,
Attorney General of the United States, et al.
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**RENEWED EMERGENCY MOTION UNDER
CIRCUIT RULE 27-3 FOR ADMINISTRATIVE STAY
AND STAY PENDING APPEAL**

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CIRCUIT RULE 27-3 CERTIFICATE

The undersigned counsel certifies that the following is the information required by Circuit Rule 27-3:

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(2) Facts showing the existence and nature of the emergency

As set forth more fully in the motion, on September 4, 2020, the district court entered an order generally prohibiting the government from placing alien minors in hotels while they are in the process of being expelled from the United States in accordance with an order issued by the U.S. Centers for Disease Control and Prevention (CDC) in response to the COVID-19 pandemic. The district court stayed its order until September 8, and directed the government to stop placing alien minors in hotels under the CDC order by September 15. The government filed an appeal from the order and moved for a stay from this Court. This Court granted an administrative stay of the order until September 16 and set a briefing schedule on the motion. On September 16, the Court denied the government's motion without prejudice, extended the administrative stay until September 23, and directed the government to first seek a stay of the order from the district court to allow that court to resolve issues related to the government's need for a stay in the first instance. The government did so, and the district court denied the government's application and made limited modifications to the September 4 order, directing the government to comply with the order starting on September 28.

A stay pending appeal is now needed from this Court to prevent heightened risk of spread of COVID-19 in congregate-care facilities where the government will now be forced to place minors subject to the district court's order.

(3) When and how counsel notified

The undersigned counsel notified counsel for plaintiffs by telephone on September 23, 2020, of Defendants' intention to file this motion. Plaintiffs oppose the relief requested in this motion, but agree to the further administrative stay and

briefing schedule proposed below. Service will be effected by electronic service through the CM/ECF system.

(4) Submissions to the district court

The government filed an ex parte application seeking a stay from the district court on September 17. The district court denied Defendants' request for a stay on September 21, and set the new deadline for compliance with its order to September 28.

(5) Decision requested by

By agreement between the parties, the government asks—and Plaintiffs do not oppose—that the Court grant an administrative stay of the district court's order through September 30, and set this motion for briefing and a decision as follows:

- Plaintiffs' opposition to be filed by midnight on September 25;
- Defendants' reply brief to be filed by 2 pm on September 28;
- If the panel needs additional time to issue a decision, it will extend the administrative stay accordingly.

Dated: September 24, 2020

Respectfully submitted,

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INTRODUCTION

This Court should stay pending appeal the district court’s orders (Dkt. 976, Ex. A; Dkt. 990, Ex. B) undermining public-health measures adopted by the CDC in response to the COVID-19 pandemic. The orders rest on serious errors, and if not stayed, will irreparably harm public safety during the pandemic.

Acting under authority granted in Title 42 of the U.S. Code, in March the CDC Director issued a public-health order “suspen[ding]” the introduction of certain aliens into the United States because such a suspension was “required in the interest of the public health.” 42 U.S.C. § 265. In effectuating that suspension, the government sometimes briefly houses alien minors in hotels so that they are not introduced into congregate settings in the United States where they risk introducing COVID-19 throughout facilities and communities. While the minors are in these hotels, the government provides them with supervision by specialists, recreation, amenities, and protective measures against COVID-19.

This case, *Flores v. Barr*, has nothing to do with the Title 42 public-health regime. It was filed 35 years ago, and produced a settlement agreement (Ex. C) nearly a quarter-century ago governing “the detention, release, and treatment of minors in the custody of [the former Immigration and Naturalization Service (INS)]” during their immigration proceedings under Title 8 of the U.S. Code. Agreement ¶ 9. The Agreement provides that, after alien minors are apprehended and held in immigration custody under Title 8, they are entitled to “safe and sanitary” conditions (¶ 12), and must be transferred “as expeditiously as possible” to a “licensed program” for custody during immigration proceedings (¶ 12.A). Although the Title

42 public-health authorities were enacted decades before the Agreement was executed, the Agreement says nothing of public-health concerns or the exercise of public-health authority. Nor does the Agreement purport to govern custody outside of immigration custody, or in the context of a public-health emergency. The Agreement applies only to a class of “all minors who are detained in the legal custody of the INS”—the former agency that was responsible for immigration proceedings and custody—and now to agencies that are enforcing the former INS’s immigration authorities under Title 8. *Id.* ¶ 10. Here, the authority for legal custody derives from 42 U.S.C. § 265, a public-health authority of the CDC that has nothing to do with the former INS or its functions.

Although the Agreement does not apply to alien minors who are not in immigration custody, and although the CDC order concerns public-health measures rather than immigration custody, the district court ruled that the Agreement applies to alien minors who are held in hotels under the CDC’s Title 42 measures and that the government’s use of hotels for temporary sequestered custody violates the Agreement. Dkt. 976 (Order). The court reasoned that the Agreement applies because the Department of Homeland Security (DHS), a successor to the INS, exercises current “legal custody” over minors who are held in hotels under Title 42. Order 5-11. On the merits, the court reasoned that the use of hotels is not sufficiently “safe” to satisfy the Agreement and that the Agreement should be read to require that minors in custody under Title 42 must be transferred to “licensed programs” within 72 hours of apprehension. Order 11-16. The court generally prohibited the

government from using hotels to hold minors pending expulsion under the CDC order. Order 16-18.

The district court's order rests on manifest errors and irreparably harms the United States and the public. It should be stayed pending appeal.

The district court is wrong that the Agreement applies to minors in custody under the authority of Title 42. Order 5-11. The Agreement applies only to “all minors who are detained in the legal custody of the INS.” Agreement ¶ 10. That provision requires looking to the legal authority giving the INS authority to detain: Title 8. Here, the source of legal authority for custody is a CDC order issued under Title 42, and so, under the Agreement, minors are in the legal custody of the CDC, not the INS's successors. The Agreement's focus on the “legal custody of the INS” makes clear that the Agreement concerns *immigration custody* under Title 8—the custody that the former INS exercised in 1997. “Legal custody” here must be evaluated by the *legal* authority that governs that custody, which at the time the Agreement was signed was Title 8, not Title 42. The Agreement does not govern non-immigration, Title 42 custody during a public-health emergency.

Even if the district court were correct that the Agreement governs custody under Title 42, the court erred on the merits when it held that the government's temporary housing of minors in hotels under the CDC order fails to comply with the Agreement. Order 11-16. The Agreement requires that minors be held in “safe and sanitary” conditions and transferred or released from custody “as expeditiously as possible.” Agreement ¶ 12. The hotels are sanitary and can safely house minors for brief periods under the CDC order. The government is taking precautions to prevent

transmission of COVID-19 to—or by—these minors. Minors enjoy recreation and are cared for by trained professionals. And the government is processing minors under Title 42 as “expeditiously as possible”—most very promptly, with those who stay in hotels remaining there less than 5 days on average. The district court’s contrary view does not account for the context here: a public-health emergency where a key component of the government’s response is to limit the introduction of aliens into the United States, and particularly into congregate facilities at the border.

A stay is warranted because the order here will irreparably harm the United States and the public. *See* Ortiz Decl. (Ex. D); Porvaznik Decl. (Ex. E); Hott Decl. (Ex. F); First Harper Decl. (Dkt. 925-1); Harper Decl. (Ex. G); Sualog Decl. (Ex. H and Att. 1). The district court’s irreparable-harm conclusion rests on a manifest disregard of record evidence, dismissing it as speculation. As government witnesses explain, the order requires the government to place minors into congregate facilities, which undermines the ability of these facilities to implement COVID-19 protection measures, and obstructs a critical public-health order that the CDC Director has determined to be necessary because “there remains a serious risk to the public health that COVID-19 will continue to spread to unaffected communities within the United States, or further burden already affected areas.” 85 Fed. Reg. 31503, 31505.

The Court should stay the district court’s orders pending appeal.

BACKGROUND

A. This Case, the 1997 Settlement Agreement, and Later Legislation

The *Flores* plaintiffs brought suit in 1985 on behalf of a class of alien minors detained by the INS because “a parent or legal guardian fails to personally appear to take custody of them.” *Reno v. Flores*, 507 U.S. 292, 296 (1993). After the Supreme Court upheld the government’s regulations governing the detention and release of alien minors and remanded the case, the parties in 1997 entered into the Agreement.

The Agreement applies to “all minors who are detained in the legal custody of the INS.” Agreement ¶ 10. It establishes a “nationwide policy for the detention, release, and treatment of minors in the custody of the INS.” *Id.* ¶ 9. Under the Agreement, the INS must hold minors in facilities that are “safe and sanitary.” *Id.* ¶ 12. As a default, the INS must place a minor in a licensed program within 72 hours of apprehension. *Id.* ¶ 12.A. In an “influx” or “emergency,” that 72-hour requirement does not apply, and placement into a licensed program is instead required “as expeditiously as possible.” *Id.* A licensed program is “any program ... that is licensed by an appropriate State agency to provide ... services for dependent children.” *Id.* ¶ 6.

In 2002, Congress enacted the Homeland Security Act (HSA), 116 Stat. 2135, creating DHS and abolishing the INS. The HSA transferred most of INS’s immigration functions to DHS, and transferred to HHS responsibility for the care of “unaccompanied alien children” (UACs). 6 U.S.C. § 279(a), (b)(1)(A). The Trafficking Victims Protection Reauthorization Act (TVPRA), 122 Stat. 5044 (2008), later affirmed that “the care and custody of all [UACs], including

responsibility for their detention, where appropriate, shall be the responsibility of” HHS. 8 U.S.C. § 1232(b)(1).

The successors of the INS that carry out its immigration functions today—including immigration custody—are U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS), all part of DHS, and, for unaccompanied alien children, HHS’s Office of Refugee Resettlement (ORR). 6 U.S.C. §§ 202, 279, 552; 8 U.S.C. § 1232. The authority for immigration proceedings, and to hold alien minors in immigration custody, is in Title 8. 8 U.S.C. §§ 1225, 1226, 1231, 1232.

B. CDC Statutory Authority and the Government’s 2020 Response to the COVID-19 Pandemic

Nearly a quarter century after the Agreement was executed, the United States was called upon to respond to the COVID-19 pandemic. In March the CDC issued an order under 42 U.S.C. § 265. Order, 85 Fed. Reg. 17060; Extension, 85 Fed. Reg. 22424; Amendment and Extension, 85 Fed. Reg. 31503. Enacted in 1944, section 265 authorizes the CDC Director, in response to a “serious danger of the introduction of [a communicable disease in a foreign country] into the United States,” to “prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.” 42 U.S.C. § 265. The CDC order “applies to persons traveling from Canada or Mexico ... who would otherwise be introduced into a congregate setting in a land Port of Entry (POE) or Border Patrol station at or near the United States borders with Canada and Mexico.”

85 Fed. Reg. at 17061. The order explains that “[t]he introduction into congregate settings in land POEs and Border Patrol stations of persons from Canada or Mexico increases the already serious danger to the public health to the point of requiring a temporary suspension of the introduction of such persons into the United States.” *Id.* The CDC Director has extended the order on the ground that “there remains a serious risk to the public health that COVID-19 will continue to spread to unaffected communities within the United States, or further burden already affected areas.” 85 Fed. Reg. at 31505. The CDC has determined that the CDC order “significantly mitigated the specific public health risk identified in the initial Order.” *Id.*

Title 42 also provides that “[i]t shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations.” 42 U.S.C. § 268. In line with that provision, and given the CDC’s limited resources, in issuing its order the CDC directed customs officers of DHS to assist in implementing the order. 85 Fed. Reg. at 17067.

The CDC order directs that covered aliens should be moved to their country of last transit or their country of origin “as rapidly as possible, with as little time spent in congregate settings as practicable under the circumstances.” 85 Fed. Reg. at 17067. CBP may, based on the totality of the circumstances, except a minor from the CDC order and transfer the minor to immigration custody under Title 8. *Id.* at 17061.

When they cannot be moved immediately to their country of last transit, minors and families may be housed in hotels. First Harper Decl. (Dkt. 925-1) ¶ 2. These hotels provide amenities and help implement the CDC order’s directive “that

covered aliens spend as little time in congregate settings as practicable under the circumstances.” 85 Fed. Reg. at 17067. Custody in hotels is accomplished through a contract with MVM Inc., which specializes in the transportation and care of this vulnerable population. First Harper ¶¶ 2, 3; Harper ¶¶ 3-5; Hott ¶ 12. MVM hires specialists who interact with and care for minors and family groups/units while they are in the hotel. Harper ¶¶ 3-5; Hott ¶ 12. At the hotels, minors are provided amenities, medical care and daily medical screenings by a medical professional, and protections against COVID-19. First Harper ¶¶ 13-20.

C. The District-Court Orders

On August 14, plaintiffs filed a motion purportedly to enforce the Agreement, arguing that the government’s use of hotels to house minors under the CDC’s order violates the Agreement. Dkts. 920, 920-1. On September 4, the district court granted the motion. Order, Dkt. 976.

On jurisdiction, the court ruled that the Agreement applies to alien minors who are in government custody under the CDC’s Title 42 order. Order 5-11. The court ruled that “custody,” as used in the Agreement’s phrase “all minors in the legal custody of the INS,” means “the right and responsibility to care for the well-being of the child and make decisions on the child’s behalf.” Order 5-6. The court emphasized that DHS is a legal successor to the INS, and concluded that DHS has legal custody over minors being excluded under Title 42 and housed in hotels because DHS exercises control over whether minors are processed under Title 42, where they are held during processing, and when and how minors are released from custody. Order 6-11.

On the merits, the court concluded that housing alien minors in hotels under Title 42 does not comply with the Agreement. Order 11-16. To start, the court concluded that housing minors in hotels is inconsistent with the Agreement's requirement (§§ 12, 19) for expeditious placement in licensed programs. Order 12-13. The court noted that ORR licensed facilities have many available beds, and concluded that, given that availability, "as expeditiously as possible" requires transfer within a three-day window. *Id.* Next, the court acknowledged that the hotels' conditions "are generally sanitary under normal circumstances," but concluded that hotels did not satisfy the Agreement's requirement (§ 12.A) to provide "safe" conditions. Order 13-15. The court concluded that MVM personnel are not providing adequate supervision to minors in hotels, and so ruled that "the hotel program is not safe with respect to preventing minors from contracting COVID-19 or providing the type of care and supervision suitable for unaccompanied minors." Order 15. Finally, the court acknowledged that minors have access to phone calls, but deemed this process inadequate to satisfy the Agreement's requirement (§ 32) that class counsel have access to conduct attorney-client visits. Order 15-16.

The court generally barred the government from holding minors in hotels under the Title 42 processes. Order 16-18. Among other things, the court ordered that "DHS shall cease placing minors at hotels by no later than September 15, 2020," and that "DHS shall transfer all minors ... currently held in hotels to [ORR licensed shelters or ICE family residential centers] as expeditiously as possible." Order 17.

The government moved the district court for a stay of the September 4 order pending appeal and submitted declarations attesting to the harms that the September 4 order would cause. Dkt. 985. On September 21, that court denied a stay, concluding that each stay factor favored plaintiffs. Dkt. 990. The court stated that the government’s factual presentation on harm “appear[s] to be highly speculative” and faulted the government for not including a declaration from a public-health official or “scientific or empirical analysis” and providing “conclusory assertions.” *Id.* at 3-4. The court stated that placements with ORR are more likely to benefit class members and “mitigate the spread of the virus” than the processes established under the CDC’s public-health order. *Id.* at 4-5. The court ordered that its September 4 order would be effective on September 28 and included a paragraph allowing DHS to “implement brief hotel stays (not more than 72 hours) as necessary and in good faith to alleviate bottlenecks in the intake processes at licensed facilities.” *Id.* at 5.

ARGUMENT

A stay is warranted. The government is likely to prevail on appeal, it will be irreparably harmed without a stay, a stay will not substantially harm plaintiffs, and the public interest supports a stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

I. A Stay Is Warranted Because the District Court’s Order Is Erroneous.

A stay pending appeal is warranted because the district court’s order rests on significant and clear errors of law.

First, the district court erred in holding that the Agreement applies here. Order 5-11. The Agreement applies only to minors who are in the “legal custody of

the INS” as that term was used by the parties in 1997. Agreement ¶¶ 4, 10. The term “legal custody” refers to the source of law that gives rise to the government’s custody of the child. A contrary reading makes the word “legal” superfluous, and ignores that a minor’s parent may retain custody as well. Indeed, the Agreement recognizes a distinction between *legal custody* and *physical custody*, and provides for the INS in some instances to place a minor in the *physical custody* of a licensed program (and thus outside of the INS’s *physical custody*), while specifying that the minor remains in the INS’s *legal custody*. Agreement ¶ 19. In 1997, INS would have “legal custody” over minors based on the Title 8 immigration laws in effect at that time that gave it authority to hold aliens pending removal proceedings. *Reno v. Flores*, 507 U.S. 292, 298 (1993). By contrast, the source of detention authority for the custody here is 42 U.S.C. § 265 and the CDC order issued under that provision. So, for purposes of the Agreement, these minors are in the legal custody of the CDC, not the INS’s successors.

That the Agreement governs immigration custody under Title 8 is further evident from its context. The Agreement settled issues related to custody by the INS incident to immigration proceedings, under the law governing that custody. *E.g.*, Agreement ¶¶ 11, 14, 24.A. When the Agreement was executed in 1997, the INS’s legal authority to detain minors was found within Title 8. 8 U.S.C. §§ 1225, 1252 (1995). Such detention was incident to immigration deportation and exclusion proceedings, the authority for which was also detailed in Title 8. 8 U.S.C. §§ 1225, 1226, 1231, 1252(b) (1995). The authority for immigration proceedings, and the authority to hold alien minors in immigration custody pending those proceedings,

remains in Title 8 today. 8 U.S.C. §§ 1225, 1226, 1231, 1232. Thus, the Agreement applies to minors in immigration custody under Title 8. The INS’s successors that carry out these immigration functions under Title 8 today—including immigration custody—are CBP, ICE, and USCIS, all in DHS, and ORR for UACs.

The Agreement does not encompass custody incident to the implementation of this present-day CDC order issued under 42 U.S.C. § 265. The sections of Title 42 at issue are not immigration statutes and are not limited to aliens. And persons processed under Title 42 are not processed for immigration enforcement actions. Rather, 42 U.S.C. § 265 provides the CDC broad authority to respond to public-health emergencies, and thus authorizes custody that is a necessary part of that response. While components of DHS play a role in today’s Title 42 process, that role is not based in any Title 8 immigration authority. Rather, under 42 U.S.C. § 268, “[i]t shall be the duty of the *customs officers* and of *Coast Guard officers* to aid in the enforcement of quarantine rules and regulations.” (Emphases added.) Notably, although today DHS assists HHS in implementing the CDC’s order in line with section 268 because customs officers and the Coast Guard are now a part of DHS, when the Agreement was executed, the duty in section 268 would not have applied to INS because at that time the Coast Guard and customs officers were part of the Treasury Department. 19 U.S.C. § 1401(i); 6 U.S.C. §203(1).

The Agreement also clearly does not apply here when it is read in broader context and as a whole. Section 265 was enacted in 1944, but the Agreement makes no mention of that statute, nor does it refer or directly relate to custody for public-health purposes. Section 265 authorizes the CDC Director to “prohibit, in whole or

in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.” 42 U.S.C. § 265. That authority is irreconcilable with the Agreement’s release obligation (§ 14). And requiring that the government transfer minors to facilities “licensed by an appropriate State agency” (§ 6) undercuts the CDC order’s aim to prevent the “danger to the public health that results from the introduction of such persons into congregate settings at or near the borders [that] is the touchstone of th[e] order.” 85 Fed. Reg. at 17061. Had the parties intended the Agreement to apply to the public-health-related custody here, they would have had to address how the Agreement’s terms were meant to apply to the type of processes—focused on averting the danger of transmission of disease—that could be expected to occur under section 265. They did not. Nothing in the Agreement suggests that the parties intended it to govern procedures under 42 U.S.C. § 265 or the brief incidental custody necessary to effectuate the movement that the CDC order requires. The Agreement does not apply here, and the motion to enforce should have been denied.

In ruling otherwise, the district court relied on the fact that DHS is a legal successor to the INS, and on its reading of “legal custody” as used in the Agreement to mean “the ability to provide care and supervision for the child.” Order 6. The court ruled that DHS has “legal custody” of minors during the Title 42 expulsion process, and so concluded that the parties anticipated “that when the successors to the INS held minors in their legal custody—whether ‘by mere coincidence’ or not—the Agreement would apply.” Order 9. But the court failed to construe “legal

custody of the INS” as a whole and in keeping with its plain meaning under the Agreement. As explained, that text refers to immigration custody under Title 8 as carried out by the INS in 1997. Here, the custody at issue is entirely different—it is part of a distinct process that implements a CDC public-health order, subject to legal authority in Title 42. Nothing in the Agreement supports the view that the parties anticipated that the Agreement would be applied to custody authorized by a public-health statute conferring authority on the CDC.

Second, even if the Agreement does apply to this custody, the district court erred in holding that the government’s use of hotels violates the Agreement.

To start, the manner in which the government uses hotels for custody as part of Title 42 processes satisfies the Agreement’s requirement to promptly transfer alien minors out of an unlicensed facility. Agreement ¶ 12; *contra* Order 11-13. Under the CDC order the government processes minors for expulsion as expeditiously as possible, and the use of hotels provides a safe and sanitary location for custody while also housing the minors together near airports to facilitate quick movement. The district court incorrectly concluded that the Agreement requires that minors be transferred to licensed facilities, ignoring that paragraph 12 of the Agreement allows that in cases of “influx” or “emergency”—including “medical emergencies (e.g., a chicken pox epidemic among a group of minors)” —the requirement for transfer is only that it should occur “as expeditiously as possible.” Those exceptions apply here and so any application of a strict three-day transfer rule is incorrect. And, in requiring transfer within three days, the district court disregarded its prior ruling giving the government at least *20 days* before transfer to

a licensed program (to address credible-fear claims). Dkt. 189. *A fortiori* the expeditious-placement standard applies here, and is met by giving the government a short period—five days on average—to effectuate a public-health order, using hotels for custody as needed.

Moreover, in entering into the Agreement, the parties represented “that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law.” Agreement ¶ 41. Thus, the requirement of transfer “as expeditiously as possible” should not be read to conflict with 42 U.S.C. § 265. Requiring that minors in custody under section 265 be transferred to licensed congregate-care facilities within and throughout the United States within three days, as the district court’s order does, conflicts with the CDC’s efforts to exercise its authority under section 265 by prohibiting the introduction of individuals into congregate settings based on public-health considerations.

The court also erred in ruling that the custody at issue is not “safe and sanitary.” Order 13-15. The court acknowledged that the hotel rooms provided amenities and “are generally sanitary under normal circumstances,” Order 13, but ruled that the conditions are not “safe.” In so ruling, the court originally relied on a generalized assertion that to be safe, the hotels must provide a “system of care for children of different ages and developmental stages,” Order 14, but disclaimed this requirement in its subsequent order. Dkt. 990 at 2. Having disclaimed this requirement, the court offered no basis for deeming these hotels unsafe. These fully equipped hotels are staffed by specialists, Harper ¶¶ 3-5, and, as detailed above and below, include numerous amenities: they are safe. *See supra* Part B; *infra* Part II.

II. A Stay Is Needed To Prevent Immediate Irreparable Harm To The United States And The Public.

The district court's order causes irreparable harm and undermines the public interest. Multiple government officials have assessed the September 4 order and concluded that it will increase risks to the public, to minors already in custody at ICE and ORR facilities, and to minors who will now have to be transferred into congregate care at those facilities. The order will increase the number of referrals of minors into ICE family residential centers and ORR shelters. Ortiz ¶ 9; Porvaznik ¶¶ 4-6; Hott ¶ 5; Sualog (Att. 1) ¶¶ 13-14, 22, 43-44. These increased referrals into ICE and ORR custody will increase the risk of COVID-19 exposure in U.S. Border Patrol facilities, ICE family residential centers, and ORR shelters. Ortiz ¶¶ 8-13; Hott ¶¶ 6-8; Sualog (Att. 1) ¶¶ 11, 14-16, 44-46. The increased numbers, and the increased need to transfer minors between facilities, will increase the risk that COVID-19 will spread outside those facilities, to local communities. Ortiz ¶ 8, 11-13; Hott ¶¶ 10-11; Sualog (Att. 1) ¶¶ 15, 20-21, 44-46, 47-49. And these factors together will strain the operations of all of these agencies. Ortiz ¶¶ 14-16; Hott ¶ 9, 10-11; Sualog (Att. 1) ¶¶ 16, 22.

The district court disparaged this evidence as “highly speculative.” Dkt. 990 at 3. That is clearly wrong—the district court had no basis to simply reject out of hand the considered assessments of officials involved in implementing an important public-health order. And the court was also wrong that the government did not provide empirical analysis supporting its assertion that 30% of minors entering its custody will have been exposed to COVID-19. Sualog (Ex. H) ¶ 18 (stating that

30% of minors who were referred to ORR custody during the identified time period were COVID-19 positive or exposed to COVID-19). The district court's orders (*e.g.*, Dkt. 990 at 4) focus too narrowly on the use of hotels versus licensed facilities, and fail to come to terms with the reality that preventing the government from using hotels is not just a matter of where minors are housed; rather, it undercuts the operation of the Title 42 order, heightening the risks that other minors as well as members of the community will become infected because the government is required to hold minors in a series of congregate-care facilities throughout the United States.

The orders will, in short, obstruct the CDC order's aim to prevent the introduction of COVID-19 into the United States, because they will instead obligate the government to introduce minors into congregate-care facilities, thereby increasing the risk to those individuals, and to the public, that COVID-19 will spread. 85 Fed. Reg. at 17061. Notably, plaintiffs and the district court have asserted the dangers of holding minors in congregate settings given COVID-19. Dkt. 733-1; Dkt. 784, 833. Yet the district court has now required that all minors and families who would have been held in individual hotel rooms before expulsion must now instead be placed into congregate settings regardless of the CDC Director's judgments and the limitations on the government's ability to maintain appropriate infection-control measures in those settings. The public interest is served by allowing the Nation's chief public-health expert, the CDC Director, to determine operations during a global pandemic. It is particularly critical for courts to take care in this context not to usurp the functions of the Executive Branch. Indeed, the Supreme Court has made clear that it disfavors judicial decisions that inject courts

into the management of the COVID-19 pandemic. *See, e.g., S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020). It bears emphasis, moreover, that ORR’s current success in preventing COVID-19 outbreaks at its facilities is due to its maintaining low numbers at those facilities. Sualog (Att. 1) ¶¶ 17-19, 27-43; Sualog (Ex. H) ¶¶ 6-7. Given the need to limit capacity to address COVID-19, the supposedly large number of available beds in ORR facilities is a mirage. Sualog (Att. 1) ¶¶ 45-46, 47-49; Sualog (Ex. H) ¶¶ 9-11; 13-17. It is thus not “highly speculative” for the government to assert that increased transfers, as the district court has required, will quickly overwhelm ORR and escalate the risk of transmission of COVID-19 to minors in ORR custody and local communities. Sualog (Att. 1) ¶¶ 17-22; Sualog (Ex. H) ¶¶ 10-12.

Plaintiffs do not face comparable harm from a stay. Indeed, based on plaintiffs’ ongoing efforts to halt congregate care of minors, it would be remarkable for them now to assert that brief custody at a hotel is more harmful than congregate care. The government has taken extensive measures to address the risks presented by COVID-19 for minors and family groups temporarily housed at hotels under Title 42. Minors have continual access to the amenities of a typical hotel room, medical care, and specialized oversight. Plaintiffs put forth no evidence of harm to any minor from being held in a hotel during Title 42 processing. Dkt. 920. The district court failed to point to any harm that will befall minors in hotels, and simply declared—without citation to any evidence—that minors are less likely to suffer harm if transferred to licensed facilities. Considerations of harm and the equities support a stay.

CONCLUSION

The Court should stay the district court's orders pending the resolution of this expedited appeal (Dkts. 976, 990).

Dated: September 24, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 24, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

/s/ Sarah B. Fabian

SARAH B. FABIAN

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 85-4544-DMG (AGRx)** Date September 4, 2020

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Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER RE PLAINTIFFS’ MOTION TO ENFORCE
SETTLEMENT AS TO “TITLE 42” CLASS MEMBERS [920]**

**I.
INTRODUCTION**

On August 14, 2020, Plaintiffs filed a motion to enforce the *Flores* Settlement Agreement (“FSA” or “Agreement”) with respect to Class Members detained in hotels pending expulsion pursuant to 42 U.S.C. section 265 (“Title 42”). [Doc. # 920.] In particular, Plaintiffs argue that (1) minors detained by the Department of Homeland Security (“DHS”) under the direction of a Title 42 order by the Centers for Disease Control and Prevention (“CDC”) are Class Members within the scope of the *Flores* Agreement, and (2) holding such Class Members in unlicensed hotels for prolonged periods violates the Agreement. Plaintiffs therefore ask the Court to order DHS to stop detaining minors in hotels and to comply with the Agreement with respect to the placement of Class Members. Defendants maintain that the Court lacks jurisdiction to issue such an order because these minors are not Class Members, and in any event, detaining them in hotels does not violate the Agreement. The motion has been fully briefed. [Doc. ## 925, 960.] The Court held a hearing on the motion on September 4, 2020.

Having duly considered the parties’ written submissions and oral argument, the Court **GRANTS** Plaintiffs’ Motion to Enforce for the reasons stated below. The Court has jurisdiction over this matter and orders DHS to end its practice of detaining Class Members in hotels. DHS cannot evade its obligations under the *Flores* Agreement by hiding behind a different statute while exercising unfettered discretion over the minors within its care.

**II.
BACKGROUND**

On January 28, 1997, this Court approved the *Flores* Agreement—a class action settlement—between Plaintiffs and the federal government. *See Flores v. Sessions*, 862 F.3d

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863, 866 (9th Cir. 2017). At the time, the Immigration and Naturalization Service (“INS”) was the primary agency tasked with enforcing the nation’s immigration laws, principally the Immigration and Nationality Act, also known as Title 8. It was the INS’s conduct that was at issue in the *Flores* litigation, as memorialized in the Agreement’s class definition: “All minors who are detained in the legal custody of the INS.” FSA at ¶ 10 [Doc. # 101].

In 2002, Congress passed the Homeland Security Act, which abolished the INS and transferred its functions to various agencies within the newly created DHS, as well as to the Office of Refugee Resettlement (“ORR”), an agency within the Department of Health and Human Services (“HHS”). 6 U.S.C. §§ 251, 279, 291. Also transferred to DHS were the functions of the former U.S. Customs Service, which had been a part of the Treasury Department. *Id.* at § 203(1). The immigration and customs security and enforcement-related functions were comingled and vested into two agencies within DHS: Customs and Border Protection (“CBP”) and Immigration and Customs Enforcement (“ICE”). *See* 6 U.S.C. § 211; *id.* at § 252 (establishing the Bureau of Border Security); H.R. Doc. No. 108-32, at 1 (renaming the Bureau of Border Security the “Bureau of Immigration and Customs Enforcement”).

The *Flores* Agreement is binding upon the named Defendants and their “agents, employees, contractors and/or successors in office.” FSA at ¶ 1. Consequently, after the reorganization of the INS, its “obligations under the Agreement now apply to the Department of Homeland Security and the Department of Health and Human Services.” *Flores v. Barr*, 934 F.3d 910, 912 n.2 (9th Cir. 2019).

On March 20, 2020, CDC, a subagency of HHS, issued an order closing the United States’ borders with Mexico and Canada to certain persons in response to the COVID-19 pandemic. *See* Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 26, 2020) (effective March 20, 2020) (“Closure Order”). The Closure Order called for covered persons to be removed from the United States and returned to their country of origin, or another practicable location, as rapidly as possible. *Id.* at 17,067. It applied to “persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry (POE) or Border Patrol station at or near the United States borders with Canada and Mexico,” and exempted U.S. citizens, permanent residents, and those with valid travel documents or subject to the visa waiver program, among others. *Id.* at 17,061. The Closure Order was issued pursuant to HHS’s authority under 42 U.S.C. sections 265 and 268. Enacted in 1944, the relevant section of Title 42 states:

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Whenever [the Secretary of HHS] determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the [Secretary], in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

42 U.S.C. § 265. The Closure Order noted the “serious danger” of COVID-19 entering the United States through land Ports of Entry and Border Patrol Stations operated by CBP. 85 Fed. Reg. at 17,061. The Order “requested that DHS implement this order because CDC does not have the capability, resources, or personnel needed to do so.” *Id.* at 17,067. The Closure Order has since been extended twice, the second time indefinitely. *See* Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists, 85 Fed. Reg. 22,424 (Apr. 22, 2020) (effective April 20, 2020); Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists, 85 Fed. Reg. 31,503 (May 26, 2020) (effective May 21, 2020).

On July 22, 2020, the Independent Monitor, Andrea Ordin, and Special Expert, Dr. Paul H. Wise, filed an Interim Report on the Use of Temporary Housing for Minors and Families Under Title 42 (“July 22 Interim Report”) [Doc. # 873], alerting the Court to DHS’s practice of using hotels to temporarily house accompanied and unaccompanied minors pending their expulsion under Title 42, routinely for multiple days. *Id.* at 11.¹ On August 7, 2020, the Court determined the issue of “hoteling” to be beyond the scope of prior briefing and ordered the Plaintiffs to file a motion to enforce on an expedited briefing schedule. [Doc. # 914.] In the same Order, the Court directed the Independent Monitor to continue observing and reporting on Title 42 hoteling. On August 26, 2020, the Monitor filed another Interim Report, finding that 25 hotels across three states have been used to house 660 minors between the ages of 10 and 17, 577 of whom were unaccompanied. August 26 Interim Report at 12, 15 [Doc. # 938]. Of the unaccompanied minors, 126 (26%) were under 15 years of age. *Id.* at 15. On average, minors are housed in hotels for just under five days, though 25% have been held for more than 10 days,

¹ All page references herein are to page numbers inserted by the CM/ECF system.

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with a maximum stay of 28 days. *Id.* at 16; Supplemental Harper Decl. at ¶ 6 [Doc. # 970].² The hoteling program is operated by ICE and its contractor, MVM, Inc. (“MVM”). July 22 Interim Report at 11. It has rapidly expanded since the Closure Order was first issued, becoming a full-scale detention operation for minors and families immediately preceding their expulsion under Title 42. *See id.*; August 26 Interim Report at 12. The Independent Monitor recommended that unaccompanied minors be excluded from the hoteling program, finding there to be “no assurance that the [hoteling program] can provide adequate custodial care for single minors.” August 26 Interim Report at 21.³

**III.
LEGAL STANDARD**

The Court incorporates the legal standard for motions to enforce articulated in its July 24, 2015 and June 27, 2017 Orders and need not repeat it here. *See Flores v. Johnson*, 212 F. Supp. 3d 864, 869–70 (C.D. Cal. 2015); *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1048–50 (C.D. Cal. 2017).

**IV.
DISCUSSION**

As a preliminary matter, the Court makes clear what is *not* at issue in this case—the validity of Title 42 expulsions. Much as an examination of the legal underpinning of the Migrant Protection Protocols (“MPP”), also known as the “Remain in Mexico” policy, is outside the purview of the *Flores* Agreement, so too is Defendants’ policy of expelling minors pursuant to Title 42. *See* April 24, 2020 Order at 13 [Doc. # 784].

² Statistics on the length of minors’ stays in hotels, cited herein, may contain slight inaccuracies due to Defendants’ late filing of corrected data. *See* Supplemental Harper Decl.; Corrected Attachment A to Opp. (under seal) [Doc. # 972]. The corrections to the data are not material to any of the Court’s conclusions.

³ Defendants object to the Independent Monitor’s Reports, claiming that the Monitor’s recommendations hold Defendants to a standard not found in the *Flores* Agreement. [Doc. # 967.] The Monitor found that “the [hoteling program] is not fully responsive to the safe and sanitary requirements of young children.” August 26 Interim Report at 19. The “safe and sanitary” requirement is directly found in the *Flores* Agreement, as is the requirement for conditions that “are consistent with the [] concern for the particular vulnerability of minors.” FSA at ¶ 12.A. The Monitor’s conclusions stem from the well-established definition of “safe and sanitary.” *See Flores v. Barr*, 934 F.3d at 916 n.6 (“‘safe and sanitary’ conditions includes protecting children from developing short- or long-term illnesses as well as protecting them from accidental or intentional injury”); Part IV.B.2, *infra*. The Court therefore **OVERRULES** Defendants’ objections.

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The sole focus of the Court is Defendants’ treatment of minors within their “legal custody” and whether it comports with the requirements of the *Flores* Agreement. The Court considers first the threshold question of whether minors in Title 42 custody are *Flores* Class Members.

A. Jurisdiction Over Minors Detained Under Title 42

The *Flores* Agreement provides protections to its Class Members, who are defined as “[a]ll minors who are detained in the legal custody of the INS.” FSA at ¶ 10. Whether minors detained under Title 42 are Class Members therefore depends on who has legal custody over them, and whether that entity is a successor to the INS. The question turns on the definition of “legal custody” as contemplated by the Agreement.

1. The Meaning of “Legal Custody” Under the *Flores* Agreement

When interpreting the language of a contract, “[t]he whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.” Cal. Civ. Code § 1641. The *Flores* Agreement discusses “custody” and “legal custody” throughout. Unless detention is necessary to “ensure the minor’s safety or that of others,” Paragraph 14 instructs the INS to “release a minor from its custody” to, in order of preference, a parent, legal guardian, adult relative, an adult designated by a parent or legal guardian “as willing to care for the minor’s well-being,” “a licensed program willing to accept custody,” or to an adult or entity “seeking custody” when there is no other alternative. Paragraph 15 provides that, prior to a minor being “released from INS custody,” the accepting custodian must agree to “provide for the minor’s physical, mental, and financial well-being.” Under Paragraph 16, if the accepting custodian fails to abide by this agreement, the INS “may terminate the custody arrangements and assume legal custody” of the minor. Paragraph 19 provides that, in the event a minor is not released, “the minor shall remain in INS custody.” In such situations, the minor shall be placed in a licensed program, but “[a]ll minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS.”

In this context, the definition of “legal custody” is unambiguous. Each use of “custody” or “legal custody” connotes the ability to provide care and supervision for the child. The Agreement discusses the transfer of “custody” from the INS to parents or other private adults or entities, and it requires the transferee custodian to agree to provide for the minor’s well-being. It also provides for the ability of the INS to transfer physical possession while retaining “legal custody,” in which case only the INS can authorize further transfer or release. The use of the

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word “legal” is telling. The Agreement employs the formal meaning of “legal custody,” derived from family law, signifying the right and responsibility to care for the well-being of the child and make decisions on the child’s behalf. *See* Black’s Law Dictionary (11th ed. 2019) (defining “legal custody” as “[t]he authority to make significant decisions on a child’s behalf, including decisions about education, religious training, and healthcare”); Cal. Fam. Code §§ 3003, 3006 (defining “legal custody” as “the right and the responsibility to make the decisions relating to the health, education, and welfare of a child”); *see also In re Jennifer R.*, 14 Cal. App. 4th 704, 710 (1993) (recognizing legal custody as the ability to make “major decisions that are going to effect [sic] the life of the child”).

2. “Legal Custody” Under Title 42 Procedures

With this understanding in mind, there is no doubt that DHS maintains legal custody of minors subject to Title 42 expulsion. From the moment they are first apprehended until they are released or expelled, DHS has the authority to make decisions relating to the welfare and legal status of the children.

DHS agents have near complete control over whether, when, and how they apprehend individuals under Title 42. The Closure Order delegated to CBP the responsibility to execute its directives, and noted that CBP had already “developed an operational plan” for its implementation. 85 Fed. Reg. at 17,067. Based on CBP’s internal guidance memo on the Closure Order, titled “Operation Capiro,” Border Patrol agents are tasked with apprehending persons under the Closure Order and “may rely on their training and expertise in detecting, apprehending, and determining whether persons are subject to the CDC order.” U.S. Customs & Border Protection, *COVID-19 Capiro Memo*, <https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html> (“Capiro Memo”) at 1.⁴ The Closure Order also grants DHS the discretion to exempt certain covered individuals “based on the totality of the circumstances,” although they “shall consult with CDC” regarding these individualized exceptions. 85 Fed. Reg. at 17,061.

DHS also appears to exercise unilateral discretion over whether detained minors remain within the Title 42 expulsion process or are transferred into Title 8 proceedings, such as removal proceedings under 8 U.S.C. section 1229(a). The Capiro Memo provides that when an individual is “determined to no longer be amenable” to Title 42 expulsion, they are to be processed under Title 8. Only the “Chief Patrol Agent” of CBP can sign off on such a decision. Capiro Memo at

⁴ The Capiro Memo is an internal document published by the press and cited by Plaintiffs, but Defendants do not dispute its authenticity.

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2. There is no procedure for CDC to review or approve that decision. Moreover, multiple legal services providers attest that DHS summarily re-designates minors from Title 42 to Title 8 custody, with no explanation given, and perhaps for no other reason than that counsel has appeared to advocate on the child’s behalf. *See* Nagda Decl. at ¶ 32 [Doc. # 920-4] (“We are not aware of any reason for the children’s ‘re-designation’ other than our efforts to notify DHS that we were aware of the child’s presence in DHS custody.”); Galindo Decl. at ¶ 5 [Doc. # 897-3] (“[E]very time we have contacted the government about a specific child who had not yet been removed, the government has removed that child from the Title 42 Process.”); Odom Decl. at ¶ 19 [Doc. # 920-3] (“In almost every case, our intervention has succeeded in officials reprocessing the children under Title 8, rather than Title 42[.]”); Galindo Decl. at ¶ 3 [Doc. # 920-7] (“As of August 13, 2020, the U.S. government has transferred at least 44 unaccompanied children out of the Title 42 process and into ORR care as a result of our efforts.”).⁵ CDC appears to have no role in this process. *See* Nagda Decl. at ¶ 33 (“[W]e have never interacted with a CDC representative in any capacity[.]”); Seaton Decl. at ¶ 16 [Doc. # 920-5] (“I did not interact or communicate with any representatives from the CDC during my representation of [a minor in Title 42 custody].”). In July 2020, 46 minors were reprocessed from Title 42 to Title 8 custody. *See* Adamson Decl., Ex. 1, Title 42 Data Summary (“July Data Summary”) at 20, 25 [Doc. # 960-1].

DHS also has complete control over where and under what conditions to detain minors under Title 42, including over the decision to house them in hotels. The hoteling operation is managed by the Juvenile and Family Residential Management Unit of ICE, which has hired a contractor to run the facilities on the ground, though ICE “oversees all aspects of the operations.” *See* Harper Decl. at ¶¶ 1–3, 11 [Doc. # 925-1]. CDC appears to have no role in the process. *See id.* ICE feeds, clothes, and provides for the hygiene of the minors, with apparently no input from CDC. *See id.* at ¶¶ 13–18. ICE even handles medical care for the minors, *see id.* at ¶ 20, notwithstanding CDC and HHS’s expertise in the field. In other words, DHS maintains “the right and the responsibility to make the decisions relating to the health, education, and welfare of [the] child.” Cal. Fam. Code §§ 3003, 3006 (definition of legal custody in the family law context).

Finally, DHS has wide discretion to determine when and whether minors held under Title 42 leave their custody. According to the Independent Monitor, the amount of time minors spend in hotels under Title 42 custody varies widely, with no apparent methodology and no formal

⁵ Defendants object to many of Plaintiffs’ declarations for lack of personal knowledge. Opp. at 26 n.10 [Doc. # 925]. To the extent that Plaintiffs’ declarants offer hearsay testimony on behalf of others in their organizations, any defect as to this testimony can be easily remedied if a full evidentiary hearing is requested and deemed necessary. The Court therefore provisionally **VERRULES** Defendants’ evidentiary objections.

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limits on the length of stays. August 26 Interim Report at 16–19. There is no indication that CDC plays any role in deciding when minors’ custody with DHS ends and they are ultimately expelled from the country. DHS retains plenary authority to make this “major decision” affecting the child’s life. *See In re Jennifer R.*, 14 Cal. App. 4th at 710.

Defendants do not dispute the degree of control DHS exercises over the minors. Opp. at 19–20 [Doc. # 925]. They also rightly recognize that the Agreement contemplates a definition of “legal custody” distinct from physical custody, even pointing to state family law authorities on the meaning of legal custody. *Id.* at 14–15; Defs.’ Response to Pls.’ Report on Parties’ Conference re “Title 42” Class Members at 5–6 n.2 [Doc. # 900]. But they then insist that legal custody refers to “the source of legal authority to hold the child,” irrespective of who actually controls the child’s life, and that therefore legal custody belongs to CDC. Opp. at 19. Neither the law nor the *Flores* Agreement employs the term “legal custody” in such a cabined manner.

