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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 JENNY LISETTE FLORES, *et al.*,

19 Plaintiffs,

20 v.

21 WILLIAM BARR, Attorney General of
22 the United States, *et al.*,

23 Defendants.

No. CV 85-4544-DMG-AGR_x

REPLY TO OPPOSITION TO MOTION TO
ENFORCE SETTLEMENT RE “TITLE 42”
CLASS MEMBERS

Hearing: Sept. 4, 2020
Time: 11:00 a.m.
Hon. Dolly M. Gee

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1 I. INTRODUCTION

2 Opposing the instant motion, Defendants wholly fail to counter Plaintiffs’
3 showing that —

- 4 • Defendants regularly detain children in hotels and hold rooms for
5 weeks despite having thousands of vacant beds in licensed facilities;
- 6 • Hotels and hold rooms in which the Department of Homeland Security
7 (“DHS”) places children during Title 42 detention are not licensed, not
8 inspected by independent child welfare agencies, not open to
9 children’s individual legal counsel, not open to class counsel, and
10 apparently closed even to the Independent Monitor;
- 11 • DHS exercises unbridled discretion to classify children for Title 42
12 detention, and to re-classify them for Title 8 detention, without regard
13 to any discernable public health purpose; and
- 14 • DHS—and not the Department of Health and Human Services
15 (“HHS”) or the Centers for Disease Control and Prevention
16 (“CDC”)—also exercises plenary decision-making authority over the
17 placement of children designated for Title 42 detention.

18 Further, Defendants’ opposition is entirely unpersuasive because, as used in the
19 settlement approved by this Court on January 28, 1997 (“Settlement”), the federal
20 agency with “legal custody” of a child is the agency that has decision-making
21 authority over their placement regardless of the statute alleged to authorize their
22 detention. Here, that agency is DHS.

23 In candor, the Order Suspending Introduction of Certain Persons from
24 Countries where a Communicable Disease Exists (“Closure Order”) itself appears
25 to be more of an end-run around protections Congress has conferred on
26 immigrants and asylum-seekers in general, and non-citizen children in particular,
27 than a rational measure to protect public health. 85 Fed. Reg. 17,060 (March 20,
28

1 2020). Yet however inhumane, unnecessary and unlawful it may be, the instant
2 motion does not call upon the Court to decide whether the Closure Order violates
3 Title 8.

4 Rather, it here suffices that the Court should respect Congress’s
5 unmistakable solicitude for the safety and well-being of immigrant and asylum-
6 seeking children for howsoever long they are in federal custody. There simply is
7 no conflict, much less an irreconcilable one, between Title 42 and the Closure
8 Order, on the one hand, and Defendants’ affording vulnerable children prompt
9 licensed placement, on the other.

10 The Court should respect Congress’s wishes. It should grant the instant
11 motion and require Defendants to transfer children they designate for Title 42
12 detention to licensed placements without unnecessary delay.

13 II. CHILDREN DESIGNATED FOR TITLE 42 DETENTION ARE ENTITLED TO THE
14 SETTLEMENT’S PROTECTIONS.

15 A. **DHS has plenary decision-making authority over children**
16 **ostensibly detained under Title 42 and, therefore, they are in**
17 **DHS’s “legal custody.”**

18 The Settlement protects “all minors who are detained in the legal custody of
19 the INS.” Settlement ¶ 10. It is undisputed that this includes children in the legal
20 custody of DHS and its component entities Customs and Border Protection
21 (“CBP”) and Immigration and Customs Enforcement (“ICE”). *See* Defs’
22 Response in Opposition to Pls’ Motion to Enforce [Doc. # 925] (“Defs’ Opp.”) at
23 11. The uncontroverted facts establish that children designated for Title 42
24 detention remain in DHS’s legal custody regardless of the nominal statutory
25 authority for their detention.

26 The Settlement uses the term “legal custody” to refer to the entity with
27 decision-making power over a child’s placement and transfer: the INS. Settlement
28 ¶ 19 (“All minors placed in such a licensed program remain in the legal custody of

1 the INS and may only be transferred or released under the authority of the INS.”).
2 According to Defendants, “Paragraph 19 makes clear the parties’ agreement that
3 the ‘legal custody of the INS’ means custody at the direction of the INS, where the
4 INS retains the authority to authorize continued detention or release of the minor.”
5 Defs’ Response to Pls’ Report on Parties’ Conference re “Title 42” Class
6 Members [Doc. # 900] at 5. Defendants also acknowledge that when the parties
7 entered into the Settlement the “distinction between legal custody and physical
8 custody was clearly understood in California,” with “legal custody” referring to
9 “the power to make major decisions affecting the life of the child.” *Id.* at 5-6 n.2
10 (citing *In re Jennifer R.*, 17 Cal. Rptr. 2d 759, 763 (Ct. App. 1993)).¹

11 There is no question that DHS exercises authority over all major decisions
12 affecting children detained pursuant to Title 42, including initial designation,
13 transfer, placement, and care. DHS exercises unfettered authority to reclassify
14 children under Title 8 at any point during their detention. *See* Pls’ Motion to
15 Enforce Settlement Re “Title 42” Class Members [Doc. # 920-1] (“Mot. to
16 Enforce”) at 8-13; Declaration of Maria Odom (“Odom Decl.”) [Doc. # 920-3] ¶¶
17 19-20; Ex. A, Declaration of Melissa Adamson, Ex. 1, Title 42 Data Summary
18 (“Data Summary”) at 12-13, 17-18 (DHS July ¶ 29 report lists 37 accompanied
19 and nine unaccompanied children “reprocessed” from Title 42 to Title 8 and
20 thereafter released or transferred to licensed placement or family detention

21
22 ¹ Defendants offer no support for their assertion that the term “legal custody” refers
23 “to the source of legal authority to hold the child.” Defs’ Opp. [Doc. # 925] at 14.
24 The Settlement nowhere limits its coverage to children taken into custody under
25 any particular statute, and, as Defendants concede, the *only* children DHS detains
26 under the Closure Order are those whom it would otherwise take into custody in
27 enforcing Title 8. *See* Amendment and Extension of Order Suspending
28 Introduction of Certain Persons from Countries where a Communicable Disease
Exists, 85 Fed. Reg. 31,503, 31,507 (May 26, 2020) (defining “covered alien” and
exempting, among others, U.S. citizens, green card holders, and individuals with
valid travel documents).

1 center).² Defendants’ July report also indicates that DHS freely transferred
2 children between hotels, other unlicensed placements, licensed ORR placements,
3 and ICE Family Residential Centers before expelling them pursuant to Title 42.
4 Data Summary at 12-19.³

5 DHS likewise retains plenary decision-making authority over children they
6 place in MVM Transport’s physical custody. Mellissa Harper, Chief of the
7 Juvenile and Family Residential Management Unit (JFRMU) within ICE
8 Enforcement and Removal Operations (ERO), declares that “JFRMU addresses
9 issues confronting unaccompanied alien children (UAC) and alien family groups
10 *who come into ERO custody*” “includ[ing] oversight of the housing of minors and
11 family groups/units in hotels” through a contract with MVM. Harper Decl. [Doc.
12 # 925-1] ¶¶ 1-2 (emphasis added); *see also id.* at ¶ 11 (ICE “oversees all aspects
13 of the operations” of hotel placements).

14 By contrast, there is no indication that the CDC plays any role in decisions
15
16
17

18 ² DHS detained at least 23 of the 37 accompanied children it “reprocessed” from
19 Title 42 to Title 8 for more than six days in hotels or other unlicensed facilities
20 before releasing or transferring them to family detention centers. Data Summary at
21 17-18. DHS detained at least three unaccompanied children for six days in a hotel
22 or other unlicensed placement before reprocessing and transferring them to licensed
23 ORR placement. *Id.* at 12-13.

23 ³ For example, ICE detained some accompanied children at hotels or other
24 unlicensed placements, before sending them to Karnes Family Residential Center
25 (“Karnes”), whereas others have been transferred directly to Karnes and then
26 expelled under Title 42. Data Summary at 15-16.

26 DHS appears to have placed at least one child in ORR custody, only to then transfer
27 him to a hotel prior to Title 42 expulsion. *Id.* at 13. DHS initially detained two
28 others in hotels and then transferred them to ORR custody. Both were still reported
as “T42 awaiting expulsion” in the July report. *Id.*

1 regarding the classification, placement, or care of children.⁴ *See* Mot. to Enforce
2 at 8-13. The Closure Order covers *only* persons whom DHS would otherwise
3 detain under Title 8 and nowhere hints that CDC will assume legal custody of any
4 individual. *See* Amendment and Extension of Order Suspending Introduction of
5 Certain Persons from Countries where a Communicable Disease Exists, 85 Fed.
6 Reg. 31,503, 31,507 (May 26, 2020) (order applies to “persons traveling from
7 Canada or Mexico (regardless of their country of origin) who would otherwise be
8 introduced into a congregate setting in a land or coastal Port of Entry (POE) or
9 Border Patrol station”). To the contrary, the Closure Order expressly
10 contemplates that critical decision-making authority in individual cases will
11 remain with DHS. *See id.* (customs officers can except individuals from the order
12 “based on the totality of the circumstances”).

13
14 **B. All unaccompanied children in HHS custody are members of the class.**

15 As Plaintiffs established in their opening brief, it is also clear that even
16 were unaccompanied children designated under Title 42 in HHS’s, rather than
17 DHS’s, “legal custody,” they would nonetheless remain class members. The
18 Trafficking Victims Protection Reauthorization Act (TVPRA) assigns “the care
19 and custody of all unaccompanied alien children, including the responsibility for
20 their detention,” to the Secretary of Health and Human Services (“HHS”). 8
21 U.S.C. § 1232(b)(1). Congress has therefore made HHS the INS’s successor for
22 purposes of the detention and placement of unaccompanied class members. *See*
23 *Flores v. Barr*, 934 F.3d 910, 912 n.2 (9th Cir. 2019); *Flores v. Johnson*, 212 F.

24 _____
25 ⁴ Even assuming, arguendo, the CDC were to have some role with regard to the
26 treatment of children subject to the Closure Order, DHS’s decision-making
27 authority means it would retain legal custody nonetheless. *See Flores v. Sessions*,
28 862 F.3d 863, 877 (9th Cir. 2017) (noting that “both the HSA and TVPRA provide
[] for a degree of cooperation between ORR and outside agencies” with regard to
the treatment of unaccompanied minors).

1 Supp. 3d 864, 885 (C.D. Cal. 2015).

2 Defendants’ answer—that holding HHS as the INS’s successor would lead
3 to “absurd results,” including the quarantine of U.S. citizens, Defs’ Opp. at 13-14,
4 is meritless. First, the TVPRA charges HHS with the former INS’s responsibilities
5 *only* with respect to the placement and release of “unaccompanied alien children.”
6 § 1232(b)(1). The TVPRA was “intended to address the unique vulnerability of
7 minors who enter this country unaccompanied, and to improve the treatment of
8 such children while in government custody.” *Flores v. Sessions*, 862 F.3d at 881.
9 These children are indisputably among the Settlement’s intended class members.
10 *See id.* at 866; *Flores v. Lynch*, 828 F.3d 898, 907 (9th Cir. 2016).

11 Second, as has been seen, the Closure Order applies only to non-citizens
12 whom DHS would otherwise detain pursuant to Title 8. 85 Fed. Reg. at 31,507.
13 Holding HHS to its obligations under the Settlement does not broaden the class
14 definition and is consistent with the parties’ intent to provide “minimum standards
15 for the detention, housing, and release of non-citizen juveniles who are detained
16 by the government.” *Flores v. Sessions*, 862 F.3d at 866.

17
18 **III. CONGRESS HAS PRESERVED THE SETTLEMENT INVIOLOATE, AND NOTHING**
19 **PREVENTS DEFENDANTS FROM COMPLYING WITH THEIR AGREEMENT WHILE**
20 **CARRYING OUT THE CLOSURE ORDER.**

21 **A. Nothing in Title 42 or the Closure Order requires the Court to**
22 **ignore Congress’s solicitude for Plaintiff children.**

23 Underlying the whole of Defendants’ opposition is a flawed assumption
24 that providing children appropriate placement and carrying out the Closure Order
25 are zero-sum propositions: that is, there is some irreconcilable conflict that
26 prevents doing both. Defendants never identify any such conflict, because there is
27 none.

28 The TVPRA both (1) preserves the Settlement; and (2) directs *all* federal
agencies to transfer the custody of unaccompanied minors to “the Secretary of

1 Health and Human Services not later than 72 hours. . . ,” who must then
2 “promptly” place them “in the least restrictive setting that is in the best interest of
3 the child.” 8 U.S.C. §§ 1232(b)(3), (c)(2)(A). Congress’s objective in enacting
4 the TVPRA is unmistakable: the federal government must treat immigrant and
5 asylum-seeking children with compassion and care, just as the Settlement
6 requires. *See Flores v. Sessions*, 862 F.3d at 881.

7 In contrast, 42 U.S.C. § 265 does not mention detention at all. The CDC’s
8 statutory authority to detain is found at 42 U.S.C. § 264(b), a statute that pre-dates
9 the TVPRA by some six decades. It provides in pertinent part:

10
11 Regulations prescribed under this section shall not provide for the
12 apprehension, detention, or conditional release of individuals except for
13 the purpose of preventing the introduction, transmission, or spread of
14 such communicable diseases as may be specified from time to time in
Executive orders of the President upon the recommendation of the
Secretary, in consultation with the Surgeon General.

