No. 25-6567

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, *et al.*,
Plaintiffs-Appellees,

v.

PAMELA BONDI, ATTORNEY GENERAL, *et al.*,
Defendants-Appellants.

PLAINTIFFS-APPELLEES' MOTION TO DISMISS

On appeal from the
United States District Court for the Central District of California
Case No. 2:85-cv-04544-DMG-AGR

CARLOS R. HOLGUÍN
BARDIS VAKILI
SARAH E. KAHN
Center for Human Rights &
Constitutional Law
1505 E. 17th St., Ste. 117
Santa Ana, California 92705
Tel: (213) 388-8693

MISHAN WROE
DIANE DE GRAMONT
REBECCA WOLOZIN
National Center for Youth Law
1212 Broadway, Suite 600
Oakland, California 94612
Tel: (510) 835-8098

LEECIA WELCH
Children's Rights
2021 Fillmore Street
San Francisco, CA 94115
Telephone: (415) 602-5202

Attorneys for Plaintiffs-Appellees

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INTRODUCTION

Defendants-Appellants ("Defendants") have impermissibly jumped the gun in appealing a non-final order issued in response to Plaintiffs-Appellees' ("Plaintiffs") motion to enforce the *Flores* Settlement Agreement ("FSA" or "Settlement") regarding the duration and conditions of detention of children in Customs and Border Protection ("CBP") facilities. The Court does not have jurisdiction to consider this appeal because the order at issue is not a final order and is not an appealable interlocutory order. Dismissal is therefore appropriate.[1]

The appealed order is not final pursuant to 28 U.S.C. § 1291 because it is merely a waypoint in the parties' ongoing dispute about the government's noncompliance with the Settlement. *See* Exh. A, Order re Plaintiffs' Motion to Enforce [1575], Aug. 15, 2025 at 9 ("CBP MTE Interlocutory Order" or "Int. Order") [Dkt. 1638]. Citing two previous orders, the appealed order merely re-

[1] On February 25, 2026, the merits briefing for this appeal was held in abeyance "until 60 days after a decision is issued in *Flores v. Bondi*, No. 25-6308." Dkt. 12.1. Plaintiffs move to dismiss for lack of jurisdiction before the parties and this Court reach such briefing. "At any time prior to the disposition of a civil appeal or petition for review if the Court determines that the appeal is not within its jurisdiction, the Court may issue an order dismissing the appeal without notice or further proceedings." 9th Cir. R. 3-6(b). "[A] motion to dismiss for lack of jurisdiction can be made at any time during the appeal process." Chris Goelz, et al., Rutter Group Practice Guide: Federal Ninth Circuit Civil Appellate Practice Ch. 6-C, ¶ 6:326.1 (2025).

states the district court's interpretation that the Settlement's "requirement that minors be held in 'facilities that are safe and sanitary' encompasses 'a commonsense understanding' of what 'safe and sanitary' means, and includes access to toilets and sinks, drinking water and food, soap, towels, showers, dry clothing, toothbrushes, and adequate temperature control and ventilation." *Id.* (quoting FSA ¶ 12A; *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1057 (C.D. Cal. 2017)); *Flores v. Barr*, 934 F.3d 910, 916 (9th Cir. 2019). As the order itself points out, this is nothing new. This Court and the district court have long interpreted the FSA's minimum standards for the detention of children to require adequate temperature and sleeping conditions. *Id.* In ordering Defendants to comply with prior orders and the Settlement, the district court did not require any new action from Defendants.

Additionally, the order is not a final order because it clearly contemplates future orders. Therefore, permitting this appeal to proceed will only result in the piecemeal review that section 1291 seeks to prevent. Defendants now have six separate appeals pending (Ninth Circuit Court of Appeal Nos. 24-3656, 25-820, 25-6308, 25-7468, 25-5443, and the present appeal). Although the district court found violations of the FSA based on CBP's continued practice of leaving lights on throughout the night and maintaining cold temperatures in CBP facilities, it put off resolving Plaintiffs' claim that CBP was violating the "expeditious processing"

requirement of the FSA pending consideration of future reports. Int. Order at 7-8, 14. Further, the court also postponed a final decision as to whether the court should appoint an independent monitor until it could consider those future reports. *Id*. at 13. This hardly makes for a ripe appeal.

Further, this Court does not have jurisdiction because the district court's order is not an appealable interlocutory order. It is not an order "granting, continuing, modifying, refusing or dissolving" the FSA or any injunction. 28 USC § 1292(a)(1). Instead, it merely requires Defendants to adhere to the FSA and to abide by an *existing* requirement to report to the district court regarding their compliance efforts. *See* Int. Order at 7-8 (denying Plaintiffs' motion "insofar as they request new relief").

Thus, because this Court lacks jurisdiction, Plaintiffs respectfully request this Court dismiss this improper appeal.[2]

BACKGROUND

In 1984, the Immigration and Naturalization Service ("INS") adopted a policy prohibiting the release of detained minors to anyone other than "a parent or lawful guardian, except in unusual and extraordinary cases." *Reno v. Flores*, 507 U.S. 292, 296 (1993) (quotation marks omitted). Plaintiffs-Appellees challenged

[2] Defendants oppose dismissal of this appeal.

both the INS's refusal to release children and the conditions of their detention. *See Flores v. Meese*, 681 F. Supp. 665 (C.D. Cal. 1988). The parties reached a settlement in 1997, which the district court approved under Rule 23(e). Exh. B, FSA.

Through the FSA, the parties agreed to basic protections for children, including that (1) they be expeditiously processed for release with a preference for family reunification, (2) if they could not be released, they would be transferred to a non-secure facility licensed for the care of children, and (3) any necessary detention would occur in facilities that were "safe and sanitary" and in accordance with Defendants' expressed "concern for the particular vulnerability of minors." FSA ¶¶ 12.A, 14.

The district court and this Court have repeatedly had to resolve disputes regarding the government's noncompliance with the Settlement. *See, e.g., Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016); *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017); *Flores v. Barr*, 934 F.3d 910 (9th Cir. 2019); *Flores v. Rosen*, 984 F.3d 720 (9th Cir. 2020); and *Flores v Garland*, 3 F.4th 1145 (9th Cir. 2021).

Relevant to this appeal, in May 2016, Plaintiffs filed a Motion to Enforce and Appoint a Special Monitor, alleging, *inter alia*, inadequate conditions in CBP facilities, which the district court granted in part on June 27, 2017. Exh. C, Order re Pls.' Mot. to Enforce and Appoint a Special Monitor ("June 27, 2017 Order")

[Dkt. 363]. The court found that Defendants were in substantial noncompliance with the Settlement's requirements to provide adequate food and clean drinking water, sanitary conditions, reasonable temperature, adequate sleeping conditions, access to legal services, and opportunity for release. *Id*. at 33-34.

This was the first time the district court had the opportunity to interpret the FSA's requirements regarding conditions in CBP facilities. Defendants appealed, and this Court dismissed the appeal for lack of jurisdiction because the opinion did "not require the government to take any specific action," and instead merely "interpreted the existing Agreement" to "reflect a commonsense understanding of what the [safe and sanitary provision] requires." *Barr*, 934 F.3d at 914, 916.

On May 21, 2022, after years of litigating ongoing violations in CBP detention, the parties reached a Settlement as to the Rio Grande Valley ("RGV") and El Paso Sectors of U.S. Border Patrol, a subcomponent of CBP. Exh. D, 2022 CBP Settlement [Dkt. 1254-1] ("CBP Settlement"). The CBP Settlement explicitly "clarif[ied] the Parties' understanding of the meaning of certain provisions of the Flores Settlement Agreement" found in paragraphs 11 and 12.A. CBP Settlement Preamble. The parties agreed that, among other things, CBP would "make reasonable efforts to dim the lights between 2200 and 0600" and "maintain a temperature range" between 69 and 83 degrees Fahrenheit. CBP Settlement ¶¶ VII.6.3; VII.5.A.1.

Eight years after the district court first interpreted "safe and sanitary" to include adequate sleeping conditions and moderate temperatures, six years after the Ninth Circuit affirmed the district court's interpretation as consistent with the Settlement, and three years after parties agreed that the Settlement required these basic standards be met, the court found that Defendants are again failing to meet these requirements. Int. Order at 13-15.

The court issued no new interpretation, let alone modification, of the Settlement, noting that it had "issued this same ruling [regarding cold temperatures] in its June 27, 2017 Order as to the RGV sector." *Id*. at 11 fn. 9 Further, the court declined to appoint an independent monitor in anticipation of a forthcoming report from CBP's internal monitor. *Id*. at 13 (stating that after an upcoming status conference on that report, the court "may reconsider what in essence is Plaintiffs' request for re-appointment of an independent monitor at that time.").

Finally, the court deferred ruling on the motion to enforce regarding prolonged time in custody, again in anticipation of future filings by CBP. Int. Order at 7-8. Specifically, it held that time in custody ("TIC") "likely violate[s] the FSA, and seem[s] particularly unnecessary given the extremely low census," but noted that CBP "is working to resolve it" and that it would wait for "the benefit of Defendants' explanations" in an upcoming status report, after which it would "be

better able to assess whether further enforcement of the Agreement is warranted." *Id.* Without finding a time-in-custody violation, "the Court reemphasize[d] Defendants' obligation to process, transfer, and release class members as expeditiously as possible, consistent with the FSA and the 2022 CBP Settlement." *Id*. at 13.

Meanwhile, several separate matters are playing out on parallel tracks before this Court and the district court. On May 22, 2025, Defendants moved to terminate the Settlement. Exh. E, Defendants' Notice of Motion to Terminate Settlement Agreement [Dkt. 1567]. They then appealed the district court's denial of that motion. Case No. 25-6308. They have also filed appeals of virtually every ruling issued by the district court in the last two years, seemingly in an effort to misrepresent the district court's oversight of the parties' agreement as "decades of intolerable judicial intrusion." *See* Def. Motion to Terminate Opening Brief 25-6308 at 2; Case Nos. 24-3656; 25-5443; 25-6567; 25-7468. Since this rush of appeals, Defendants have now decided that the "intolerable judicial intrusion" is tolerable after all, at least for the approaching months, as they have moved to stay all appeals except the appeal that is fully briefed and the appeal of the district court's denial of their motion to terminate. Case No. 25-6567 [Dkt. 10]; Case No. 25-7468 [Dkt. 7]; Case No. 25-5443 [Dkt. 23]; Case No. 24-3656 [Dkt. 28].

STANDARD OF REVIEW

This Court has "jurisdiction to determine [its] own jurisdiction" and must do so "at the outset." *Special Invs., Inc. v. Aero Air, Inc.*, 360 F.3d 989, 992 (9th Cir. 2004). A court considers "the jurisdictional issue de novo." *Id*. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Scott v. Pasadena Unified Sch. Dist*., 306 F.3d 646, 654 fn. 9 (9th Cir. 2002) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868)).

ARGUMENT

Circuit courts have appellate "jurisdiction of appeals from all final decisions of the district courts of the United States," 28 U.S.C. § 1291, and of interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1). This order is neither and therefore should be dismissed.

I. The Court lacks jurisdiction to review this order because the CBP MTE Interlocutory Order is not a final appealable order.

The Court must "try to treat the postjudgment proceeding" in a consent decree case "as if it were a free-standing lawsuit . . . and to identify the final decision in the postjudgment proceeding and confine any further appeal under section 1291 to that decision." *Bogard v. Wright*, 159 F.3d 1060, 1062 (7th Cir.

1998). As this Court held in another appeal in this litigation, a "postjudgment order is final in the injunctive consent decree context" when it has "significant, lasting ramifications" and "no further proceedings on the same issue were contemplated." *Garland*, 3 F.4th at 1153 (internal citations omitted). The order at issue is not final under that standard for at least two reasons—the order does not require anything new of Defendants and it expressly contemplated future proceedings regarding the dispute such that this appeal will likely result in piecemeal litigation.

A. The order is not final pursuant to § 1291 because it is simply a waypoint in the parties' continuing dispute regarding CBP's noncompliant detention of children.

Typically, "a party is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of district court error at any stage of the litigation may be ventilated." *Digit. Equip. Corp. v. Desktop Direct, Inc*., 511 U.S. 863, 868 (1994). A "final decision" is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). This is not such an order because it imposes no new obligations on Defendant-Appellants.

A decision on a motion to enforce a settlement is an "interlocutory district court order[]," not a final order pursuant to 28 U.S.C. section 1291. *Barr*, 934 F.3d at 914. This is because an order on a motion to enforce "is not [] a decision that ends the litigation on the merits . . . [a] district court's denial of [a] motion to

enforce [an] agreement is simply a way point in the parties' continuing dispute." *S.O.C., Inc. v. Clark Cnty.*, 34 F. App'x 360, 361-62 (9th Cir. 2002) (unpublished) (holding that a court order denying a motion to enforce an agreement where the district judge found the "parties should have been able to resolve a 'single incident' in an informal manner" was not appealable because it was "simply a way point in the parties' continuing dispute").

In narrow circumstances, "post-judgment orders" on motions to enforce may be final for purposes of § 1291, where the order "govern[s] future interactions between defendants" and other parties. *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1064-65 (9th Cir. 2010) (district court order requiring jail to produce and disseminate a plan for complying with the ADA and prior order was appealable because it required Defendants to *implement new, final actions* according to the plan, without any further fact-finding or orders from the court).

Here, the order was nothing more than a "way point," assisting the court in guiding the "parties' continuing dispute." *S.O.C., Inc.*, 34 F. App'x at 362. Rather than definitively ending the dispute on the merits, the district court made limited findings and identified two violations of the Settlement (regarding temperature and 24-hour lighting), each of which the court had identified as Settlement violations in previous orders. Int. Order at 11-12; *see, e.g.*, June 27, 2017 Order at 18.

Nor does the CBP MTE Interlocutory Order "govern future interactions between" the parties because it imposes no new requirements on either party regarding the two detention conditions on which the court found violations. *Armstrong*, 622 F.3d at 1064-65. The court required no new plan and no new action, because Defendants were already obligated to comply with the FSA before the order was issued.

In short, the CBP MTE Interlocutory Order has no lasting ramifications, because it merely reiterated the Defendants' obligations regarding lighting and temperature, consistent with previous orders and the Settlement. Therefore, it is not a final, appealable order and this court does not have jurisdiction over Defendants' appeal.

B. The CBP MTE Order was not final pursuant to § 1291 because it contemplated future orders and proceeding with this appeal would result in impermissible piecemeal review.

The foundation of the final judgment rule is the policy against piecemeal litigation. *See Catlin,* 324 U.S. at 233-34 (1945). 28 U.S.C. §§ 1291 and 1292 "disallow appeal from any decision which is tentative, informal or incomplete." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). Jurisdiction does not lie where an order "contemplate[s] further orders." *Armstrong*, 622 F.3d at 1065. The CBP MTE Interlocutory Order contemplates future orders dependent on the contents of government reports the court had previously ordered to be filed and

a forthcoming status conference. Since the report filings and status conference, the court has not yet issued further orders to resolve this dispute. Thus, reviewing this appeal would necessarily result in piecemeal review.

For example, the district court declined to appoint an independent monitor to help address the violations alleged by Plaintiffs, noting that CBP's internal monitor had already been ordered to file a report with the court. Int. Order at 7-8 (noting that "the Court has already ordered [supplemental reporting on the issues]. . . as part of its remedial authority flowing from prior orders."). The court further stated that, after an upcoming status conference on that report, the court "may reconsider what in essence is Plaintiffs' request for *re-appointment* of an independent monitor at that time." *Id*. at 13 (emphasis in original). This clearly "contemplates further orders," including the possibility of further review that ultimately results in no remedial order and no new requirements on Defendants at all. *Armstrong*, 622 F.3d at 1065.

The district court also denied the motion to enforce "insofar as [Plaintiffs] request new relief on this issue" of time in custody pending review of the same supplemental report. Int. Order at 7-8. The court explained that although TIC "likely violate[s] the FSA and seem[s] particularly unnecessary given the extremely low census," CBP "is working to resolve it" and the court would wait for "the benefit of Defendants' explanations" in an upcoming status report, after

which it would "be better able to assess whether further enforcement of the Agreement is warranted." *Id*. As with the appointment of a monitor, this language contemplates consideration of information not yet before the court and a future related order.

Thus, if permitted to proceed, this appeal will necessarily result in piecemeal review, because the district court may issue further findings at a later date to address the unresolved issues Plaintiffs presented in their motion to enforce. *See Plata v. Brown*, 754 F.3d 1070, 1074 (9th Cir. 2014) (holding that reviewing an order appellants claimed delayed adjudication of their motion to terminate "does raise the problem of piecemeal review, because this particular litigation has been in the postjudgment, remedial phase since the entry of the first consent decree in 2002"). Even "in proceedings to enforce consent decrees," permitting such an interim order "to be immediately appealable would threaten an avalanche of interlocutory appeals." *Bogard*, 159 F.3d at 1063. This is precisely what Defendants have already unleashed on this Court. Case Nos. 24-3656, 25-6308, 25-7468, 25-5443, and the present appeal.

II. The Court lacks jurisdiction to review this order because is not an appealable interlocutory order as it does not modify the FSA.

Because the CBP MTE Interlocutory Order is not a final order, it therefore can only be reviewed if it is an appealable interlocutory order under § 1292(a)(1). *Ashker v. Newsom*, No. 09-CV-05796 CW, 2022 WL 1003178, at *4 (N.D. Cal.

Apr. 4, 2022) (order extending settlement was interlocutory). It is not. A non-final order is appealable only if it is an "[i]nterlocutory order[] . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1). This Court has already found that a motion to enforce the FSA is not appealable unless it modifies the Settlement and that the district court's interpretation of the Settlement does not constitute modification. *Barr*, 934 F.3d at 915-916. That Opinion controls here.

Like prior orders in response to FSA enforcement motions, because the CBP MTE Interlocutory Order "did not grant, continue, refuse, dissolve, or refuse to dissolve an injunction," the "only possible basis for appellate jurisdiction therefore depends on whether the Order 'modif[ied]' the Agreement." *Id*. at 914. Because the order merely "reemphasizes" but does not modify Defendants' obligations under the FSA, it is not a reviewable interlocutory order. Int. Order at 13.

The two violations found by the district court – regarding lighting and temperature – involved the basic and already-established requirements of FSA ¶ 12.A. Int. Order at 9 ("The FSA's requirement that minors be held in 'facilities that are safe and sanitary' encompasses 'a commonsense understanding' of what 'safe and sanitary' means, and includes access to toilets and sinks, drinking water and food, soap, towels, showers, dry clothing, toothbrushes, and adequate temperature control and ventilation.") (quoting FSA ¶ 12A; *Barr*, 934 F.3d at 916).

This Court has made clear the district court's interpretation and enforcement of FSA ¶ 12.A does not confer appellate jurisdiction, because any such order interprets, but does not modify, Defendants' obligations under the FSA:

> Specifically, the government contends that, by interpreting paragraph 12A in the body of its opinion to require that Border Patrol stations provide the most basic human necessities—accommodations that allow for adequate sleep, essential hygiene items, and adequate, clean food and water—the district court modified the Agreement's requirement that minors be held in 'safe and sanitary' conditions that comport with the 'special concern for the particular vulnerability of minors.' We emphatically disagree . . . In short, the district court's explanation of its enforcement of paragraph 12A regarding the conditions at Border Patrol stations concerned only requirements unarguably within the terms of the Agreement. As a result, the portion of the court's order enforcing paragraph 12A did not constitute an '[i]nterlocutory order[ ] ... modifying [an] injunction[ ], or refusing to ... modify [an] injunction[ ].' 28 U.S.C. § 1292(a)(1). We therefore lack jurisdiction over this claim.

Flores v. Barr, 934 F.3d at 915-16.

Flores v. Barr controls the inquiry here. The court's findings in the MTE CBP Interlocutory Order are nearly identical to those in the order at issue in *Flores v. Barr*, and it similarly imposed no new obligations on Defendants. Compare Int. Order at 11-12 (granting the MTE "on the issue of adequate temperature controls at a reasonable and comfortable range in the named sectors" and "on the issue of reduced lighting at night") with *Barr*, 934 F.3d at 916 (FSA encompasses protections that "reflect a commonsense understanding" of what constitutes safe and sanitary conditions and concern for the particular vulnerability of minors, including ensuring children are "not sleep-deprived.") and FSA ¶ 12.A (requiring

CBP to "hold minors in facilities that are safe and sanitary" and provide "access to toilets and sinks, drinking water and food . . . adequate temperature control and ventilation").

The parties themselves have long agreed that moderate temperature and adequate sleeping conditions are required by Paragraph 12A. CBP Settlement at 1, §§ 5(A)(1), 6(3) ("[T]he Parties enter into this Agreement for the purpose of clarifying the Parties' understanding of the meaning of" Paragraphs 11 and 12A of the FSA, including that "CBP shall maintain a temperature range inside facilities in RGV and El Paso Sector of no less than 69° Fahrenheit and no more than 83° Fahrenheit" and "shall make reasonable efforts to dim the lights between 2200 and 0600.").

Further, the district court's review of alleged violations and its clarification of the terms of the FSA do not constitute a "modification" because the Settlement explicitly provides for such review. *Bogard*, 159 F.3d at 1064 (order extending monitor's term did not modify the consent decree where the consent decree explicitly provided the term would end on a certain date "unless extended by order of this court," "reserv[ing that] power to the court.").

The FSA explicitly provides for routine monitoring and enforcement. First, it lays out the right of counsel to monitor conditions. FSA ¶ 32 ("counsel are entitled to attorney-client visits"). Second, it explicitly provides for enforcement of

its terms. FSA ¶ 37 ("This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement.").

Where a court issues orders enforcing no more than what the parties agreed to, it does not modify the settlement. Rather than modifying the settlements, the district court's oversight and enforcement orders represent an explicit component of the parties' agreements. That applies with particular force here, where the court explicitly noted in its CBP MTE Interlocutory Order that it had "issued this same ruling in its June 27, 2017 Order as to the RGV sector. [Doc. #363.] Thus, in addition to enforcing the FSA and 2022 Settlement, the Court also enforces its June 27, 2017 Order on this issue." Int. Order at 11 fn 9.

Therefore, "the district court's explanation of its enforcement of paragraph 12A regarding the conditions at Border Patrol stations concerned only requirements unarguably within the terms of the Agreement," as previously defined by the district court, this Court, and the parties. *Barr*, 934 F.3d at 916. As a result, the CBP MTE Interlocutory Order "did not constitute an '[i]nterlocutory order[ ] ... modifying [an] injunction[ ], or refusing to ... modify [an] injunction[ ]'" under 28 U.S.C. § 1292, and this Court "lack[s] jurisdiction over this claim." *Id*.

CONCLUSION

For the foregoing reasons, this Court should dismiss Defendant-Appellants' appeal.

Dated: March 6, 2026

s/ Sarah Kahn

CARLOS R. HOLGUÍN
BARDIS VAKILI
SARAH E. KAHN
Center for Human Rights & Constitutional Law
1505 E. 17th St., Ste. 117
Santa Ana, CA 92705
Tel: (213) 388-8693

MISHAN WROE
DIANE DE GRAMONT
REBECCA WOLOZIN
National Center for Youth Law
1212 Broadway, Suite 600
Oakland, California 94612
Tel: (510) 835-8098

LEECIA WELCH
Children's Rights
2021 Fillmore Street
San Francisco, CA 94115
Telephone: (415) 602-5202

CERTIFICATE OF COMPLIANCE

1. This motion complies with the word and page limit of Cir. R. 27-1 because: this brief contains 4063 words and is 17 pages, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because: this brief has been prepared in a proportionally spaced typeface and Times New Roman size 14 font.

Dated: March 6, 2026

/s/ *Sarah Kahn*
Sarah Kahn
Center for Human Rights & Constitutional Law

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PLAINTIFFS-APPELLEES' EXHIBITS TO MOTION TO DISMISS

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CARLOS R. HOLGUÍN
BARDIS VAKILI
SARAH E. KAHN
Center for Human Rights &
Constitutional Law
1505 E. 17th St., Ste. 117
Santa Ana, California 92705
Tel: (213) 388-8693

MISHAN WROE
DIANE DE GRAMONT
REBECCA WOLOZIN
National Center for Youth Law
1212 Broadway, Suite 600
Oakland, California 94612
Tel: (510) 835-8098

LEECIA WELCH
Children's Rights
2021 Fillmore Street,
San Francisco, CA 94115
Tel: (415) 602-5202

Attorneys for Plaintiffs-Appellees

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EXHIBIT A

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

PAMELA BONDI, Attorney General of the United States, *et al.*,

Defendants.

Case No. CV 85-4544-DMG (AGRx)

ORDER RE PLAINTIFFS' MOTION TO ENFORCE [1575]

Before the Court is Plaintiffs' Motion to Enforce the *Flores* Settlement Agreement. [Doc. # 1575 ("MTE").] The motion is fully briefed. [Doc. ## 1606 ("Opp."), 1619 ("MTE Reply").] For the reasons set forth below, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' MTE.

I.

BACKGROUND[1]

A. Settlement Agreement with the INS

On January 28, 1997, this Court approved the *Flores* Settlement Agreement ("FSA" or "Agreement"), a class action settlement between Plaintiffs—minors subject to detention by United States immigration authorities—and the federal government. *See Flores v. Sessions*, 862 F.3d 863, 866 (9th Cir. 2017). At the time, the Immigration and Naturalization Service ("INS") was the primary agency tasked with enforcing the nation's immigration laws, principally the Immigration and Nationality Act ("INA"). The Agreement accordingly defined the class as "All minors who are detained in the legal custody of the INS." FSA ¶ 10 [Doc. # 101].

Paragraph 40 of the Agreement, the provision governing termination of the FSA, initially stated: "All terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS [Immigration and Naturalization Service] is in substantial compliance with this Agreement, except that the INS shall continue to house the general population of minors in INS custody in facilities that are licensed for the care of dependent minors." FSA ¶ 40. The parties originally contemplated that Defendants would initiate action to publish the terms of the FSA as a regulation within 120 days after final district court approval of the Agreement. *Id.* ¶ 9. In an effort to do so, in 1998, the INS published a proposed rule, stating that the "substantive terms of the [FSA] form[ed]

[1] The Court has summarized the background of this case on multiple occasions throughout this litigation, including in its concurrently issued Order re Defendants' motion to terminate. ("Ord. re 2025 MTT"). The Court repeats here the factual and procedural background that is the most relevant to the current motion.

the basis for the proposed rule." 63 Fed. Reg. 39,759 (1998). The 1998 proposed rule and accompanying rulemaking process did not result in a final rule. *See Flores v. Rosen*, 984 F.3d 720, 728 (9th Cir. 2020).