Defendants point to Paragraph 19, which provides for the INS to hand over physical custody to a licensed program while retaining legal custody, as evidence that CDC too can maintain legal custody even while delegating physical custody to DHS. But Paragraph 19 specifically reserves for the INS the sole authority to release or transfer the minor, as is consistent with the authority inherent in having legal custody. Licensed programs also have a host of minimum standards by which they must abide. *See* FSA, Ex. 1. By contrast, CDC does not appear to have any voice in the child’s future legal status or physical placement, whereas DHS has free rein. Even if the Court assumes for the sake of argument that the CDC maintains some form of legal custody as the source of the detention authority, that does not foreclose DHS from having legal custody by virtue of its unbridled authority to take actions and make decisions relating to the minor. *See* Cal. Fam. Code § 3003 (recognizing joint legal custody).

Defendants argue that the Agreement was only ever intended to apply to minors held under Title 8, and that the parties could never have anticipated that DHS would, “by mere coincidence,” be tasked with implementing a CDC order under Title 42. Opp. at 19. But nowhere in the Agreement is Title 8 or any other authorizing statute mentioned.⁶ The words “pursuant to Title 8” or the like are conspicuously absent from the class definition. The Agreement did not restrict itself to any particular statutory framework, though it easily could

⁶ Passing references are made to certain procedures and institutions under Title 8, such as immigration courts and bond hearings. *See, e.g.*, FSA at ¶ 14 (“Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court”); ¶ 12.A (“Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing, *if applicable.*”) (emphasis added). But these references do not imply that custody must be *exclusively* pursuant to Title 8 proceedings.

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have done so. The Court will not insert such a limitation into the Agreement when the plain meaning is evident. Indeed, it very well may be unprecedented and unanticipated for DHS to detain minors pursuant to Title 42. *Cf. Flores v. Lynch*, 828 F.3d 898, 906 (9th Cir. 2016) (“[I]t is apparent that this agreement did not anticipate the current emphasis on family detention. . . . Nonetheless, the *Flores* Settlement, by its terms, applies to all ‘minors in the custody’ of ICE and DHS, not just unaccompanied minors.”) (quoting *Bunikyte, ex rel. Bunikiene v. Chertoff*, No. A-07-CA-164-SS, 2007 WL 1074070, at *3 (W.D. Tex. Apr. 9, 2007) (alteration in original)). But what the parties very much did anticipate is that when the successors to the INS held minors in their legal custody—whether “by mere coincidence” or not—the Agreement would apply.

Defendants also point to the purported statutory authority under which DHS implements Title 42, providing that “[i]t shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations.” 42 U.S.C. § 268. Defendants argue that “customs officers” were not a part of the old INS, and so even though they are subsumed by DHS now, in this capacity DHS is not a successor to the INS. This argument *might* hold some water *if* the officials enforcing the Closure Order and detaining minors in their legal custody were truly customs officers operating separate and apart from immigration authorities. But that is not the case. The Capiro Memo specifically tasks the U.S. Border Patrol—which was a part of the INS, *see* 6 U.S.C. § 251(1)—with apprehending persons under the Closure Order and determining their eligibility for Title 42 processes. Capiro Memo at 1; *see also* Odom Decl., Ex. B at 17 (correspondence between legal service provider and Border Patrol agent regarding the custody of minor in Title 42 proceedings). Upon entering the Title 42 procedure, minors are placed into the “custody” of the Enforcement and Removal Operations (“ERO”) division of ICE, which runs the hoteling operation. Harper Decl. at ¶¶ 1–2. This same division takes custody of individuals when they are processed under Title 8. *See* Capiro Memo at 3 (“ICE/ERO will take custody . . . and follow established procedures under Title 8 or Title 42 as applicable.”). Defendants’ declarant, an ERO official who testifies to overseeing minors’ custody under Title 42, has appeared in this case before, testifying to her management of ICE Family Residential Centers (“FRCs”). *See* Decl. of Mellissa Harper at ¶ 1 [Doc. # 746-12]. In fact, at least 21 children held under Title 42 were at one point transferred to an FRC or ORR facility, where presumably they were overseen by the same staff managing those held there under Title 8. *See* July Data Summary at 21–23.

By its terms, the Closure Order applies only to persons “who would otherwise be introduced into a congregate setting in a land Port of Entry (POE) or Border Patrol station”—in other words, to those who would otherwise enter into Title 8 proceedings. 85 Fed. Reg. at 17,061. And as discussed above, the officials with custody of the minors maintain plenary authority to transfer them from Title 42 to Title 8 proceedings. There is no question that the

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immigration authorities of the United States are detaining the minors in their legal custody. These authorities are clearly the successors to the INS and so are squarely bound by the *Flores* Agreement, regardless of what statute they purport to be acting under. *See Flores v. Sessions*, 862 F.3d at 879 (“The government remains bound by its bargain in the *Flores* Settlement, regardless of which agency may now be charged with caring for unaccompanied minors. The acronyms have changed, but the effect remains the same.”). A contrary result would be to endorse a shell game.

3. Reconciling the *Flores* Agreement with Title 42 Requirements

Defendants also maintain that the *Flores* Agreement cannot be interpreted in such way as to conflict with the requirements of Title 42. In particular, they argue that placing minors in licensed programs would necessitate their “introduction” into the United States, which Title 42 specifically prohibits. *Opp.* at 17. But there is no reason why sending minors to licensed facilities would “introduce” them into the United States any more than putting them up in hotels in Phoenix, Houston, and San Antonio already has. *See* August 26 Interim Report at 13. Indeed, to the extent that Title 42 is meant to protect against the introduction of infectious diseases, Defendants have failed to demonstrate how hotels, which are otherwise open to the public and have unlicensed staff coming in and out, located in areas with high incidence of COVID-19, are any better for protecting public health than licensed facilities would be. *See id.* at 13–14; *see also* Part IV.B.2, *infra*. Moreover, in 2008—after both Title 42 and the *Flores* Agreement were implemented—Congress passed the Trafficking Victims Protection Reauthorization Act (“TVPRA”), which codified many of the same protections that the *Flores* Agreement guarantees to unaccompanied minors, including the requirement for *any* agency to transfer unaccompanied minors to ORR within three days. *See Flores v. Sessions*, 862 F.3d at 880–81; *see also* 8 U.S.C. § 1232(b)(3).⁷ If Title 42 precludes compliance with the *Flores* Agreement requirement to place minors in licensed programs, then it would also preclude compliance with the TVPRA. The Court need not force a construction that would render the Agreement and the TVPRA incompatible with Title 42 when a perfectly reasonable interpretation that harmonizes them is available. *See Morton v. Mancari*, 417 U.S. 535, 551 (1974) (“[W]hen two statutes are capable

⁷ Section 1232(b)(3) states unambiguously:

Except in the case of exceptional circumstances, *any* department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.

⁸ 8 U.S.C. § 1232(b)(3) (emphasis added).

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of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.”).

Defendants also argue that the *Flores* Agreement was intended to address “longer term immigration custody,” making it at odds with the “short-term purposes” of Title 42. Opp. at 17. First, the Court questions Defendants’ premise—the Agreement very much accounted for the short term, requiring the INS to place a minor within three days or as expeditiously as possible, and specifically setting requirements for safe and sanitary conditions in the interim period when the INS holds minors in detention. Agreement at ¶ 12.A; see also July 24, 2015 Order, 212 F. Supp. 3d at 880–82 (applying Paragraph 12 to short-term holding cells at Border Patrol stations). If Title 42 were solely a short-term framework, then it would not result in minors being held for as many as 28 days. But even if this analysis has some value, the two remain perfectly reconcilable. So long as Title 42 procedures remain sufficiently brief so as not to lead to minors’ prolonged detention, then Defendants do not have to worry about the *Flores* Agreement. This was true, for example, when hoteling was used in the past for a day or two preceding long-distance deportation flights or to accommodate unexpected flight cancellations or delays. See July 22 Interim Report at 11. But if the process results in detention for any real amount of time, as is clearly the case here, then the Agreement’s protections are triggered.

Moreover, DHS has already held at least some minors subject to Title 42 in licensed ORR facilities. In July alone, two children were held in ORR custody while awaiting expulsion under Title 42, and at least one child was transferred from an ORR facility to a hotel before being expelled under Title 42. See July Data Summary at 21. Two minors were even transferred from hotels to ORR *after testing positive for COVID-19*. See August 26 Interim Report at 20. If transferring covered minors to licensed facilities were truly an affront to Title 42, then DHS has already violated the law several times over.⁸

B. Title 42 Custody’s Compliance with the *Flores* Agreement

Having determined that the Court has jurisdiction to hear Plaintiffs’ complaints, the Court now turns to the merits of the motion to enforce. Plaintiffs raise a number of ways in which the Title 42 hoteling operation purportedly violates the *Flores* Agreement.

⁸ Because the Court finds that DHS unquestionably has legal custody of the minors within the meaning of the *Flores* Agreement, it need not address whether CDC, if it too has legal custody, would be considered a successor in interest to the INS.

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1. Placement in a Licensed Program

The *Flores* Agreement requires that, if there is no qualified adult or entity that can take custody, DHS must transfer the minor to a “licensed program” within three days of their arrest— or, in cases of an “emergency or influx,” “as expeditiously as possible.” FSA at ¶¶ 12, 19. Licensed programs are those that are “licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children.” *Id.* at ¶ 6.

There is no dispute that hoteling is not a licensed program. DHS’s contractor, MVM, is not licensed by a state agency to provide care for children. The hoteling also does not meet a number of requirements of licensed programs under the Agreement, including providing an individualized needs assessment, educational services, daily outdoor activity, and counseling sessions, among others. *Id.*, Ex. 1 at ¶¶ A.3–7; July 22 Interim Report at 12. Rather, Defendants argue that hotel stays are only short-term, and minors are removed from the placement as expeditiously as possible under the circumstances required by the Title 42 process. *Opp.* at 22–25.

On average, children spend approximately five days in hotels. August 26 Interim Report at 16. Over three-quarters of minors stay for three days or more. July Data Summary at 14–15. The Court acknowledges that the COVID-19 pandemic presents an “emergency” situation that could slow down the rate of placements. Care would have to be taken not to group too many children together in close quarters, and this may cause transportation delays. Nonetheless, Defendants fail to show how diverting children to hotels, rather than immediately sending them to licensed facilities in the same region with ample accommodations, in any way expedites the process. Instead, they again argue that doing so would controvert Title 42 by “introducing” minors into the United States. *Opp.* at 23–24. As discussed above, sending children to licensed facilities is no more an “introduction” than sending them to hotels is. In fact, the reverse is true given that hotels are public accommodations open to all manner of guests.

Moreover, this Court has previously relaxed the three-day transfer requirement when Defendants acted “in good faith and in the exercise of due diligence” to expeditiously transfer minors to licensed programs. August 21, 2015 Order, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015). Here, hoteling is *not* part of a good faith effort towards placing children in licensed programs. It would be one thing if hoteling served as a temporary stopgap in the process of cautiously sending children to licensed facilities with all deliberate speed given the extenuating circumstances of the pandemic. But that is not what the hotel placements are for. Hoteling has *fully replaced* licensed programs for minors in Title 42 custody for the period prior to expulsion. *See* July 22 Interim Report at 17; July Data Summary at 17, 19, 21 (only 3 out of 197

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unaccompanied hotelled children were transferred from the hotel to ORR while remaining in Title 42 custody). Significantly, ORR shelters were 97% vacant as of August 22, 2020, with a capacity of over 10,000 beds. August 24, 2020 ORR Juvenile Coordinator Report at 3 [Doc. # 932-2]. All 197 unaccompanied minors hotelled in July could have been sent to ORR without making a dent in the facilities' capacity—making Defendants' claim that hoteling is necessary to alleviate an emergency ring especially hollow. Meanwhile, as discussed further below, hoteling presents particular vulnerabilities to COVID-19. See Part IV.B.2, *infra*. Defendants cannot seriously argue in good faith that flouting their contractual obligation to place minors in licensed programs is necessary to mitigate the spread of COVID-19. Therefore, the Court finds Defendants have materially breached their duty under Paragraphs 12 and 19 to place minors in licensed facilities as expeditiously as possible.

2. Safe and Sanitary Conditions

Paragraph 12.A of the *Flores* Agreement also requires that, immediately following arrest, DHS shall hold minors in conditions that are “safe and sanitary” and that recognize “the particular vulnerability of minors.” These requirements include “protecting children from developing short- or long-term illnesses as well as protecting them from accidental or intentional injury.” *Flores v. Barr*, 934 F.3d at 916 n.6. They do not incorporate specific standards nor are they limited to the other enumerated requirements of Paragraph 12. *Id.* at 916. Rather, they encompass those safeguards that “reflect a commonsense understanding” of what safe and sanitary conditions, with concern for the particular vulnerability of minors, require. *Id.*

According to Defendants, upon leaving CBP stations, minors or their family members are given an age- and gender-appropriate travel kit that includes basic hygiene items such as soap, shampoo, a toothbrush, toothpaste, deodorant, and feminine hygiene products. Harper Decl. at ¶ 13. In the hotel rooms, they receive clothes, beds, a backpack, snacks, water, three hot meals a day, and showers. *Id.* at ¶¶ 14–16. The rooms are cleaned regularly. *Id.* at ¶ 18. The hotels appear to be mainstream chains that offer mid-tier accommodations. August 26 Interim Report at 19. The Court appreciates these efforts and finds that they are generally sanitary under normal circumstances.

But that does not end the inquiry. The detention must also be “safe,” keeping in mind the “particular vulnerability of minors.” See *Flores v. Barr*, 934 F.3d at 915 (“Courts interpreting the language of contracts should give effect to every provision, and an interpretation which renders part of the instrument to be surplusage should be avoided.”) (quoting *United States v. 1.377 Acres of Land*, 352 F.3d 1259, 1265 (9th Cir. 2003)) (internal quotation marks omitted). Each minor is overseen by an MVM “Transportation Specialist,” who remains inside the room

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and within the line-of-sight of the child or family members at all times in order “to safeguard the minors and family groups/units.” Harper Decl. at ¶¶ 6–7. These Transportation Specialists are required to have a high school diploma and three years of experience “in a field related to law, social work, detention, corrections, or similar occupational area” (or two years of experience, if they have an associate degree). *Id.* at ¶ 3. The Specialists are employed by ICE’s contractor, MVM, about which Defendants provide little information other than that it is “a company specializing in the transportation and care of this vulnerable population.” *Id.* at ¶ 2. “Most” Specialists are native Spanish speakers, and they “interact” with unaccompanied minors by “playing board or video games or watching television and movies (chosen by the minor) in order to keep them comfortable, engaged, and at ease.” *Id.* at ¶¶ 9–10.

The Independent Monitor and Dr. Wise have raised concerns with this lack of qualified, specialized supervision, especially for younger, unaccompanied children. August 26 Interim Report at 19–20; July 22 Interim Report at 17, 19. The Court agrees. Children as young as 10 are left alone with an adult who has no qualifications or training in childcare. Defendants offer no formal protocols for how MVM Specialists are to adequately care for unaccompanied minors, other than vague assurances that they “interact” with the children by playing games or turning on the TV. There appear to be no separate standards for how 10-year-olds are cared for compared to 17-year-olds, despite the significant developmental differences and “particular vulnerability” of younger children. *See* July 22 Interim Report at 19 (“It is also important to recognize that a detention experience need not require mistreatment to be traumatic for a young child.”). Put simply, Defendants’ purported “list of amenities is not a system of care for children of different ages and developmental stages.” August 26 Interim Report at 21.⁹

Moreover, oversight of the hoteling program is vague and minimal. MVM “quality control compliance specialists” are on site, but Defendants give no indication as to whether they have formal qualifications or follow specific procedures. *See* Harper Decl. at ¶ 5. ICE personnel are physically present at one hotel, and “regularly visit” the others “to ensure compliance,” but again, Defendants provide no information about their qualifications or procedures—or indeed, even what “compliance” looks like. *See id.* at ¶ 11. The only “independent” oversight consists of ICE’s contractor conducting “virtual” inspections, which have occurred in all three cities but not necessarily in all hotels. Defendants do not provide any details as to these inspections. *See id.* at ¶ 12.

⁹ While the words “system of care” do not appear in the *Flores* Agreement, the phrase has similar connotations to concepts that *are* in the Agreement, such as “setting appropriate to the minor’s age and special needs,” “special concern for their particular vulnerability as minors,” and “safe.” FSA at ¶¶ 11–12.A.

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The Court finds that these conditions are not adequately safe and do not sufficiently account for the vulnerability of unaccompanied minors in detention.

Additionally, this Court has previously held that “safe and sanitary” conditions require measures to prevent the spread of COVID-19. *See* April 24, 2020 Order at 4–5 [Doc. # 784]. ICE provides masks, gloves, hand sanitizer, and cleaning wipes, and surfaces are regularly sanitized and wiped. Harper Decl. at ¶ 18. Transportation Specialists regularly have their temperatures taken and respond to COVID-19 related questions prior to beginning their shift, and children also have their temperatures taken daily. *Id.* at ¶ 19; July 22 Interim Report at 16. Medical professionals are on site and conduct daily screenings. Harper Decl. at ¶ 20.

On the other hand, detainees and MVM staff are not regularly tested for COVID-19, except before detainees depart the country. July 22 Interim Report at 16. The hotel staff, including housekeeping and others who may enter the rooms, fall outside of any protective measures. *Id.* at 18–19. The hotels are open to the public and located in cities such as McAllen, El Paso, Phoenix, Houston, and San Antonio, which have all experienced high rates of local COVID-19 transmission. *See id.* at 13–14; August 26 Interim Report at 13–14. Hotels in general have a high-turnover population of travelers, a group at high risk of transmitting COVID-19. Many of the hotels are located adjacent to airports. *See* July Data Summary at 16. Also, ICE and MVM have no specific protocols in place for when minors or family members test positive for COVID-19. *See* July 22 Interim Report at 19–20; August 26 Interim Report at 20–21. Some individuals at hotels who tested positive were transferred to ORR or FRCs, while others remained quarantined at the hotel. *Id.*

On balance, the Court finds that the hotel program is not safe with respect to preventing minors from contracting COVID-19 or providing the type of care and supervision suitable for unaccompanied minors.

3. Access to Counsel

Plaintiffs raise particular concern with the inability of counsel to discover, locate, and contact minors detained in hotels. Mot. at 21–22. Defendants provided no notice to Plaintiffs’ counsel that minors were being held in hotels—lawyers only discovered the program when family members called to seek help. *See* Vargas Decl. at ¶ 14 [Doc. # 920-2]; Odom Decl. at ¶¶ 17–18; Nagda Decl. at ¶ 29; Corchado Decl. at ¶ 7 [Doc. # 920-6]. Legal services providers attest that they face unusual difficulty locating children within Title 42 custody, and DHS officials often are unable to provide accurate information as to where a child is at any given moment. *See* Corchado Decl. at ¶ 8 (“I have also found that immigration officials sometimes

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have conflicting information among agencies about who has custody of a child.”); Nagda Decl. at ¶ 30 (“DHS has no designated point of contact, and we frequently reach out to multiple CBP and ICE officials when trying to locate each child.”); Odom Decl. at ¶ 23 (“These contacts may involve repeated emails and telephone calls to CBP facilities and our known points of contact in CBP and ICE.”). When attorneys were able to locate a child, ICE physically prevented them from entering the hotel. Vargas Decl. at ¶ 22 (“Unidentified men, who appeared to be contractors of DHS, refused to permit [Texas Civil Rights Project] attorneys to offer any legal services to these children.”). ICE has also limited children’s ability to speak to attorneys by phone. Corchado Decl. at ¶ 11 (“[T]here were delays of several days before children were able to speak to a lawyer, because DHS limited the phone calls that a child could make to family, which necessarily delays either the child or family being able to learn about legal assistance and reach out to any lawyer.”); Odom Decl. at ¶ 27 (“[C]hildren have reported to [Kids in Need of Defense] attorneys that while they were held in hotels or other unlicensed placements subject to Title 42, they were not told that they had a right to speak to a lawyer.”).

Paragraph 32 of the *Flores* Agreement entitles Plaintiffs’ counsel to visits with Class Members, even though the attorneys may not have the names of the minors in custody. Defendants do not dispute any of Plaintiffs’ accounts, but simply offer that minors are provided “a minimum of one phone call a day,” with additional phone calls allowed “upon request.” Harper Decl. at ¶ 21. If an attorney has a notice of appearance on record, or if a minor requests an attorney call, “the call is scheduled and facilitated as soon as possible.” *Id.*

As the legal services providers’ experiences demonstrate, this process is woefully inadequate and not substantially compliant with Paragraph 32. The Agreement contemplates attorneys having near-unfettered access to minors in custody, provided they meet certain well-established protocols. DHS instead puts the entire onus on the minor to seek out counsel, requiring children to have the wherewithal to put their one phone call a day towards retaining a lawyer. This is exactly the scenario the *Flores* Agreement intended to avoid. Paragraph 32 is straightforward in requiring that Plaintiffs’ counsel be allowed to access the facilities and contact the minors, even if they do not yet know the identity of a specific minor.

V.
CONCLUSION

Since March 2020, Title 42 has largely replaced the Title 8 framework at the southwest border. *See* August 26 Interim Report at 9–10 (showing sharp increase in Title 42 expulsions correlating with decline in Title 8 apprehensions). This Court is sensitive to the exigencies created by COVID-19 and recognizes that the pandemic may require temporary, emergency

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modifications to the immigration system to enhance public safety. But that is no excuse for DHS to skirt the fundamental humanitarian protections that the *Flores* Agreement guarantees for minors in their custody, especially when there is no persuasive evidence that hoteling is safer than licensed facilities. While the legality of the Closure Order generally is beyond the scope of this Court’s jurisdiction, the Court *is* obligated to ensure that minors in DHS custody are not left in a legal no-man’s land, where no enforceable standards apply. Defendants may not exploit Title 42 to send children in their legal custody “off into the night.” *Flores v. Sessions*, 862 F.3d at 878 n.17 (quoting *Reno v. Flores*, 507 U.S. 292, 295 (1993)).

In light of the foregoing, Plaintiffs’ motion to enforce the *Flores* Agreement is **GRANTED**. The Court hereby **ORDERS** as follows:

1. All minors detained in the legal custody of DHS or ORR pursuant to Title 42 are Class Members as defined by Paragraph 10 of the *Flores* Agreement. Defendants shall comply with the Agreement with respect to such minors to the same degree as any other minors held in their custody.
2. Implementation of this Order shall be stayed until **September 8, 2020**. DHS shall cease placing minors at hotels by no later than **September 15, 2020**. Consistent with past practice, exceptions may be made for one to two-night stays while in transit or prior to flights, if minors are traveling longer distances, or due to unexpected flight delays. If other exigent circumstances arise that necessitate future hotel placements, Defendants shall immediately alert Plaintiffs and the Independent Monitor, providing good cause for why such unlicensed placements are necessary.
3. Except as provided in Paragraph 12.A of the *Flores* Agreement, DHS shall transfer all minors—both accompanied and unaccompanied—currently held in hotels to licensed facilities as defined in Paragraph 6 as expeditiously as possible.¹⁰ Under Paragraph 12.A, if a bed in a licensed facility is immediately available, DHS shall generally make a licensed placement of class members within 72 hours of arrest or apprehension.
4. Plaintiffs’ counsel shall be permitted to visit any facility where minors in Title 42 custody are held, and to meet with any minor held in Title 42 custody, in accordance

¹⁰ The Court notes that while FRCs, where accompanied minors are likely to be placed as a practical matter, may be unlicensed facilities because they are secure, they at least have well-established standards of care and oversight in common with licensed facilities.

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with Paragraphs 32 and 33 of the *Flores* Agreement, with limitations to account for social distancing as necessary.

5. The Independent Monitor, Andrea Ordin, and Special Expert, Dr. Paul Wise, may in the exercise of their monitoring duties conduct investigations, interviews, and site visits with respect to any minors held in Title 42 custody and any facilities where minors in Title 42 custody are held, pursuant to Ms. Ordin's authority under the Court's October 5, 2018 Order [Doc. # 494] and to ensure compliance with this Order.
6. The ICE and ORR Juvenile Coordinators shall maintain records and statistical information on minors held in Title 42 custody pursuant to Paragraph 28A, and shall monitor compliance with the Agreement with respect to any minors held in Title 42 custody pursuant to Paragraph 29. The Juvenile Coordinators shall file their next interim report by **October 2, 2020** and include an update regarding the number of minors held in Title 42 custody and the status of compliance with this Order, along with the other topics specified in the Court's Order regarding Plaintiffs' Motion to Enforce [Doc. # 919] for a Notice of Rights.
7. Plaintiffs and Defendants may file a **joint** response by **October 9, 2020** to the Juvenile Coordinators' reports after having met and conferred regarding areas of dispute and attempted to achieve resolution.
8. The Court shall hold a further telephonic or video status conference on **October 16, 2020 at 11:00 a.m.** to discuss compliance with the Court's Orders.

IT IS SO ORDERED.

EXHIBIT B

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Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS’ *EX PARTE*
APPLICATION TO STAY [985]**

On September 4, 2020, the Court granted Plaintiffs’ Motion to Enforce the *Flores* Settlement Agreement (“Agreement” or “FSA”) as to Class Members detained by the Department of Homeland Security (“DHS”) under 42 U.S.C. section 265 (“Title 42”). [Doc. # 976 (“Sept. 4 Order”).] The Court found that minors held by DHS pursuant to a public health order under Title 42, designed to prevent the introduction of certain persons into the United States due to the COVID-19 pandemic, are *Flores* Class Members, and holding such Class Members in unlicensed hotels violates the Agreement. *Id.* The effective date of the Sept. 4 Order was originally set for September 8, 2020, and Defendants were to stop placing minors in hotels by September 15. On September 11, Defendants petitioned the Ninth Circuit to stay the Court’s Order pending appeal. 9th Cir. No. 20-55951, Doc. # 2. The Ninth Circuit denied the emergency motion without prejudice, directing Defendants to first bring their request for a stay to this Court, and extended an administrative stay of the Sept. 4 Order to September 23, 2020. 9th Cir. Doc. # 8. On September 17, Defendants filed the instant *Ex Parte* Application to Stay the Sept. 4 Order pending appeal. [Doc. # 985.] Plaintiffs oppose the Stay Application. [Doc. # 988.]

For the following reasons, Defendants’ Stay Application is **DENIED**.

**I.
LEGAL STANDARD**

When determining whether to issue a stay, courts consider the following four factors: (1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)).

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**II.
DISCUSSION**

A. Likelihood of Success on the Merits

Defendants fail to show they are likely to succeed on the merits for the simple reason that their Stay Application merely recycles the same arguments they made in their Opposition to the Motion to Enforce, which the Court thoroughly addressed and refuted in its Order. *See generally* Sept. 4 Order.

In brief, Defendants point no authority to support their position that the *Flores* Agreement—a document fundamentally about the care and welfare of children—defines “legal custody” as the source of legal authority to detain the child, rather than the well-established definition under family law. *See* Sept. 4 Order at 5–6, 8–9. Nor do they provide any support for their bewildering logic that a public health law designed to prevent the introduction of persons and diseases into the United States somehow allows DHS to detain minors in hotels open to the American public but not house them in monitored, regulated, licensed facilities. *See id.* at 10–11. Or for the notion that hoteling is a lawful means of processing minors “as expeditiously as possible” when the program makes *no* good faith effort to actually place minors in licensed facilities. *See id.* at 12–13.

The only new information Defendants provide that at all speaks to the merits is additional facts relating to ICE’s contract with MVM (the private contractor that runs the hoteling program) and the training of its “transportation specialists.” *See* Harper Decl., Attachments A, B, and C [Doc. # 985-1 at 25–114]. But the fact that MVM personnel receive a mere two days of training, only a fraction of which are dedicated to child development and care, before being placed alone in a room with a tender age child for hours at a time reaffirms the Court’s finding that hoteling is not suitable for unaccompanied minors. *See* Sept. 4 Order at 13–14. And Defendants misunderstand the September 4 Order when they assert that the Court’s reasoning imposes a “system of care” requirement that is not found in the *Flores* Agreement. The Court did not demand any formal system of care beyond one that is safe and sanitary, appropriate to minors’ ages and special needs, and concerned for their particular vulnerability as minors. *See id.* at 14 n.9 (citing FSA at ¶¶ 11–12.A).¹

¹ Defendants do not even bother attempting to argue why they are likely to succeed on a challenge to the Court’s holding that hoteling is unsafe with respect to protecting minors from COVID-19, or that it denies them adequate access to counsel. *See* Sept. 4 Order at 15–16.

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B. Irreparable Harm Absent a Stay

Defendants argue that transferring minors in Title 42 custody to ORR licensed facilities and ICE Family Residential Centers (FRCs) risks overwhelming the adjusted, pandemic-appropriate capacities of these congregate facilities. *See* Stay Application at 10–14.

In particular, Defendants maintain that although the facilities have significant capacity, the real problem lies with the intake process. Sept. 17, 2020 Sualog Decl. at ¶¶ 5–8. [Doc. # 985-1]. They claim that “under the current infection control measures, there are limits to the number of [unaccompanied minors] that ORR can safely absorb into the system at any one time,” and that “the ORR system would likely come under significant stress if ORR were to begin to receive on a regular basis approximately 75 to 100 referrals of UAC per week, with approximately 30% of the UAC having tested positive or been exposed to COVID-19.” *Id.* at ¶¶ 9–10; *see also* Hott Decl. at ¶¶ 6–8 [Doc. # 985-1] (similar rationale for FRCs).

But Defendants provide no basis of support for these underlying factual contentions, which appear to be highly speculative. *First*, according to data Defendants offered for the Motion to Enforce briefing, from March through July, 577 unaccompanied minors were detained in hotels under Title 42. *See* Sept. 4 Order at 3. Now Defendants purport that 75 to 100 minors *per week* would need to be placed in ORR facilities.² *Second*, they offer no explanation for the premise that a full 30% of unaccompanied minors will have been “exposed” to COVID-19, such that they would require quarantine or isolation upon intake. None of Defendants’ declarants are public health officials, and they provide no scientific or empirical analysis by which they reach this assumption. These conclusory assertions are insufficient to support a finding of irreparable harm. *See Doe #1 v. Trump*, 957 F.3d 1050, 1059–60 (9th Cir. 2020) (“The government cannot meet this burden by submitting conclusory factual assertions and speculative arguments that are unsupported in the record.”); *Nken*, 556 U.S. at 434 (“[S]imply showing some possibility of irreparable injury fails to satisfy the second factor.”).

Moreover, even if absorbing Title 42 minors into ORR facilities does in fact create a “bottleneck,” *see* Sept. 17, 2020 Sualog Decl. at ¶ 8, the Sept. 4 Order expressly contemplates the possibility of brief hotel stays as “a temporary stopgap in the process of cautiously sending children

² Defendants apparently now contend that 2,200 unaccompanied minors were referred to ICE by CBP for Title 42 custody. Ortiz Decl. at ¶ 6 [Doc. # 985-1]. They provide no explanation for the discrepancy between the 577 number used just a few weeks ago and the 2,200 number deployed now. This is not the first time Defendants have offered inconsistent data. *See* Sept. 4 Order at 4 n.2. The fact that the government cannot seem to consistently keep track of how many children it has held in its custody is disturbing, to put it mildly. It is emblematic of the problem with such an opaque, unregulated, *ad hoc* program.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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to licensed facilities with all deliberate speed given the extenuating circumstances of the pandemic.” Sept. 4 Order at 12; *see also id.* at 17 (“If other exigent circumstances arise that necessitate future hotel placements, Defendants shall immediately alert Plaintiffs and the Independent Monitor, providing good cause for why such unlicensed placements are necessary.”). In short, nothing in the Court’s Sept. 4 Order prevents an orderly and safe system of staged transfers that considers public health needs as well as logistical issues. Defendants’ alleged harm is not irreparable when it can be avoided while still complying with the Court’s Order.

C. Injury to Parties Caused by a Stay

Of course, any harm to minors that may result from increased intake at ORR and FRCs must be balanced against the harm of continuing the hoteling program. It is no contest. The Court discussed in detail the danger that unlicensed, unmonitored detention in hotels poses to unaccompanied minors. *See* Sept. 4 Order at 13–16. Even in terms of the threat of COVID-19, the very reason Defendants do not want to send minors to ORR facilities, “Defendants have failed to demonstrate how hotels, which are otherwise open to the public and have unlicensed staff coming in and out, located in areas with high incidence of COVID-19, are any better for protecting public health than licensed facilities would be.” Sept. 4 Order at 10. Not only are the minors and their families potentially endangered by hoteling, but so are MVM personnel, hotel staff, and other guests that stay at the hotels. Even if the infection control protocols at ORR come under some stress, or are forced to make some adjustments, the Court is confident that they would remain far safer than unregulated hotel stays for both detained minors and the general public. Moreover, there are sufficient numbers of currently under-utilized ORR facilities such that transfers can be allocated among facilities to avoid over-concentration or bottlenecks. To the extent that Defendants raise concerns with the safety risks of travel to accommodate transfers, they were already subjecting minors to significant travel under the hoteling program. *See* Levy Decl. at ¶ 7 [Doc. # 988-1] (“Children are frequently moved from facility to facility without warning, and without being told their location.”).

In an effort to maintain a static population at ORR facilities and FRCs, Defendants’ position amounts to leaving hundreds of minors stranded “in a legal [and public-health] no-man’s land, where no enforceable standards apply.” Sept. 4 Order at 17. The *Flores* Agreement does not sanction such arbitrary discrimination between its Class Members.

D. Public Interest

The public has an interest in protecting the welfare of children. *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944). Congress affirmed the public’s interest in enforcing the *Flores*

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Agreement when it preserved the Agreement and codified its requirement that detained unaccompanied minors be transferred to the custody of ORR. *See* 8 U.S.C. § 1232; *Flores v. Sessions*, 862 F.3d 863, 870–71, 879 (9th Cir. 2017). The public also has an interest in preventing the spread of COVID-19, and as this Court has now reiterated on multiple occasions (and as Defendants have yet to refute), placing minors in licensed, regulated facilities, with proper safety protocols, would likely do more to mitigate the spread of the virus than housing them in hotels open to the public.

**III.
CONCLUSION**

Defendants' Stay Application is **DENIED**. The Court **ORDERS** that the September 4, 2020 Order shall be effective as of **September 28, 2020**, in full, subject to the following modifications:

1. DHS shall cease placing minors at hotels immediately as of this new effective date.
2. DHS may implement *brief* hotel stays (not more than 72 hours) as necessary and in good faith to alleviate bottlenecks in the intake processes at licensed facilities. When any Class Members are transferred to hotels for this purpose, Defendants shall notify Plaintiffs' counsel and the Independent Monitor, providing the identities and number of minors subject to the hotel placements, and the locations of the hotels. These hotel placements shall be subject to Paragraphs 4–6 of the Conclusion in the Sept. 4 Order.

IT IS SO ORDERED.

EXHIBIT C

8/12/96

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,)	Case No. CV 85-4544-RJK(Px)
)	
Plaintiffs,)	Stipulated Settlement
)	Agreement
-vs-)	
)	
JANET RENO, Attorney General)	
of the United States, et al.,)	
)	
Defendants.)	

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/ / /

STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement

Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.

2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.

3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.

4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.

5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.

6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in

Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with

major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this

Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of this Agreement, attached hereto as Exhibit 2.

III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12.A. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate

supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19, (i) within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such

emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or

that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;
- B. a legal guardian;
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;
- E. a licensed program willing to accept legal custody; or
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;

- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian, in writing, seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject

of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

- i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);
- ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

- B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;
- C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);
- D. is an escape-risk; or
- E. must be held in a secure facility for his or her own safety, such as when the INS has

reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

- A. the minor is currently under a final order of deportation or exclusion;
- B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;
- C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24.A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any

United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770, (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services available in the district pursuant to INS regulations (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except:

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause B, minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1)

biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. 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.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the 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. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the

terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

XI ATTORNEY-CLIENT VISITS

32.A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who

may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minors in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

XV RESERVATION OF RIGHTS

36. Nothing in this Agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that a party has violated the terms of this Agreement shall be served on plaintiffs addressed to:

/ / /

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

Carlos Holguín
Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere
James Morales
114 Sansome Street, Suite 905
San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson
Assistant United States Attorney
300 N. Los Angeles St., Rm. 7516
Los Angeles, CA 90012

Allen Hausman
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

XVIII ATTORNEYS' FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of \$374,110.09, in full settlement of all attorneys' fees and costs in this case.

/ / /

XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement, except that the INS shall continue to house the general population of minors in INS custody in facilities that are licensed for the care of dependent minors.

XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

For Defendants: Signed: _____ Title: _____

Dated: _____

For Plaintiffs: Signed: _____ Title: _____

Dated: _____

EXHIBIT 1

MINIMUM STANDARDS FOR LICENSED PROGRAMS

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the

minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.

4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.
5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.
6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.
7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the

opportunity to get acquainted with the staff, other children, and the rules of the program.

It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.
9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.
10. Whenever possible, access to religious services of the minor's choice.
11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.
12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.
13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

EXHIBIT 2

INSTRUCTIONS TO SERVICE OFFICERS RE:
PROCESSING, TREATMENT, AND PLACEMENT OF MINORS

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

(a) Minors. A minor is a person under the age of eighteen years. However, individuals who have been “emancipated” by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

(b) General policy. The INS treats, and will continue to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

(c) Processing. The INS will expeditiously process minors and will provide a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS’s concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the juvenile cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in

INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

(d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others. Minors shall be released, in the following order of preference, to:

- (i) a parent;
- (ii) a legal guardian;
- (iii) an adult relative (brother, sister, aunt, uncle, or grandparent);
- (iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;
- (v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or
- (vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

(e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- (i) provide for the minor's physical, mental, and financial well-being;
- (ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;
- (iii) notify the INS of any change of address within five (5) days following a move;
- (iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;
- (v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

(vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

(f) Suitability assessment. An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

(g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue as long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

(h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. Exhibit 1 of the *Flores v. Reno* Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

- (i) the minor is an escape risk or delinquent, as defined in Paragraph (i) below;
- (ii) a court decree or court-approved settlement requires otherwise;
- (iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or
- (iv) the minor must be transported from remote areas for processing or speaks an unusual

language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

(i) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor —

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

“Chargeable” means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

(a) the minor is currently under a final order of deportation or exclusion;

(b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

(c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional Juvenile Coordinator.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review as set out in Exhibit 6 of the *Flores v. Reno* Settlement Agreement, and (2) the list of free legal services providers compiled pursuant to INS regulations (unless previously given to the minor).

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The INS may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. Statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours must be reported to the Juvenile Coordinator by all INS district offices and Border Patrol stations. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration

status, and (f) hearing dates. INS officers should also inform the Juvenile Coordinator of the reasons for placing a minor in a medium-security facility or detention facility as described in paragraph (i).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit the lawyers for the *Flores v. Reno* plaintiff class to visit minors, even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

EXHIBIT 3

CONTINGENCY PLAN

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in programs licensed by an appropriate state agency as expeditiously as possible. An "emergency" is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An "influx" is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that the INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the List. The Emergency Placement List will include the facility name; the number of beds potentially available at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.

2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, (3) date placed in INS custody, and (4)

place and date of current placement.

3. Within one business day of the emergency or influx the Juvenile Coordinator or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

EXHIBIT 4

AGREEMENT CONCERNING FACILITY VISITS UNDER PARAGRAPH 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

EXHIBIT 5

LIST OF ORGANIZATIONS TO RECEIVE INFORMATION RE: SETTLEMENT AGREEMENT

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137

Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W. 4th Floor, Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

EXHIBIT 6
NOTICE OF RIGHT TO JUDICIAL REVIEW

“The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form.”

EXHIBIT D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jenny Lisette Flores, *et al.*,)
 Plaintiffs,)
)
v.)
)
William P. Barr, *et al.*,)
 Defendants.)

2:85-cv-04544-DMG-AGR

DECLARATION OF RAUL L. ORTIZ

I, Raul L. Ortiz, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records, and reasonably relied upon in the course of my employment, hereby declare as follows relating to the above-captioned matter.

1. I am currently the Deputy Chief, U.S. Border Patrol (USBP), U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have been in this position since March 2, 2020. In this role, I am responsible for executing the mission of the U.S. Border Patrol to protect the border between ports of entry, which includes patrolling the approximately 6,000 miles of Mexican and Canadian international land borders and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico. I oversee more than 20,000 Border Patrol Agents and other employees across the country.
2. I have been a Border Patrol agent since May 13, 1991, when I entered into service in San Diego Sector. I have held various leadership positions in the Del Rio Sector, such as Assistant Patrol Agent in Charge, Patrol Agent in Charge and Assistant Chief Patrol Agent. From 2009 to 2012, I served as the Director of Border Management Task Force, Senior Advisor to DHS' envoy to Afghanistan and Pakistan, and as the DHS Attaché in Kabul. In 2012, I was promoted to Deputy Chief, Law Enforcement

Operational Programs in Border Patrol Headquarters. In 2013, I became the Deputy Chief Patrol Agent of Border Patrol's Rio Grande Valley Sector. In 2019, I became Chief Patrol Agent of the Del Rio Sector.

3. I understand the court recently issued an order requiring DHS to discontinue its practice of holding those alien minors processed under 42 U.S.C. § 265 (Title 42) in hotels pending their return to their home country, absent extraordinary circumstances. I make this declaration to explain the likely operational impact of that order on USBP.
4. On March 20, 2020, the U.S. Centers for Disease Control and Prevention (CDC) issued an Order that temporarily suspended the introduction of certain persons traveling from Canada and Mexico, based on its finding that the introduction of such persons posed a serious danger of further introduction of COVID-19 into the United States. In accordance with this Order, subject to certain exceptions, aliens who travel from Canada or Mexico and who would otherwise be introduced into a congregate setting in USBP facilities at or near the United States borders with Canada and Mexico for processing are instead expeditiously expelled from the United States, unless an USBP agent, with supervisory approval, determines that it is appropriate to except an individual from the Title 42 process. USBP works to immediately return those individuals processed under Title 42 to their country of last transit whenever possible. In the event a person cannot be returned to the country of last transit, CBP works with U.S. Immigration and Customs Enforcement (ICE) and other partners to expel the individual to his or her country of origin as expeditiously as possible.
5. The purpose of the CDC Order is to prevent the introduction of COVID-19 into the United States. Therefore, USBP's goal is to process and expel those individuals subject to the Order as quickly as possible, and to limit the time that individuals spend

in USBP facilities pending their expulsion. This is particularly important given the nature of USBP's facilities, which are generally designed for short-term holding, and are not equipped for social distancing or quarantining a large number of people. There is often not sufficient space, for instance, to maintain six feet of distance between individuals, and USBP is not equipped to be able to isolate or quarantine large numbers of individuals. Therefore, a single case of COVID-19 in a facility will reduce the capacity of that facility, as it will be necessary to take steps to decontaminate the entire facility. Additionally, while USBP works to ensure that all individuals in its custody receive appropriate medical care, USBP facilities are not equipped to provide long-term or critical care, as may be required for individuals infected with COVID-19.

6. Between March 20 and September 9, 2020, USBP has expelled more than 159,000 individuals along the southwest border under Title 42. Of these, approximately 8,800 were single minors (e.g., minors apprehended without any accompanying adult family member) and approximately 7,600 were members of family units or family groups. While USBP was able to immediately expel almost 7,000 families and more than 6,500 single minors to Mexico, USBP transferred more than 600 family units/family groups and more than 2,200 single minors to ICE custody to be repatriated directly to their home countries. I understand that ICE often held family units, family groups, and single minors in hotels pending available return flights to their home country, in order to limit the spread of COVID-19 in ICE family residential centers and Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) shelters.
7. I understand that the court's order prohibits ICE from holding any minor processed

under the CDC Order in hotels pending their return. I understand that, under the order, if a minor is not able to be expelled to Mexico or expelled to their country of origin within a few days, that the minor must be transferred to a “licensed facility” pending their expulsion consistent with normal *Flores* requirements. It is my understanding that, for those single minors who are not able to be expelled within a few days, they must be transferred to the custody of HHS ORR. It is my understanding that, for those minors who are part of family units and family groups who are not able to be expelled to Mexico or expelled to their country of origin within a few days, this will require ICE to hold these individuals in its family residential centers.

8. This order is likely to cause three significant problems. First, the order is likely to lead to crowding and an increased risk of COVID-19 exposure in USBP facilities, both for individuals in CBP custody and USBP agents. Second, the order is likely to cause an increased risk of COVID-19 exposure in HHS and ICE facilities. Third, the order is likely to strain an already overburdened system.
9. First, and based on historical practice, while USBP may be able to expel some population of single minors immediately to Mexico or their home countries within a few days of their apprehension, USBP must transfer those minors who cannot be returned in this manner to ICE or HHS custody. Specifically, USBP anticipates that it may need to refer approximately 60-140 additional single minors to HHS per week as a result of the order. Without the ability to hold those minors in hotels pending return, ICE and HHS must hold those minors in their facilities. I understand that both ICE and HHS have implemented significant public health measures in their facilities in response to COVID-19 including, for instance, steps to ensure appropriate social

distancing and quarantine, when appropriate. Such steps, by their very nature, limit the number of people that can be housed in any particular facility. Therefore, there are fewer available beds at both ICE and HHS facilities, which limits the number of individuals that ICE and HHS are able to accept from USBP. Thus, ICE and HHS are likely to be limited in their ability to accept even a small increase in the number of minors transferred to their custody.