15 *Id.*

16 The “regulation[] prescribed under this section,” 42 C.F.R. § 71.37, posits
17 detailed procedures the CDC must follow when quarantining, isolating, or
18 releasing individuals conditionally:

19
20 A Federal order authorizing quarantine, isolation, or conditional release
21 shall be in writing, signed by the Director, and contain the following
22 information: . . . (4) An explanation that the Federal order will be
23 reassessed no later than 72 hours after it has been served and an
24 explanation of the medical review of the Federal order pursuant to this
25 part, including the right to request a medical review, present witnesses
26 and testimony at the medical review, and to be represented at the
medical review by either an advocate (e.g., an attorney, family member,
or physician) at the individual’s own expense, or, if indigent, to have
representatives appointed at the government’s expense . . .

27 The procedures Defendants follow in detaining children pursuant to the Closure
28

1 Order do not appear at all related to § 264 or its implementing regulations. The
2 sole regulation the CDC appears to have promulgated specifically to implement
3 the Closure Order, 42 C.F.R. § 71.40, never mentions “apprehension,” “detention”
4 or “custody” at all.

5 Defendants’ expansive reading of their detention powers under 42 U.S.C.
6 § 265 offers no reason to ignore Congress’s having preserved the Settlement many
7 decades after it last addressed this provision in 1944. *FDA v. Brown &*
8 *Williamson Tobacco Corp*, 529 U.S. 120, 143 (2000), *superseded on other*
9 *grounds by statute*, 21 U.S.C. § 387a (“[A] specific policy embodied in a later
10 federal statute should control our construction of the earlier statute, even though it
11 has not been expressly amended.”) (internal quotation marks and alterations
12 omitted)).

13 In *Morton v. Mancari*, 417 U.S. 535 (1974), the Supreme Court held, “The
14 courts are not at liberty to pick and choose among congressional enactments, and
15 when two statutes are capable of co-existence, it is the duty of the courts, absent a
16 clearly expressed congressional intention to the contrary, to *regard each as*
17 *effective.*” *Id.* at 551 (emphasis added); *see also Connecticut Nat’l*
18 *Bank v. Germain*, 503 U.S. 249, 253 (1992) (“Redundancies across statutes are
19 not unusual events in drafting, and so long as there is no ‘positive repugnancy’
20 between two laws, . . . a court must give effect to both.”).

21 In *J.B.B.C. v. Wolf*, the court applied this principle to preliminarily enjoin
22 Defendants against summarily expelling a child pursuant to Title 42, a practice
23 that unavoidably conflicts with the TVPRA.⁵ *See* Transcript of Telephonic
24

25 ⁵ 8 U.S.C. § 1232(a)(5)(D) provides, “Any unaccompanied alien child sought to be
26 removed by the Department of Homeland Security, except for an unaccompanied
27 alien child from a contiguous country . . . shall be— (i) placed in removal
28 proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C.
1229a); . . .”

1 Motion Hearing, No. 1:20-cv-01509-CJN, ECF No. 39 (D.D.C. June 24, 2020)
2 [previously filed as Doc. # 897-2]. The court held, “Even if the power to remove
3 were read by [42 U.S.C.] section 265, the plaintiff has likelihood of success
4 because the provision, in the Court’s view, *should be harmonized, to the maximum*
5 *extent possible, with immigration statutes . . . that grant special protections to*
6 *minors . . .” Id. at 50 (emphasis added).*

7 The Settlement clearly regulates how Defendants must treat children while
8 these children are in their custody. If the court in *J.B.B.C.* enjoined Defendants to
9 observe the special protections Congress has conferred on Plaintiff children, this
10 Court should do no less: it should order Defendants to observe the protections the
11 Settlement confers and Congress preserved in the Homeland Security Act and the
12 TVPRA.

13 **B. Defendants fail to show how the Closure Order prevents them**
14 **from affording children prompt, licensed placement.**

15 Defendants’ affording children licensed placement would not impede their
16 carrying out the Closure Order. First, Defendants detain a relatively small
17 percentage of children pursuant to Title 42 for longer than 72 hours. Defendants’
18 data show that between March and July, CBP “encountered” over 8,600 UACs
19 and some 8,700 family units at the Southwest border. *See* U.S. Customs & Border
20 Protection, *Southwest Border Migration FY 2020, U.S. Border Patrol Southwest*
21 *Border Encounters FY 2020*, www.cbp.gov/newsroom/stats/sw-border-migration
22 (last modified August 6, 2020); *see also id.* (“Beginning in March FY20, USBP
23 Encounters statistics include both Title 8 Apprehensions and Title 42
24 Expulsions.”).

25 Over approximately the same period, Defendants report detaining 510
26 children pursuant to Title 42 for 72 hours or more. Data Summary at 6-7; *see*
27
28

1 Attachment A.⁶ Of the 577 unaccompanied children Defendants held in hotels,
2 436 were detained for three or more days. *Id.* These children total 5 percent of all
3 unaccompanied children Defendants “encountered” at the Southwest border.⁷
4 Clearly, there is nothing limiting Defendants from providing children detained
5 over 72 hours a licensed placement.⁸

6 Second, Defendants’ argument that providing children a licensed placement
7 would “introduce” them into the United States, *see, e.g.*, Defs’ Opp. at 12, is
8 devoid of merit. Defendants cannot seriously deny that children detained in hotels

9 ⁶ This number derives from Attachment A [Doc. # 927] to Exhibit 1 (Declaration of
10 Mellissa Harper) [Doc. # 925-1]. As the Data Summary explains, it is an open
11 question whether the data included in Defendants’ Attachment A or ¶ 29 are fully
12 accurate. Data Summary at 1-5. The Independent Monitor’s report expressed
13 similar concerns regarding inconsistencies in the data provided in Defendants’
14 Attachment A and the monthly *Flores* reports. *See* Interim Report on the Use of
15 Temporary Housing for Minors and Families under Title 42 by Independent
16 Monitor and Dr. Paul Wise, August 26, 2020 [Doc # 938] (“Aug. Interim Report”)
17 at 11 n.9.

16 ⁷ It is not possible to calculate this percentage for accompanied children, as the CBP
17 data does not distinguish between children and adults when reporting Family Unit
18 numbers. *See* CBP, *Southwest Border Migration FY 2020*,
19 <https://www.cbp.gov/newsroom/stats/sw-border-migration> (“Family Unit represents
20 the number of individuals (either a child under 18 years old, parent, or legal
21 guardian) apprehended with a family member by the U.S. Border Patrol.”).

21 ⁸ Defendants complain that Plaintiffs fail to state whether unaccompanied children
22 only, or both accompanied and unaccompanied children, are entitled to licensed
23 placement as Settlement ¶ 12 directs. Defs’ Opp. at n.3.

23 The short answer is that the TVPRA preserves the Settlement in whole, and the
24 agreement protects *both* accompanied and unaccompanied children. *Flores v.*
25 *Lynch*, 828 F.3d at 901.

26 As this Court has remarked, however, Defendants have elected to force families to
27 separate if they wish to avail themselves of their Settlement rights. As a practical
28 matter, the primary beneficiaries of requiring Defendants to afford class members
prompt licensed placement will be unaccompanied class members.

1 in McAllen, El Paso, San Antonio, or Phoenix are *already* in the United States.
2 Nor do Defendants deny that they have hundreds of empty licensed beds at their
3 disposal in or near these very same cities.

4 Defendants never explain how placing a child in a licensed facility would
5 introduce a child into the United States any more than does their detaining them
6 for weeks in unlicensed and unmonitored hotels or MVM transport facilities,
7 where they have daily contact with multiple MVM, medical, and ICE personnel.⁹
8 *See Harper Decl.* ¶¶ 6-9, 19-20; *J.B.B.C. Hearing Tr.* at 49-50 (“In my view, the
9 plaintiff is likely to succeed on the question of whether 42 U.S.C. 265 grants the
10 director of the CDC the power the government articulates here” because “the
11 statute authorizes the director of the CDC to prohibit the introduction of persons . .
12 .. There’s a serious question about whether that power includes the power also to
13 remove or exclude *persons who are already present in the United States.*”
14 (emphasis added)).¹⁰

15 Insofar as placement is concerned, Defendants fail to demonstrate how their
16 complying with the Settlement impedes their ability to execute the Closure Order.
17 Resolving the question sub judice is accordingly straightforward: because there is
18

19 ⁹ Defendants also admit that they introduce hotelled children into urgent care
20 centers and local emergency rooms if emergency or behavioral health services are
21 needed. *See Harper Decl.* ¶ 20.

22 ¹⁰ The CDC has interpreted “introduction into the United States of persons from a
23 foreign country” to mean “movement of a person from a foreign country . . . into
24 the United States so as to bring the person into contact with persons in the United
25 States, or so as to cause the contamination of property in the United States, in a
26 manner that the Director determines to present a risk of transmission of a
27 communicable disease to persons or property, even if the communicable disease has
28 already been introduced, transmitted, or is spreading within the United States.” 42
C.F.R. § 71.40(b)(1). Assuming, arguendo, the CDC has correctly construed what
it means to introduce them into the United States, Defendants have the Plaintiff
children in their custody, and whether they are detained in a licensed facility or a
hotel, they are in “contact with persons in the United States.”

1 no conflict between Defendants’ executing the Closure Order and their providing
2 children a licensed placement, the Court should give effect to Congress’s having
3 protected and preserved class members’ Settlement rights, including their right to
4 licensed placement.

5 IV. ANY AMBIGUITY IN THE SETTLEMENT CAN AND SHOULD BE RESOLVED IN
6 FAVOR OF REQUIRING DEFENDANTS TO PLACE CHILDREN EXPEDITIOUSLY IN
7 LICENSED FACILITIES.

8 **A. The Settlement nowhere suggests Defendants should have free**
9 **rein to deny children licensed placement by facile designation.**

10 Defendants next argue that despite the Settlement’s expressly binding the
11 INS’s successors and Congress’s having expressly named HHS as that successor
12 with respect to custody and placement of unaccompanied class members, they are
13 free to treat children howsoever they wish because the parties never intended the
14 Settlement to apply to children DHS purports to detain pursuant to Title 42. *E.g.*,
15 Defs’ Opp. at 12-13. Defendants’ argument is meritless. The parties *intended* to
16 protect immigrant and asylum-seeking children from inappropriate, unmonitored,
17 and unlicensed placement; they did *not* intend that Defendants have license to
18 evade that obligation by arbitrarily branding or un-branding children as threats to
19 public health.

20 In their opening brief, Plaintiffs explained that CBP and ICE *choose* to
21 designate children under Title 8 or Title 42 detainees without much, if any,
22 apparent regard for public health. Mot. to Enforce at 10-12. The Independent
23 Monitor observed that “there appears to be no formal policy regarding the
24 procedures” for unaccompanied children who test positive for Covid-19 and two
25 of three unaccompanied children who “tested positive for Covid-19 while in the
26 custody of ICE at a hotel” were transferred to ORR custody. Interim Report on the
27 Use of Temporary Housing for Minors and Families under Title 42 by
28 Independent Monitor and Dr. Paul Wise, August 26, 2020 [Doc # 938] (“Aug.

1 Interim Report”) at 16-17.¹¹

2 The Settlement, however, squarely places Defendants under a *mandatory*
3 duty to afford the general population of detained children prompt placement in
4 licensed, non-secure facilities. Settlement ¶ 12.A (“[T]he INS *shall* place all
5 minors pursuant to Paragraph 19 as expeditiously as possible. . .” (emphasis
6 added)); *see also* Settlement ¶ 41 (“The undersigned . . . warrant that upon

7 _____
8 ¹¹ Defendants admit that CBP exempts children from the Closure Order based on
9 ill-defined “humanitarian concerns,” including when an officer “sees signs of
10 illness.” *See* Defs’ Opp. at 5-6, 20 n.9. It appears that the majority, if not the only,
11 children Defendants actually expel under the Closure Order are those who do not
12 have COVID, while those who test positive are sometimes “introduced” into
13 facilities holding Title 8 detainees. *See* Interim Report on the Use of Temporary
14 Housing for Minors and Families Under Title 42 by Independent Monitor, July 22,
15 2020 [Doc # 873] (“July Interim Report”) at 17 (“[A]t least one family was
16 transferred to the Karnes FRC after 2 symptomatic members tested positive for
17 COVID-19.”). Expelling the healthy while admitting the infected is certainly a
18 curious approach to protecting public health.

19 But to speak straight from the shoulder, it is increasingly evident that the Closure
20 Order is a legal and factual subterfuge for the unlawful expulsion of immigrant and
21 asylum-seeking children. *See, e.g.,* Letter to HHS Secretary Azar and CDC
22 Director Redfield Signed by Leaders of Public Health Schools, Medical Schools,
23 Hospitals, and Other U.S. Institutions, May 18, 2020,
24 [www.publichealth.columbia.edu/public-health-now/news/public-health-experts-
25 urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers](http://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers) (“The
26 nation’s public health laws should not be used as a pretext for overriding
27 humanitarian laws and treaties that provide life-saving protections to refugees
28 seeking asylum and unaccompanied children. . . . *Despite its public health pretext, the CDC order fails to further public health and disregards alternative measures that can protect public health while preserving access to asylum and other protection.*” (emphasis added)).

Nor is there any doubt the stratagem is succeeding in abrogating asylum protections by other means. *See* C-SPAN, *Senate Hearing on Customs and Border Protection Oversight*, June 25, 2020, www.c-span.org/video/?473378-1/senate-hearing-customs-border-protection-oversight (00:54:25) (CBP Acting Commissioner Morgan testifies that his agency has summarily expelled 2,000 unaccompanied children while processing only some 300 as Title 8 directs).

1 execution of this Agreement in their representative capacities, their principals,
2 agents, and successors of such principals and agents shall be fully and
3 unequivocally bound hereunder to the full extent authorized by law.”).

