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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, *et al.*, Plaintiffs, v. TODD BLANCHE, Acting Attorney General of the United States, *et al.*, Defendants.	Case No. CV 85-4544-DMG (AGRx) **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO PARTIALLY RECONSIDER ORDER OF APRIL 3, 2026** Hearing Date: May 22, 2026 Time: 9:30 AM Place: Courtroom 8C, First Street Courthouse Honorable Dolly M. Gee Chief United States District Judge

INTRODUCTION

In the September 4 and September 21, 2020 orders [Dkts. ## 976, 990] (collectively, "Title 42 orders"), the Court resolved issues arising from the Title 42 context and applied the *Flores* Settlement Agreement ("FSA") to minors subject to Title 42 expulsion. Consistent with the well-settled principle that an injunction must be read "in context" and "with reference to the issues it was meant to decide," Defendants understand the Title 42 orders as applying solely to the context of minors subject to Title 42 expulsion. Doc. # 1760, at 15–16.[1] In the April 3, 2026 order, the Court extended the Title 42 orders beyond that context without analyzing the current circumstances. Doc. # 1755, at 4. Therefore, Defendants moved for reconsideration. Doc. # 1760.

In their opposition, Plaintiffs fail to refute that reconsideration is warranted. Doc. # 1764. Plaintiffs contend that the Court already decided "whether extended detention in hotels violated" the FSA. *Id.* at 4. But the issue before the Court in 2020 was much narrower. The Court only decided that extended detention in hotels under the circumstances of expulsions under the Title 42 public health Order violated the FSA. Plaintiffs do not dispute that at least some important circumstances are different now compared to the Title 42 context. The Court should apply the general standards of expeditious processing to evaluate current hotel use, not the specific remedial orders entered in the Title 42 context. And at a minimum, the Court should

[1] In this brief, all page references are to page numbers inserted by the CM/ECF system.

not have applied the Title 42 orders to the current circumstances without formal notice and briefing.

ARGUMENT

I. Plaintiffs err by removing the Title 42 orders from their context.

Contrary to Plaintiffs' argument, court orders are not statutes to be read solely by parsing their "plain language." Doc. # 1764, at 6; *see Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373–74 (2023). As shown in Defendants' Motion, the Title 42 Orders arose from the Title 42 context and must be "construed with reference" to that context. Doc. # 1760, at 15–16 (quoting *City of Vicksburg v. Henson*, 231 U.S. 259, 269 (1913)).

Although the Court applied the general FSA standards to class members subject to the Title 42 public health Order, the Court did so with respect to the circumstances that those class members were in—the circumstances of how hotels were used in the Title 42 context. The Court was specifically considering whether the FSA permitted using hotels as they were used during enforcement of the Title 42 public health Order in the middle of a global pandemic. Doc. # 976, at 12–16. The Court had no occasion to rule on the permissibility of hotel placements in other contexts, and the Court's order should not be read as applying to other contexts. Doc. # 1760, at 15–16.

Plaintiffs' reliance on the Ninth Circuit's opinion is also misplaced. Doc. # 1764, at 7. The Ninth Circuit held that FSA paragraph 12.A's "emergency" exception did not excuse compliance with the FSA's licensed program requirement because the district court had granted the government flexibility to address exigent

circumstances and the record did not establish that the government needed more time to place minors in licensed programs during the pandemic. *Flores v. Garland*, 3 F.4th 1145, 1156 (9th Cir. 2021). But the Ninth Circuit did not consider the FSA's "influx" provision that has been continuously in effect for years and that also grants the government additional flexibility in releasing minors or transferring them to licensed programs. *See* Doc. # 1760, at 7, 20. Moreover, the Ninth Circuit was reviewing the "record" applicable to the Title 42 context, not the record and circumstances of current hotel stays.

The Court's Title 42 orders arose from the Title 42 context and are best read as limited to that context. The Court should not have applied the Title 42 Orders to the current circumstances in the April 3, 2026 Order.[2]

II. Plaintiffs ignore the many differences between Title 42 hotel placements and current hotel use.

Plaintiffs do not dispute that, unlike under Title 42, hotels are neither the default placement nor a full-scale detention program; hotel use is situational and longer placements affect only a small percentage of families. Doc. # 1760, at 17–18. Longer hotel stays occur when there are not practicable alternatives. *Id.* at 18.