10. Such a decrease in both ICE and HHS capacity will lead to an increased risk of COVID-19 in USBP facilities, as increased numbers of minors are likely to spend longer time in USBP facilities. As described above, USBP facilities are not designed nor equipped for social distancing or quarantining large numbers of people. USBP facilities generally have holding cells or pods, where individuals remain in relatively close proximity to each other pending processing and transfer to another facility. If there are more than a few people in a particular holding cell or pod, it is not possible to remain more than six feet apart. While it is possible to isolate an individual in a particular hold room, all other individuals in custody then have comparatively less space. For instance, if a facility has five hold rooms and 40 individuals in custody, isolating one person means that the other 39 individuals must be held in the remaining four hold rooms. If two individuals require isolation, this further limits the space available to the remaining 38 individuals. Additionally, USBP facilities do not, in general, have isolation rooms with negative pressure, separate HVAC systems, or other measures that may be required to contain the spread of COVID-19. Therefore, an increased number of individuals in custody, in a finite amount of space, dramatically increases the risk that individual in custody will become infected with COVID-19.

11. Additionally, while some USBP facilities have medical providers on-site, the medical providers generally provide treatment for acute conditions, and do not provide long-term or critical care such that would likely be required for individuals infected with COVID-19. Therefore, USBP relies heavily on the local medical system, and USBP must transport individuals in custody who become infected with COVID-19 to local hospitals. Therefore, an increased number of infections in USBP custody also increases the risk of exposure in local communities, placing a further strain on their local healthcare systems. It is important to note that many USBP facilities on the southern border are in areas, such as the Rio Grande Valley in Texas and Tucson, Arizona, already facing a high number of COVID-19 cases in their local population.
12. Lastly, the increase in exposure to COVID-19 in USBP facilities will significantly increase the risk that USBP agents will be exposed and will become infected. USBP – and CBP more broadly – has already seen a significant number of its employees impacted by COVID-19. As of September 7, 2020, 2,018 CBP employees had tested positive for COVID-19, a 12% increase compared to the 1,806 who tested positive on August 7, 2020. Also as of September 7, 2020, 12 employees and one CBP contractor have died from COVID-19. Additionally, when USBP employees test positive or are exposed, they must self-quarantine for 14 days until they recover and are no longer contagious. USBP has a finite number of agents who can take over for those agents, which severely impacts USBP’s ability to perform its mission. For instance, in the Laredo Sector, which saw a significant number of its personnel test positive for COVID-19 over the summer, Border Patrol has had to increase the number of shifts that agents must work at its checkpoints, reassign personnel to those checkpoints, and suspend certain law enforcement trainings. These strains on USBP’s personnel and

corresponding resource reassignments put the safety and security of the border at risk.

13. Additionally, it is likely that, as the number of minors that both ICE and HHS are required to hold in their facilities increases due to a prohibition on the use of hotels, the number of COVID-19 infections in these facilities are likely to increase. This increased exposure places the health and safety of those in custody at risk, as well as ICE and HHS personnel. Such exposure is likely to require ICE and HHS to take additional measures to limit the spread of COVID-19 in their facilities, which will further limit the number of available beds and may also lead to further restrictions on the ability to accept individuals from USBP.
14. Even putting aside concerns about the public health implications of the order, the requirements of the order will strain the capacity of an already-burdened system. Even without a pandemic, ICE and HHS have facility restrictions, often based on gender, demographics, and particular medical needs that often limit or impact who USBP can transfer to ICE and HHS custody. For instance, HHS has limited facilities that can accept unaccompanied alien children with particular medical needs. The further restrictions required by COVID-19 already placing a further strain on the capacity of the system. Thus, while USBP has excepted from the CDC Order and processed for immigration proceedings under Title 8 more than 1,600 family units and 1,500 unaccompanied alien children, there is already limited HHS and ICE capacity to hold these individuals.
15. The restrictions required by the order will further strain this capacity, as it will require both HHS and ICE to hold those minors and families that were previously held in hotels in their facilities. As outlined above, this increased population is likely to further exacerbate the risks of COVID-19 infection in those facilities, which will

further limit the ability of HHS and ICE to accept custody of minors and families.

16. Even in the absence of a pandemic, capacity constraints at ICE and HHS mean that individuals will remain in USBP custody for longer periods of time, and make it more likely that USBP facilities become overcrowded. Such conditions pose a health and safety risk to individuals in USBP custody and to Border Patrol agents even in the absence of a pandemic. For instance, in order to ensure that USBP provides safe conditions for all individuals, particularly minors, USBP generally takes steps to ensure that, for instance, unaccompanied minors are not held in the same area as unrelated adults, and single males are not held with female head-of-household families. As the number of individuals in custody increases, it becomes more difficult for USBP to meet these requirements and keep minors safe. Additionally, even putting aside concerns about COVID-19, overcrowded conditions are more likely to lead to the spread of other communicable diseases such as scabies, chicken pox, and flu.
17. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 11 day of September, 2020.



Raul L. Ortiz
Deputy Chief, U.S. Border Patrol
U.S. Customs and Border Protection

EXHIBIT E

Ukraine as part of the U.S. DOD Cooperative Threat Reduction Weapons of Mass Destruction Proliferation Prevention Initiative to coordinate high-level cooperation between CBP and the Defense Threat Reduction Agency. I participated in Operation Jumpstart, planning and coordinating the deployment of 6,000 National Guard soldiers to the southwest border. In 2015, I was selected as the Chief Patrol Agent in Yuma Sector to lead nearly 900 agents and support personnel in securing 126 miles of the United States – Mexico international border in both Arizona and California. Prior to taking command of Yuma Sector, I served as the Acting Chief Patrol Agent of the Big Bend Sector in Texas.

3. I understand the court recently issued an order requiring DHS to discontinue its practice of holding those alien minors processed under 42 U.S.C. § 265 (Title 42) in hotels pending their return to their home country, absent extraordinary circumstances. I understand that Deputy Chief Raul Ortiz previously submitted a declaration on September 11, 2020. I make this declaration to provide additional information about the operational impact of the court's order on USBP operations.
4. As explained in Chief Ortiz's declaration, USBP may be able to expel some population of single minors subject to the CDC Order immediately to Mexico or transfer some directly to an ICE expulsion flight to their home countries within a few days of their apprehension. However, because of ICE's limited capacity to hold minors pending expulsion flights because of the court's order, USBP must now except from the CDC Order those single minors who cannot be returned in this manner and transfer them to HHS custody. Since the court's order was issued, USBP has already seen an increase in the number of single minors excepted from the CDC Order and transferred to HHS. Specifically, when comparing the average number of referrals to HHS for the past 7-day average to the previous 21-day average, referrals have increased by approximately twenty-four percent.
5. Additionally, USBP excepted 47 single minors from the CDC Order and referred them to

HHS on September 11, 58 on September 12, and 50 on September 13. By comparison, USBP excepted 17 single minors from the CDC Order and referred them to HHS on August 25, 7 on August 26 and 15 on August 27. For additional context, USBP excepted 34% of single minors from the Northern Triangle from the CDC Order and referred them to HHS in August 2020. So far in September 2020, USBP has excepted 54% of single minors from the Northern Triangle from the CDC Order and referred them to HHS.

6. Additionally, based on historical trends, USBP expects that there will be an increase in the number of single minors encountered this month. For instance, USBP apprehended 2,435 single minors in Jul, and 3,003 in August. At the current rate, USBP projects that it will encounter approximately 3,560 single minors in September 2020. When looking only at single minors from the Northern Triangle, USBP encountered 771 in July 2020, 1,111 in August 2020, and 800 as of September 16, 2020. At this current rate, USBP expects to encounter approximately 1,500 single minors from the Northern Triangle in September 2020. If these numbers hold, USBP expects that it may be required to except from the CDC Order and refer at least 380 minors to HHS within two weeks.
7. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 17 day of September, 2020.



Anthony J. Porvaznik
Acting Chief, Law Enforcement Operations Directorate
U.S. Border Patrol
U.S. Customs and Border Protection

EXHIBIT F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY L. FLORES, et al.,

Plaintiffs,

vs.

EDWIN MEESE, et al.,

Defendants.

Case No. 2:85-cv-04544-DMG-AGR_x

[Judge: Hon. Dolly M. Gee]

**DECLARATION OF RUSSELL HOTT
IN SUPPORT OF REQUEST FOR
EMERGENCY STAY OF THIS
COURT'S SEPTEMBER 4, 2020,
ORDER GRANTING PLAINTIFFS
MOTION TO ENFORCE**

I, Russell Hott, declare the following under 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. Currently, I am the Acting Assistant Director for the Custody Management Division (“CMD”) for Enforcement and Removal Operations (“ERO”) at U.S. Immigration and Customs Enforcement (“ICE”) within the Department of Homeland Security (“DHS”). I have held this position since February 2020. CMD provides policy and oversight for the administrative custody of ICE’s highly transient and diverse population of immigration detainees. CMD is composed of three divisions led by three Deputy Assistant Directors under my direct supervision: (1) the Alternatives to Detention Division; (2) the Detention Management Division; and (3) the Custody Programs Division.

2. As the Acting Assistant Director, I am responsible for the effective and proficient performance of these three Divisions and their various units, including the oversight of compliance with ICE’s detention standards and conditions of confinement at ICE detention

facilities generally. I am further responsible for managing ICE detention operations efficiently and effectively to provide for the safety, security, and care of an average of about 35,000 detainees daily (approximately 21,000 detainees daily since April 2020), at approximately 250 facilities nationwide, including three family residential shelters located in Texas and Pennsylvania.

3. As a part of my official duties, I am familiar with the September 4, 2020, decision in *Flores v. Barr*, No. 85-4544 (C.D. Cal. filed July 11, 1985), ECF No. 976.

4. The information in this declaration is based upon my personal knowledge and experience as a law enforcement officer and upon information provided to me in my official capacity. Operational realities are fluid with new decisions required on a regular basis. The information in this declaration is current and accurate as of the time I signed below.

5. ERO considers alien minors who are accompanied by one or both parents and/or legal guardian to be a family unit, and in accordance with the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA). Family units subject to removal from the United States pursuant to Title 8 are housed at a Family Residential Center (FRC). FRCs are designed as residential centers and not detention centers; therefore, security protocols (i.e. fencing, secured doors, controlled movement, level of security staffing, etc.) are not present in the same form as at ICE's adult detention facilities. Housing family units subject to the Title 42 process, as well as those subject to Title 8, will present challenges.

6. Because of the pandemic and consistent with the guidelines set forth in ERO's Pandemic Response Requirements (PRR), ERO has implemented measures such as social distancing, cohorting new intakes and positive cases, and operating at a reduced capacity in an effort to reduce the risk of spreading COVID-19. Generally, FRCs have the capacity to hold

approximately 3,000 family unit individuals with one family unit housed per suite; however, in the midst of COVID-19, ERO's PRR recommends limiting capacity of the FRCs to 75% or less, and ERO has maintained the FRCs at 5% to 10% of capacity to mitigate the risk of COVID-19. Given the physical layout of FRCs and the various permutations of the family units detained there, the addition of Title 42 cases will make it difficult for ERO to maintain an operating capacity of even 50%. With a limited number of suites in the medical housing unit at the FRCs, an influx of positive Title 42 cases could force cohorting of COVID positive family units in other areas of the facility, thereby increasing the risk of cross-contamination with the FRC's general population.

7. To the extent ERO has held family units subject to Title 42 at the FRCs, it has only been done in limited instances, such as when hotel accommodations were terminated with little notice and other hotels lacked vacancy. If all family units subject to Title 42 must be housed at FRCs, ERO likely will not have the ability to cohort all incoming Title 42 family units for 14 days separately from the existing FRC population. If new Title 42 family units are comingled with the existing FRC population, it could lead to an introduction of COVID-19 within the existing FRC population which, to date, has been successfully mitigated. Should COVID-19 be introduced into an existing FRC population, quarantining the population could essentially lead to the inability to accept any new residents, either Title 8 or Title 42, for at least 14 days.

8. Because the FRCs lack the same security protocols as detention centers, ERO's ability to effectively maintain separation of various populations, such as the separation of Title 42 cases from Title 8 cases or cohorting a large influx of new intakes, is limited. Cohorting and separation of separate populations is most effective with physical barriers, which are limited at

the FRCs. At this time, the open plan layouts of the FRCs do not provide the necessary physical separation and thus, depending on the amount and frequency of newly arriving families, full separation of T42 family units from Title 8 cases may not be operationally possible. In the absence of full physical separation of the two populations or sufficient space to cohort various Title 42 groups, introduction of all Title 42 family units to FRCs pose a risk of contagion and spread of the virus within the FRCs. Other reasons warranting a separation of Title 42 cases from Title 8 cases are the following: 1) differing administrative processes; 2) staging for transport as Title 42 cases are immediately eligible for expulsion from the United States; and 3) cleaning considerations as the suites housing Title 42 cases are likely to turnover more quickly.

9. Additionally, not every family unit is eligible for placement in an FRC. For example, a Title 42 family unit that includes a parent with a criminal history may not be amenable for placement at an FRC but could potentially be housed together in a hotel, where the family unit would not be co-mingling with other family units. Without an ability to utilize hotels, in this scenario, ERO may need to separate the family unit because no Title 42 family members with a criminal history will be commingled with other families at an FRC.

10. Given the court's order and the immediacy of its implementation, ERO would likely either need to forego sight and sound separation between Title 42 and Title 8 cases at the FRCs, release Title 8 cases it would not otherwise release, or incur additional expense and extend the length of detention by transporting Title 42 cases to a location farther away from the border.

11. In addition to the challenges faced at FRCs, ERO may face difficulty transporting unaccompanied minors on behalf of CBP and/or HHS. The inability to house minors in hotels will require the transport of single minors for longer distances so that they may be held by

HHS's Office of Refugee Resettlement (ORR) and, thereby, likely increase the length of detention. Currently, ERO is largely able to transport the single minors by vehicle, which poses a risk of virus transmission to the transportation specialists but is a lesser risk to the general public than other means of transport; however, the longer transport distances, as well as the strain it will place on staffing and equipment resources, will likely necessitate an increased use of commercial air or land transportation. Utilizing commercial services significantly increases the possibility of COVID-19 exposure to the traveling public, increases the potential of an absconder, and increases the possibility of hostile public interaction. ORR alone determines placement for juveniles transferred into their custody; currently, I understand that ORR maintains approximately 195 facilities located across 23 states. Should ERO need to transfer Title 42 juveniles to ORR, this additional travel throughout the United States is imprudent and poses an additional risk to the general public.

12. ERO is assisted with transportation through a contract with MVM. Pursuant to the contract with MVM, it must follow a fully developed training curriculum, and transportation staff shall have the highest level of competency possible. Upon onboarding, training is given on the topics below, and refresher training on the same topic is required quarterly. Transportation staff must complete at least 16 hours of training when onboarding. In addition, supervisors must attend 24 hours of additional training. MVM must certify that personnel have successfully passed all the required training and provide documentation of required training. Areas of training include:

- a. Airport rules and regulations for travelers,
- b. Crisis intervention,
- c. Child development,
- d. Working with and transporting youth with special needs,

- e. Transporting youth with behavioral problems,
- f. CPR, Epi-pens & First Aid training,
- g. Non-secured UAC and family policy, and
- h. Procedures for and implementation of contingency plans in the event of crisis during transport, including de-escalation techniques.
- i. Ethics and Authority
- j. Note-Taking and Report Writing
- k. Self-Defense
- l. Human Relations
- m. Handling Disorderly Conduct, Civil Disturbances, and Other Incidents
- n. Cultural and Ethnic Sensitivity
- o. Bloodborne Pathogens and Respiratory Viruses, including work practices that help eliminate or reduce the risk of exposure

13. For these and other reasons, ICE requires an emergency stay in order to mitigate the impact of the court's September 4, 2020, order.

Signed on this 10th day of September 2020.



Russell Hott
Acting Assistant Director
Custody Management Division
ICE Enforcement and Removal Operations

EXHIBIT G

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES, <i>et al.</i> ,)	Case No.: CV 85-4544-DMG
)	
Plaintiffs,)	
)	
v.)	
)	
WILLIAM BARR, Attorney General of the)	
United States, <i>et al.</i> ,)	
)	
Defendants.)	
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DECLARATION OF MELLISSA HARPER

I, Mellissa Harper, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records and reasonably relied upon in the course of my employment, relating to the above-captioned matter, hereby declare as follows:

1. I am the Chief of the Juvenile and Family Residential Management Unit (JFRMU), Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security. JFRMU addresses issues confronting unaccompanied alien children (UAC) and alien family groups who come into ERO custody. JFRMU develops policies sensitive to the various vulnerabilities and needs of these populations. JFRMU trains, monitors, and advises Field Office Juvenile Coordinators. JFRMU oversees and monitors the implementation of nationwide court orders that impact this population, including

those in the present case.

2. Responsibilities within my purview include oversight of the housing of minors and family groups/units in hotels.¹ As a part of my official duties, I am familiar with the September 4, 2020, decision in *Flores v. Barr*, No. 85-4544 (C.D. Cal. filed July 11, 1985), ECF No. 976. This declaration is intended to provide additional information to supplement my previously filed declaration, ECF 925-1, and the “Declaration of Russell Hott in Support of Request for Emergency Stay of this Court’s September 4, 2020, Order Granting Plaintiffs Motion to Enforce.” ECF 2, Ex. E. Currently, no minors are being held in hotels as part of the Title 42 program.

3. Housing minors in hotels is accomplished through a contract with MVM Inc. (MVM), a company specializing in the transportation and care of this vulnerable population. The contract’s statement of work (SOW) is attached to this document as Exhibit A. It details the stringent requirements with which MVM must comply in order to care for minors. For example, at page 61 the SOW states: “The Contractor shall have the knowledge and experience necessary to provide transportation services for UAC and families from infancy up to age 17 and adults that are heads of FAMU households. This includes having a firm understanding of the applicable laws and regulations pertaining to UAC, knowledge of childhood and

¹ A family “group” refers to siblings, minors with aunts/uncles, etc., and family “units” (FAMU) are traditional parent/child units.

adolescent development.” Exh. A, p. 61.

4. MVM hires “Bilingual Travel Youth Care Workers” (Worker) who interact and care for minors and family groups/units while in the hotel. MVM runs a detailed and rigorous training program for these Specialists. A sample training program is attached as Exhibit B. In addition, workers must meet pertinent educational, experience and language requirements before they can work with minors as evidenced by the attached “Bilingual Travel Youth Care Worker” job announcement. Exh. C.

5. ICE JFRMU’s independently contracted inspection team for the family residential centers and ICE juvenile facilities conducts unannounced virtual inspections in all three cities to verify conditions at the hotels are humane and safe. The latest inspections in each of the three cities occurred on July 16, 2020; July 30, 2020; and, August 3, 2020, respectively.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 17, 2020



Mellissa Harper, Unit Chief,
Juvenile and Family Residential
Management Unit
U.S. Immigration and Customs Enforcement

Attachment A

Contract 70CDCR20C00000001

SECTION C

PERFORMANCE WORK STATEMENT

UAC and FAMU TRANSPORTATION SERVICES

I. Background

A. Introduction

U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), has a continuing and mission-critical responsibility for transporting apprehended aliens from U.S. Customs and Border Protection (CBP) and other agencies. Among the groups of aliens transferred from CBP to ICE are unaccompanied alien children (UAC) and accompanied children as family units (FAMU). ICE is responsible for transporting these juveniles to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) shelters located throughout the continental United States and accompanied children as family groups into Family Residential Centers (FRCs) in Texas and Philadelphia.

The Immigration and Nationality Act (INA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 and 2013 provide certain safeguards aimed at protecting UAC encountered within the United States or at its borders or ports of entry. The law requires that certain U.S. government agencies develop policies and procedures to protect UAC in the United States from traffickers and, when appropriate, safely repatriate UAC to their country of nationality or last habitual residence.

DHS places those UAC who cannot be returned immediately, as well as all UAC from countries other than Mexico or Canada, in removal proceedings under § 240 of the INA. DHS then transfers the UAC to the care and custody of HHS/ORR. ORR houses UAC in children's shelters, staff-secure facilities, and secure facilities.

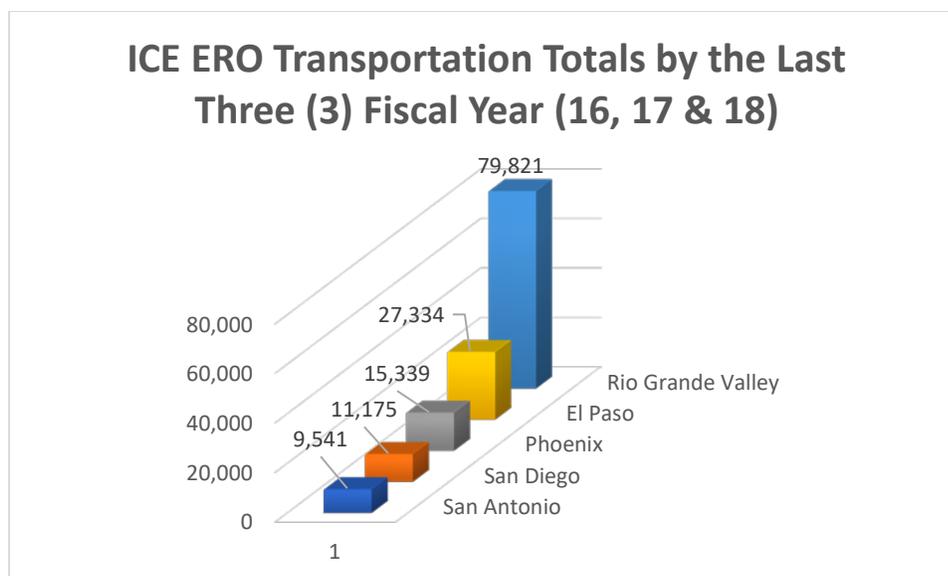
ORR also maintains bed space in residential treatment facilities for children with special needs. ORR places young UAC, as well as UAC who are accompanied by their own children, in foster care, where they may apply for various immigration benefits through U.S. Citizenship and Immigration Services (CIS), including asylum and other programs designed to assist victims of crime, abuse and neglect, domestic violence, and human trafficking.

The volume of UAC apprehensions and FAMUs continues to create numerous operational challenges for DHS components; CBP and ICE continue to work on ways to improve the processing and transfer of this vulnerable population. ICE transports UAC and FAMUs via ground, commercial air, and charter flights.

ICE estimates that approximately 45,000 UAC will be transported per year including: 88% air transportation, 12% ground transportation. ICE estimates that approximately 15,000 family units or more will be transported by per year: 92% commercial or charter air and 8% local ground transportation. UAC and FAMU apprehensions have increased each fiscal year (FY).

Throughout FY 16, 17, and 18, ICE transferred over 143,000 UAC and FAMU individuals from various cities to various locations. Each origin location is unique and can occur nationwide. Occasionally, travel is between multiple locations that may occur more than once or twice, but there are no set routes that happen on a regular basis. Infrequently, charter flights are required to transport UACs or FAMUs. This type of transfer is dependent upon whether or not an ORR facility or FRCs has enough bed space for a large capacity of UAC or FAMUs. FY18 data shows that there were 17 charter flights. These flights moved a total of 3,338 UACs and FAMUs.

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The BP Rio Grande Valley (RGV), El Paso and Phoenix Sectors accounted for a disproportional percentage of the increase in overall apprehensions. In the past three FYs, the majority of the transportation has been in the ERO San Antonio (SNA) Harlingen (HLG) sub-office where RGV BP Sector is located. This has been where majority of UAC are transported with El Paso coming in second and Phoenix coming in third. These hubs account for 95% or more of all escorted commercial transfers as places of origin. There are no significant destination hubs, as the transportation movements are on an open-bed basis.

ORR generally identifies the placement location for a UAC within four to six hours of initial notification. ORR maintains beds throughout the U.S. continental with approximately 85% (in FY 2018) in states along the Southwest Border. In recent years, ORR vastly increased its UAC capacity from under 2,000 beds in September 2011 to over 16,000 beds in September 2018. As of October 2018, ORR has increased its UAC capacity to 16,051 beds. Under current law and regulation, ICE does not have authority nor is responsible to detain unaccompanied children over 72 hours (Trafficking Victim's Protection Reauthorization Act of 2008 & Flores Stipulated Agreement of 1994).

ORR has the sole authority to determine where ORR shelters will exist and where a UAC will be placed for long-term care. The locations of ORR shelters will likely shift depending on ORR's contracting methods. In some cases, ORR may not provide ICE with much advance notice as to when a new shelter opens. The Contractor shall be prepared to transport UAC to any location nationwide without delay.

B. Need

ICE is seeking the services of a highly responsible contractor that fully embraces the philosophy of treating all UAC and FAMUs with dignity and respect, while adhering to standard operating procedures and policies that allow for effective, efficient, and incident-free transport. The Contractor shall provide unarmed escort staff, including management, supervision, manpower, training, certifications, licenses, drug testing, equipment, and supplies necessary to provide on-demand escort services for non-criminal/non-delinquent UAC and FAMUs ranging from infants to 17 years of age and adults with a family, seven (7) days a week, 365 days a year. Transport will be required for UAC or family groups, to include both male and female juveniles. It is critical for the contractor to provide staff who are well qualified and trained to work with this vulnerable population.

UAC escort vary significantly in lead times and demand, as some days can have no demand, while others have a short turnaround time. Demand occurs on both weekdays and weekends, and escorted travel may include up to two overnights of travel. For this reason, the Contractor shall have an on-call, flexible, responsive, and well-trained staff to meet ERO requirements. ICE estimates that approximately 60,000 commercial airline tickets will be acquired by the Contractor. It is the responsibility of the Contractor to purchase all commercial plane tickets, and sometimes coordinate charter flights with COR's approval.

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Sometimes, the contractor will have to plan commercial or charter flights in a period of less than 24 hours. In FY18, 11% of commercial flights were cancelled due to unforeseen events such as last-minute weather, or delays. The Contractor shall coordinate follow-up logistics when these instances occur. In some situations, such as flight delays, cancellations, etc.; the time the contractor maintains custody of the UAC or family unit may be extended. In limited cases, overnight housing may be required. Use of the contractor's staging/waiting room satellite office space will be limited to 12 hours or less, and allow for ready access to food, water, clean clothes, hygiene products, and comfortable furniture. ICE estimates that about 16,000 Transportation Specialists flights will be purchased to accompany UAC or FAMUs on air transportation. In addition to coordinating air transfers, the contractor is required to move UACs and FAMUs to various destinations by ground transportation. In FY18, individuals were transported 1.86 million miles.

Transportation services under this contract shall include, but are not limited to, assisting with:

1. Transferring physical custody of UAC from DHS to Health and Human Services (HHS) care via ground or air methods of transportation (charter or commercial carrier);
2. Transferring physical custody of FAMUs to ICE ERO Family Residential Centers (FRCs) via ground or air methods of transportation (charter or commercial carrier);
3. Coordinating/communicating with DHS and HHS staff;
4. Travel coordination and logistics;
5. Generating transport documents, records, and reports;
6. Acquiring and providing UAC & FAMUs with timely meals, snacks, and drinks;
7. Providing and issuing clothing and other articles as needed;
8. Providing, seeking or coordinating medical care if a UAC & FAMU becomes ill while in transit;
9. Property inventory;
10. Maintaining/stocking daily supplies;
11. Drafting reports; and,
12. Limited unarmed transportation specialist services to accommodate for trip disruptions due to inclement weather, faulty equipment, transport disruptions, or other exigent circumstances.

C. Contract Type

1. The Government anticipates awarding a five-year Time and Material (T&M) Stand Alone contract vehicle consisting of a one-year base period, and four (4) one-year option periods.
2. The provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards (formerly known as the Service Contract Act of 1965), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, *et seq.*), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925) are applicable to this acquisition. All required clauses, provisions shall be included in the solicitation and resulting contractual instrument.

D. Place of Performance

1. Service Area: Nationwide. Services are unpredictable and can occur in any location in the nation.

E. Current UAC & FAMU Transport

Currently, ICE/ERO operates a Contractor-led Transport for UAC and FAMUs transportation initiative to support ERO Field Offices in moving this population to ORR shelters or ICE Family Residential Centers within the interior of the United States. The Contractor coordinates directly with DHS and HHS for operational arrangements and estimated time of arrival notice. The Contractor and all ICE personnel are required to meet the statutorily mandated 72-hours transfer requirements from pick up to drop off. Personal property and personal legal documents (excluding the DHS A-file or T-file) accompany the UAC to the ORR placement facility. For FAMUs personal property and personal legal documents (including DHS A-files or T-files) accompany the FAMU to the Family Residential Centers (FRCs).

II. Definitions and Links

See Part: 2 of this document

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III. Objectives

The objective of this contract is to provide highly-structured, efficient transportation for UAC and FAMU from their point(s) of entry/staging location(s) across the nation to ORR shelters or FRCs, for the purpose of family reunification or long-term care.

IV. Period of Performance

The period of performance for this contract includes a 12-month base period and four 12-month one-year options.

V. ICE Standards/Special Requirements

The Contractor is required to perform in accordance with all ICE policies and legislative requirements related to the transportation of UAC and FAMUs including but not limited to the ICE Performance-Based National Detention Standards (PBNDS 2011), the ICE Family Residential Standards, the Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook, the Flores Settlement Agreement, the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, and the Homeland Security Act of 2002. ICE Inspectors shall conduct continued and ongoing inspections of Contractor led escorts to ensure compliance with the aforementioned standards.

Personnel shall have the knowledge and experience necessary to transport individual children with special needs. Children with special needs may require transportation methods that save time and are direct (e.g., transport by commercial airline without layovers). Additionally, in the event of exigent circumstances, the Contractor shall be required to transport UAC or FAMUs via ground to Hub airports or other staging areas that are not located within the area of initial apprehension. In all such cases, the Contractor shall provide UAC and FAMUs with access to medical care as needed.

VI. ICE's Commitment to the Best Interests of Children

ICE is committed to treating all individuals in its care with respect and dignity and gives full consideration to the inherent vulnerabilities of children. ICE expects the Contractor to incorporate these same principles in its policies and procedures and demonstrate them through its actions. In all cases, the best interest of the child shall be the primary consideration, and children are to be treated with special consideration for their unique needs—to include their safety, security, well-being, and immediate physical health needs.

It is ICE policy to provide effective safeguards against sexual abuse and assault of all individuals in ICE custody, particularly in matters related to screening, staff training, detainee education, response and intervention, medical and mental health care, reporting, investigation, and monitoring and oversight. ICE has zero tolerance for any forms of sexual abuse and assault. ICE is fully committed to following the DHS "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," 79 Fed. Reg. 13100, which were promulgated pursuant to the Prison Rape Elimination Act of 2003 (PREA) and its own Sexual Assault and Abuse Prevention Intervention (SAAPI) policies.

ICE's SAAPI Directive defines custody as the period of time during which a person (1) has been detained by ICE under its administrative and/or criminal authorities, (2) is physically present in an ICE owned, leased, or contracted detention facility pursuant to such authorities, or (3) is being transported by ICE (including for purposes of removal from the United States) pursuant to such authorities. The Contractor shall be well versed in these materials and shall actively incorporate their underpinnings in all its practices.

A. Contractor's General Knowledge of and Experience with UAC & FAMU

The Contractor shall have the knowledge and experience necessary to provide transportation services for UAC and families from infancy up to age 17 and adults that are heads of FAMU households. This includes having a firm understanding of the applicable laws and regulations pertaining to UAC, knowledge of childhood and adolescent development.

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The Contractor shall have the personnel and infrastructure necessary to transport UAC and FAMUs either individually or in groups. Both male and female UAC shall be transported, and the Contractor shall maintain sufficient staffing patterns such that same-gender staffs are available to assist transport of males and/or females. In FY18, 12,209 females and 29,169 males were transported by air or ground.

Personnel shall have knowledge and experience in the transportation of individual children with special needs. Children with special needs may require a transportation method that is time-saving and direct and provides for appropriate accompanying medical or mental health care. In addition, the Contractor shall have personnel who are able to communicate with juveniles in their own designated language(s). While this may not require each employee to be fluent in all encountered languages, personnel should have access to and knowledge of translation services and devices.

B. Non-Secure Transportation

1. Under this contract, UAC & FAMU being transported for placement in ORR shelters or FRCs shall be escorted by unarmed Contractor escorts. Accordingly, restraining UACs is strongly discouraged. In the event that restraint of a UAC becomes necessary during transport, the Contractor shall contact the Contract Officer's Representative (COR). The COR will contact local field office or local law enforcement immediately after the situation is under the Transportation Specialists (TS's) control. Use of restraints shall be in line with the Family Residential Standards (FRS) on Restraints and Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook and section XI, Part M of the PWS.
2. Contractor Guiding Principles:
 - a. UAC & FAMU shall be transported in a safe and humane manner and under the supervision of trained and experienced personnel.
 - b. At least one staff member of the same sex as the UAC shall be a member of the escort team. Any exceptions shall be approved by the COR or designee before commencement of the escort.
 - c. The Contractor staff shall maintain constant "line of sight and sound" supervision of each UAC & FAMU during the transport.
 - d. UAC or FAMU being transported shall not be left in a locked, unattended vehicle.
 - e. UAC and families shall be separated from unrelated adults at all times during transport and seated in an area of the vehicle near Transportation Specialists and under their close supervision.
3. The Contractor shall be responsible for transport of UAC & FAMUs going to shelters, foster care, FRC's or other necessary locations as a direct result of their escort duties or directed by the COR.

C. Ongoing Efforts

1. The Contractor shall support ERO's desire to maintain frequent communication with Transportation Security and Administration (TSA) CBP, ICE, and ORR on issues related to the transfer, custody, and care of children.

D. Standards of Conduct

1. The Contractor shall be responsible for developing and maintaining standards of conduct for personnel competency, conduct, appearance, integrity and shall be responsible for its personnel's performance and the quality of the services they provide. These standards shall be at least as high as ICE's standards for its own personnel and operations.
 - a. The Contractor shall provide all personnel with a copy of the written standards of conduct.
 - b. All personnel shall certify in writing that they have read and understand these standards.
 - c. The contractor shall provide a copy of the contractors written standards of Conduct to the COR within fifteen days of the contract award
 - d. A record of this certificate shall be provided to the COR prior to any personnel beginning work under this contract.
2. The Contractor shall, at all times, demonstrate cultural sensitivity and age-sensitive conduct.

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3. The Contractor shall provide sufficient supervision and oversight of its personnel to ensure ongoing adherence to all standards of conduct.
4. Contractors shall conduct themselves in a manner that reflects positively on ICE/ERO, recognizing the effects of personal appearance, speech, conduct, and demeanor. In communicating the appropriate sense of authority, every Contractor shall dress, speak, and act with the utmost professionalism.
5. Because children differ in comprehension levels, simple language with the appropriate tone is required. The Contractor shall always be aware that UAC and families may be intimidated by authority figures; therefore, to avoid any confusion, the Contractor should explain to the UAC and families prior to the transport what to expect during their transport.
6. In the event of a language barrier, the Contractor shall adhere to the stipulations in Section XI, Scope, C. Languages/Translators of this PWS, and shall make every effort to communicate with the UAC or FAMU, especially on matters such food and restroom stops.
7. Contractor staff shall not display favoritism or preferential treatment to one UAC or group of UAC or families over another.
8. Contractor personnel shall not enter into a personal relationship with any UAC or family unit individuals.
9. Contractor personnel shall be prohibited from accepting any personal gift, favor, or service from a UAC or from the UAC's family or close associates, no matter how trivial the gift or service may seem. All staff shall be required to immediately report any such offers to their assigned supervisor and the supervisor shall report this information to the COR within one (1) hour of notification from employee. In addition, no personnel shall give any gift, favors, or service not authorized under the ERO Transport contract to UAC, their families, or close associates.
10. Contractor personnel shall not enter into any business relationship (e.g., selling, buying, trading personal property, etc.) with UAC or their families.
11. Contractor personnel shall not have any outside or social contact with FAMUs or UAC, their families or close associates.
12. The Contractor shall immediately report to the COR any violations or attempted violations of the standards of conduct within one (1) hour of notification.
 - a. Violations may result in dismissal of the involved personnel by the Contractor or recommendation for removal from the contract at the discretion of the COR.
 - b. Failure to report a known violation to the COR by the contractor or to take appropriate disciplinary action against offending personnel shall subject the Contractor to appropriate action up to and including termination of the contract for default.
13. Violations of these standards of conduct shall result in administrative contract action by ICE and may result in prosecution where applicable.

VII. Prison Rape Elimination Act (PREA)

A. PREA

At all times, the Contractor shall adhere to the standards set forth in the DHS Prison Rape Elimination Act (PREA) regulation and the ICE/ERO Residential Standard on Sexual Abuse and Assault Prevention and Intervention (SAAPI) policy.

1. The PREA regulation was enacted by DHS to establish a zero-tolerance policy for sexual abuse or exploitation of detained persons. The Contractor shall comply with the PREA standards for juveniles. (See 6 C.F.R. 115, *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities* at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-07/pdf/2014-04675.pdf>.)
2. The DHS PREA standards require in all instances that juveniles be detained in the least restrictive setting appropriate to the juvenile's age and special needs, provided that such setting is consistent with the need to protect the juvenile's well-being and that of others, as well as other laws, regulations, or legal requirements. *
3. In detention facilities, juveniles shall be held apart from adult detainees, minimizing sight, sound, and physical contact, unless the juvenile is in the presence of an adult member of the family unit, and provided there are no safety or security concerns. *
4. In holding facilities, PREA requires that unaccompanied juveniles generally be held separately from adult detainees. They may remain with a non-parent adult family member in instances where the family relationship has been vetted to the extent feasible and the agency has determined that

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remaining with the non-parental adult family member is appropriate under the totality of the circumstances.*

B. Sexual Abuse Prevention

1. ICE is committed to upholding the precepts of the DHS PREA regulation and the ICE/ERO SA-API policy. The Contractor shall uphold these standards as well, with specific attention to the “zero-tolerance” standard regarding sexual abuse and assault.
2. Additionally, the Contractor shall establish written policy and procedures for SA-API that include, at a minimum:
 - a. Prevention
 - b. Prompt and effective intervention to address the safety and treatment needs of resident victims if an assault occurs
 - c. Investigation, discipline, and prosecution of assailants

VIII. Policy

- A. Without undue delay, UAC & FAMU are transported to designated placements in accordance with the following guidance.**
 1. UAC arrested or taken into custody by DHS shall not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to a DHS office where separate transportation would be otherwise impractical. In those instances, the Contractor shall take necessary precautions for the protection and wellbeing of such UAC. The Contractor shall assist, without undue delay, in making transportation arrangements to a DHS-designated location.
 2. Whenever a UAC & FAMU is transferred from one placement facility to another, the UAC & FAMU shall be transferred with all of his or her possessions and legal papers. The A-file or turn over custody documents will be hand carried by Transportation Specialists. If property is not turned over, COR will be notified to make a determination to continue with transfer. However, if the UAC’s or FAMU’s possessions exceed the amount permitted normally by the carrier in use, the possessions shall be shipped to the UAC or FAMU in a timely manner.
 3. To affect transportation in a safe and efficient manner, the Contractor shall act in accordance with the guiding principles below and State licensing requirements related to transportation.

B. Additional Age-Dependent Policies

1. Any alien below the age of 18 is considered a juvenile.
2. While all juvenile escorts are considered priority, alien juveniles under the age of 14 are considered particularly vulnerable. These juveniles are to be moved as expeditiously as possible with consideration given to their safety, well-being, and other special needs.
3. Any alien child below the age of 5 requires an additional escort of the expected two (2) guards’ ratio, as he or she cannot be cared for by the Transport Specialist (TS) assigned to the mission according to the detainee-to-guard ratio assigned to the aircraft.
4. If a tender-age (12yrs old & under) UAC is accompanied by another family member who is standard age (13 to 17), the older UAC cannot be considered responsible for their sibling or relative. Therefore, if a tender age and standard age are traveling together, they will require two escorts. Siblings should be transferred together, to the extent possible.

C. Escort-to-UAC or FAMU Ratios

1. The Contractor shall maintain the following Chaperone-to-UAC or FAMU ratios:
 - a. UAC from ages 10 – 17:
 - i. Two (2) TSs for the first six (6) UAC and/or UAC family member;

* This language is drawn from 115.14 and 115.114 in PREA.

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- ii. An additional escort shall be required for increment of six (6) groups of UACs exceeding six (6) (i.e., 25 UAC equals six (6) escorts).
 - iii. A female TSs shall accompany groups of UACs containing female UAC. Same gender TSs will escort same gender UACs.
 - iv. In the event of an emergency, any opposite gender escort requires an additional level of supervisory review and reporting during transport. Contractor will contact the COR for approval.
 - v. The contractor will contact the COR for approval of any ratio increase.
 - b. UAC under age 10 but over the age of 5:
 - i. A minimum of two staff for up to eight (8) UAC
 - ii. A minimum of three staff for more than eight (8) UAC, up to 15 UAC.
 - iii. A female escort shall accompany groups of UACs containing female UAC.
 - iv. In the event of an emergency, any opposite gender escort requires an additional level of supervisory review and reporting during transport. Contractor will contact the COR for approval.
 - c. UAC 5 years and under
 - i. Any alien child below the age of 5 requires an additional escort over and above the expected two (2) escorts per mission ratio, as he or she cannot be cared for by the Transport Specialist (TS) assigned to the mission according to the standard UAC or FAMU-to-escort ratio.
 - d. Exceptions to the Escort-to-UAC or FAMU ratios will be approved by the COR on a case by case basis.
2. The Contractor may propose recommendations to ICE at any time regarding efficient application of escort ratios. However, implementation of any change is not authorized until approved by the Juvenile and Family Residential Management Unit (JFRMU) COR.

IX. Operations Constraints / Assumptions

- A. Contract personnel shall fully comply with the following:
 - 1. Immigration and Nationality Act (INA) as amended, 8 U.S.C. 1101 et seq.,
 - 2. Homeland Security Act of 2002 (HSA), as amended, and
 - 3. Title 8 Code of Federal Regulations (CFR), Alien and Nationality, as amended.
- B. The care, custody, and transport of UAC shall be fully in accordance with:
 - 1. Trafficking Victims Protection Reauthorization Act (TVPRA);
 - 2. HSA 2002, § 462 (Codified at 6 U.S.C. § 279);
 - 3. Immigration and Nationality Act;
 - 4. ICE Family Residential Standards;
 - 5. *Flores* Stipulated Settlement Agreement, Case No. CV 85-4544 (C.D. Cal. Jan. 17, 1997);
 - 6. Existing Federal laws and regulations; and
 - 7. Applicable DHS guidance, policies, procedures, and the ICE Under-72 Hour Juvenile Staging Checklist.

X. Quality Control

- A. For all areas of responsibility detailed within this PWS, the Contractor shall also define and implement quality assurance review and internal audit procedures in its Quality Control Plan, execute and document the results of such reviews and audits, and deliver all related documentation (e.g., internal audit reports) to the Contracting Officer's Representative (COR).

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All records shall be available to the Contracting Officer's Representative (COR) at any time during the execution of this contract and following close-out of the contract for a period of five years. The contractor shall provide a copy of the quality control plan to the COR within fifteen days of the contract award

XI. Scope

A. Service Plan

1. The Contractor shall be responsible for adhering to all regulations outlined under the ICE Family Residential Standards (FRS), Part 5 Activities, § 5.3 Escort Trips for Non-Medical Emergencies.
2. The Contractor shall provide unscheduled escort to UAC and FAMU during transport, via commercial air or charter flights and ground transport, from the DHS facility near the point of apprehension to a final destination, as determined by ICE/ERO and ORR.
3. The Contractor shall develop and implement a service plan and perform services in accordance with the requirements of this PWS at ERO locations nationwide. The current ORR locations are shown in Attachment 7.
4. The services provided shall consist of transport/escort of UAC and FAMU from their port of entry, centralized processing center or other ERO facility to their destination, as determined by ERO and ORR.
5. The organization, design, and administration of the contracted transport/escort program shall comply with all applicable federal, state, and local licensing provisions, as well as ERO requirements as put forth in this PWS and elsewhere in this contract. The Contractor shall provide management oversight for the implementation and operations set forth in this PWS.
6. The Contractor shall establish UAC's and FAMU' transport and Escort policies and Standard Operating Procedures for approval by ERO Juvenile and Family Residential Management Unit COR.

B. Transferring of Physical Custody

1. UAC Custody Transfer Stipulations

- a. The Contractor may refuse to accept a UAC referred by CBP or ICE under the following circumstances only and as approved by the COR:
 - i. The UAC is combative and/or disruptive;
 - a) Determination may be made at the discretion of the COR.
 - b) In such cases, the TS or other Contractor representative shall immediately notify the COR or designee for further guidance. The COR or designee will notify the local Field Office Juvenile Coordinator (FOJC).
 - ii. Medical concerns are present, and CBP or ICE has not provided appropriate documentation of the UAC's fitness for travel. Contractor will notify the COR to continue with the travel or not. CBP is responsible for providing a medical clearance.
 - iii. A UAC with special needs, for whom DHS has not provided adequate time for necessary preparations. Contractor will notify the COR for guidance.
 - iv. A UAC or FAMU believed to be a flight risk, notify the COR for guidance.