4 Nothing in the Settlement hints that DHS should be at liberty to evade that
5 obligation by mere incantation: that is, by arbitrarily designating one or another
6 child for Title 42 detention. Ceding Defendants such a prerogative would, of
7 course, render the Settlement illusory, a result settled canons of contract
8 interpretation categorically condemn. 2 CORBIN ON CONTRACTS 142 (rev. ed.
9 1995) (“An illusory promise is one containing words ‘in promissory form that
10 promise nothing’”); RESTATEMENT (SECOND) OF CONTRACTS § 203(a) (1981)
11 (“[A]n interpretation which gives a reasonable, lawful, and effective meaning to
12 all the terms is preferred to an interpretation which leaves a part . . . of no effect”);
13 *Kennewick Irrigation Dist. v. United States*, 880 F.2d 1018, 1032 (9th Cir. 1989)
14 (“Preference must be given to reasonable interpretations as opposed to those that
15 are unreasonable, or that would make the contract illusory.”) (quotation marks
16 omitted).¹²

17
18 ¹² Defendants dramatically oversimplify the law in arguing that what the parties
19 anticipated when they entered into the Settlement—and only what they then
20 anticipated—strictly cabins the Settlement. *E.g.*, Defs’ Opp. at 13.

21 For example, in 1997 the parties had no inkling Congress would dissolve the INS in
22 2002 or enact the TVPRA in 2008, yet the Settlement remains binding on HHS and
23 DHS. *Flores v. Sessions*, 862 F.3d at 870-71. That the parties did not anticipate
24 the current pandemic or, to speak plainly, Defendants’ seizing upon a public health
25 emergency to adopt a novel interpretation of 42 U.S.C. § 265 and deny non-citizen
26 children the Settlement’s protections, is of no moment. *See Flores v. Lynch*, 828
27 F.3d at 906 (“[T]hat the parties gave inadequate attention to some potential
28 problems of accompanied minors does not mean that the Settlement does not apply
to them.”). Children whom Defendants select for Title 42 expulsion are just as
needful of proper placement as those they openly detain under Title 8. *Id.* at 907
 (“The government has not explained why the detention claims class would exclude
accompanied minors; minors who arrive with their parents are as desirous of

1 **B. The Settlement should not be construed to deny identically**
2 **situated children proper placement.**

3 Nor is Defendants’ picking and choosing children for licensed or unlicensed
4 placement minimally rational. In the opening brief, Plaintiffs argued that, should
5 the Court detect any ambiguity in the Settlement, it should construe the Settlement
6 as protecting children irrespective of whether Defendants choose to designate
7 them for Title 42 or Title 8 detention. Mot. to Enforce at 13. The Court would
8 thereby avoid serious constitutional questions regarding equal protection that
9 would arise from Defendants’ treating *identically* situated children differently. *Id.*

10 In opposing the instant motion, Defendants fail to explain how a child
11 whom they elect to brand “Title 42” is any less deserving of prompt licensed
12 placement, or any more likely to threaten public health, than one they decide to
13 detain pursuant to Title 8. Indeed, Defendants nowhere deny that they regularly
14 shift the nominal basis for detaining a child from Title 42 to Title 8 for little or no
15 reason.

16 Instead, Defendants argue that the “Court is not being asked to interpret
17 Title 42, but rather it is being asked to interpret a settlement agreement. The
18 doctrine of constitutional avoidance has no application here.” Defs’ Opp. at 16.
19 Whether Title 42 necessarily conflicts with the TVPRA’s savings clause and, a
20 fortiori, the Settlement, is among the questions sub judice. Assuming, arguendo,
21 Defendants were to succeed in conjuring up some irreconcilable conflict between
22 Title 42 and the Settlement, the doctrine of constitutional avoidance would
23 mitigate in favor of harmonizing Title 42 with Congress’s subsequent directives
24 (1) that the Settlement should endure, and (2) that all federal agencies must

25
26
27 _____
28 education and recreation, and as averse to strip searches, as those who come
alone.”).

1 transfer unaccompanied children to HHS within 72 hours.¹³ See 8 U.S.C.
2 1232(b)(3), (c)(2)(A).

3 In sum, whether viewed as a question of statutory construction, contractual
4 interpretation, or both, the result is the same: Defendants have no rational basis for
5 denying children proper placement by dint of the label they choose to fasten upon
6 them. Both Title 42 and the Settlement should therefore be construed such that
7 Defendants are required to afford identically situated children prompt, licensed
8 placement.

9
10 V. PLAINTIFFS HAVE MORE THAN CARRIED THEIR BURDEN OF PROVING THAT
11 DEFENDANTS ARE DETAINING CHILDREN IN UNLICENSED PLACEMENTS IN
12 VIOLATION OF THE SETTLEMENT.

13 Defendants do not deny they are detaining children in unlicensed facilities,
14 in some cases for weeks at a time. Nor do Defendants counter Plaintiffs' evidence
15 that they deny children detained in unlicensed facilities access to counsel,
16 education, and recreation.¹⁴ Finally, Defendants nowhere deny (i) that no state

17 ¹³ In any event, the doctrine of constitutional avoidance is applicable to interpreting
18 contracts. *E.g.*, *City of San Diego v. Rider*, 47 Cal. App. 4th 1473, 1490 (1996)
19 (“As a contract, the lease must receive such an interpretation as will make it lawful .
20 . . if it can be done without violating the intention of the parties. Here the facility
21 lease itself provides the city and agency intended the lease be carried out in a lawful
22 *and constitutional* fashion.” (emphasis added) (internal quotation marks and
23 citations omitted)).

24 ¹⁴ Defendants do not deny barring individual legal counsel's or class counsel's
25 access to “hotelled” children while guilefully impugning the evidence children's
26 legal services providers are able to supply. The Court has rebuffed similarly sharp
27 practices in the past, and it should do so here again. See *e.g.*, Transcript of Video
28 Proceedings at 16, *Lucas R. v. Azar et al.*, No CV18-05741-DMG (Mar. 27, 2020)
[previously filed as Doc. # 774-71] (“I cannot tell the plaintiffs to come up with
data that they don't have because you won't give it to them.”). In any event, the
declarations supporting the instant motion are clearly admissible: the declarants
provide direct legal services to the children at issue and have experienced first-hand
Defendants' concerted efforts to hold “hotelled” children all but incommunicado.

1 child welfare licensing official monitors the conditions and treatment children
2 experience during unlicensed placement,¹⁵ (ii) that they are blocking Plaintiffs’
3 counsel’s access to children detained in unlicensed facilities notwithstanding
4 Settlement ¶¶ 32 and 33, or (iii) that not even the Independent Monitor has been
5 provided access to class members or the ability to independently assess detainee
6 experiences. *See* Aug. Interim Report at 15.

7
8 **A. The uncontroverted evidence establishes that Defendants are**
9 **failing to transfer children to licensed placements as**
10 **expeditiously as possible.**

11 In their opening brief, Plaintiffs explained that absent an “influx,”
12 Settlement ¶ 12 generally requires Defendants to transfer a minor to a non-secure
13 licensed placement within three days, but that even during an influx, the
14 agreement requires licensed placement “as expeditiously as possible.” Settlement
15 ¶ 12A3.

16 Defendants do not deny that their licensed shelters are now nearly empty.
17 Under prevailing circumstances, Defendants’ transferring children to licensed

18 ¹⁵ Defendants expect Plaintiffs and the Court to ignore the independent state
19 monitoring protections of the Settlement and instead to rely on ICE’s
20 “[u]nannounced virtual inspections” to verify the conditions these children are
21 kept in. Harper Decl. ¶ 12. This type of self-monitoring has already been rejected
22 by this Court once before and should not now be deemed sufficient independent
23 monitoring to ensure compliance with the Settlement. *See* Order re Pls’ Mot to
24 Enforce Settlement [516] and Defs’ Notice of Termination and Mot in the
25 Alternative to Terminate the Flores Settlement Agreement [639] at 9, [Doc. # 688]
26 (“Therefore, this new regulatory definition of ‘licensed facility’ would effectively
27 authorize DHS to place class members in ICE detention facilities that are not
28 monitored by state authorities, but are instead audited by entities handpicked by
DHS... . This is more than a minor or formalistic deviation from the provisions of
the Flores Agreement, as ‘[t]he purpose of the licensing provision is to provide
class members the essential protection of regular and comprehensive oversight by
an *independent* child welfare agency.’”).

1 placement after three days is entirely “possible,” and Defendants offer no
2 evidence to the contrary.¹⁶ Defendants’ latest ¶ 29 report and Attachment A to
3 their Opposition also confirm that DHS is *not* transferring class members to
4 licensed placements as expeditiously as possible.¹⁷

5 The most Defendants muster in opposition is that children’s “average
6 lengths of stay” in irregular facilities are short. *See* Harper Decl. ¶ 23. This says
7 nothing about the many children whom DHS has detained for 10, 15, 20, or 25
8 days or more in unlicensed placements. Data Summary at 6-7, 9-19. In July,
9 DHS detained at least 13 accompanied and eight unaccompanied children in
10 hotels for two weeks or more, including two unaccompanied children whom it
11 detained in hotels for 28 days. *Id.* at 6-7, 10-12, 14-18. Once again, Defendants’
12 own data confirm they are violating the Settlement’s command that they provide
13 children safe and proper placement as expeditiously as possible.

14 ¹⁶ Similarly, the TVPRA requires all federal agencies to transfer the custody of
15 unaccompanied minors to “the Secretary of Health and Human Services not later
16 than 72 hours. . . ,” who must then “promptly” place them “in the least restrictive
17 setting that is in the best interest of the child.” 8 U.S.C. §§ 1232(b)(3). Defendants
18 use the term “single minor.” To the extent this term is used to imply that these
19 children fall outside the protections granted by Congress to unaccompanied
20 children, this usage is inconsistent with statute. *See* 6 U.S.C. § 279(g)(2).

20 ¹⁷ Defendants argue they may delay 20 days before transferring children to a
21 licensed placement without violating the Settlement’s requirement that transfer
22 occur “as expeditiously as possible.” Defs’ Opp. at 20.

23 Defendants’ attempt to analogize delay in licensed placement while ORR facilities
24 are nearly vacant to delays in releasing accompanied children during the 2015
25 “surge” in family detention is deeply and obviously flawed. *See* Order re Response
26 to Order to Show Cause [Doc # 189] at 10 n.7 (“Paragraph 12A requires that
27 Defendants ‘place all minors pursuant to Paragraph 19 as expeditiously as possible’
28 in ‘the event of an emergency or influx of minors into the United States.’ This
language, on its face, gives Defendants some latitude, *provided it is exercised
reasonably and in good faith, to deal with emergency situations.*”) (emphasis
added).

1 **B. Defendants have concealed the conditions and treatment class**
2 **members experience during unlicensed placement from class**
3 **counsel, children’s individual counsel, and the Independent**
4 **Monitor.**

5 The Settlement’s requirement that children be placed in licensed facilities
6 ensures that children in immigration custody are in placements that “comply with
7 all applicable state child welfare laws and regulations” and are “licensed by an
8 appropriate State agency to provide residential, group, or foster care services for
9 dependent children” Settlement Ex. 1, ¶ 6. As this Court has observed, the
10 agreement’s licensing requirement ensures that Defendants’ facilities are regularly
11 inspected by independent state child welfare authorities. *Flores v. Johnson*, 212
12 F. Supp. 3d 864, 879 (C.D. Cal. 2015), (independent oversight “the animating
13 concern of the Agreement’s licensing requirement”).

14 Defendants do not deny that hotels and MVM hold rooms are unlicensed,
15 and their failure to transfer children to licensed placement as expeditiously as
16 possible is a per se breach of the Settlement.

17 Instead, Defendants argue that the Court should trust that they are supplying
18 “hotelled” children the basics: clothing, food, a bed and a shower.¹⁸ Yet even
19 taking Defendants’ rosy portrayal at face value, the Settlement requires them to
20 provide children far more than just food and basic sanitation. The uncontroverted
21 evidence shows that children in unlicensed placements lack adequate access to
22 legal counsel, to a needs assessment, including identification of special needs, to
23 recreation, to an educational assessment and educational services, to leisure time
24 activities apart from television, to mental health and family reunification services,

25
26 ¹⁸ There is no mention of what steps Defendants take to ensure safe and sanitary
27 conditions when children are detained in other unlicensed placements listed in the
28 monthly *Flores* data reports that are not hotels, such as hold rooms, “MVM
Transport,” or “MVN Transportation.” See Data Summary at 11-19 (listing
examples of children held by “MVM Transport” and “MVN Transportation”).

1 all of which licensed placements must supply. Settlement Ex. 1.¹⁹ *See e.g.* Aug.
2 Interim Report at 15 (The current “hotelling” of unaccompanied minors “is not
3 fully responsive to the safe and sanitary requirements of young children.”).

4 Defendants fail as well to offer any evidence casting doubt on the
5 Independent Monitor’s finding that “hotelled” children are rarely permitted
6 outdoor recreation, education, or counseling. July Interim Report at 9. The
7 August Report of the Independent Monitor similarly did not find evidence of the
8 provision of recreation, education, or counseling. *See* Aug. Interim Report. The
9 Independent Monitor has made clear the current system of detaining
10 unaccompanied minors in unlicensed facilities “is not a system of care for children
11 of different ages and developmental stages.” *Id.* at 17. Adequate custodial care
12 requires “specialized custodial elements, continuous oversight, and specialized
13 training of relevant personnel.” *Id.* Moreover, Defendants have no formal age
14 limit policy regarding which unaccompanied children are “too young” to be held
15 in unlicensed facilities and there is no apparent limit to the length of stay for
16 unaccompanied children in unlicensed placements. *Id.* at 16. Instead of meeting
17 their clear legal obligation, Defendants are improperly detaining unaccompanied
18 children for long periods of time in unlicensed facilities.