On December 7, 2001, the parties stipulated to modify Paragraph 40 such that it now reads: "All terms of this Agreement shall terminate 45 days following defendants' publication of final regulations implementing this Agreement[.] Notwithstanding the foregoing, the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors." *See* MTT, Ex. J at 32 ("FSA (as amended)") [Doc. # 1567-15]. [2]

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

The *Flores* Agreement is binding upon the named Defendants and their "agents, employees, contractors and/or successors in office." FSA at ¶ 1. Consequently, after the reorganization of the INS, its "obligations under the Agreement" transferred to DHS and HHS. *Flores v. Barr*, 934 F.3d 910, 912 n.2 (9th Cir. 2019).

B. The 2022 CBP Settlement

After years of negotiations and mediation regarding the conditions at CBP facilities, the parties reached a supplemental settlement agreement. [Doc. ## 1254-1

[2] Page citations herein refer to the page numbers inserted by the CM/ECF system.

("2022 CBP Settlement"); 1278 ("Ord. Approving 2022 CBP Settlement").] The 2022 CBP Settlement clarified the parties' understanding of Paragraphs 11 and 12A of the FSA, as they applied to conditions of CBP detention in the El Paso and Rio Grande Valley ("RGV") sectors.

As part of the 2022 CBP Settlement, Defendants agreed to ensure that CBP facilities in the El Paso and RGV sectors provide class members with access to "toilets, sinks, showers, hygiene kits, drinking water, age-appropriate meals and snacks, medical evaluations and appropriate medical treatment, clothing and blankets, caregivers in certain facilities, adequate supervision to protect minors from others, and adequate temperature control and ventilation." Ord. re 2022 CBP Settlement at 2. The 2022 CBP Settlement also required prioritization of family unity so long as it was operationally feasible and created the "Juvenile Care Monitor" ("JCM") role to allow for the independent monitoring of CBP's compliance with the 2022 CBP Settlement and the FSA more broadly. *Id*.

C. Current Motion to Enforce & Motion to Terminate

Plaintiffs now move to enforce the FSA, citing extended times in custody and unsafe and unsanitary conditions for minors detained in CBP and ICE facilities. Defendants oppose the MTE and move to terminate the FSA in its entirety, as to both DHS and HHS. The Court has addressed Defendants' MTT in a separate Order.

II.
LEGAL STANDARD

This Court has the power to enforce the terms of the Agreement because, with certain exceptions not relevant here, the Agreement "provides for the enforcement, in this District Court, of the provisions of this Agreement. . . ." *See* FSA ¶ 37; *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380-81 (1994); *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978). "[T]he construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally." *O'Neil v. Bunge Corp.*, 365 F.3d 820, 822 (9th Cir.

2004) (quoting *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992)).

The *Flores* Agreement is a consent decree. "Consent decrees have the attributes of both contracts and judicial acts," and in interpreting consent decrees, courts apply traditional contract principles. *Thompson v. Enomoto*, 915 F.2d 1383, 1388 (9th Cir. 1990). Under California law, a court must interpret a contract with the goal of giving effect to the parties' mutual intention as it existed at the time of contracting. Cal. Civ. Code § 1636. Where the parties dispute the meaning of specific contract language, "the court must decide whether the language is 'reasonably susceptible' to the interpretations urged by the parties." *Badie v. Bank of Am.,* 67 Cal. App. 4th 779, 798, 79 Cal. Rptr. 2d 273 (1998). If the contract is clear, however, the plain language of the contract governs. *Bank of the West v. Superior Court,* 2 Cal. 4th 1254, 1264, 10 Cal. Rptr. 2d 538 (1998).

The Court must consider the contract as a whole and be sure "to give effect to every part, if reasonably practicable, each clause helping to interpret the other." *Pinel v. Aurora Loan Servs., LLC,* 814 F. Supp. 2d 930, 943 (N.D. Cal. 2011) (quoting Cal. Civ. Code § 1641) (internal quotation marks omitted). "Courts must interpret contractual language in a manner that gives force and effect to every provision, and not in a way that renders some clauses nugatory, inoperative or meaningless." *Id.* When necessary, a court can look to the subsequent conduct of the parties as evidence of their intent. *See Crestview Cemetery Assn. v. Dieden,* 54 Cal. 2d 744, 754 (1960). If there is still uncertainty after the Court applies the foregoing rules, "the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." Cal. Civ. Code § 1654.

III.

DISCUSSION

Plaintiffs move to enforce the FSA and request that the Court appoint an Independent Monitor. MTE at 10. Plaintiffs seek an Independent Monitor who will monitor compliance in all CBP sectors, including by "validating data," "monitoring time in custody," and "monitoring and providing guidance on CBP's systems for tracking [time in custody] and expeditiously processing minors for release or transfer." MTE, Proposed Order ¶ 5 [Doc. # 1575-1]. Plaintiffs assert that enforcement of the Agreement and appointment of an additional monitor are most necessary to address CBP's lack of compliance with the FSA's "prompt release" and "safe and sanitary conditions" provisions.[3] MTE at 19–24. Plaintiffs submitted 23 declarations from minors detained in CBP and ICE facilities across the country—in New York, Maine, Illinois, Ohio, Arizona, Texas, and California—in support of their MTE.

A. Time in Custody

Plaintiffs assert that CBP's new policy "refusing to consider arriving non-citizens for release" has resulted in the unnecessarily prolonged detention of class members, despite the very low census numbers. MTE at 16. This conclusion appears to be in line with Defendants' own reported statistics, declarations of class members, and recent JCM and Juvenile Coordinator reports. *See, e.g.*, Declaration of Sarah E. Kahn ISO MTE ("Kahn Decl. ISO MTE") ¶ 13 (comparing December 2024 statistics, where CBP released 7,041/47,324 (15%) of individuals, with April 2025 statistics, where CBP released 2/8,383 individuals (0.0002%)) [Doc. # 1575-3]; Declaration of Diane de Gramont ISO MTE ("de Gramont Decl. ISO MTE") ¶¶ 21, 26; Ex. A (comparing May

[3] Plaintiffs also state that CBP denies access to telephones, fails to ensure contact with family members, and fails to provide children with adequate medical care. MTE at 24–26. Their Proposed Order does not request any form of relief, however, with regard to these specific issues. Accordingly, the Court takes these additional allegations into consideration insofar as they are evidence of a lack of substantial compliance, but the Court will not issue any relief as to these issues beyond that which already exists in prior orders.

2024 statistics, where 7% of detained minors were held for over seven days and 0.4% were held for over 14 days, with April 2025 statistics, where 60% of detained minors were held for over seven days and 23% were held for over 14 days) [Doc. # 1575-4]; Declaration of A.K. ¶ 6 (42 days in CBP custody)[4] [Doc. # 1575-24]; Declaration of F.Y. ¶ 6 (30 days in CBP custody) [Doc. # 1575-13]; Declaration of M.M. ¶ 7 (21 days in CBP custody) [Doc. # 1575-14]; JCM May 2025 Interim Report at 6 (documenting that families with children are "routinely" in CBP custody for greater than seven days) [Doc. # 1570]; 2025 CBP JC Report at 12 (showing families with children, on average, were held in CBP custody for over 72 hours in February–June of 2025) [Doc. # 1599-1].

Although Plaintiffs are correct that these extended times in custody ("TIC times") likely violate the FSA, and seem particularly unnecessary given the extremely low census, the CBP Juvenile Coordinator's most recent report shows that the average TIC times for family units have been going down over the past few months. *See* 2025 CBP JC Report at 12 (showing the average TIC times for family units gradually decreasing from 177.39 hours in February 2025 to 77.84 hours as of June 10, 2025). This indicates that CBP is aware of the issue and is working to resolve it. Further, as a part of its remedial authority flowing from prior orders to enforce, the Court has already ordered the CBP Juvenile Coordinator to file a supplemental report providing: (1) a census of minors who were held in CBP custody for over 72 hours during the months of June and July 2025, and (2) the reason why each minor was held for over 72 hours. *See* Order re July 2025 Status Conference at 1 [Doc. # 1614]. Once the Court has the benefit of Defendants' explanations as to why they have been detaining class members for extended

[4] Despite A.K.'s lengthy time in custody, Defendants aver that they were moving as "expeditiously as possible," but that getting a flight back to Kazakhstan for A.K.'s family was a "lengthy process." MTE Opp. at 10. When Defendants finally got a flight for the family a month later, the family refused to board the plane because they feared being harmed back in Kazakhstan. MTE Reply at 15. Defendants then screened the family under the Convention Against Torture ("CAT"), which they passed, and Defendants transferred the family to ICE custody. *Id.* Thus, had Defendants completed the CAT screening for A.K., her husband, and their two-year-old child when they first asserted their fear of returning to Kazakhstan (i.e., when they first arrived), they could have been transferred to ICE detention a month earlier. *Id.*

periods of time, it will be better able to assess whether further enforcement of the Agreement is warranted, or whether Defendants' delays were reasonable due to operational concerns. The Court therefore **DENIES** Plaintiffs' MTE insofar as they request new relief on this issue.

The Court will also briefly address Defendants' oral and written objections in connection with the Court's July 25, 2025 Status Conference and July 28, 2025 Order following the status conference. *See* Order re July 2025 Status Conference at 1 [Doc. # 1614]. Defendants object to the Court's request for supplemental reports from the Juvenile Coordinators including further data about TIC times, ICE's Modified Family Residential Standards, transportation issues as they relate to TIC times, and any issues that overlap with the present MTE and Defendants' pending MTT. *See* JC Report Objections at 3–9 [Doc. # 1620]. Defendants base their objections on the assertion that the information requested by the Court is "outside the scope of the Juvenile Coordinator's annual report." *Id.* at 3. Defendants also object "to any finding that the JCM has the authority to monitor ICE facilities." *Id.* at 9–10.

The Court **OVERRULES** Defendants' objection to the Court's request that Juvenile Coordinators file supplemental reports. It is astounding to the Court that Defendants would make such an objection. First, the Court has an obligation to oversee the FSA and the 2022 CBP Settlement, and it is impossible for the Court to do so in a meaningful way without adequate information. The parties, presumably, understood this when they drafted the FSA because it created a Juvenile Coordinator role specifically to "review, assess, and report to the court regarding compliance with the terms of this Agreement." FSA ¶ 30. Second, the Court has issued remedial orders in the past regarding CBP and ICE facilities and, as such, has the inherent authority to enforce those orders. *See, e.g.*, Doc. ## 189, 363, 833, 926, 987; *Shillitani v. United States*, 384 U.S. 364, 370 (1966) (explaining that courts have the inherent authority to monitor and enforce their prior orders). Further, the Court has requested specific information of this type multiple times throughout this litigation and never has been met with blanket

objections of this nature. [*See, e.g.*, Doc. ## 585, 784, 914, 987, 1098, 1229, 1406.] To the extent the use of the Juvenile Coordinators is a less intrusive enforcement mechanism than the appointment of an independent monitor, the Court has endeavored to use that approach except in the face of persistent violations.

B. Safe and Sanitary Conditions

The FSA's requirement that minors be held in "facilities that are safe and sanitary" encompasses "a commonsense understanding" of what "safe and sanitary" means, and includes access to toilets and sinks, drinking water and food, soap, towels, showers, dry clothing, toothbrushes, and adequate temperature control and ventilation. FSA ¶ 12A; *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1057 (C.D. Cal. 2017); *Flores v. Barr*, 934 F.3d at 916.

Plaintiffs argue that Defendants have violated this provision by maintaining "freezing" temperatures in the facilities and by failing to provide adequate sleeping conditions, access to soap,[5] and by detaining minors in port of entry ("POE") facilities—which are not equipped for detention—for long periods of time. *See, e.g.*, Declaration of G.B.A. ¶ 11 ("There is water but no soap to wash our hands") [Doc. # 1575-18]; Declaration of S.G. ¶ 11 ("[T]hey offered to let us take a shower, but it was in the middle of the night") [Doc. # 1575-23]; F.Y. Decl. ¶ 13 ("There was shampoo for our hair but no soap"); Declaration of K.V.L. ¶¶ 7, 8 (explaining she was detained with her five-year-old son in room with no windows and the toilet was "completely visible" to people walking by the room) [Doc. # 1575-6]; Declaration of A.T. ¶ 10 ("We were not permitted to flush the toilet")[6] [Doc. # 1575-16]; A.K. Decl. ¶ 22 ("I was only able to bathe my [two-year-old] daughter about once every two weeks . . . [because] there was only cold water").

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[5] It appears from the CBP Juvenile Coordinator's most recent report, and from the status conference following, that the lack of soap issue is actively being resolved. 2025 CBP JC Report at 21; *see also* Mejia Decl. ¶ 21.

[6] The particular restroom mentioned by A.T. must be flushed from outside the detention cell. "Officers generally make efforts to flush the toilet after use, or as often as needed to ensure proper functioning." Mejia Decl. ¶ 12.

1. Temperatures

In support of a recurring complaint, Plaintiffs present evidence that class members have experienced extremely cold temperatures while in CBP custody.[7] *See* Declarations of T.M. (New York) ¶ 7 ("The cell was freezing cold") [Doc. # 1575-5]; V.I.B.G. (New York) ¶ 11 ("It was freezing"); G.A.D. (San Diego) ¶ 15 ("The room is very cold") [Doc. # 1575-9]; R.S.R. (San Diego) ¶ 14 ("[I]n the night time it is very cold") [Doc. # 1575-11]; L.G.C.G. (San Diego) ¶ 18 ("It is cold in the pod") [Doc. # 1575-10]; F.Y. (El Paso) ¶ 7 ("It was extremely cold. My sons both got sick there because it was so cold."); M.M. (El Paso) ¶ 8 ("It was freezing cold in the detention") [Doc. # 1575-14]; A.T. (O'Hare Airport) ¶ 11 ("It was freezing all the time") [Doc. # 1575-16]; M.H. (Ursula) ¶ 10 ("It is extremely cold in the room") [Doc. # 1575-19]; M.L.R.L. (Ursula) ¶ 11 ("It is very cold. They gave us one sweater, but it is thin and we didn't get anything else to stay warm") [Doc. # 1575-20]; L.N. (Chula Vista) ¶ 15 ("It is always cold in the room") [Doc. # 1575-21]; W.J. (Chula Vista) ¶ 11 ("The facility is usually cold and we are only allowed to wear one layer of clothing at a time") [Doc. # 1575-22]; S.G. (Chula Vista) ¶ 5 ("It is very, very cold"); A.K. (Otay Mesa) ¶ 16 ("Many kids in the room got sick because of the cold"); S.K. (Otay Mesa) ¶ 11 ("It was extremely cold") [Doc. # 1575-25]. This has been a consistent issue throughout this case, across many different sectors. *See, e.g.*, Ord. re MTE and Appoint Monitor at 15–16 [Doc. # 363]; Dec. 2024 JCM Report at 9–10 [Doc. # 1522]; Ord. re Motion to Modify 2022 Settlement at 4 [Doc. # 1547]; May 2025 JCM Report at 8.

Defendants report that the temperatures in all facilities were within the acceptable range while the declarants and their families were detained. *See generally* Declaration of Benjamin Hollinder ("Hollinder Decl.") [Doc. # 1606-1]. But this generalized declaration is not enough to contradict the large volume of specific accounts by class

[7] Two class members reported being too hot in the "Dilley" and "Karnes" ICE facilities. Declaration of K.V.L. ¶ 18; Declaraion of V.I.B.G. ¶ 34 [Doc. # 1575-12]. Because these are only two individual accounts—each from a different facility—and because Plaintiffs' MTE and this Order focus primarily on CBP facilities, the Court does not address these isolated temperature issues.

members and their families that they experienced extreme discomfort due to cold temperatures. Additionally, as recently as in his May 2025 report, the JCM stated that "[i]nterviews with [Border Patrol] agents, parents, children, and caregivers all reported that temperatures in holding pods could vary dramatically" in the El Paso sector. May 2025 JCM Report at 8. Moreover, even when temperatures are in the acceptable range, children often still feel cold without additional layers, and Plaintiffs' witnesses also reported either not knowing they could request additional layers or receiving only one thin layer. *See, e.g.*, R.S.R. (San Diego) ¶ 14 ("They give us thin metal blankets, but no extra clothes"); *see also* Dec. 2024 JCM Report at 10 ("Children have long reported cold temperatures in CBP facilities and having extra clothing readily available for children has been the primary means of avoiding the necessity of raising the minimum allowable temperatures").

Given the weight of the evidence, the Court finds that Plaintiffs have satisfied their burden of establishing Defendants' substantial non-compliance with the Agreement in the RGV (Ursula), El Paso, and San Diego (San Diego SSF,[8] Chula Vista, Otay Mesa POE) sectors. The Court **GRANTS** Plaintiffs' MTE on the issue of adequate temperature controls at a reasonable and comfortable range in the named sectors.[9] The Court **DENIES** the MTE as to the other cited facilities as to this issue (New York and O'Hare) because Plaintiffs have not provided enough evidence to demonstrate, by a preponderance of the evidence, that Defendants have failed to substantially comply with the FSA's temperature provision in those sectors.

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[8] The Court acknowledges that the San Diego SSF has not been used since March 2025 but notes the noncompliance nonetheless in case the facility is reopened. *See* Hollinder Decl. ¶ 71.

[9] The Court issued this same ruling in its June 27, 2017 Order as to the RGV sector. [Doc. # 363.] Thus, in addition to enforcing the FSA and 2022 Settlement, the Court also enforces its June 27, 2017 Order on this issue. *See Shillitani*, 384 U.S. at 370 (courts have inherent authority to monitor and enforce their prior orders).

2. Lights

The other issue most cited by Plaintiffs' declarants was inadequate sleeping conditions and, more specifically, that the lights at CBP facilities were not dimmed at night. Declarations of K.V.L. ¶ 14 ("My son couldn't sleep. He woke up so many times because there was an extremely bright light on the entire night"); G.A.D. ¶ 19 ("Lights are blaring at all hours. My sons can't sleep at night because of the light"); V.I.B.G. ¶ 35 ("I have asked [the staff] to not yell and not turn high lights in [her son's] face, but they still do it"); F.Y. ¶ 11 ("The lights were on all night, they never turned off"); L.N. ¶ 19 ("[T]hey keep the lights on all day and night . . . My children and I are not sleeping enough because it is so difficult to fall asleep"); W.J. ¶ 12 ("The lights in our room are always on. They never turn them off or dim them and I have to cover my head with my blanket so that I can sleep"); S.G. ¶ 13 ("They leave the lights on all day and night, so it is very hard to sleep"); A.K. ¶ 14 ("There was a light on 24 hours"); S.K. ¶ 18 ("The lights were on all night and day").

In response, Defendants state either that staff members at any given facility make reasonable efforts to dim lights at night, or that it is impossible to dim the lights at a particular facility. *See* Hollinder Decl. ¶¶ 32, 75, 102. This evidence, however, is not sufficient to undercut the credibility of the assertions made by numerous detainees, in numerous sectors, across a several months-long time period. The Court **GRANTS** Plaintiffs' motion to enforce the FSA on the issue of reduced lighting at night in the El Paso and San Diego sectors (San Diego SSF, Chula Vista, Otay Mesa) and **DENIES** the MTE as to the other sectors.[10]

3. Other Prevalent Unsafe and Unsanitary Conditions

Plaintiffs mention a wide variety of conditions at play in the CBP facilities—some of which can be remedied via enforcement or attention by the Juvenile Coordinator, but some of which are impossible to resolve due to the physical limitations of certain CBP

[10] To the extent a facility does not have the ability to dim the lights, CBP shall make reasonable efforts to turn off some of the lights to darken the pod areas. *See* Hollinder Decl. ¶ 32.

facilities (e.g., lack of windows, inability to go outdoors, toilet-flushing mechanisms). This underscores precisely why the prolonged times in CBP custody remain a significant problem. CBP facilities, by design, are not suitable for minors for long periods of time. Indeed, both sides agree that CBP facilities and POEs are "generally designed to be temporary, short-term holding facilities." Declaration of Margaret Isaacs ("Isaacs Decl.") ¶ 5 [Doc. # 1606-5]; *see also* Declaration of Luis Mejia ("Mejia Decl.") ¶ 7 [Doc. # 1606-2]. Thus, although the Court cannot remedy certain problematic, but unchangeable, physical conditions at border stations, the Court reemphasizes Defendants' obligation to process, transfer, and release class members as expeditiously as possible, consistent with the FSA and the 2022 CBP Settlement.

C. Monitoring

Although Plaintiffs request the appointment of an independent monitor, the Court does not find this remedy to be warranted at this time. As mentioned above, the Court has already ordered both the CBP and ICE Juvenile Coordinators to file supplemental reports, due on September 8, 2025, regarding the increase in the average length of time in custody for minors. *See* Ord. re July 25, 2025 Status Conference. Additionally, the JCM is filing an amended Final Report by September 5, 2025. *See* Ord. re JCM's Final Report and June 23, 2025 Status Conference [Doc. # 1591]. A further status conference regarding all three reports is scheduled for September 22, 2025. *Id.* Depending on the contents of those reports, the Court may reconsider what in essence is Plaintiffs' request for *re-appointment* of an independent monitor at that time. For now, the Court **DENIES** Plaintiffs' request for appointment of a monitor.

IV.
CONCLUSION

In light of the foregoing, the Court **GRANTS in part and DENIES in part** Plaintiffs' MTE. The Court **ORDERS** as follows:

1. The Court **DENIES without prejudice** Plaintiffs' request to re-appoint a monitor. The CBP and ICE Juvenile Coordinators shall comply with the Court's Order re

July 25, 2025 Status Conference [Doc. # 1614]. Defendants' objections to that Order are **OVERRULED**.

2. With regard to the RGV, El Paso, and San Diego (San Diego SSF, Chula Vista, Otay Mesa) sectors, as required by Paragraphs 12.A, 14, and 18 of the FSA and Sections VII(1) and VII(8)(B) of the 2022 CBP Settlement, the CBP shall expeditiously process class members and begin to make and record prompt and continuous efforts on its part toward family reunification and the release of a minor upon taking the minor into custody. Such efforts shall include expeditious processing for individualized bond determination where appropriate pursuant to Paragraph 24A of the Settlement, and shall continue throughout the child's time in CBP custody including after the minor is transferred, if applicable, to another facility operated by Defendants. If prompt and continuous effort toward release and reunification requires transfer to another facility, CBP must effect any such transfer expeditiously.

3. As required by Paragraph 18 of the FSA and Section VII of the 2022 CBP Settlement to make continuous efforts toward family reunification and release, the Department of Homeland Security ("DHS") shall not "restart the clock" when it transfers a class member from one unlicensed, secure facility to another, regardless of which DHS component agency operates the facility. Expeditious processing begins at apprehension and must continue from apprehension through the child's release from Defendants' custody.

4. With regard to the RGV, El Paso, and San Diego (San Diego SSF, Chula Vista, Otay Mesa) sectors, as required by Paragraphs 11 and 12.A of the FSA and Section VII of the 2022 CBP Settlement, DHS shall hold minors in facilities that are safe and sanitary and are consistent with its concern for the particular vulnerability of minors, for the entirety of their detention in DHS custody. Because CBP facilities are intended only for short-term use, CBP shall hold minors in its custody only for the amount of time DHS reasonably requires to process the minor for release

and/or actively arrange for and complete transport of the minor to a more suitable facility.

5. As required by Paragraph 28A of the Settlement, the CBP and ICE Juvenile Coordinators shall maintain accurate records and statistical information on minors held in DHS custody more than 72 hours. The data provided to Plaintiffs' Counsel under Paragraphs 28A and 29 shall include all children in DHS custody for a cumulative period of more than 72 hours, including minors transferred between DHS component agencies. As required by Paragraphs 28.A, 29, and 32 of the Settlement, DHS shall notify Plaintiffs' Counsel of, or make clear in the monthly data it provides, the location and nature of the facilities where all minors in its custody are held.

IT IS SO ORDERED.

DATED: August 15, 2025

DOLLY M. GEE
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT B

8/12/96

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057
(213) 388-8693

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales
114 Sansome Street, Suite 905
San Francisco, CA 94104
(415) 453-3307

Attorneys for Plaintiffs

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

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

Attorneys for Defendants

Additional counsel listed next page

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs' Additional Counsel

ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Mark Rosenbaum
Sylvia Argueta
1616 Beverly Boulevard
Los Angeles, CA 90026
Telephone: (213) 977-9500

STREICH LANG
Susan G. Boswell
Jeffrey Willis
1500 Bank of America Plaza
33 North Stone Avenue
Tucson, AZ 85701
Telephone: (602) 770-8700

Defendants' Additional Counsel:

Arthur Strathern
Mary Jane Candaux
Office of the General Counsel
U.S. Immigration & Naturalization Service
425 I St. N.W.
Washington, DC 20536
/ / /

STIPULATED SETTLEMENT AGREEMENT

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

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

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

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

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

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

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

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

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

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

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

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

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

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

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

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

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

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

major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

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

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

III CLASS DEFINITION

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

IV STATEMENTS OF GENERAL APPLICABILITY

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

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

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

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

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

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

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

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

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

VI GENERAL POLICY FAVORING RELEASE

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

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

A. a parent;

B. a legal guardian;

C. an adult relative (brother, sister, aunt, uncle, or grandparent);

D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;

E. a licensed program willing to accept legal custody; or

F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

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

A. provide for the minor's physical, mental, and financial well-being;

B. ensure the minor's presence at all future proceedings before the INS and the immigration court;

C. notify the INS of any change of address within five (5) days following a move;

D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;

E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor.

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

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

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

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

VII INS CUSTODY

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

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

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

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

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

i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);

ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

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

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

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has

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

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

A. the minor is currently under a final order of deportation or exclusion;

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

C. the minor has previously absconded or attempted to abscond from INS custody.

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

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

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

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

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

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

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

VIII TRANSPORTATION OF MINORS

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

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

B. where separate transportation would be otherwise impractical.

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

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

IX TRANSFER OF MINORS

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

X MONITORING AND REPORTS

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

biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

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

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

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

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

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

XI ATTORNEY-CLIENT VISITS

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

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

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

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

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

XII FACILITY VISITS

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

XIII TRAINING

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

XIV DISMISSAL

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

XV RESERVATION OF RIGHTS

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

XVI NOTICE AND DISPUTE RESOLUTION

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

/ / /

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales
114 Sansome Street, Suite 905
San Francisco, CA 94104

and on Defendants addressed to:

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

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

XVII PUBLICITY

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

XVIII ATTORNEYS' FEES AND COSTS

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

/ / /

XIX TERMINATION

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

XX REPRESENTATIONS AND WARRANTY

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

For Defendants: Signed: Doris Meissner Title: Commissioner, INS

Dated: 9/16/96

For Plaintiffs: Signed: per next page Title: _____

Dated: _____

The foregoing stipulated settlement is approved as to form and content:

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
Carlos Holguin
Peter Schey

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales

ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Mark Rosenbaum
Sylvia Argueta

STEICH LANG
Susan G. Boswell
Jeffery Willis

Date: 1/13/97 By _____

Date: 11/13/96 By _____

Exhibit 1

EXHIBIT 1

MINIMUM STANDARDS FOR LICENSED PROGRAMS

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

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.