2. Transfer of UAC & FAMU from DHS to HHS care via ground or air transport

a. Transfer Logistics

- i. DHS, the Contractor, and the receiving ORR provider shall coordinate transfer logistics including transportation arrangements, the UAC's supply of current medications, his/her prescription information (e.g., dosage), transfer of the UAC's belongings, and preparation of the UAC for transport and transfer of custody.

b. Notifications

- i. Notify the component staging the UAC or FAMU of the intended time of travel.

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- ii. For routine transfers, **Contractor is required to provide notice within 5 min TO no more than 12 hours from anticipated transfer of UAC to** the COR, as well as the Field Office Juvenile Coordinator (FOJC) of the designated ORR shelter representative is receiving a UAC or Family Residential Center (FRC) receiving a FAMU with an estimated time of arrival at the shelter or FRC, of the transfer as outlined below.
- iii. For emergency transfers, the Contractor will notify the COR within an hour of transfer. The COR will notify the designated ORR representative, as soon as possible, or at the latest, the following business day.

c. UAC/ FAMU Preparation

- i. The Contractor will make sure the UAC and FAMU are fit for transportation with access to shower facilities, hygiene kits and clothing. The Contractor is required to procure all additional hygiene kits, lunches, or other necessary goods for the UACs and FAMUs;
- ii. DHS and the Contractor, in collaboration with the receiving ORR provider and FRCs, prepare the UAC or FAMU for transfer. Preparation includes but not limited:
 - a) Notification given to the UAC and FAMU, considering both safety and child well-being. The Contractor considers the safety of the UAC or FAMU and others in deciding when and what information to share with the UAC or FAMU prior to the transfer.
 - b) Gathering and preparing the UAC's or FAMU' belongings for transport and transfer.
- iii. Orientations prior to transport shall be provided to all UAC or FAMU and shall include the following:
 - a) Communication with the UAC or family in a language he or she can understand;
 - b) Completion of UAC's schedule and contact information;
 - c) Meeting with the Transport Specialist (TS);

d. UAC or FAMU Arrival at ORR Facility or FRCs

- i. Upon the UAC's arrival, the receiving ORR care provider or FRCs:
 - a) Ensure proper paper work and property is turned over.
 - b) Ensures receipt of sufficient medication supply, and ensures a refill is obtained, if required. If the apprehending agency medical clearance mentions of a medication before taking over custody. The apprehending agency should fill the perception. In an occasion that during transport the individual is taken to urgent care or emergency room, the contractor will assist with filling the prescription.
 - c) Signs the Transfer Request and Tracking Form to validate that all items listed in the transfer request are included in the UAC's or FAMU' transfer packet.

3. Temporary Staging/ Waiting Areas

- a. The Contractor shall be responsible for adhering to all regulations outlined under the ICE Family Residential Standards (FRS), Part 7 Administration & Management, § 7.4 Transfer of Residents. All hub locations are required to have a staging/waiting room area.
 - i. UAC and FAMU's shall receive meal service regardless of time in custody. Juveniles, babies, and pregnant females shall have regular access to snacks, milk, juice, baby food, baby formula etc.
 - ii. The Contract shall be sensitive to the cultural and religious differences of all detainees. Religious requests shall be granted whenever possible.
 - iii. In some situations, such as flight delays, cancellations, etc., the time the Contractor maintains custody of the UAC or family units may be extended. In limited cases, overnight housing may be required.

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Use of the contractor's staging/waiting area in satellite office space will be limited to 12 hours or less, and allow for ready access to food, water, clean clothes, hygiene products, and comfortable furniture.

Staging/waiting area in satellite space is only intended to house minors or family groups for short periods of time and to assist with avoiding long waits in public areas such as airports, when possible.

The contractor shall provide for a hotel room whenever minors will remain in the contractor's custody over 12 hours due to HHS placement cancellation or re-designation, flight cancellations, or any other delay.

NOTE: The Contractor shall notify the COR immediately when placing a UAC or family unit at a hotel. The Contractor shall provide the COR with the UAC's name, hotel name, address, room number, and phone number.

b. Separation of UAC by Types in Staging/ Waiting Room Areas

- i. Age: While held in a staging/waiting area, non-related UAC shall be separated by age when operationally feasible. All UAC age 15 and over shall be held separately from UAC age 14 and under, when operationally feasible.
 - a) Tender-age (12yrs and under) UAC: In concert with ORR standards, all UAC under 12 years of age are considered tender age. When encountering a tender age UAC, DHS shall make every effort to coordinate with ORR to seek local immediate placement in order to avoid having to place a tender-age UAC in a stage/waiting room environment
- ii. Gender: Unrelated UAC shall be separated by gender and monitored by personnel of the same gender, when feasible.

c. Hotel Rooms

- i. If a UAC is temporarily housed at a hotel awaiting custody determination or placement, he or she shall be allowed to take a change of clothing, personal hygiene items, and female sanitary products (as needed), in order to shower and dress for the following day, and subsequently, until departure from the hotel.
- ii. The Contractor shall notify the COR immediately or within one (1) hour of knowing when placing a UAC or family unit at a hotel. The Contractor shall provide the COR with the UAC's or FAMU individuals name, hotel name, address, room number, and phone number.
- iii. The ratios under VIII.C Escort-to-UAC or FAMU Ratios apply to UACs placed in hotels overnight.

d. Allegations of Personnel Misconduct

- i. In the event of a physical altercation or an allegation of sexual abuse, the Contractor will immediately notify the COR or within one (1) hour of knowing of the incident. The COR will notify Immigration Health Service Corps (IHSC) for any immediate medical care, and FOJCs.
 - b) If the child is under the legal age in the State where the incident occurs, the Contractor will notify the COR (s) or ACOR. The COR(s) or ACOR will notify the Child Protection Agency in the county where the child is being held.
- ii. COR may refer the UAC to emergency medical personnel via 911 or a local emergency medical facility.
- iii. The Contractor shall adhere to ERO protocol for both concerns, listed above, in order to avoid delays in proper notifications or actions. Protocol includes notification to the COR immediately or within one (1) hour .

4. Searches

- a. UAC and families should be searched using a stand-alone or handheld metal detector for contraband in order to maintain good order, safety, and security.

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- b. The Contractor shall inspect parcels, bags, bundles, boxes, and other property. UAC and FAMU's property shall be kept outside the hold area, out of reach of the UAC and FAMU's.
- c. The Contract is required to search articles of clothing before they are returned to the UAC and FAMU's.
- d. When there is reasonable belief or suspicion that contraband may be concealed on the person or a good opportunity for concealment has occurred, a pat down search may be conducted in accordance with Section E4 of this document.
 - i. The Contractor is prohibited from using a UAC and FAMU's' gender, ethnicity, race, or religion as a factor in determining any level of suspicion for a pat-down search, in all but the most exceptional circumstances.
 - ii. A pat-down is an inspection of a UAC or FAMU's, using the hands.
 - iii. No UAC or family member 14 years old or under may be subject to a pat-down search without the explicit authorization of the COR.
 - iv. Any pat-down should be documented in the daily log record with the approving supervisor's name.
- e. Same-gender TSs shall be used to conduct searches.
- f. For the purpose of transporting UAC and FAMU's, contraband is defined as prohibited items, be they either legal or illegal.
 - i. Legal contraband is considered items that a UAC or FAMU's would otherwise be allowed to possess if not in custody of ICE. This would include such things as cell phones, legal currency, etc.
 - ii. Legal contraband shall be locked in a secure storage area and delivered to the receiving center or facility.
 - iii. Illegal contraband includes unauthorized drugs, weapons, etc.

C. Languages/Translators

- 1. The Contractor shall employ personnel who are able to communicate with the UAC or FAMU's in their own language(s) or able to use a translator or devices to translate.
 - a. While this may not require each personnel to be fluent in a number of languages, personnel should have access to translation services or devices.
 - b. The ability of Contractor staff to overcome a language barrier greatly reduces the UAC's or family's anxiety during transport and allows them to understand what is happening to them, which may reduce the likelihood of any disturbances.
- 2. The Contractor shall provide professional translators, bilingual staff (preferred method), or devices to communicate with UAC or family who do not speak or comprehend English.
 - a. The Contractor may use commercial telephonic interpretation services for this purpose as approved by the COR.

D. Transport Documents

- 1. The Contractor may be required in some cases to transport and transfer certain UAC documentation. For FAMU the A-file accompanies the FAMU to the FRCs and are hand carried and in possession of the Transportation Specialists.
- 2. The Contractor shall not deal directly with the consular or any foreign Governments on behalf of the UAC or FAMU.
- 3. Required transport documentation:
 - a. Four (4) copies of I-216 Manifest of Transfer. I-216 is mandatory for all transports of an alien to include using the Enforcement Alien Booking Module (EABM) to record the time in custody of every UAC and families. The manifest shall also serve to verify each person called for the transport.
 - b. The form shall be kept with transporting manifest records for the required retaining period. Prior to beginning the transport from one location to the next, the Contractor shall notify the receiving office of the estimated time of arrival and send or provide an electronic copy of the I-216 with the alien's information. Prepare any required transferring paperwork as necessary.

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1. UAC:
 - a. I-862 Notice to Appear
 - b. I-770 Notice of Rights
 - c. List of free legal services
 - d. Medical clearance to travel, plus medication if applicable
 - e. These turn over custody documents will be hand carried by the Transportation Specialists.
2. FAMU:
 - a. A-Files will be hand carried and on person of the Transportation Specialists.

Upon receipt of the transport document, the Contractor shall be required to:

 - i. Notify the COR and FOJC of the receipt of all travel documents the same business day they are received.
 - ii. Contractor will assign an Administrative Support Representative to provide administrative support in the tracking of UAC movements by entering "book-in" and "book-out" data into ERO's case management IT system/official system of record.
 - iii. Maintain an electronic copy log including:
 - a) Date received
 - b) Alien Number
 - c) Name of UAC or family members
 - d) Country of Citizenship
 - e) Type of document
 - f) Name of Contractor receiving document
 - g) Date given to ERO
 - h) ERO Officer initials confirming receipt
 - i) Transport document number
 - j) Transport document issuance date
 - k) Transport document validity dates

E. Travel Responsibilities

1. General Guidelines

- a. TS's shall not carry weapons (including less-than-lethal weapons).
- b. Personal Protective Equipment (PPE), such as latex gloves for use during UAC or family member searches, shall be provided at the discretion of the Contractor and at no additional cost to the government.
- c. TS's duties may include, but are not limited to, the following tasks:
 - i. Searching UAC or family members for contraband, in accordance with XI.B.4.
 - ii. Loading and unloading UAC or families (including those with special needs or requiring special assistance) into and out of transport vehicles and aircraft,
 - iii. Loading and unloading property into and out of transport vehicles and aircraft,
 - iv. Feeding UAC or FAMU's and assisting in cleanup afterwards,
 - v. Identifying prior documentation before taking over custody:
 - i. Verify paperwork from apprehending agency before taking over custody.
 - ii. Verify paperwork with UAC or FAMU by asking the following:
 1. Name
 2. Date of Birth
 3. Country of Birth
 4. If they have any siblings that traveled with them.
 5. If they are sick.
 6. If they are pregnant
 7. Take the UAC or FAMU temperature with a laser thermometer
 - vi. Escorting UAC or family members to restrooms and are always accompanied by a TS:
 1. TS will make sure to check the stall before the UAC or FAMU uses them.
 2. After FAMU or UAC use the stall check for cleanness.

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- vii. Assisting with perimeter security when requested, and
- viii. Ensuring general security and safety of UAC and FAMU's during transit.
- d. Dress code is business casual (t-shirts, jeans, and tennis shoes are prohibited).
- e. TSs shall provide for the care, custody, and security of the UAC and FAMU's during the transportation process.

2. Hubs/ Site Office (s)

- a. The Contractor shall be required to staff and maintain offices in the area of McAllen, Texas driving distance to the Rio Grande Valley (RGV) Border Patrol (BP) Sector Centralize Processing Center due to high volume CBP apprehensions of UAC and FAMU's being brought to process at this centralized location for the RGV BP Sector and up to 15 miles of an airport for their operations, with potential for expansion to additional locations over time if JFRMU see a need for additional offices depending on the workload. The additional site offices will be in the following areas due to DHS operational needs:
 - i. San Antonio, Texas site office will not only be limited to assist ERO San Antonio, Laredo & Del Rio Border Patrol Sectors or Office of Field Operations in area of responsibility but will also assist east coast or west coast DHS Offices depending on workload. Office will be up to 15 miles of the San Antonio Airport.
 - ii. El Paso, Texas site office will not only be limited to assist El Paso ERO but will assist El Paso, Big Bend Border Patrol Sectors and Office of Field Operations area of responsibilities and will also assist east coast or west coast DHS Offices depending on work load. Office will be up to 15 miles to the airport.
 - iii. Phoenix, Arizona site office will not only be limited to assist Phoenix ERO, but will assist Yuma, Tucson Border Patrol Sectors and Office of Field Operations, will also assist east coast or west coast DHS Office depending on workload. Office will be up to 15 miles to the airport.
 - iv. Additional hubs or site offices may be added at the discretion of HQ ERO JFRMU with COR approval.
- b. The Contractor shall be sufficiently flexible to meet the significant daily variability in demand.

3. Airline Escort

- a. The Contractor is responsible to contact the airline to make travel arrangements.
- b. TS's will verify the I-216 and paperwork before taking over custody.
- c. TS's will call their command center/dispatch to confirm they have the correct individual before taking over custody.
- d. TS's will make sure the UAC or FAMU is properly ready for travel with clean clothing and personnel hygiene.
- e. Charter flights will be approved by the COR.
- f. The Contractor will maintain the UAC and family ratios;
- g. The COR will approve the increase of Transportation Specialists-to-UAC or FAMU ratio in accordance with the Section VIII sections B and C.
- h. Pregnant female on their third trimester will not be flown but driven. The COR and ACOR should be notified immediately or within an hour of knowing of all pregnant females.
- i. The use of global positioning system (GPS) devices such as phone or tablets shall be required.

4. Ground Transport

The Contractor shall provide ground transportation as follows:

- a. The Contractor may employ best means of transportation for the current circumstances (e.g., commercial ground transport, charter ground transport, Contractor-owned vans or buses, etc.).

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- i. Contractor-owned vans or buses will require visual and audio cameras with global positioning system (GPS).
- b. The Contractor shall be responsible for adhering to all regulations outlined under the ICE/ERO Family Residential Standard "Transfer of Residents" and ICE/ERO Family Residential Standard, "Transportation (By Land)."
- c. When escorting UAC or FAMU's, TSs shall maintain regular radio and cellular telephonic communication with other Contractor personnel, insofar as technologically possible and resources allow.
- d. The Contractor shall provide, operate, manage, and maintain vehicles and TSs, 24 hours per day, seven (7) days per week, year-round in accordance with all rules and regulations governing TS performance.
- e. Escort staff who transport UAC and FAMU's shall comply with all Federal, State, and local regulations including, but not limited to, the following:
 - i. Each occupant shall wear a seat belt when the vehicle is moving.
 - ii. The driver shall have a valid driver's license from the State where he/she is a resident.
 - iii. All vehicles used for transportation are regularly inspected, utilize a checklist and correct any defect that could render the vehicle unsafe and/or inoperable.
 - iv. A vehicle inspection report, including an odometer reading, shall be completed following each trip. While on a trip the TS's will notify the command center/dispatch at every 100-mile marker.
 - v. The identities of all UAC and family members to be transported shall be verified through proper documentation procedures, with a call to the command center/dispatch for double verification.
 - vi. The driver shall drive defensively and take care to protect the UAC and FAMU's occupants and vehicle, obey traffic laws, and report damage or accidents immediately. If an accident occurs with the any UAC or FAMU in the vehicle, notify the COR.
 - vii. Staff shall place UAC and family members with special needs in transport vehicles that can best accommodate their particular needs.
- f. TS may escort the number of UAC and FAMU's permitted by the vehicle's rated capacity, adhering to ratios defined in this PWS outlined in § VIII (Policy), Paragraphs B and C.
 - i. Such escorts are permitted provided the TS shall not be involved in movement of the UAC or family outside the vehicle without other assistance.
- g. UAC and FAMU's shall not be transported in vehicles with detained adults except:
 - i. When being transported from the place of arrest or apprehension to a DHS office, or
 - ii. Where joint transportation would be operationally necessary.
 - iii. Where the first exception does not apply, and joint transportation is operationally necessary, UAC and FAMU shall be separated from adult detainees during transportation by vehicle. TSs shall take necessary precautions for the protection of the well-being of such UAC and FAMU when transported with adults.
 - iv. FAMU's, and UAC shall be separated from unrelated adult males by separate passenger compartments or an empty row of seats.
- h. While preparing UAC and FAMU's for transport, same-gender TSs shall be used to conduct a pat-down search of UAC and FAMU's when necessary. TSs shall conduct the search of a UAC and FAMU's of the opposite sex only in extreme circumstances, in the absence of same-sex TS and section XI.B.4.
 - i. When transporting UAC and FAMU's of the opposite gender, officers shall call into the command center/dispatch for their time of departure and odometer reading and then do so again on every 100-mile marker and upon arrival, to account for their time.

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- i. Pregnant female on their third trimester are limited to transportation by ground of not to exceed ten hours with frequent stops. If transportation exceeds 10 hours, transportation by auto or van is required, with frequent breaks.

j. Vehicle Operation

- i. UAC and families shall be transported in a safe and humane manner.
- ii. The Contractor shall:
 - a) Maintain the appropriate driver's license for vehicle (e.g. CDL for bus).
 - b) Assign TSs to maintain control of the vehicles at all times, including removing the keys from the ignition upon parking the vehicle.
 - c) Inspect each vehicle before and after use to ensure all items are cleared from the vehicle.
 - d) Follow state and federal vehicle regulations.
 - e) Refrain from texting or using mobile devices while operating the vehicle.
 - f) Exercise extreme caution, reduce speed, and use logic when negotiating a steep grade or while driving through inclement weather or on hazardous road conditions.
 - g) Avoid undesignated roads that would hinder emergency personnel from responding in a timely fashion.
 - h) Maintain proper temperature settings based on weather conditions.
 - i) Make sure all UAC and family members are wearing seatbelts and seated while the vehicle is in motion. For those instances in which a UAC or family member that requires a child safety seat (car seat or booster as required by Federal, state and local law), make sure the car seat or booster is properly installed and appropriate seat restraints devices are properly used and secure.
- i. Driving hours and number of occupants. There must always be two drivers, with at least one of the same gender as the UAC/FAMU. assigned for the trip.
- ii. Each TS shall recognize the limitations imposed by his/her own driving skills, personal distractions, environmental conditions, and modify his/her driving accordingly.
- iii. During frequent stops, which shall be kept to a minimum time, UAC and family members shall not leave the vehicle until the TSs have secured the area. When UAC and FAMU's are taken out of the vehicle, the TSs shall keep the UAC and FAMU's under constant observation to prevent external contact(s) and/or contraband smuggling. At least one TS shall remain in the vehicle with the rest of the UAC and FAMU's, if applicable.
- iv. All TSs shall strictly adhere to the following rules/restrictions:
 - a) Bus operators shall be in possession of a current valid CDL from the state in which they work;
 - b) TSs shall be off duty for the 8 hours immediately preceding any trip or trip segment;
 - c) TSs shall be restricted for transport duties to 10 hours, maximum, driving time (time on the road) per trip segment with 8 off-duty hours in-between segments; and
 - d) TSs shall be limited to 50 hours, maximum, driving time per work week with 70 hours, maximum, in any 8-day period;
 - e) UAC and FAMU's cannot exceed 12 hours in transport on a bus, except under exceptional circumstance and as approved by COR.
 - f) Transportation exceeding 12 hours shall be conducted via sedan or van, with frequent restroom breaks;
 - g) In accordance with Federal, state or local laws, car seats are required for infants and small children (those required to use booster/car seats not by age but rather by weight).

k. Staff Responsibilities

- i. Limit driving time to ten (10) hours in any 15-hour period.

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- ii. Drive only after eight (8) consecutive off-duty hours.
- iii. Do not receive transportation assignments after having been on duty, in any capacity, for 15 hours.
- iv. Drive a 50-hour maximum in a given work week of seven days; a 70-hour maximum during eight consecutive days.
- v. During emergency conditions (including bad weather), officers may drive as long as necessary to reach a safe area (i.exceeding the 10-hour limit).
- vi. Staff shall travel directly to and from the destination, making no detours or extra stops.
- vii. Staff shall return to the point of departure immediately if they feel there is a safety or security problem.

I. Vehicle Maintenance Responsibilities

- i. The Transportation Specialists will inspect the vehicle at the begin their ground transport.
- ii. The Contractor shall, on a monthly basis, inspect all vehicles for damage, contraband and cleanliness.
- iii. The Contractor shall check and fill gas tanks, add oil and coolant as needed.
- iv. Annual inspections shall also be coordinated by Contractor Fleet Operations.

5. Air Transport

The contractor shall provide air transport as follows:

- a. The Contractor may employ the best means of transportation for the current circumstances (e.g., commercial air transport, charter air transport, etc.). Charter flights are approved by the COR.
- b. The Contractor shall be responsible for all flight bookings, itineraries, routing, and associated bookings (e.g., hotel, rental car) for both the TS and escorted UAC or FAMU's.
- c. The Contractor shall invoice ERO on a monthly basis for all transports completed in the preceding month. Cost of airfare and other transport-specific costs (e.g., cab fare, hotel room) shall be billed separately from the escort and be at cost.
- d. Domestic daily flights may be to single or multiple destinations, normally with a maximum of 8 hours of flight time scheduled per day. Any special requests to exceed the 8 hours shall be approved in advance by the COR.
- e. To facilitate flight planning, schedule requirements typically will be provided to the Contractor no later than 24 hours prior to the initial departure time of a flight. In the event of an emergent requirement that necessitates a transport in less than 24 hours, the Contractor shall make every effort to comply.
- f. Occasionally, when directed by the COR, the following may be required for domestic flights:
 - i. TS augmentation to permit longer flights or travel itineraries.
 - ii. TSs remaining overnight.
 - iii. Obtaining special equipment for the boarding and deplaning of special needs passengers.
 - iv. Charter flights

F. Snacks and Meals

- 1. At least three meals a day shall be provided to the UAC and FAMU's.
 - a. The quantity of food served shall meet minimum daily requirements as recommended by the United States Department of Agriculture, unless otherwise recommended in writing by a licensed physician, certified nurse practitioner or licensed physician's assistant for a specific UAC and FAMU's and be reasonable in cost.
 - b. Additional portions (seconds) of meals shall be available for the UAC and FAMU's.

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- c. Each meal shall contain at least one item from the dairy, protein, fruits and vegetables, and grain food groups, unless otherwise recommended in writing by a licensed physician, certified nurse practitioner or licensed physician's assistant for a specific UAC and FAMU.
 - d. Dietary alternatives shall be available for a UAC and FAMU who has special health needs, religious beliefs regarding dietary restrictions or vegetarian preferences.
2. Withholding or forcing of food is prohibited.
 - a. The Contractor may not withhold meals or drink as punishment.
3. TSs shall provide meals and snacks during the transport of UAC and FAMU's
 - a. TSs shall consider when the last meal was provided when serving meals to UAC and FAMU's, to compensate for time-zone changes and transport restrictions (e.g., when food will be unavailable during a flight of three (3) hours or more, the UAC needs to be provided meals prior to and after the flight). Contractor should be conscious of duration of escort.
 - b. Snack and drinks should be available regardless of the time in custody.
4. The Food Service standard applies to food served in transit.
 - a. Meals shall satisfy the nutritional requirements in accordance with the United States Department of Agriculture, unless otherwise recommended in writing by a licensed physician, certified nurse practitioner or licensed physician's assistant for a specific UAC.
 - b. All special dietary needs shall be identified prior to the transport.
5. The TSs shall observe safe-handling procedures at all times.
 - a. In transit, the food shall be stored and served at required temperatures, maintain personal hygiene, and meet all sanitation requirements.
 - b. For ground transports, there shall be a constant supply of drinking water in water containers, along with paper cups.
6. The Contractor's sending office shall be responsible for monitoring the condition and routine cleaning/sterilizing of the water containers, basins, latrines, etc. in vehicles in order to adhere to the Food Service standard.
7. In the event of an emergency or upon direction by the COR when meals were not provided by the Contractor's sending office, the TSs may purchase meals from a commercial source. Receipts shall be saved and submitted to local invoicing department within their site office.

G. Issuing Clothing and Other Articles

1. At times, circumstances of the encounter do not allow for articles of clothing or footwear to be brought with the UAC or FAMU's. If a UAC or FAMU does not have shoes or clothing, families can drop off clothing or a non-governmental organization (NGO) can donate items to the Contractor for use by the UAC or families when needed.
2. In circumstances in which a UAC or FAMU is unable to obtain appropriate clothing and footwear through family or NGO sources, the Contractor shall provide appropriate attire for each UAC and family member, according to the following stipulations:
 - a. Temperature appropriate undergarments, shirt, pants, socks and sneakers. Outer wear in the form of a light jacket or long sleeve sweatshirt shall be provided between October 1 and April 1. When the UAC or family is traveling to a cold climate area, the above timelines may be adjusted by the Contractor as necessary.
 - b. The Contractor shall be required to maintain or have immediate access to sufficient inventory to accommodate projected transports for the coming week, based on ICE-reported projections.
 - c. The Contractor shall maintain or have immediate access to sufficient provisions in inventory to accommodate any influx of UAC or families or other unexpected increase in transports.
3. For transport, the Contractor shall issue to each UAC and FAMU a travel kit (adjusted for families) including the following toiletries and personal hygiene items:
 - a. 1 toothbrush
 - b. 1 travel-sized tube or 0.28oz of toothpaste

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- c. 1 comb or brush
 - d. Deodorant
 - e. lip balm 1/57oz
 - f. Sanitary Pads
4. Personal travel kits shall also include a sufficient quantity of the following items depending the UAC and FAMU's age.
- a. diapers
 - b. wipes
 - c. diaper rash ointment
 - d. infant formula (milk)
 - e. bottle
 - f. pacifier
 - g. baby blanket

H. Transfer of Funds, Valuables, and Personal Property

1. In accordance with Admission and Release, Funds and Personal Property and Transfer of Residents, every UAC and FAMU shall be transferred with their funds, valuables, and personal property.
2. The I-216 Manifest should include property receipt numbers for the UAC and family's property. The TS is responsible for verifying the manifest against the property prepared for the transport.
3. In the event that a UAC and FAMU claims to be missing funds, valuables or personal property, the UAC and FAMU shall remain at the staging/holding area until the completion of the required paperwork (SF-95 and I-387 or comparable forms). Photocopies of the completed forms shall be sufficient documentation for the transfer to proceed.
4. UAC and families are allowed to keep the following items on their possession:
 - a. Contact phone numbers;
 - b. Money (paper currency); coins should be placed in property;
 - c. Eyeglasses and contact lenses;
 - d. Receipt from money and property (G-589, I-77);
 - e. Small religious items.
5. If any of these items would compromise the TS's or UAC' and FAMU's safety, TSs have the discretion to place the items in the UAC and FAMU's personal property.
6. UAC and families shall not have access to personal property while in transit to the transfer location.
7. Prior to transfer, the Contractor shall provide to the receiving care provider any significant information received or significant incident reports that occurred after the transfer request was sent, so that the placement may be re-evaluated, if needed.
8. The TSs shall submit to the care provider the following documentation and items (as applicable), which accompany each UAC and FAMU at the time of transfer:
 - a. UAC and FAMU's personal belongings including clothing, money, valuables, and items obtained during the UAC and FAMU's stay at the referring care provider;
 - b. Medication supply, if applicable;
 - c. Transfer Request and Tracking Form;
 - d. Copy of the UAC and FAMU's entire case file including all documents from any prior placements, any family reunification documents, and all original documents (e.g., birth certificates).

I. Office Sites

1. **Contractor Office Sites (C-Sites)**
 - a. Contractor Office sites (C-sites) shall have the following features/amenities:
 - i. Accessibility to Public Transportation
 - ii. Proximity to an ERO Office or Sub-Office
 - iii. Parking available for the COR(s) on an as-needed basis.

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- iv. Office space available to the COR(s) and ACOR for interviews or other specific tasks, the Contractor shall not be required to provide office furniture or computer equipment.
 - v. Access to offices, vans or buses cameras
 - vi. GPS tracking devices and not limited to any tracking/monitoring of the UAC or FAMU equipment.
- b. The Contractor is responsible to provide their own offices/office space adequate for their personnel, vehicles, and equipment at each of its designated C-sites operational locations under this contract.
 - c. Office(s) space shall be obtained by the Contractor. The Contractor shall be responsible for the maintenance, janitorial service, upkeep, repair and utilities.
 - d. The office should have a waiting area and restrooms. Shower facilities are not required to be at the C-site staging area; however, the contractor must provide or have access to shower facilities if the UAC/FAMU is not showered by CBP prior to transport.
 - e. The Contractor shall provide the COR with written certification that the office/office space complies with state and local emergency and safety codes prior to beginning work under this contract.
 - f. The Contractor shall enforce a tobacco-free environment in all of its offices. Each Contractor site shall have sufficient Contractor-owned vehicles (COVs) available 24 hours a day to meet contractual requirements
 - g. The C-site offices staff shall include at minimum, Site Manager, Logistic, Command Center/dispatch, sufficient Transport Specialists (TS), to meet the contractual requirements, and an Administrative Assistant. Any deviations are subject to discussion with and approval by COR.
 - h. The C-site Office in McAllen provides the allotted time to meet the 72-hour legal mandate to place UACs in shelters. The location of the office shortens the distance to the RGV Border Patrol Sector Centralize Processing Center and provides quicker transport times. The office will require a command center or dispatch with Travel Analysts and Travel Analysts Supervisor(s). The command center Travel Analysts and any other personnel can increase depending on the workload with activity of the UAC and FAMU and approval of the COR. See revised PWS
 - i. -
 - i. The Site Manager for each office shall ensure that the C-site has appropriate coverage at all times to fulfill all requirements of this contract.
 - j. C-Site staffing ratios shall be based on the active UAC and FAMU populations utilizing a 30-day moving average based on written data provided by the COR when requested by the Contractor.
 - k. The Contractor shall provide its staff with all IT equipment and networking at its own facilities.
 - l. The Contractor shall maintain an aesthetically appealing office that reflects positively on DHS ICE and is appropriate for the community area in which it is located.
 - m. When accessing information and applications behind the DHS and ICE firewalls, the Contractor shall ensure that its operations under the ERO contract comply with all applicable DHS and ICE Office of the Chief Information Officer (OCIO) requirements.
 - n. The Contractor shall affirmatively demonstrate through appropriate documentation that occupancy meets all applicable Federal, state and local licensing requirements.

J. Emergencies

- 1. The Contractor shall create an emergency preparedness plan.
- 2. The Contractor shall include in its emergency preparedness plan (e.g., Continuity of Operations Plan, Disaster Recovery Plan):
 - a. Written evacuation and alternate staging procedures for use in event of fire, flood, severe weather or any other similar emergency, or should a C-site facility become unfit for its intended use for any period of time.
 - b. Written back-up procedures for IT systems used to support continuity of operations during an event
- 3. The Contractor shall review its plans annually, update as necessary, and reissue to the local fire marshal and the COR, as well as ensuring awareness of the plan and procedures by the staff.

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4. Emergency Situations

- a. The Contractor shall establish a written procedure for TSs to follow during an en route emergency, as well as the Contractor shall notify the COR of an emergency immediately or within one (1) hour of the incident.
- b. If an emergency occurs notify the COR. COR will reach out to ICE/ERO office,
- c. If a situation is life-threatening, the TSs cannot afford to wait while calling their site-manager and COR, the TSs should take immediate action. Procedures shall include the following scenarios:

i. External Attack

- a) If attacked, the transporting TSs should request assistance from the nearest law enforcement agency, continuing to drive until the vehicle is incapacitated.
- b) The TSs should do everything possible to protect the safety of everyone in the vehicle.

ii. Hunger Strikes

- a) Any UAC and FAMU's observed or known to have missed three consecutive meals, or four meals in any two-day period, or any child who states his/her intention to no longer eat, will be considered to be on a hunger strike.
- b) The Contractor shall advise COR immediately or within one (1) hour of known incident.

iii. Escape/Attempted Escape

- a) If a UAC or family member escapes, the TSs shall not jeopardize the security and accountability of the other UAC and family members being escorted by chasing the escapee. One TS will make every attempt to find the UAC or FAMU, so long as the other UACs and family members are monitored/secured by a TS and the COR is notified. The COR will notify the nearest ICE/ERO office to assist, providing the escapee's name, A-number, height, weight, type of clothing, and direction of flight, if known. The contractor notifies and relays information to the local law enforcement agency or airport PD.
- b) The TSs should wait for assistance, under no circumstance using the vehicle to pursue the escapee. While waiting, the TSs should begin to prepare a written report of the escapee and/or attempted escape.
- c) The Program or Site Manger will request an incident report from TSs. Site Manger will provide an incident report to the COR immediately or within one (1) hour of known incident.

iv. Hostages

- a) If a hostage situation occurs on board the vehicle, one TS should secure the vehicle perimeter; the other dials 911 and notifies the local law enforcement agency of the situation. Also, the Contractor shall notify the COR as soon as safely possible.
- b) The TS should make every effort to determine who is involved and whether armed, relaying all circumstances to the local law enforcement agencies. Under no circumstance shall TS bargain with or take orders from a hostage taker(s).
- c) The TSs should hold all UAC and families on board until help arrives, assuming the hostage taker(s) allow non-participants to be removed from the area. Regardless of demands, the TSs shall not allow hostage taker(s) off the bus, with or without hostages.

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- d) The TSs shall not take any action to remedy a hostage situation, especially one that would involve use of force. The TSs shall follow the instructions of local law enforcement, which shall include cooperating with other law enforcement agencies and notify the COR of the situation.
- e) A hostage situation shall effectively cease the transportation assignment because of the need to interview witnesses, examine the crime scene, etc. The TS should receive instructions on how and where to precede once the hostage situation is resolved.
- f) The TS's notes should include participants, witnesses, action taken, etc.

V. Illness

- a) If a UAC or family member becomes ill while in transit, but the illness is not serious, the TS shall take appropriate action and alert the site-manager. The site-manager will alert the COR to provide guidance on how to handle the situation.
- b) If the illness requires immediate medical treatment, (e.g., heart attack, loss of consciousness) the TS should request assistance from the nearest emergency service and local law enforcement agency.
- c) The Contractor will prepare procurement paperwork and make arrangements for hospitalization, security, etc.

vi. Death

- a) If an alien dies while in transit, TSs should notify the COR. The COR will notify the originating and receiving office as soon as possible, and follow the procedures specified in the Residential Standard on Terminal Illness, Advance Directives, and Death.
- b) The closest ICE/ERO office shall coordinate with other agencies including the coroner, required to be on the scene when the body is removed from the vehicle. This shall take place in the State where death occurred. The Residential Standard on Terminal Illness, Advance Directives, and Death specifies the procedures with which the TSs shall comply.
- c) An incident report will be required to the COR immediately or within one (1) hour of known incident.

vii. Fire

- a) In case of a fire in or on the vehicle, the TS shall stop and evacuate the vehicle immediately. The TSs should use the on-board equipment to attempt to stop the fire.
- b) If necessary, the TSs shall request assistance form the local fire department and law enforcement agency.
- c) If the fire requires the occupants' evacuation of the vehicle, the TS's are responsible for maintaining accountability while removing the UAC and families in an orderly fashion.
- d) Notify the COR and incident report will be required immediately or within one (1) hour of known incident.

viii. Riots

- a) If a riot, fight, or any disturbance occurs on the vehicle, the TS will order the UAC or FAMU to cease and the driver shall attempt to move the vehicle to the side of the road.
- b) If necessary, the crew shall request assistance from the local law enforcement agency.
- c) Efforts should be made to determine the instigators, number of residents involved, names and A-numbers.
- d) When sufficient assistance is available, the Transportation Specialists shall Attempt to regain control, using only as much

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force as necessary. TSs may not enter the passenger area bearing arms.

- e) TS's will notify their site-manager and the COR.
- f) Incident Report will be required immediately or within one (1) hour of known incident.

ix. Traffic Accident

- a) In the event of a traffic accident, involving the transport vehicle, the TS shall obtain medical assistance for any UAC and FAMU who may be injured, by requesting assistance from the nearest emergency service and local law enforcement agency. The Contractor shall assume responsibility for UAC and FAMU's and prepare paperwork and make arrangements for hospitalization, security, etc.
- b) As part of the policies and SOP's, the Contractor shall establish written procedures for transporting assignments involved in traffic accidents.
- c) Notify the COR and an incident report is required.

X. Vehicle Failure

- a) Should any transport vehicle become inoperable during an operations, the Contractor must notify the COR immediately and or the command center/dispatch if the disruption will interfere with the timely transport of the UAC and/or FAMU.

Xi. Natural Disasters

- a) As part of the policies and SOPs, the Contractor shall establish written procedures for Transportation Specialists to follow when there is severe weather or a natural disaster. Procedure should be made available to the COR upon request.
- b) TS's shall identify information of importance to transport during the evacuation, including information on each UAC and family member (identifying any health information, including allergies and prescription medications), a photo of each UAC and family member, information on each UAC and family potential sponsor, and important telephone numbers. This information shall be maintained in one notebook for prompt evacuation in the event of an emergency.
- c) Items of importance to transport during the evacuation, including medications taken by any UAC and family member, and any other items that are essential to the well-being of any individual or group of UAC or families.

xii. Transporting UAC and Families with Special Needs

- a) In the event that a UAC or FAMU's with special needs shall be transported, the Contractor will contact the COR to seek assistance from ORR as they can identify the appropriate staff that is licensed to handle special needs.
- b) If a UAC or FAMU is encountered with a caregiver, the caregiver should oversee the care and needs of the UAC or FAMU until the COR can determine the appropriate action. See Caregiver definition in part 2 of this document.
- c) As these cases can be delicate, the Contractor is expected to notify the COR immediately.

5. Reportable Incidents

- a. The following incidents are immediately reportable to the appropriate supervisor and the COR
 - i. A death of a UAC or FAMU,
 - ii. A physical act by a UAC or FAMU to commit suicide,

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- iii. An injury, trauma or illness of a UAC or FAMU requiring inpatient treatment at a hospital,
 - iv. Any injury, trauma, or illness of a UAC or FAMU requiring outpatient treatment at a hospital,
 - v. A violation of a UAC or FAMU's rights,
 - vi. Intimate sexual contact between UAC or FAMU, consensual or otherwise,
 - vii. Escape of a UAC or FAMU,
 - viii. Abuse or misuse of a UAC or FAMU's funds,
 - ix. An outbreak of a serious communicable disease, or
 - x. An incident requiring the services of the fire or police departments.
 - xi. Upon Request of COR on any other types of incidents.
- b. Procedure
- i. The TS shall report, orally and then in writing, to the appropriate supervisor and COR immediately when:
 - a) a fire requiring the relocation of UAC or FAMU
 - b) an unexpected death of a UAC or FAMU
 - c) a UAC or FAMU who is missing from any staging site or transport vehicle if police have been notified.
 - ii. The Contractor shall initiate an investigation of a reportable incident immediately following the report of the incident and shall complete the investigation within a reasonable time.
 - iii. The Contractor shall submit a final reportable incident report to the agency immediately following the conclusion of the investigation.
 - iv. The COR will keep a copy of the reportable incident reports on file.

K. Medical Issues and Medication

1. Medical Issues

- a. All UAC and FAMU's are required to have a recent medical summary. If it is determined that a medical summary has not been prepared, the TS shall contact the COR. If the COR directs continued transport, then the TS shall provide a copy of that direction into the files.
- b. UAC and FAMU's who are transferred to the Contractor with a medical prescription but no medication for the duration of the transfer shall have access to the medication prior to transferring to ORR or FRCs. If a UAC or FAMU's requires medication to be dispensed, coordinate with the COR for guidance. TS shall contact the COR to determine how or if to transport.
- c. In the event that a UAC or FAMU requires immediate medical attention, contact emergency personnel. Notify the site-manager and COR within one (1) hour of the incident.
- d. Basic medical supplies such as a thermometer and first aid kit shall be available during transport.

2. Medication

- a. Generally, TSs should not administer medication. If a UAC or FAMU's requires medication to be dispensed, coordinate with the COR for guidance.
 - b. Medications or prescriptions should be attached to the I-216 manifest.
 - c. Notation of medication should be included in the manifest comments and COR notified if any medication was administered.
 - d. Reserved
- e. Storage of Medications
- i. Prescription and over-the-counter medications shall be kept in their original containers.
 - ii. Prescription and potentially poisonous over-the-counter medications shall be kept in an area or container that is locked.
 - iii. Prescription and potentially poisonous over-the-counter medications stored in a refrigerator shall be kept in a separate locked container.

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- iv. Prescription medications shall not be stored with over-the-counter medications.
- v. Prescription and over-the-counter medications shall be stored under proper conditions of sanitation, temperature, moisture and light.
- vi. Discontinued and expired medications and prescription medications for UAC or families who are no longer in transport, shall be disposed of in a safe manner.

f. Labeling of Medications

- i. The original container for prescription medications shall be labeled with a pharmacy label that includes the UAC or FAMU's name, the name of the medication, the date the prescription was issued, the prescribed dosage and the name of the prescribing physician.
- ii. Over-the-counter medications shall be labeled with the original label.

g. Use of Prescription Medications

- i. Prescription medications shall be used only by the UAC or FAMU for whom the medication was prescribed.
- ii. Contractor will notify the COR immediately whenever medication is not administered to the right UAC and, or FAMU.

h. Medication Log

- i. A medication log shall be kept including the following for each UAC and FAMU:
 - a) A list of prescription medications
 - b) The prescribed dosage
 - c) Possible side effects
 - d) Contraindicated medications
 - e) Specific administration instructions, if applicable
 - f) The name of the prescribing physician
- ii. For each prescription and over-the-counter medication including insulin administered or self-administered, documentation in the log shall include the following:
 - a) the medication that was administered,
 - b) dosage,
 - c) date,
 - d) time, and
 - e) the name of the person who administered or self-administered the medication.

This information shall be logged at the same time each dosage of medication is administered or self-administered.

i. Medication Errors

- i. Documentation of medication errors shall be kept in the medication log.
- ii. Medication errors include the failure to administer medication, administering the incorrect medication, administering the correct medication in an incorrect dosage or administering the correct medication at the incorrect time.
- iii. After each medication error, follow-up action to prevent future medication errors shall be taken and documented.
- iv. Notify the COR of the medication error

j. Adverse Reaction

- i. If a UAC or FAMU has a suspected adverse reaction to a medication, the TS shall notify COR immediately. Documentation of adverse reactions and the physician's response shall be kept in the UAC or FAMU's record.

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k. Emergency and Health-Threatening Situations

- i. TSs shall be knowledgeable in how to handle emergency and nonemergency conditions. They may be required to assess immediately and provide a direct response to an emergency situation, such as an allergic reaction or respiratory arrest. They also need to know how to access regular medical support. TS are required to request assistance from the nearest emergency services. Basic medical supplies such as a thermometer and first aid kit shall be available during transport.

l. Self-Administration of Medications

- i. A UAC or FAMU is permitted to self-administer medications, insulin injections and epinephrine injections for insect bites, if the following requirements are met:
 - a) The UAC or FAMU recognizes and distinguishes the medication and knows the condition or illness for which the medication is prescribed, the correct dosage and when the medication is to be taken.

1. Special Populations

1. Transportation/Travel with Regard to Health
 - a. UAC or FAMU's who have serious physical or mental health issues or have had exposure to a communicable disease shall not be transferred or moved until they have been medically cleared by a health care professional.
 - b. For communicable diseases, if an UAC or FAMU shall be moved from a facility and/or an isolation area, a mask should be worn by the UAC or FAMU at all times and Universal Precautions shall be implemented. An emergency vehicle should be employed if exposure is undetermined.
 - c. Prior to any travel by plane and/or bus, documentation shall be provided that demonstrates that the UAC or FAMU in question has been medically cleared.

L. Behavior Management

1. The Contractor shall develop a behavior-management plan that shall include management techniques for transporting UAC and FAMU's. This shall include positive incentives such as providing video games, or movies that have ear phones and are age appropriate, as well as a list of rules and age-appropriate consequences for violation of these rules.
2. All UAC and families shall be treated fairly and equitably. Prior to administering consequences, the Contractor shall carefully assess the following circumstances:
 - a. The seriousness of the offense,
 - b. The UAC or FAMU's age,
 - c. The frequency of misconduct
 - d. The UAC or FAMU's attitude.
 - e. The potential effect of the misconduct on the transport environment.
3. The following management techniques may be used, alone or in combination, for behavior incidents arising during transport:
 - a. Verbal (oral or written) correction,
 - b. Cooling-off time or "time-out,"
 - c. Seating changes during transport,
 - d. Removing positive reinforcement items,
 - e. Removal from transport (with referral to the local FOJC for further action).
4. When transporting special needs UAC and FAMU's, staff shall be advised prior to transport of any additional inappropriate management techniques.
5. UAC and families shall be advised of the behavior management system prior to beginning of the transport.