19 Defendants claim that children detained in hotels and other unlicensed
20 placements have “telephonic access . . . to counsel while housed in the hotels”
21 because each minor “is given a minimum of one phone call a day.” Defs’ Opp. at
22 25. Defendants fail to explain how a child is supposed to locate a lawyer when
23 pro bono legal services providers have been ejected from hotels, when they insist
24 a lawyer must have entered an appearance for a child before he or she will be
25 allowed to call her lawyer, and when few lawyers will appear for a client whose
26

27 ¹⁹ According to Defendants, the only “behavioral health” services “hotelled”
28 children receive is a trip to the emergency room when necessary. Harper Decl. ¶
20.

1 location they do not know and whom they have never previously been permitted
2 to interview. *See* Mot. to Enforce at 17-18 (families often do not know where
3 Defendants are detaining their children and cannot reasonably be expected to
4 retain counsel, let alone obtain a signed Form G-28; legal service providers report
5 extreme difficulty locating “hotelled” children because Defendants obstruct
6 access).²⁰

7 As of August 14, 2020, Defendants had access to over 12,000 vacant beds
8 in licensed facilities. ORR Juvenile Coordinator Interim Report, Aug. 24, 2020
9 [Doc. # 932-2] at 2. There is no excuse for leaving vulnerable children in
10 unlicensed and unmonitored facilities while licensed beds sit vacant —at taxpayer
11 expense.

12 VI. CONCLUSION.

13 For the foregoing reasons, the Court should grant this motion and order
14 Defendants to comply with the Settlement with respect to placement and
15 monitoring of class members designated for Title 42 expulsion.

25 ²⁰ The importance of children’s having meaningful access to counsel is hard to
26 overstate. Without a lawyer, children’s ability to oppose summary Title 42
27 expulsion is nil, whereas DHS nearly always transforms Title 42 children into Title
28 8 children once counsel enters an appearance. *See* Odom Decl. at ¶ 19; Ex. F to
Mot. to Enforce, Declaration of Daniel Galindo ¶¶ 3-4 (“Galindo Decl.”).

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Dated: August 28, 2020

CENTER FOR HUMAN RIGHTS AND
CONSTITUTIONAL LAW
Carlos R. Holguín

NATIONAL CENTER FOR YOUTH LAW
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EXHIBIT A

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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 JENNY LISETTE FLORES, *et al.*,
19 Plaintiffs,
20 v.
21 WILLIAM BARR, Attorney General of
the United States, *et al.*,
22
23 Defendants.
24

Case No. CV 85-4544-DMG-AGRx
DECLARATION OF MELISSA ADAMSON IN
SUPPORT OF PLAINTIFFS’ REPLY TO
OPPOSITION TO MOTION TO ENFORCE
SETTLEMENT RE “TITLE 42” CLASS
MEMBERS
Hearing: Sept. 4, 2020
Time: 11:00 a.m.
Hon. Dolly M. Gee

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28

1
2 **DECLARATION OF MELISSA ADAMSON**
3 **IN SUPPORT OF PLAINTIFFS’ REPLY TO OPPOSITION TO MOTION TO ENFORCE**
4 **SETTLEMENT RE “TITLE 42” CLASS MEMBERS**

5 I, Melissa Adamson, declare as follows:

6
7 1. I am counsel of record for Plaintiffs in the above-captioned case. I execute this
8 declaration in support of Plaintiffs’ Reply to Opposition to Motion to Enforce
9 Settlement re “Title 42” Class Members.

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

13 3. Attached hereto is a true and correct copy of Exhibit 1 (“Title 42 Data
14 Summary”). I authored Exhibit 1, which includes a description of inconsistencies
15 between Defendants’ Attachment A (Doc. # 927) (“Attachment A”) to Exhibit 1
16 (Declaration of Mellissa Harper) (Doc. # 925-1) (“Harper Decl.”) and the monthly
17 *Flores* data reports, an analysis of the Attachment A data, and an analysis of the July
18 *Flores* data report.

19
20 Data Inconsistencies

21 4. On the morning of August 25, promptly after identifying significant
22 inconsistencies, Plaintiffs communicated their questions regarding inconsistencies
23 between Attachment A and the monthly *Flores* data reports to Defendants. Attached
24 hereto as Exhibit 2 is a true and correct copy of the email correspondence addressing
25 data inconsistencies.

26 5. On August 27, Defendants provided an updated version of Attachment A which
27 they stated reconciled certain date inconsistencies. *See* Exhibit 2. As of this filing, the
28 updated Attachment A had not yet been approved by the Court to file under seal, and

1 therefore the attached Data Summary does not address that data set. However, upon
2 examination of the Attachment A Defendants included in their August 27th email
3 correspondence, it does not appear that the “updated Attachment A” resolves the
4 inconsistencies identified in Exhibit 1, namely missing children, inconsistent dates of
5 detention, inconsistent locations of detention, and inconsistent Subject ID numbers.

6 6. In comparing Attachment A and the monthly *Flores* reports, I used children’s
7 Subject ID numbers to locate their record within each respective data set. For children
8 that were listed in the *Flores* report but not in Attachment A, or children listed in
9 Attachment A but not in the monthly *Flores* report, I also searched their given and
10 family names in case they had been assigned different Subject ID numbers.

11 7. In comparing Attachment A and the monthly *Flores* reports, I used the most
12 recent versions of the *Flores* reports produced by Defendants.

13
14 July Flores Data Report Analysis

15 8. In preparing the Title 42 Data Summary, I reviewed the monthly statistical data
16 reports produced by the Department of Homeland Security (“DHS”) and the
17 Department of Health and Human Services (“HHS”) pursuant to ¶¶ 28 and 29 of the
18 *Flores* Settlement Agreement for the month of July 2020 (“July ICE data report”).

19 9. The July ICE data report provides each class member’s “Alien File Number,”
20 “Subject ID,” “Given Name,” “Family Name,” “Country of Citizenship,” “Birth
21 Date,” and “Initial ICE Book-In Date.” The ICE data report also provides the “Book-
22 in Date” and “Book-out Date” for each placement in which the child has been
23 detained, as well as each placement’s “Facility Name” and “Facility Type.” The report
24 also includes columns listing information regarding “Release Reason,” “In a Family
25 Unit or Family Group?,” and “Detention Criteria.”

26 10. I used the methodology described in ¶¶ 11-22 to calculate the information
27 presented in the Title 42 Data Summary.

28

1 11. To identify **unaccompanied children**, I limited the inquiry to children listed as
2 “No” in the “In a Family Unit or Family Group?” column.

3 12. To identify **accompanied children**, I limited the inquiry to children listed as
4 “Yes, Family Unit” in the “In a Family Unit or Family Group?” column.

5 13. Defendants state that “**family ‘groups’** refer to siblings, minors with
6 aunts/uncles, etc., and **family ‘units’** are traditional parent/child units.” Harper Decl.
7 at 3 n.1. To identify children in “family groups,” I limited the inquiry to children
8 listed as “Yes, Family Group” in the “In a Family Unit or Family Group?” column.

9 14. To identify **children expelled under Title 42**, I limited the inquiry to children
10 listed as “Title 42 Expulsion” in the “Detention Criteria” column and listed as “Title
11 42 Return” or “Removed” in the “Release Reason” column.

12 15. To identify **children awaiting expulsion under Title 42**, I limited the inquiry
13 to children listed as “T42 awaiting expulsion” in the “Detention Criteria” column and
14 listed as “Title 42 Return” or “Transferred” in the “Release Reason” column.

15 16. To identify **children that were held under Title 42, reprocessed under Title**
16 **8**, and transferred to an ORR facility, I limited the inquiry to children listed as
17 “Initially processed under T42. Reprocessed under T8 after claiming CF” in the
18 “Detention Criteria” column who had an entry for an ORR facility in their subsequent
19 detention history.

20 17. To identify **children that were held in hotels or other unlicensed placements**
21 **after leaving an ORR placement**, I reviewed the full detention history for class
22 members who had an entry for “ORR” in the “Facility Type” column.

23 18. To identify **children that were held under Title 42, reprocessed under Title**
24 **8, and either transferred to a Family Residential Center, paroled, or released on**
25 **order of recognizance**, I limited the inquiry to children listed as “Initially processed
26 under T42. Reprocessed under T8 after claiming CF” in the “Detention Criteria”
27 column who were listed as “Yes, Family Unit” in the “In a Family Unit or Family
28 Group?” column.

1 19. To identify **children that were held in Customs and Border Protection**
2 **custody for three or more days**, I limited the inquiry to children for whom this
3 information was provided in the “Detention Criteria” column (listed as “3 days in
4 CBP custody. F/O transferred to ICE for Rep,” “4 days in CBP custody,” “4 days in
5 CBP custody prior to transfer to the FRC,” “5 days in CBP custody,” “6 days in CBP
6 custody,” “7 days in CBP custody,” “8 days in CBP custody,” “9 days in CBP
7 custody,” “10 days in CBP custody,” “11 days in CBP custody,” “11 days in CBP
8 custody/transferred to ICE for release,” “12 days in CBP custody,” or “13 days in
9 CBP custody.”).

10 20. To determine each **child’s “Total Days in ICE Custody,”** I calculated the
11 number of days between each class member’s “Book-in Date” and “Book-out Date.”
12 For example, a class member with a book-in date of 7/15/2020 and a book-out date of
13 7/20/20 was calculated as having spent five days in ICE custody. This method was
14 chosen to avoid overcounting days spent in custody, as the monthly data reports do
15 not list the exact time that class members arrive at each placement.

16 21. For the purposes of this Data Summary, the **“Total Days in ICE Custody”**
17 calculated in each table reflects the children’s time spent in hotels, “MVM Transport,”
18 “MVN Transportation,” ICE hold rooms, and field offices. It does not include time
19 that children spent in Customs and Border Protection or ICE Family Residential
20 Centers.

21 22. To determine each **child’s age**, I calculated the difference between each class
22 member’s listed date of birth and the last day of the month (July 31, 2020). For
23 children under 1 year old, age was determined based on the child’s date of birth and
24 the child’s “book-in” date.

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23. The information contained in Exhibit 1 is true and correct to the best of my knowledge and belief.

24. I declare under penalty of perjury that the foregoing is true and correct.
Executed this 28th day of August, 2020 at San Mateo, California.



Melissa Adamson

EXHIBIT 1

TITLE 42 DATA SUMMARY

I. Introduction

This Data Summary includes a description of inconsistencies between Defendants' provided data sets, an analysis of Defendants' Attachment A (Doc. # 927) ("Attachment A") to Exhibit 1 (Declaration of Mellissa Harper) (Doc. # 925-1) ("Harper Decl."), and an analysis of the July *Flores* data report. The July *Flores* data report analysis includes numbers of unaccompanied and accompanied children detained in hotels or other unlicensed placements that have been expelled or are awaiting expulsion under Title 42. The July *Flores* data report analysis also includes numbers of unaccompanied and accompanied children who have been detained in hotels or unlicensed placements under Title 42, reprocessed to Title 8, and transferred to ORR placements, ICE Family Residential Centers, or released.

II. Data Inconsistencies

Plaintiffs have identified significant inconsistencies between the data provided in Attachment A and the data that has been produced in the monthly *Flores* data reports ("*Flores* reports"). These inconsistencies include: 1) missing children; 2) inconsistent dates of detention; 3) inconsistent locations of detention; and 4) inconsistent Subject ID numbers.

Plaintiffs communicated their concern regarding these inconsistencies to Defendants on the morning of August 25, 2020. *See* Exhibit 2 to Declaration of Melissa Adamson in Support of Plaintiffs' Reply to Opposition to Motion to Enforce Settlement Re "Title 42" Class Members ("Adamson Decl."). On August 27, Defendants provided an updated version of Attachment A which they stated reconciled certain date inconsistencies. *Id.* As of this filing, the updated Attachment A had not yet been approved by the Court to file under seal, and therefore this Summary does not address that data set. However, upon examination of the Attachment A Defendants included in their August 27 email correspondence, it does not appear that the "updated Attachment A" resolves the inconsistencies identified in this document, namely missing children, inconsistent dates of detention, inconsistent locations of detention, and inconsistent Subject ID numbers.

Due to time constraints, Plaintiffs were unable to complete a full comparison of each of the 660 children listed in Attachment A with the children listed in the *Flores* reports. However, the number of inconsistencies identified for the children that Plaintiffs did compare was alarming. Based on these inconsistencies, Plaintiffs are concerned that one or both data sets are inaccurate.

The examples listed below, as well as the examples footnoted throughout this summary, are not a comprehensive list of the inconsistencies between the data sets but a representative sample of the types of inconsistencies that exist. Additionally, while some children's records only included one inconsistency between Attachment A and the *Flores* report, other records included multiple inconsistencies. For example:

- A.P.V. ([REDACTED])
 - July *Flores* report¹: Held from 6/9-7/1 at “MVM Transport, San Antonio Proper.” Country of citizenship listed as Brazil.
 - Attachment A: Held from 6/9/-7/7 at “Homewood Suites San Antonio Nw.” Nationality listed as Haitian.
- G.J.P. ([REDACTED], [REDACTED])
 - April *Flores* report: Held from 4/22-4/27 at “Hampton Inn & Stes Mcallen,” and 4/27/-4/28 at “MVN Transportation, SNA.” Subject ID ([REDACTED]).
 - Attachment A: Held from 4/21-4/28 at “Courtyard Airport Marriot.” Subject ID ([REDACTED]).²

1. Missing Children

Plaintiffs have identified multiple children detained in hotels under Title 42 that were listed in the *Flores* reports but were not included in Attachment A.