2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.

3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be

residing in the United States and may be able to assist in family reunification.

4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.

5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management

is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.

9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

10. Whenever possible, access to religious services of the minor's choice.

11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.

12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or

exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

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

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

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

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

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

Exhibit 2

EXHIBIT 2

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

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

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

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

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

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

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

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

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

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

(i) a parent;

(ii) a legal guardian;

(iii) an adult relative (brother, sister, aunt, uncle, or grandparent);

(iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;

(v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or

(vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

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

(i) provide for the minor's physical, mental, and financial well-being;

(ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;

(iii) notify the INS of any change of address within five (5) days following a move;

(iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;

(v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

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

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

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

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

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

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

(i) the minor is an escape risk or delinquent, as defined in Paragraph (i) below;

(ii) a court decree or court-approved settlement requires otherwise;

(iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or

(iv) the minor must be transported from remote areas for processing or speaks an unusual

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

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

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

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

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

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

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

(iv) is an escape-risk; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 3

EXHIBIT 3

CONTINGENCY PLAN

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

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

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

place and date of current placement.

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

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

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

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

Exhibit 4

EXHIBIT 4

AGREEMENT CONCERNING FACILITY VISITS UNDER PARAGRAPH 33

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

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

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

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

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

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

Exhibit 5

EXHIBIT 5

LIST OF ORGANIZATIONS TO RECEIVE INFORMATION RE: SETTLEMENT AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 6

EXHIBIT 6
NOTICE OF RIGHT TO JUDICIAL REVIEW

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

PROOF OF SERVICE BY MAIL

I, Sonia Fuentes, declare and say as follows:

1. I am over the age of eighteen years and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 South Occidental Boulevard, Los Angeles, California 90057, in said county and state.

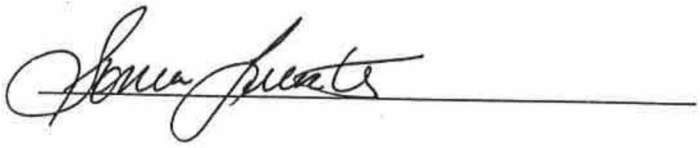
2. On January ___, 1997, I served the attached STIPULATED SETTLEMENT AGREEMENT on defendants in this proceeding by placing a true copy thereof in a sealed envelope addressed to their attorneys of record as follows:

Mr. Michael Johnson
Assistant U.S. Attorney
300 N. Los Angeles St. #7516
Los Angeles, CA 90012

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between the place of mailing and the place so addressed.

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

Executed this ___th day of January, 1997, at Los Angeles, California.



/ / /

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
Charles Song
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693; Fax: (213) 386-9484

LATHAM & WATKINS
Steven Schulman
555 Eleventh St., NW, Suite 1000
Washington, DC 20004
Telephone: (202) 637-2184

Of counsel:

YOUTH LAW CENTER
Alice Bussiere
417 Montgomery Street, Suite 900
San Francisco, CA 94104
Telephone: (415) 543-3379 x 3903

Attorneys for plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al., Plaintiffs, -vs- JANET RENO, Attorney General of the United States, et al. Defendants	Case No. CV 85-4544-RJK(Px) STIPULATION EXTENDING SETTLEMENT AGREEMENT AND FOR OTHER PURPOSES; AND ORDER THEREON

///

IT IS HEREBY STIPULATED by and between the parties as follows:

1. Paragraph 40 of the Stipulation filed herein on January 17, 1997, is modified to read as follows:

"All terms of this Agreement shall terminate ~~the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement,~~ *45 days following defendants' publication of final regulations implementing this Agreement*

~~except that~~ *Notwithstanding the foregoing*, the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors."

/ / /

2 For a period of six months from the date this Stipulation is filed, plaintiffs shall not initiate legal proceedings to compel publication of final regulations implementing this Agreement Plaintiffs agree to work with defendants cooperatively toward resolving disputes regarding compliance with the Settlement. The parties agree to confer regularly no less frequently than once monthly for the purpose of discussing the implementation of and compliance with the settlement agreement However, nothing herein shall require plaintiffs to forebear legal action to compel compliance with this Agreement where plaintiff class members are suffering irreparable injury

Dated: December 7, 2001.

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A Schey

LATHAM & WATKINS
Steven Schulman

YOUTH LAW CENTER
Alice Bussière

Carlos Holguín, *for plaintiffs*.

Dated: December 7, 2001

Arthur Strathern
Office of the General Counsel
U. S. Immigration & Naturalization Service

for
Arthur Strathern, *for defendants*
Per fax authorization

IT IS SO ORDERED

Dated: December ____ 2001

UNITED STATES DISTRICT JUDGE

2. For a period of six months from the date this Stipulation is filed, plaintiffs shall not initiate legal proceedings to compel publication of final regulations implementing this Agreement. Plaintiffs agree to work with defendants cooperatively toward resolving disputes regarding compliance with the Settlement. The parties agree to confer regularly no less frequently than once monthly for the purpose of discussing the implementation of and compliance with the settlement agreement. However, nothing herein shall require plaintiffs to forebear legal action to compel compliance with this Agreement where plaintiff class members are suffering irreparable injury.

Dated: December 7, 2001.

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguin
Peter A. Schey

LATHAM & WATKINS
Steven Schulman

YOUTH LAW CENTER
Alice Bussiere

Carlos Holguin, *for plaintiffs*

Dated: December 7, 2001.

Arthur Strathern
Office of the General Counsel
U.S. Immigration & Naturalization Service

Arthur Strathern, *for defendants*
Per fax authorization

IT IS SO ORDERED

Dated: December 7, 2001.

UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE BY MAIL

I, Carlos Holguin, declare and say as follows:

1 I am over the age of eighteen years and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 South Occidental Boulevard, Los Angeles, California 90057, in said county and state

2 On December 7, 2001, I served the attached STIPULATION on defendants in this proceeding by placing a true copy thereof in a sealed envelope addressed to their attorneys of record as follows:

Arthur Strathern
Office of the General Counsel
U.S. Immigration & Naturalization Service
425 I St. N.W.
Washington, DC 20536

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between the place of mailing and the place so addressed.

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

Executed this 7th day of December, 2001, at Los Angeles, California

/ / /

EXHIBIT C

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

Case No.	**CV 85-4544 DMG (AGRx)**	Date	June 27, 2017
Title	***Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al.***	Page	1 of 34

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

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	Attorneys Present for Defendant(s)
None Present	None Present

Proceedings: IN CHAMBERS - ORDER RE PLAINTIFFS' MOTION TO ENFORCE AND APPOINT A SPECIAL MONITOR [201, 202]

I.
INTRODUCTION

On July 24, 2015, the Court found that Defendants Jeh Johnson and the U.S. Department of Homeland Security ("DHS") and its subordinate entities, U.S. Immigration and Customs Enforcement ("ICE") and U.S. Customs and Border Protection ("CBP") had breached the settlement agreement (the "Agreement") that they had reached with Plaintiff Jenny L. Flores and other class members—accompanied and unaccompanied minors—in 1997. *Flores v. Johnson*, 212 F. Supp. 3d 864 (C.D. Cal. 2015) ("July 24, 2015 Order"). The Court subsequently gave Defendants an opportunity to respond to the Court's proposed remedies. On August 21, 2015, the Court issued its remedial order. *Flores v. Lynch*, 212 F. Supp. 3d 907 (C.D. Cal. 2015) ("August 21, 2015 Order"). Defendants appealed.

On July 6, 2016, the Ninth Circuit issued its opinion, affirming the district court in part and reversing in part. In particular, the Ninth Circuit concluded that while "the Settlement unambiguously applies both to accompanied and unaccompanied minors," it "does not create affirmative release rights for parents." *Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016).

Before the Court is Plaintiffs' motion to enforce the Agreement. ("Pl. Mot.") [Doc. ## 201, 202.] According to Plaintiffs, Defendants are in breach of the Agreement by (1) continuing to detain class members in deplorable and unsanitary conditions in CBP facilities (also referred to as "Border Patrol Stations"); (2) failing to advise class members of their rights under the Agreement; (3) failing to make and record ongoing efforts aimed at release or placement of class members; (4) detaining class members for weeks or months in secure, unlicensed facilities; (5) commingling class members with unrelated adults for extend periods; and (6) interfering with class members' right to counsel. Plaintiffs request that the Court appoint a special monitor to ensure Defendants' compliance with the Agreement. Defendants filed an

opposition. ("Def. Resp.") [Doc. # 208.] They then filed a motion for an evidentiary hearing, which the Court granted in part and denied in part. ("October 7, 2016 Order") [Doc. # 274.]

The Court in its October 7, 2016 Order stated that it would hold a January 30, 2017 evidentiary hearing on four of the six issues Plaintiffs identified. *Id.* at 1. In response to the Court's order, Plaintiffs filed supplemental briefing as well as a Statement of Uncontroverted Facts. *See* ("Pl. Supp.") [Doc. # 287]; ("Plaintiff's SUF") [Doc. # 314]. In turn, Defendants filed a separate Statement of Genuine Disputes of Material Fact and a Second Supplemental Response in opposition to Plaintiff's motion. *See* ("Def. Sec. Supp. Resp.") [Doc. # 296]; ("Def. SGDMF") [Doc. # 297].

For the reasons discussed below, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' motion to enforce and appoint a special monitor.[1]

II.
LEGAL STANDARD

A. Burden of Proof – Preponderance of the Evidence

"The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally." *O'Neil v. Bunge Corp.*, 365 F.3d 820, 822 (9th Cir. 2004) (internal citations and quotation marks omitted); *Adams v. Johns-Manville Corp.*, 876 F.2d 702, 704, 709 (9th Cir. 1989) ("Under California law, settlement agreements are governed by general principles of contract law. . . . The motion to enforce the settlement agreement essentially is an action to specifically enforce a contract."); July 24, 2015 Order, 212 F. Supp. 3d at 870. Under state law, courts apply the preponderance of the evidence standard to motions to enforce settlement agreements. *See Buss v. Superior Court*, 16 Cal. 4th 35, 54 (1997) (preponderance of the evidence standard applies to "contractual causes of action") (citations omitted).

According to Defendants, the Court should use a clear and convincing standard. The cases that Defendants cite apply this higher burden of proof to civil contempt actions. *See, e.g.*, *Kelly v. Wengler*, 822 F.3d 1085, 1096 (9th Cir. 2016) ("The district court found by clear and convincing evidence that [defendant] was in civil contempt because it violated the settlement

[1] Due to the numerous issues raised by the parties and the voluminous record presented, consisting of over 100 declarations and deposition excerpts, the Court will summarize the facts as necessary as it addresses the parties' various claims.

agreement and had failed to take all reasonable steps to comply."). As Defendants put it, "because Plaintiffs' motion to enforce the Agreement amounts to a request for civil sanctions against Defendants, . . . the Court should require Plaintiffs to establish any violation of the Agreement under the clear and convincing standard." Def. Sec. Supp. Resp. at 4 (citations omitted).

The Court disagrees. Plaintiffs make no attempt to hold Defendants in civil contempt. Pl. Supp. at 24 ("Plaintiffs do not seek a contempt ruling against Defendants."); *cf. Labor/Cmty. Strategy Ctr. v. L.A. Cty. Metro. Transp. Auth.*, 564 F.3d 1115, 1123 (9th Cir. 2009) (moving party in motion for contempt must show alleged party in contempt violated court order by clear and convincing evidence). Plaintiffs' motion asserts breach of contract and seeks enforcement of the Agreement.

The Court therefore will apply the preponderance of the evidence standard to Plaintiffs' motion to enforce.

B. Substantial Compliance

"Like terms in a contract, distinct provisions of consent decrees are independent obligations, each of which must be satisfied before there can be a finding of substantial compliance." *Rouser v. White*, 825 F.3d 1076, 1081 (9th Cir. 2016). "Substantial compliance" means more than "taking significant steps toward compliance" with a consent decree. *Id.* at 1082. In California, "a party is deemed to have substantially complied with an obligation only where any deviation is 'unintentional and so minor or trivial as not substantially to defeat the object which the parties intend to accomplish.'" *Id.* (quoting *Wells Benz, Inc. v. U.S. for Use of Mercury Elec. Co.*, 333 F.2d 89, 92 (9th Cir. 1964) (citation and some quotation marks omitted)). "This standard doesn't require perfection. . . . Deviations are permitted so long as they don't defeat the object of the decree." *Id.* (citation omitted).

Defendants contend that if Plaintiffs satisfy their burden to show breach of the Agreement, the burden then shifts to the government to demonstrate that it substantially complied with the Agreement. Substantial compliance with a court order, however, is typically a "*defense* to an action for civil contempt." *Balla v. Idaho State Bd. of Corr.*, 869 F.2d 461, 466 (9th Cir. 1989) (emphasis added) (citation omitted). As discussed above, Plaintiffs do not bring a civil contempt action.

Nonetheless, Plaintiffs appear to agree that they must show Defendants "have not demonstrated 'substantial compliance' as required by Paragraph 30 of the Flores Agreement."

Pl. Supp. at 24 ("The appropriate governing standard is substantial compliance by a preponderance of the evidence."); *cf. Jeff D. v. Otter*, 643 F.3d 278, 283–84 (9th Cir. 2011) ("Because consent decrees have many of the attributes of ordinary contracts [and] . . . should be construed basically as contracts, the doctrine of substantial compliance, or substantial performance, may be employed.") (internal citation and quotation marks omitted). Indeed, as Plaintiffs point out, there is a particular provision of the Agreement that explicitly bears on the "substantial compliance" inquiry. *See* Agreement ¶ 30 ("the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement") [Doc. # 101 at 8].

As such, the Court will apply the preponderance of the evidence standard to the issue of whether Plaintiffs have demonstrated that Defendants have failed to substantially comply with certain provisions of the Agreement.

III.
EVIDENTIARY OBJECTIONS AND REQUEST FOR JUDICIAL NOTICE

Plaintiffs interpose no evidentiary objections, arguing instead that Defendants' evidence presents no genuine dispute of material facts that would require live in-court testimony in an evidentiary hearing. Defendants raise numerous objections to Plaintiffs' evidence, submitting two sets of objections. *See* Doc. ## 217-5, 296-1. As to the first set of objections, the Court incorporates its rulings from its January 24, 2017 Order. [Doc. # 320.] With regard to Defendants' second set of objections, the Court does not address objections pertaining to facts it deems immaterial to the resolution of the motion. Rather, the Court addresses these objections only to the extent it deems it necessary.

A. Defendants' Objection to Declaration and Deposition Testimony

As an initial matter, Defendants "object to the Court's consideration of inadmissible out of court statements made by witnesses who were not produced for examination at the [January 30, 2017 evidentiary] hearing." Def. Statement Regarding Witnesses at 1 [Doc. # 327]. In effect, Defendants object to all of Plaintiffs' witness declarations and deposition evidence "on the ground that Plaintiffs are not making these witnesses available for cross-examination [at the January 30, 2017 hearing]." *Id.* at 2. Defendants also object to the consideration of declaration and deposition evidence from Plaintiffs' witnesses "without the opportunity to show bias on the part of the witness through cross examination or other means." *See, e.g.*, Def. Objections to Plaintiffs' SUF (Objection No. 9) at 4 [Doc. # 296-1].

The Court **OVERRULES** these objections. On more than one occasion, this Court has expressed that the January 30, 2017 evidentiary hearing would be "limited only to cross-examination and redirect examination of witnesses." *See* Evidentiary Hearing Order at 2 [Doc. # 274]. The Court gave the parties *three months* to allow depositions to be taken and made it known that it would rely on witness statements (i.e., declarations, deposition transcripts) submitted in advance in an effort to streamline the evidentiary hearing rather than requiring the parties to present over 100 witnesses from various parts of the country for direct examination. The Court also instructed the parties to designate those witnesses whose live testimony would be necessary.[2]

Still, Defendants argue, just as they did during the October 6, 2016 hearing that preceded the evidentiary hearing, that the Court must hear live testimony from all of Plaintiffs' witnesses in order to evaluate their credibility. Hearing Tr. dated Oct. 6, 2016, at 51–52. In a November 22, 2016 Joint Status Report, Defendants reiterated their position that "the Court simply cannot resolve such [factual] disputes without making an assessment of each witness's credibility. . . . This requires that the Court hear in-court testimony, rather than consider statements made in inadmissible declarations." *See* Doc. # 279 ("Nov. 22, 2016 Joint Status Report" at 10). The Court rejects Defendants' position. In fact, in bench trials, courts in this district routinely rely upon declarations and deposition testimony in lieu of in-court direct examination, reserving in-court testimony only for cross-examination and redirect.

In the final analysis, Defendants failed to designate which witnesses they wished to cross-examine at the January 30, 2017 evidentiary hearing. Instead, Defendants requested that the "Court clarify that the Federal Rules of Evidence will apply at the January 30, 2017 evidentiary hearing, and that Plaintiffs will be required to establish their claim of breach based on admissible evidence, in accordance with those Rules." *Id.* at 10–11. In contrast, Plaintiffs explicitly stated that they did not "intend to call witnesses for cross-examination" and instead would "rely upon uncontested facts" on the record. *Id.* at 1.

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[2] At an October 6, 2016 Hearing, the Court clarified the following regarding the forthcoming evidentiary hearing:

> You [Defense Counsel Sarah Fabian] and [Plaintiffs' counsel Peter] Schey or the plaintiff's team can meet and confer regarding which witnesses need to actually show up for an evidentiary hearing, which can be sufficient with the use of declarations and depositions, and then you shall file a joint status report regarding the results of your meet and confer as to how you envision the evidentiary hearing to proceed and how many defendant's or plaintiff's witnesses are going to be showing up for live testimony, if any.

Hearing Tr. dated Oct. 6, 2016, at 54.

By failing to designate witnesses for cross-examination, Defendants waived their right to cross-examine all of Plaintiffs' witnesses in court. Plaintiffs submitted the evidence on which they expected to rely in connection with their Statement of Uncontroverted Facts. Contrary to Defendants' position, it was not Plaintiffs' responsibility to designate which witnesses they wished to have testify at the evidentiary hearing. Rather, it was incumbent upon Defendants to identify the witnesses they intended to cross-examine. *See* Hearing Tr. dated Oct. 6, 2016 at 59 (The Court: "[I]f there is an issue of credibility, it should be done during cross-examination. So no one should have direct testimony. We'll already have had tons of direct testimony from your declarations and from depositions." . . . Mr. Schey: "Okay. And so it's plaintiffs deciding who of the defendant's people they want to cross-examine and defendant's deciding who of plaintiff's people.").

B. Defendants' Other Blanket Objections

Defendants make blanket objections to 90 deposition excerpts and declarations presented by Plaintiffs. Defendants list—by page or paragraph number—numerous passages or paragraphs within each deposition excerpt or witness statement. Yet, Defendants fail to identify which of the multiple objections identified per declaration/deposition applies to which passage. Instead, Defendants repeatedly copy and paste the same overbroad "boilerplate recitations" regarding, for instance, hearsay, bias, or foundation for all of the passages within the same witness statement.

The Court will not parse through each declaration or transcript and try to determine which statements Defendants believe constitute hearsay or lack foundation, and then decide whether any hearsay exceptions apply or if a proper foundation has been laid. *See, e.g.*, *Stonefire Grill, Inc. v. FGF Brands, Inc.*, 987 F. Supp. 2d 1023, 1033 (C.D. Cal. 2013) ("All of the parties' objections are boilerplate recitations of evidentiary principles or blanket objections without analysis applied to specific items of evidence. . . . On this basis alone, the Court will not scrutinize each objection and give a full analysis of identical objections raised as to each fact.") (citation and internal quotation marks omitted).

The Court therefore **OVERRULES** Defendants' myriad blanket hearsay and foundation objections. That being said, the Court has applied the Federal Rules of Evidence and has relied upon only evidence it deems admissible. To the extent that the Court relies on Plaintiffs' facts, it **OVERRULES** Defendants' blanket objections that those facts are irrelevant.

Finally, the Court **DENIES** as moot *Amici Curiae* American Immigration Council and American Immigration Lawyers Association's request for judicial notice of the Report of the

Department of Homeland Security Advisory Committee on Family Residential Centers. [Doc. # 286.] The Court did not rely upon this report in its analysis below.

IV.
DISCUSSION

A. Border Patrol Station Conditions

In its July 24, 2015 Order, this Court found that "[i]n light of the voluminous evidence that Plaintiffs have presented of the egregious conditions of the holding cells [at Border Patrol Stations], . . . Defendants have materially breached the Agreement's term that Defendants provide 'safe and sanitary' holding cells for class members while they are in temporary custody." 212 F. Supp. 3d at 882. The Court referred to Paragraph 12A of the Agreement, which provides that class members shall be held in "safe and sanitary" facilities following arrest. Such CBP facilities, where class members spend one to several nights before transfer to a family residential center (accompanied minors) or to the Office of Refugee Settlement (unaccompanied minors), must "provide access to toilets and sinks, drinking water and food as appropriate, . . . [and] adequate temperature control and ventilation." Agreement ¶ 12; *see also* 6 U.S.C. § 279. The conditions at these facilities must also be "consistent with the INS's concern for the particular vulnerability of minors." Agreement ¶ 12A.

At the time of the Court's July 24, 2015 Order, Defendants relied solely on their Hold Rooms and Short Term Custody Policy as well as a single declaration from a Border Patrol officer to support their position that they satisfied the Agreement's standards. 212 F. Supp. 3d at 881–82. Moreover, they argued that it would be impossible for them to provide the same level of care at the Border Patrol stations that they offered at longer-term facilities due to the short duration of stay at the Border Patrol stations and the large volume of individuals that pass through. *Id.*

Here, Plaintiffs argue that Defendants continue to detain class members in deplorable and unsanitary conditions in violation of the Agreement. Plaintiffs present voluminous testimony from class members in the form of declarations and deposition excerpts, which attest to the unsafe and unsanitary conditions at the CBP facilities in five different categories: (1) inadequate food; (2) inadequate access to clean drinking water; (3) inadequate hygiene (bathrooms, soap, towels, toothbrushes); (4) cold temperatures; and (5) inadequate sleeping conditions.

Though Plaintiffs have submitted a plethora of detainee declarations in support of their motion, the Court notes that the overwhelming majority of them come from detainees who

stayed at CBP stations located within the Rio Grande Valley Sector ("RGV Sector"). One or two declarations from detainees located within other sectors that span over one hundred miles and have multiple CBP stations is not enough to satisfy the preponderance of the evidence standard regarding the conditions at those facilities.

As such, the Court limits its discussion of conditions and the scope of any resultant monitoring to those CBP facilities located within the RGV Sector, rather than the CBP facilities at the other sectors.[3] While the Court certainly did not limit the scope of its August 21, 2015 Order in this way, there is insufficient evidence to suggest that any other CBP stations in locales outside of the RGV Sector have failed to comply with the Court's earlier order that they should "comply with the Agreement and Defendants' own acknowledged standards and procedures." 212 F. Supp. 3d at 915.

As discussed below, however, there is ample evidence that CBP stations in the RGV Sector must be brought into compliance with the Agreement and Defendants' existing standards.

1. Access to Food

Recent detainees assert that Defendants failed to provide them with adequate access to food. In addition to food standards under the Agreement, Plaintiffs point to the CBP National Standards on Transport, Escort, Detention, and Search ("TEDS Manual"), which lays out standards for meals and snacks for class members in detention. Def. Supp., Ex. 30 ("TEDS Manual") [Doc. # 298-2]. According to the CBP's own standards, minors "will be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot." TEDS Manual § 5.6. Additionally, the food provided "must be in edible condition (not frozen, expired, or spoiled)" and minors "must have regular access to snacks, milk, and juice." *Id.* §§ 4.13, 5.6.

Despite the TEDS Manual standards and Paragraph 12A of the Agreement, many detainees attested to, among other things, not receiving hot, edible, or a sufficient number of meals during a given day spent at a CBP facility. *See, e.g.*, Declaration of Walter A. ("Walter A Decl.") ¶¶ 5–6 ("The only food we got was sandwiches of 2 pieces of dry bread and one thin

[3] There are nearly a dozen U.S. Border Patrol Sectors along the southern border. *See* Doc. # 299-7 (map depicting sectors and locations of CBP stations throughout the United States). Plaintiffs contest neither the map nor Defendants' document identifying the locations of where Plaintiffs' declarants/deponents were detained. *See* Doc. # 299-6. Plaintiffs' handful of non-RGV-Sector declarations come only from the Del Rio Sector, the Laredo Sector, and the El Paso Field Office. *Id.*

slice of ham and a small box of juice. We were fed three times over the two days we were there. We were hungry, very cold, scared, and unable to sleep.") [Doc. # 202-1 at 58]; Deposition of Karina V. ("Karina V. Depo.") at 28 (she and her three-year old son were offered a "sandwich with frozen ham" with "a kind of ice under the bread" as the first meal) [Doc. # 287-4]; Declaration of Karina V. ¶ 7 ("Karina V. Decl.") (stating son got diarrhea within an hour of eating the sandwich) [Doc. # 342-5 at 37]; Declaration of Franklin R. ("Franklin R. Decl.") ¶ 8 (received "a cookie for breakfast, a sandwich (2 pieces of bread with one thin slice of meat) for lunch, and another cookie for dinner. I was very hungry all day because this was not enough food.") [Doc. # 202-2 at 40].

Defendants dispute Plaintiffs' evidence. To support their argument, Defendants rely upon the declaration or deposition testimony of chief patrol agents of the various CBP Sectors[4], CBP field operations directors, and other officials in leadership positions within ICE and CBP. These witnesses generally discuss the policies and practices at the CBP stations. *See e.g.*, Declaration of Manuel Padilla, Jr. ("Padilla Decl.") ¶¶ 46–48 (Chief Patrol Agent for the RGV Sector describing policy to provide scheduled meals to class members and what they consist of) [Doc. # 211-1]. Such witnesses also highlight contracts with third party entities that address certain CBP conditions. *See, e.g.*, *id.* ¶ 46 (describing RGV Sector's contract with Deployed Resources LLC to provide for a "menu conforming to a culturally Hispanic diet" and that "[p]ursuant to the statement of work, the meals provided must meet Texas Department of Agriculture Food & Nutrition guidance and additional quality control requirements") (internal quotation marks omitted).