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M. Use of Restraints

The use of restraints should be on strict case by case basis and not as a general practice. UAC or FAMU shall not be restrained during transport unless there is evidence or a perceived threat of violent behavior or other reason to believe the UAC or FAMU is an escape risk. All UAC and FAMU must be treated with courtesy and respect. In the event that use of restraints seems warranted or is recommended by TS, the Contractor shall contract the COR immediately.

1. Handcuffing exceptions:
 - a. Juveniles. Do not handcuff juveniles during transport unless there is evidence or a perceived threat of violent behavior, a history of criminal activity, or other reasons to believe the detainee is an escape risk. Consider size, age, gender, and comprehension level when considering the use of restraints on juveniles. Treat all juveniles with courtesy and respect, but do not sacrifice or compromise security to do so.
 - b. Family Units. As a rule, do not handcuff family units during transport unless there is evidence or a perceived threat of violent behavior, a history of criminal activity, or reason to believe the alien is an escape risk.
2. Full Restraints exceptions:
 - a. Juveniles. If its is necessary to use restraints on a UAC, always consider size, ae gender and comprehension level when considering the type of approved restraints to apply Juveniles under 12 years of age will never be placed in full restraints. As a rule, full restraints should never be used on minors over the age of 12 unless they are actively presenting combative behavior and there is articulable evidence that suggests violent behavior is imminent, or very likely to occur, or the juvenile has history of criminal history and/or a history of escape such that safety and security would be compromised. The use of full restraints on a UAC must be approved by the COR in all cases. The use of restraints on a UAC must be fully documented with an after action report. UAC who are pregnant will never be placed in restraints, unless deemed to pose a threat of harm or escape.
 - b. Family Units, Do not use full restraints on family units during transport unless there is evidence or a perceived threat of violent behavior, a history of criminal activity, or other reasons why you believe they are an escape risk or presenting combative behavior that would jeopardize a safe and secure transport. The use of restraints on a UAC must be fully documented with the after-action report.

N. Confidentiality

1. The Contractor is prohibited from using or redistributing any ICE information except as specified in the contract.
2. Neither the Contractor nor any contract personnel shall discuss or release any information about the UAC and FAMU or the UAC's or FAMU's case with anyone other than ERO and ORR.
3. The Contractor shall not discuss or release any information about the UAC or family members, or any information related to the UAC or family's immigration case, legal stage, case management, or health/medical information with the UAC or family's legal representative or any other individual external to ERO or ORR. All questions from UAC's attorneys should be referred to ERO.
4. The Contractor shall encrypt and/or password-protect all email transmissions containing UAC case information and other sensitive data that is deemed to be Personally Identifiable Information (PII) and/or Sensitive Personally Identifiable Information (PII).
 - a. Current ICE policies and regulations state that any email correspondence with outside entities (to include Contract personnel) containing PII or Sensitive PII shall be encrypted.

O. Legal Counsel

1. The Contractor may allow official legal counsel retained by any UAC or family member or a family into the Contractor office waiting area, provided they are not soliciting for business or causing a disruption.
2. The Contractor shall not permit legal counsel to attend face-to-face meetings between a UAC or family, while in transit.

P. Media / Media Inquires

1. The contractor will not answer any media inquiries.
2. If the Contractor receives a media request, they will notify the COR to advise ICE Public Affairs Office (PAO)
3. If TS's encounter a reporter, TSs will respectfully let the reporter know to contact ICE. No other information will be given to media reporter.

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4. For inquiries regarding UAC & FAMU or ICE's usage of this agreement, there shall be no public disclosures regarding this agreement made by the Contractor (or any subcontractors) without review and approval of such disclosure by ICE.

Q. Records Management

1. The Contractor shall operate a records management process that addresses, at a minimum, the following:
 - a. Case Record Management
 - i. The Contractor shall develop, maintain, and safeguard individual UAC and family case records at the Contractor's operational location.
 - ii. The Contractor shall develop a system of accountability that preserves the confidentiality of records and protects records from unauthorized use or disclosure.
 - iii. The Contractor shall verify that all official documents accompanying UAC and families are complete and accurate so that they precisely identify the UAC or family.
 - iv. Original travel and identity documents (e.g. visas, passports) shall be maintained by ICE.
 - v.
 - b. Case Records
 - i. Case records shall include all information provided by ICE to the Contractor and may include the following, as applicable:
 - a) Name
 - b) Alien Registration Number
 - c) Enforce Alien Removal Module (EARM) Subject ID Number
 - d) Country of Citizenship
 - e) Date of birth
 - f) Relevant biographical UAC or FAMU information
 - g) Orientation and enrollment forms
 - h) Written change requests
 - i) Copy of immigration release paperwork
 - j) Case information from the referral source
 - k) Individual service plans and case notes
 - l) Progress reports
 - m) Program rules and disciplinary policies
 - n) Copies of disciplinary actions
 - o) Referrals to other service agencies
 - p) Copies of identification documents; (e.g., driver licenses, identification cards)
 - q) Copies of immigration court paperwork (as applicable)
 - r) Copies of travel documents (as applicable)
 - s) Reported Employment Information
 - t) Transfer-of-Custody or Termination Forms
 - c. Time-Date Stamp Requirement
 - i. Any system that the Contractor uses for updating UAC and FAMU records including, but not limited to, those listed above in this section shall satisfy the requirement that relevant changes or updates be date-stamped, preferably with an automated, system-generated time-stamp.
 - ii. All previous time-stamps shall be preserved and visible next to each sequential update or change with the most recent update annotated (e.g., by highlighting the most recent time-stamped revision).
 - d. Grievances
 - i. As part of the policies and SOP's the Contractor shall develop procedures for reporting and handling grievances.
 - ii. All formal grievances shall be reported to the COR immediately.

R. Reports

1. Custom or ad hoc reports may be requested from the Contractor as needed. Such reports are expected to be generated within two business days, unless another timeframe is agreed upon in writing by the COR and the Contractor.
2. Real-time access to live data will be provided to the COR and his/her designee
3. Trend analysis and other dashboards will be developed at the direction of the COR

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4. Recurring reports will be required at regular intervals and may change as necessary to meet operational needs.
 - a. The interval for reports may be daily, weekly, monthly, quarterly or yearly.
5. The following list delineates possible standard reports/notifications that will be regularly provided by the Contractor. The COR and Contractor will meet to determine the standard package of required reports.
 - a. Custom Reports on Demand / Ad Hoc Reports
 - i. These requests shall come from the COR or the Alternate COR, as necessary according to operational need.
 - ii. Notification of Confirmed Birth or Pregnancy Termination
 - a) Once a UAC or family member makes a claim and provides medical documentation of a birth or pregnancy termination, a notification should immediately be made to COR via e-mail.
 - b) This notification should include the following data elements:
 - 1) Mother's Last Name
 - 2) Mother's First Name
 - 3) Baby's Last Name
 - 4) Baby's First Name
 - 5) Mother's A-Number
 - 6) EARM Subject ID
 - 7) AOR
 - 8) Date of Confirmed Pregnancy
 - 9) Expected Due Date (if known)
 - 10) Name, address, telephone and relationship to child's father (if known)
 - b. Daily/ Weekly/ Quarterly and Yearly Reports
 - i. Transport Report
 - a) For each transport conducted, the Contractor shall provide the following information:
 - 1) Number of UAC and/or family members transported
 - 2) Demographic of UAC:
 - i. Age,
 - ii. Gender,
 - iii. Citizen of Country (COC)
 - 3) A-number
 - 4) Number of escorts.
 - 5) Date/time of ORR placement
 - 6) Date/time of contractor took custody of minor
 - 7) Date/time of contractor turned over custody to ORR
 - 8) Origin & Destination
 - 9) Number of required hours of transport
 - 10) Any changes to the transport due to data/placement/communication error, illness etc. all data changes are maintained to ensure accurate tracking of time frames.
 - ii. Emergency Reports
 - a) Emergency Reports shall be generated within one (1) business day of an established event unless stated sooner within this PWS.
 - b) The following events require an Emergency Report:
 - 1) Escapes/attempted escapes not resolved within 24 hours
 - 2) Death, Hospitalization or Serious Medical Condition
 - 3) Suicide attempt
 - 4) Sexual abuse or assault
 - 5) Suspected abuse or neglect
 - 6) Suspected violation of a restraining order
 - 7) Police Contact
 - 8) Inappropriate conduct or behavior between contract staff and alien
 - 9) Contacts or threats by individuals believed to represent alien smuggling syndicates or organized crime
 - 10) Media Interest

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- c) Emergency Reports shall include the following information:
 - 1) Program Location
 - 2) Biographical Information
 - i. A-Number
 - ii. EARM Subject ID
 - iii. Date of Birth
 - iv. Phone Numbers
 - v. Address
 - vi. Employment information
 - vii. Photo
 - viii. Height
 - ix. Weight
 - x. Vehicle information
 - xi. Personal Contacts
 - 3) Immigration history, current legal stage, and any known criminal history or gang affiliation
 - 4) Previous emergency report dates and types
 - 5) Narrative of Incident
 - 6) Actions taken to resolve
 - 7) ERO Notifications, including:
 - i. Dates
 - ii. Times
 - iii. Recipients
 - 8) Any known media interest
- iii. Summary of Emergency Reports Issued
 - a) This is a weekly report containing all of the emergency reports
- c. Weekly Reports
 - i. Daily Trip Log Details
 - a) Time from placement to pick up
 - b) Time from when contractor picked up and transported
 - c) UAC and family members escort
 - 1) Name
 - 2) A-number
 - 3) Subject ID
 - 4) DOB
 - 5) Gender
 - 6) COC
 - d) Escort
 - 1) First Name
 - 2) Last Name
 - 3) Gender
 - e) Origin & Destination
 - 1) City and/or Facility
 - 2) Miles traveled
 - ii. Weekly Roll-up:
 - a) Total number of UAC and FAMU's escorted
 - b) Total number of contract staff escorting UAC and/or FAMU's
 - c) Total number of trips
 - iii. Daily and weekly totals, by transport, delineating the following information:
 - a) Number of UAC transported
 - b) Demographic of UAC and FAMU's:
 - 1) Age
 - 2) Gender
 - 3) COC
 - c) A-number
 - d) Number of escorts
 - e) Origin & Destination
- d. Monthly Reports
 - i. Transport Document Report
 - ii. Billing Report

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- iii. Monthly Program Progress Report, which shall include the number of grievances filed with the Contractor by reporting month, year to date, and since program inception, and any steps taken to resolve such grievances.
 - iv. Contractor's personnel roster that includes, at a minimum:
 - a) Full name of personnel
 - b) Personnel's official job title (e.g., Program Director, TS)
 - c) Date of hire
 - d) Date of assignment to ERO contract
 - e) Training status
 - f) Date removed/terminated from ERO contract duties
 - g) TS-to-UAC ratio (by location and overall program)
 - v. JFRMU Transportation report (Offerors shall use Attachment 10.- transportation monthly report template): the monthly data submission and report for this contract will include, at a minimum, the information for each air and/or ground transportation mission in each tab of the JFRMU Transportation template. (see Attached Excel file). A separate file will be submitted that indicates a breakdown of billable hours with personnel divided into Air Escort Hours and Ground Escort Transportation Hours. This data report and the data submission will be emailed to the COR monthly upon invoice approval for the applicable time period. Data captured in the submission will be within the approved invoice period. Upon award, the Government will work with the contractor to update the JFRMU Transportation template to improve data submission efficiencies. All changes will need to be approved by the COR. The Government reserves the right to, after award, provide an updated file or template to fix issues, expand capabilities and improve performance of the file.
- e. Annual Reports
- i. At the conclusion of each period of performance, the Contractor shall prepare an annual report
 - ii. Information for the annual reports shall address, at a minimum:
 - a) Program expectations compared to actual function in the previous 12 months
 - b) Significant events
 - c) Performance measures, such as percentage of successful transports of UAC and families, as well as escapes or absences without permission, media issues, necessary administrative changes, and fiscal issues
 - d) Recommendations for program improvement
- f. ERO/Contractor Meeting Minutes
- i. The Contractor's representatives shall meet with the COR and on a regular basis, as determined by COR.
 - ii. Meetings shall provide a management-level review and assessment of Contractor performance, and a discussion/resolution of any program issues. A mutual effort shall be made to resolve all identified problems or issues.
 - iii. The Contractor shall prepare written minutes of the meetings and shall submit the minutes within five (5) days for COR review and approval. Upon COR approval, the Contractor shall distribute copies to all attendees

S. Records Retention

- 1. The Contractor shall provide written plans, policies, and procedures that describe the format and reporting criteria for all records and reports.
- 2. The Contractor shall maintain all logs and records required to execute and document the operational and managerial aspects of this program in compliance with the requirements of this contract.
- 3. All logs and records shall be maintained at the Contractor's office (or, as applicable, the ICE ERO office) in locked cabinets within the administrative area.
- 4. All Contractor personnel assigned to perform duties under this contract shall be trained in and comply with ICE Records Management policies and procedures.

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5. All records are subject to inspection and review by the COR at any time during the term of the contract or thereafter. All reporting requirements contained within this contract shall comply with this section.
6. The Contractor shall not destroy or alter any logs or records pertaining to this contract.
7. At the completion or termination of this contract, the Contractor shall submit all logs and records to ICE ERO as directed by the COR.

T. Required Insurance and Liability Coverage

Prior to performance of any services, the Contractor shall procure and shall maintain during the entire contract period of performance the following insurance coverage:

1. *Liability Insurance.* The Contractor shall maintain, or cause to be maintained at its sole expense, bodily injury and property damage liability insurance.
2. *Insurance Certificates.* Within thirty (30) days of award, within five (5) days prior of an option scheduled to be exercised, and one (1) day after being adjusted or revised, Contractors shall submit copies of insurance certificates and certify that the required insurance coverage shall be in force prior to performance of any services.
3. *Workers Compensation.* The Contractor shall maintain workers compensation insurance, providing applicable statutory benefits for all personnel performing services pursuant to this agreement. The cost of such workers compensation insurance premiums is the firm responsibility.
4. *Conditions of Insurance.* Each such policy shall insure the Contractor's contractual liability to ICE as contained in this Agreement. The geographic limits, if any, contained in each and every such policy of insurance shall include, at minimum, all territories over which the Contractor shall operate. If the policy is cancelled, the Contractor shall give ICE written notice as soon as notification is received.
5. *Other Insurance(s) as Requested.* In certain instances, the Government may require additional or supplemental insurance. If required, additional or supplemental insurance requests will be set forth in the Task Order RFQ.

U. Deliverables

1. In addition to the reports described as above, please refer to Attachment 8 for deliverables.
2. Review of Deliverables:
 - a. The COR will provide written acceptance, comments and/or change requests, if any, within thirty (30) business days from receipt by the Government of the initial deliverable.
 - b. Upon receipt of the Government comments, the Contractor shall have fifteen (15) business days to incorporate the Government's comments and/or change requests and to resubmit the deliverable in its final form.
 - c. If written acceptance, comments and/or change requests are not issued by the Government within thirty (30) calendar days of submission, the draft deliverable shall be deemed acceptable as written and the Contractor may proceed with the submission of the final deliverable product.
 - d. The Contractor shall provide all deliverables to the COR in Microsoft Excel, PowerPoint or Word-compatible format. Adhere accordingly to Deliverables - Attachment 8.
 - e. The Government will provide written notification of acceptance or rejection of all final deliverables within thirty (30) calendar days. Absent written notification, final deliverables may be construed as accepted. All notifications of rejection will be accompanied with an explanation of the specific deficiencies causing the rejection.

XII. Contractor Personnel

A. General Requirements

- A. The Contractor shall supply the COR with a monthly list of all personnel working on the contract.
- B. The Contractor shall obtain prior written concurrence from the COR for appointment and replacement of key personnel as established within the contract clause entitled "Key Personnel."
- C. The Contractor shall certify, prior to commencement of services, within two (2) days of an option exercise, and/or within one (1) day of a new staff member cleared by ICE to commence services, that all Contractor personnel performing escort services or coming into contact with UAC or family:

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- a. Are U.S. citizens.
- b. Have successfully completed a seven-year criminal background investigation within the previous twelve (12) months.
- c. Are qualified to perform duties associated with these transports, based on the results of the background investigation,
- d. Are certified, as appropriate, in the state in which their work is to be conducted and maintain those certifications.
- e. Are screened prior to employment, and re-screened on an annual basis, at a minimum, as follows:
 - i. psychological testing,
 - ii. honesty and integrity validation,
 - iii. employment verification,
 - iv. criminal records checks,
 - v. credit checks,
 - vi. driver's license check,
 - vii. pre-employment and random drug screenings.
- f. Possess a successful background and security investigation with no derogatory references.
- g. Are up-to-date on all routine vaccinations and immunizations, including but not limited to, the following, as recommended by the Centers for Disease Control and Prevention (CDC):
 - a. Measles, Mumps, and Rubella (MMR),
 - b. Varicella (chicken pox)
 - c. Diphtheria, Tetanus, and Pertussis (DTaP),
 - d. Polio (IPV),
 - e. Hemophilus influenza (Hib),
 - f. Hepatitis B,
 - g. Hepatitis A,
 - h. Rotavirus (RV),
 - i. Pneumococcus (PCV),
 - j. Influenza (annual)
- h. Any instance of criminal conviction, or non-disclosure of same, shall preclude an individual from eligibility to act as a Transportation Specialists, Travel Analysts, Administrator Assistant, Administrator Support and Program Manager.

A. Program Manager (Key Personnel)

Requirements

The Program Manager shall:

1. Possess a bachelor's degree from an accredited university (or an associate degree with two or more years of additional relevant experience may be substituted for a bachelor's degree or more than four years of additional related experience may be substituted for a degree) and,
 2. Have at least two years of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; and certification, licensure, and credentials applicable to the professional accreditation of the position and (a minimum of four years of experience in a related field is required when an associate degree with two or more years of relevant experience is substituted for a bachelor's degree , or 6 years of experience in a related field when four years of experience is substituted for a degree).
 3. Management experience applicable to the goals and objectives of this requirement, sufficient to communicate with other staff, and appropriate for a similar program environment.
- ii. Duties
1. The PM supervises the Site Managers

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2. The Program Manager, or the person designated to act on his/her behalf, shall be accessible to ERO by mobile phone 24 hours per day, 7 days per week, 365 days per year.

B. Site Manager [Key Personnel]

1. Requirements

The Site Manager shall:

- a. Possess a bachelor's degree from an accredited university (an associate degree with two or more years of extra relevant experience may be substituted for a bachelor's degree, or more than four years of related experience may **be substituted for a degree**) and,
- b. Have at least two years or more of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; and (a minimum of four years of experience is required when an associate's degree with two or more years of relevant experience is substituted for a bachelor's degree or 6 years of experience in a related field when four years of experience is substituted for a degree) and,
- c. Demonstrate management and supervisory experience applicable to the goals and objectives of this requirement and appropriate for a similar program environment.

2. Duties

- a. The Site Manager supervises TSs and Administrative Assistants.
- b. The Site Manager shall meet the minimum requirements as established to be able to train and perform the duties of the TS.
- c. The Site Manger shall be located at each C-site.
- d. The Site Manager, or the person designated to act on his/her behalf, shall be accessible to ICE/ERO/ JFRMU by mobile phone 24 hours per day, 7 days per week, 365 days per year.

C. Transport Specialist (TS)

1. Requirements

The Transportation Specialists (TS) shall:

- a. Possess an associate degree in an appropriate discipline from an accredited college (a high school diploma with one or more years of extra relevant experience may be substituted for an associate degree) and,
- b. Have at least two years of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; as well as certification, licensure, and credentials applicable to the professional accreditation of the position if applicable (a minimum of three years of experience in a related field is required when a high school diploma with one or more years of relevant experience is substituted for an associate degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this program sufficient to communicate with other staff, and appropriate for a similar program environment.

2. Duties

The TS shall:

- a. Provide transport services to UAC and families
- b. Communicate directly and effectively with UAC and families
- c. Maintain appropriate transportation logs and records
- d. Maintain current training and certification requirements in accordance with state and ICE/ERO standards

D. Travel Analysts (TA) Non-Key Personnel

1. Requirements

The Travel Analysts (TA) shall:

- a. Possess an associate degree in an appropriate discipline from an accredited college (a high school diploma with an extra two or more years of relevant experience may be substituted for an associate degree) and,
- b. Have at least two years of documented experience in a field related to security, law, social work, detention, corrections, or similar occupational area; certification, licensure, and credentials applicable to the professional accreditation of the position (a minimum of four years of experience is required when a high school diploma with two or more years of relevant experience is substituted for an associate degree) and,

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- c. Demonstrate experience applicable to the goals and objectives of this program sufficient to communicate with other staff, and appropriate for a similar program environment.,
3. Duties
- The Travel Analysts (TA) shall:
- e. Provide and coordinate travel arrangements.
 - f. Maintain communication with Transportation Specialists, DHS and HHS with travel itineraries when taking over custody or dropping off UAC and FAMU at ORR shelters or FRCs.
 - g. Maintain current training and certification requirements in accordance with state and ICE/ERO standards

E. Training Director - Non-Key Personnel

Position Overview

The training director will be accountable for the development and implementation of training curriculum and training strategies to support the Program goals; including being responsible for all training programs and insure that there are two collaborative programs operating at all times: new hire training and refresher training.

1. Requirements:

The Training Directors shall:

- a. Possess a bachelor's degree (in a related field such as Education or English is preferred) or Five years of relevant experience with proper certification can be substituted for education and,
- b. Have a minimum of two years' experience in training coaching and development and,
- c. Have demonstrated excellent written, oral, presentation and public communications skills.

2. Duties

The Training Director shall:

- a. Deliver New Hire and Recurring Training as determined by the Program Director
- b. Develop and update curriculum as needed
- c. Communication with Program Managers to identify training needs
- d. Identify employee weaknesses and develop training solutions
- e. Responsible for managing, designing, coordinating, and conducting all training programs
- f. Communicate to trainees and employees what is expected in the performance of their duties
- g. Drive ICE ERO values and Program philosophy through all training and development activities
- h. Communicate with ICE COR to ensure that training is meeting program needs
- i. Motivate employees to be best they can be in performing their duties and representing ICE ERO

F. Logistics Specialist - Non-Key Personnel

1. Requirements

The Logistics Specialist shall:

- d. Possess an associate degree in an appropriate discipline from an accredited college (a high school diploma with two or more years of relevant experience may be substituted for an associate degree) and,
- e. Have at least two years of documented experience in a field related to security, law, social work, detention, corrections, or similar occupational area; certification, licensure, and credentials applicable to the professional accreditation of the position (a minimum of four years of experience is required when a high school diploma with two or more years of relevant experience is substituted for an associate degree) and,
- f. Demonstrate experience applicable to the goals and objectives of this program enough to communicate with other staff, and appropriate for a similar program environment.,

2. Duties

The Logistics Specialist shall:

- a. Drive passengers to and from client sites or airports
- b. Log and reporting of all vehicle activities into mobile application

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- c. Clean vehicles, sanitizes interiors and ensures they are fueled and ready for ground trips
- d. Assign vehicles based on the number of TS' and UACs traveling, installs and removes child seats based on age and height/weight as required
- e. Inventory UAC supplies for clothing, shoes, toiletries, orders and assembles individual hygiene packs
- f. Orders UAC meals, snacks and beverages

G. Administrative Assistant (AA)

1. Requirements

The Administrative Assistant (AA) shall:

- a. Possess an associate degree in an appropriate discipline from an accredited university (a high school diploma with an extra two or more years of relevant experience may be substituted for an associate degree) and,
- b. Have at least two years of experience working with computers (a minimum of four years of experience is required when a high school diploma with two or more years of relevant experience is substituted for an associate degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this program sufficient to communicate with other staff, and appropriate for a similar program environment.

2. Duties

- a. Communicate with UAC and families prior to and during transport, as necessary
- b. Support the TS in providing transport services to UAC and families
- c. Support the TS with duties performed during transports
- d. Assist the Program Manager as needed
- e. Maintain current training and certification requirements in accordance with state and ICE/ERO standards

H. Administrative Support

- 1. To assist in the tracking of UAC movements by entering "book-in" and "book-out" data into ERO's case management IT system/official system of record.
- 2. The personnel performing the data entry will sit in the office in the area of McAllen, Texas near or driving distance to RGV Border Patrol Sector Centralized Processing Center.

I. Transportation Coordinator

1. Requirements

- a. Possess an associate degree in an appropriate discipline from an accredited university (a high school diploma with an extra two or more years of relevant experience may be substituted for an associate degree) and,
- b. Have at least two years of experience working with in a field related to law, social work, detention, corrections or similar occupation area (a minimum of four years of experience is required when a high school diploma with two or more years of relevant experience is substituted for an associate degree) and.
- c. Experience working with large groups individuals
- d. Ability to work a flexible schedule, including nights and weekends
- e. Possesses strong computer skills
- f. Possess a valid and current driver's License

2. Duties

- a. Coordinates with the pod (holding area) officers so that UAC/family members are groomed, dressed and medically cleared in time to travel.
- b. Visual verification of UAC/family members match the government issued number, photo(s) in the file and emails to confirm identity of traveling UAC/family members.
- c. Put together Enforcement Removal Operations (ERO) packets per UAC/family member.
- d. Provides UACs and/or family members with orientation, answers questions, and describes the transportation process.
- e. Communicates to Logistics any requirements for meals, car seats, baby formula, diapers and other supplies to restock lockers in and maintain inventory.
- f. Ensures up-to-date travel procedures and processes are distributed in a timely manner to all employees
- g. Works with border patrol to ensure that UAC/Family members have their property.

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J. Corporate Security Officer

1. Requirements

- a. Bachelor's degree; a combination of college and work experience or 1 years related Industrial Security experience may be substituted in lieu of degree.
- b. No less than 3 years hands-on experience in one or more security and/or intelligence discipline and experience implementing complex government security and/or intelligence programs and policies.
- c. Experience with Security Records Management requirements, processes, tools and/or software.
- d. Able to obtain a security clearance, if required for assigned workload.
- e. Possesses Strong computer skills

2. Duties

- a. Coordinates the security package process with candidates, hiring managers, and customers; ensures packages are current and updates managers and customers on any changes;
- b. Screens and coordinates all requests for personnel security clearances with Operations Supervisor to ensure legitimate government/industry needs are being met, and assists eligible candidates with clearance processing
- c. Collects, organizes, and tracks security forms and information
- d. Reviews personnel security forms, such as SF-85, SF-85PS and SF86, for inconsistencies or omissions
- e. Reviews credit check reports and communicates with the candidates regarding any additional information that is required
- f. Communicates on a continuous basis with Recruitment staff regarding security packages and applicant tracking system updates, issues, and reports.
- g. Accurately interpret government guidelines/requirements, organizational policy and conveyed it to team members
- h. Manage all aspects of the National Industrial Security Program (NISP) and other security activities which includes documents/visitor control, personnel security and this security aspects of classified contracting.
- i. Able to obtain a security clearance, if required for assigned workload.

K. Compliance and Quality Control Manager

1. Requirements

The Compliance and Quality Control Manager shall:

- a. Possess a bachelor's degree from an accredited university (an associate degree with two or more years of extra relevant experience may be substituted for a bachelor's degree, or more than four years of related experience may **be substituted for a degree**) and,
- b. Have at least two years or more of documented experience in a field related to program management, business administration, or similar occupational area; and (a minimum of four years of experience is required when an associate's degree with two or more years of relevant experience is substituted for a bachelor's degree or 6 years of experience in a related field when four years of experience is substituted for a degree) and,
- c. Demonstrate management and supervisory experience applicable to the goals and objectives of this requirement and appropriate for a similar program environment.

2. Duties

The Compliance and Quality Control Manager shall:

- a. Manage a critical program area that requires focused, program-wide oversight and coordination.
- b. Ensure ongoing program-wide compliance with Government policies, procedures and guidance; applicable laws and regulations; and contractor policies and procedures.
- c. Lead implementation and management quality control plans.
- d. Lead regularly scheduled and unannounced internal audits on processes and systems.
- e. Ensure contractual compliance with all reporting requirements; immediately notifying contractor management and the COR of any potential issues or noncompliance.
- f. Serve as liaison during ERO inspections.

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- g. Communicate directly with ICE COR to ensure that compliance and quality control needs are being met.

L. Site Supervisors

1. Requirements

The Site Supervisors shall

Possess a bachelor's degree from an accredited university (an associate degree with two or more years of extra relevant experience may be substituted for a bachelor's

- a. degree, or more than four years of related experience may **be substituted for a degree**) and,
- b. Have at least two years or more of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; and (a minimum of four years of experience is required when an associate's degree with two or more years of relevant experience is substituted for a bachelor's degree or 6 years of experience in a related field when four years of experience is substituted for a degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this requirement and appropriate for a similar program environment.

2. Duties

The Site Supervisors shall

- a. Enforce program changes as specified by the Program Manager and disseminate guidance to personnel.
- b. Ensure ongoing program-wide compliance with Government policies, procedures and guidance; applicable laws and regulations; and contractor policies and procedures.
- c. Oversee workflow and staff.
- d. Ensure operational plans adhere to the highest relevant safety standards, are planned and communicated in advance and are professionally implemented.
- e. Review employee training status and certifications to ensure compliance with contract requirements.
- f. Reconcile inventory and reports in accordance with work orders.

M. Transportation Coordinator and Logistics Specialist Supervisor

1. Requirements

The Transportation Coordinator and Logistics Specialist Supervisor shall

- a. Possess a bachelor's degree from an accredited university (an associate degree with two or more years of extra relevant experience may be substituted for a bachelor's degree, or more than four years of related experience may **be substituted for a degree**) and,
- b. Have at least two years or more of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; and (a minimum of four years of experience is required when an associate's degree with two or more years of relevant experience is substituted for a bachelor's degree or 6 years of experience in a related field when four years of experience is substituted for a degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this requirement and appropriate for a similar program environment.

2. Duties

The Transportation Coordinator and Logistics Specialist Supervisor shall

- a. Supervise a critical program area that requires focused, program-wide oversight and coordination.
- b. Oversee Transportation Coordinator and Logistics Specialist staff.
- c. Organize workflow and ensure Transportation Coordinator and Logistics Specialist Travel Analysts understand duties and delegated tasks.
- d. Create monthly work schedules and submit to management for approval.
- e. Ensure operational plans adhere to the highest relevant safety standards, are planned and communicated in advance and are professionally implemented.

N. Travel Analyst Supervisors

1. Requirements

The Travel Analyst Supervisors shall

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- a. Possess a bachelor's degree from an accredited university (an associate degree with two or more years of extra relevant experience may be substituted for a bachelor's degree, or more than four years of related experience may **be substituted for a degree**) and,
- b. Have at least two years or more of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; and (a minimum of four years of experience is required when an associate's degree with two or more years of relevant experience is substituted for a bachelor's degree or 6 years of experience in a related field when four years of experience is substituted for a degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this requirement and appropriate for a similar program environment.

2. Duties

The Travel Analyst Supervisors shall

- a. Organize workflow and ensure Travel Analysts understand duties and delegated tasks.
- b. Review and verify all daily reports.
- c. Create monthly work schedules and submit to management for approval.

O. Office Coordinator

1. Requirements

The Office Coordinator shall

- a. Possess an associate degree in an appropriate discipline from an accredited university (a high school diploma with an extra two or more years of relevant experience may be substituted for an associate degree) and,
- b. Have at least two years of experience working with computers (a minimum of four years of experience is required when a high school diploma with two or more years of relevant experience is substituted for an associate degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this program sufficient to communicate with other staff, and appropriate for a similar program environment.

2. Duties

The Office Coordinator shall

- a. Perform administrative lead duties. Perform initial compliance checks on transport packets, employee training/compliance packets, inventory purchases, maintenance, records storage, travel expense vouchers and non-disciplinary personnel actions.
- b. Manage personnel status report and update personnel availability.
- c. Review TS time sheet after hours have been entered into the HR database.
- d. Issue all contractor ID cars for the UAC program.
- e. Assist Site Manager with subordinate workload distribution.

P. Data Librarian

1. Requirements

The Data Librarian shall

- a. Possess a bachelor's degree from an accredited university (an associate degree with two or more years of extra relevant experience may be substituted for a bachelor's degree, or more than four years of related experience may **be substituted for a degree**) and,
- b. Have at least two years or more of documented experience in a field related to business administration, statistics, data analysis, data management or similar occupational area; and (a minimum of four years of experience is required when an associate's degree with two or more years of relevant experience is substituted for a bachelor's degree or 6 years of experience in a related field when four years of experience is substituted for a degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this requirement and appropriate for a similar program environment

2. Duties

The Data Librarian shall

- a. Manage day-to-day program coordination and administrative requirements.
- b. Support administrative tasks critical to efficient, compliant operations and effective data management.

Q. IT Specialist

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1. Requirements

The IT Specialist shall

- a. Possess a bachelor's degree from an accredited university (an associate degree with two or more years of extra relevant experience may be substituted for a bachelor's degree, or more than four years of related experience may **be substituted for a degree**) and,
- b. Have at least two years or more of documented experience in a field related to information technology support, system/database development or management, or similar occupational area; and (a minimum of four years of experience is required when an associate's degree with two or more years of relevant experience is substituted for a bachelor's degree or 6 years of experience in a related field when four years of experience is substituted for a degree) and,
- c. Demonstrate experience applicable to the goals and objectives of this requirement and appropriate for a similar program environment.

2. Duties

The IT Specialist shall

- a. Serve as IT liaison with contractor's corporate office.
- b. Troubleshoot and resolve IT issues impacting local contract performance.
- c. Support technical, systems and database management.

R. Removal from Duty

1. The Contractor shall notify the COR immediately upon learning of adverse or disqualifying information regarding any personnel. The Contractor shall immediately remove the personnel from performing duties under this contract or any other ICE contract and comply with further guidance from the COR upon learning of adverse or disqualifying information. Disqualifying information may include, but is not limited to:
 - a. Arrest or conviction of a crime (felony or misdemeanor offenses)
 - b. A record of arrest(s) for traffic offenses (especially DUI)
 - c. False information entered on suitability forms
 - d. The Contractor shall immediately remove from assignment to this contract, or any other ICE contract, any personnel who has been disqualified for security reasons or is deemed unfit to perform his or her duties.
2. The Contractor shall immediately notify the COR when removing personnel from duty. A determination of being unfit for duty shall include, at a minimum, incidents involving misconduct as set forth below:
 - a. Neglect of duty or failure to carry out assigned tasks;
 - b. Falsification or unlawful concealment, removal, mutilation, or destruction of any official documents or records, or concealment of material facts by willful omissions from official documents or records;
 - c. Theft, assault, vandalism or any other criminal actions;
 - d. Possession of or selling, consuming, or being under the influence of intoxicants, drugs, or other mind-altering substances;
 - e. Unethical or improper use of official authority;
 - f. Violations of security procedures or regulations;
 - g. Fraternalization with program UAC or families;
 - h. Failure to maintain or fulfill training requirements.
3. The Contractor shall notify the COR in writing of any personnel terminations, suspensions, resignations, or any other adverse personnel actions taken for any reason.
4. Contractor staff shall be prohibited from providing legal advice to program UAC and families and from interfering with a program UAC and FAMU's immigration status proceedings or the execution of final orders of the Immigration Court. Failure to comply may result in termination of the contract and/or criminal charges against the personnel.

S. Credentials

1. All contractor staff shall carry approved identification credentials at all times while performing under this contract. Credentials shall contain the following for each personnel:
 - a. A photograph of the personnel that is at least one square inch
 - i. The photograph shall show the head and shoulders of the personnel.
 - ii. The photograph shall be no more than one year old at the time the credential is issued.
 - b. Signature of the personnel

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- c. Validation by the issuing authority
2. Credentials shall be valid for up to five years and shall be unique from any other credentials issued by the Contractor to other personnel.
3. The Contractor shall void and immediately make appropriate disposition of all identification credentials upon completion of assignments such that the Contractor is no longer performing under this contract. All Federally issued identification credentials shall be returned to the ERO program office for appropriate disposition at the earliest to occur of: (i) upon request of the COR, (ii) the termination of the contract or (iii) when the applicable employee no longer works on the Contract or for the Contractor.

T. Security Requirements

Security requirements for this contract are described in Attachment 9.

U. Training

1. The Contractor shall follow a fully developed training curriculum (approved by the COR after award) and transporting staff shall have the highest level of competency possible. Training is initially given on the topics below when coming on board, and refresher training on the same topic is given quarterly. This training must be at least 16 hours. The COR will be provided with time/dates and location of training. Areas of training shall include, at a minimum, the following:
 - a. Airport rules and regulations for travelers,
 - b. Crisis intervention,
 - c. Child development,
 - d. Working with and transporting youth with special needs,
 - e. Transporting youth with behavioral problems,
 - f. CPR, Epi-pens & First Aid training,
 - g. Non-secured UAC and family policy, and
 - h. Procedures for and implementation of contingency plans in the event of crisis during transport, including de-escalation techniques.
 - i. Ethics and Authority
 - j. Note-Taking and Report Writing
 - k. Self-Defense
 - l. Human Relations
 - m. Handling Disorderly Conduct, Civil Disturbances, and Other Incidents
 - n. Cultural and Ethnic Sensitivity
 - o. Orientation
2. The Contractor shall be required to fulfill ERO training requirements for Contractors, as designated by COR, which may change from time to time.
3. The Contractor shall complete all ICE mandatory training for Contractors. The mandatory training courses can change from year to year. The training is available online at the [DHS Performance and Learning Management System](#) (PALMS).
 - a. Access to the ICE Virtual University may be made available to the Contractor's staff following contract award.
 - b. In the event access is not available, the COR will provide the Contractor with a CD version.
4. Current Training Requirements:
 - a. Privacy Training for SharePoint Collaboration Site Users
 - b. Information Assurance Awareness Training (IAAT)
 - c. Operations Security (OPSEC) Basic
 - d. Privacy at DHS: Protecting Personal Information
 - e. DHS Basic Records Management
 - f. DHS Department Wide File Plan
 - g. Electronic Records Management
 - h. Vital Records Guidance
5. The Contractor shall train its staff in accordance with a written Training Plan for all personnel that incorporates the mandatory training requirements listed below, as well as other related training courses developed by the Contractor that are necessary for successful performance while working on this requirement. Refresher training is required quarterly.
6. In addition, supervisors shall attend 24 hours of additional training within 30 days of start on contract (that includes:
 - a. Communications
 - b. Solving performance problems
 - c. Counseling personnel

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- d. Leadership skills (emphasizing styles, motivation, and career development)
 - e. Scheduling
 - f. Equal employment practices
7. Contractor Certification: The Contractor shall certify that personnel have successfully passed all the required training and shall provide documentation of training to the COR. Under no circumstances shall Contractor personnel perform duties under this contract until all initial training, or refresher training as required in this subsection, is successfully completed and certified by the Contractor in writing and accepted by the COR.
 8. The COR shall provide written approval prior to the assignment of any personnel beginning to perform any duties under this contract.
 9. All personnel shall be given two and a half hours quarterly refresher training
 10. Documentation and Orientation
 - a. Upon contract award, ERO shall provide the initial orientation training for the Contractor's staff. Contractor staff shall then be responsible for training utilizing a "train the trainer" approach.
 - b. Upon approval of each successive option year, the Contractor and ERO shall ensure that all training is up-to-date and in compliance with all regulations and ERO mission needs. If there are any significant changes, COR shall provide the new orientation training for the Contractor's staff with a "train-the-trainer" approach.
 - c. The Contractor shall provide all subsequent orientation training for all personnel, including those added throughout the duration of the contract.
 - d. The Contractor shall ensure that the mandatory training as well as the training required to be developed by the Contractor is provided to all personnel.
 - e. Training may be provided by either the Contractor or an external institution acceptable to the COR.
 - f. Failure of any personnel to successfully complete mandatory training is sufficient reason to disqualify him or her from duty.
 - g. All components of the training and all types of documentation associated with this Contract are subject to evaluation, monitoring, and approval by the COR.
 - h. The Contractor shall provide to the COR monthly documentation of the training completed for each Contractor personnel, including but not limited to:
 - i. number of training hours,
 - ii. type of training,
 - iii. date and location of training, and
 - iv. name of the instructor.
 - i. The Contractor shall provide to the COR copies of all certifications, upon request.
 11. Contractor Staff Training
 - a. Administrative Staff
 - i. The Contractor shall provide 16 hours of training to all administrative support Contractor personnel who have office contact with UAC, in addition to orientation- Section L.1 and L.4. This training should be completed within 14 days of employment and prior to being assigned duties.
 - ii. All Contractor personnel in this category shall be given quarterly refresher training consisting of the mandatory training each subsequent quarter of employment. Quarterly training shall be approximately 2.5 hours.
 - b. TSs and Management Staff
 - i. The Contractor shall provide 16 hours of training to each TS and managerial staff member with all of the mandatory training courses described above. These courses shall be completed within 14 days of employment. Section L.1 and L.4
 - ii. Managerial personnel shall complete 24 hours of general management training during the first year and each subsequent year of employment. The Contractor shall provide the COR copies of training certification.
 - iii. All Contractor personnel in this category shall be given quarterly refresher training consisting of the mandatory training each subsequent quarter of employment
 12. Contractor shall provide ICE Government personnel with training and/or orientation of Contractor systems that will be used during performance of this contract within 10 days of contract award.

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PART 2

TERMS, DEFINITIONS, AND PARTIAL EXPLANATIONS

Admission

The lawful entry of an alien into the United States after inspection and authorization by an Immigration Officer. *See* INA § 101(a)(A).

Adult

A person eighteen (18) years or older.

Alien

Any person not a citizen or national of the U.S.

Asylee

An alien in the United States or at a port of entry who is found to be unable or unwilling to return to his or her country of nationality and/or is seeking protection from that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. For persons with no nationality, the country of nationality is considered to be the country in which the alien last habitually resided. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States.

Cancellation of Removal

For Permanent Residents - Relief from removal which may be granted by an Immigration Judge (IJ) pursuant to INA § 240A(a) to certain eligible lawful permanent residents, in effect "canceling" the removal which otherwise would occur as a result of the alien's violation of the INA and finding by the IJ that the alien is inadmissible or deportable.

For non-Permanent Residents - Relief from removal which may be granted by an IJ pursuant to INA § 240A(b) to certain aliens who are not lawful permanent residents and who have been found to be inadmissible or deportable from the U.S. Aliens receiving this relief are made lawful permanent residents of the U.S.

Caregiver

An adult that is caring for a UAC with special needs may be allowed to provide care until their identity is verified, or until ORR may be able to provide additional licensed staff to assist the special needs children.

Contraband: Any item that aliens are not authorized to have in his or her possession while in the custody of ICE.

Contracting Officer (CO)

Contracting officer is a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings on the part of the federal government, in this case ICE. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. Administrative contracting officer (ACO) refers to a contracting officer who is administering contracts. 42 C.F.R. § 2.101

Contracting Officer's Representative (COR)

The CO is assisted in his or her duties by the Contracting Officer's Representatives (COR), who usually does not have the authority of a Contracting Officer. The COR, located at ICE Headquarters is responsible for monitoring the day-to-day performance, activities and technical aspects of the contract and is supported on this contract by local Task Managers. Task Managers assist the COR in monitoring contract performance at the AOR field office or sub-office level.

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Contractor

The entity that provides services described in this Statement of Work (SOW) under a federal contract.

Custody

ICE's Sexual Assault and Abuse Prevention Intervention (SAAPI) policy directive defines custody as the period of time during which a person has been detained by ICE under its administrative and/or criminal authorities, is physically present in an ICE owned, -leased, or -contracted detention facility pursuant to such authorities, or is being transported by ICE (including for purposes of removal from the United States) pursuant to such authorities.

Deportation/Removal/Exclusion

The formal removal of an alien from the United States when the alien has been found removable for violating the immigration laws. Deportation, Removal or Exclusion is ordered by an immigration judge without any punishment being imposed or contemplated; deportation or removal may also be ordered by a DHS deciding official under certain statutory provisions.

Enforcement and Removal Operations (ERO)

The component within DHS/ICE that promotes public safety and national security by ensuring the lawful departure of all removable aliens from the United States.

Department of Homeland Security (DHS)

The Executive Branch Department tasked with leading the unified national effort to secure the U.S. and preserve its freedoms. While the Department was created to secure the U.S. against those who seek to disrupt the American way of life, the DHS charter also includes preparation for and response to all hazards and disasters.

Emergency

Any disruption of normal facility procedures, policy or activity caused by riot, strike, escape, fire, natural disaster or other serious incident.

Employment

Any labor or occupation for which compensation is given or received. Employment in the United States is authorized for aliens who are lawful permanent residents (LPRs), or aliens who have a valid employment authorization document issued by USCIS. Note: Participation in the ATD program does not require employment, nor authorize employment for those without proper authorization.

Enter on Duty (EOD)

For the purposes of this contract, to begin employment, after having received a DHS suitability determination granted by written authorization by the COR to perform duties under this contract.

Escort: An officer who accompanies any person who has been arrested and/or detained under the authorities of ERO during transport or movement.