Hotel placements are safe and sanitary and governed by ICE's established Temporary Housing Standards. *Id.* at 18–19. Generally, if any medical requests are

[2] Because Defendants seek reconsideration of the April 3, 2026 Order, not the Title 42 orders, Defendants' Motion filed on April 17, 2026 was timely. C.D. Cal. L.R. 7-18 ("Absent good cause shown, any motion for reconsideration must be filed no later than 14 days after entry of the Order that is the subject of the motion or application.").

made or if there are any medical issues observed by ICE personnel, then a family would be transported to a medical service provider. ICE monitors children in hotel stays and responds to any medical needs. ICE also provides access to counsel for monitoring, interviews, and for representation. Doc. # 1760, at 20.

Plaintiffs provide a couple of examples to argue that ICE does not sufficiently provide for medical needs or access to counsel during hotel stays. Doc. # 1764, at 10–13. But "Plaintiffs' handful" of declarations are insufficient to show substantial noncompliance at temporary hotel placements and would not justify blanket, nationwide restrictions on hotel use. *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1053 & n.3 (C.D. Cal. 2017); *see Lewis v. Casey*, 518 U.S. 343, 359 (1996).

Plaintiffs also fault Defendants for not notifying Plaintiffs' counsel of hotel placements. Doc. # 1764, at 14. But nothing in the FSA requires immediate notice to *Flores* class counsel of any minor's location. And the Court's Title 42 orders do not require notice to class counsel because minors are not being placed in hotels as part of enforcing Title 42.

Hotels should not be subject to uniquely rigid restrictions. They should be treated like other unlicensed placements under the FSA's influx provision. Plaintiffs seek to restrict ICE's operational flexibility, but a temporary hotel stay can be the "least restrictive setting appropriate to the minor's age and special needs," considering ICE's requirements "to ensure the minor's timely appearance" for immigration court proceedings and a removal flight and "to protect the minor's well-being and that of others." FSA ¶ 11. Finally, even if the Court agrees with Plaintiffs as to the alleged deficiencies with hotel stays, the proper remedy would not be

imposing all the restrictions from the Title 42 context. Rather, the Court should tailor an order to any specific concerns it has regarding current hotel placements.

III. Defendants' past statements do not assert an inconsistent position and provide no basis for applying the Title 42 orders beyond the Title 42 context.

Plaintiffs argue that Defendants "themselves originally interpreted these orders to apply to all class members." Doc. # 1764, at 7. That is irrelevant to the best reading of the Orders as understood in context. Plaintiffs' assertion also appears to be incorrect. The two times that this issue has arisen between the parties, Defendants' counsel informed Plaintiffs' counsel that the Title 42 orders do not apply outside the Title 42 context.

In an August 15, 2022 letter from Plaintiffs' counsel to Defendants' counsel following a July 27, 2022 meet and confer, Plaintiffs describe Defendants' position as being the same as Defendants' position today: "that the district court's orders restricting the detention of class members in hotels and requiring Defendants to report prolonged hotel detentions apply exclusively to class members detained pursuant to Title 42." Doc. # 1427-1, at 25, 28. Likewise, after a dispute about hotel use arose this Spring, Defendants' counsel informed Plaintiffs' counsel of Defendants' position on the issue through the meet-and-confer discussion for this Motion and the Motion itself.

Plaintiffs point to three documents to support their argument. The first two documents are a March 6, 2021 email and a May 12, 2021 email from Defendants' counsel to Plaintiffs' counsel in which Defendants notified Plaintiffs of the planned,

regular use of hotels as "Emergency Family Reception Sites" during the ongoing pandemic. Doc. # 1764-2, at 7, 10. The situation raised obvious parallels to the Title 42 litigation, and the 2021 emails reflect a desire to work cooperatively with opposing counsel to minimize potential litigation. Just as "Plaintiffs do not agree that these emails were in fact sufficient to comply with the Court's September 2020 orders," Doc. # 1764, at 8 n.3, so too Defendants do not agree that the emails were in fact necessary to comply with the Title 42 orders.

Plaintiffs also point to the ICE Juvenile Coordinator's annual report filed on July 1, 2022, which noted that hotel stays were "subject to the terms set forth in this court's September 4 and September 21, 2020 orders." Doc. # 1764, at 8 (quoting Doc. # 1259-2). Defendants clarified any confusion regarding that statement's scope when the parties met and conferred a few weeks later on July 27, 2022, and Defendants informed Plaintiffs of Defendants' position "that the district court's orders restricting the detention of class members in hotels and requiring Defendants to report prolonged hotel detentions apply exclusively to class members detained pursuant to Title 42." Doc. # 1427-1, at 25, 28. Plaintiffs' references to these past documents provide no reason to apply the Title 42 orders beyond their context.

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' Motion.

DATED: May 8, 2026

Respectfully submitted,

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L.R. 11-6.2 Certification

The undersigned counsel of record for the United States certifies that this brief contains 1,603 words, which complies with the word limit of L.R. 11-6.1.

Dated: May 8, 2026

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