None of this generalized evidence, however, undermines the veracity of Plaintiffs' first-hand experiences. Defendants repeat what they did before in response to Plaintiffs' 2015 Motion to Enforce: point to their own policies and practices. But "[t]he mere existence of those policies tells the Court nothing about whether those policies are actually implemented, and the current record shows quite clearly that they were not." July 24, 2015 Order, 212 F. Supp. 3d at 881–82.

Defendants do introduce data logs from a CBP computer system known as the e3 Detention Module ("e3DM"), which allows Defendants to track and monitor when Border Patrol agents have provided certain detainees with meals, water, and other amenities. Declaration of David Strange ("Strange Decl.") ¶¶ 2–3 [Doc. # 344-2]. Defendants cite to the e3DM logs for a

[4] Defendants submitted a map depicting over 100 CBP stations, with each station being part of a larger "sector." *See* Doc. # 299-7. In Texas, for instance, there exists the RGV Sector, the Big Bend Sector, the Del Rio Sector, and the Laredo Sector. In contrast, New Mexico has only one sector—the El Paso Sector. Each sector contains a certain number of CBP stations.

handful of detainees to show that the records contradict their statements as to the number of meals received and whether they were served hot or cold. *See* Def. Resp. at 11–12.

There are several problems associated with the activity logs that undermine their reliability. For example, they do not identify the type of meal provided. The logs also show that some detainees went for extended periods (e.g., 11 hours) without food, which Defendants themselves admit is an error. *See, e.g.*, Strange Decl., Ex. F (arrest time of 1:00 p.m. for Dina P., Alison A., Anderson A., Susan A. with first meal not served until 12:10 a.m. the following day); *id.*, Ex. A (arrest time of 5:15 a.m. for Franklin C. with first meal not served until 3:22 p.m.); *id.*, Ex. I (arrest time of 2:00 p.m. for Jenyffer G. and Angel T. with first meal not served until 2:00 a.m. the following day); Deposition of Manuel Padilla, Jr. ("Padilla Depo") at 26–27 [Doc. # 287-1 at 31].[5]

Defendants fail to explain these time-gap discrepancies or what efforts, if any, they undertook to monitor the accuracy of the records entered. *See* Deposition of Paul Beeson at 45–46 (Chief Patrol Agent of Tucson Sector answered "No" when asked if he was aware of what training agents undergo with respect to inputting data into the e3DM system or what efforts exist to monitor the accuracy of meal records entered) [Doc. # 287-1 at 73]. At oral argument, when the Court asked government counsel to address the discrepancies Plaintiffs raised with respect to activities entered in the e3DM logs, counsel merely reiterated Defendants' policy of feeding children snacks every three hours and attributed the errors to e3DM being a "new" system rolled out with "new monitoring procedures" that would require some time "before agents are . . . fully compliant." Hearing Tr. dated Jan. 30, 2017, at 40.

In any event, to the extent some discrepancies exist between a detainee's claim regarding the frequency and quality of food and the corresponding e3DM log, Defendants only point to a small number of discrepancies.[6] *See* Def. Resp. at 11-12. This pales in comparison to the large

[5] During Padilla's telephonic deposition, Defense counsel objected to questioning from Plaintiffs regarding these e3DM documents on grounds of foundation—Plaintiffs apparently failed to send the documents in advance to Defense counsel so that the witness could view the documents concurrently with the examination. Padilla stated that without the e3DM documents in front of him, he could not determine if the time-gap discrepancies resulted from a "system error or input error or what caused that anomaly." Padilla Depo. at 26–27. The Court will nonetheless accept Padilla's answer that the apparent 10 to 12 hour periods without food is, at a minimum, an error of some sort related to the inputting of the data onto the e3DM system or the e3DM system itself.

[6] Even with these limited examples, not all of the e3DM records show that the detainee's statements are inaccurate or misleading. For instance, Defendants argue that the e3DM record contradicts Franklin R's claim that he received only two cookies and one ham sandwich during his first day in CBP custody. *See* Franklin R. Decl. ¶ 8 ("The first day that I was there they gave me a cookie for breakfast, a sandwich (2 pieces of bread with one thin slice

volume of statements by detainees who described receiving inadequate food. In short, the Court does not find that Defendants' e3DM records undermine the credibility of the detainee statements presented regarding the frequency and quality of the food Defendants served them.

Given the above, the Court finds that Plaintiffs' have satisfied their burden of establishing Defendants' substantial non-compliance with the Agreement and **GRANTS** Plaintiffs' motion to enforce as to the RGV Sector on the issue of adequate access to food.

2. Access to Clean Drinking Water

Plaintiffs proffer evidence that child detainees had no adequate access to clean drinking water. Under the CBP's standards, "[f]unctioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." TEDS Manual § 4.14. But Plaintiffs present testimony that recent detainees drank water that tasted dirty and did not have access to clean drinking cups. *See, e.g.*, Franklin R. Decl. ¶ 8 ("The officials put a container with water in our room and gave us one cup to share amongst the 20 people in my cell. The water tasted very bad and the container was not clean. Very few minors held in my cell were willing to drink the water."); Declaration of Bianca C. ¶ 11 ("The water they have given me tastes dirty, so I have not drank water since arriving.") [Doc. # 202-2 at 10]; Declaration of Josselyn M. ("Josslyn M. Decl.") ¶ 13 ("The water tastes like chlorine.") [Doc. # 202-2 at 72]; Declaration of Alexander Mensing ("Mensing Decl.") ¶ 6, Ex. P (Declaration of Rosemary Y.) ¶ 18 ("We had to share a cup among all the women and children – about 20 people – and the water hurt my stomach.") [Doc. # 342-5].

In response, Defendants again point to their general policies and practices and contracts with third party providers. *See, e.g.*, Padilla Decl. ¶¶ 56–57 ("the holding rooms in the Rio Grande Valley each have sport style five gallon water coolers . . . with disposable cups made available to detainees"). This does not contradict the specific detainee statements provided by

of meat) for lunch, and another cookie for dinner"); Def. Resp. at 11 ("Border Patrol records indicate that he was provided ten meals in the just over 48 hours he was in custody"). But an examination of the e3DM record for this detainee shows he was arrested on January 22, 2016 at 5:15 a.m. Strange Decl., Ex. A. Within the next 24 hours, Defendants' own record indicates that Franklin R. received his first meal at 3:22 p.m. (1522) and a second meal at 11:36 p.m. (2336). *Id.* He received his third meal on January 23, 2016 at 7:16 a.m. *Id.* The e3DM record does not contradict Franklin R.'s declaration that he received two cookies and a ham sandwich as the Defendants' records do not indicate what type of meal they served detainees. If anything, based on Defendants' position at oral argument, they would probably suggest that another "anomaly" occurred with the data entry because Franklin R.'s e3DM record suggests he was not fed for a 10-hour period following apprehension.

Plaintiffs. *See infra*, section IV.A.1. Indeed, Defendants have not offered evidence based on records or a witness' personal knowledge to contradict the specific accounts by Plaintiffs' witnesses of inadequate water, both in quality and availability, during their CBP-facility detention.

The Court therefore finds that Plaintiffs have satisfied their burden of establishing Defendants' substantial non-compliance with the Agreement and **GRANTS** Plaintiffs' motion to enforce as to the RGV Sector on the issue of inadequate access to water.

3. Unsanitary Conditions

Recent detainees describe unsanitary conditions at the CBP facilities in the RGV Sector. According to CBP standards, "[a]ll facilities or hold rooms used to hold detainees must be regularly and professionally cleaned and sanitized"; detainees "must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs"; "[d]etainees using the restroom will have access to toiletry items, such as toilet paper and sanitary napkins," and, whenever "operationally feasible," soap; and minors would be provided with clean bedding. TEDS Manual §§ 4.6, 4.11, 4.12. Moreover, CBP agents would enable detainees to shower where they are available, "perform bodily functions, and change clothing without being viewed by staff of the opposite gender . . . ." *Id.* § 4.6.

There is an apparent disconnect between the CBP's standards and class members' experiences, all of whom describe unsanitary conditions with respect to the holding cells and bathroom facilities, and lack of privacy while using the restroom, access to clean bedding, and access to hygiene products (i.e., toothbrushes, soap, towels). *See, e.g.*, Declaration of Celina S. ("Celina S. Decl.") ¶ 8 ("There was an open toilet in the room [of 50 people] with no toilet seat for everyone to use. Everyone could see if we were using the toilet.") [Doc. # 202-1 at 77]; Karina V. Depo. at 25–27 (describing having to sleep on the holding room's concrete floor, which was "dirty" with "soil from outside," having no access to a sink to wash hands, and being given one aluminum sheet to share with her son during sleep) [Doc. # 287-4]; Mensing Decl., Ex. O, Declaration of Ritza M. ¶ 8 ("In the bathroom there was no soap to wash my hands or space to shower.") [Doc. # 342-5]; *id.* ¶ 5 (describing having to stay in wet clothes (from crossing through river) during entire stay at the CBP facility); Declaration of Yessenia E. ("Yessenia E. Decl.") ¶ 6 (no soap, no brush, no change of clothes, no pillows or blankets, and no toothbrushes for three days) [Doc. # 202-1 at 74].

Defendants' reliance on their policies, practices, and third party contracts on this issue of unsanitary conditions again fails to controvert Plaintiffs' first-hand accounts. *See, e.g.*, Padilla

Decl. ¶ 60 ("Rio Grande Valley Sector has multiple contracts covering the cleaning needs for the stations throughout the sector . . . [including] with TRDI Inc. and Ace Communications"); *see supra*, section IV.A.1.

On the specific issue of hygiene products, Defendants argue that the Agreement does not require them to provide class members with soap, towels, showers, dry clothing, or toothbrushes. According to Defendants, "If Plaintiffs wish to . . . assert that certain hygiene items or clothing items must be provided, they must do so in a new lawsuit." Def. Sec. Supp. Resp. at 14. The Agreement certainly makes no mention of the words "soap," "towels," "showers," "dry clothing," or "toothbrushes."

Nevertheless, the Court finds that these hygiene products fall within the rubric of the Agreement's language requiring "safe and sanitary" conditions and Defendants' own established standards.

Defendants argue that they have shown as a matter of policy and practice that they provide class members at CBP facilities with soap, toothbrushes, toothpaste, and access to showers "to the greatest extent possible." Def. Sec. Supp. Resp. at 16. The evidence that they cite pertains primarily to conditions at CPC-Ursula[7], a CBP facility located within the RGV Sector in Texas.

According to the Chief Patrol Agent Padilla of the RGV Sector, "[a]lthough not all stations in RGV Sector have shower and laundry facilities available, approximately 93% of the juveniles apprehended in the RGV Sector are transferred following their processing to CPC-Ursula where shower and laundry services are provided to all detainees." Padilla Decl. ¶ 68. Class members in the RGV Sector are transferred, on average, to CPC-Ursula "within approximately 33 hours of apprehension and processing." *Id.* This is consistent with many of Plaintiffs' class member declarations from the RGV Sector who report being transferred to a second facility—albeit not always within 33 hours—before being taken to a longer-term family residential center. *See, e.g.*, Yessenia E. Decl. ¶¶ 6, 9 (spending three days at the McAllen CBP station before being transferred to another facility that detainees called "*La Perrera*"[8] where she could shower for the first time since being taken into custody, and then to the family residential center at Dilley). At CPC-Ursula, detainees have "an opportunity to shower, have their clothes laundered, and receive a change of new clothes." Padilla Decl. ¶ 71; *see id.* ¶¶ 73 ("The change

[7] CPC refers to "Centralized Processing Center." *See* Declaration of Todd Owen ¶ 7 [Doc. # 208-3].

[8] Detainees in the record often refer to CPC-Ursula as *la perrera* or "the dog house."

of clothing Border Patrol provides to the juveniles at CPC-Ursula consists of shirts, sweat pants, socks, and undergarments."), 74 ("juveniles at CPC-Ursula are provided their laundered clothes in a property bag that transfers with them upon release or transfer to ORR or ICE"). Padilla also states that class members at CPC-Ursula are provided with "a hygiene kit consisting of a towel, toothbrush, toothpaste, mouthwash, soap, and shampoo." *Id.* ¶ 75.

This evidence of Defendants' policies and practices at CPC-Ursula, however, does not undermine the credibility of the assertions made by numerous class members regarding the lack of hygiene products at the other stations. *See also, e.g.*, Declaration of Sara E. ("Sara E. Decl.") ¶¶ 6–8 (throughout two days at a CBP station in Welasco, Texas and a third day at another CBP station, her daughter "was not able to shower, wash or change underwear or clothes" and was not given the opportunity to brush teeth) [Doc. # 202-1 at 65]; Yessenia E. Decl. ¶ 6 ("For three days [at McAllen station] we were given no soap to wash, no toothbrushes to brush our teeth, no paper towels to dry our hands when we washed our hands, nothing to brush our hair, no change of underwear or clothes, no pillows or blankets and no beds to sleep in."). Even assuming that the 93 percent transfer figure is correct—and Plaintiffs do not appear to challenge Padilla's estimate—that still leaves approximately seven percent of potentially thousands of class members who do not make it to CPC-Ursula within the 33-hour window.

More significantly, Plaintiffs present uncontroverted declarations from detainees who, even while at CPC-Ursula, never received either soap, toothbrushes, towels, or showers. *See, e.g.*, Declaration of Dina R. ¶ 5 ("We were not able to bathe in the *hielera* or the *perrera*. We were dirty the whole time.") [Doc. # 342-5 at 61]; Sara E. Decl. ¶¶ 6–8 (her daughter "was not able to shower, wash or change underwear or clothes" and not given the opportunity to brush teeth); Declaration of Denis A. ¶ 13 ("We had no opportunity to bathe while we were in the *hieleras* or the *perrera*, so we were unable to bathe for three days until we got to the detention center [at Dilley]") [Doc. # 342-5 at 106].

Even the deposition excerpts identified by Defendants in their Statement of Genuine Dispute of Material Fact to challenge Plaintiffs' facts about the hygiene products fail to undermine the credibility of class members' statements. *See* Deposition of Franklin C. at 17 (did not receive soap, but did receive paper towels and a toothbrush), 21 (testified to receiving a shower at the Karnes family residential center) [Doc. # 344-5 at 1]; Deposition of Mirna G. at 18–19 (cell did not have soap with the sink but there were paper towels) [Doc. # 344-8].[9]

[9] Defendants further identify the declaration of Chief Patrol Agent of the Del Rio Sector Matthew J. Hudak and the declaration of Hector A. Mancha Jr., the Director of Field Operations for the CBP in El Paso, Texas. The

Defendants also present three exhibits from the Strange Declaration, which consist of e3DM forms. While some of these forms list "Shower Provided" to Nathaly R. (daughter of Sara E.), Franklin C., and Dina R's three children—Alison, Anderson, Susan—the Court will not rely on this data for the same reasons already discussed above with regard to the e3DM forms' reliability issues. *See supra* section IV.A.1. Moreover, the "Station/Facility" box on these activities logs has been left blank such that the Court is unable to discern to which facility the forms apply.

In light of the discussion above, the Court finds that, at a minimum, Plaintiffs have satisfied their burden of establishing Defendants' substantial non-compliance with the Agreement at all non-CPC-Ursula CBP stations located within the RGV sector and **GRANTS** Plaintiffs' motion to enforce the Agreement on the issue of unsanitary conditions as to those stations. Because there is some evidence, albeit to a lesser degree, of non-compliance at CPC-Ursula—not just on the issue of unsanitary conditions but also other conditions identified by Plaintiffs—monitoring of that station is nonetheless warranted. *Cf. Unknown Parties v. Johnson*, 2016 WL 8188563, at *12 (D. Ariz. Nov. 18, 2016) ("Given the evidence of noncompliance related to conditions of sanitation, compliance monitoring is warranted.").

4. Cold Temperatures

Plaintiffs present evidence that recent child detainees experienced extremely cold temperatures at the CBP stations. Just like the declarants cited in the Court's July 24, 2015 Order, many continue to describe the CBP facilities as *hieleras* or "iceboxes." *See, e.g.*, Declaration of Julissa H. ("Julissa H. Decl.") ¶ 2 ("Immigration officials brought me to the *hielera*, where we were held for two days.") [Doc. # 342-5 at 31]; July 24, 2015 Order, 212 F. Supp. 3d at 880. Even though CPB standards require Border Patrol officers to "maintain hold room temperature within a reasonable and comfortable range for both detainees and officers/agents," TEDS Manual § 4.7, numerous declarants describe great discomfort with the cold temperatures. *See, e.g.*, Julissa H Decl. ¶ 4 (describing that five-year-old son was "shaking" from the cold air conditioning and only had an aluminum blanket to cover himself); Declaration of Kenia G. ¶ 8 (detained in "freezing cold" cell with two-year old daughter who wore wet pants and a wet diaper and used only "[t]he silver paper they gave us to cover her body") [Doc. # 202-2 at 6]; Celina S. Decl. ¶ 5 ("The cell was extremely cold very crowded. I believe that as more people came into the room, the air conditioners were turned up."); Declaration of Lindsay G. ("Lindsay G. Decl.") ¶¶ 4, 7 ("There were no beds, pillows, or blankets. I held [my three-year-old daughter] tight, wrapping my arms around her to keep her warm. . . . Her hands started to

Court did not consider this evidence, as the scope of this Order is limited to CBP stations located within the Rio Grande Valley Sector.

turn colors, she was so cold.") [Doc. # 202-1 at 100]. Furthermore, according to TEDS Manual § 4.7, "[u]nder no circumstances will officers/agents use temperature controls in a punitive manner."

Yet, Plaintiffs present evidence that officers lowered the temperature in response to detainee complaints. *See, e.g.*, Julissa H. Decl. ¶ 4 ("I asked the officers if they could turn down the air conditioning because the kids were getting very chilly, but after I asked they actually made it colder. . . . Sometimes the officers yelled to the kids to shut up because the children were crying so loud because of the cold."); Declaration of Mirna M. ¶ 4 ("We never got a mattress or a blanket, and it was very cold. The children began crying, and when they [sic] children cried they would turn the temperature down even further. We were completely unable to sleep because it was so cold. . . ."") [Doc. # 202-1 at 68].

On this cold-temperature issue, Defendants once again rely upon the declaration or deposition testimony of chief patrol agents to describe their policies and practices. *See, e.g.*, Padilla Decl. ¶ 67 ("Agents record if the temperature is within range (66–80 degrees Fahrenheit) or specifically note when the temperature is out of range."). The e3DM records also state entries for the temperature in some "comments" sections. *See, e.g.*, Strange Decl., Ex. F ("temp 73"). But this evidence does not contradict the large volume of specific accounts by Plaintiffs' witnesses that they experienced extreme discomfort with cold temperatures.

Accordingly, the Court finds that Plaintiffs have satisfied their burden of establishing Defendants' substantial non-compliance with the Agreement in the RGV Sector and **GRANTS** Plaintiffs' motion to enforce on the issue of adequate temperature controls at a reasonable and comfortable range.

5. Sleeping Conditions

Finally, with regard to sleeping conditions, Plaintiffs introduce recent detainee testimony attesting to conditions at the CBP stations—cold temperatures, overcrowding, lack of proper bedding (i.e., blankets, mats), constant lighting—that together "force [class members] to endure sleep deprivation." Pl. Mot. at 10; *see, e.g.*, Celina S. Decl. ¶ 8 ("At the border patrol station there were about 50 other people in our cell. It was so crowded there was barely room for everyone. My son and I were freezing. There were no beds, it was just a room with cement floors and benches. . . . We were not able to sleep."); Declaration of Silvia V. ¶ 4 ("[W]e are held in a cell with about thirty to forty other mothers and children. . . . The bright lights on the ceiling stay on all nights. We have no mattresses or pillows or blankets. We only have a thin silver foil paper to cover ourselves. . . . It is very hard to get any sleep because the floor is hard

and cold, the cell is very crowded, the lights are on and very bright, and children are crying and coughing all night long.") [Doc. # 202-2 at 77.]

Defendants argue that Plaintiffs' allegations relating to sleep presuppose requirements that do not exist in the Agreement. After all, the word "sleep" does not appear in the Agreement.

Nonetheless, whether Defendants have set up conditions that allow class members to sleep in the CBP facilities is relevant to the issue of whether they have acted in a manner that is consistent with "the INS's concern for the particular vulnerability of minors" as well as the Agreement's "safe and sanitary" requirement. *See* Agreement ¶ 12A; *see also* July 24, 2015 Order, 212 F. Supp. 3d at 880–82 (overcrowding at the CBP facilities, "which forced children to sleep standing up or not at all," contributed to finding that "Defendants have materially breached the Agreement's term that Defendants provide 'safe and sanitary' holding cells for class members while they are in temporary custody"). Plaintiffs have submitted a number of declarations attesting to the dismal conditions at the CBP facilities that make it difficult for class members to sleep. *See, e.g.*, Declaration of Ismar S. ¶ 5 (only place for detainee and seven-year-old daughter to sleep was on the floor, "[b]ut there were so many people in the room that there was not enough room for us all to lay down") [Doc. # 202-1 at 86]; Josslyn M. Decl. ¶ 10 ("The lights have been on since I got to this station. There are no beds or blankets here, just pieces of foil. I have slept on the concrete floor and a concrete bench that lines the wall. They are very cold."); Declaration of Sonia A. ¶¶ 3, 6 ("I had to sleep on the floor, because there wasn't enough space to lie down. There were about 35 or 40 people in the cell. We had to sleep sitting up, which was very difficult. . . . We [Sonia A. and son] arrived in wet, muddy clothes, and we were not given a change of clothes or underwear. The wet clothes made it even colder, more uncomfortable, and more difficult to sleep.") [Doc. # 202-1 at 109].

Defendants offer deposition excerpts from three detainees who state that they or their children were able to sleep while in CBP custody. *See* Def. SGDMF at 9 (citing Karina V. Depo. at 22 (McAllen)[10]; Lindsay L. Depo. at 14, 18 (CPC-Ursula); Zulma R. Depo. at 25 (CPC-Ursula) (stating her and her son slept at *la perrera*)[11]). They also submit testimony from Chief Patrol Agent Padilla that at the CPC-Ursula Border Patrol Station, Defendants provide detainees with mattresses. Padilla Decl. ¶ 89. Plaintiffs' own witness testimony from CPC-Ursula mentions conditions like the constant lighting, but ultimately do not state they could not sleep. *See, e.g.*, Declaration of Maria D. ¶ 7 (stating that "[t]he lights were kept on all night and there

[10] *See* Doc. # 299-6 (identifying Karina V as having been detained at McAllen CBP station).

[11] *See also* Doc. # 299-6.

were no windows" at the *perrera* but not discussing difficulty sleeping) [Doc. # 202 at 96]; *cf. id.* ¶ 6 (stating that at the *hielera* her son "barely slept" because of overcrowding, having to sleep on the floor, and no blankets). This evidence, however, does not undercut the credibility of the assertions made by numerous detainees regarding sleeping conditions at the other stations.

In sum, the Court finds that Plaintiffs' have satisfied their burden of establishing Defendants' substantial non-compliance with the Agreement at all non-CPC-Ursula CBP stations located within the RGV Sector on the issue of sleeping conditions. The Court therefore **GRANTS** Plaintiffs' motion to enforce the Agreement as to the sleeping conditions issue at non-CPC-Ursula stations within the RGV Sector. On the other hand, Plaintiffs have not met their burden of showing substantial non-compliance on this issue with respect to the CPC-Ursula station—in that limited respect, Plaintiffs' motion is **DENIED**.

B. Failure to Provide Three Advisals

According to Plaintiffs, Defendants routinely fail to advise class members of their rights under the Agreement. But in their motion, Plaintiffs fail to identify what part of the Agreement Defendants are failing to follow, and vaguely refer only to the "advisal of rights." Pl. Mot. at 11. The Agreement does not provide for "advisals of rights about the *Flores* case" *per se*.

In their response, Defendants point to Paragraph 24D, which requires Defendants to provide class members with three rights advisals: "(a) INS Form I-770, (b) an explanation of right of judicial review as set out in Exhibit 6 [("Notice of Right to Judicial Review")][12], and (c) the list of free legal services available in the district pursuant to INS regulations (unless previously given to a minor)."

To the extent Plaintiffs contend that Defendants have failed to substantially comply with Paragraph 24D(a), the Court finds that Plaintiffs have not satisfied their burden. Not only do

[12] A copy of Exhibit 6 is attached to the Agreement. It is entitled "Notice of Right to Judicial Review" and states the following:

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

See Exhibit 6, Doc. # 101 at 52.

Plaintiffs fail to provide sufficient evidence that Defendants have failed to distribute the Form I-770 to class members, Plaintiffs fail to explain to the Court what the Form I-770 is.

Defendants concede that they failed to comply with Paragraph 24D(b) at the time Plaintiffs filed their motion. Defendants admit that "the precise notice provided in Exhibit 6 to the Agreement is not provided to juveniles in family residential centers." Def. Resp. at 34. They go on to state, however, that in light of Plaintiffs' motion they are "working to implement a procedure to provide the notice" to class members and cite to the depositions of Juanita Hester, Valentine de la Garza, and Joshua Reid. *Id.*; *see* Deposition of Juanita Hester ("Hester Depo.") at 35–36 (Sept. 9, 2016) (the directive to distribute Exhibit 6 to juveniles issued "[s]everal months ago") [Doc. ## 262-3, 262-4]; Deposition of Valentin de la Garza ("de la Garza Depo.") at 43 (Sept. 9, 2016) (could not recall exactly when they started distributing Exhibit 6 to class members) [Doc. ## 262-1, 262-2]; Deposition of Joshua Reid ("Reid Depo.") at 12–13 (Sept. 12, 2016) (Exhibit 6 issued "sometime towards the end of July of 2016") [Doc. ## 262-5, 262-6].

To the extent Defendants contend that the intervening reforms render Plaintiffs' motion moot on this issue, they are incorrect. As the Court stated in its prior order, "[e]ven assuming Defendant's new policy complies with the Agreement, Defendants could easily revert to the former challenged policy as abruptly as they adopted the new one." July 24, 2015 Order, 212 F. Supp. 3d at 873 n.4; *see also McCormack v. Herzog*, 788 F.3d 1017, 1025 (9th Cir. 2015) ("A defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur."). As such, Defendants' most recent efforts to comply with Paragraph 24D(b), while laudable, do not render this part of the motion moot.