Attachment A listed a total of 46 children detained in hotels under Title 42 in the month of April. However, the following 12 children were listed as “Title 42 Return” in the April *Flores* report³ but were not included in Attachment A. All 12 children were held in hotels.

- I.L.G. ([REDACTED]) (Listed as “Single Minor,” held 4/18-4/24)
- J.D.L.M. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)
- N.F.G. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)
- N.F.R. ([REDACTED]) (Listed as “Single Minor,” held 4/21-4/24)
- N.C.M. ([REDACTED]) (Listed as “Single Minor,” held 4/23-4/24)
- A.G.G. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)
- N.G.C. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)
- J.L.P. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)
- F.L.T. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)
- M.M.M. ([REDACTED]) (Listed as “Single Minor,” held 4/22-4/24)
- W.M.C. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)
- K.M.M. ([REDACTED]) (Listed as “Single Minor,” held 4/17-4/19)

This issue extended to other months as well. For example, the following seven children were included in the July *Flores* report, but were not included in Attachment A. All seven children were held in hotels.

- L.L. ([REDACTED]) (Listed as “Family Unit,” held 7/1-7/26)
- T.P.Z. ([REDACTED]) (Listed as not in a “Family Unit” or “Family Group,” held 6/21-7/8)
- L.P. ([REDACTED]) (Listed as not in a “Family Unit” or “Family Group,” held 7/20-7/26)
- H.E. ([REDACTED]) (Listed as “Family Unit,” held 6/26-7/26)
- H.E. ([REDACTED]) (Listed as “Family Unit,” held 6/26-7/26)
- M.E. ([REDACTED]) (Listed as “Family Unit,” held 6/26-7/26)
- B.E.F. ([REDACTED]) (Listed as “Family Unit,” held 6/26-7/26)

¹ “ICE July 2020 Flores Report,” provided by Defendants on August 14, 2020.

² All other information for the minor, including full name, date of birth, and nationality, was the same.

³ “Copy of April 2020 Flores Report REDO,” provided by Defendants on August 24, 2020.

Plaintiffs have also identified multiple children listed in Attachment A that were not included in the *Flores* reports. For example, of the 46 total children detained in April under Title 42 listed in Attachment A, the following six children were listed in Attachment A but were not included in the April *Flores* report:

- J.R.A. (██████████)⁴ (Listed as “Single Minor,” held 4/20-4/24)
- M.T.S. (██████████) (Listed as “Single Minor,” held 4/19-4/19)
- A.M.P.V. (██████████) (Listed as “Single Minor,” held 4/24-4/24)
- E.C.O. (██████████) (Listed as “Single Minor,” held 4/23-4/24)
- J.G.C. (██████████) (Listed as “Single Minor,” held 4/23-4/24)
- J.M.M. (██████████) (Listed as “Single Minor,” held 4/23-4/24)

This issue extended to other months as well. For example, the following ten children were listed in Attachment A but were not included in the July *Flores* report:

- D.B.R. (██████████) (Listed as “Single Minor,” held 7/2-7/13)
- L.G.B. (██████████) (Listed as “Single Minor,” held 7/22-7/31)
- Z.E.Y. (██████████) (Listed as “Single Minor,” held 7/16-7/24)
- E.D.Z.L. (██████████) (Listed as “Single Minor,” held 7/22-7/27)
- S.P.V. (██████████) (Listed as “Single Minor,” held 7/23-7/27)
- M.R.O. (██████████) (Listed as “Single Minor,” held 7/23-7/27)
- F.N.C. (██████████) (Listed as “Single Minor,” held 7/23-7/27)
- E.A.G. (██████████) (Listed as “Single Minor,” held 7/23-7/27)
- L.A.G. (██████████) (Listed as “Single Minor,” held 7/23-7/27)
- R.R.R. (██████████) (Listed as “Single Minor,” held 7/23-7/27)

2. Inconsistent Dates of Detention

Plaintiffs have identified multiple children for whom the listed dates of detention in Attachment A and the *Flores* report are inconsistent. For example, of the 46 total children detained in April under Title 42 listed in Attachment A, the following five children’s dates of detention were inconsistent with what was reported in the April *Flores* report.

- Y.M.D.L. (██████████)
 - April *Flores* report: Held 4/17-4/19
 - Attachment A: Held 4/19-4/19
- B.L.G.J. (██████████)
 - April *Flores* report: Held 4/23-4/24
 - Attachment A: Held 4/22-4/24
- M.E.M. (██████████)
 - April *Flores* report: Held 4/25-4/29
 - Attachment A: Held 4/28-4/29
- V.R. (██████████)
 - April *Flores* report: Held 4/26-4/29
 - Attachment A: 4/28-4/29

⁴ The data entry for this child’s Subject ID number was “██████████.” Due to lack of this child’s full Subject ID number, Plaintiffs searched for this child’s listed name and date of birth in the April *Flores* report but could not locate him.

- G.J.P. ([REDACTED], [REDACTED])
 - April *Flores* report: Held 4/22-4/28
 - Attachment A: Held 4/21-4/28

This issue extended to other months as well. For example:

- E.E.M.V. ([REDACTED])
 - July *Flores* report: Held 7/11-7/15
 - Attachment A: Held 7/8-7/15
- A.P.V. ([REDACTED])
 - July *Flores* report: Held 6/9-7/1
 - Attachment A: Held 6/9-7/7
- Y.A.S. ([REDACTED])
 - July *Flores* report: Held 7/16-7/18
 - Attachment A: Held 7/17-7/17
- M.J.M. ([REDACTED])
 - July *Flores* report: Held 7/21-7/27
 - Attachment A: Held 7/21-7/24

3. Inconsistent Locations of Detention

Attachment A lists 25 different hotels where children were detained, at least 20 of which were never listed in the March, April, May, June or July *Flores* reports. The *Flores* reports include “MVM Transport” and “MVN Transportation” as detention locations whereas Attachment A does not.

Plaintiffs have identified multiple children for whom the listed location of detention in Attachment A and the *Flores* report are inconsistent. For example, of the 46 total children detained in April listed in Attachment A, 18 children’s locations of detention were inconsistent with what was reported in the April *Flores* report, including inconsistent states. For example:

- N.V.V. ([REDACTED])
 - April *Flores* report: Held 4/23-4/29 at “Hampton Inn & Stes Elp Ap,” and 4/29-4/30 at “MVM Transport”
 - Attachment A: Held 4/23-4/30 at “Hampton Inn & Suites Phoenix Airport” and “Hampton Inn & Stes Mcallen”
- J.R.M. ([REDACTED])
 - April *Flores* report: Held 4/20-4/29 at “Hampton Inn & Stes Elp Ap,” and 4/29-4/30 at “MVM Transport”
 - Attachment A: Held 4/20-4/30 at “Towneplace Suites Alexandria Marriott” and “Hampton Inn & Stes Mcallen”
- A.H.M. ([REDACTED])
 - April *Flores* report: Held 4/18-4/24 at “Hampton Inn & Stes Mcallen”
 - Attachment A: Held 4/18-4/24 at “Best Western Rose Garden Inn & Suites – McAllen”
- J.S.U. ([REDACTED])
 - April *Flores* report: Held 4/18-4/24 at “Hampton Inn & Stes Mcallen”

- Attachment A: Held 4/18-4/24 at “Best Western Rose Garden Inn & Suites – McAllen”
- G.J.P. ([REDACTED], [REDACTED])
 - April *Flores* report: Held 4/22-4/27 at “Hampton Inn & Stes Mcallen,” and 4/27-4/28 at “MVN Transportation, SNA”
 - Attachment A: Held 4/21-4/28 at “Courtyard Airport Marriot”
- C.E.A. ([REDACTED])
 - April *Flores* report: Held 4/22/-4/29 at “Hampton Inn Pho[enix] Airport N”
 - Attachment A: Held 4/22-4/29 at “Courtyard Airport Marriot”
- G.A.R. ([REDACTED])
 - April *Flores* report: Held 4/20-4/24 at “Hampton Inn & Stes Mcallen”
 - Attachment A: Held 4/20-4/24 at “Hotel Pharr Plaza”

This issue extended to other months as well. For example:

- P.G.A. ([REDACTED])
 - July *Flores* report: Held 7/8-7/16 at “Hampton Inn Pho[enix] Airport N” and 7/16-7/17 at “MVM Transport, Phoenix”
 - Attachment A: Held 7/7-7/17 at “Hampton Inn & Suites Mcallen”
- N.R.S. ([REDACTED])
 - July *Flores* report: Held 7/15-7/21 at “Hampton Inn Pho[enix] Airport N” and 7/21-7/24 at “MVM Transport, Phoenix”
 - Attachment A: Held 7/15-7/24 at “Hampton Inn & Stes McAllen”

4. Inconsistent Subject ID Numbers

Plaintiffs have identified multiple children with differing Subject ID numbers across the data sets. For example, of the 46 total children detained in April under Title 42 listed in Attachment A, the following two children had different Subject ID numbers in the April *Flores* report. All other information for the minor, including name, date of birth, and nationality, was the same.

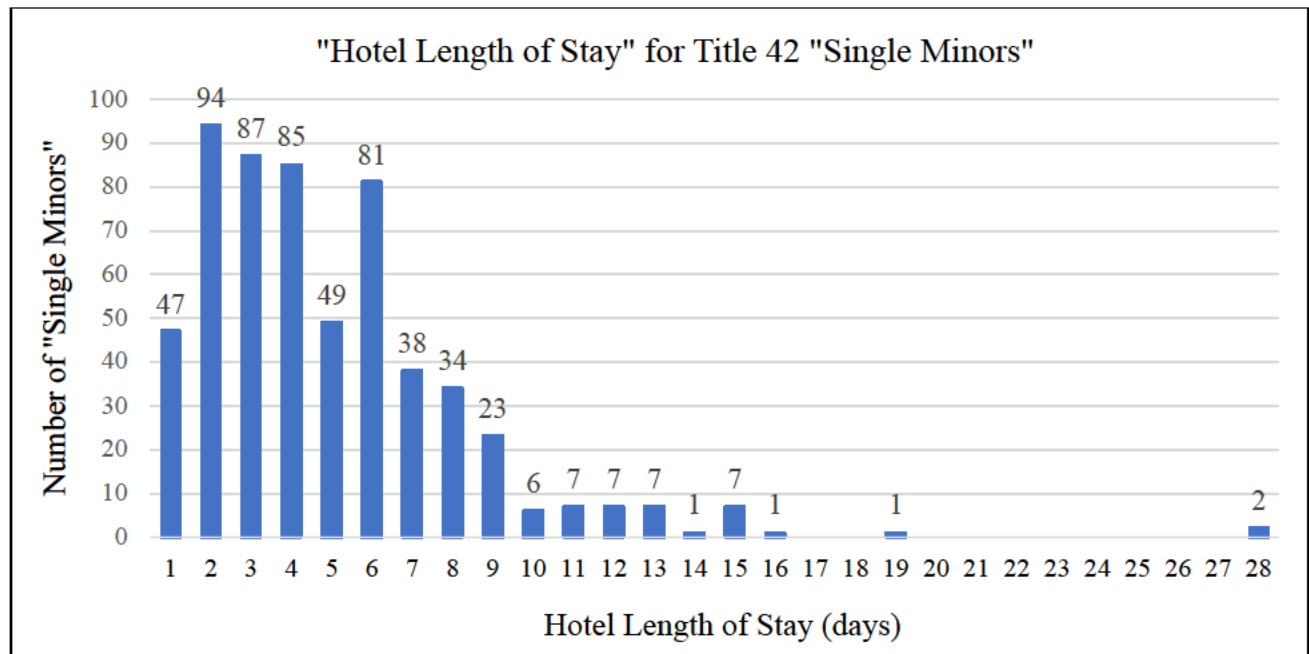
- J.D.C.
 - April *Flores* report: [REDACTED]
 - Attachment A: [REDACTED]
- G.J.P.
 - April *Flores* report: [REDACTED]
 - Attachment A: [REDACTED]

III. Attachment A Analysis

This section analyzes data from Attachment A, which “reflects minors subject to the Title 42 process who were housed in hotels from April 18, 2020, until July 31, 2020.” *See* Harper Decl. at 10. As noted above, Plaintiffs have concerns regarding the accuracy of this data set.

Attachment A listed a total of 660 children, which Defendants categorized as either “Family Unit,” “Family Group,” or “Single Minor.”⁵ Plaintiffs have included figures showing the lengths of stay for each of these categories below.