Expedited Removal (ER)

DHS has the authority to quickly order the removal of certain inadmissible aliens from the United States. The authority covers aliens who are inadmissible because they have no entry documents or because they have used counterfeit, altered, or otherwise fraudulent or improper documents. The authority covers aliens who arrive in, enter, or have entered the United States without having been admitted or paroled by an immigration officer Attempt to at a port-of-entry. The alien is not referred to an immigration judge except under certain circumstances after an alien makes a claim to lawful status in the United States or demonstrates a credible fear of persecution if returned to his or her home country.

Facility

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Offices, office space or other accommodation chosen by the contractor in which employees work performing duties required under this contract.

Family Group

An adult non-United States citizen parent and/or legal guardian accompanied by their own non-United States citizen juvenile child(ren).

Flight Risk

An alien who is believed to attempt to flee from custody, if he or she is not otherwise prevented from doing so.

Fugitive

An ICE fugitive is defined as an alien who has failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or who has failed to report to an Officer from Enforcement and Removal Operations after receiving notice to do so.

Full Restraints

Full Restraints are defined as ICE-approved handcuffs, waist/belly chain, and leg irons.

Grievance

A written complaint filed by a Participant concerning personal health/welfare or the operations and services of the Program.

Hold Room

Any room or location used for the temporary detention of individuals, including interview rooms, visitation rooms, processing rooms, and holding cells.

Immigration and Customs Enforcement (ICE)

Created in March 2003, U.S. Immigration and Customs Enforcement (ICE) is the largest investigative branch of the Department of Homeland Security (DHS). Its mission is to protect America and uphold public safety. The agency fulfills this mission by identifying criminal activities and eliminating vulnerabilities that pose a threat to our nation's borders, as well as enforcing economic, transportation, and infrastructure security. By protecting our national and border security, ICE seeks to eliminate the potential threat of terrorist acts against the United States.

Juvenile

A person known or reasonably believed not have reached his or her 18th birthday.

Office of Refugee Resettlement

Unaccompanied children apprehended by DHS are transferred to the care and custody of ORR, who promptly places a UAC in the least restrictive setting that is in the best interest of the child.

Participant Records

Records that contain information concerning the Participant's personal, criminal and medical history combined with behavior and activities. Participant records include but are not limited to photographs, disciplinary infractions and actions taken, grievance reports, documentation supporting excused absences from appearance appointments (e.g. "doctor's notes"), and employment history.

Refugee

Loosely, an alien who is outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, political affiliation, and/or membership in a particular social group.

Removal Proceedings

A hearing conducted by an Immigration Judge for the sole purpose of deciding the inadmissibility or deportability of an alien.

Search

An inspection of the alien's person and property for contraband in order to maintain good order and security.

Sexual Assault and Abuse Prevention Intervention (SAAPI) Policy

An ICE directive containing policies and procedures for the prevention of sexual abuse or assault of individuals in ICE custody, which provides agency-wide policy and procedures for timely notification of sexual abuse and assault allegations, prompt and coordinated response and intervention, and effective monitoring of sexual abuse and assault incidents.

https://www.ice.gov/doclib/foia/dro_policy_memos/sexual-abuse-assault-prevention-intervention-policy.pdf

Standard Age

Refers to unaccompanied children between the ages of 13 – 17 years.

Tender Age

Any juvenile that is 12 years and under.

Termination of Proceedings

An action by an IJ ending removal proceedings with or without a final determination on the removal charge(s). Removal proceedings can be terminated without prejudice, with the ability to re-calendar the case before the court or terminated altogether. Termination orders may be appealed to the BIA by either party.

Training

An organized, planned and evaluated activity designed to achieve specific learning objectives. Training may occur on-site, at an academy or training center, at an institution of higher learning, through contract service, at professional meetings or through closely supervised on-the-job training. Meetings of professional associations are considered training when there is clear evidence of the above elements.

Translator

For purposes of this contract a translator is defined as: A person who translates from one language into another. This could be the translation of speech or written documents.

Unaccompanied Alien Child (UAC)

An alien under the age of 18, with no legal status in the United States, and no parent or legal guardian present to accept care and custody.

Unaccompanied Female

A female not in the company of an immediate relative.

Unaccompanied Juvenile

A juvenile not in the company of an immediate relative.

United States Citizen (USC)

See 8 U.S.C. §§1401-1453.

U.S. Customs and Border Protection (CBP)

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The component in DHS whose primary mission is to secure the sovereign borders of the United States and to keep terrorists and their weapons out of the United States. It also has a responsibility for securing and facilitating trade and travel while enforcing hundreds of U.S. regulations, including immigration and drug laws.

Voluntary Departure (VD)

An administrative decision granted by an Immigration Judge either prior to completion or at the completion of removal proceedings granting an alien permission to depart the United States voluntarily and at the alien's own expense.

Work Week: Work week is defined as starting on Sunday to Saturday.

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Part 3
Estimated Workload

The Government estimates this PWS would require approximately the following labor categories:

- Program Manager (1)
- Training Director (1)
- Compliance and Quality Control Manager (1)
- Corporate Security Manager (1)
- Site Managers, Four (4)
 - McAllen, Texas
 - One (1) Site Manager
 - San Antonio, Texas
 - One (1) Site Manager
 - El Paso, Texas
 - One (1) Site Manager
 - Phoenix, Arizona
 - One (1) Site Manager
- Site Supervisors, Four (4)
 - McAllen, Texas
 - One (1) Site Supervisor
 - San Antonio, Texas
 - One (1) Site Supervisor
 - El Paso, Texas
 - One (1) Site Supervisor
 - Phoenix, Arizona
 - One (1) Site Supervisor
- Transportation Coordinator and Logistics Specialist Supervisor (1) McAllen, TX
- Transportation Specialists, 443 currently but projected to increase to 710
 - McAllen, Texas
 - 205 currently but projected 300
 - San Antonio, Texas
 - 111 currently but projected 160
 - El Paso, Texas
 - 40 currently but projected 90
 - Phoenix, Arizona
 - 87 currently but projected 160
- Travel Analyst Supervisors (2)
- Travel Analysts 13 currently but projected 25
 - McAllen, Texas
 - 9 currently but projected 20 (Command Centers is the backbone of the operations)
 - San Antonio, Texas
 - 4 currently but projected 5 (emergency or back up command center)
- Transportation Coordinator 4 currently but projected 10
 - McAllen, Texas (4)
 - El Paso, Texas 0 currently but projected 3
 - Phoenix, Arizona 0 currently but projected 3
- Administrative Support
 - McAllen, Texas, 6 currently but project 10

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- Administrative Assistant 4 currently but project 8
 - McAllen, Texas, 1 currently but projected 2
 - San Antonio, Texas, 1 currently but projected 2
 - El Paso, Texas, 1 currently but projected 2
 - Phoenix, Arizona, 1 currently but projected 2
- Data Librarian (1) McAllen, TX
- IT Specialist (1) McAllen, TX
- Logistic Specialist (13)
 - McAllen, Texas (5)
 - San Antonio (2)
 - El Paso, Texas (3)
 - Phoenix, Arizona (3)

Office Coordinator (1) McAllen, TX

(END OF SECTION C)

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SECTION D

PACKAGING AND MARKING

D.1 Packaging and Marking

All information and/or correspondence submitted to the Contracting Officer or the COR shall be clearly marked and indicate the contract number.

D.2 Report Cover Sheet

Each report submitted by the Contractor via soft copy shall have a cover sheet containing the following information:

1. Name and Address of the COR
2. Contract Number
3. Name and Address of the Contractor
4. Title of Report
5. Report Number and Type
6. Period Covered by the Report

No report cover sheet is required for reports submitted via e-mail.

[END OF SECTION D]

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SECTION E

INSPECTION AND ACCEPTANCE

E.1 Clauses Incorporated by Reference (FAR 52.252-2 Feb 1998)

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text can be accessed electronically at this internet address: <https://acquisition.gov/browse/index/far>.

Clause Number	Clause Title	Date
52.246-6	Inspection -- Time-and-Material and Labor-Hour	May 2001

[END OF SECTION E]

(Remainder of page intentionally left blank)

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SECTION F**DELIVERIES OR PERFORMANCE****F.1 Clauses Incorporated by Reference (FAR 52.252-2 Feb 1998)**

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text can be accessed electronically at this internet address: <https://acquisition.gov/browse/index/far>.

Clause Number	Clause Title	Date
52.233-3	Protest After Award	AUG 1996
52.242-15	Stop Work Order	Aug 1989
52.242-17	Government Delay of Work	Apr 1984

F.2 Term of Contract

The initial term of this contract shall be for a twelve (12)-month base period, consisting of a two (2)-month transition period and a ten (10)-month performance period.

The two (2)-month transition-in period shall ensure an orderly transition from the existing contract with no degradation of service. The transition-in period shall also provide the awardee adequate time to obtain the required contractor personnel security clearances, Entry on Duty (EOD) determination, facility space, and staff that space. Contractor personnel shall be able to start work no sooner than the base period contract start date or the date the security clearance is granted (EOD), whichever is later.

This contract shall also contain four (4) one-year option periods. Offerors are required only to price the transition, base and option periods.

The entire contract term including options shall not exceed 60 months with a six month option to extend services (five years and six months) in duration.

F.3 Period of Performance

The estimated period of performance of this contract is as follows:

Base Period – April 1, 2020 through March 31, 2021 (inclusive of 60 days of transition)
 Option Year 1 – April 1, 2021 through March 31, 2022
 Option Year 2 – April 1, 2022 through March 31, 2023
 Option Year 3 – April 1, 2023 through March 31, 2024
 Option Year 4 – April 1, 2024 through March 31, 2025

The period of performance is estimated dates only and as such may be adjusted at the time of contract award. Option periods of performance shall remain as twelve (12) months.

F.4 Place of Performance

Performance shall take place within United States nationwide

F.5 Contractor Evaluating Procedures

Performance ratings will be input into the Contractor Past Performance Assessment Reporting System (CPARS) as outlined in FAR 42.1502. The CPARS website is located: <http://www.cpars.csd.disa.mil/cparsmain.htm>

[END OF SECTION F]

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SECTION G

CONTRACT ADMINISTRATION DATA

G.1 Contract Administration

Notwithstanding the Contractor's responsibility for total management responsibility during the performance of this contract, the administration of the contract will require maximum coordination between the ICE and the Contractor.

The individuals outlined in Section G will be the Government points of contact during the performance of this contract for their respective roles as identified herein:

G.1 Contract Administration

Notwithstanding the Contractor's responsibility for total management responsibility during the performance of this contract, the administration of the contract will require maximum coordination between the ICE and the Contractor.

The individuals outlined in Section G will be the Government points of contact during the performance of this contract for their respective roles as identified herein:

G.2 Contracting Officer's Representative

The following individual is designated and authorized by the CO to perform contract administration functions related to the technical performance of this contract.

Name: [REDACTED]
Email: [REDACTED]
Telephone: [REDACTED]

Contracting Officer (CO)

The ICE Office of Acquisition Management has the overall responsibility for administration of the UAC and FAMU Transportation Contract. The CO, without right of delegation, is the only authorized individual to take actions on behalf of the Government to amend, modify or deviate from the contract terms, conditions, requirements, specifications, details and/or delivery schedules. The CO for this contract is:

Name: [REDACTED]
Email: [REDACTED]
Telephone: [REDACTED]

G.2.1 Contractor Point of Contact

Contractor's POC shall be responsible for comprehensive account support for the UAC and FAMU Transportation contract, and act as the central point of contact with the Government for all contract issues. The POC will represent the Contractor at all post-award meetings.

Name: [REDACTED]
Email: [REDACTED]
Telephone: [REDACTED]

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To Be Designated at Time of Award

G.3 HSAR 3052.242-72 Contracting Officer's Representative DEC 2003

- (a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Representative (COR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COR under the contract.
- (b) The Contracting Officer cannot authorize the COR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

G.4 Invoice Requirements

In accordance with Section G, Contract Administration Data, invoices shall be submitted as follows:

Service Providers/Contractors shall use these procedures when submitting an invoice.

1. Invoice Submission: Invoices shall be submitted in a .pdf format monthly via email to:

Invoice.Consolidation@ice.dhs.gov

Each email shall contain only one (1) invoice and the subject line of the email will annotate the invoice number. The emailed invoice shall include the bill to address shown below:

DHS, ICE
Financial Operations - Burlington
P.O. Box 1620
ATTN: ICE-ERO-FHQ-DMD
Williston, VT 05495-1620

Note: the Service Providers or Contractors Dunn and Bradstreet (D&B) DUNS Number must be registered in the System for Award Management (SAM) at <https://www.sam.gov> prior to award and shall be notated on every invoice submitted to ensure prompt payment provisions are met. The ICE program office identified in the task order/contract shall also be notated on every invoice.

2. Content of Invoices: Each invoice submission shall contain the following information:

- (i) Name and address of the Service Provider/Contractor. Note: the name, address and DUNS number on the invoice MUST match the information in both the Contract/Agreement and the information in the SAM. If payment is remitted to another entity, the name, address and DUNS information of that entity must also be provided which will require Government verification before payment can be processed;
- (ii) Dunn and Bradstreet (D&B) DUNS Number;
- (iii) Invoice date and invoice number;
- (iv) Agreement/Contract number, contract line item number and, if applicable, the order number;
- (v) Description, quantity, unit of measure, unit price, extended price and period of performance of the items or services delivered;
- (vi) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vii) Terms of any discount for prompt payment offered;
- (viii) Remit to Address;
- (ix) Name, title, and phone number of person to notify in event of defective invoice; and

As authorized by FAR 52.212-4 (Alt 1), Section (i) Payments, the contractor shall substantiate invoices by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

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Invoice Supporting Documentation. In order to ensure payment, the vendor must also submit supporting documentation to the Contracting Officers Representative (COR) identified in the contract as described below. Supporting documentation shall be submitted to the COR or contract Point of Contact (POC) identified in the contract or task order with all invoices, as appropriate. See paragraph 4 for details regarding the safeguarding of information. Invoices without documentation to support invoiced items, containing charges for items outside the scope of the contract, or not based on the most recent contract base or modification rates will be considered improper and returned for resubmission. Supporting documentation requirements include:

(ii). Fixed Unit Price Items (items for allowable incurred costs, such as detention and/or transportation services with no defined minimum quantities, unarmed transportation specialist or escort services, transportation mileage or other Minor Charges such as sack lunches and detainee wages): shall be fully supported with documentation substantiating the costs and/or reflecting the established price in the contract and submitted in .pdf format.

(iii). Other Direct Charges:

The invoice shall include appropriate supporting documentation for any direct charge billed for reimbursement.

4. Safeguarding Information: As a contractor or vendor conducting business with Immigration and Customs Enforcement (ICE), you are required to comply with DHS Policy regarding the safeguarding of Sensitive Personally Identifiable Information (PII). Sensitive PII is information that identifies an individual, including an alien, and could result in harm, embarrassment, inconvenience or unfairness. Examples of Sensitive PII include information such as: Social Security Numbers, Alien Registration Numbers (A-Numbers), or combinations of information such as the individuals name or other unique identifier and full date of birth, citizenship, or immigration status.

As part of your obligation to safeguard information, the follow precautions are required:

Email supporting documents containing Sensitive PII in an encrypted attachment with password sent separately.

Never leave paper documents containing Sensitive PII unattended and unsecure. When not in use, these documents will be locked in drawers, cabinets, desks, etc. so the information is not accessible to those without a need to know.

Use shredders when discarding paper documents containing Sensitive PII.

Refer to the DHS Handbook for Safeguarding Sensitive Personally Identifiable Information (March 2012) found at <http://www.dhs.gov/xlibrary/assets/privacy/dhs-privacy-safeguardingsensitivepiihandbook-march2012.pdf> for more information on and/or examples of Sensitive PII.

5. If you have questions regarding payment, please contact ICE Financial Operations at 1-877-491-6521 or by e-mail at OCFO.CustomerService@ice.dhs.gov.

[END OF SECTION G]

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 HSAR 3052.215-70 Key Personnel or Facilities (DEC 2003)

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel or Facilities under this Contract:

<u>Position</u>	<u>Name</u>	<u>Hub</u>
Program Manager	[REDACTED]	
Site Manager	[REDACTED]	McAllen
Site Manager	[REDACTED]	San Antonio
Site Manager	[REDACTED]	El Paso
Site Manager	[REDACTED]	Phoenix

H.2 HSAR 3052.204-71 Contractor Employee Access (SEPT 2012)

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

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(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized access to sensitive information, the Contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

ALTERNATE I (SEP 2012)

When the contract will require Contractor employees to have access to Information Technology (IT) resources, add the following paragraphs:

(g) Before receiving access to IT resources under this contract the individual must receive a security briefing, which the Contracting Officer's Technical Representative (COTR) will arrange and complete any nondisclosure agreement furnished by DHS.

(h) The Contractor shall have access only to those areas of DHS information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Any attempts by Contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.

(i) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the Contractor performs business for the DHS Component. It is not a right, a guarantee of access, a condition of the contract, or Government Furnished Equipment (GFE).

(j) Contractor access will be terminated for unauthorized use. The Contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under the contract, unless a waiver has been granted by the Head of the Component or designee, with the concurrence of both the Department's Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees.

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Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:

- (1) There must be a compelling reason for using this individual as opposed to a U. S. citizen; and
- (2) The waiver must be in the best interest of the Government.

(1) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the contracting officer.

(End of clause)

H.3 ICE Information Governance and Privacy Requirements Clause (JUL 2017)

Guidance: In addition to FAR 52.224-1 Privacy Act Notification (APR 1984), 52.224-2 Privacy Act (APR 1984), FAR 52.224-3 Privacy Training (JAN 2017), and HSAR Clauses, the following IGP clause must be included in its entirety in all contracts. No section of this clause may be read as self-deleting unless the terms of the contract meet the requirements for self-deletion as specified in this clause.

H.3.1 A: Limiting Access to Privacy Act and Other Sensitive Information

(1) Privacy Act Information

In accordance with FAR 52.224-1 Privacy Act Notification (APR 1984), and FAR 52.224-2 Privacy Act (APR 1984), if this contract requires contractor personnel to have access to information protected by the Privacy Act of 1974 the contractor is advised that the relevant DHS system of records notices (SORNs) applicable to this Privacy Act information may be found at www.dhs.gov/privacy. Applicable SORNs of other agencies may be accessed through the agencies' websites or by searching FDsys, the Federal Digital System, available at <http://www.gpo.gov/fdsys/>. SORNs may be updated at any time.

(2) Prohibition on Performing Work Outside a Government Facility/Network/Equipment

The Contractor shall perform all tasks on authorized Government networks, using Government-furnished IT and other equipment and/or Workplace as a Service (WaaS) if WaaS is authorized by the statement of work. Government information shall remain within the confines of authorized Government networks at all times. Except where telework is specifically authorized within this contract, the Contractor shall perform all tasks described in this document at authorized Government facilities; the Contractor is prohibited from performing these tasks at or removing Government-furnished information to any other facility; and Government information shall remain within the confines of authorized Government facilities at all times. Contractors may only access classified materials on government furnished equipment in authorized government owned facilities regardless of telework authorizations.

(3) Prior Approval Required to Hire Subcontractors

The Contractor is required to obtain the Contracting Officer's approval prior to engaging in any contractual relationship (Subcontractor) in support of this contract requiring the disclosure of information, documentary material and/or records generated under or relating to this contract. The Contractor (and any Subcontractor) is required to abide by Government and Agency guidance for protecting sensitive and proprietary information.

(4) Separation Checklist for Contractor Employees

Contractor shall complete a separation checklist before any employee or Subcontractor employee terminates working on the contract. The separation checklist must verify: (1) return of any Government-furnished equipment; (2) return or proper disposal of sensitive personally identifiable information (PII), in paper or electronic form, in the custody of the employee or Subcontractor employee including the sanitization of data on any computer systems or media as appropriate; and (3) termination of any technological access to the Contractor's facilities or systems that would permit the terminated employee's access to sensitive PII.

In the event of adverse job actions resulting in the dismissal of an employee or Subcontractor employee, the Contractor shall notify the Contracting Officer's Representative (COR) within 24 hours. For normal separations, the Contractor shall submit the checklist on the last day of employment or work on the contract.

As requested, contractors shall assist the ICE Point of Contact (ICE/POC), Contracting Officer, or COR with completing ICE Form 50-005/Contractor Employee Separation Clearance Checklist by returning all Government-furnished property including but not limited to computer equipment, media, credentials and passports, smart cards, mobile devices, PIV cards, calling cards, and keys and terminating access to all user accounts and systems.

H.3.2 B: Privacy Training, Safeguarding, and Remediation

If the Safeguarding of Sensitive Information (MAR 2015) and Information Technology Security and Privacy Training (MAR 2015) clauses are included in this contract, section B of this clause is deemed self-deleting

(1) Required Security and Privacy Training for Contractors

Contractor shall provide training for all employees, including Subcontractors and independent contractors who have access to sensitive personally identifiable information (PII) as well as the creation, use, dissemination and/or destruction of sensitive PII at the outset of the employee's work on the contract and every year thereafter. Training must include procedures on how to properly handle sensitive PII, including security requirements for the transporting or transmission of sensitive PII, and reporting requirements for a suspected breach or loss of sensitive PII. All Contractor employees are required to take the *Privacy at DHS: Protecting Personal Information* training course. This course, along with more information about DHS security and training requirements for Contractors, is available at www.dhs.gov/dhs-security-and-training-requirements-contractors. The Federal Information Security Management Act (FISMA) requires all individuals accessing ICE information to take the annual Information Assurance Awareness Training course. These courses are available through the ICE intranet site or the Agency may also make the training available through hypertext links or CD. The Contractor shall maintain copies of employees' certificates of completion as a record of compliance and must submit an annual e-mail notification to the ICE Contracting Officer's Representative that the required training has been completed for all the Contractor's employees.

(2) Safeguarding Sensitive PII Requirement

Contractor employees shall comply with the Handbook for Safeguarding sensitive PII at DHS at all times when handling sensitive PII, including the encryption of sensitive PII as required in the Handbook. This requirement will be flowed down to all subcontracts and lower tiered subcontracts as well.

(3) Non-Disclosure Agreement Requirement

All Contractor personnel that may have access to PII or other sensitive information shall be required to sign a Non-Disclosure Agreement (DHS Form 11000-6) prior to commencing work. The Contractor shall maintain signed copies of the NDA for all employees as a record of compliance. The Contractor shall provide copies of the signed NDA to the Contracting Officer's Representative (COR) no later than two (2) days after execution of the form.

(4) Prohibition on Use of PII in Vendor Billing and Administrative Records

The Contractor's invoicing, billing, and other financial/administrative records/databases may not store or include any sensitive Government information, such as PII that is created, obtained, or provided during the performance of the contract. It is acceptable to list the names, titles and contact information for the Contracting Officer, Contracting Officer's Representative, or other ICE personnel associated with the administration of the contract in the invoices as needed.

(5) Reporting Suspected Loss of Sensitive PII

Contractors must report the suspected loss or compromise of sensitive PII to ICE in a timely manner and cooperate with ICE's inquiry into the incident and efforts to remediate any harm to potential victims.

1. The Contractor must develop and include in its security plan (which is submitted to ICE) an internal system by which its employees and Subcontractors are trained to identify and report the potential loss or compromise of sensitive PII.
2. The Contractor must report the suspected loss or compromise of sensitive PII by its employees or Subcontractors to the ICE Security Operations Center (480-496-6627), the Contracting Officer's Representative (COR), and the Contracting Officer within one (1) hour of the initial discovery.
3. The Contractor must provide a written report to ICE within 24 hours of the suspected loss or compromise of sensitive PII by its employees or Subcontractors. The report must contain the following information:
 - a. Narrative or detailed description of the events surrounding the suspected loss or compromise of information.
 - b. Date, time, and location of the incident.
 - c. Type of information lost or compromised.
 - d. Contractor's assessment of the likelihood that the information was compromised or lost and the reasons behind the assessment.
 - e. Names of person(s) involved, including victim, Contractor employee/Subcontractor and any witnesses.
 - f. Cause of the incident and whether the company's security plan was followed and, if not, which specific provisions were not followed.
 - g. Actions that have been or will be taken to minimize damage and/or mitigate further compromise.
 - h. Recommendations to prevent similar situations in the future, including whether the security plan needs to be modified in any way and whether additional training may be required.

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4. The Contractor shall provide full access and cooperation for all activities determined by the Government to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of sensitive information incidents.

5. At the Government's discretion, Contractor employees or Subcontractor employees may be identified as no longer eligible to access sensitive PII or to work on that contract based on their actions related to the loss or compromise of sensitive PII.

(6) Victim Remediation

The Contractor is responsible for notifying victims and providing victim remediation services in the event of a loss or compromise of sensitive PII held by the Contractor, its agents, or its Subcontractors, under this contract. Victim remediation services shall include at least 18 months of credit monitoring and, for serious or large incidents as determined by the Government, call center help desk services for the individuals whose sensitive PII was lost or compromised. The Contractor and ICE will collaborate and agree on the method and content of any notification that may be required to be sent to individuals whose sensitive PII was lost or compromised

H.4.0: C: GOVERNMENT RECORDS TRAINING, OWNERSHIP, AND MANAGEMENT

H.4.1 REC: C.1: Records Management Training and Compliance:

(a) The Contractor shall provide DHS basic records management training for all employees and Subcontractors that have access to sensitive PII as well as to those involved in the creation, use, dissemination and/or destruction of sensitive PII. This training will be provided at the outset of the Subcontractor's/employee's work on the contract and every year thereafter. This training can be obtained via links on the ICE intranet site or it may be made available through other means (e.g., CD or online). The Contractor shall maintain copies of certificates as a record of compliance and must submit an e-mail notification annually to the Contracting Officer's Representative verifying that all employees working under this contract have completed the required records management training..

(b) The Contractor agrees to comply with Federal and Agency records management policies, including those policies associated with the safeguarding of records covered by the Privacy Act of 1974. These policies include the preservation of all records created or received regardless of format, mode of transmission, or state of completion.

H.4.2 REC C.2: Records Creation, Ownership, and Disposition:

(a) The Contractor shall not create or maintain any records not specifically tied to or authorized by the contract using Government IT equipment and/or Government records or that contain Government Agency data. The Contractor shall certify in writing the destruction or return of all Government data at the conclusion of the contract or at a time otherwise specified in the contract.

(b) Except as stated in the Performance Work Statement and, where applicable, the Contractor's Commercial License Agreement, the Government Agency owns the rights to all electronic information (electronic data, electronic information systems or electronic databases) and all supporting documentation and associated metadata created as part of this contract. All deliverables (including all data and records) under the contract are the property of the U.S. Government and are considered federal records, for which the Agency shall have unlimited rights to use, dispose of, or disclose such data contained therein. The Contractor must deliver sufficient technical documentation with all data deliverables to permit the agency to use the data.

(c) The Contractor shall not retain, use, sell, disseminate, or dispose of any government data/records or deliverables without the express written permission of the Contracting Officer or Contracting Officer's Representative. The Agency and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. § 2701. Records may not be removed from the legal custody of the Agency or destroyed without regard to the provisions of the Agency records schedules

H.4.3 D: DATA PRIVACY AND OVERSIGHT

Section D applies to information technology (IT) contracts. If this is not an IT contract, section D may read as self-deleting.

H.4.4 DATA D.1: Restrictions on Testing or Training Using Real Data Containing PII:*(1) Restrictions on Testing or Training Using Real Data Containing PII*

The use of real data containing sensitive PII from any source for testing or training purposes is generally prohibited. The Contractor shall use synthetic or de-identified real data for testing or training whenever feasible. ICE policy requires that any proposal to use of real data or de-identified data for IT system testing or training be approved by the ICE Privacy Officer and Chief Information Security Officer (CISO) in advance. In the event performance of the contract requires or necessitates the use of real data for system-testing or training purposes, the Contractor in coordination with the Contracting Officer or Contracting Officer's Representative and Government program manager shall obtain approval from the ICE Privacy Office and CISO and complete any required documentation.

If this IT contract contains the Safeguarding of Sensitive Information (MAR 2015) and Information Technology Security and Privacy Training (MAR 2015) clauses, section D(2) of this clause is deemed self-deleting.

H.4.5 DATA D.2 Requirements for Contractor IT Systems Hosting Government Data

The Contractor is required to obtain a Certification and Accreditation for any IT environment owned or controlled by the Contractor or any Subcontractor on which Government data shall reside for the purposes of IT system development, design, data migration, testing, training, maintenance, use, or disposal.

H.4.6 DATA D.3 Requirement to Support Privacy Compliance

(a) The Contractor shall support the completion of the Privacy Threshold Analysis (PTA) document when it is required. PTAs are triggered by the creation, modification, upgrade, or disposition of an IT system, and must be renewed at least every three years. Upon review of the PTA, the DHS Privacy Office determines whether a Privacy Impact Assessment (PIA) and/or Privacy Act System of Records Notice (SORN), or modifications thereto, are required. The Contractor shall provide adequate support to complete the PIA in a timely manner and shall ensure that project management plans and schedules include the PTA, PIA, and SORN (to the extent required) as milestones. Additional information on the privacy compliance process at DHS, including PTAs, PIAs, and SORNs, is located on the DHS Privacy Office website (www.dhs.gov/privacy) under "Compliance." DHS Privacy Policy Guidance Memorandum 2008-02 sets forth when a PIA will be required at DHS, and the Privacy Impact Assessment Guidance and Template outline the requirements and format for the PIA.

(b) If the contract involves an IT system build or substantial development or changes to an IT system that may require privacy documentation, the Contractor shall assign or procure a Privacy Lead, to be listed under "Key Personnel." The Privacy Lead shall be responsible for providing adequate support to DHS to ensure DHS can complete any required PTA, PIA, SORN, or other supporting documentation to support privacy compliance. The Privacy Lead shall work with personnel from the program office, the ICE Privacy Office, the Office of the Chief Information Officer, and the Records Management Branch to ensure that the privacy documentation is kept on schedule, that the answers to questions in the PIA are thorough and complete, and that questions asked by the ICE Privacy Office and other offices are answered in a timely fashion. The Privacy Lead:

- Must have excellent writing skills, the ability to explain technology clearly for a non-technical audience, and the ability to synthesize information from a variety of sources.
- Must have excellent verbal communication and organizational skills.
- Must have experience writing PIAs. Ideally the candidate would have experience writing PIAs for DHS.
- Must be knowledgeable about the Privacy Act of 1974 and the E-Government Act of 2002.
- Must be able to work well with others.

(c) If a Privacy Lead is already in place with the program office and the contract involves IT system builds or substantial changes that may require privacy documentation, the requirement for a separate Private Lead specifically assigned under this contract may be waived provided the Contractor agrees to have the existing Privacy Lead coordinate with and support the ICE Privacy POC to ensure privacy concerns are proactively reviewed and so ICE can complete any required PTA, PIA, SORN, or other supporting documentation to support privacy compliance if required. The Contractor shall work with personnel from the program office, the ICE Office of Information Governance and Privacy, and the Office of the Chief Information Officer to ensure that the privacy documentation is kept on schedule, that the answers to questions in any privacy documents are thorough and complete, that all records management requirements are met, and that questions asked by the ICE Privacy Office and other offices are answered in a timely fashion.

(End of Clause)

H.5. Safeguarding of Sensitive Information (MAR 2015)

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(a) *Applicability.* This clause applies to the Contractor, its subcontractors, and Contractor employees (hereafter referred to collectively as “Contractor”). The Contractor shall insert the substance of this clause in all subcontracts.

(b) *Definitions.* As used in this clause—

“Personally Identifiable Information (PII)” means information that can be used to distinguish or trace an individual's identity, such as name, social security number, or biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-personally identifiable information can become personally identifiable information whenever additional information is made publicly available—in any medium and from any source—that, combined with other available information, could be used to identify an individual.

PII is a subset of sensitive information. Examples of PII include, but are not limited to: name, date of birth, mailing address, telephone number, Social Security number (SSN), email address, zip code, account numbers, certificate/license numbers, vehicle identifiers including license plates, uniform resource locators (URLs), static Internet protocol addresses, biometric identifiers such as fingerprint, voiceprint, iris scan, photographic facial images, or any other unique identifying number or characteristic, and any information where it is reasonably foreseeable that the information will be linked with other information to identify the individual.

“Sensitive Information” is defined in HSAR clause 3052.204-71, Contractor Employee Access, as any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of Title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

“Sensitive Information Incident” is an incident that includes the known, potential, or suspected exposure, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or unauthorized access or attempted access of any Government system, Contractor system, or sensitive information.

“Sensitive Personally Identifiable Information (SPII)” is a subset of PII, which if lost, compromised or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Some forms of PII are sensitive as stand-alone elements. Examples of such PII include: Social Security numbers (SSN), driver's license or state identification number, Alien Registration Numbers (A-number), financial account number, and biometric identifiers such as fingerprint, voiceprint, or iris scan. Additional examples include any groupings of information that contain an individual's name or other unique identifier plus one or more of the following elements:

(1) Truncated SSN (such as last 4 digits)

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- (2) Date of birth (month, day, and year)
- (3) Citizenship or immigration status
- (4) Ethnic or religious affiliation
- (5) Sexual orientation
- (6) Criminal History
- (7) Medical Information
- (8) System authentication information such as mother's maiden name, account passwords or personal identification numbers (PIN)

Other PII may be "sensitive" depending on its context, such as a list of employees and their performance ratings or an unlisted home address or phone number. In contrast, a business card or public telephone directory of agency employees contains PII but is not sensitive.

(c) *Authorities.* The Contractor shall follow all current versions of Government policies and guidance accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>, or available upon request from the Contracting Officer, including but not limited to:

- (1) DHS Management Directive 11042.1 Safeguarding Sensitive But Unclassified (for Official Use Only) Information
- (2) DHS Sensitive Systems Policy Directive 4300A
- (3) DHS 4300A Sensitive Systems Handbook and Attachments
- (4) DHS Security Authorization Process Guide
- (5) DHS Handbook for Safeguarding Sensitive Personally Identifiable Information
- (6) DHS Instruction Handbook 121-01-007 Department of Homeland Security Personnel Suitability and Security Program
- (7) DHS Information Security Performance Plan (current fiscal year)
- (8) DHS Privacy Incident Handling Guidance
- (9) Federal Information Processing Standard (FIPS) 140-2 Security Requirements for Cryptographic Modules accessible at <http://csrc.nist.gov/groups/STM/cmvp/standards.html>
- (10) National Institute of Standards and Technology (NIST) Special Publication 800-53 Security and Privacy Controls for Federal Information Systems and Organizations accessible at <http://csrc.nist.gov/publications/PubsSPs.html>
- (11) NIST Special Publication 800-88 Guidelines for Media Sanitization accessible at <http://csrc.nist.gov/publications/PubsSPs.html>

(d) *Handling of Sensitive Information.* Contractor compliance with this clause, as well as the policies and procedures described below, is required.

(1) Department of Homeland Security (DHS) policies and procedures on Contractor personnel security requirements are set forth in various Management Directives (MDs), Directives, and Instructions. *MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information* describes how Contractors must handle sensitive but unclassified information. DHS uses the term "FOR OFFICIAL USE ONLY" to identify sensitive but unclassified information that is not otherwise categorized by statute or regulation. Examples of sensitive information that are categorized by statute or regulation are PCII, SSI, etc. The *DHS Sensitive Systems Policy Directive 4300A* and the *DHS 4300A Sensitive Systems Handbook* provide the policies and procedures on security for Information Technology (IT) resources. The *DHS Handbook for Safeguarding Sensitive Personally Identifiable Information* provides guidelines to help safeguard SPII in both paper and electronic form. *DHS Instruction Handbook 121-01-007 Department of Homeland Security Personnel Suitability and Security Program* establishes procedures, program responsibilities, minimum standards, and reporting protocols for the DHS Personnel Suitability and Security Program.

(2) The Contractor shall not use or redistribute any sensitive information processed, stored, and/or transmitted by the Contractor except as specified in the contract.

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(3) All Contractor employees with access to sensitive information shall execute *DHS Form 11000-6, Department of Homeland Security Non-Disclosure Agreement (NDA)*, as a condition of access to such information. The Contractor shall maintain signed copies of the NDA for all employees as a record of compliance. The Contractor shall provide copies of the signed NDA to the Contracting Officer's Representative (COR) no later than two (2) days after execution of the form.

(4) The Contractor's invoicing, billing, and other recordkeeping systems maintained to support financial or other administrative functions shall not maintain SPII. It is acceptable to maintain in these systems the names, titles and contact information for the COR or other Government personnel associated with the administration of the contract, as needed.

(e) *Authority to Operate*. The Contractor shall not input, store, process, output, and/or transmit sensitive information within a Contractor IT system without an Authority to Operate (ATO) signed by the Headquarters or Component CIO, or designee, in consultation with the Headquarters or Component Privacy Officer. Unless otherwise specified in the ATO letter, the ATO is valid for three (3) years. The Contractor shall adhere to current Government policies, procedures, and guidance for the Security Authorization (SA) process as defined below.

(1) Complete the Security Authorization process. The SA process shall proceed according to the *DHS Sensitive Systems Policy Directive 4300A* (Version 11.0, April 30, 2014), or any successor publication, *DHS 4300A Sensitive Systems Handbook* (Version 9.1, July 24, 2012), or any successor publication, and the *Security Authorization Process Guide* including templates.

(i) Security Authorization Process Documentation. SA documentation shall be developed using the Government provided Requirements Traceability Matrix and Government security documentation templates. SA documentation consists of the following: Security Plan, Contingency Plan, Contingency Plan Test Results, Configuration Management Plan, Security Assessment Plan, Security Assessment Report, and Authorization to Operate Letter. Additional documents that may be required include a Plan(s) of Action and Milestones and Interconnection Security Agreement(s). During the development of SA documentation, the Contractor shall submit a signed SA package, validated by an independent third party, to the COR for acceptance by the Headquarters or Component CIO, or designee, at least thirty (30) days prior to the date of operation of the IT system. The Government is the final authority on the compliance of the SA package and may limit the number of resubmissions of a modified SA package. Once the ATO has been accepted by the Headquarters or Component CIO, or designee, the Contracting Officer shall incorporate the ATO into the contract as a compliance document. The Government's acceptance of the ATO does not alleviate the Contractor's responsibility to ensure the IT system controls are implemented and operating effectively.

(ii) Independent Assessment. Contractors shall have an independent third party validate the security and privacy controls in place for the system(s). The independent third party shall review and analyze the SA package, and report on technical, operational, and management level deficiencies as outlined in *NIST Special Publication 800-53 Security and Privacy Controls for Federal Information Systems and Organizations*. The Contractor shall address all deficiencies before submitting the SA package to the Government for acceptance.

(iii) Support the completion of the Privacy Threshold Analysis (PTA) as needed. As part of the SA process, the Contractor may be required to support the Government in the completion of the PTA. The requirement to complete a PTA is triggered by the creation, use, modification, upgrade, or disposition of a Contractor IT system that will store, maintain and use PII, and must be renewed at least every three (3) years. Upon review of the PTA, the DHS Privacy Office determines whether a Privacy Impact Assessment (PIA) and/or Privacy Act System of Records Notice (SORN), or modifications thereto, are required. The Contractor shall provide all support necessary to assist the Department in completing the PIA in a timely manner and shall ensure that project management plans and schedules include time for the completion of the PTA, PIA, and SORN (to the extent required) as milestones. Support in this context includes responding timely to requests for information from the Government about the use, access, storage, and maintenance of PII on the Contractor's system, and providing timely review of relevant compliance documents for factual accuracy. Information on the DHS privacy compliance process, including PTAs, PIAs, and SORNs, is accessible at <http://www.dhs.gov/privacy-compliance>.

(2) *Renewal of ATO*. Unless otherwise specified in the ATO letter, the ATO shall be renewed every three (3) years. The Contractor is required to update its SA package as part of the ATO renewal process. The Contractor shall update its SA package by one of the following methods: (1) Updating the SA documentation in the DHS automated information assurance tool for acceptance by the Headquarters or Component CIO, or designee, at least 90 days before the ATO expiration date for review and verification of security controls; or (2) Submitting an updated SA package directly to the COR for approval by the Headquarters or Component CIO, or designee, at least 90 days before the ATO expiration date for review and verification of security controls. The 90 day review process is independent of the system production date and therefore it is important that the Contractor build the review into project schedules. The reviews may include onsite visits that involve physical or logical inspection of the Contractor environment to ensure controls are in place.

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(3) *Security Review.* The Government may elect to conduct random periodic reviews to ensure that the security requirements contained in this contract are being implemented and enforced. The Contractor shall afford DHS, the Office of the Inspector General, and other Government organizations access to the Contractor's facilities, installations, operations, documentation, databases and personnel used in the performance of this contract. The Contractor shall, through the Contracting Officer and COR, contact the Headquarters or Component CIO, or designee, to coordinate and participate in review and inspection activity by Government organizations external to the DHS. Access shall be provided, to the extent necessary as determined by the Government, for the Government to carry out a program of inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of Government data or the function of computer systems used in performance of this contract and to preserve evidence of computer crime.

(4) *Continuous Monitoring.* All Contractor-operated systems that input, store, process, output, and/or transmit sensitive information shall meet or exceed the continuous monitoring requirements identified in the *Fiscal Year 2014 DHS Information Security Performance Plan*, or successor publication. The plan is updated on an annual basis. The Contractor shall also store monthly continuous monitoring data at its location for a period not less than one year from the date the data is created. The data shall be encrypted in accordance with *FIPS 140-2 Security Requirements for Cryptographic Modules* and shall not be stored on systems that are shared with other commercial or Government entities. The Government may elect to perform continuous monitoring and IT security scanning of Contractor systems from Government tools and infrastructure.

(5) *Revocation of ATO.* In the event of a sensitive information incident, the Government may suspend or revoke an existing ATO (either in part or in whole). If an ATO is suspended or revoked in accordance with this provision, the Contracting Officer may direct the Contractor to take additional security measures to secure sensitive information. These measures may include restricting access to sensitive information on the Contractor IT system under this contract. Restricting access may include disconnecting the system processing, storing, or transmitting the sensitive information from the Internet or other networks or applying additional security controls.

(6) *Federal Reporting Requirements.* Contractors operating information systems on behalf of the Government or operating systems containing sensitive information shall comply with Federal reporting requirements. Annual and quarterly data collection will be coordinated by the Government. Contractors shall provide the COR with requested information within three (3) business days of receipt of the request. Reporting requirements are determined by the Government and are defined in the *Fiscal Year 2014 DHS Information Security Performance Plan*, or successor publication. The Contractor shall provide the Government with all information to fully satisfy Federal reporting requirements for Contractor systems.

(f) *Sensitive Information Incident Reporting Requirements.*

(1) All known or suspected sensitive information incidents shall be reported to the Headquarters or Component Security Operations Center (SOC) within one hour of discovery in accordance with *4300A Sensitive Systems Handbook Incident Response and Reporting* requirements. When notifying the Headquarters or Component SOC, the Contractor shall also notify the Contracting Officer, COR, Headquarters or Component Privacy Officer, and US-CERT using the contact information identified in the contract. If the incident is reported by phone or the Contracting Officer's email address is not immediately available, the Contractor shall contact the Contracting Officer immediately after reporting the incident to the Headquarters or Component SOC. The Contractor shall not include any sensitive information in the subject or body of any e-mail. To transmit sensitive information, the Contractor shall use *FIPS 140-2 Security Requirements for Cryptographic Modules* compliant encryption methods to protect sensitive information in attachments to email. Passwords shall not be communicated in the same email as the attachment. A sensitive information incident shall not, by itself, be interpreted as evidence that the Contractor has failed to provide adequate information security safeguards for sensitive information, or has otherwise failed to meet the requirements of the contract.

(2) If a sensitive information incident involves PII or SPII, in addition to the reporting requirements in *4300A Sensitive Systems Handbook Incident Response and Reporting*, Contractors shall also provide as many of the following data elements that are available at the time the incident is reported, with any remaining data elements provided within 24 hours of submission of the initial incident report:

- (i) Data Universal Numbering System (DUNS);
- (ii) Contract numbers affected unless all contracts by the company are affected;
- (iii) Facility CAGE code if the location of the event is different than the prime contractor location;
- (iv) Point of contact (POC) if different than the POC recorded in the System for Award Management (address, position, telephone, email);
- (v) Contracting Officer POC (address, telephone, email);
- (vi) Contract clearance level;
- (vii) Name of subcontractor and CAGE code if this was an incident on a subcontractor network;
- (viii) Government programs, platforms or systems involved;

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- (ix) Location(s) of incident;
- (x) Date and time the incident was discovered;
- (xi) Server names where sensitive information resided at the time of the incident, both at the Contractor and subcontractor level;
- (xii) Description of the Government PII and/or SPII contained within the system;
- (xiii) Number of people potentially affected and the estimate or actual number of records exposed and/or contained within the system; and
- (xiv) Any additional information relevant to the incident.