Finally, with regard to Paragraph 24D(c), the Court finds that Plaintiffs have provided sufficient evidence of substantial non-compliance, namely declarations from class members (or their parents) stating that they never received a list of legal counsel or services. *See, e.g.*, Yessenia E. Decl. ¶ 8 ("No one gave me a list of lawyers I could call. There was no list of lawyers or free legal aid programs to call posted anywhere that I could see."); Declaration of Cesia V. ¶ 8 (same) [Doc. # 202-1 at 82]; *see also* Lindsay G. Decl. ¶¶ 4, 10, 12 ("Since being placed in immigration custody [with her three-year-old daughter] I have not had access to a phone or been given the chance to make a phone call. . . . I have not been given a list of legal service providers"). Indeed, Paragraph 24D(c) goes hand-in-hand with the Notice of Right of Judicial Review (Exhibit 6), which states that "[i]f you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."

In summary, the Court **GRANTS** Plaintiff's motion to enforce Paragraph 24D with regard to the requirements that Defendants provide class members with a list of legal services and the Notice of Right of Judicial Review (Exhibit 6). The Court **DENIES** the motion with respect to the Form I-770 requirement for lack of evidence.

C. Efforts to Release Minors and Detainment in Secure, Licensed Facilities

As the Ninth Circuit has acknowledged, "[t]he [Flores] Settlement creates a *presumption in favor of releasing minors* and requires placement of those not released in licensed, non-secure facilities that meet certain standards." *Flores*, 828 F.3d at 901 (emphasis added).

Specifically, the Agreement requires ICE to (1) "release a minor from its custody without unnecessary delay" to a parent, a legal guardian, or other qualified adult custodian, except where the detention of the minor is required "either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others"; and (2) "[u]pon taking a minor into custody, . . . [to] make and record prompt and continuous efforts on its part toward family reunification and the release of the minor . . . ." Agreement ¶¶ 14, 18. Paragraphs 19 and 23 go on to state that when ICE does not release a minor pursuant to Paragraph 14, the minor shall be placed in a non-secure, licensed facility. *See* July 24, 2015 Order, 212 F. Supp. 3d at 877.

Here, Plaintiffs contend that Defendants refuse to "make and record continuous efforts" aimed at the release of class members. Moreover, they argue Defendants still fail to place class members in non-secure, licensed facilities, in violation of the Agreement.

1. Failure to Make Continuous Efforts to Release Minors

i. Expedited Removal Generally

According to Defendants, the Agreement does not require them to make and record continuous efforts to release accompanied minors who are in expedited removal proceedings because they are subject to mandatory detention. Def. Sec. Supp. Resp. at 17. Defendants contend that because class members who have been detained at the U.S.-Mexican border have been placed in "expedited removal" under section 235 of the Immigration and Nationality Act ("INA"), 8 U.S.C. section 1225(b)(1), they must be detained.

"Expedited removal proceedings provide a streamlined process by which U.S. officers can remove aliens who attempt to gain entry to the United States but are not admissible."[13] *United States v. Barajas-Alvarado*, 655 F.3d 1077, 1080 n.2 (9th Cir. 2011) (citing 8 U.S.C. § 1225(b)); *see also* August 21, 2015 Order, 212 F. Supp. 3d at 912 n.4. "The expedited removal statute, § 1225(b), provides that when an alien seeks admission to the United States after arriving at a port of entry and does not have entry documents, misrepresents the alien's identity or citizenship, or presents fraudulent identity or immigration documents, 'the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates an intention to apply for asylum . . . or a fear of persecution.' § 1225(b)(1)(A)(i)." *Barajas-Alvarado*, 655 F.3d at 1081. All detainees in expedited removal whose inadmissibility is being considered or who have been ordered removed "shall be detained" pending determination and removal, subject to a few exceptions. 8 C.F.R. § 235.3(b)(2)(iii); *see infra*, section IV.C.1.ii (discussing standards for parole).

If the undocumented detainee intends to seek asylum or expresses a fear of persecution, the expedited removal statute requires the immigration officer to refer the detainee for an interview with an asylum officer. 8 U.S.C. § 1225(b)(1)(A). If an asylum officer finds that the detainee does not have a credible fear of persecution, the detainee may request review by an immigration judge. 8 C.F.R. § 208.30(g). "Pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien *shall be detained*." 8 C.F.R. § 235.3(b)(4)(ii) (emphasis added); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Mandatory Detention—Any alien subject to the procedures under this clause *shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.") (emphasis added).

Even where an asylum officer determines that the detainee has a credible fear of persecution, he or she "shall be detained," 8 U.S.C. § 1225(b)(1)(B)(ii), and placed in regular INA section 240 removal proceedings before an immigration judge, rather than the expedited removal proceedings discussed above, for a determination of the asylum claim.[14] *See* 8 C.F.R. §§ 208.30(f), 1235.6(a)(1)(ii) (referral to immigration judge).

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[13] Plaintiffs do not dispute that the expedited removal statute gives Defendants the discretion to place class members apprehended at the border in expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1). Both sides also do not dispute that some class members have been placed in expedited removal upon entry into the United States.

[14] "Section 240 removal proceedings" refer to removal proceedings conducted by an immigration judge under section 240 of the INA. *See* 8 U.S.C. § 1229a(a)(1) ("An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien."). Section 240 of the INA is codified in 8 U.S.C. § 1229.

In sum, the expedited removal statute and the accompanying regulations generally require the detention of undocumented detainees apprehended at the U.S.-Mexican border, who have been placed in expedited removal proceedings, until eligibility for relief is established. There are, however, statutory exceptions.

ii. Discretion to Release Minors in Expedited Removal

"Although Section 1225(b) generally mandates the detention of aliens seeking admission pending their removal proceedings, individuals detained under the statute may be eligible for discretionary parole from ICE custody." *Rodriguez v. Robbins*, 715 F.3d 1127, 1132 (9th Cir. 2013) (citing 8 U.S.C. § 1182(d)(5)(A)). Congress authorizes the Attorney General to permit parole or release "temporarily under such conditions as he may prescribe only on a *case-by-case basis* for urgent humanitarian reasons or significant public benefit," provided that the person presents neither a danger nor flight risk. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (emphasis added); 8 C.F.R. § 212.5. Under the regulations promulgated by the Attorney General, detainees in expedited removal are eligible for parole if they are pregnant, have serious medical conditions, *are juveniles who meet certain conditions*, or will be witnesses in judicial, administrative, or legislative proceedings. 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 208.30(f) ("Parole of the alien may be considered only in accordance with section 212(d)(5) of the [INA] and [8 C.F.R.] § 212.5").

Thus, a detainee in expedited removal "whose inadmissibility is being considered . . . or who has been ordered removed" may be paroled under the above standards. *See* 8 C.F.R. § 235.3(b)(2)(iii).

In particular, with regard to juveniles, the regulations governing parole state that Defendants "shall follow the guidelines set forth in § 236.3(a) of this chapter and paragraphs (b)(3)(i) through (iii) of this section" in determining under what conditions a juvenile should be released from detention. 8 C.F.R. § 212.5(b)(3). Section 236.3(a) merely defines a juvenile as "an alien under the age of 18 years." 8 C.F.R. § 236(a). Section 212.5(b)(3) sets forth the order of preference governing the conditions for a minor's parole:

> (i) Juveniles may be released to a relative (brother, sister, aunt, uncle, or grandparent) not in Service detention who is willing to sponsor a minor and the minor may be released to that relative notwithstanding that the juvenile has a relative who is in detention.

> (ii) If a relative who is not in detention cannot be located to sponsor the minor, the minor may be released with an accompanying relative who is in detention.
>
> (iii) If the Service cannot locate a relative in or out of detention to sponsor the minor, but the minor has identified a non-relative in detention who accompanied him or her on arrival, the question of releasing the minor and the accompanying non-relative adult shall be addressed on a case-by-case basis;

8 C.F.R § 212.5(b)(3)(i)–(iii).

In this case, the issue is whether the statutes and accompanying regulations for detainees in expedited removal create an exception to the *Flores* Agreement's requirement that Defendants make and record prompt and continuous efforts toward the release of class members. The Court finds that they do not.

iii. Paragraph 14 and Regulations Governing Juvenile Release

Defendants argue that under "the plain terms of the Agreement, if detention of a minor is required to secure his or her appearance before ICE for removal, or before an immigration judge, ICE is not obligated to release the minor." Def. Sec. Supp. Resp. at 17. This goes to the flight-risk issue and the Court agrees with Defendants' statement to that limited extent.

The Court disagrees with Defendants that class members' placement in expedited removal absolves them of their obligations under the Agreement to make individualized determinations regarding a minor's risk of absconding. *See* Agreement ¶ 14. While the expedited removal statute generally requires detention, 8 C.F.R. section 212.5 gives Defendants the discretion to release certain detainees on a case by case basis, including class members (juveniles), who are in various stages of the expedited-removal process.

Thus, the Agreement does not contravene the expedited removal statute.[15] Indeed, under both the Agreement and 8 C.F.R. section 212.5(b), part of the release/parole analysis includes a

[15] In any event, as the Ninth Circuit noted, the expedited removal statute was enacted in 1996 before the district court approved the Agreement in 1997. *Flores*, 828 F.3d at 910 (citing Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, § 302 , 110 Stat. 3009-546, 579-85 (1996)). The parties to the Agreement expressly stated that they knew "of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law." Agreement ¶ 41. This necessarily includes all parts of the INA, including the expedited-removal provision at INA § 235, codified at 8 U.S.C. § 1225.

case-by-case assessment of whether the minor poses a flight risk. *Compare* Agreement ¶ 14 (whether detention is required to secure timely appearance before the immigration court), *with* 8 C.F.R. § 212.5(b) (whether there is a "risk of absconding").

Defendants argue that Congress "specified that detention [for minors in expedited removal] is required *to secure the appearance of that individual*" before ICE or an immigration judge. Def. Sec. Supp. Resp. at 17 (emphasis added). Nothing in the statute or the regulations suggests that Congress automatically deemed everyone in mandatory detention under 8 U.S.C. section 1225 a flight risk. Section 212.5(b) provides special guidelines for parole. It would make little sense to have rules specifically requiring that Defendants assess a potential parolee's flight risk if Congress intended to declare everyone in expedited removal to be a flight risk.[16]

In addition to allowing for the release of certain minors, the Agreement's general presumption of release and Paragraph 14 work in harmony with Defendants' discretionary-parole policy in another way: both provisions provide an order of preference for release of minors, beginning with adult relatives.[17] The two provisions do differ in certain ways. For instance, the

[16] Defendants also argue that detaining class members for "longer periods of time where the minor is subject to a final order of removal and pending removal" does not violate the Agreement as a matter of law. Def. Sec. Supp. Resp. at 3. As one Defendant witness explains, "If [detainees] claim credible fear, then they can go in front of Asylum. If they don't claim fear, they're a final order of removal, and we will process them and have them returned to their country as soon as possible." Hester Depo. at 71.

But on the issue of mandatory detention, the expedited removal statute does not distinguish between detainees who are awaiting their credible-fear determinations and those who are awaiting removal after receiving a negative credible fear determination. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Thus, the Court does not find that class members in the latter group should be treated any differently than the former with regard to the release provisions under the Agreement and Defendants' discretionary-parole regulations.

In simpler terms, that class members are in mandatory detention because they are awaiting removal does not defeat the Agreement's presumption of release. Defendants' must still engage in a case-by-case determination as described above.

[17] While the Ninth Circuit cited 8 C.F.R. section 212.5(b)(3)(ii), which unambiguously provides that a "minor may be released with an accompanying parent who is in detention" under certain circumstances, it nevertheless found that the *Flores* Agreement did not require the release of adults with class members. *See Flores*, 828 F.3d at 908–09. This Court did not intend to suggest otherwise. It merely assumed that the release of adults must, in some circumstances (especially situations involving prolonged detention), comport with existing Supreme Court and Ninth Circuit case law requiring bond hearings within 180 days. *See, e.g.*, *Rodriguez v. Robbins*, 804 F.3d 1060, 1081–84 (9th Cir. 2015) (adults in immigration custody may not be subjected to prolonged detention (more than six months) without a bond hearing), *cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016); *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942 (9th Cir. 2008); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

discretionary-parole regulation prioritizes release of a minor to an adult relative not in detention whereas Paragraph 14 ranks a "legal guardian" above the non-parent adult relative. Nonetheless, the key factor is that Defendants' own regulations contemplate release of Class Members after an individualized assessment.[18] In fact, the ICE director who oversees operations relating to the case management of detainees at the Berks Family Residential Center states that "ICE has released minors (and their accompanying parents) from the BFRC where, for example, the minors are found to have a credible fear of persecution or where there is a medical emergency regarding the *child or parent* warranting release." Declaration of Joshua Reid ("Reid Decl.") ¶ 3 (emphasis added) [Doc. # 299-2].

Thus, the *Flores* Agreement creates an affirmative obligation on the part of Defendants to individually assess each class members' release, while 8 C.F.R. section 212.5(b) allows for Defendants to do so—notwithstanding the general mandatory-detention practice—in cases involving minors in expedited removal.

Defendants argue that "under 8 U.S.C. § 1252(f)(1), the Court cannot simply order that [class members'] detention be prohibited on a class-wide basis."[19] Def. Supp. Resp. at 13 [Doc. # 268]. The Court will issue no such order. To be clear, the Court will not dictate how Defendants must exercise their discretion to parole or release minors in every single case—instead, the Court will order Defendants to comply with the unambiguous charge of the *Flores* Agreement to make *individualized* determinations regarding a minor's flight risk rather than blanket determinations. *See Flores*, 828 F.3d at 903 ("The Settlement creates a presumption in favor of release and favors family reunification").

Ultimately, based upon an individualized review of the facts, Defendants may conclude that it is in the best interests of an accompanied minor to remain with a parent who is in detention. *See* July 24, 2015 Order, 212 F. Supp. 3d at 875 n.5 ("The parties also do not address the situation where the mother chooses to stay in the detention facility or has been deemed a

[18] At the January 30, 2017 hearing, the Court requested additional briefing on the issue of whether expedited removal requires mandatory detention. In their response brief, Defendants mention that the government may exercise its discretion to release detainees experiencing a medical emergency or for legitimate law enforcement objections. Def. Supp. Brief Regarding Expedited Removal at 3–4 [Doc. # 336]. They conveniently omit, however, any citation to 8 C.F.R. section 212.5(b) and fail to mention that juveniles qualify for discretionary parole under existing regulations.

[19] Section 1252(f)(1) states that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter," which includes the expedited removal statute. Defendants must nonetheless comply with Paragraph 14 of the Agreement.

flight or safety risk. As a practical matter, Defendants would be justified in detaining both mother and child in that case"). On the other hand, it may be the case that "in order to effectuate the least restrictive form of detention for the child, Defendants must follow an order of preference for the minor's release to an available adult [not in detention] under Paragraph 14 of the Agreement." August 21, 2015 Order, 212 F. Supp. 3d at 913 n.5. Either way, the expedited removal statute does not excuse Defendants from the commitment they made in the *Flores* Agreement to make and record efforts to release minors in ICE custody, even if the minor or her parent is in expedited removal (i.e., awaiting a credible fear determination).

Here, Defendants all but concede their failure to make and record efforts to release children in accordance with Paragraph 14, especially when the class member is accompanied by a parent or legal guardian. *See, e.g.*, Reid Decl. ¶ 3 ("Generally, ICE does not seek to release minors housed at the [Berks Family Residential Center], who are accompanied by a parent, to another adult."). If it is discovered that a *bona fide* familial relationship (i.e., parent or legal guardian) does not exist between a minor and the accompanying adult encountered at the family residential center, the minor is deemed "unaccompanied" and transferred to the Department of Health and Human Services' Office of Refugee Resettlement. *See* Declaration of Homero D. Salinas ("Salinas Decl.") ¶ 3 [Doc. # 299-3]; Declaration of Juanita Hester ("Hester Decl.") ¶ 3 [Doc. # 299-1].

Defendants also present the declaration of Jon Gurule, the Assistant Director of Field Operations for Enforcement and Removal Operations for ICE. Declaration of Jon Gurule ("Gurule Decl.") ¶ 1 [Doc. # 217-1]. Gurule directs and oversees the nationwide day-to-day immigration enforcement and removal operations of 24 ERO Field Office Directors and 5,800 immigration enforcement officers. *Id.*

According to Gurule, ICE lacks the "institutional capacity or resources to assess whether an adult (other than a parent or guardian) seeking custody of a minor already detained with a parent is a suitable custodian who will house the minor in a suitable home environment." *Id.* ¶ 16. This failure to assess non-parent/guardian custodians flies in the face of the *Flores* Agreement. Third in the order of preferences under Paragraph 14 is an adult relative (brother, sister, aunt, uncle, or grandparent) of the minor. Paragraph 17 of the Agreement further states that a "positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14."[20] This assessment may include investigating the adult

[20] Defendants argue that because Plaintiffs made no mention of Paragraph 17 violations in their opening motion to enforce, the Court should decline to consider this issue. Def. Second Supp. Resp. at 23. To be sure, the Court must focus on the issues raised in the motion itself, and not new ones raised for the first time in supplemental

custodian's living conditions, verifying the adult's identity, and consideration of the minor's wishes and concerns. Agreement ¶ 17.

Nonetheless, Gurule states that "ICE is not authorized to expend resources to conduct suitability analyses, and any resources devoted to such endeavors would no longer be available to process families as expeditiously as possible through [family residential centers]." *Id.* ¶ 16. ICE cannot simply release children to just any adult who claims custody of the child. For one, the Agreement requires that the proposed custodian execute an agreement with Defendants to, among other things, "provide for the minor's physical, mental, and financial well-being." Agreement ¶ 15. By failing to conduct suitability analyses of non-parent/guardian custodians seeking custody of class members, Defendants essentially concede to violating the Agreement.

Defendants assert that "[i]n the majority of cases, it is safer for the child to remain with his or her parent at an ICE [family residential center] than for that child to be released to a purported family member who ICE has no ability to screen for suitability to care for that child." Def. Supp. Resp. at 19. Even if the Court takes Defendants at their word that in the majority of cases, accompanied minors should stay with a parent in detention, that still leaves the rest of the potentially significant numbers of children who could be released to a custodian but for the Defendants' inability to screen.

This purported lack of institutional resources to screen is no excuse for non-performance. Defendants entered into the *Flores* Agreement and now they do not want to perform—but want this Court to bless the breach. That is not how contracts work.

In short, Defendants are not absolved of their contractual obligation to make and record efforts to release children by virtue of the expedited removal statute. In light of Defendants' own evidence that they are not substantially complying with Paragraph 14 (and the related paragraphs involving release of minors to custodians), the Court **GRANTS** Plaintiffs' motion to enforce.
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briefing. But Paragraph 17 is directly linked to the Paragraph 14 issues that Plaintiffs raised in their motion—namely, the standards governing the release of children to non-detained adults. The Court cannot examine claims of breach of Paragraph 14 without examining existing claims that Defendants violated the "positive suitability assessments" under Paragraph 17 that may be required to effectuate Paragraph 14.

2. Secure, Unlicensed Facilities

i. Unlicensed Facilities

ICE currently operates three family residential centers: the Karnes County Residential Center ("Karnes"); the South Texas Family Residential Center ("Dilley"); and the Berks Family Residential Center ("Berks"). Gurule Decl. ¶ 5. Plaintiffs continue to present evidence that these family residential centers are unlicensed. *See, e.g.*, Deposition of Phillip Miller ("Miller Depo.") at 103 (confirming that Dilley and Karnes facilities are not licensed) [Doc. # 287-3 at 6]; Letter from Pennsylvania Department of Human Services (informing Defendants of decision to "non-renew and revoke" the previously-issued certificates of compliance because Berks County Residential Center is a not a child residential facility under state regulations, but rather a "residential center for the detention of immigration families, including adults") [Doc. # 201-6 at 46]; *Grassroots Leadership Inc. v. Tex. Dep't of Family and Protective Serv.*, No. D-1-GN-15-004336, slip op., Travis Cty. Dist. Court (Dec. 16, 2016) (ordering Texas state entity to refrain from issuing child care licenses to the Karnes and Dilley family residential centers) [Doc. # 329].

Defendants do not dispute that the family residential centers continue to be unlicensed. Still, they contend that the licensed-facility issue is "new" and not previously briefed or argued in Plaintiffs' original May 19, 2016 Motion. Def. SGDMF at 14. This is incorrect. *See* Pl Mot. at 15 ("Class Members are detained in secure facilities (also not licensed for the care of dependent children) for weeks and months on end").

Defendants next point out that the licensing issue is "a question of state law" and appear to argue that state licensing requirements essentially cannot be applied to family residential centers. *See* Hearing Tr. dated Jan. 30, 2017, at 54. For instance, they emphasize that while they have "made efforts to obtain licenses in accordance with state law," if the family residential centers are "unlicensed because state law does not provide a license for those facilities, they are as licensed as they can be under state law." *Id.*; Declaration of Robert Doggett ¶¶ 3–4 (stating that Texas state court issued an order enjoining the state from issuing a license to Dilley) [Doc. # 287-5 at 124]. This reasoning is a mere reprise of Defendants' well-worn argument against Plaintiffs' February 2, 2015 Motion to Enforce—which the Court rejected—that the licensing provision in the *Flores* Agreement cannot be interpreted to apply to family residential centers, in part because there are no state licensing processes available for Defendants' specific facilities. *See* July 24, 2015 Order, 212 F. Supp. 3d at 877–78 (discussing Defendants' argument and concluding that "Defendants are required to provide children who are not released temporary placement in a licensed program"); Def. Opp. to Feb. 2. 2015 Mot. at 17 ("The 'Licensing' Provision of the Agreement Should Not Apply to Family Residential Centers") [Doc. # 121].

As the Court previously stated, "[t]he fact that the family residential centers cannot be licensed by an appropriate state agency simply means that, under the Agreement, class members cannot be housed in these facilities except as permitted by the Agreement." July 24, 2015 Order, 212 F. Supp. 3d at 877.

ii. Secure Facilities

Much like in its February 2, 2015 Motion, Plaintiffs continue to proffer evidence showing that ICE's family residential centers remain secure (i.e., detainees are held in custody and not free to leave). *See* July 24, 2015 Order, 212 F. Supp. 3d at 879–80; *see also* Walter A. Decl. ¶ 14 ("The doors here at Berks are sometimes locked and sometimes unlocked . . . Even if the doors are unlocked, we cannot just leave because there are always guards by the doors); Declaration of Allison Maria Mendez Leiva ("Allison M. Decl.") ¶ 22 ("I know that we are in a facility that is locked. At certain parts of the day we are only permitted in certain areas and blocked from certain parts of the facility. There are key pads throughout the facility. . . . I see the staff use key cards to unlock internal doors which prevent us from passing.") [Doc. # 202-2 at 20]; de la Garza Depo. at 22 (stating detainees are not free to leave Dilley "until we tell them it's – it's okay to leave") [Doc. # 287-2 at 26]. As before, Defendants do not dispute that the facilities are secure.

For the reasons already discussed in previous orders and since Plaintiffs have satisfied their burden, the Court once again finds that because the family residential centers are secure, unlicensed facilities, Defendants cannot be deemed in substantial compliance with the Agreement.

In short, the Court **GRANTS** Plaintiffs' motion to enforce the Agreement to the extent Defendants are not making and recording continuous efforts to release class members or placing children in non-secure, licensed facilities in accordance with the Agreement.

D. 20-Day Detention Period

Plaintiffs contend that Defendants routinely detain class members for weeks or months in secure, non-licensed facilities, in violation of Paragraphs 12A and 14 of the *Flores* Agreement, which requires that Defendants release class members "without unnecessary delay" to certain adults, or place them in a licensed program within five days of apprehension. In response, Defendants emphasize that they released 95 percent of 48,940 detainees booked into the three ICE family residential centers (Berks, Karnes, and South Texas) from October 23, 2015 to November 19, 2016, within 20 days of detention. Def. Sec. Supp. Resp. at 26; Declaration of

Philip T. Miller ("Miller Decl.") ¶ 5 [Doc. # 299-4]. According to Defendants, a small percentage of individuals remain in detention for longer periods of time because they (1) are in mandatory detention and are seeking to establish a credible fear claim; (2) have been denied a credible fear finding and are awaiting removal; or (3) are part of a family unit where the parent has been deemed a flight risk. Gurule Decl. ¶ 14.

This Court has already acknowledged that while the Agreement requires Defendants to place a minor with an available adult or in a non-secure, licensed facility upon apprehension within five days, there is an exception "in the event of an emergency or influx of minors into the United States." Agreement ¶ 12A. Thus, a 20-day period for release can fall within the Agreement's parameters:

> At a given time and under extenuating circumstances, if 20 days is as fast as Defendants, in good faith and in the exercise of due diligence, can possibly go in screening family members for reasonable or credible fear, then the recently-implemented DHS polices may fall within the parameters of Paragraph 12A of the Agreement, especially if the brief extension of time will permit the DHS to keep the family unit together.

August 21, 2015 Order, 212 F. Supp. 3d at 914.

The issue here, however, is that Plaintiffs present evidence of class members' detention exceeding 20 days. *See, e.g.*, Reid Depo. at 37–38 (describing having held a class member in detention at Berks for 13 months) [Doc. # 287-2 at 54]; Sara E. Decl. ¶¶ 9–11 (detained with class member child for over five weeks at Karnes); Allison M. Decl. ¶¶ 9, 11, 17 (detained at Dilley and Berks for total of eight months).

Even using Defendants' own numbers, a significant number of detainees still remained in detention for over 20 days during the 13-month period Defendants identified: approximately 2,447 individuals (five percent of 48,940). What is more, Defendants' length-of-stay statistics only account for individuals *already released*. *See* Deposition of Philip T. Miller ("Miller Depo.") at 141–143 (explaining that the length-of-stay is measured by "the difference between when you book into a [family residential center] and when you're released," and that "I can't tell you how long someone has stayed until they're no longer [detained]") [Doc. # 350]. Thus, it is unclear to the Court how many *unreleased* class members and their parents remained in detention at the family residential centers during the 13-month period from October 23, 2015 to November 19, 2016.

In light of these statistics, Plaintiffs' witness statements, the evidence that the family residential centers remain unlicensed, secure facilities, and the fact that use of the expedited removal procedure does not automatically render the Agreement's preference-for-release provision inapplicable, the Court finds Plaintiffs have established Defendants' substantial non-compliance with Paragraphs 12A and 14 of the *Flores* Agreement, notwithstanding the emergency-influx exception.

Accordingly, the Court **GRANTS** Plaintiffs' motion to enforce these paragraphs of the Agreement on the length-of-detention issue.

E. Commingling of Minors with Adults

Paragraph 12A of the Agreement states that upon apprehension, Defendants "will segregate unaccompanied minors from unrelated adults." Here, Plaintiffs assert that Defendants "routinely commingle Class Member children with unrelated adults . . . . Young girls may even be detained with unrelated men." Pl. Mot. at 14–16.