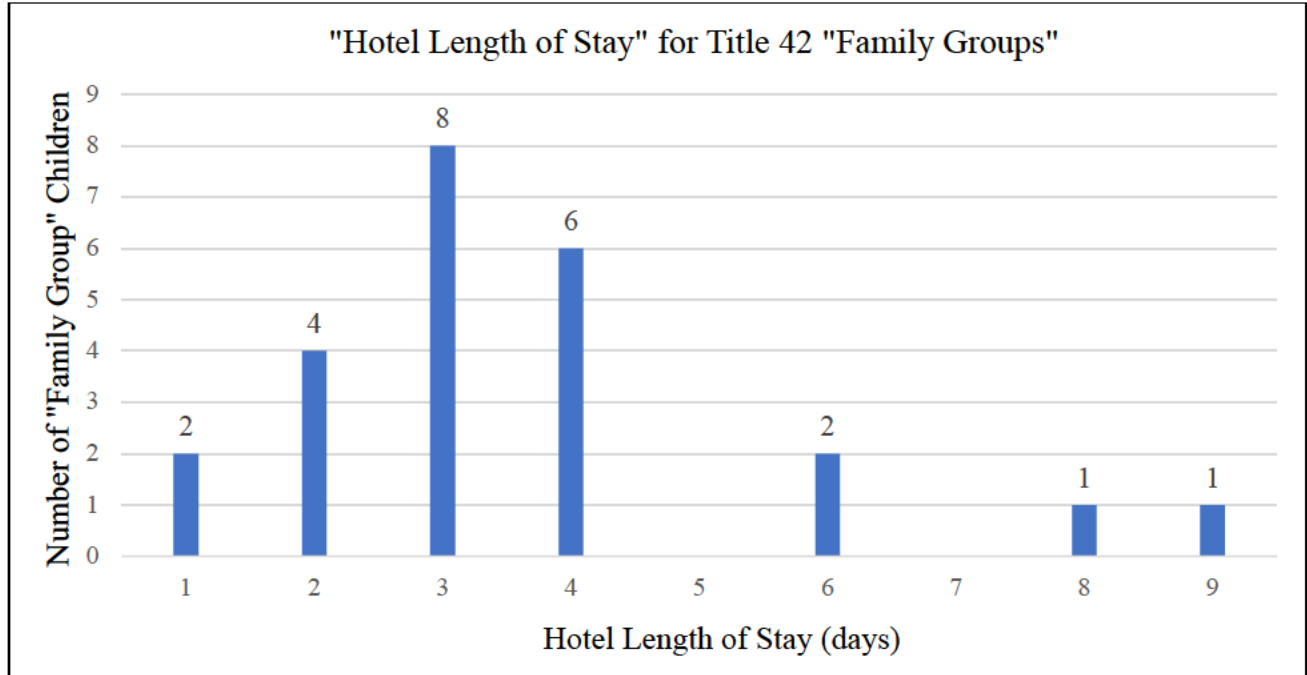
Figure 1: “Hotel Length of Stay” for Title 42 “Single Minors”



Of the 577 total “single minors” that were held in hotels, 436 children were held for three or more days (75.6%).

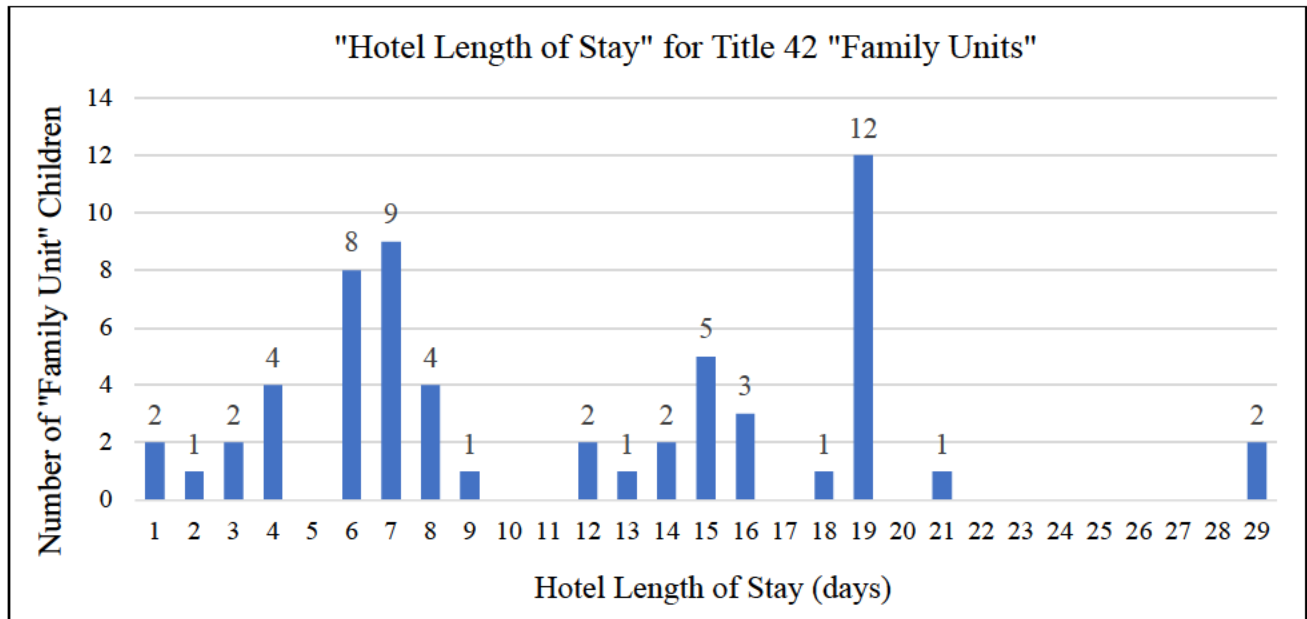
⁵ Defendants state that “family ‘groups’ refer to siblings, minors with aunts/uncles, etc., and family ‘units’ are traditional parent/child units.” Harper Decl. at 3 n.1.

Figure 2: "Hotel Length of Stay" for Title 42 "Family Groups"



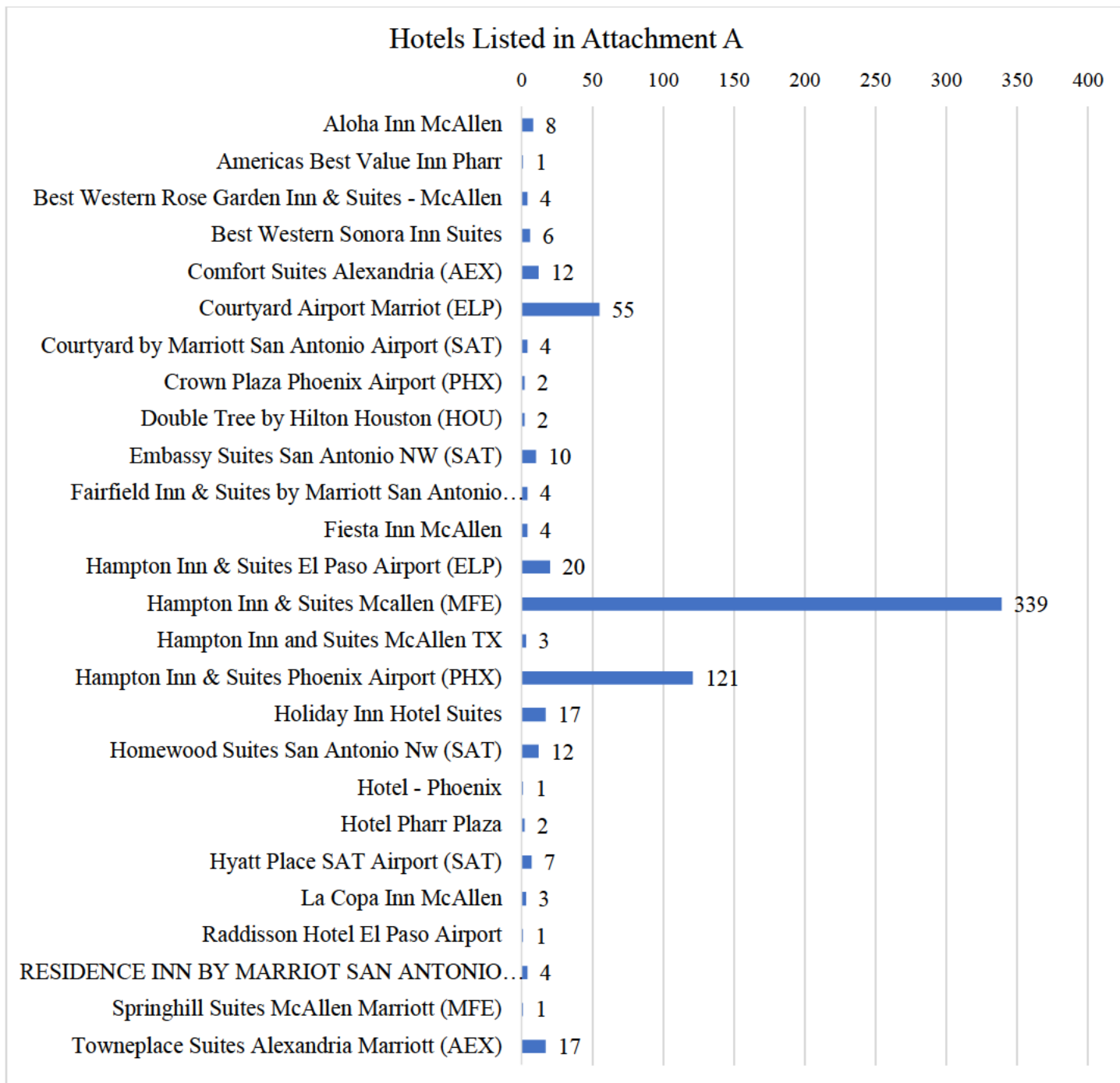
Of the 24 total "family group" children that were held in hotels, 18 children were held for three or more days (75%).

Figure 3: "Hotel Length of Stay" for Title 42 "Family Units"



Of the 59 total "family unit" children that were held in hotels, 56 children were held for three or more days (94.9%).

Figure 4: Hotels Listed in Attachment A⁶



⁶ Hotel names (and city codes in parentheses) in Figure 4 are written exactly as listed in Attachment A. Although some children were held in multiple hotels, Figure 4 only includes the hotel listed in Attachment A’s “Hotel 1” column in order to avoid double-counting children.

IV. Flores Data Summary: July 2020

This summary is based on the July *Flores* data report and includes information regarding the following categories of children for July 2020.⁷

1. Unaccompanied Children Detained in Hotels/Unlicensed Placements & Expelled or Awaiting Expulsion Under Title 42
2. Unaccompanied Children Detained in Hotels/Unlicensed Placements, Reprocessed as Title 8, and Transferred to ORR
3. Unaccompanied Children Detained in Hotels/Unlicensed Placements After Leaving ORR Custody.
4. Accompanied Children Detained in Hotels/Unlicensed Placements & Awaiting Expulsion Under Title 42
5. Accompanied Children Detained in Hotels/Unlicensed Placements, Reprocessed as Title 8, and Transferred to Family Residential Centers or Released
6. CBP Custody

1. Unaccompanied Children Detained in Hotels/Unlicensed Placements & Expelled or Awaiting Expulsion Under Title 42

A. Unaccompanied Children Expelled Under Title 42

In the July report, 177 unaccompanied children were detained in hotels and expelled under Title 42. All 177 children were listed as “Title 42 Expulsion” in the “Detention Criteria” column and were listed as either “Title 42 Return” or “Removed” in the “Release Reason” column. All 177 children were listed as “No” in the “In a Family Unit or Family Group?” column.

Total Days in ICE Custody ⁸	Number of Children Detained	Ages of Children Detained ⁹
1 day	19	10 years old (2) 12 years old (1) 13 years old (1) 14 years old (1) 15 years old (4) 16 years old (2) 17 years old (8)
2 days	13	12 years old (1) 14 years old (1) 15 years old (1)

⁷ “ICE July 2020 Flores Report,” provided by Defendants on August 14, 2020.

⁸ For this table and the following tables, the “Total Days in ICE Custody” column reflects the length of time between a child’s ICE “book-in” and “book-out” date, including time spent in hotels, “MVM Transport,” “MVN Transportation,” and ICE hold rooms. For example, a child with a book-in date of 7/21/2020 and book-out date of 7/24/2020 is listed as spending three days in ICE custody.

⁹ For this table and the following tables, children’s ages were determined based on the child’s date of birth and the last day of the month (7/31/2020). For children under 1 year old, age was determined based on the child’s date of birth and the child’s “book-in” date.

		16 years old (5) 17 years old (5)
3 days	26	11 years old (2) 13 years old (2) 14 years old (1) 15 years old (5) 16 years old (7) 17 years old (9)
4 days	38	11 years old (1) 12 years old (1) 13 years old (2) 14 years old (5) 15 years old (5) 16 years old (14) 17 years old (10)
5 days	16	13 years old (1) 14 years old (2) 15 years old (2) 16 years old (3) 17 years old (8)
6 days	32	13 years old (2) 14 years old (1) 15 years old (3) 16 years old (11) 17 years old (15)
7 days	8	16 years old (6) 17 years old (2)
8 days	14	11 years old (1) 13 years old (1) 15 years old (2) 16 years old (4) 17 years old (6)
9 days	5	16 years old (2) 17 years old (3)
11 days	2	17 years old (2)
12 days	3	14 years old (1) 17 years old (2)
15 days	1	17 years old (1)

For example:

- 11-year-old W.F.R. () was held at a hotel for five days, transferred to MVM Transport for one day, and then held at a different hotel for two days before he was expelled.
- 13-year-old E.C.P. () was held at a hotel for eight days before he was expelled.
- 16-year-old V.V.D. () was held at MVM Transport for five days and then transferred to a hotel for one day before he was expelled.¹⁰
- 17-year-old N.R.S. () was held at a hotel for six days and then transferred to MVM Transport for three days before she was expelled.¹¹
- 17-year-old N.M.T. () was held at a hotel for six days, transferred to MVM Transport for one day, and then held at a different hotel for eight days before he was expelled.¹²
- 17-year-old R.H.V. () was held at MVM Transport for one day, transferred to a hotel for two days, transferred to MVM Transport for one day, and then transferred to a different hotel for eight days before he was expelled.
- 17-year-old M.R.G. () was held at MVM Transport for one day, transferred to a hotel for two days, transferred to MVM Transport for one day, and then held at a different hotel for eight days before he was expelled.