(g) *Sensitive Information Incident Response Requirements.*

- (1) All determinations related to sensitive information incidents, including response activities, notifications to affected individuals and/or Federal agencies, and related services (e.g., credit monitoring) will be made in writing by the Contracting Officer in consultation with the Headquarters or Component CIO and Headquarters or Component Privacy Officer.
- (2) The Contractor shall provide full access and cooperation for all activities determined by the Government to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of sensitive information incidents.
- (3) Incident response activities determined to be required by the Government may include, but are not limited to, the following:
 - (i) Inspections,
 - (ii) Investigations,
 - (iii) Forensic reviews, and
 - (iv) Data analyses and processing.
- (4) The Government, at its sole discretion, may obtain the assistance from other Federal agencies and/or third-party firms to aid in incident response activities.

(h) *Additional PII and/or SPII Notification Requirements.*

- (1) The Contractor shall have in place procedures and the capability to notify any individual whose PII resided in the Contractor IT system at the time of the sensitive information incident not later than 5 business days after being directed to notify individuals, unless otherwise approved by the Contracting Officer. The method and content of any notification by the Contractor shall be coordinated with, and subject to prior written approval by the Contracting Officer, in consultation with the Headquarters or Component Privacy Officer, utilizing the *DHS Privacy Incident Handling Guidance*. The Contractor shall not proceed with notification unless the Contracting Officer, in consultation with the Headquarters or Component Privacy Officer, has determined in writing that notification is appropriate.
- (2) Subject to Government analysis of the incident and the terms of its instructions to the Contractor regarding any resulting notification, the notification method may consist of letters to affected individuals sent by first class mail, electronic means, or general public notice, as approved by the Government. Notification may require the Contractor's use of address verification and/or address location services. At a minimum, the notification shall include:
 - (i) A brief description of the incident;
 - (ii) A description of the types of PII and SPII involved;
 - (iii) A statement as to whether the PII or SPII was encrypted or protected by other means;
 - (iv) Steps individuals may take to protect themselves;
 - (v) What the Contractor and/or the Government are doing to investigate the incident, to mitigate the incident, and to protect against any future incidents; and
 - (vi) Information identifying who individuals may contact for additional information.

(i) *Credit Monitoring Requirements.* In the event that a sensitive information incident involves PII or SPII, the Contractor may be required to, as directed by the Contracting Officer:

- (1) Provide notification to affected individuals as described above; and/or

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(2) Provide credit monitoring services to individuals whose data was under the control of the Contractor or resided in the Contractor IT system at the time of the sensitive information incident for a period beginning the date of the incident and extending not less than 18 months from the date the individual is notified. Credit monitoring services shall be provided from a company with which the Contractor has no affiliation. At a minimum, credit monitoring services shall include:

- (i) Triple credit bureau monitoring;
- (ii) Daily customer service;
- (iii) Alerts provided to the individual for changes and fraud; and
- (iv) Assistance to the individual with enrollment in the services and the use of fraud alerts; and/or

(3) Establish a dedicated call center. Call center services shall include:

- (i) A dedicated telephone number to contact customer service within a fixed period;
- (ii) Information necessary for registrants/enrollees to access credit reports and credit scores;
- (iii) Weekly reports on call center volume, issue escalation (i.e., those calls that cannot be handled by call center staff and must be resolved by call center management or DHS, as appropriate), and other key metrics;
- (iv) Escalation of calls that cannot be handled by call center staff to call center management or DHS, as appropriate;
- (v) Customized FAQs, approved in writing by the Contracting Officer in coordination with the Headquarters or Component Chief Privacy Officer; and
- (vi) Information for registrants to contact customer service representatives and fraud resolution representatives for credit monitoring assistance.

(j) *Certification of Sanitization of Government and Government-Activity-Related Files and Information.* As part of contract closeout, the Contractor shall submit the certification to the COR and the Contracting Officer following the template provided in *NIST Special Publication 800-88 Guidelines for Media Sanitization.*

(End of clause)

[END OF SECTION H]

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SECTION I**CONTRACT CLAUSES****FAR 52.252-2 Clauses Incorporated by Reference. (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <https://www.acquisition.gov> and <http://farsite.hill.af.mil/>.

(End of clause)

FAR Clauses Incorporated by Reference		
CLAUSE	DESCRIPTION	DATE
FAR 52.203-3	Gratuities	APR 1984
FAR 52.203-5	Covenant Against Contingent Fees	MAY 2014
FAR 52.203-7	Anti-Kickback Procedures	MAY 2014
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	APR 2014
FAR 52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	MAY 2011
FAR 52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
FAR 52.204-13	System for Award Management Maintenance	OCT 2018
FAR 52.204-16	Commercial and Government Entity Code Reporting	JUL 2016
FAR 52.204-18	Commercial and Government Entity Code Maintenance	JUL 2016
FAR 52.212-4	Contract Terms and Conditions – Commercial Items, Alternate I	OCT 2018
FAR 52.219-8	Utilization of Small Business Concerns	OCT 2018
FAR 52.219-9	Small Business Subcontracting Plan - <i>Alternate II</i>	AUG 2018
FAR 52.219-16	Liquidated Damages -- Subcontracting Plan	JAN 1999
FAR 52.222-56	Certification Regarding Trafficking in Persons Compliance Plan	MAR 2015
FAR 52.224-1	Privacy Act Notification	APR 1984
FAR 52.224-2	Privacy Act	APR 1984
FAR 52.232-39	Unenforceability of Unauthorized Obligations	JUN 2013
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors	DEC 2013
FAR 52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004
FAR 52.237-3	Continuity of Services	JAN 1991
FAR 52.242-13	Bankruptcy	JUL 1995
FAR 52.243-3	Time-and-Materials or Labor-Hours	SEP 2000
FAR 52.244-6	Subcontracts for Commercial Items	AUG 2019
FAR 52.245-1	Government Property	JAN 2017

HSAR Clauses Incorporated by Reference

HSAR Clauses Incorporated by Reference		
CLAUSE	DESCRIPTION	DATE
HSAR 3052.203-70	Instructions for Contractor Disclosure of Violations.	SEP 2012
HSAR 3052.205-70	Advertisements, Publicizing Awards, and Releases	SEP 2012
HSAR 3052.209-70	Prohibition on Contracting with Inverted Domestic Corporations	SEP 2012
HSAR 3052.219-70	Organizational Conflict of Interest	JUN 2006
HSAR 3052.219-70	Small Business Subcontracting Plan Reporting.	JUN 2006
HSAR 3052.219-71	DHS Mentor-Protégé Program	JUN 2006
HSAR 3052.222-70	Strikes or picketing affecting timely completion of the contract work	DEC 2003
HSAR 3052.222-71	Strikes or picketing affecting access to a DHS facility	DEC 2003
HSAR 3052.228-70	Insurance	DEC 2003
HSAR 3052.242-72	Contracting Officer's Technical Representative	DEC 2003

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CLAUSES INCORPORATED BY FULL TEXT: FAR 52-212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (Oct 2019)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul* 2018) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (*Aug* 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (*Nov* 2015).

(5) [52.233-3](#), Protest After Award (*Aug* 1996) ([31 U.S.C. 3553](#)).

(6) [52.233-4](#), Applicable Law for Breach of Contract Claim (*Oct* 2004) (Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (*Sept* 2006), with Alternate I (*Oct* 1995) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (*Oct* 2015) ([41 U.S.C. 3509](#))).

(3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (*June* 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (*Oct* 2018) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(5)[Reserved].

(6) [52.204-14](#), Service Contract Reporting Requirements (*Oct* 2016) (Pub. L. 111-117, section 743 of Div. C).

(7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (*Oct* 2016) (Pub. L. 111-117, section 743 of Div. C).

(8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (*Oct* 2015) ([31 U.S.C. 6101 note](#)).

(9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (*Oct* 2018) ([41 U.S.C. 2313](#)).

(10)[Reserved].

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___ (11)

(i) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (*Nov 2011*) ([15 U.S.C.657a](#)).

___ (ii) Alternate I (*Nov 2011*) of [52.219-3](#).

___ (12)

(i) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (*Oct 2014*) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

___ (ii) Alternate I (*Jan 2011*) of [52.219-4](#).

___ (13)[Reserved]

___ (14)

(i) [52.219-6](#), Notice of Total Small Business Set-Aside (*Nov 2011*) ([15 U.S.C.644](#)).

___ (ii) Alternate I (*Nov 2011*).

___ (iii) Alternate II (*Nov 2011*).

___ (15)

(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (*June 2003*) ([15 U.S.C. 644](#)).

___ (ii) Alternate I (*Oct 1995*) of [52.219-7](#).

___ (iii) Alternate II (*Mar 2004*) of [52.219-7](#).

(16) [52.219-8](#), Utilization of Small Business Concerns (*Oct 2018*) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

(17)(i) [52.219-9](#), Small Business Subcontracting Plan (*Aug 2018*) ([15 U.S.C. 637\(d\)\(4\)](#))

___ (ii) Alternate I (*Nov 2016*) of [52.219-9](#).

___ (iii) Alternate II (*Nov 2016*) of [52.219-9](#).

___ (iv) Alternate III (*Nov 2016*) of [52.219-9](#).

___ (v) Alternate IV (*Aug 2018*) of [52.219-9](#)

___ (18) [52.219-13](#), Notice of Set-Aside of Orders (*Nov 2011*) ([15 U.S.C. 644\(r\)](#)).

___ (19) [52.219-14](#), Limitations on Subcontracting (*Jan 2017*) ([15 U.S.C.637\(a\)\(14\)](#)).

(20) [52.219-16](#), Liquidated Damages-Subcontracting Plan (*Jan 1999*) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

___ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (*Oct 2019*) ([15 U.S.C. 657f](#)).

(22) [52.219-28](#), Post Award Small Business Program Rerepresentation (*Jul 2013*) ([15 U.S.C. 632\(a\)\(2\)](#)).

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___ (23) [52.219-29](#), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (*Dec 2015*) ([15 U.S.C. 637\(m\)](#)).

___ (24) [52.219-30](#), Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (*Dec 2015*) ([15 U.S.C. 637\(m\)](#)).

✓ ___ (25) [52.222-3](#), Convict Labor (*June 2003*) (E.O.11755).

✓ ___ (26) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (*Oct 2019*) (E.O.13126).

___ (27) [52.222-21](#), Prohibition of Segregated Facilities (*Apr 2015*).

✓ ___ (28) (i) [52.222-26](#), Equal Opportunity (*Sept 2016*) (E.O.11246).

___ (ii) Alternate I (*Feb 1999*) of [52.222-26](#).

✓ ___ (29) (i) [52.222-35](#), Equal Opportunity for Veterans (*Oct 2015*) ([38 U.S.C. 4212](#)).

___ (ii) Alternate I (*July 2014*) of [52.222-35](#).

✓ ___ (30) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (*Jul 2014*) ([29 U.S.C.793](#)).

___ (ii) Alternate I (*July 2014*) of [52.222-36](#).

✓ ___ (31) [52.222-37](#), Employment Reports on Veterans (*Feb 2016*) ([38 U.S.C. 4212](#)).

✓ ___ (32) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (*Dec 2010*) (E.O. 13496).

✓ ___ (33) (i) [52.222-50](#), Combating Trafficking in Persons (*Jan 2019*) ([22 U.S.C. chapter 78](#) and E.O. 13627).

___ (ii) Alternate I (*Mar 2015*) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).

✓ ___ (34) [52.222-54](#), Employment Eligibility Verification (*Oct 2015*). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

___ (35)

(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (*May 2008*) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (*May 2008*) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (36) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (*Jun 2016*) (E.O. 13693).

___ (37) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (*Jun 2016*) (E.O. 13693).

___ (38)

(i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (*Jun 2014*) (E.O.s 13423 and 13514).

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- ___ (ii) Alternate I (*Oct 2015*) of [52.223-13](#).
- ___ (39)
- (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (*Jun 2014*) (E.O.s 13423 and 13514).
- ___ (ii) Alternate I (*Jun 2014*) of [52.223-14](#).
- ✓ (40) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (*Dec 2007*) ([42 U.S.C. 8259b](#)).
- ___ (41)
- (i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (*Oct 2015*) (E.O.s 13423 and 13514).
- ___ (ii) Alternate I (*Jun 2014*) of [52.223-16](#).
- ✓ (42) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (*Aug 2011*) (E.O. 13513).
- ___ (43) [52.223-20](#), Aerosols (*Jun 2016*) (E.O. 13693).
- ___ (44) [52.223-21](#), Foams (*Jun 2016*) (E.O. 13693).
- ✓ (45) (i) [52.224-3](#) Privacy Training (*Jan 2017*) (5 U.S.C. 552 a).
- ___ (ii) Alternate I (*Jan 2017*) of [52.224-3](#).
- ✓ (46) [52.225-1](#), Buy American-Supplies (*May 2014*) ([41 U.S.C. chapter 83](#)).
- ___ (47) (i) [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act (*May 2014*) [41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.
- ___ (ii) Alternate I (*May 2014*) of [52.225-3](#).
- ___ (iii) Alternate II (*May 2014*) of [52.225-3](#).
- ___ (iv) Alternate III (*May 2014*) of [52.225-3](#).
- ___ (48) [52.225-5](#), Trade Agreements (*Oct 2019*) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).
- ✓ (49) [52.225-13](#), Restrictions on Certain Foreign Purchases (*June 2008*) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (50) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (*Oct 2016*) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).
- ___ (51) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (*Nov 2007*) ([42 U.S.C. 5150](#)).
- ___ (52) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (*Nov 2007*) ([42 U.S.C. 5150](#)).
- ___ (53) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (*Feb 2002*) ([41 U.S.C.4505](#), [10 U.S.C.2307\(f\)](#)).
- ___ (54) [52.232-30](#), Installment Payments for Commercial Items (*Jan 2017*) ([41 U.S.C.4505](#), [10 U.S.C.2307\(f\)](#)).

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(55) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (*Oct* 2018) ([31 U.S.C. 3332](#)).

(56) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (*Jul* 2013) ([31 U.S.C.3332](#)).

(57) [52.232-36](#), Payment by Third Party (*May* 2014) ([31 U.S.C.3332](#)).

(58) [52.239-1](#), Privacy or Security Safeguards (*Aug* 1996) ([5 U.S.C. 552a](#)).

(59) [52.242-5](#), Payments to Small Business Subcontractors (*Jan* 2017) ([15 U.S.C. 637\(d\)\(13\)](#)).

(60) (i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (*Feb* 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

(ii) Alternate I (*Apr* 2003) of [52.247-64](#).

(iii) Alternate II (*Feb* 2006) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.222-17](#), Nondisplacement of Qualified Workers (*May* 2014)(E.O. 13495).

(2) [52.222-41](#), Service Contract Labor Standards (*Aug* 2018) ([41 U.S.C. chapter 67](#)).

(3) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (*May* 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

(4) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (*Aug* 2018) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

(5) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (*May* 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

(6) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (*May* 2014) ([41 U.S.C. chapter 67](#)).

(7) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (*May* 2014) ([41 U.S.C. chapter 67](#)).

(8) [52.222-55](#), Minimum Wages Under Executive Order 13658 (*Dec* 2015).

(9) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (*Jan* 2017) (E.O. 13706).

(10) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (*May* 2014) ([42 U.S.C. 1792](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records-Negotiation.

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(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (*Oct* 2015) ([41 U.S.C. 3509](#)).

(ii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (*Jan* 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul* 2018) (Section 1634 of Pub. L. 115-91).

(iv) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (*Aug* 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) [52.219-8](#), Utilization of Small Business Concerns (*Oct* 2018) ([15 U.S.C.637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(vi) [52.222-17](#), Nondisplacement of Qualified Workers (*May* 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](#).

(vii) [52.222-21](#), Prohibition of Segregated Facilities (*Apr* 2015).

(viii) [52.222-26](#), Equal Opportunity (*Sept* 2015) (E.O.11246).

(ix) [52.222-35](#), Equal Opportunity for Veterans (*Oct* 2015) ([38 U.S.C.4212](#)).

(x) [52.222-36](#), Equal Opportunity for Workers with Disabilities (*Jul* 2014) ([29 U.S.C.793](#)).

(xi) [52.222-37](#), Employment Reports on Veterans (*Feb* 2016) ([38 U.S.C.4212](#))

(xii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (*Dec* 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xiii) [52.222-41](#), Service Contract Labor Standards (*Aug* 2018) ([41 U.S.C. chapter 67](#)).

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(xiv) (A) [52.222-50](#), Combating Trafficking in Persons (*Jan 2019*) ([22 U.S.C. chapter 78](#) and E.O 13627).

(B) Alternate I (*Mar 2015*) of [52.222-50](#)([22 U.S.C. chapter 78](#) and [E.O 13627](#)).

(xv) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (*May 2014*) ([41 U.S.C. chapter 67](#)).

(xvi) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (*May 2014*) ([41 U.S.C. chapter 67](#)).

(xvii) [52.222-54](#), Employment Eligibility Verification (*Oct 2015*) (E.O. 12989).

(xviii) [52.222-55](#), Minimum Wages Under Executive Order 13658 (*Dec 2015*).

(xix) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (*Jan 2017*) (E.O. 13706).

(xx) (A) [52.224-3](#), Privacy Training (*Jan 2017*) ([5 U.S.C. 552a](#)).

(B) Alternate I (*Jan 2017*) of [52.224-3](#).

(xxi) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (*Oct 2016*) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

(xxii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (*May 2014*) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xxiii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (*Feb 2006*) ([46 U.S.C. Appx.1241\(b\)](#) and [10 U.S.C.2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (Feb 2000). As prescribed in [12.301](#)(b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause”.

Alternate II (Aug 2019). As prescribed in [12.301](#)(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8 G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than-

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

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(ii) *Those clauses listed in this paragraph (e)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (*Oct 2015*) ([41 U.S.C. 3509](#)).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (*Jun 2010*) (Section 1553 of Pub. L. 111-5).

(C) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul 2018*) (Section 1634 of Pub. L. 115-91).

(D) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(E) [52.219-8](#), Utilization of Small Business Concerns (*Oct 2018*) ([15 U.S.C. 637\(d\)\(2\) and \(3\)](#)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(F) [52.222-21](#), Prohibition of Segregated Facilities (*Apr 2015*).

(G) [52.222-26](#), Equal Opportunity (*Sept 2016*) (E.O. 11246).

(H) [52.222-35](#), Equal Opportunity for Veterans (*Oct 2015*) ([38 U.S.C. 4212](#)).

(I) [52.222-36](#), Equal Opportunity for Workers with Disabilities (*Jul 2014*) ([29 U.S.C. 793](#)).

(J) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (*Dec 2010*) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(K) [52.222-41](#), Service Contract Labor Standards (*Aug 2018*) ([41 U.S.C. chapter 67](#)).

(L) ___(1) [52.222-50](#), Combating Trafficking in Persons (*Jan 2019*) ([22 U.S.C. chapter 78](#) and E.O 13627).

___(2) Alternate I (*Mar 2015*) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O 13627).

(M) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (*May 2014*) ([41 U.S.C. chapter 67](#)).

(N) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (*May 2014*) ([41 U.S.C. chapter 67](#)).

(O) [52.222-54](#), Employment Eligibility Verification (*Oct 2015*) (Executive Order 12989).

(P) [52.222-55](#), Minimum Wages Under Executive Order 13658 (*Dec 2015*).

(Q) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (*Jan 2017*) (E.O. 13706).

(R)(1) [52.224-3](#), Privacy Training (*Jan 2017*) ([5 U.S.C. 552a](#)).

(2) Alternate I (*Jan 2017*) of [52.224-3](#).

(S) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (*Oct 2016*) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302](#) Note).

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(T) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(U) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(End of Clause)

52.216-18 Ordering (Oct 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from September 1, 2019 through August 31, 2024.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

52.216-19 Ordering Limitations (Oct 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$100,000.00, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor --

- (1) Any order for a single item in excess of the contract period of performance estimated max quantity for the contract year in effect;
- (2) Any order for a combination of items in excess of the contract period of performance estimated max quantity for the contract year in effect; or
- (3) A series of orders from the same ordering office within 365 days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 5 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

52.216-22 -- Indefinite Quantity (Oct 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after August 31, 2024.

(End of Clause)

Contract 70CDCR20C00000001

FAR 52.217-8

Option to Extend Services

NOV. 1999

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days

FAR 52.217-9

Option to Extend the Term of the Contract

MAR 2000

(a) The Government may extend the term of this contract by written notice to the Contractor within **30** days before the end of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least **60** days before the end of the contract. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed **60 months**.

(End of clause)

Solicitation Provisions Incorporated by Full Text

HSAR CLAUSES INCORPORATED IN FULL TEXT

HSAR 3052.204-70

Security Requirements for Unclassified Information Technology Resources

JUN 2006

(a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location. This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency's mission.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract.

(1) Within 30 days after receipt of all transition items and documentation from the incumbent, the contractor shall submit for approval its IT Security Plan, which shall be consistent with and further detail the approach contained in the offeror's proposal. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(2) The Contractor's IT Security Plan shall comply with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.); the Government Information Security Reform Act of 2000; and the Federal Information Security Management Act of 2002; and with Federal policies and procedures that include, but are not limited to, OMB Circular A-130.

(3) The security plan shall specifically include instructions regarding handling and protecting sensitive information at the Contractor's site (including any information stored, processed, or transmitted using the Contractor's computer systems), and the secure management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) Examples of tasks that require security provisions include--

Contract 70CDCR20C00000001

(1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and (2) Access to DHS networks or computers at a level beyond that granted the general public (e.g., such as bypassing a firewall).

(d) At the expiration of the contract, the contractor shall return all sensitive DHS information and IT resources provided to the contractor during the contract and certify that all non-public DHS information has been purged from any contractor-owned system. Components shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.

(e) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer. Accreditation will proceed according to the criteria of the DHS Sensitive System Policy Publication, 4300A (Version 2.1, July 26, 2004) or any replacement publication, which the Contracting Officer will provide upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document. The contractor shall comply with the approved accreditation documentation.

(End of clause)

[END OF SECTION I]

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Contract 70CDCR20C00000001

SECTION J

LIST OF ATTACHMENTS

- J.1 – Attachment 1 – Wage Determination
- J.2 – Attachment 2 – Quality Assurance Surveillance Plan
- J.3 – Attachment 3 – Facility Contracts List for DHS
- J.4 – Attachment 4 – Deliverables Table
- J.5 – Attachment 5 - Security Language
- J.6 – Attachment 6 – Transportation Monthly Report Template

[END OF SECTION J]

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Attachment B

Transportation Specialist Training Agenda and Acknowledgement of Training Day 1

8:30am-9:00am

Program Manager Welcome and HR Paperwork.

9:00am- 12:00pm

UAC Orientation

- Historical and Overview of the UAC Program.
- Understanding of the basic demographic information about the UAC Population and reasons behind the recent influx into the United States.
- Understanding ICE's role in the UAC process.
- Understanding ICE's primary considerations and philosophy.
- Understanding the Services MVM Provides ICE and the role and expectations of the Transportation Specialist on this contract.

Non-Secure UAC and Family Policy

- Identify ICE Policies regarding custody issues.

TS General Policies and Specific Duties

- Understand on Boarding and MVM Command Center Policies for work assignments.
- Understand the topic covered by the SOPs for this contract and the care, custody, and security of UAC's and Family Units.
- Articulate the importance of following Department of Transportation Regulations and MVM Driving policies.
- Provide safe, secure transport services to UACs and families via ground transportation and air travel across the nation.
- Understand temporary staging and hospital visit protocols.
- Meet and Greet Procedures (VIDEO)
- Hotel Stays and Transfer Procedures (VIDEO)

MVM TABLET and MILESTONES SPECIFIC TRAINING

Lunch

1:30pm-6:00pm

Emergency, Crises, and Special Situations

- Understand procedures for dealing with manmade or natural emergencies, Active Shooter, external attacks, hunger strikes, escapes, hostage situations, medical emergencies, death, fire, and traffic accidents.
- Understand the importance of having a "What If" plan and rally point.
- Understand the importance keeping UACs and Family Units safe during an emergency crisis.

Airport Missions, Regulations and Tips for Traveling with Minors

- Know TSA regulations and protocols.
- Understand MVM Policies regarding transportation via the airlines.
- Understanding the importance of relationship building with the TSA, Airlines, and Federal, State, and Local Officials at the airports.
- Airport Mission Procedures
- FIT TO FLY
- FIT TO FLY VIDEOS

Ethics and Authority

- Understand the ethical issues of decision making.
- Understand MVM's Code of Ethics, Culture of Reporting, and procedures of reporting ethical issues.
- Recognizing Red Flags.

Key Control

- Identify the basic rules for signing out/in procedures and lost keys.
- Identify what items make up key control.

Note Taking and Report Writing

- List and briefly describe the techniques and pitfalls of report writing.
- Briefly describe the four traditional report writing questions: Who, What, Where, Why.
- Describe the importance of reviews, spell checks, and critique for accuracy.

Telephone and Radio Procedures

- Use Telephone and radio equipment in accordance with all applicable MVM policies, and Transportation SOPs.
- Understand the protocols for 911 calls using NYPD Phonetic Alphabet, numbers, and important descriptors.

Bloodborne Pathogens and Respiratory Viruses

- Define Bloodborne pathogens and Respiratory Virus (COVID-19)
- Describe the importance of personal protective equipment (PPE) and hand washing in reducing the risk of bloodborne pathogens into a person's body.
- Identify work practices that help eliminate or reduce the risk of exposure.
- PPE Procedures for all Missions

Medications

- Understand the importance of documenting the administration of medication to UACs and or Family Units.
- Understanding medical protocols to provide Transportation Specialists with the rules and requirements that govern the storing and dispensing of medications used by UAC and the Family Units.
- Understand the prescription label in reference to: Name, Dosage, Route, and Time.
- Understand Self Administration Medications such as the EPIPEN.

Searches, Property, Use of Force, and Restraints

- Understand the purpose of searching UACs and Family Units and property.
- Understand ICE and Border Patrol Policies regarding property and money specifically.
- Understand soft and hard handcuffs and policies regarding use.

Prison Rape Elimination Act (PREA)

- Understand the purpose of PREA.
- Understand “No Consent in Custody” and Zero Tolerance
- Understand reporting obligations and procedures to combat sexual assault and abuse.

Suicide Prevention and Intervention

- Recognize signs and situations indicating that a UAC is potentially a suicide risk.
- Understand the importance of getting a baseline during the UAC Orientation.
- Identify procedures to protect a UAC who threatens suicide.
- ICE ZERO Tolerances Policy

Sexual Harassment

- Define sexual harassment.
- Identify different types of sexual harassment.
- Identify behaviors that constitute sexual harassment.
- Identify and describe the reporting requirements for violations of sexual harassment.
- Identify and articulate the potential consequences for violating the sexual harassment policy.

Standards of Conduct

- Identify behaviors prohibited by MVM’s standard of conduct policy.
- Identify behaviors prohibited by the contract.
- Understand the possible consequences of violating conduct standards.
- Understand and identify the standards for employee appearance.

Cultural and Ethic Sensitivity

- Recognize cultural differences.
- Understand how cultural differences may impact communication with UACs and family members.
- Understand how these impacts may vary based on country of origin. Age, and gender of the UAC, and age and gender of the Transportation Specialists.
- Understand Prejudice, Stereotypes, and Discrimination.

Transportation Specialist Training Agenda Day 2

8:30am – 12:00pm

15 Passenger Van Training

- Presentation Video
- Written Test

Child Development

- Articulate the importance of understanding child development and how it applies to a Transportation Specialist.
- Identify key characteristics of each age group.
- Discuss methods of relating to each age group.
- Identify unique challenges to each age group or developmental level.
- Discuss methods to ease fear and build trust with the UAC's.

Child Behavioral Programs and Special Needs

- Describe the behavioral difficulties one is likely to encounter in transporting UACs and Family Units.
- Identify the types of special need UACs that MVM might transport.
- Understand the importance of teamwork among TS's.
- Understand the effects of trauma on a UAC or family member.
- Understand precautions and safety concerns transporting special need kids.
- Understand the use of compassion and empathy to aid in managing UACs with special needs.

Introduction Effective Communication

- Identify obstacles that hinder effective communication.
- Identify the four levels of listening and the importance of being an Active Listener.
- Understand concepts of effective communication.
- Understanding the use of Open and Closed end questions in communication.
- Understanding Non-Verbal, body language, and body positioning.

Effective Communication with Children

- Understanding key communication skills for working with UACs.
- Understanding building and maintaining a positive relationship using effective communication.
- Understanding what effective communication consider when communicating with children.
- Understanding communication techniques for difference age groups.
- Proper use of Structured Choice, Advance Notice, Connect before you Direct, When/Then Techniques.
- The importance of Delivery and a Big Smile for Effective Communication.

Nonviolent Crisis Intervention

- Understand the four stages of the Crisis Intervention.
- Understand the importance of keeping UACs at Stage One throughout the trip using support mechanisms.
- Understanding the importance of staying focused and paying attention to the UAC at all times.

Which Way Home (Documentation)

Lunch

1:00pm-3:00pm

Defensive Tactics Practical (Use of Force, Searching, Restraints)

3:00-6:00pm

Scenarios

- Present situations that TS's might encounter while transporting UAC's and Family Units.
- Candidates think through and develop a solution that is consistent with the Training they have received following MVM and ICE Policies.

TS Refresher Training (40 Minutes)

- A.V.O.I.D. Mistakes and Communicate

Training Review and Per Diem Overview

Written Test (30 Minutes)

Class Picture (1 Minute)

Conclusion of 2 Day TS Training

ACKNOWLEDGEMENT

On this Date

I,

Have attended the TS Training and successfully passed the Transportation Specialist and 15 Passenger Van Exams.

Signature

ADDITIONALLY:

All new TS's will have to come into their site office:

- Read SOPs, Tablet Training, and get a review of Office Procedures prior to begin working
- Take ICE Required Courses for Contract via Email with links to LMS.
 1. ICE-Privacy Part 1
 2. ICE- Privacy Part 2
 3. Rules of Behavior Part 1
 4. Rules of Behavior Part 2

I Understand that I must complete the above additional training to begin work on the UAC/FAMU Contract.

Signature

Attachment C



Bilingual Travel Youth Care Worker

Department:	UAC – Homeland Security and Public Safety
Schedule:	Full Time
Travel:	100%

About MVM, Inc.

Service, Support, Success are the pillars upon which MVM's founders built the company, and they continue to serve as MVM's core values. Along with our uncompromising insistence on integrity and ethical business practices, these values make us the service provider of choice for our customers and the employer of choice for our dedicated team members.

Working at MVM, Inc. takes a certain kind of person; we want someone who identifies with our values and is willing to challenge themselves both personally and professionally. We seek employees who are passionate about serving and making a difference in lives of others.

We are looking to add a **Bilingual Travel Youth Care Worker**. If you can envision joining a team where you will have the opportunity to provide mission driven results; then we are looking for you!

Here's what you need to be successful in this role:

- **Coachable:** You are open to constructive criticism, with a strong desire to implement and sustain feedback by others, with ability to follow a workflow process
- **Customer service orientated:** You understand the value of a relationship by building trust and relating to the customer to ensure the conversation progresses properly
- **Committed:** You have the passion and perseverance for what you want to accomplish
- **Supportive Mentality:** Be honest, act with integrity, and keep the conversation focused on helping and nurturing children
- **Frequent Travel:** As required to fulfill the obligations and responsibilities of the position with a minimum of three (3) days consecutively at a time and with short notice
- **Critical Duties:** Support responsibilities that must continue to be performed during crisis situations and contingency operations. Necessary responsiveness will

What You will Get to Do!!

The **Bilingual Travel Youth Care Worker** must have a compassion for children and are passionate about serving and making a difference in the lives of others. Provide humble care and service to unaccompanied children and teens, while you are accompanying them on domestic flights and via ground transportation to shelters all over the country. During these trips, the Travel Youth Care Workers use their language skills to communicate in a way that is culturally sensitive, while fostering a safe and comfortable environment.

Key functions you will perform!

- Responsible for the safe and secure transportation of unaccompanied minor(s) and families in a humane manner and in accordance with MVM's established transportation by land and air policies and procedures
- Ensures that an orientation is provided to all children and families in a language they understand
- Reviews the documentation to ensure it contains all information needed for travel
- Completes, verifies, and provides documentation to all parties involved
- Prepares to work with uncooperative individuals in both controlled and uncontrolled situations.
- Prepares meals and snacks for the children and/or family units for the duration of the transport.
- Logs transportation details, such as medication, meals offered, eaten, and refused.
- Provides clean and appropriate clothing based upon weather conditions at destination location.
- Reports into the Command Center at established check points and advices on any changes, disruptions or concerns throughout the transportation route. Logs information.
- If applicable, maintains a medication log for the UAC and or family members to include the type of medication, the numbers of times the medication is administered throughout the transport and any irregularities from what the prescription directs.

What you will need to have:

- Associate degree in an appropriate discipline from an accredited college (a high school diploma with one or more years of extra relevant experience may be substituted for an associate degree)
- Have at least two (2) years of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; as well as certification, licensure, and credentials applicable to the professional accreditation of the position, if applicable.
- Available for domestic travel 100% required.
- Ability to comprehend and speak (both) Spanish and English fluently
- Ability to pass a Government Security Background Investigation and including a favorable credit check
- Possess a valid and current driver's License.

Clearance:

- Applicants selected will be subject to a Government background investigation and may need to meet eligibility requirements for access to classified information.

Security Requirements:

- U.S. Citizenship
- Ability to obtain/maintain a Security Clearance
- Favorable credit check

These requirements are thoroughly reviewed during the employment screening process. Acceptance for this opportunity is dependent upon meeting all qualification/selection criteria.

We Offer...

- Paid training, fun, talented and driven teammates
- Knowledgeable, encouraging, and present leadership
- A diverse and community-minded organization
- Career growth and learning opportunities for aspiring minds
- A competitive benefits package, and fosters a highly skilled, energized, and empowered workforce.

Due to the high volume of applications received, the Recruiting Department will contact you directly, should you be selected to advance in our recruitment process.

If you have what it takes, apply now!!

EXHIBIT H

**UNITED STATES DISTRICT COURT
FOR THE CENTAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES; *et al.*,

Plaintiffs,

v.

WILLIAM P. BARR, Attorney General of the
United States, *et al.*,

Defendants.

Case No. CV 85-4544-DMG

**SUPPLEMENTARY DECLARATION OF JALLYN SUALOG,
DEPUTY DIRECTOR, OFFICE OF REFUGEE RESETTLEMENT**

I, Jallyn Sualog, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am the Deputy Director of the Office of Refugee Resettlement (“ORR”), an Office within the Administration for Children and Families (“ACF”), U.S. Department of Health and Human Services (“HHS”).

2. My qualifications, professional experience, and basis for my personal knowledge are detailed in the September 11, 2020 declaration I previously submitted in support of the Government’s request for an administrative stay of the district court’s September 4, 2020 Order, No. 20-55951, Dkt. No. 2-5 (9th Cir., Sept. 11, 2020), attached hereto as “Exhibit 1,” which I incorporate by reference.

3. I submit this supplementary declaration to: (a) clarify my testimony regarding ORR’s functional intake capacity, Exhibit 1, ¶¶ 43-44, in light of my prior testimony in support of the Government’s opposition to the request for a temporary restraining order in *Lucas R.*, No. 2:18-cv-05741, Dkt. No. 230-1, ¶¶ 13-14 (C.D. Cal. Mar. 27, 2020), attached hereto as “Exhibit 2”; (b)

address the impracticalities of Plaintiffs' proposal to use temporary foster care to house Title 42 minors; and (c) provide an update to ORR intake and referral figures presented in my September 11, 2020 declaration.

Prior Declaration Testimony

4. In my March 27, 2020 declaration, I stated that, based on February 2020 data, ORR was at "28% occupancy rate", and based on that historically low capacity, concluded that "for the near-term, ORR is likely to have sufficient capacity to continue to implement necessary social distancing and/or isolation." Exhibit 2, at ¶¶ 13-14.

5. This statement was made in opposition to the *Lucas R.* plaintiffs' request for the expedited release of UAC in ORR custody based on the allegedly heightened risk of COVID-19 infection within the ORR network, and was intended to demonstrate ORR's ability to safely implement COVID-19 protocols with respect to the then-current population of UAC already in ORR's care and custody.

6. At the time the March 27, 2020 declaration was written, the CDC Order had only just become effective and referrals had dropped precipitously such that the ORR population was practically static. At the time, there were serious outbreaks emerging in New York, California, and Washington (states with a significant number of ORR shelters), and large portions of the country were entering strict "lock downs" pursuant to various state and local health directives. ORR was assuming a similarly cautious posture, and its primary focus was on ensuring that the UAC already in its care and custody could be adequately protected from COVID-19. At the time, 30% capacity was deemed adequate to implement protocols sufficient to protect the current population of UAC from COVID-19.

7. I understand that this statement has been interpreted by some as meaning that ORR can safely ingest *any* number of UAC until the ORR network reaches approximately 30% capacity. However, this statement was made before all of ORR's current COVID-19 protocols were in place, and thus did not account for the capacity that ORR must hold in reserve in order to properly stage incoming UAC. This statement also did not address what impact an increase in the rate of referrals or an increase in the percentage of infected referrals would have on ORR's ability to implement effective COVID-19 containment protocols with respect to incoming UAC.

8. ORR's current intake capacity must be understood in light of the current COVID-19 protocols described in my September 11, 2020 declaration, which includes staging incoming UAC in facilities along the Southwest border. This process, which was designed to frontload protections on incoming UAC, in order to protect the entirety of the ORR network, has the potential to create a bottleneck if a sufficient number of incoming UAC need to be placed in quarantine/isolation.

9. The determination in my September 11, 2020 declaration remains correct: the ORR system would likely come under significant stress if ORR were to begin to receive on a regular basis approximately 75 to 100 referrals of UAC per week, with approximately 30% of the UAC having tested positive or been exposed to COVID-19. The compounding of that stress by other factors outside of ORR's control—such as a material shift in the demographics of UAC referrals towards younger children, which would limit the number of licensed facilities capable of caring for such children—would likely worsen the situation and jeopardize ORR's ability to maintain effective infection control measures. If the September 4 Order becomes effective, and the volume of referrals to ORR increases in kind, then the risk of such a scenario and the attendant consequences would increase dramatically.

10. This is partly because under the current infection control measures, there are limits to the number of UAC that ORR can safely absorb into the system at any one time. A breakdown in the operationalization of the infection control measures—triggered by a large volume of referrals or shift in the clinical presentations of UACs—would increase the danger of COVID-19 for newly-referred UACs and those presently in the system.

11. Beyond this point, capacity in those facilities designated for the staging of incoming UAC will quickly be depleted, and ORR will be forced to move increasing numbers of UAC into the interior of the United States. Depending on the percentage of infected incoming UAC, ORR may also need to conduct medical staging operations further inland.

12. ORR's capacity is also affected by conditions in communities where shelters are located. Already states such as California, Washington, and Texas have been impacted by natural disasters like wild fires and hurricanes. ORR must also consider the possibility that future outbreaks of COVID-19 in communities where shelters are located could temporarily eliminate those locations as potential placements, and further limit ORR's capacity.

Foster Care

13. I understand that Plaintiffs have suggested that ORR could simply transfer an excess UAC to foster care.

14. While ORR may have approximately 1900 TFC beds as of September 16, 2020, this does not translate to an ability to accommodate that many children into TFC programs. Transitional foster care (TFC) is reserved for children under the age of 12, pregnant and parenting teens, children with disabilities and/or sibling groups.¹

¹ See Children Entering the United States Unaccompanied: Guide to Terms, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide->

15. The majority of UAC DHS refers to ORR are teenagers who are often not suitable for TFC due to their age.

16. Additionally, foster parents are licensed for specific ages, genders, and capacities within their own private homes, and only children meeting these specific demographics can be referred for placement with these families. Even outside of a worldwide pandemic it can be time consuming to identify a suitable foster family given the demographics of a referred child and their individual needs. Foster parents retain the right to deny placement at any time.

17. In addition, many foster families already have their own children, family members, and other foster children in their homes. The potential for exposure to COVID-19 by taking in referrals from the border could prove too risky for foster parents to accept. In fact, ORR programs have noted a drop in available foster families in recent months, due in part to these concerns.

Updated Figures

18. From September 1, 2020 to September 16, 2020, ORR has received 568 referrals, of which 30% were COVID-19 positive or exposed; specifically, 2 were COVID-19 positive (requiring isolation) and 170 were COVID-19 exposed (requiring quarantine). In addition, since September 11, 2020, there have been an additional 46 COVID-19 cases among the UAC already in ORR care.

Executed on September 17, 2020.



Jallyn Sualog

to-terms (defining “Transitional Foster Care”); ORR Policy Guide § 1.2.2,
<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.2>.

Attachment 1

No. _____

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, et al.
Plaintiffs-Appellees,

v.

WILLIAM P. BARR,
Attorney General of the United States, et al.
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**DECLARATION OF JALLYN SUALOG,
DEPUTY DIRECTOR, OFFICE OF REFUGEE RESETTLEMENT**

I, Jallyn Sualog, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am the Deputy Director of the Office of Refugee Resettlement (“ORR”), an Office within the Administration for Children and Families (“ACF”), U.S. Department of Health and Human Services (“HHS”).

2. I have held the position of Deputy Director since June 2018. I was previously the Director of Children’s Services from September 2013 through June 2018. I have worked at ORR since February 2007. I have a Master’s of Arts in Clinical Psychology. Before joining ORR, I worked as a mental health professional

and managed the child welfare and social services programs for Hawaii's largest non-profit organization.

3. As the Deputy Director of ORR, I have responsibility for the oversight of the Unaccompanied Alien Children ("UAC") program, including all aspects of operations, planning and logistics, medical services, and monitoring. My job duties include the formulation and implementation of ORR's response to coronavirus disease 2019 (COVID-19) across its network of grantee care-provider facilities. In the course of performing my duties, I have gained personal knowledge of the factors that impact ORR operations, and the challenges associated with implementing ORR's COVID-19 infection control protocols.

4. My testimony in this declaration is based upon this personal knowledge, and information obtained from records and systems maintained by ORR in the regular course of performing my job duties.

5. I am testifying in this declaration to the best of my knowledge, and understand that this declaration is for use in the Government's appeal of the district court's September 4, 2020 order in *Flores v. Barr*, No. 2:85-cv-04544-DMG-AGR (C.D. Cal.), Dkt. No. 976 ("September 4 Order").

The district court's order will significantly disrupt ORR operations and endanger UAC and ORR personnel

6. I have been asked by ORR leadership to assess the potential impact that material changes in the current ORR operating environment would have on ORR program operations, including the impact of the September 4 Order.

7. It is my understanding that the September 4 Order directs the Government to cease temporarily housing alien minors in hotels pending their expulsion pursuant to the CDC Order prohibiting the introduction of certain “covered aliens” into the United States.

8. I understand that in the September 4 Order, the district court determined that minors held pursuant to the CDC Order are also members of the *Flores* settlement class, and therefore must be transferred “as expeditiously as possible” to a licensed ORR grantee care provider facility if “a bed in a licensed facility is immediately available.” Dkt. No. 976, 17, para.1. I also understand that the September 4 Order directs that, once in ORR care, any minors subject to the CDC Order must be treated identically to the population of UAC that it is ORR’s statutory mission to care for. *See id.*

9. It is my understanding the district court stayed the September 4 Order until midnight on September 8, after which, the U.S. Department of Homeland Security (DHS) must cease placing minors in hotels by September 15. *Id.* at 17, para.2. Absent an emergency stay, I anticipate that on or about September 15, ORR

will begin receiving referrals from DHS of alien minors who would otherwise have been cared for in hotels and then expelled under the CDC Order.

10. As described below, ORR has implemented robust COVID-19 infection control protocols, which I believe have helped to protect both UAC and ORR and grantee personnel from COVID-19 thus far. ORR's infection control protocols were developed in consultation with CDC, and take into account the relatively low and stable ORR census during the COVID-19 pandemic. Although the ORR network is comprised of many facilities that house and care for UAC in congregate settings, the relatively low and stable ORR census has allowed ORR to implement infection control measures across the ORR network that would be unworkable if the number of UAC referred to ORR were to increase materially above current levels.

11. I anticipate that the September 4 Order will lead to an increase in the number of referrals to ORR. If the number of referrals increases materially, ORR will not be able to safely absorb incoming UAC according to its existing COVID-19 infection control measures, which will increase the risk of introducing COVID-19 into the ORR network, which I understand to be the type of situation the CDC Order was intended to avoid.

12. Indeed, it is my understanding that hotels are used to house Title 42 minors pending their expulsion precisely because hotels furnish accommodations

conducive to an effective quarantine. Specifically, it is my understanding that hotels enable Title 42 minors to be confirmed to individual rooms with closed doors, where each minor has their own sleeping, eating, and bathing facilities. According to CDC guidance, it is ideal to quarantine individuals in private quarters because it eliminates the opportunity for others to come into contact with surfaces that may have been contaminated with respiratory droplets produced the quarantined individual, such as doorknobs, faucet handles, and other high-touch surfaces.¹

13. Under the September 4 Order, hotels are no longer an option for temporarily housing Title 42 minors pending their expulsion. As a result, Title 42 minors who would have been housed in hotels Order will now be referred to ORR.

14. As the number of UAC in the ORR network increases, ORR will gradually lose the extra space that must be held in reserve to quarantine or isolate UAC as needed, and ORR will be forced to house UAC in denser conditions, which will further increase the risk of transmission of COVID-19.