Plaintiffs fail, however, to satisfy their burden of demonstrating Defendants' substantial non-compliance with this provision by a preponderance of the evidence. The Agreement's commingling provision applies only to *unaccompanied* class members. Plaintiffs' examples involve statements from *accompanied* class members (or their accompanying parents) who state that Defendants mixed them in with unrelated adults. *See* Pl. SUF at 110–117; *e.g.*, Declaration of Yeslin L. ¶ 2 ("I am detained with my mother, my younger sister and my younger brother.") [Doc. # 202-1 at 62]. Plaintiffs' statements from various ICE directors also do not help: they involve statements regarding conditions at family residential centers, which house only accompanied minors and their families. Pl. SUF at 110–114; *see also* January 20, 2017 Order at 3–4 (describing how Congress transferred responsibility for the care and placement of unaccompanied minors from ICE to the Department of Health and Human Services) [Doc. # 318]. At other times, Plaintiffs' witness statements fail to differentiate whether the observed commingling involved accompanied or unaccompanied minors.

Accordingly, the Court **DENIES** Plaintiffs' motion to enforce Paragraph 12A of the Agreement on the issue of commingling class members with adults.

F. Right to Counsel/Failure to Notify

Plaintiffs contend that Defendants routinely interfere with class members' right to counsel, which frustrates their ability to protect and assert their rights under the *Flores*

Agreement. The Court notes at the outset that there is no provision of the *Flores* Agreement that establishes class members' right to counsel. *See also J.E.F.M. v. Lynch*, 837 F.3d 1026, 1033 (9th Cir. 2016) ("[R]ight-to-counsel claims must be raised through the [petition for review] process because they 'arise from' removal proceedings. The counsel claims are not independent or ancillary to the removal proceedings.") (quoting 8 U.S.C. § 1259(b)(9)).

To the extent Plaintiffs' motion to enforce is based on Defendants' failure to provide class members' counsel with advance notice regarding class members' transfers between ICE facilities pursuant to Paragraph 17 of the Agreement, the Court **DENIES** Plaintiffs' motion. Plaintiffs provide only one example where Defendants allegedly failed to give an attorney representing a group of class members notice of their relocation. *See* Pl. SUF at 143–44 (quoting from Declaration of Ed McCarthy, Esq.). Plaintiffs also do not challenge Defendants' evidence establishing a valid reason for their failure to notify counsel: attorney McCarthy was not the attorney of record for the class members in question. *See* Second Declaration of Juanita Hester ¶ 6 ("ICE is only able to notify attorneys of the transfer of a minor where that attorney filed a DHS Form G-28, with ICE, notifying ICE of the attorney-client relationship," which McCarthy failed to do) [Doc. # 299-1].

G. Appointment of a Monitor

Paragraph 24A of the *Flores* Agreement provides as follows:

> An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours.

See also Agreement ¶¶ 25–31.

It is unclear to the Court whether a Juvenile Coordinator has ever existed during the more than 20 years since the parties entered into the *Flores* Agreement—and if one did, whether he or she ever fulfilled any of the duties identified in Paragraph 24A. It is high time for Paragraph 24A to be meaningfully enforced.

Although Plaintiffs request the appointment of an independent monitor, the Court finds it appropriate—at least at this juncture—to breathe life back into Paragraph 24A. To that end, the Court will order Defendants within 30 days of this Order to identify and propose to the Court the name of a Juvenile Coordinator and provide that person's curriculum vitae and his or her

qualifications for the position. The Juvenile Coordinator will monitor compliance with those terms of the *Flores* Agreement, which this Court has found must be enforced and shall report directly to the Court regarding the status of Defendants' compliance. Once the Juvenile Coordinator has been designated, the Court shall establish a schedule for the Juvenile Coordinator's periodic written reports to the Court, as well as Plaintiffs' response to those reports. Within one year from the date of the Juvenile Coordinator's appointment, the Court shall assess whether Defendants are in substantial compliance with the *Flores* Agreement and whether the objectives of the Coordinator have been met. If the Court is not satisfied with the progress made within that time frame, it will reconsider Plaintiffs' renewed request for appointment of an independent monitor.

V.
CONCLUSION

A. Findings

Based on the foregoing, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' motion to enforce the *Flores* Agreement as follows:

1. Conditions at CBP stations in the RGV Sector:

   a. Plaintiffs' motion to enforce Paragraph 12A of the Agreement on the issue of access to adequate food is **GRANTED**;

   b. Plaintiffs' motion to enforce Paragraph 12A of the Agreement on the issue of access to clean drinking water is **GRANTED**;

   c. Plaintiffs' motion to enforce Paragraph 12A of the Agreement on the issue of unsanitary conditions is **GRANTED** as to all non-CPC-Ursula CBP stations located within the RGV Sector. For reasons discussed in section IV.A.3, the Court also orders compliance monitoring at CPC-Ursula;

   d. Plaintiffs' motion to enforce Paragraph 12A of the Agreement on the issue of temperature control is **GRANTED**;

   e. Plaintiffs' motion to enforce Paragraph 12A of the Agreement on the issue of sleeping conditions is **GRANTED** as to all non-CPC-Ursula CBP stations within the RGV Sector, and **DENIED** as to CPC-Ursula;

2. Failure to Provide Advisals: Plaintiff's motion to enforce Paragraph 24D with regard to the requirements that Defendants provide class members with a list of legal services and the Notice of Right of Judicial Review (Exhibit 6) is **GRANTED**. The Court **DENIES** the motion with respect to the Form I-770 requirement;

3. Efforts to Release Class Members: Plaintiffs' motion to enforce Paragraphs 14, 18, 19, and 23 of the Agreement on the issue of whether Defendants are making and recording continuous efforts to release class members or place them in non-secure, licensed facilities in accordance with the Agreement is **GRANTED**;

4. 20-Day Detention Period: Plaintiffs' motion to enforce Paragraphs 12A and 14 of the Agreement on the length-of-detention issue is **GRANTED**;

5. Commingling: Plaintiffs' motion to enforce Paragraph 12A of the Agreement on the issue of commingling class members with adults is **DENIED**;

6. Right to Counsel: Plaintiffs' motion to enforce based on a right-to-counsel claim is **DENIED**; and

7. Within 30 days from the date of this Order, Defendants shall submit the name of a proposed Juvenile Coordinator pursuant to Paragraph 12A of the Agreement and his or her qualifications for the position.

IT IS SO ORDERED.

EXHIBIT D

CBP Settlement Agreement

Flores v. Garland, Case No. 2:85-cv-4544 (C.D. Cal.)

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WHEREAS the original complaint in this action was filed on July 11, 1985, and on January 28, 1997, the Court approved a class-wide settlement of this action pursuant to Fed. R. Civ. P. 23 ("Settlement"); and

WHEREAS Plaintiffs have filed a request for a temporary restraining order and preliminary injunction (TRO) (ECF No. 572) seeking to enforce compliance with the Settlement addressing conditions and processing of class members at U.S. Customs and Border Protection ("CBP") facilities in the Rio Grande Valley (RGV) and El Paso Border Patrol Sectors; and

WHEREAS on June 28, 2019 this Court ordered the parties to engage in mediation discussions before Special Master/Independent Monitor Andrea Sheridan Ordin to attempt to resolve Plaintiffs' TRO; and

WHEREAS contested litigation regarding conditions for class members at CBP facilities would be complex, lengthy and costly to all parties concerned; and

WHEREAS, with the assistance of Special Master/Independent Monitor Ordin and court-appointed medical/public health expert Dr. Paul Wise, the Parties have conducted discussions and arm's length negotiations with respect to a compromise and settlement of the TRO with a view to settling the issues in dispute, preventing future litigation over safe and sanitary conditions for class members in CBP custody in the RGV and El Paso Border Patrol Sectors, and achieving the most effective relief possible consistent with the interests of the Parties; and

WHEREAS the parties have concluded that the terms and conditions of this compromise are fair and reasonable, and

WHEREAS Plaintiffs agree that, should Defendant CBP remain in compliance with the terms of this Agreement in the El Paso and RGV Border Patrol Sectors, Plaintiffs will refrain from filing any action to enforce the provisions of Paragraphs 11 and 12A of the Settlement as set forth below against CBP in the RGV and El Paso Border Patrol Sectors; and

WHEREAS, the Parties enter into this Agreement for the purpose of clarifying the Parties' understanding of the meaning of certain provisions of the *Flores* Settlement Agreement ("Settlement"), as they apply to conditions of CBP detention in the RGV and El Paso Sectors of the U.S. Border Patrol; the provisions at issue are:

Paragraph 11: The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special consideration for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate.

and

Paragraph 12A: Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as

appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor.[1]

WHEREAS with the exception of claims identified in the paragraph below, Plaintiffs agree to withdraw their pending TRO claims under the portions of Paragraphs 11 and 12A of the Settlement set forth above with prejudice; and

WHEREAS, Plaintiffs agree to withdraw their pending TRO filing, and withdraw without prejudice any pending TRO allegations regarding (i) time in custody (ii) Defendants' making and recording of efforts aimed at the prompt release of minors, or (iii) Defendants' notice to class members or accompanying adult relatives of class members' right to release or transfer to a facility licensed for the care of dependent children; the parties agree that these issues are not addressed in this Agreement;

NOW, THEREFORE, the Parties stipulate that this Agreement constitutes a full and complete resolution of the issues raised in the TRO that relate to the portions of paragraphs 11 and 12A that are set forth above.

I. DEFINITIONS

Wherever used in this Agreement, the following terms have the meanings set forth below:

1. "**Party" or "Parties"** shall apply to Defendant CBP and to Plaintiffs. As the terms apply to CBP, it shall include CBP's agents, employees, contractors and/or successors in office establishing, directing, overseeing, or performing functions for CBP in the RGV and El Paso Sectors of the U.S. Border Patrol. As the term applies to Plaintiffs, it shall include all class members.

2. "**Class Member**" or **"Class Members"** shall apply to the persons defined in Paragraph 10 of the 1997 *Flores* Settlement ("Settlement").

3. "**Defendant" and "CBP"** for purposes of this Agreement are CBP's agents, employees, contractors and/or successors in office establishing, directing, overseeing, or performing functions for CBP in the RGV and El Paso Sectors of the U.S. Border Patrol. This Agreement is not intended to bind any CBP entities outside of the RGV and El Paso Sectors of the U.S. Border Patrol. This Agreement also does not bind other agencies, such as ICE and HHS.

4. "**Unaccompanied Child(ren)" ("UC")** shall mean the definition provided in 6 U.S.C. § 279(g)(2).

5. "**Juvenile Priority Facility**" shall mean a facility, designated by CBP, as being the first option to hold class members until appropriate placement with ICE or HHS can be secured or release from CBP custody can be accomplished. Within 30 days of the Court's approval of this Agreement, CBP shall identify at least one Juvenile Priority Facility in

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[1] The successors of the INS that carry out immigration functions today are CBP, U.S. Immigration and Customs Enforcement ("ICE"), and U.S. Citizenship and Immigration Services, all of which are part of the U.S. Department of Homeland Security ("DHS"), as well as the U.S. Department of Health and Human Services ("HHS"), Office of Refugee Resettlement ("ORR"). *See* Homeland Security Act of 2002 §§ 402, 462, 1512, Pub. L. No. 107-296, 116 Stat. 2135 (codified at 6 U.S.C. §§ 202, 279, 552); TVPRA, 8 U.S.C. § 1232.

RGV Sector and one in El Paso Sector, notify Class Counsel of this designation, and begin utilizing those facilities. Thereafter, CBP shall notify Class Counsel within thirty days of changing its juvenile priority facilities or commencing operation of a new juvenile priority facility in either the RGV or El Paso Sectors. The designation of a juvenile priority facility will be dependent upon traffic patterns and the number of class members in custody at any given time. Juvenile priority facilities may include Centralized Processing Centers (CPCs), soft-sided structures, or other facilities for which additional steps have been taken to accommodate class members. Juvenile priority facilities may vary in the specific steps taken to accommodate juveniles, and not all juvenile priority facilities will necessarily provide the same degree of accommodations.

6. **"Medical Priority Locations"** shall mean those locations staffed with contracted medical personnel. All juvenile priority facilities shall be designated as medical priority facilities.

7. **"Juvenile Coordinator's Office"** shall mean the CBP *Flores* Juvenile Coordinator, his or her employees, assistants, and aides.

8. "**Juvenile Care Monitor"** shall mean the Monitor described in section IX of this Agreement.

9. "**Effective Date"** is the date upon which the Agreement is approved by the Court.

10. **"Class Counsel"** are Peter Schey and Carlos Holguin.

II. SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND DISTRIBUTION; RELEASE OF CLAIMS

1. This Agreement represents a commitment by CBP—specifically by the RGV and El Paso Border Patrol Sectors within CBP that were the subject of Plaintiffs' TRO—to comply with the requirements of paragraphs 11 and 12A of the Settlement, mandating that class members be housed in safe and sanitary conditions with particular regard for the vulnerability of minors.

2. By entering into this Agreement, Defendant CBP agrees to be bound by the terms of this Agreement in U.S. Border Patrol facilities in the RGV and El Paso Border Patrol Sectors.

3. **Preservation of Defenses**. By agreeing to this Agreement and the releases contained herein, Defendant CBP does not waive any defenses available to it or to the United States in any other pending or future action to claims that were or could have been made in the Action that arise from the same common nucleus of operative facts alleged by Plaintiffs in their pleadings and the arguments made in the Action.

4. By entering into this Agreement, Plaintiffs and all class members agree to release, relinquish, and discharge Defendant CBP from all claims in their pending TRO except that, as set forth above, the withdrawal of Plaintiffs' TRO is without prejudice to their ability to bring future action regarding certain issues not covered by this Agreement. This Release shall not apply to individual class member actions brought pursuant to paragraph 24B of the Settlement.

5. The Parties agree to submit this Agreement to the Court for preliminary approval without a hearing unless the Court in its discretion decides to schedule a hearing regarding preliminary approval of this Agreement. The Parties agree to seek a hearing on final approval of this Agreement within 60 days of preliminary approval of the Agreement. If the Agreement is preliminarily approved by the Court, the Parties agree that within three weeks of such preliminary approval, CBP will post a summary of the Agreement jointly

developed by Plaintiffs and Defendants along with a notice of the hearing date for final approval in CBP's facilities where class members may be held in the RGV and El Paso Sectors. CBP agrees not to seek to withdraw from this Agreement at any time prior to the hearing date for final approval.

6. This Agreement shall become effective upon final court approval (the "Effective Date"). Within thirty (30) days of the Effective Date, Defendants shall ensure that CBP has issued new guidance regarding the content of this Agreement and distributed it to all employees in the RGV and El Paso Sectors. Defendants shall provide this guidance to the Juvenile Coordinator, Class Counsel, the Special Master/Independent Monitor and to the Juvenile Care Monitor.

7. Defendant CBP agrees to post the poster attached as Exhibit 1 in all CBP facilities in the RGV and El Paso Sectors where class members are held.

8. This Agreement shall terminate two and one half years from its Effective Date, or upon the termination of the *Flores* Settlement Agreement, whichever is sooner.[2]

III. NO ADMISSION OF WRONGDOING

This Agreement, whether or not executed, and any proceedings taken pursuant to it:

1. Shall not be construed to waive, reduce, or otherwise diminish the authority of Defendant to enforce the laws of the United States against class members, consistent with the Constitution and laws of the United States, and applicable regulations;

2. Shall not be offered or received against Defendant as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by Defendant of the truth of any fact alleged by the Plaintiffs or the validity of any claim that has been or could have been asserted in the TRO or this litigation, or the deficiency of any defense that has been or could have been asserted in this litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by the Defendants of any violations of the Settlement; and

3. Shall not be offered or received against Defendant as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, nor shall it create any substantive rights or causes of action against any of the Parties to this Agreement, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Defendant may refer to it and rely upon it to effectuate the liability protection granted it hereunder.

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[2] Paragraph 40 of the Flores Settlement Agreement provides that the Settlement "shall terminate 45 days following defendants' publication of final regulations implementing this Agreement." The Settlement may also be terminated, in whole or in part, by a court order or an Act of Congress. If provisions of Paragraphs 11 and 12 A of the Flores Settlement Agreement terminate with respect to CBP, this Agreement necessarily terminates as well.

IV. FORCE MAJEURE CONDITIONS EXCUSING COMPLIANCE WITH THE AGREEMENT

1. Defendant CBP enters into this Agreement in good faith and with all intention of complying with this Agreement, but recognizes that situations outside of its control may make it impossible to comply with certain provisions of this Agreement. Additionally, Defendant CBP recognizes that full compliance with the terms of this Agreement is dependent on receiving adequate appropriated funding from Congress. In the event of lack of adequate appropriated funding, full compliance will not be possible.

2. In the event that Defendant CBP believes compliance with any of the provisions of this Agreement must be excused due to the existence of a Force Majeure event, CBP shall notify in writing the Special Master/Independent Monitor (for the duration of her term), the Juvenile Care Monitor (for the duration of his or her term), and Class Counsel as soon as possible (but in all events no later than three (3) days) after the occurrence or commencement of the Force Majeure event. That notification shall specify the nature and extent of the Force Majeure event, the date that the Force Majeure event commenced, the anticipated duration of CBP's inability to fully comply with this Agreement as a result of such Force Majeure event, the details of the circumstances of the non-compliance with the Agreement, and the efforts CBP is undertaking to mitigate the impact of the Force Majeure event and return to compliance with the Agreement. During the duration of the Force Majeure event, CBP shall undertake diligent efforts to minimize the impact of the Force Majeure event and comply with the terms of this Agreement to the extent possible. No later than three (3) days after CBP has returned to full compliance following a Force Majeure event, CBP shall notify in writing the Special Master/Independent Monitor (for the duration of her term), the Juvenile Care Monitor (for the duration of his or her term), and Class Counsel that the Force Majeure event has ended and CBP has returned to full compliance with this Agreement.

3. A Force Majeure event shall be defined as any circumstance outside of CBP's control that precludes full compliance with the terms of this Agreement, including, for instance, natural disasters; other emergencies (fires, terrorism, etc.); full or partial government shutdown; public health concerns; or lack of appropriated funds to carry out certain provisions of this Agreement despite Defendants' best efforts to secure and allocate necessary funding. A Force Majeure event includes the period of time necessary following the event to recover from that event. Non-compliance proximately caused by a bona fide Force Majeure event shall not be considered a violation of this Agreement, so long as diligent best efforts are made to cure the non-compliance as promptly as reasonably practicable.

4. If Class Counsel disagrees with Defendant's assertion of a Force Majeure event, the dispute shall be resolved in accordance with the Dispute Resolution procedures set forth below. Defendant's failure to provide Class Counsel with timely notice of a Force Majeure event that causes non-compliance shall constitute a violation of this Agreement, and shall preclude the related non-compliance from exemption as a violation of this Agreement.

V. MIGRATION SURGES

1. The Parties are aware that there are situations that do not constitute a Force Majeure Event, but which may nevertheless impact CBP's ability to maintain full compliance with this Agreement. Where such surge situations occur and impact CBP's ability to fully comply with this agreement, CBP agrees that heightened oversight by the Juvenile Care Monitor and Special Master/Independent Monitor is warranted.

2. A surge situation will not necessarily mean that compliance with this Agreement is not possible, and during any surge situation, CBP shall make all efforts to continue to comply with all provisions of this Agreement. If full compliance is not possible, CBP shall take all necessary steps to mitigate any non-compliance and comply with this Agreement to the extent possible, including, but not limited to, seeking assistance from all appropriate federal and other partners and activating any appropriate internal contingency plans. As soon as practicable, Defendant shall notify the Special Master/Independent Monitor (for the duration of her term), the Juvenile Care Monitor (for the duration of his term), and Class Counsel of the extent of the non-compliance, the expected duration of such non-compliance, and the steps taken to mitigate such non-compliance. CBP will work with the Juvenile Care Monitor and Special Master/Independent Monitor to ensure that non-compliance is mitigated to the greatest extent possible during the surge situation. As soon as possible, Defendant shall notify Class Counsel the Juvenile Care Monitor and the Special Master/Independent Monitor when any non-compliance has ended. The fact that Defendant provides notice of non-compliance under this section shall not, on its own, constitute evidence of breach.

VI. PARTIAL COMPLIANCE OR DELAYS IN COMPLIANCE

1. There are additional situations, also outside of Defendant CBP's control, where CBP may be able to only partially comply with certain provisions of the Agreement, or limited situations that cause minor "non-compliance" or delays in compliance by CBP. Such situations may include, for instance, one malfunctioning toilet or sink in a particular facility, an air conditioning outage in a particular facility that is rectified within several hours, or a computer system outage that is rectified within several hours.

2. Defendant need not provide notice of these limited, minor instances of partial non-compliance to Class Counsel, the Special Master/Independent Monitor, or the Juvenile Care Monitor, but will undertake all efforts to mitigate the situation and return into full compliance as soon as operationally possible.

VII. CONDITIONS AT CBP FACILITIES

1. Facility Designation

1. CBP shall transfer all class members who are not immediately returned voluntarily to their country of origin to juvenile priority facilities as expeditiously as possible. Such transfer shall occur within 48 hours of arrival at a non-priority facility and, in general, within 24 hours of arrival at a non-priority facility. CBP shall make all reasonable efforts to hold class members in juvenile priority facilities for the duration of their time in CBP custody.

2. Juvenile priority facilities such as CPCs or soft-sided facilities may be made up of "pods," or open holding areas within the larger facility. Individuals held in each pod will generally be able to move freely about that pod.

3. Juvenile priority facilities shall work to reduce the use of fencing and enclosures that are not needed for security reasons.

4. Juvenile priority facilities shall, to the extent possible, have areas that provide the least restrictive setting for class members appropriate to their age and special

needs. This setting must be consistent with the need to ensure safety and security of all persons within the facility.

5. The planning and construction of new CBP facilities in the RGV and El Paso Sectors have and will take into consideration that the facilities will be permanently or temporarily used as juvenile priority facilities, as outlined in this Agreement.

6. Non-juvenile priority facilities shall maintain an adequate supply of items to accommodate the temporary holding of class members. These supplies shall include the following items:

a. Mats and blankets;
b. External garments, such as sweatshirts, and jackets;
c. Undergarments and clothing, such as sweatpants, t-shirts, and underwear;
d. Diapers of varying sizes and baby wipes;
e. Potable water, cups as appropriate, meals, and snacks;
f. Hygiene products to include soap and/or hand sanitizer, a mechanism for drying hands, toothbrushes, and toothpaste; and
g. Disposable bottles, baby formula, and baby/toddler food, cloth swaddling blankets and beanies.

2. Quality Assurance

1. CBP shall have a Contracting Officer Representative (COR) assigned to oversee the contracts of each juvenile priority facility.

2. Contract terms shall not be inconsistent with the terms of this Agreement.

3. The COR shall monitor the contracts and recommend corrective action if deficiencies are noted.

4. The COR shall recommend increases in the services provided in the contracts, as needed, to ensure services are adequate even in instances of a surge.

5. Each contract shall have quality assurance (QA) measures taken on the part of the contractor in place, to ensure that all of the standards outlined in the contract statement of work are met. The COR shall oversee the QA process and collect logs documenting the existing process.

6. CBP shall work toward training a limited number of employees as COR level three representatives, to provide a second level of observation and compliance for the contracts. COR level three representatives are able to provide an additional level of oversight into contractors' compliance measures and QA processes, such that CBP will have the ability to more closely inspect, validate, and monitor compliance.

3. CBP Enhanced Medical Support for Class Members in Custody

A. Medical Support Goals

1. CBP medical support in the RGV and El Paso Sectors shall align with and support CBP's operational law enforcement mission.

2. CBP medical support shall function as a front-line element of a broader network of medical care – including local health systems, ICE, and HHS.

3. CBP medical support seeks to ensure appropriate access to medical care for persons in custody, with an emphasis on populations who may be vulnerable, such as class members.

4. CBP medical support shall also promote CBP workforce health.

B. Medical Support Approach

1. CBP recognizes its critical role in providing medical support, consistent with its law enforcement mission, as a front-line element of a broader network of medical support.

2. CBP shall rely heavily on referrals to local health systems (and local standards of care), as well as on transfers to its partners at ICE and HHS Office of Refugee Resettlement (ORR), who have more robust medical capabilities.

3. CBP shall utilize a layered approach to medical support, endeavoring to ensure no single point of failure.

- Agents in the field shall be trained to recognize and respond to signs/symptoms of injury or illness.
- CBP shall promptly activate the 911 system or refer class members to the local health system whenever appropriate for evaluation and treatment.
- CBP shall have contracted medical support personnel at medical priority facilities in the RGV and El Paso Sectors who shall provide initial assessment, treatment, and referral.
- CBP shall refer class members with urgent or emergent medical issues to the local health system. CBP shall use its best efforts to prioritize referral to facilities with pediatric specialists and capabilities, to the extent such facilities are available and to the extent that referral to such facilities would not delay emergency treatment. CBP shall use its best efforts to enter into referral agreements with local health care facilities in each Sector.
- CBP shall coordinate and collaborate with a broad network of medical support stakeholders.
- The CBP Chief Medical Officer shall engage in all aspects of CBP medical support efforts on an ongoing basis.
- CBP shall coordinate with and request assistance from other relevant stakeholders, such as the U.S. Department of Homeland Security (DHS), ICE, HHS ORR, the Centers for Disease Control and Prevention (CDC), and state/local health officials, as appropriate, for additional medical support.
- In particular, CBP shall coordinate closely with ICE and HHS ORR regarding transfer of persons in custody with identified medical issues, to include infectious diseases, mental health issues, and acute or chronic medical conditions.
- CBP's Medical Support shall be subject to independent monitoring as set forth in Section IX below.

4. CBP shall engage with its federal partners, public health experts, and the Juvenile Care Monitor on appropriate protocols for addressing issues of public health concern.

5. While CBP recognizes that certain vaccines may be a component of medical care in certain settings, they may be more effectively administered by other government agencies with existing capabilities and custodial responsibilities for class members. CBP will continue to review the appropriateness of vaccine administration for class members in CBP custody in collaboration with other relevant government agencies and the Juvenile Care Monitor.

6. As part of its medical support approach, CBP (working with its broader network of medical support) shall abide by relevant medical and public health standards of care that the Juvenile Care Monitor agrees are consistent with CBP's obligations under this Agreement in its

treatment of class members. Those relevant standards of care shall take into account the unique operational circumstances of CBP's custody of class members, its front-line role in a broader network of medical support, and CBP's law enforcement mission.