B. Unaccompanied Children Awaiting Expulsion Under Title 42

In July, 20 unaccompanied children were listed as “T42 awaiting expulsion” in the “Detention Criteria” column and were listed as either “Title 42 Return” or “Transferred” in the “Release Reason” column. All 20 of these children had a listed book-out date and did not appear to still be in custody as of July 31, 2020, but are listed separately here because they were coded as “awaiting expulsion.” All 20 children were listed as “No” in the “In a Family Unit or Family Group?” column.

Total Days in ICE Custody	Number of Children Detained	Ages of Children Detained
2 days	1	15 years old (1)
3 days	1	17 years old (1)
6 days	1	13 years old (1)
8 days	2	15 years old (2)
9 days	1	17 years old (1)
10 days	2	17 years old (2)
11 days	2	11 years old (1)

¹⁰ The July Flores report lists V.V.D. () as detained from 7/11-7/16 at MVM Transport and from 7/16-7/17 at Hampton Inn & Suites McAllen. Attachment A lists V.V.D. () as detained from 7/11-7/16 at Hampton Inn & Suites McAllen.

¹¹ The July Flores report lists N.R.S. () as detained from 7/15-7/21 at Hampton Inn Phoenix Airport and from 7/21-7/24 at MVM Transport. Attachment A lists N.R.S. () as detained from 7/15-7/24 at Hampton Inn & Suites McAllen.

¹² The July Flores report lists N.M.T. () as detained from 7/9-7/15 at Hampton Inn Phoenix Airport and from 7/16-7/24 at Hampton Inn & Suites McAllen. Attachment A lists N.M.T. () as detained from 7/9-7/24 at Hampton Inn & Suites McAllen.

		14 years old (1)
12 days	1	16 years old (1)
13 days	2	14 years old (1) 16 years old (1)
14 days	2	13 years old (1) 17 years old (1)
15 days	3	16 years old (2) 17 years old (1)
28 days	2	16 years old (1) 17 years old (1)

For example:¹³

- 11-year-old N.L.A. () was held at a hotel for four days, transferred to MVM Transport for one day, and then transferred to a hotel for six days before she was expelled.¹⁴
- 13-year-old J.M.A. () was held at a hotel for 14 days before he was expelled.
- 17-year-old M.D.L.O () and 16-year-old K.T.D.L. (), likely siblings, were held at a hotel for 28 days before they were expelled.¹⁵

2. Unaccompanied Children Detained in Hotels/Unlicensed Placements, Reprocessed as Title 8, and Transferred to ORR

In July, nine unaccompanied children were listed as being held under Title 42, reprocessed under Title 8, and transferred to an ORR facility. All nine children were listed as “Initially processed under T42. Reprocessed under T8 after claiming CF” in the “Detention Criteria” column. All nine children were listed “No” in the “In a Family Unit or Family Group?” column.

Total Days in ICE Custody before Transfer to ORR Custody	Number of Children Detained	Ages of Children Detained
0 days ¹⁶	3	16 years old (1) 17 years old (2)
2 days	3	10 years old (1) 13 years old (1) 17 years old (1)

¹³ As noted above, these children were listed as “T42 awaiting expulsion” in the “Detention Criteria” column and but had listed “book-out” dates and did not appear to be in custody as of July 31, 2020. The examples listed below are based on the children’s listed “book-in” and “book-out” dates.

¹⁴ The July Flores report lists N.L.A. () as detained from 6/30-7/7 at MVM Transport and Hampton Inn & Suites Mcallen. Attachment A lists N.L.A. () as detained from 6/26-7/7 at Hampton Inn & Suites Phoenix Airport, Courtyard Airport Marriot, and Crown Plaza Phoenix Airport.

¹⁵ The July Flores report lists M.D.L.O () as detained from 6/26-7/24 at Hampton Inn & Suites Mcallen. Attachment A lists M.D.L.O () as detained from 6/26-7/24 at Hampton Inn & Suites Phoenix Airport. The July Flores report lists K.T.D.L. () as detained from 6/26-7/24 at Hampton Inn & Suites Mcallen. Attachment A lists K.T.D.L. () as detained from 6/26-7/24 at Hampton Inn & Suites Phoenix Airport.

¹⁶ For children whose “book-in” and “book-out” date was on the same day, they are listed as “0 days.”

6 days	3	13 years old (1) 14 years old (1) 16 years old (1)
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Six of these children were held in hotels or other unlicensed placements before they were transferred to ORR (all children held for two and six days in the above table). For example:

- 13-year-old M.J.M. () was held at “MVM Transport” for one day, transferred to a hotel for two days, transferred to “MVN Transportation” for one day, transferred to “MVM Transport” for two days, and then transferred to an ORR shelter.¹⁷
- 14-year-old L.P. () was held at a hotel for one day, transferred to “MVM Transport” for one day, transferred to a different hotel for two days, transferred to “MVN Transportation” for two days, and then transferred to an ORR shelter.¹⁸
- 16-year-old L.C.B. () was held at a hotel for six days before he was transferred to an ORR shelter.¹⁹

Separately, at least two children were held in hotels, transferred to ORR custody, and were listed as “T42 awaiting expulsion” in the “Detention Criteria” column.

- 17-year-old T.P.Z. () was held at a hotel for 17 days before she was transferred to an ORR shelter. She is listed as “T42 awaiting expulsion.”²⁰
- 15-year-old Y.A.S. () was held at a hotel for two days before he was transferred to an ORR shelter. He is listed as “T42 awaiting expulsion.”²¹

Additionally, at least one child was initially placed in ORR custody and then transferred to a hotel before being expelled under Title 42.

- 16-year-old J.S.P. () was transferred by “MVM Transport” to an ORR shelter for three days, then transferred to “MVM Transport” for one day, and then transferred to a hotel for one day before he was expelled. He is listed as “Title 42” under “Release Reason” and “Title 42 Expulsion” under “Detention Criteria.”

¹⁷ The July *Flores* report lists M.J.M. () as detained at a hotel or MVM Transport from 7/21-7/27. Attachment A lists M.J.M. () as detained at a hotel from 7/21-7/24.

¹⁸ L.P. () was not included in Attachment A.

¹⁹ The July *Flores* report lists L.C.B. () as detained at a hotel from 7/9-7/15. Attachment A lists L.C.B. () as detained at a hotel from 7/9-7/17.

²⁰ T.P.Z. () was not included in Attachment A.

²¹ The July *Flores* report lists Y.A.S. () as detained at a hotel or MVM Transport from 7/16-7/18. Attachment A lists Y.A.S. () as detained at a hotel from 7/17-7/17.

3. Children Detained in Hotels/Unlicensed Placements After Leaving ORR Custody

In July, at least seven children were held in hotels or other unlicensed placements after leaving ORR custody and before they were removed or voluntarily departed the country.

Total Days in ICE Custody (after ORR)	Number of Children Detained	Ages of Children Detained
0 day	2	10 years old (1) 17 years old (1)
1 day	1	2 years old (1)
2 days	1	13 years old (1)
3 days	1	15 years old (1)
6 days	1	17 years old (1)
8 days	1	7 years old (1)

For example:

- 7-year-old D.V.A. () was transferred from her ORR Transitional Foster Care placement to a hotel for one day, and then transferred to “INS Airport Hold.” As of July 31, 2020, D.V.A. was still held at “INS Airport Hold” and had been there for seven days.²²
- 17-year-old F.P.M. () was transferred from his ORR placement to a hotel for six days, then transferred to a hold room before he departed the country.²³

4. Accompanied Children Detained in Hotels/Unlicensed Placements & Expelled or Awaiting Expulsion Under Title 42

A. Accompanied Children (“Family Unit”) Expelled Under Title 42

The July report lists 30 accompanied children detained in hotels or unlicensed placements and expelled under Title 42. All 30 children were listed as “Title 42 Return” in the “Release Reason” column and listed as “Title 42 Expulsion” in the “Detention Criteria” column. All 30 children were listed “Yes, Family Unit” in the “In a Family Unit or Family Group?” column.

Total Days in ICE Custody	Number of Children Detained	Ages of Children Detained
3 days	3	1 year old (1) 2 years old (1) 17 years old (1)
4 days	1	9 years old (1)
6 days	14	3 months old (4) 4 months old (3) 5 months old (1) 9 months old (1)

²² D.V.A. () was not included in Attachment A.

²³ F.P.M. () was not included in Attachment A.

		4 years old (1) 6 years old (1) 8 years old (1) 10 years old (1) 16 years old (1)
7 days	1	2 months old (1)
18 days	11	1 year old (2) 2 years old (3) 6 years old (1) 7 years old (1) 10 years old (1) 11 years old (1) 12 years old (2)

Of these children, at least three were held at Karnes County Residential Center (“Karnes”) before they were expelled under Title 42. For example:

- 3-month-old E.C.D. (██████████) was transferred by “MVM Transport” to Karnes, where he was held for one day, then transferred to a hotel for four days, and then transferred to “MVN Transportation” for one day before he was expelled.
- 3-month-old C.I.L.S. (██████████) was transferred by “MVM Transport” to Karnes for one day, then transferred to “MVN Transportation” for 5 days before she was expelled.
- 3-month-old Co.L.S. (██████████) was transferred by “MVM Transport” to Karnes, then transferred to “MVN Transportation” for one day, transferred to a hotel for four days, and then transferred to “MVN Transportation” for one day before he was expelled.

Separately, at least 8 accompanied children held under Title 42 were at one point held at Karnes County Residential Center (“Karnes”). All 8 children were listed as “Title 42 Return” in the “Release Reason” column and were listed as “Individual is part of a family unit and Head of Household is subject to detention” (as opposed to “Title 42 Expulsion”) under the “Detention Criteria” column. All 8 children were listed “Yes, Family Unit” in the “In a Family Unit or Family Group?” column.

Four of these children were held at hotels or other unlicensed placements as well as at Karnes before they were expelled under Title 42.²⁴

- 1-year-old A.L.A. (██████████) was held by “MVM Transport” for one day, transferred to a hotel for one day, and then transferred by “MVN Transportation” to Karnes for 9 days before he was expelled.
- 1-year-old A.L.J. (██████████) was held at a hotel for 10 days, then transferred to Karnes for 6 days before she was expelled.
- 2-year-old A.D.B.A. (██████████) was held at “MVM Transport” for five days, then transferred to Karnes for six days before he was expelled.

²⁴ These four children were not included in Attachment A.

- 1-year-old E.D.E. (██████████) was held at “MVM Transport” for five days, then transferred to Karnes for six days before he was expelled.

Four children were transferred directly to Karnes and then expelled under Title 42.

- 11-year-old S.F. (██████████) was transferred by “MVM Transport” to Karnes for 4 days before she was expelled.
- 8-year-old W.F. (██████████) was transferred by “MVM Transport” to Karnes for 4 days before he was expelled.
- 1-year-old A.M.J.D. (██████████) was transferred by “MVM Transport” to Karnes for 5 days before she was expelled.
- 1-year-old S.J.P. (██████████) was transferred by “MVM Transport” to Karnes for 5 days before she was expelled.

Additionally, at least four accompanied children were held in hotels and were released or still in custody at the end of the month (July 31, 2020).²⁵ These children were not listed as “Title 42 Return” in the “Release Reason” column or “Title 42 Expulsion” in the “Detention Criteria” column.

- 8-year-old I.D. (██████████) and 13-year-old Z.D. (██████████), likely siblings, were held at a hotel for 13 days before they were released under an order of recognizance. Their “Detention Criteria” column states “FAMU apprehended on 6/18/20. The FAMU was released on 7/2/10. No information found regarding the detention.”
- 12-year-old A.M.B. (██████████) was held at a hotel for two days and then transferred to “MVN Transportation” for 12 days before she was released under an order of recognizance.
- 7-year-old L.M.R. (██████████) was held at “Miami District” for one day, transferred to a hotel for seven days, and then transferred back to “Miami District,” where she had been for seven days as of July 31, 2020. L.M.R. did not have a listed book-out date in the July report.

B. Accompanied Children (“Family Unit”) Awaiting Expulsion Under Title 42

The July report lists five accompanied children detained in hotels or unlicensed placements and awaiting expulsion under Title 42 (listed as “T42 awaiting expulsion” in the “Detention Criteria” column). All five children were listed “Yes, Family Unit” in the “In a Family Unit or Family Group?” column.

- 8-year-old H.E. (██████████), 5-year-old H.E. (██████████), 1-year-old M.E. (██████████), and 3-month-old B.E.F. (██████████), likely siblings, were held at “MVM Transport” for one day, transferred to a hotel for 29 days, and then transferred to Karnes.²⁶ They are listed as “T42 awaiting expulsion” in the “Detention Criteria” column.

²⁵ These four children were not included in Attachment A.

²⁶ These four children were not included in Attachment A.

- 17-year-old L.S.H. (██████████) was held at “MVM Transport” for one day and then transferred to a hotel for 12 days. He has a “book-out” date but is listed as “T42 awaiting expulsion” in the “Detention Criteria” column.

C. Children (“Family Group”) Expelled Under Title 42

In July, nine “family group” children were detained in hotels and expelled under Title 42. All nine children were listed as “Title 42 Expulsion” in the “Detention Criteria” column and were listed as “Title 42 Return” in the “Release Reason” column. All nine children were listed “Yes, Family Group” in the “In a Family Unit or Family Group?” column. There were no “Family Group” children that were listed as “awaiting expulsion” under Title 42.

Total Days in ICE Custody	Number of Children Detained	Ages of Children Detained
2 days	5	4 years old (1) 5 years old (1) 6 years old (1) 8 years old (1) 9 years old (1)
3 days	1	7 years old (1)
4 days	2	8 years old (2) 9 years old (1)

5. Accompanied Children Detained in Hotels/Unlicensed Placements, Reprocessed as Title 8, and Transferred to Family Residential Centers

In July, at least 37 accompanied children were held under Title 42, reprocessed as Title 8, and either transferred to a Family Residential Center, paroled, or released on order of recognizance (as listed in the “Release Reason” column). All 37 children were listed as “Initially processed under T42. Reprocessed under T8 after claiming CF” under the “Detention Criteria” column. All 37 children were listed as “Yes, Family Unit” in the “In a Family Unit or Family Group?” column.