¹ See CDC, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (updated July 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (“In order of preference, multiple quarantined individuals should be housed: IDEAL: Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully.”); see also CDC, Guidance for Shared or Congregate Housing, <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html> (last updated Aug. 3, 2020) (“If possible, designate a separate bathroom for residents with COVID-19 symptoms.”).

15. Furthermore, immediate implementation of the September 4 Order will require ORR to abruptly transfer hundreds of UAC currently housed in shelters along the Southwest border further inland, in order to make room to medically stage additional incoming UAC in facilities along the Southwest border. This will require UAC and ORR personnel to travel long distances on common carriers, such as airplanes, creating additional risk of infection. The movement of so many UAC across the ORR network also increases the risk of introducing COVID-19 into the shelters that receive transferred UAC, and the communities where those shelters are located.

16. I am concerned that once implementation of the September 4 Order begins, the operational complexity of the implementation will have the unintended consequence of increasing the danger of COVID-19 within the ORR network.

Material changes in the ORR operating environment will negatively impact the program

17. At this point in time, ORR is implementing infection control measures across its system in response to the COVID-19 pandemic, and the system-wide census (that is, the number of UAC in the system) is low relative to the maximum capacity of the system when there is no pandemic. It is also low relative to the historical highs in the census when there is no pandemic. The relatively low census

has remained relatively stable for months. ORR attributes the current operating environment to the CDC Order.

18. My experience is that a host of factors can impact ORR operations. Some of those factors are within ORR's control. Others are not. ORR does not, for example, control the number of referrals of UAC that it receives from DHS; the home countries, demographics, or clinical presentations of the UAC referred by DHS; the numbers or locations of potential sponsors for the UAC; the public health situation domestically or internationally; the public health measures implemented by individual U.S. states or transportation companies (e.g., commercial airlines) in response to the COVID-19 pandemic; and natural disasters that take ORR shelters offline (e.g., recent hurricanes in Texas and Louisiana). ORR can control the public health measures that it implements within its system—as well its decisions concerning the placement and release of UACs—within the operating environment that is presented to ORR and is outside of ORR's control.

19. My best programmatic judgment is that the relatively low and stable census in recent months has given ORR needed operational flexibility to effectively implement infection control measures—and make prompt and safe placement and release decisions—across the system. ORR has, for example, been able to isolate or quarantine confirmed or suspected cases of COVID-19, respectively, among the UAC population as they arise. These measures have protected the health and safety

of UAC in ORR's care and custody and prevented the development of more serious public health concerns in ORR shelters.

20. It would increase the risks to the federal and grantee staff who care for the UAC if there were a material increase in UAC referrals or the percentage of UACs who have tested positive for COVID-19 or been exposed to the disease; the complexity of ORR operations would increase as well and have a potentially negative impact on the effectiveness of the infection control measures in ORR shelters. Indeed, under the current infection control measures, there are limits to the number of UAC that ORR can safely absorb into the system at any one time. A breakdown in the operationalization of the infection control measures—triggered by a large volume of referrals or shift in the clinical presentations of UACs—would increase the danger of COVID-19 for newly-referred UACs and those presently in the system.

21. The health and safety of federal and grantee staff is critical because the loss of staff to sickness or self-quarantine diminishes the capacity of ORR to care for UAC. ORR already loses dozens of staff each week to self-quarantine for COVID-19 because of state and local rules that mandate self-quarantine when traveling between U.S. jurisdictions with high rates of community transmission. When members of the staff transport UAC to sponsors as part of the release process, many become temporarily unavailable regardless of whether they have actually

become infected with or exposed to COVID-19. Any outbreaks in ORR shelters that might result from increases in the census or breakdowns in infection control measures would put additional stress on program operations. Sadly, there have also been several staff deaths associated with COVID-19 during the pandemic; rigorous adherence to infection control measures is important to maintaining morale and the ability to recruit and retain new staff during this challenging time.

22. My best programmatic judgment is that the ORR system would likely come under significant stress if ORR were to begin to receive on a regular basis approximately 75 to 100 referrals of UAC per week, with approximately 30% of the UAC having tested positive or been exposed to COVID-19. The compounding of that stress by other factors outside of ORR's control—such as a material shift in the demographics of UAC referrals towards younger children, which would limit the number of licensed facilities capable of caring for such children—would likely worsen the situation and jeopardize ORR's ability to maintain effective infection control measures. If the September 4 Order becomes effective, and the volume of referrals to ORR increases in kind, then the risk of such a scenario and the attendant consequences would increase dramatically.

The COVID-19 pandemic presents unprecedented operational challenges for ORR

23. ORR is the agency charged with the care and custody of UAC pursuant to 8 U.S.C. § 1232(c) and other provisions. As such, ORR is committed to providing for the safety and well-being of all UAC in its care, as well as protecting the health and safety of the communities in which these children live—including from the risk of COVID-19.

24. To carry out its mission, ORR relies on a network of grantee care-provider facilities located across the country. There are a total of 107 facilities in the ORR grantee care-provider network that house UAC in a congregate setting.

25. ORR has experience with the identification, mitigation, and treatment of communicable diseases affecting UAC, including seasonal influenza (flu), mumps (parotitis), chicken pox (varicella), and tuberculosis. ORR has policies pertaining to communicable disease control that predate the COVID-19 pandemic. ORR's general, long-standing policies concerning the management of communicable disease require the routine assessment of travel history when a child arrives at a care-provider program; medical screenings and vaccinations within 48 hours of arriving at ORR shelters; ability to isolate or quarantine individuals for the purpose of communicable disease control; hand hygiene and respiratory etiquette education efforts; and established communicable disease reporting to the local health authority.

26. The operational challenges presented by the COVID-19 pandemic far exceed those presented by other communicable diseases in the past. Previously, when ORR needed to address infection prevention and control, it was in response to isolated cases or outbreaks in individual facilities, where the cause typically was an already-infected UAC. Other instances involved localized outbreaks in communities where ORR facilities are located. ORR and its care providers have never before confronted a situation where all incoming UAC increased the danger of the introduction of a quarantinable communicable disease into the United States,² or where the same quarantinable communicable disease posed a risk to the current UAC population and ORR and grantee personnel based on the community transmission of that disease in locations where ORR facilities are located. Likewise, ORR and its care providers did not originally structure the physical plants or ordinary operations of their facilities to address the challenges presented by the COVID-19 pandemic; the pandemic has required substantial and novel adjustments in the use, operations, and capacity of facilities by ORR and its care providers. In these respects, the COVID-19 pandemic has been unprecedented in the history of the program.

² See Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17060 (Mar. 26, 2020) (effective Mar. 20, 2020) (determining that “covered aliens” who have traveled through Mexico pose a risk of introducing COVID-19 into the United States due to the prevalence of COVID-19 in Mexico).

ORR's infection control measures are workable and safe with a stable and low census

27. Since the first reports of COVID-19 in the U.S., ORR has monitored the public health reporting on COVID-19 in the jurisdictions in which grantee care-provider facilities operate. ORR has provided regular updates to grantee care-provider facilities on infection prevention and control, and issued guidance regarding the screening and management of UAC, facility personnel, and visitors who have potentially been exposed to COVID-19. All of these measures are rooted in guidance from CDC.

28. Personnel from ORR's Division of Health for Unaccompanied Children (DHUC) began consulting with CDC to develop COVID-19 infection control measures that could be implemented across the ORR network, notwithstanding the variation in physical structures, staffing, and operations across ORR care provider facilities. Specifically, DHUC, including DHUC Director Dr. Michael Bartholomew, consulted with relevant subject matter experts from CDC, including Dr. Amanda Cohn, who reviewed ORR's guidance to care provider facilities on COVID-19 to confirm that it aligned with CDC's guidelines and recommendations, and the best practices for preventing and controlling the spread of COVID-19 within residential facilities. This includes guidance related to symptom and temperature monitoring of staff and children, cleaning and hygiene guidance, and ensuring the ability to isolate ill UAC and quarantine potentially

exposed UAC. *See* Decl. of A. Cohn, *Lucas R. v. Azar*, No. 2:18-cv-5741 DMG (PLAx), Dkt. No. 230-11 (Mar. 27, 2020) (describing CDC’s consultation with ORR).

29. To prevent those who may have been exposed to or infected with COVID-19 from entering ORR facilities, ORR has mandated that all visitors and staff seeking to enter any grantee care-provider facility answer COVID-19 screening questions and submit to a mandatory temperature check. With the exception of UAC who are being processed for admission, grantee care-provider facilities are required to deny access to anyone with a fever of 100°F or above; or who exhibits signs of symptoms of an acute respiratory infection, such as a cough or shortness of breath; or who has had contact with someone with a confirmed diagnosis of COVID-19 in the previous 14 days; or who has been tested for COVID-19 and is awaiting test results; or who, in the previous 14 days, has traveled to a country identified by CDC as having widespread, sustained community transmission of COVID-19.

30. In addition, UAC entering ORR care are screened for COVID-19 exposure or symptoms during their initial medical examination (“IME”), which has been expanded to include a COVID-19 health screening protocol consistent with CDC COVID-19 guidelines.

31. UAC at risk of COVID-19 exposure based on reported travel history, but without symptoms, are quarantined and monitored for 14 days. UAC who exhibit COVID-19 symptoms during their IME are isolated and tested in consultation with the local health authority.

32. ORR has also instituted a symptom-monitoring regime to ensure that any UAC in any facility who begins exhibiting potential symptoms of COVID-19 after their IME is immediately identified and appropriately isolated in consultation with the local health authority.

33. Since March 19, 2020, ORR has required each grantee care-provider facility to monitor the temperature of every UAC in care. UACs' temperatures are taken twice daily, once in the morning and again in the evening, and are recorded in a master census temperature report that each facility is required to maintain. If any UAC is found to have a temperature above 100°F, the grantee care-provider is required to immediately alert ORR. The grantee care-provider is required to alert ORR each day that any child has a temperature over 100°F. So for example, if a UAC has a 101°F fever for three days, ORR will be alerted of this fact every day for the duration of the child's fever. Early identification of potential COVID-19 cases allows for early introduction of appropriate public health measures.

34. Any UAC exhibiting symptoms consistent with COVID-19, such as coughing, fever, or difficulty breathing, at any point during their time in ORR care

are to be immediately isolated and referred for evaluation by a licensed medical provider, in consultation with the local health authority. If a UAC is recommended for testing by the healthcare provider or public health department, the UAC is tested.

35. The same isolation procedures are used for any UAC determined to be at risk for COVID- 19 exposure or infection, whether based on information collected during the IME, or through subsequent monitoring. The affected UAC will be provided with a private room, with a closed door and bathroom access, preferably a private bathroom that is not used by other staff or UAC. State and local health departments, along with DHUC are immediately notified and consulted for additional guidance on risk assessment, symptom monitoring, and isolation or quarantine.

36. Facility personnel who enter an occupied isolation room are required to wear personal protective equipment, including an N95 respirator and goggles or a face shield, per CDC guidelines. If a UAC in isolation needs to leave the isolation room for any reason (e.g., to attend a medical appointment, etc.), the UAC must wear a surgical mask for the duration of their time outside the isolation room.

37. If a UAC must be transported to a health clinic or other off-site location, the facility must notify the local health department for guidance on proper precautions during transport. The facility is also required to alert the intended

destination so that proper infection control measures may be implemented prior to the UAC's arrival.

38. UAC are required to remain in isolation until cleared by the local health department or DHUC. During this time in isolation, UAC receive the same services as their non-isolated peers in the same facility, although services—particularly education services—may be adjusted to accommodate proper infection-control procedures.

39. Program staff will provide an affected UAC with notice of the isolation requirement and address questions or concerns the child may have about medical isolation, as well as potential delays to anticipated transfers or discharge plans. In order to protect the health of UAC and the local community, UAC cannot be transferred either to another facility or released to a sponsor until cleared by local health authorities and DHUC.

40. In my judgment, these infection control measures have protected the health and safety of UAC and federal and grantee staff alike. As I discuss more fully below, the ORR system has had to manage UAC and staff who have tested positive for COVID-19 or been exposed to the disease. The management of those situations pursuant to ORR's infection control measures has succeeded in preventing more serious public health concerns from developing in ORR facilities.

41. In my judgment, ORR has been able to implement the infection control measures effectively due in part to its system-wide census during the COVID-19 pandemic. The system-wide census during the pandemic has been far less than either ORR's maximum capacity or historical highs.

42. As of September 8, 2020, there are a total of 1,097 UAC in ORR care. This includes 409 UAC in long-term foster care and 139 UAC in transitional foster care, which are not congregate settings. For congregate settings only, there are 515 UAC in shelter facilities.

43. Currently, ORR's care-provider facilities are operating below their maximum capacity and historical highs. For example, at this time last year (August/September of 2019), ORR was receiving approximately 2,779 monthly referrals and had almost 5,039 minors in care with a 41% occupancy rate (including influx and variance beds). In contrast, August 2020 referrals were approximately 423 with approximately 972 minors in care, and an 8% occupancy rate (including influx and variance beds).

44. Critically, based on the August 2020 referrals, ORR is already receiving approximately 105 referrals a week, which is the upper limit of referrals ORR can safely absorb while maintaining COVID-19 infection prevention protocols. Thus, ORR is already at its functional intake capacity. It is my understanding that DHS anticipates that it may need to refer approximately 60-140

additional minors to ORR per week after the September 4 Order takes effect and DHS can no longer house minors in hotels.

45. Thus, I anticipate that ORR will immediately begin receiving approximately 165 to 245 referrals a week from DHS once the September 4 Order becomes effective, which exceeds the threshold of 75 to 100 referrals a week that ORR can safely absorb according to its COVID-19 infection prevention protocols.

46. Although ORR has a large number of available beds on paper, the majority of these beds are located in congregate facilities, where UAC live in dormitory-like conditions, with shared sleeping, eating, and bathing facilities. ORR cannot use its full capacity to shelter UAC without jeopardizing its ability to maintain its current infection control measures. Moreover, many of the available beds are in shelters located in the interior of the United States, and ORR could not utilize them without transporting UAC from the U.S.-Mexico border region, through multiple states, to the shelters. This would increase the risk of COVID-19 exposure for UAC and federal and grantee staff alike, in addition to leading to reductions in ORR operational capacity due to subsequent self-quarantines of returning staff. The relatively stable, historically low system-wide census within ORR facilities during the COVID-19 pandemic has allowed ORR the operational flexibility that it needs to implement infection control measures effectively.

Careful placement and release decisions are another key part of the COVID-19 response

47. ORR is continually monitoring the jurisdictions in which its grantee care-provider facilities operate to determine whether the conditions in the community surrounding the facility warrant the suspension of placements due to concerns related to COVID-19. For example, beginning on March 9, 2020, ORR stopped placements of UAC on a rolling basis in the states of California, New York, and Washington due to the ongoing outbreaks of COVID-19 among the general public in those states.

48. In addition, ORR is prioritizing local placements for all new referrals from DHS in order to limit the need for UAC to travel on commercial airliners, which poses a risk of exposing passengers (including UAC) to COVID-19. Care providers may still use air travel to reunify a UAC with their sponsor if it is safe to do so. But care providers are required to assess the safety of the UAC's ultimate destination, in order to anticipate logistical issues associated with the COVID-19 pandemic. Care-provider facilities are required to consult with their Federal Field Specialist ("FFS"), or delegate, if a UAC will be traveling to a jurisdiction with widespread community transmission of COVID-19 or that is subject to a community-wide "lock down." In such cases, release should be postponed until it is deemed safe, which may be an undetermined and lengthy period, further burdening ORR capacity. This safety assessment includes consideration of the

particular UAC's unique medical needs and vulnerabilities, and the UAC's respective medical specialists are consulted in the safety planning process.

49. The increased operational complexity associated with placement and release decisions during the COVID-19 pandemic is yet another reason why a stable and low census is important to the effective implementation of infection control measures within the ORR system. ORR cannot utilize its full capacity during the COVID-19 pandemic without jeopardizing its ability to maintain effective infection control measures. At the same time, ORR must account for an array of public health concerns whenever it moves UAC into and out of ORR facilities. A stable and low census gives ORR the operational flexibility that it needs to make placement and release decisions that are not only prompt but also safe for UAC and the public.

COVID-19 has already impacted ORR care-provider facilities

50. Despite the robust measures described above, COVID-19 has still impacted ORR. As of September 8, 2020, there have been a total of 204 confirmed COVID-19 cases among UAC across all ORR care-provider facilities since March 24, 2020, when the first infection of a UAC was reported in a facility in New York. Currently, there are 65 active cases. Active cases are primarily in Texas, where ORR within the last two weeks received over 100 referrals of UAC infected with or exposed to COVID-19. These UAC are currently in isolation, per ORR and CDC guidelines, and are receiving appropriate monitoring and medical care. Even if

some eventually test negative, they must be presumed positive and cared for as such until results are available.

51. In addition, a total of 745 program staff and contractors have self-reported testing positive for COVID-19 since March 18, 2020. The majority of infected staff are in Texas, Arizona and New York. ORR has received reports that four (4) facility staff members and one (1) foster parent have died as a result of COVID-19. ORR's medical team and the affected programs have worked in close coordination with the local public health departments on appropriate public health measures for staff members, which typically involve self-quarantine at home, and the tracking and monitoring of the affected staff members' contacts within the care-provider facility, per CDC guidance.

52. In addition to the COVID-19 protocols described above, care-provider facilities are directed to follow any local requirements issued by the state licensing agency or other local public health authority related to the identification, reporting, and control of communicable diseases that are more stringent than ORR's protocols.

Executed on September 11, 2020.



Jallyn Sualog
Deputy Director
Office of Refugee Resettlement

Attachment 2

Exhibit Q

Sualog Declaration

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUCAS R., *et al.*,

Plaintiffs,

v.

ALEX AZAR, Secretary of U.S. Dep’t of Health
and Human Services, *et al.*,

Defendants.

Case No.: 2:18-CV-5741 DMG (PLAx)

District Judge Dolly M. Gee

**DECLARATION OF JALLYN SUALOG, DEPUTY DIRECTOR, OFFICE OF REFUGEE
RESETTLEMENT**

I, Jallyn Sualog, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am the Deputy Director of the Office of Refugee Resettlement (“ORR”), an Office within the Administration for Children and Families (“ACF”), U.S. Department of Health and Human Services (“HHS”).

2. I have held the position of Deputy Director since June 2018. I was previously the Director of Children’s Services from September 2013 through June 2018. I have worked at ORR since February 2007. I have a Master’s of Arts in Clinical Psychology. Before joining ORR, I worked as a mental health professional and managed the child welfare and social services programs for Hawaii’s largest non-profit organization.

3. As the Deputy Director of ORR, I have responsibility for the oversight of the Unaccompanied Alien Children (“UAC”) program, including all aspects of operations, planning and logistics, medical services, and monitoring. My job duties include the formulation and implementation of ORR’s response to COVID-19 across its network of grantee care-provider facilities.

4. My testimony in this declaration is based upon my personal knowledge of ORR’s response to COVID-19, information obtained from records and systems maintained by ORR in the regular course of performing my job duties, and CDC guidance documents regarding COVID-19, which I obtained from the CDC’s official website and reviewed in connection with the performance of my duties.

5. I am testifying in this declaration to the best of my knowledge, and understand that this declaration is for use in the *Lucas R.* case.

1 *Background*

2 6. ORR is the agency charged with the care and custody of UAC pursuant to 8 U.S.C. § 1232(c)
3 and other provisions. As such, ORR is committed to providing for the safety and well-being of all UAC
4 in its care, as well as protecting the health and safety of the communities in which these children live—
including from the risk of COVID-19.

5 7. To carry out its mission, ORR relies on a network of grantee care-provider facilities located
6 across the country. There are a total of 107 facilities in the ORR grantee care-provider network that house
7 UAC in a congregate setting: 98 shelters, 6 staff secure facilities, 1 secure facility, and 2 residential
8 treatment centers (“RTCs”).

9 8. Although each care-provider facility is unique in terms of its physical layout and
10 capabilities, the ORR Guide generally defines a shelter as “a residential care provider facility in which all
11 of the programmatic components are administered on-site, in the least restrictive environment.”¹

12 9. A staff secure facility is generally defined as “a facility that maintains stricter security
13 measures, such as higher staff to unaccompanied alien children ratio for supervision, than a shelter in order
14 to control disruptive behavior and to prevent escape. A staff secure facility is for unaccompanied alien
15 children who may require close supervision but do not need placement in a secure facility. Service
16 provision is tailored to address an unaccompanied alien child’s individual needs and to manage the
17 behaviors that necessitated the child’s placement into this more restrictive setting. The staff secure
18 atmosphere reflects a more shelter, home-like setting rather than secure detention. Unlike many secure
care providers, a staff secure care provider is not equipped internally with multiple locked pods or cell
units.”²

19 10. A secure facility is generally defined as “a facility with a physically secure structure and
20 staff able to control violent behavior. ORR uses a secure facility as the most restrictive placement option
21 for an unaccompanied alien child who poses a danger to self or others or has been charged with having
22 committed a criminal offense. A secure facility may be a licensed detention center or a highly structured
therapeutic facility.”³

23 11. An RTC is generally defined as “a sub-acute, time limited, interdisciplinary, psycho-
24 educational, and therapeutic 24-hour-a-day structured program with community linkages, provided through
25

26 ¹ ORR, *Children Entering the United States Unaccompanied: Guide to Terms* (Mar. 21, 2016), “Shelter care,” available at
<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Shelter Care>.

27 ² *Id.*, “Staff secure care,” available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Staff Secure Care>.

28 ³ *Id.*, “Secure care,” available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Secure Care>.

1 non-coercive, coordinated, individualized care, specialized services and interventions. Residential
2 treatment centers provide highly customized care and services to individuals following either a community
3 based placement or more intensive intervention, with the aim of moving individuals toward a stable, less
4 intensive level of care or independence. ORR uses a RTC at the recommendation of a psychiatrist or
5 psychologist or with ORR Treatment Authorization Request (TAR) approval for an unaccompanied alien
6 child who poses a danger to self or others and does not require inpatient hospitalization.”⁴

7 12. As of March 25, 2020, there are a total of 3,374 UAC in ORR care. This includes 439 UAC
8 in long-term foster care and 374 UAC in transitional foster care, which are not congregate settings. For
9 congregate settings only, there are 2,505 UAC in shelter facilities, 28 in staff secure facilities, 12 in secure
10 facilities, and 16 in RTCs.

11 13. Currently, ORR’s care-provider facilities are operating significantly below their maximum
12 capacity and historical highs. For example, at this time last year (March of 2019), ORR was receiving
13 approximately 8,000 monthly referrals and had almost 12,000 minors in care with an 87% occupancy rate
14 (including influx and variance beds). In contrast, February referrals from 2020 were approximately 2,000
15 per month with approximately 3,600 minors in care, and a 28% occupancy rate (including influx and
16 variance beds). As a result, ORR currently has additional capacity and more opportunity to ensure social
17 distancing and isolation within the care provider network.

18 14. In addition, CDC recently issued an order under Public Health authorities suspending
19 introduction of certain persons into the United States.⁵ As a result, for the near-term, ORR is likely to have
20 sufficient capacity to continue to implement necessary social distancing and/or isolation.

21 *ORR Infection Control Measures in Care Provider Facilities*

22 15. ORR has significant historical experience with the identification, mitigation, and treatment
23 of contagious diseases affecting UAC, including seasonal influenza (flu), mumps (parotitis), chicken pox
24 (varicella), and tuberculosis. Accordingly, ORR has policies pertaining to infectious disease control that
25 predate the COVID-19 pandemic.

26 16. ORR’s general, long-standing policies concerning the management of communicable
27 disease require the routine assessment of travel history when a child arrives at a care-provider program;
28 medical screenings and vaccinations within 48 hours of arriving at ORR shelters; ability to isolate or

⁴ *Id.*, “Residential Treatment Center (RTC),” available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Residential Treatment Center>.

⁵ CDC Order Under Sections 362 and 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268), available at <https://www.cdc.gov/quarantine/order-suspending-introduction-certain-persons.html>.

1 quarantine individuals for the purpose of infectious disease control; hand hygiene and respiratory etiquette
2 education efforts; and established communicable disease reporting to the local health authority.⁶

3 17. Since the first reports of COVID-19 in the U.S., ORR has monitored the public health
4 reporting on COVID-19 in the jurisdictions in which grantee care-provider facilities operate. ORR has
5 provided regular updates to grantee care-provider facilities on infection prevention and control, and issued
6 guidance regarding the screening and management of UAC, facility personnel, and visitors who have
7 potentially been exposed to COVID-19. All of these measures are rooted in CDC guidance.⁷

8 18. To prevent those who may have been exposed to, or who may be infected with COVID-19
9 from entering ORR facilities, ORR has mandated that all visitors and staff seeking to enter any grantee
10 care-provider facility answer COVID-19 screening questions and submit to a mandatory temperature
11 check. With the exception of UAC who are being processed for admission, grantee care-provider facilities
12 are required to deny access to anyone with a fever of 100°F or above; or who exhibits signs of symptoms
13 of an acute respiratory infection, such as a cough or shortness of breath; or who has had contact with
14 someone with a confirmed diagnosis of COVID-19 in the previous 14 days; or who has been tested for
15 COVID-19 and is awaiting test results; or who, in the previous 14 days, has traveled to a country identified
16 by the CDC as having widespread, sustained community transmission of COVID-19.

17 19. In addition, UAC entering ORR care are screened for COVID-19 exposure or symptoms
18 during their initial medical examination (“IME”), which has been expanded to include a COVID-19 health
19 screening protocol consistent with CDC COVID-19 guidelines.

20 20. UAC at risk of COVID-19 exposure based on reported travel history, but without symptoms,
21 are quarantined and monitored for 14 days. UAC who exhibit COVID-19 symptoms during their IME are
22 isolated and tested in consultation with the local health authority.

23 21. ORR has also instituted a rigorous symptom-monitoring regime to ensure that any UAC in
24 any facility who begins exhibiting potential symptoms of COVID-19 after their IME is immediately
25 identified and appropriately isolated in consultation with the local health authority.

26 22. Since March 19, 2020, ORR has required each grantee care-provider facility to monitor the
27 temperature of every UAC in care. UACs’ temperatures are taken twice daily, once in the morning and
28 again in the evening, and are recorded in a master census temperature report that each facility is required
to maintain. If any UAC is found to have a temperature above 100°F, the grantee care-provider is required

⁶ See ORR Policy Guide § 3.4.6 Management of Communicable Diseases, § 3.4.7 Maintaining Health Care Records and Confidentiality, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3>.

⁷ CDC, Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases, <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>.

1 to immediately alert ORR. The grantee care-provider is required to alert ORR each day that any child has
2 a temperature over 100°F. So for example, if a UAC has a 101°F fever for three days, ORR will be alerted
3 of this fact every day for the duration of the child’s fever. Early identification of potential COVID-19 cases
4 allows for early introduction of appropriate public health measures.

5 23. Any UAC exhibiting symptoms consistent with COVID-19, such as coughing, fever, or
6 difficulty breathing, at any point during their time in ORR care are to be immediately isolated and referred
7 for evaluation by a licensed medical provider, in consultation with the local health authority. If a UAC is
8 recommended for testing by the healthcare provider or public health department, the UAC will receive
9 testing.

10 24. The same isolation procedures are used for any UAC determined to be at risk for COVID-
11 19 exposure or infection, whether based on information collected during the IME, or through subsequent
12 monitoring. The affected UAC will be provided with a private room, with a closed door and bathroom
13 access, preferably a private bathroom that is not used by other staff or UAC. State and local health
14 departments, along with ORR’s Division of Health for Unaccompanied Children (“DHUC”) are
15 immediately notified and consulted for additional guidance on risk assessment, symptom monitoring, and
16 isolation or quarantine.

17 25. Facility personnel who enter an occupied isolation room are required to wear personal
18 protective equipment, including an N95 respirator and goggles or a face shield, per CDC guidelines.

19 26. If a UAC in isolation needs to leave the isolation room for any reason (e.g., to attend a
20 medical appointment, etc.), the UAC must wear a surgical mask for the duration of their time outside the
21 isolation room.

22 27. If a UAC must be transported to a health clinic or other off-site location, the facility must
23 notify the local health department for guidance on proper precautions during transport. The facility is also
24 required to alert the intended destination so that proper infection control measures may be implemented
25 prior to the UAC’s arrival.

26 28. UAC are required to remain in isolation until cleared by the local health department or
27 DHUC. During this time in isolation, UAC receive the same services as their non-isolated peers in the
28 same facility, although services—particularly education services—may be adjusted to accommodate
proper infection-control procedures.

29. Any room, object, or vehicle used by a UAC in isolation is thoroughly sanitized afterwards.⁸

⁸ See CDC, Disinfecting Your Facility if Someone is Sick, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html>.

1 30. To assess whether each grantee care-provider facility has appropriate stores of personal
2 protective equipment (“PPE”) to safely respond in the event COVID-19 is detected within their facility, on
3 March 13, 2020, ORR inventoried all care providers for their current levels of PPE (e.g., surgical masks
4 and gowns, face shields, N95 respirators) and cleaning/disinfecting supplies, as well as the number of staff
5 who are involved in cleaning and maintenance activities. Any facility that encounters difficulty
6 maintaining adequate levels of COVID-19 related supplies may request additional stores from FEMA, and
7 ORR may assist in facilitating any such requests.

8 31. Program staff will provide an affected UAC with notice of the isolation requirement and
9 address questions or concerns the child may have about medical isolation, as well as potential delays to
10 anticipated transfers or discharge plans. In order to protect the health of UAC and the local community,
11 *UAC cannot be transferred either to another facility or released to a sponsor until cleared by local health
12 authorities and DHUC.*

13 *ORR Suspensions of Placements and Releases*

14 32. Beginning on March 9, 2020, ORR stopped placements of UAC on a rolling basis in the
15 states of California, New York, and Washington due to the ongoing outbreaks of COVID-19 among the
16 general public in those states. ORR is continually monitoring the jurisdictions in which its grantee care-
17 provider facilities operate to determine whether the conditions in the community surrounding the facility
18 warrant the suspension of placements due to concerns related to COVID-19.

19 33. In addition, ORR is prioritizing local placements for all new referrals from DHS in order to
20 limit the need for UAC to travel on commercial airliners, which poses a risk of exposing passengers
21 (including UAC) to COVID-19. Care providers may still use air travel to reunify a UAC with their sponsor
22 if it is safe to do so. However, care providers are required to assess the safety of the UAC’s ultimate
23 destination, in order to anticipate logistical issues associated with COVID-19 disruptions. Care-provider
24 facilities are required to consult with their Federal Field Specialist (“FFS”), or delegee, if a UAC will be
25 traveling to a jurisdiction with widespread community transmission of COVID-19 or that is subject to a
26 community-wide “lock down,” such as California. In such cases, release should be postponed until it is
27 determined to be safe for the UAC to travel to their destination. This safety assessment includes
28 consideration of the particular UAC’s unique medical needs and vulnerabilities, and the UAC’s respective
29 medical specialists are consulted in the safety planning process.

30 34. Prior to the COVID-19 pandemic, ORR was working on a telehealth initiative to increase
31 UAC’s access to healthcare resources that may not be physically present in their locality. In light of the
32 state orders restricting the movement of people generally in California, New York, and elsewhere, ORR
33 has rolled out its telehealth capabilities ahead of schedule in numerous jurisdictions in order to ensure care-

1 provider facilities are able to provide UAC with access to medical care without having to leave their
2 facilities. Those jurisdictions are: California, New York, Connecticut, Maryland, Massachusetts, New
3 Jersey, Pennsylvania, Texas, and Virginia. Further, ORR is awaiting final approval from telehealth
4 providers in Arizona, Florida, Illinois, Michigan, Washington, and Oregon, and anticipates the service will
be available in these locations in the near future.

5 *COVID-19 Cases in ORR Grantee Care Provider Facilities*

6 35. As of March 26, 2020, there have been four confirmed COVID-19 cases among UAC across
7 all ORR care-provider facilities. All four cases were in a single facility in New York state, and the affected
8 UAC are currently in isolation, per ORR and CDC guidelines, and are receiving appropriate monitoring
9 and medical care.

10 36. Currently, 18 UAC in the care-provider network have been tested. As noted, four tested
positive for COVID-19, 11 tested negative for COVID-19, and three have test results pending.

11 37. Pursuant to CDC Guidance, any UAC who has undergone COVID-19 testing is considered
12 presumptively positive until results are available (typically within 3-4 after testing) and are placed in
13 isolation as a precautionary measure.

14 38. In addition, a total of eight program staff, contractors or foster parents at five care-provider
15 programs across New York, Washington, and Texas have self-reported testing positive for COVID-19.
16 ORR's medical team and the affected programs have worked in close coordination with the local public
17 health departments on appropriate public health measures, which typically involve self-quarantine at home,
18 and the tracking and monitoring of the affected staff members' contacts within the care-provider facility,
per CDC guidance.⁹

19 39. In addition to the COVID-19 protocols described above, care-provider facilities are directed
20 to follow any local requirements issued by the state licensing agency or other local public health authority
21 related to the identification, reporting, and control of communicable diseases that are more stringent than
22 ORR's protocols.

23 *Assessment of Plaintiffs' Assertions*

24 40. In their March 22, 2020 correspondence, Plaintiffs stated that they "are advised that
25 *congregate care is inherently incongruent with the recommendations of the Centers for Disease Control*
26 *and Prevention*, state health authorities, and epidemiologists, all of whom recommend (if not mandate)
social distancing and related safety precautions that are difficult, if not impossible, to observe in facilities

27 _____
28 ⁹ CDC, Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus
Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases,
<https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>.

1 housing more than ten Class Members.” *See* Ltr. from C. Holguin (Ctr. for Human Rights & Const. Law),
2 to D. Shieh (DOJ), dated Mar. 22, 2020, at 2 (emphasis added), attached hereto as “Exhibit A.”

3 41. CDC, however, has issued guidance on COVID-19 containment in various congregate
4 settings, including colleges,¹⁰ nursing homes,¹¹ prisons,¹² and homeless shelters.¹³ ORR has implemented
5 such guidance to the extent that it can be applied to its grantee care-provider facilities. Further, ORR has
6 consulted with CDC regarding ORR’s COVID-19 containment and mitigation strategies and has been told
7 by CDC that they are consistent with CDC’s recommendations.

8 42. I have serious concerns about the proposals in Plaintiffs’ March 22 correspondence that call
9 for the expedited release of UAC to potential sponsors. In particular, the immediate, blanket release of
10 UAC to sponsors located in jurisdictions with widespread community transmission of COVID-19 would
11 pose a risk to the health and welfare of the UAC. UAC are currently housed in settings where infection
12 control protocols are rigorously enforced. In contrast, upon release, UAC may be exposed to COVID-19
13 in airports or transit systems, or through sponsors who have been exposed to COVID-19, or through
14 circulation in communities with widespread community transmission of COVID-19.

15 43. Many sponsors are also located in states that are currently under “lock down” in which
16 residents’ freedom of movement has been significantly curtailed in an effort to control the spread of
17 COVID-19, such as California, Washington, and New York. If anything, the current ORR approach is
18 consistent with those “lock down” orders in that UAC are shielded from UAC community transmission.

19 44. ORR’s efforts to safely release UAC to safe, approved sponsors remain ongoing. But
20 Plaintiffs’ proposal to release UAC to sponsors who are still undergoing vetting would materially increase
21 the risk of release to a sponsor who potentially cannot or will not shelter in place with the UAC, or who
22 may not adhere to appropriate infection control practices (e.g., social distancing), or who may circulate
23 with the UAC in areas with widespread community transmission of COVID-19, all of which increase the
24 health risks to the UAC. Plaintiffs’ proposal would also increase the risk of release to a sponsor who,
25 because vetting has not yet completed, is, or will become unable to financially support the UAC due to
26 COVID-19-related business closures, layoffs, or furloughs.

27 ¹⁰ CDC, Interim Guidance for Administrators of U.S. Higher Education, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-ihe-response.html>.

28 ¹¹ CDC, Preventing the Spread of COVID-19 in Retirement Communities and Independent Living Facilities (Interim Guidance), <https://www.cdc.gov/coronavirus/2019-ncov/community/retirement/guidance-retirement-response.html>.

¹² CDC, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

¹³ CDC, Interim Guidance for Homeless Service Providers to Plan and Response to Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

1 45. The immediate, blanket release of UAC to sponsors who are still undergoing vetting would
2 also deprive these UAC of access to the significant medical resources of ORR (including testing for
3 COVID-19). Once they leave ORR’s care they are limited by the resources of their sponsor’s household
4 and local community, at a time when important medical resources may be in short supply.¹⁴

5 46. Plaintiffs propose that ORR can expedite the release of UAC to potential sponsors on
6 Plaintiffs’ terms while adequately vetting the sponsors for the new child welfare and public health concerns
7 that have arisen in recent months and are continuing to evolve. Plaintiffs, however, do not identify the
8 safeguards that ORR can jettison from the sponsor vetting process without putting UAC at risk.

9 47. Plaintiffs also overlook the fact that fingerprinting remains a key component for many
10 sponsors in the sponsor vetting process, particularly sponsors who are not parents or close relatives. Such
11 fingerprinting has been affected by the recent closures of some digital fingerprinting sites due to COVID-
12 19.

13 48. Thirty-nine digital fingerprinting sites in 21 states¹⁵ have, as of March 24, 2020, either
14 closed, curtailed their hours of operation, or switched to an “appointment only” system in response the
15 public health threat posed by COVID-19. Fingerprinting is a key component of the background check
16 process that is needed to fulfill the requirements of the TVPRA and ensure UAC are not released into the
17 custody of sponsors with disqualifying criminal histories, such as convicted human traffickers and
18 pedophiles. Potential sponsors for whom ORR requires fingerprints (including those who are not Category
19 1 or 2A sponsors)¹⁶ must be able to undergo fingerprinting in order for background checks to be performed.

20 49. To compensate for the reduced availability of digital fingerprinting, ORR’s has directed
21 care providers to automatically mail fingerprint cards to all individuals identified in family reunification
22 applications, so that given limited hours at digital fingerprint locations, potential sponsors are aware of the
23 ability to have fingerprints taken on fingerprint cards, including at a local law enforcement agency. While
24 fingerprint cards are often used, this alternative to digital fingerprinting could take longer for potential
25 sponsors to execute given the additional steps involved, and the reliance on the mail system to transmit the
26 cards.

27 ¹⁴ ORR is aware of one instance in which 3 UAC who were recommended for COVID-19 testing were unable to immediately
28 obtain a COVID-19 test due to the particular community’s system for allocating tests among primary care providers. DHUC
is monitoring this situation and will intervene as necessary to assure the UAC have prompt access to COVID-19 testing.

¹⁵ Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Louisiana, Massachusetts, Maryland, Missouri, North
Carolina, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Washington.

¹⁶ ORR Policy Guide § 2.2.1, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.2.1> (defining Category 2A sponsors; Category 1 sponsors are parents or legal guardians; Category 1 and 2A sponsors generally do not require fingerprinting, unless there is a special concern).

1 50. My opinion is that ORR cannot safely release UAC to sponsors absent vetting that includes
2 the completion of fingerprint-based background checks where required, or other protective measures, such
3 as home studies, which are required in certain instances by the TVPRA. This is especially true during the
4 current public health emergency. The jettisoning of core safeguards in the sponsor vetting process in order
5 to effectuate the immediate release of UAC would expose UAC to not only public health dangers but also
6 material child welfare and safety risks.

7 51. Plaintiffs also request a full adversarial hearing in order for UAC to challenge failures to
8 (yet) release to individuals applying to be sponsors (including individuals still undergoing vetting). In my
9 opinion, the creation and operation of such an adversarial hearing process during the current public health
10 emergency would require ORR to redeploy federal and grantee staff from program operations, and
11 materially degrade the ability of ORR to conduct sponsor vetting and work with grantee care-provider
12 facilities to maintain appropriate infection control measures and protect the health and safety of UAC at
13 the facilities. My opinion is that to maximize child welfare during the current public health emergency,
14 the federal and grantee staff need to focus on program operations with the goal of releasing UAC to
15 sponsors only when it is safe to do so.

16 Executed on March 27, 2020.

17 
18 _____
19 Jallyn Sualog

Exhibit Q, Attachment A

March 22, 2020 Letter from Plaintiffs' Counsel

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

256 S. OCCIDENTAL BOULEVARD
LOS ANGELES, CA 90057
Telephone: (213) 388-8693 Facsimile: (213) 386-9484
www.centerforhumanrights.org

March 22, 2020

Daniel Shieh
Benjamin Mark Moss
Marina C. Stevenson
Civil Division, Office of Immigration Litigation
United States Department of Justice
P.O. Box 878
Ben Franklin Station
Washington, DC 20044

Via email.

Re: *Lucas R. et al. v. Azar et al*, 2:18-cv-05741-DMG-PLA.

Dear Counsel:

Plaintiffs request that the parties meet and confer tomorrow, March 23, 2020, to explore ways in which the parties may cooperatively address the grave risk that Class Members¹ in the above-referenced action are now facing, or will shortly face, in ORR congregate care facilities as a result of the COVID-19 pandemic and public health national emergency. Absent a cooperative agreement, Plaintiffs will need to file a temporary restraining order (“TRO”) immediately seeking relief from the Court, as described below.

Plaintiffs are advised that congregate care is inherently incongruent with the recommendations of the Centers for Disease Control and Prevention, state health authorities, and epidemiologists, all of whom recommend (if not mandate) social distancing and related safety precautions that are difficult, if not impossible, to observe in facilities housing more than ten Class Members.

We accordingly wish to discuss expediting the release of Class Members to available custodians. We, of course, appreciate the need to protect children against abuse or neglect following release, but believe that such risks need to be balanced against the substantial and immediate dangers that children would face as COVID-19 spreads through congregate care facilities. *See* TVPRA, 8 U.S.C. § 1232(c)(2)(A) (requiring ORR “promptly” place detained children “in the least restrictive setting that is *in the best interest of the child*” (emphasis added)).

We are already aware that Class Members have been exposed to COVID-19 at the MercyFirst and Abbott House programs in New York. We have also been informed that ORR has stopped

¹ Class Members include all youth within any of the five classes the Court certified in its order of November 2, 2018 (ECF No. 126), as modified by order entered December 27, 2018 (ECF No. 141).

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placing Class Members at numerous other shelters in New York, as well as some in California, Washington, Oregon and Pennsylvania, though we do not know whether Class Members at shelters in these states have likewise been exposed to COVID-19.

As such, it is no longer in the best interest of many, if not all, Class Members to remain housed in congregate care, particularly where recommended and/or mandatory safety precautions are not observed and Class Members' exposure to COVID-19 is highly likely. *See* TVPRA, 8 U.S.C. § 1232(c)(2)(A). During this rapidly expanding and unprecedented public health crisis, Class Members' health and welfare must be paramount, as mandated by the TVPRA and state, local, and national authorities, among others.

We accordingly propose that the parties discuss the following:

- 1) The steps ORR has taken and is taking to ensure the safety of Class Members in light of the COVID-19 pandemic.
- 2) Whether, with respect to all members of the "unfit custodian class," as defined in the Court's order of December 27, 2018 (ECF No. 141) ("Unfit Custodian Class Members"), absent good cause based on articulable facts to believe that available custodian(s) would harm or neglect a class member, or that an individual class member presents a current danger to the public, ORR would be amenable to expediting release of all Unfit Custodian Class Members to available custodians who have been vetted and meet the safety threshold noted above, or else place such Unfit Custodian Class Members in non-congregate care.
- 3) Whether, with respect to Unfit Custodian Class Members whom it fails to release or place in non-congregate care, ORR would be amenable to amending Policy Guide § 2.7.8, *available at* www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.7 (last visited March 22, 2020), effective immediately, to provide as follows:
 - a. All Unfit Custodian Class Members shall have the right of administrative appeal without regard to the degree of family affinity of their available custodians.
 - b. The Assistant Secretary for Children and Families, or his or her designee, shall afford each administratively appealing Unfit Custodian Class Member —
 - i. a reasonable opportunity to examine ORR's evidence and reasons for the Unfit Custodian Class Member's continued detention in advance of any hearing;
 - ii. the right to be represented by counsel;
 - iii. a reasonable opportunity to submit documentary evidence and testimony in support of release;

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iv. an opportunity to be heard via teleconference or video conference within five business days of filing an administrative appeal; and

v. a written decision issued no later than three business days following the administrative hearing directing the Unfit Custodian Class Member's immediate release, transfer to non-congregate care, or else setting out the reasons for continued custody and placement in congregate care.

Plaintiffs sincerely hope the parties can work jointly to protect the health and welfare of Class Members under increasingly difficult conditions, but are prepared to pursue all available legal remedies should such cooperation prove unsuccessful. Accordingly, Plaintiffs intend to apply for a TRO and order to show cause re: preliminary injunction by no later than the close of business on March 24, 2020, in the event the parties have not reached an agreement on the above. The requested relief will include all items discussed herein.

Should Defendants decline this invitation to confer, pursuant to Local Rule 7-19, Plaintiffs ask that Defendants advise whether they oppose the application for a TRO.

Thank you,

s/ Carlos Holguín

Carlos Holguín
One of the attorneys for Plaintiffs