C. Enhanced Medical Support Approach:

1. CBP shall utilize operational risk management principles to identify CBP medical priority facilities for enhanced medical support. All juvenile priority facilities shall be identified as medical priority facilities.
    - Operational risk management considerations include volume (number of persons apprehended/in custody); demographics (priority emphasis on UCs and family units); duration of time in custody; remoteness; availability of local medical care.
2. CBP shall utilize contracted medical personnel to provide enhanced medical support at medical priority facilities. This enhanced medical support shall include:
    - Contracted medical support teams
    - Medical providers – Licensed and credentialed to provide assessment, treatment, and referral for the population in custody, including class members
    - Medical support personnel
    - Medical Direction and Supervision

D. Enhanced Medical Support Process:

1. ***Health Intake Interviews***
    - CBP shall conduct a health interview with all class members in custody upon initial arrival at a U.S. Border Patrol facility in the RGV and El Paso Sectors.
    - CBP shall use a standardized form attached as Exhibit 2 for this health interview, in addition to any forms utilized by CBP medical contractors.
    - The health interview shall be conducted by contracted medical personnel or by Border Patrol agents, as appropriate.
    - During the health interview, CBP shall identify class members who are tender age (12 and under); pregnant; or with an illness, injury, disease, or other medical issue. For such class members, CBP will make the appropriate disposition, based on the circumstances. For instance, CBP may activate 911/EMS; refer/transport to local health system; or refer to the onsite medical provider for further evaluation/medical assessment, if an onsite medical provider is available.
2. **Medical Assessments**
    - Medical assessments will be conducted by CBP contracted credentialed medical providers, when available. Medical assessments shall be conducted on class members who are tender age; pregnant; or with an injury, illness, disease, acute needs associated with a disability or chronic illness, or other medical issue. Where contracted medical providers are not available, individuals in custody may be referred to the local health system or to other available health care providers for a medical assessment, as appropriate.
    - Medical assessments shall include a detailed assessment for potential medical issues requiring further evaluation, including:
        - Targeted history, physical, vital signs, review of systems, assessment, disposition
        - Consideration of nutritional issues and mental health issues

- For class members identified as requiring additional medical evaluation or treatment, CBP will make the appropriate disposition, based on the circumstances. For instance, CBP may activate 911/EMS; refer/transport to local health system; or conduct medical encounter/treatment onsite.

3. **24/7 onsite medical treatment** –
   - At identified juvenile priority locations, CBP contracted medical personnel shall be onsite at all times and able to provide evaluation and treatment for basic medical issues identified upon initial intake assessment or throughout time in custody.
   - Complex or emergency issues shall be referred to the local health system.

4. **Follow-up care** – CBP contracted medical personnel shall provide follow-up care after referral to a local health system or hospitalization.

5. **Public Health/Infectious Disease support** – CBP contracted medical personnel shall provide support to early identification, treatment, isolation, appropriate referrals, infection control, and public health support for infectious diseases in CBP facilities.

6. **Exit Health Interview** – CBP contracted medical personnel shall conduct exit health interviews for class members who receive medical treatment in CBP custody, as appropriate, to ensure persons in custody are fit for travel or transfer.

7. **Trauma-Informed Care-** At juvenile priority facilities, CBP shall take a trauma-informed approach to class members in custody. Recognizing the potential for trauma in their home communities and on their journey and that time in custody can be destabilizing and disorienting, CBP will make efforts to foster reassurance, resilience, orientation, recreation, and distraction.

4. Nutrition Standards for CBP Facilities in RGV and El Paso Sectors

A. In General

1. In all facilities, CBP shall ensure that class members have access to age-appropriate meals and snacks that meet class members' daily caloric needs. The main emphasis shall be on safety of food sources and meeting basic, age-appropriate caloric intake and hydration needs.

2. Food and water shall never be used as a reward, or withheld as punishment. Food provided shall be in edible condition (not frozen, expired, or spoiled).

3. CBP shall provide ready access to clean drinking water and cups, as appropriate, at all times. Clean drinking water shall be provided through the use of functioning clean and hygienic water fountains, bottled water, or portable water coolers. In juvenile priority facilities, at least one of those options shall be made available to all class members outside of the common toilet area. Sufficient cups shall be provided in hold rooms or other areas where class members are held so that class members are not required to share drinking cups with other detainees. Water and cups shall routinely be checked and replenished as necessary. Where portable water coolers are used, they shall be washed or rinsed with warm water once during every shift period. Containers that have visible dirt or mold shall not be reused until thoroughly cleaned. Portable water coolers shall be thoroughly cleaned at least weekly. Any visible dirt or mold shall be removed when the container is washed. All portable coolers shall be covered or enclosed and shall be replaced if the spout is not operational or if the container cannot be completely cleaned due to age or deteriorating condition.

4. Class members shall be offered a snack upon arrival to a CBP facility and meals at regularly scheduled intervals. At least two of those meals shall be hot. Class members shall have regular access to snacks, milk, and juice.

5. CBP shall ensure that all class members have access to age-appropriate food that is prepared in a safe and sanitary manner, taking into account all appropriate food safety requirements. Food must be appropriate for class members' age and capabilities.

- Agents shall comply with food handling instructions included in any packaged food, and shall wear gloves when preparing food.
- CBP shall work with the Juvenile Care Monitor to develop and implement appropriate guidelines for food provided to class members in non-priority facilities.

6. CBP shall provide safe and hygienic access to age-appropriate food for children under 2 years old, including baby formula and baby foods.

- Disposable bottles, potable water, and formula mixing instructions shall be available and readily accessible in all CBP facilities. Instructions shall be available in English and Spanish and shall include diagrams that demonstrate how to mix formula.

7. CBP shall record the availability of snacks and drinking water for class members in custody. CBP shall record the provision of meals for class members in custody.

8. Initial intake assessments, such as health interviews or medical assessments, shall include consideration of potential acute malnutrition or dehydration and other nutrition-related concerns.

9. Class members in custody identified with a potential nutrition-related concern shall receive appropriate evaluation by onsite medical support personnel or referral to the local health system.

10. CBP shall support breast-feeding as desired by mothers in custody with young children.

11. CBP shall take note of and be prepared to accommodate food allergies with simple, basic, readily available hypoallergenic alternatives.

12. In facilities that utilize contracts for meals and snacks, the contractor shall provide appropriate quality assurance, subject to CBP COR oversight.

13. The CBP Juvenile Coordinator's Office (JCO), in coordination with the CBP Chief Medical Officer, shall monitor adherence to CBP nutrition standards.

a. Monitoring efforts shall include ongoing review of utilization of meals by tender-age children.

B. Priority Facilities

Additionally, in juvenile priority facilities, CBP shall provide the following:

1. Tender-Age Children (age 12 and under): CBP shall ensure all food service contracts provide meals appropriate for tender-age children that meet USDA nutritional guidelines and all other USDA-consistent nutritional standards adopted by CBP.

2. Older Children/Adults (age 13 and over): CBP shall ensure all food service contracts provide meals for older children and adults that meet USDA nutritional guidelines and all other USDA-consistent nutritional standards adopted by CBP.

3. Special considerations**:** CBP recognizes individuals in its custody are from various countries with diverse food preferences, dietary restrictions, and nutrition habits. While it is not feasible or medically necessary to tailor food sources to individual preferences, CBP shall use its best efforts to accommodate class members' dietary

restrictions and preferences, as appropriate.

5. Temperature and Warmth

A. Temperature

1. CBP shall maintain a temperature range inside facilities in RGV and El Paso Sector of no less than 69° Fahrenheit and no more than 83° Fahrenheit. Although this is an acceptable range, the target temperature shall not be at either the high or the low end of the accepted range but instead a temperature that is considered generally comfortable.

2. All facilities shall closely monitor and record the ambient temperature by use of digital displays (where installed) or by the use of a temperature reading device. All facilities shall have a functional device available to ensure close monitoring of the temperature in all pods/cells where class members are held. Agents shall be responsible for monitoring and maintaining the ambient temperature of the facility within the appropriate temperature range and recording the temperature in the appropriate electronic systems of record at appropriate intervals no less than twice a day.

3. When conducting site visits, the JCO shall confirm that the temperature of all hold rooms where class members are present is within the appropriate temperature range. The JCO shall also confirm that agents record whether the temperature is within range in the appropriate systems of record. This will serve as an additional level of oversight to ensure temperature is maintained within the appropriate range and properly recorded.

B. Garments

1. Facilities shall maintain a stock of clothing in a variety of sizes that can be distributed to class members. Basic clothing includes sweatpants, t-shirts, underwear, and socks. External clothing for additional warmth may include garments such as sweatshirts, beanies, sweatshirts, jackets, or other types of garments that provide an extra layer of warmth that is age-appropriate. Each facility will make a determination of which type of garment(s) would be the most cost effective and operationally feasible to maintain in stock. CBP shall ensure blankets are available for class members in custody. CBP shall provide cloth swaddling blankets for infants and children under age 2.

2. Class members shall be provided clean, dry clothing if their clothing is wet or soiled.

3. Class members in possession of warm clothing at the time of apprehension shall generally retain possession of such items while in custody unless such items pose a health or safety threat.

4. When warm clothing in a class member's possession at the time of apprehension is required to be laundered or discarded for purposes of health or sanitation concerns, replacement garments shall be made available to the class member.

5. Beanies shall be available in a variety of sizes for class members less than five years of age.

6. Additional blankets shall be available upon the request of the class member, his/her parent, or other accompanying family member.

7. The JCO shall verify that facilities have a stock of garments during site visits.

6. Sleep

1. CBP shall make all reasonable efforts to provide class members with sufficient space, as well as a mat and blanket, during sleep hours. Sleep hours can vary, but will typically be defined as the hours from 2200 to 0600.

2. Class members shall be provided blankets or extra clothing for adequate warmth upon request or upon expressing general discomfort from cold, or when observed shivering or huddling for warmth. See section VII.5, on Temperature and Warmth for a list of external clothing and details about supplies.

3. If there are no safety concerns and it is not physically impracticable to do so, CBP shall make reasonable efforts to dim the lights between 2200 and 0600. CBP shall only dim the lights if the dimming of the lights can be accomplished in a manner that will not compromise safety of any persons being housed or working in the facility and it is not physically impracticable in existing structures. "Dimming" can include turning off sections of lighting in the cells or pods. The facilities will maintain sufficient light at all times to enable agents, security officers, and caregivers to properly monitor all individuals in custody.

4. CBP shall make reasonable efforts to minimize noise and disruptions between 2200 and 0600.

5. In juvenile priority facilities, clocks shall be placed in locations visible from each pod/cell, unless there is no available space to place a clock.

7. Hygiene and Sanitation

1. Hygiene kits shall be available to class members upon request, and will be provided to each class member when showers are offered. The hygiene items offered shall include appropriate soap for hair and body, toothbrushes/toothpaste, and towels for showering.

2. CBP shall provide a shower to each class member as soon as possible following the class member's arrival to a juvenile priority facility, and shall offer additional showers at 48-hour intervals thereafter.

3. Toothbrushes and toothpaste shall be provided to class members daily, and also available upon request. Parents and other accompanying adult family members shall be responsible for the dental hygiene of their child when the child is part of a family group or unit.

4. In juvenile priority facilities where caregivers are available, caregivers shall assist unaccompanied class members in their hygiene routines, as needed.

5. In juvenile priority facilities where caregivers are available, caregivers shall assist family groups or units as needed in their hygiene routines, to include caring for minor children while parents or other adult family members shower.

6. In CBP facilities where laundry facilities are available or laundry services are contracted, soiled clothing shall be laundered to the extent operationally practicable. If laundry facilities/services are not available, clean clothing shall be available to replace soiled clothing, to include cloth swaddling blankets, sweatpants, t-shirts, socks, and underwear.

7. In juvenile priority locations where space is available, infant changing stations shall be maintained. In all locations, diapers in a variety of sizes and baby wipes shall be accessible.

8. All class members shall have access to functioning toilets and sinks, toilet paper, soap and/or hand sanitizer, and feminine hygiene products at all times. Janitorial and portable toilet contractors shall maintain toilets and hand washing stations to ensure adequate supplies of toilet paper and soap are provided. Class members shall have a mechanism or means to dry their hands.

9. Adequate space shall be made available for the storage of hygiene supplies identified within this section. These items should be adequately stored for either immediate use or long-term storage in the event of a surge. Temperature, humidity, and accessibility of the storage area should also be taken into account to determine an adequate storage location.

10. During site visits, the JCO shall confirm availability of hygiene supplies in conformance with TEDS and guidelines established in this Agreement.

8. **Child-Appropriate Environment**

A. In General

CBP shall treat all class members in custody with dignity, respect and special concern for their particular vulnerability as minors and place each class member in the least restrictive setting appropriate to the class member's age and special needs.

B. Family Unity

1. Absent an articulable operational reason, class members apprehended with adult family members (including non-parents or legal guardians) shall remain with that family member during their time in CBP custody, in accordance with TEDS, as well as the requirements of the TVPRA.

2. Non-parent or legal guardian family members may include adult siblings, grandparents, cousins, aunts, uncles, great-aunts, or great-uncles.

3. When there is an operational need to house family members separately, CBP shall make and record the reasons for holding them apart and all reasonable efforts to ensure that the family members have the opportunity to interact. Agents shall inform class members of all ages that, if they are housed separately from a family member, they can ask agents, guards, or caregivers to interact with that family member. "Family member" includes both parents/legal guardians and non-parents/legal guardians that were traveling with a class member of any age. This information will be provided orally and via the poster attached as Exhibit 1.

4. CBP shall take into account a class member's age and special needs in determining whether it is appropriate to house a class member separately from his or her family member.

5. Each facility may hold family members in a different manner based on different demographics and the capabilities of the facilities. For instance, in some facilities, it may be necessary to house all teenage boys together, regardless of whether they entered with a family member. In other facilities, it may be possible to hold a teenage boy with his accompanying family member. In all cases, efforts shall be made at each facility to ensure interaction between family members. These efforts can include having a common area with benches for visiting throughout the day, sharing meals together in a common area or participating in recreational time together.

6. Orientation training for security guards and caregivers shall inform the caregivers and security guards that class members are able to ask for and shall, barring

exceptional circumstances, have contact and interaction with family members housed in the same facility.

7. CBP shall notify HHS/ORR when there are unaccompanied class members who are related and in need of placement, in an attempt to ensure that class members are jointly placed in an ORR facility or in facilities that are in close proximity, to allow for family interaction.

8. CBP shall make all reasonable efforts to provide unaccompanied class members daily access to a phone in order to permit contact with family members.

C. Special Considerations

1. In juvenile priority facilities where facility capabilities and operational and safety needs allow, such as CPCs and soft-sided facilities, CBP shall make reasonable efforts to have televisions made available in pods where class members are routinely housed. Televisions will only be made available if the facility can accommodate the televisions while also ensuring that they can be secured in a location that minimizes damage to the televisions or possible injury to the persons in the facility.

2. Juvenile priority facilities shall make an effort to have available age-appropriate toys/activities. Such toys and activities shall not pose a health risk or security risk to any persons in the facility.

3. In juvenile priority facilities where space and custody levels allow, such as CPCs and soft-sided facilities, CBP shall make efforts to provide child appropriate "furniture" in areas that are holding tender age children. This can include items such as plastic tables or benches that cannot be easily disassembled or cause a health/safety risk. The child appropriate furniture shall not be required at Border Patrol stations where these types of accommodations are not operationally feasible.

4. In juvenile priority facilities, CBP shall provide unaccompanied class members with at least one daily message (in person or video) providing reassurance of their safety and orienting them to date, time, location, and general process/disposition/ expectations.

9. Caregivers

A. General Provisions

1. Caregivers are a critical component of CBP's efforts to meet the unique needs and vulnerabilities of class members in custody, and to provide a safe and secure environment for class members.

2. All juvenile priority facilities shall utilize caregivers. Caregivers shall meet all required background checks and have sufficient experience and training to provide general support to class members in custody.

3. Caregiver services shall be available on a 24/7 basis, to include weekends and federal holidays, at juvenile priority facilities.

4. Caregivers shall provide a mixed gender staff to include at least one male and one female staff member at all times. A supervisor shall be available at all times.

5. Nothing in this section precludes CBP from implementing additional qualifications or training or from setting additional responsibilities or hiring individuals with additional expertise.

B. Orientation

In addition to the general requirements outlined above, CBP shall provide caregivers with an orientation that includes information on monitoring in CBP holding facilities, as well as the caregiver's role in observing and reporting inappropriate behavior, detainee health conditions, and the recognition and referral of those detainees displaying emotional and mental distress. Training will include but not be limited to Prison Rape Elimination Act (PREA) compliance, *Flores* compliance, and compliance with TEDS.[3]

C. Responsibilities

1. Caregivers shall support general care to infants and children up to age 5 in custody.
2. Caregivers shall coordinate the collection and bagging of dirty laundry.
3. Caregivers shall issue and collect shower/hygiene supplies.
4. Caregivers shall monitor (i.e., maintain visual contact) at all times all class members going into and out of showers, from start to finish, taking care to adhere to DHS regulations implementing the PREA.
5. Caregivers shall assist in bathing class members, as appropriate.
6. Caregivers shall be responsible for storing clothing and issuing it to class members while the class members' clothing is being washed.
7. Caregivers shall maintain a safe working environment, observing and encouraging adherence to safety rules and health guidelines.
8. Caregivers shall maintain inventory of the clothing, towels for showering, and hygiene kits available for use and notify CBP staff of any low inventories, in order to initiate procurement actions.
9. Caregivers shall refer any suspected or reported medical or mental health issues to USBP personnel or medical personnel onsite.

D. Additional Caregiver Support

1. CBP is committed to continuing to enhance and expand caregiver services to continue to meet the unique needs and vulnerabilities of class members
2. CBP will make best efforts to hire, contract for, or provide additional caregivers or other individuals sufficient to provide additional support for class members in custody, including:
    a. Assisting class members in communicating and interacting with family members that may be held in a separate cell or pod.
    b. Assisting with the general care of class members, to include monitoring, changing diapers, assisting with toilet use and hand-washing, feeding when a child is not able to feed him or herself, and identifying and tending to other similar basic needs of class members as they arise.
    c. Providing supervision and support to class members during recreational and exercise activities. These types of activities may include age appropriate activities such as reading, art, or general play.
    d. Assisting with distribution of meals delivered to the facility, as needed.
3. As part of the of hiring or contracting efforts described in paragraph 1, CBP shall make best efforts to provide caregiver staffing sufficient to:

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[3] https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search

a. Provide at least one caregiver for each holding pod or cell in which class members are being held in CPC or soft-sided juvenile priority facilities. For pods holding family units, the caregivers can be re-assigned if needed to supplement an emergent need to provide for special needs and tender age children.
Provide enough additional caregivers in place to assist with showers, meals, recreation time and other responsibilities without depleting the pod staffing. The additional caregivers do not need to be available during hours in which these activities are not typically provided. c. Provide additional staff during times of surges of class members, as requested by CBP.

VIII. EXTENDED TIME IN CUSTODY

If a situation occurs in which a class member remains in CBP custody for longer than 72 hours, CBP shall take prompt additional steps to ensure that conditions remain safe and sanitary, as appropriate based on the length of time a class member remains in custody.

Additionally, CBP shall:

1. Provide a supplemental health interview to all class members every 5 days;
2. Conduct enhanced medical monitoring on class members, as appropriate, as outlined in Section I.D. of the attached Medical Annex;
3. Continue to offer showers to class members every 48 hours;
4. Continue to provide toothbrushes and toothpaste to class members daily and upon request, as well as hygiene kits at the time showers are provided;
5. Continue to provide class members access to clean and dry clothes;
6. Continue to provide class members with adequate food and clean drinking water. CBP shall make reasonable efforts to provide additional variety in the meals available to class members who remain in custody for more than 72 hours;
7. In juvenile priority facilities, provide opportunities for recreation and other child-appropriate activities daily. CBP shall make all reasonable efforts to provide class members with outdoor recreation.
8. Continue to provide mats and blankets during hours of sleep, as well as continue to make reasonable efforts to dim the lights in CBP facilities during hours of sleep.

IX. JUVENILE CARE MONITOR

1. The Parties agree to request that a Juvenile Care Monitor who is agreed to by the parties shall be given authority by the Court to monitor compliance in the RGV and El Paso Sectors with the Settlement as detailed in this Agreement. The Juvenile Care Monitor shall be entitled to reimbursement of reasonable fees and expenses. These fees and expenses will be subject to a cap of $280,000 annually. On a monthly basis, the Juvenile Care Monitor shall provide CBP with a detailed record of hours billed and expenses incurred in the preceding month. If CBP disputes a bill from the Juvenile Care Monitor it shall have 15 days to review and submit objections to the Juvenile Care Monitor or to request additional documentation from the Juvenile Care Monitor. If any dispute over the Juvenile Care Monitor's bill is not resolved within 30 days then CBP will submit the dispute to the Court for resolution.
2. The Juvenile Care Monitor will, subject to an appropriate confidentiality agreement, have access to CBP documents and records, may conduct announced and

unannounced visits to U.S. Border Patrol facilities in the RGV and El Paso Sectors, may conduct interviews with class members and accompanying adult family members, and may conduct interviews with CBP employees and the employees of its contractors. The Juvenile Care Monitor will prepare and provide the Special Master/Independent Monitor (for the duration of her term) and the Parties with quarterly reports. The Juvenile Care Monitor will file these reports with the Court. If these reports are deemed confidential by the Special Master/Independent Monitor, the Juvenile Care Monitor, or either Party, they shall be filed under seal with the Court. Each report shall be accompanied by a summary that will be filed on the public docket. Either Party may file objections to or comments to the reports. Any objections or comments regarding confidential matters shall be filed under seal. The Juvenile Care Monitor will prepare a monitoring protocol which will be adhered to by the Juvenile Care Monitor and all Parties.

3. The Juvenile Care Monitor may designate qualified medical professionals to assist in his or her monitoring functions. The Juvenile Care Monitor may also identify proposed aides unaffiliated with CBP or with Plaintiffs and, through the Special Master/Independent Monitor, seek Court approval (or, after the expiration of the Special Master/Independent Monitor's term, directly from the Court) for the hiring of such aides and medical professionals to assist the Juvenile Care Monitor in all aspects of his or her monitoring work. Both Parties must agree to any proposed aides or medical professionals. Such aides or medical professionals, acting under the supervision of the Juvenile Care Monitor, may inspect CBP facilities and records, and interview CBP employees, regarding compliance with this Agreement. These aids and/or medical professionals will be paid for their services, and these payments will be subject to the annual cap designated above in Paragraph 1 of this Section.

4. The Juvenile Care Monitor will promptly notify CBP and Defendants' Counsel of any observed failure to substantially comply with this Agreement or the Settlement within the RGV or El Paso Sectors and, if the situation is not timely remedied, promptly notify the Special Master/Independent Monitor (for the duration of her term), the CBP Juvenile Coordinator, and Class and Defendants' Counsel of any observed failure to substantially comply with this Agreement. The Juvenile Care Monitor may inform the Independent Monitor/Special Master and Class Counsel of any site visits or other steps taken to monitor compliance with this Agreement.

5. The Juvenile Care Monitor shall be responsible for monitoring overcrowding, in addition to monitoring compliance with all terms of this Agreement. Overcrowding is defined as a level of occupancy that exceeds the physical space required to maintain a safe and sanitary environment for each individual in custody.

(i) CBP shall provide the Juvenile Care Monitor with the information he or she determines, in consultation with CBP, is necessary to assess the potential for or actual overcrowding in juvenile priority facilities. This information shall include occupancy data for all pods and cells in CBP facilities in the RGV and El Paso Sectors; demographic data regarding class members in CBP custody; data regarding the time that class members spend in CBP custody; and data regarding the size of available holding areas.

(ii) The Juvenile Care Monitor may notify Class Counsel if capacity in CBP facilities holding class members in the RGV or El Paso sectors reaches 90% or more for a period of more than 72 hours.

(iii) During any periods of overcrowding, CBP shall make all efforts to continue to comply with all provisions of this Agreement. To the extent that full compliance is

not possible, CBP shall take all necessary steps to mitigate any non-compliance and comply with this Agreement to the extent possible, including, but not limited to, seeking assistance from all appropriate federal and other partners and activating any appropriate internal emergency plans.

7. The Juvenile Care Monitor may inspect CBP facilities in the RGV and El Paso Sectors manner discussed above, and may also request data from CBP, in order to determine whether CBP is in compliance with the terms of this Agreement, including whether there is overcrowding at CBP juvenile priority facilities, as defined in paragraph 4. When conducting inspections of non-priority facilities, such visits shall be solely for the purpose of determining whether the facility is prepared to hold class members in compliance with this Agreement.

8. The Juvenile Care Monitor may, in his or her discretion, provide Class Counsel with documents or information provided by Defendants, to the extent that he or she determines that such sharing would facilitate the performance of his or her duties in monitoring compliance with the terms of this Agreement, including monitoring whether there is overcrowding at CBP juvenile priority facilities in RGV and El Paso Sectors, as defined in paragraph 4.

9. If, in the course of his or her monitoring duties under this Agreement, the Juvenile Care Monitor identifies any concerns or issues related to a suspected failure to substantially comply with the Settlement in any Sector outside of RGV or El Paso, the Juvenile Care Monitor may notify the CBP Juvenile Coordinator and the CBP Chief Medical Officer in writing. The Juvenile Coordinator's Office and/or the CBP Chief Medical Officer, as appropriate, will review the concerns with the Juvenile Care Monitor. The Juvenile Care Monitor also may request to be permitted to conduct further review of the concerns, and CBP may, at its discretion, approve such a request. CBP may also request that the Juvenile Care Monitor provide a recommendation following any such review.

10. The Juvenile Care Monitor shall be appointed to a single term of sixteen months from the date of appointment by the Court. The Juvenile Care Monitor's fifth and final quarterly report shall be submitted fourteen months after appointment by the Court. Within 30 days of receiving this final report, the Parties shall meet and confer regarding whether the Juvenile Care Monitor's term shall be extended. If no agreement is reached, Plaintiffs may petition the Court for a single extension of the Monitor's term. Such an extension request must be accompanied by the specific instances of non-compliance that Plaintiffs believe justify the extension. Plaintiffs bear the burden of proving non-compliance.

11. In the event that the Juvenile Care Monitor is unable to perform his or her duties, the Parties shall meet and confer regarding the appointment of an appropriate individual to replace the Juvenile Care Monitor. During the meet and confer, the Parties will each recommend two individuals to replace the Juvenile Care Monitor. Following the meet and confer, the Parties will, through the Special Master/Independent Monitor, seek Court approval of such individual (or, after the expiration of the Special Master/Independent Monitor's term, directly from the Court). The Parties may seek the assistance of the Special Master/Independent Monitor for the duration of her term.