Total Days in ICE Custody ²⁷	Number of Children Detained	Ages of Children Detained
0 days	13	1 year old (3) 2 years old (1) 3 years old (2) 8 years old (1) 10 years old (1) 11 years old (2) 12 years old (1) 15 years old (1)

²⁷ Here, “Total Days in ICE Custody” reflects the time spent in hotels, “MVM Transport,” “MVN Transportation,” and ICE hold rooms. It does not include time spent in an ICE Family Residential Center or Custom and Border Protection custody.

		16 years old (1)
6 days	1	9 months old (1) ²⁸
8 days	3	2 years old (2) 3 years old (1)
11 days	10	5 months old (1) 1 year old (3) 2 years old (2) 5 years old (1) 8 years old (1) 12 years old (1) 13 years old (1)
12 days	5	11 months old (1) 1 year old (1) 6 years old (1) 7 years old (1) 15 years old (1)
13 days	3	7 months old (2) 8 months old (1)
14 days	1	17 years old (1)
25 days	1	3 years old (1)

Of these children, 24 were held in hotels or other unlicensed placements before they were reprocessed under Title 8 (all children held for between six and 25 days in the above table). For example:

- 3-year-old L.L. () was held at “MVM Transport” for one day, transferred to a hotel for 24 days, and then transferred to Karnes.²⁹
- 17-year-old F.B. () was held at a hotel for two days, transferred to “MVN Transportation” for 12 days, and then released on an order of recognizance.³⁰

Separately, at least three other accompanied children were held in hotels and then transferred to a family residential center or paroled, but were not listed as “processed under T42” or “reprocessed under T8” in the “Detention Criteria” column.” These children were listed as “Yes, Family Unit” in the “In a Family Unit or Family Group?” column.

- 2-year-old A.S.J.P. () was held at “MVM Transport” for one day, transferred to a hotel for 24 days, and then transferred to Karnes.³¹ The “Detention Criteria” column states “Individual is part of family unit and Head of Household is subject to detention.”

²⁸ Nine-month-old T.T.N. () was listed as “Initially processed under T42. Reprocessed under T8 after claiming CF” and did not have a listed book-out date in the July report. He had been held at a hotel for six days as of July 31, 2020.

²⁹ L.L. () was not included in Attachment A.

³⁰ F.B. () was not included in Attachment A.

³¹ A.S.J.P. () was not included in Attachment A.

- 3-year-old A.P.V. () and 7-year-old S.V. (), likely siblings, were held at “MVM Transport” for 22 days and then transferred to Karnes before they were released on parole.³² Their “Detention Criteria” column states “Individual is part of family unit and Head of Household is subject to detention.”

6. CBP Custody

As noted, the “Total Days in ICE Custody” columns in the tables above reflect the length of time between a child’s ICE “book-in” and “book-out” date, including time spent in hotels, “MVM Transport,” “MVN Transportation,” and ICE hold rooms. These tables do not include time spent in ICE Family Residential Centers or take into account the time that children may have already spent in Customs and Border Protection (“CBP”) custody.

In the July report, there were 41 children that were listed as having spent three or more days in CBP custody prior to their transfer to ICE custody. All 41 children were listed as “Yes, Family Unit” in the “In a Family Unit or Family Group?” column. The Detention Criteria column for these children stated “3 days in CBP custody. F/O transferred to ICE for Rep,” “4 days in CBP custody,” “4 days in CBP custody prior to transfer to the FRC,” “5 days in CBP custody,” “6 days in CBP custody,” “7 days in CBP custody,” “8 days in CBP custody,” “9 days in CBP custody,” “10 days in CBP custody,” “11 days in CBP custody,” “11 days in CBP custody/transferred to ICE for release,” “12 days in CBP custody,” or “13 days in CBP custody.”

Number of Days in CBP Custody	Number of Children Detained	Ages of Children Detained
3 days	1	1 year old (1)
4 days	9	1 year old (1) 2 years old (2) 3 years old (1) 5 years old (1) 7 years old (1) 10 years old (1) 16 years old (2)
5 days	2	9 years old (1) 12 years old (1)
6 days	1	3 years old (1)
7 days	1	3 years old (1)
8 days	10	1 year old (2) 2 years old (1) 4 years old (2) 6 years old (1) 7 years old (1) 8 years old (1) 10 years old (1)

³² The July data report lists A.P.V. () and S.V. () as detained from 6/9-7/1 at MVM Transport. Attachment A lists A.P.V. () and S.V. () as detained from 6/9-7/7 at a hotel.

		13 years old (1)
9 days	3	2 years old (2) 5 years old (1)
10 days	5	1 year old (1) 2 years old (1) 3 years old (1) 14 years old (1) 16 years old (1)
11 days	3	1 year old (2) 3 years old (1)
12 days	3	4 years old (1) 8 years old (1) 14 years old (1)
13 days	3	8 years old (1) 15 years old (1) 16 years old (1)

EXHIBIT 2

From: Fabian, Sarah B (CIV) Sarah.B.Fabian@usdoj.gov
Subject: RE: Act v ty n Case 2:85-cv-04544-DMG-AGR Jenny L F ores v. Edw n Meese Sea ed Dec arat on n SupportDec arat on
Date: August 27, 2020 at 1:22 PM
To: Carlos Ho guin crhogu n@centerforhumanr ghts.ema
Cc: Andrea Sher dan Ord n aord n@strumwooch.com, Leeca We ch wech@youth aw.org, Neha Desa ndesa @youth aw.org, Melissa Adamson madamson@youth aw.org, Peter Schey pschey@centerforhumanr ghts.org, Mur ey, N co e (CIV) N co e.Mur ey@usdoj.gov, S v s, W am (CIV) W am.S v s@usdoj.gov, F entje, August (CIV) August.F entje@usdoj.gov



Carlos – ICE reviewed your inquiry below and has identified the source of the inconsistencies. The below statement will be included in an updated declaration from Mellissa Harper which we will file with the Court, but given the timing and your filing deadline I wanted to provide you with the information as soon as I can.

Best,
Sarah

It has come to my attention that the data provided in “Attachment A” of the August 21, 2020, filing has some inconsistencies when compared to the monthly Flores report for July. Due to ICE electronic systems and database challenges, JFRMU is working with data supplied by MVM, Inc., the contractor that manages the hotel temporary housing program. The MVM dataset included a “Planned Pick Up Date” and a “Planned Removal Date” column. It was my understanding, at the time that I received the dataset, that these two columns correlated with what is commonly known as a “book-in” date and a “book-out” date, but that the MVM system simply had different headings, because their system isn’t built around custody operations. After review, I have since learned that the “Planned Pick Up Date” does correspond to a “book-in” date and represents the date and time that MVM accepted transfer of custody of the minor from CBP; however, the “Planned Removal Date” does not correlate with the actual “book-out” date, namely, the date the minor left ICE custody. Rather, the “Planned Removal Date” represents the date the minor is scheduled for an expulsion flight. However, if the flight information changed, and the minor was on an earlier flight, that date was not updated. We have amended the dataset to include the actual “book-out” date. With the addition of the actual date the minor left ICE custody, we recalculated each minor’s length of stay at a hotel and the average length of stay for all minors.

[Redacted]

[Redacted]

[Redacted]

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]

Sarah B. Fabian
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From: Carlos Holguín <crholguin@centerforhumanrights.email>
Sent: Tuesday, August 25, 2020 1:33 PM
To: Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>
Cc: Andrea Sheridan Ordin <aordin@strumwooch.com>; Leecia Welch <lwelch@youthlaw.org>; Neha Desai <ndesai@youthlaw.org>; Melissa Adamson <madamson@youthlaw.org>; Peter Schey <pschey@centerforhumanrights.org>
Subject: Re: Activity in Case 2:85-cv-04544-DMG-AGR Jenny L Flores v. Edwin Meese Sealed Declaration in SupportDeclaration

Sarah,

We have reviewed the data provided in Attachment A and have identified numerous inconsistencies between this data and the monthly *Flores* reports. Plaintiffs are concerned that one or both data sets are inaccurate.

Attachment A lists multiple children that Plaintiffs have been unable to locate in the July report. For example: D.B.R. [REDACTED] (unaccompanied, held 7/2-7/13); L.G.B. [REDACTED] (unaccompanied, held 7/22-7/31); Z.E.Y. [REDACTED] (unaccompanied, held 7/16-7/24); E.D.Z.L. [REDACTED] (unaccompanied, held 7/22-7/27); S.P.V. [REDACTED] (unaccompanied, held 7/23-7/27); M.R.O. [REDACTED] (unaccompanied, held 7/23-7/27); and four unaccompanied children held from 7/23-7/27 at “Towneplace Suites Alexandria Marriot” (F.N.C. [REDACTED]; E.A.G. [REDACTED]; L.A.G. [REDACTED]; R.R.R. [REDACTED]).

There are also inconsistencies in the locations of where children were detained. For example, the July report shows that P.G.A. [REDACTED] was held from 7/8-7/16 at “Hampton Inn Phoenix Airport” and 7/16-7/17 at “MVM Transport, Phoenix,” but Attachment A reports that P.G.A. [REDACTED] was held from 7/7-7/17 at “Hampton Inn & Suites Mcallen.” The July report shows that N.R.S. [REDACTED] was held from 7/15-7/21 at “Hampton Inn Pho[enix] Airport N” and from 7/21-7/24 at “MVM Transport. Phoenix.” but Attachment A shows that N.R.S. [REDACTED] was

held from 7/15-7/24 at “Hampton Inn & Stes McAllen.”

Other inconsistencies appear in the dates of children’s detention. For example, the July report shows that E.E.M.V. [REDACTED] was held from 7/11-7/15 at the Hampton McAllen, but Attachment A shows that E.E.M.V. [REDACTED] was held from 7/8-7/15 at the Hampton McAllen. The July report shows that 3-year-old A.P.V. [REDACTED], country of citizenship Brazil, was held at “MVM Transport, San Antonio Proper” from 6/9-7/1, then at Karnes FRC from 7/1-7/17, but Attachment A shows that 3-year-old A.P.V. [REDACTED], nationality “Haitian,” was held at “Homewood Suites San Antonio Nw” from 6/9/-7/7.

These are examples and not a comprehensive list of the inconsistencies between the data sets, which are too numerous to list. We accordingly request a corrected data set as soon as possible or, in the alternative, an explanation of the reasons for the inconsistencies. We are also available to discuss these issues should Defendants think it helpful.

Thank you.

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On Aug 21, 2020, at 6:27 PM, Fabian, Sarah B (CIV) <Sarah.B.Fabian@usdoj.gov> wrote:

All:

Please see attached the unredacted version of Attachment A to Defendants’ Exhibit 1, filed today. I include the Court on this email as well in order to provide to both Plaintiffs and the Court an Excel version of Attachment A, which is easier to review than the filed pdf version.

Thank you all and have a nice weekend.

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From: cacd_ecfmail@cacd.uscourts.gov <cacd_ecfmail@cacd.uscourts.gov>
Sent: Friday, August 21, 2020 9:21 PM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:85-cv-04544-DMG-AGR Jenny L Flores v. Edwin Meese Sealed Declaration in SupportDeclaration

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Fabian, Sarah on 8/21/2020 at 6:21 PM PDT and filed on 8/21/2020

Case Name: Jenny L Flores v. Edwin Meese

Case Number: [2:85-cv-04544-DMG-AGR](#)

Filer: Edwin Meese

WARNING: CASE CLOSED on 10/11/2018

Document Number: [927](#)

Docket Text:

SEALED DECLARATION IN SUPPORT OF APPLICATION to file document *Attachment A to Defendants' Exhibit 1* under seal[926] filed by Defendant Edwin Meese. (Attachments: # (1) Unredacted Document) (Fabian, Sarah)

2:85-cv-04544-DMG-AGR Notice has been electronically mailed to:

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2:85-cv-04544-DMG-AGR Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

Marchela Iahdjian
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Los Angeles, CA 90057

Peter D Keisler
Office of the Immigration Litigation - Civil Litigation
US Department of Justice
PO Box 878
Ben Franklin Station
Washington, DC 20044

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:\\civ-lpl-fls-01\oil-dcs\$\sfabian\My Documents\C.D Cal\Flores Enforcement-Amendment Proceeding\2020 TRO COVID\Title 42\For Filing\Application to Seal Attachment A 8_21_20_SBF Declaration.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=8/21/2020] [FileNumber=30394117-0] [94985dbf5eaf4dc67f2c7f9d05418b08162869d5604bd483414c458561a25b0446cd1dceba70645d72888ch7d3410a6950792b426f6435c01484fafc0d1f78e11]

Document description:Unredacted Document

Original filename:\\civ-lpl-fls-01\oil-dcs\$\sfabian\My Documents\C.D Cal\Flores Enforcement-Amendment Proceeding\2020 TRO COVID\Title 42\For Filing\Cop of Summary T42 minors in Hotels through 07_31_20.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=8/21/2020] [FileNumber=30394117-1] [34185e087387b43a8dd1275a0bf3c7d2bea66709f43ceb0a09e4e09f5144cf5e779 05c3e07f631081d83542f97384456f912de246e71c889932366bc4636fcbf]]

<Summary T42 minors in Hotels through 07_31_20.xlsx><927 - UNDER SEAL Declaration in Support and Unredacted Exhibit A.pdf>



8_27_20 -
Update...20.x sx