12. CBP shall provide the Juvenile Care Monitor with all monitoring protocols, including medical monitoring protocols and protocols developed by the JCO. The Juvenile Care Monitor may review those protocols and advise Defendant on any enhancements or further refinement. Prior to the effective transition of monitoring functions, the Juvenile Care Monitor shall approve Defendant's final monitoring protocols. The JCO and the CBP

Chief Medical Office shall rely on such approved monitoring protocols, but retain discretion to update and amend such monitoring protocols, as appropriate.

13. At the completion of the Juvenile Care Monitor's term, CBP shall assume responsibility for monitoring compliance with the terms of this Agreement, including monitoring whether there is overcrowding, as defined in paragraph 4, above. For a period of thirty days after the Juvenile Care Monitor's term ends, the Juvenile Care Monitor will work with the CBP Juvenile Coordinator to ensure an effective transition of monitoring functions, and will be compensated for this work.

X. PLAINTIFFS' ATTOREY-CLIENT VISITS

In accordance with Paragraph 32A of the Settlement, Plaintiffs may continue to conduct attorney-client visits at CBP facilities in the RGV and El Paso Sectors. Plaintiffs shall provide at least fourteen (14) days' notice of any intended attorney-client visits under Paragraph 32A, and such notice shall include the names of all attorneys who will be conducting such visits, as well as any identifying information requested by CBP for purposes of conducting background checks and vetting. Plaintiffs shall not add additional names of attorneys following this initial submission. If, following any such visits, Plaintiffs identify any allegations of a breach of this Agreement or of the Settlement in CBP facilities in the RGV or El Paso Sectors, Plaintiffs shall submit those allegations to Defendant in accordance with section XII.

XI. NOTICE TO CLASS MEMBERS

Class members shall be made aware of the availability of items included in this Agreement by a poster in English and Spanish attached as Exhibit 1, which will be posted in all CBP facilities where class members are detained in the RGV and El Paso Sectors in locations within proximity to class members so they can see and read the poster. Class members age 14 or over and all accompanying adult family members of class members under the age of 14 shall also be informed of their rights under this Agreement orally and by video, as set forth in Exhibit 3 attached, and provided an I-770 in English and Spanish. If the minor or accompanying adult family member do not read or speak in the Spanish language, the I-770 shall be read to them in their native language. CBP shall provide a copy of a list of free legal services to all class members. CBP shall provide Class Counsel any amended or updated list of free legal services within thirty (30) days after any amendment to the list. Class counsel may provide CBP, through Defendants' counsel, with additional available free legal service programs to be included in the list of free legal services.

XII. ORIENTATION FOR CBP EMPLOYEES AND CONTRACTORS

All CBP employees and contractors who are required to perform their duties consistent with this Agreement shall be provided a copy of the summary of this Agreement attached as Exhibit 4, and shall receive an orientation regarding the requirements of this Agreement. The distribution of the summaries and provision of orientation shall be recorded in a manner that permits the Juvenile Care Monitor to monitor compliance with this Section.

XIII. DISPUTE RESOLUTION

1. If Class Counsel believes that Defendant has breached this Agreement, Class Counsel shall, within thirty (30) days of learning of the event giving rise to the belief, provide CBP (through Defendant's counsel) with written notice of the specific facts that they believe constitute a breach of the Agreement. Class Counsel shall also provide a copy of the notice of breach to the Juvenile Care Monitor and the Special Master/Independent Monitor during the pendency of their terms. Plaintiffs may not submit any notice of breach more than one-year after the event that forms the basis for the allegation of breach.

2. When presenting an allegation of breach to Defendant, Class Counsel shall make their best efforts to indicate the time, date, location, and the specific factual circumstances forming the basis for the alleged breach, , as well as the names and A-numbers (or other equivalent identifying information) of all class members whose claims serve as a basis for the allegations. Mere citations to the Agreement or generalized statements of harm will not be sufficient.

3. During the pendency of the terms of the Juvenile Care Monitor and the Special Master/Independent Monitor, Defendant will have fifteen (15) days to respond to the allegations, and shall provide their written response to Class Counsel, the Juvenile Care Monitor, and the Special Master/Independent Monitor. After Defendant provides a response, the Parties will meet and confer in an effort to resolve the allegations, with the participation of the Juvenile Care Monitor and the Special Master/Independent Monitor. If the Parties cannot resolve the allegations, Class Counsel may, in accordance with the Local Rules for the Central District of California and the Federal Rules of Civil Procedure, submit their allegation(s) of breach to the Court for resolution.

4. Following the expiration of the terms of the Juvenile Care Monitor and the Special Master/Independent Monitor, the CBP Juvenile Coordinator shall review and respond to allegations of breach through monitoring as described in section IX and/or directing allegations to the appropriate oversight entity within CBP. This review shall commence within seven (7) days of receiving the allegation of breach. Within thirty (30) days of receiving the allegations of a breach, Defendant shall provide a response to Plaintiffs. The parties shall meet and confer in an attempt to resolve the allegations. The parties may, upon mutual consent, request that a mediator be appointed by the Court to oversee these discussions. If the Parties cannot resolve the allegations, Class Counsel may submit the allegation of breach to the Court for resolution. Class Counsel must provide the Court with the specific reasons that they believe Defendant is in breach of the Agreement.

4. If Plaintiffs have a good faith belief that one or more class members may suffer immediate irreparable harm if the alleged violation of this Agreement is addressed in the time frame set forth above, the Parties agree that Class Counsel may seek immediate relief from the Court, following a meet and confer as required by the Local Rules of the Central District of California.

Special Considerations: Annex I

IA. Care for Class Members
IB. Behavioral Health
IC. Medical Notification
ID. Enhanced Medical Monitoring
IE. Medication Review
IF. Medical Quality Management
IG. Public Health/Infectious Disease Management
IH. Medical Documentation, Communication, and Continuity of Care
III. Surge and Crisis-Level Medical Support
IJ. Medical Monitoring and Compliance

CBP Medical Support

IA. Care for Class Members:

- CBP recognizes the unique challenges of providing medical support to juveniles in custody.
- Medical support for juveniles is an integral element of CBP medical support efforts and is integral to the overarching CBP medical support construct.
- CBP will continue to consult broadly with a number of internal and external pediatric subject matter experts, including U.S.-government pediatric experts.
- CBP contracted medical support personnel shall be trained, licensed, and credentialed to provide assessment and treatment for the population in custody, to include class members.
- CBP has engaged board-certified Pediatricians to serve as contracted Pediatric Advisors to enhance CBP medical support for juveniles in custody. Pediatric Advisors will be assigned regionally based on operational risk management considerations described in the Agreement. Pediatric Advisors' roles/responsibilities include:
    - Advise on ongoing medical protocol development and refinement for class members in CBP custody.
    - Provide consultation support to medical staff for complex juvenile medical cases.
    - Develop and conduct juvenile focused in-service training and ongoing professional development for medical staff.
    - Contribute to Medical Quality Management (MQM) efforts through juvenile chart review and Ongoing Professional Practice Evaluation.
    - Monitor juvenile referral practices and patterns and coordinate with medical providers and local health system to optimize juvenile referral practices.
        - Work with CBP, contract medical teams, and local health system to establish primary referral sites with pediatric expertise.

IB. Behavioral Health:

- CBP recognizes the potential for behavioral health issues for persons in custody, particularly for potentially vulnerable populations such as class members. CBP also recognizes that class members may have experienced trauma in their home country and on their journey, and that time in custody can be destabilizing and disorienting.

- Recognizing and addressing behavioral health issues and providing trauma-informed care is integral to the overarching CBP medical support construct.
- Health intake interviews and medical assessments include recognition of potential behavioral health issues.
- CBP's approach emphasizes psychological triage and psychological first aid with reliance on referral to local health system for behavioral health issues.
- CBP will make all reasonable efforts to expedite transfer of class members with behavioral health issues to ICE or HHS ORR, as appropriate, for enhanced behavioral health support, and will document those efforts.
- CBP has engaged credential Behavioral Health clinicians to serve as Behavioral Health Advisors to support CBP behavioral health efforts. These Behavioral Health Advisors will be assigned regionally based on operational risk management considerations described in the Agreement. Behavioral Health Advisors' roles/responsibilities include:
    - Advise on ongoing behavioral health protocol development and refinement.
    - Provide consultation support to medical staff for complex behavioral health cases.
    - Develop and conduct behavioral health focused in-service training and ongoing professional development for medical staff.
    - Contribute to MQM efforts through behavioral health chart review and Ongoing Professional Practice Evaluation.
    - Monitor behavioral health referral practices and patterns and coordinate with contract medical providers and local health system to optimize behavioral health referral practices.
    - Work with CBP, contract medical teams, and local health system to establish primary referral sites with appropriate behavioral health expertise.
- CBP shall make efforts to foster reassurance, resilience, orientation, recreation, and distraction for class members in custody.

IC. Medical Notification

- CBP's approach to identification and notification of medical issues is based on a multi-pronged, layered approach, with no single point of failure:
    - Agents shall inform individuals in custody that they have a right to medical treatment, and shall inform and encourage individuals in custody to self-refer or to refer family members or companions for medical care. This information shall be provided orally and via the poster attached as Exhibit 1.
    - Agents in the field will recognize and respond to urgent medical issues requiring activation of 911/EMS or transport to local health system.
    - CBP juvenile priority facilities will have 24/7 access to contracted onsite medical support.
    - Contracted caretakers shall receive an orientation informing them that they should refer class members with medical concerns.
    - Contracted security guards shall receive an orientation informing them that they should refer class members with medical concerns.
    - Agents shall refer class members with medical concerns to contracted medical personnel or the local health system, as appropriate, and shall conduct regular 'welfare checks' to include observation for medical concerns.

- Medical personnel shall maintain visibility on medical issues within the class member population and be prepared to engage those in custody with medical issues, as appropriate.
- CBP shall conduct Enhanced Medical Monitoring (detailed below) on persons identified as having medical issues of concern.

ID. Enhanced Medical Monitoring:

- At medical priority CBP facilities with contracted medical support, CBP shall conduct enhanced medical monitoring of persons in custody identified with significant medical issues or concerns, with an emphasis on potentially vulnerable populations such as class members.
- The timing and scope of the enhanced medical monitoring shall be tailored to the individual clinical situation or circumstance.
- Enhanced medical monitoring shall consist of, at a minimum, symptom check and temperature check (plus additional vital signs as appropriate) by medical personnel.
- Enhanced medical monitoring shall occur, at a minimum, every 4 hours.
- Enhanced medical monitoring shall include a determination of the appropriate disposition after referral or discharge from local health system.
- Enhanced medical monitoring shall include a process to track persons subject to enhanced medical monitoring and turnover between shifts or rotation of providers.
- Enhanced medical monitoring shall be documented appropriately.
- Enhanced medical monitoring shall identify class members whose condition is deteriorating or who are not making expected progress, and prompt notification will be made to pediatric advisors or to the local health system, as appropriate.

IE. Medication Review:

- CBP places a priority on ensuring availability of safe access to appropriate medication for persons in custody.
- Upon initial processing or upon health intake interview, class members will be assessed for current or unmet medication needs.
- If a class member has medication with him or her, it will be assessed to determine validity, currency, and appropriateness. If the medication is deemed to be appropriate, it may be dispensed in a controlled manner. If there is any question about the appropriateness of the medication, the class member will be evaluated by medical personnel onsite or referred to the local health system as expeditiously as possible to evaluate medication requirements.
- If medication is required, a prescription will be obtained from onsite medical personnel or from the local health system and filled.
- Medications shall be held by CBP (for safety and security reasons) while a class member is in custody and dispensed in a controlled manner consistent with prescription instructions.
- Class members shall be provided a supply of medication or a prescription upon transfer or release, as appropriate, and instructions regarding use of the medication.

IF. Medical Quality Management (MQM):

- CBP shall utilize a robust and responsive MQM program, which shall include:

- Internal controls/review – Contractor personnel conduct and review MQM efforts.
- External controls/review
  - CBP Chief Medical Officer provides CBP medical direction and oversight of MQM efforts.
  - CBP Chief Medical Officer coordinates with DHS Office of the Chief Human Capital Officer for support to MQM efforts.
  - CBP Juvenile Coordinator works with the CBP Chief Medical Officer to include medical support efforts in ongoing review activities.
  - Court-approved Juvenile Care Monitor.
- MQM elements:
  - Licensing and Credentials Review
  - Focused Professional Practice Evaluation (FPPE)
  - Ongoing Professional Practice Evaluation (OPPE)
  - Chart reviews
  - Inservice reviews
  - Sentinel Event reviews
- Physician Supervisors – CBP Physician Supervisors will play an integral role in the CBP MQM program through ongoing chart review, FPPE, OPPE, sentinel event review, and inservice programs.
- Pediatric Advisors – CBP Pediatric Advisors will play an integral role in the CBP MQM program, with a focus on care for juveniles, through ongoing chart review, FPPE, OPPE, sentinel event review, and inservice programs.
- Behavioral Health Advisors – CBP Behavioral Health Advisors will play an integral role in the CBP MQM program, with a focus on behavioral health, through ongoing chart review, FPPE, OPPE, sentinel event review, and inservice programs.
- Patient Safety/Quality Managers – CBP will engage contracted professional Patient Safety/Quality Managers to administer the MQM program and provide coordination and documentation of MQM program efforts.

- CBP shall continue to expand and enhance the MQM program in concert with the expansion and enhancement of CBP medical support efforts.

IG. Public Health/Infectious Disease Management

- CBP shall consult with partners and stakeholders, including DHS, HHS, CDC, and state and local health officials, as appropriate, to address public health/infectious disease issues in CBP facilities.
- CBP shall develop and maintain protocols regarding public health/infectious disease events in CBP facilities, to include consideration of isolation/cohorting/quarantine considerations, with an emphasis on class members.
- CBP will emphasize early identification and evaluation for public health/infectious disease issues in persons in custody, with an emphasis on class members.
- Infectious disease cases will be assessed and treated onsite (where contracted medical support personnel are available) or referred to the local health system as appropriate.
- CBP has limited isolation/quarantine capacity, but will address isolation/cohorting/quarantine requirements for class members, as appropriate, in consultation with health officials, with an emphasis on especially vulnerable class members.

Class members in isolation/quarantine shall be provided a means to communicate with accompanying family members who are not isolated/quarantined with them at least twice a day, so long as such communication will not jeopardize the health or safety of the class member or their accompanying family member. While a class member and his/her accompanying relative are in CBP custody, CBP will make best efforts to allow an accompanying adult relative to remain with a class members who requires quarantine, if medically appropriate and operationally feasible.

IH. Medical Documentation, Communication, and Continuity of Care

- CBP shall ensure appropriate documentation of medical information.
- CBP shall ensure documentation provided by the emergency room or hospital is shared with or transferred to appropriate parties as persons are transferred or released from custody.
- Where CBP has contracted medical support, as part of an Exit Health Interview, CBP will provide appropriate summary documentation of medical events which occurred within CBP custody to the patient or parent/legal guardian.
- CBP has recognized the potential operational and medical benefit of establishing an Electronic Health Record (EHR) and will establish EHR functionality as part of its expanded medical support efforts.
- CBP will work with established systems and contractors to develop initial EHR functionality.
- CBP shall adopt policies requiring that class members who receive medical treatment in CBP custody leave CBP custody with appropriate information regarding their medical condition and treatment while in CBP custody.

IJ. Surge and Crisis-level Medical Support

- CBP will maintain contracted medical support capabilities at medical priority locations.
- For surge operations, CBP will utilize contracted surge medical support at critical locations.
- For crisis-level operations, CBP will:
    - Utilize contracted surge medical support to the greatest extent possible.
    - Utilize interagency surge medical teams at critical locations.
    - Develop additional Requests for Assistance from DHS, HHS, and other U.S. government partners as appropriate.

IK. Medical Monitoring and Compliance

- The CBP Chief Medical Officer shall conduct medical direction and oversight of CBP medical support efforts
- The CBP Juvenile Coordinator shall work with the CBP Chief Medical Officer to incorporate medical monitoring and compliance into ongoing Juvenile Coordinator review efforts. The CBP Juvenile Coordinator will utilize site visits, checklists, interviews of CBP personnel, class member interviews, and relevant document review to monitor medical efforts.
- Representative examples of medical monitoring and compliance assessment may include:
    - Data points: (including age and diagnosis/disposition as appropriate)

- Number of class members apprehended and in custody
- Number of class members with Health Intake Interview
- Number of class members with Medical Encounter
- Number of class members referred to local health system
- Number of class members admitted to hospital
- Number of class member deaths in custody

- Observation and Document Review:
  - Presence of medical support on site
  - Health intake interviews, Medical Assessments, Medical Encounters being conducted
  - Medication reviews being conducted; medications provided
  - Enhanced medical monitoring being conducted
  - Medical documentation being conducted
- Juvenile Coordinator Interview:
  - Perception of access to medical support
  - Perception of quality of medical support
  - Personal experience with medical support

EXHIBIT 1

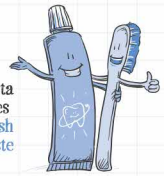
TU PUEDES PEDIR!

Lo que tienes derecho a pedir

What you have a right to ask for

HIGIENE
HYGIENE

Ducharse cada 48 horas
Shower Every 48 Hours

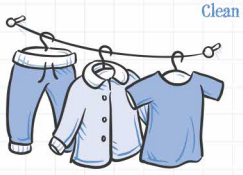


Cepillo y pasta de dientes
Toothbrush & Toothpaste

Jabon y tóalla
Soap & Towel

Productos de higiene femenina
Feminine Hygiene Products

Bäno limpio y privicidad
Clean Toilet & Privacy



Ropa limpia y seca
Clean, dry clothes

FAMILIA
FAMILY

Visitar a los miembros de la familia bajo custodia
Visit family members in custody

COMIDA Y AGUA
FOOD + WATER

Agua potable
Clean drinking water

Bocadillos, bebidas
Snacks, drinks

Dos comidas calientes al día
Two hot meals daily

CALOR
WARMTH

Estera para dormir y espacio
Sleeping Mat & Space

Mantas
Blankets

Temperatura Comfortable
Comfortable Temperature

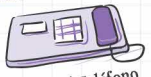
Ropa para abrigarse
Extra clothes

SUMINISTROS PARA BEBE
BABY SUPPLIES

DOCTORA / MÉDICA
DOCTOR / MEDICAL

Abogada
Lawyer

Padres o Parientes
Parents or Relatives



Acceso al Teléfono
Access to Telephone

Funcionario Consular
Consular Official

TELÉFONO
TELEPHONE

This poster must be located at all border patrol facilities so it can be seen by Flores class members and their accompanying parents in their holding cells.

EXHIBIT 2

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

ALIEN INITIAL HEALTH INTERVIEW QUESTIONNAIRE

ALIEN INFORMATION				
Alien's Name *(Last, First, MI)*				A-Number (if any)
Age	Date of Birth	Gender	Country of Citizenship	
Agent/Officer Name *(Last, First, MI)*				Event Number
Agent/Officer: Are you able to communicate with the Alien? ☐ Yes ☐ No				Date Completed

ALIEN HEALTH BACKGROUND			
	ALIEN RESPONSE		AGENT/OFFICER OBSERVATION
	Yes	No	Additional detail as appropriate
1. Do you have a history of or current medical or mental health issues?	☐	☐	
2. Are you taking any prescription medications? If yes, do you have it with you?	☐	☐	
3. Do you have any allergies? (e.g. food, medicine)	☐	☐	
4. Are you a drug user?	☐	☐	
FEMALES ONLY			
5. Are you pregnant? If yes, how many months?	☐	☐	
6. Are you nursing?	☐	☐	

ALIEN HEALTH INTERVIEW			
If answered or observed "Yes" to any of the health interview questions below, then refer for a medical assessment.	ALIEN RESPONSE		AGENT/OFFICER OBSERVATION
	Yes	No	Additional detail as appropriate
7. Are you currently ill or injured or do you have significant pain?	☐	☐	
8. Do you have a skin rash?	☐	☐	
9. Do you have a contagious disease?	☐	☐	
10. Are you thinking about hurting yourself or others?	☐	☐	
11. Do you feel feverish or do you feel that you have a fever?	☐	☐	
12. Do you have a cough or difficulty breathing?	☐	☐	
13. Do you have nausea, vomiting, or diarrhea?	☐	☐	

ADDITIONAL AGENT/OFFICER OBSERVATIONS

Are there any other observations or concerns? Examples are: disorientation, bruising/bleeding, yellow eyes/skin, environment-related illness (heat stroke, hypothermia, severe dehydration)

MEDICAL ASSESSMENT REFERRAL

Was the alien referred for a Medical Assessment? ☐ Yes ☐ No

EXHIBIT 3

EXHIBIT 3
FLORES V. GARLAND CBP NOTICE OF RIGHTS RE AGREEMENT OF _____ [DATE]

Instruction to USBP personnel: The notice below shall be read and conveyed by video to all class members (or, if under the age of 14 or otherwise unable to understand the notice, their accompanying adult family member) in Spanish. If the class member or accompanying adult family member speak a language other than Spanish, this notice shall be read to them in their native language. Personnel shall record that this notice was provided orally.

You are in the custody of U.S. Border Patrol in the El Paso or Rio Grande Valley Sector. While in this facility, you may ask the Agents, security guards or the caregivers for extra clothing, a blanket, a mat, snacks, juice, milk, drinking water, feminine hygiene products, soap, towels for showering, and a toothbrush and toothpaste, at any time.

If you are traveling with a baby or toddler, you may ask for diapers, baby bottles and formula, baby food, a swaddling blanket, or a beanie/wool hat. Baby bottles should be used only one time. Every time you need to feed your child, you should use a new baby bottle.

If you feel sick or need medical care, or if a member of your family needs medical care, please ask the Agents, the security guards, or a caregiver for help. If you want to see a family member who is in this facility but not in the same room as you, you may ask the Agents, a security guard or the caregivers in this facility to contact that family member.

An Agent will be providing you with a list of legal organizations that may represent you for free or for a small fee. You may use the telephone to call a lawyer or other legal representative at any time prior to your departure from the facility at no cost.

/ / /

EXHIBIT 4(a)

Juvenile Priority Facilities – Supervisor/Team Lead Responsibilities

The following requirements apply to ***all minors*** in custody (both accompanied and unaccompanied).

The following items should be **PROVIDED**:
Personal Hygiene – Toothbrushes daily or when requested, Hygiene kits when showering
Showers as soon as possible following arrival, and at 48-hour intervals
Laundry services
Age-appropriate Meals
Mats and Blankets
Cloth swaddling blankets for infants and children under age 2
Warm clothing, if clothes are being laundered or are soiled
Medical care, as appropriate
Dimmed lights and adequate space for sleep during the hours of 2200-0600, if safe to do so
Access to a daily phone call for unaccompanied children

The following items should be readily **AVAILABLE**:
Snacks, juice, clean drinking water, and cups
Functioning toilets and sinks/handwashing stations
Sanitary items (toilet paper, soap and/or hand sanitizer, feminine hygiene products)
Baby care items including diapers, wipes, bottles, formula, and food
Clean and dry clothing, such as sweatpants, t-shirts, underwear, socks
Additional clothing for warmth, such as sweatshirts, beanies, sweatshirts, jackets
Additional blankets, provided upon request
Infant changing tables, where space is available

Be sure the **ENVIRONMENT** is:
Clean and safe
Amenities including toilets, sinks, and water fountains are in working order
Child friendly with age-appropriate toys/activities/child appropriate furniture in place
An appropriate temperature, 69 – 83 degrees (monitor temperature with digital displays or temperature reading devices)
Reasonable efforts to minimize noise and disruptions between 2200 and 0600
Maintain family unity, in accordance with TEDS and the TVPRA
Caregivers available on a 24/7 basis

LISTEN to requests for:
Medical care
Food/snacks/water
Additional Clothing
Communication with family, consulate, or legal counsel (if one is retained)

REPORT to your supervisor:
Unsafe conditions

Juvenile Priority Facilities – Supervisor/Team Lead Responsibilities

Inappropriate conduct
The need for more supplies
Medical issues or concerns

DOCUMENT in the detention module:
All medical care
All meals provided
Communication with family, consulate or legal support
Visits with family members also in the facility
Any items supplied to the minor ex: hygiene, clothing, baby supplies, etc.
Facility temperature (at least twice/day)

If a child remains in custody for longer than 72 hours, take the following additional steps:
Supplemental health interview every 5 days
Make reasonable efforts to provide additional variety in meals
Provide opportunities for recreation, including reasonable efforts to provide outdoor recreation

EXHIBIT 4(b)

Juvenile Priority Facilities – POD/Holding Area Responsibilities

The following requirements apply to ***all minors*** in custody (both accompanied and unaccompanied).

The following items should be **PROVIDED**:
Personal Hygiene – Toothbrushes daily or when requested, Hygiene kits when showering
Meals
Mats and Blankets
Clean and Dry Clothing
Additional clothing for warmth

The following items should be readily **AVAILABLE**:
Snacks, juice, clean drinking water
Sanitary items
Baby care items such as diapers, wipes, bottles, formula, and food

Be sure the **ENVIRONMENT** is:
Clean and Safe
Amenities including toilets, sinks, and water fountains are in working order
Child friendly with age-appropriate toys/activities in place
An appropriate temperature, 69 – 83 degrees

LISTEN to requests for:
Medical care
Food/snacks/water
Additional Clothing
Communication with family, consulate or legal support

REPORT to your supervisor:
Unsafe conditions
Inappropriate conduct
The need for more supplies
Medical Issues or concerns

DOCUMENT in the detention module:
All medical care
All meals provided
Communication with family, consulate or legal support
Visits with family members also in the facility
Any items supplied to the minor ex: hygiene, clothing, baby supplies, etc.

EXHIBIT 4(c)

Non-Priority Facilities – POD/Holding Area Responsibilities

The following requirements apply to ***all minors*** in custody (both accompanied and unaccompanied).

Non-priority facilities must have an **ADEQUATE** supply of the following:

Mats and blankets;
External garments, such as sweatshirts and jackets;
Undergarments and clothing, such as sweatpants, t-shirts, and underwear;
Diapers of varying sizes and baby wipes;
Potable water, cups as appropriate, meals, and snacks;
Hygiene products, to include soap and/or hand sanitizer, a mechanism for drying hands, toothbrushes, and toothpaste; and
Disposable bottles, baby formula, and baby/toddler food, cloth swaddling blankets and beanies.

TRANSPORT class members to a Priority Facility within **24 hours** or in exigent circumstances no more than **48 hours** of arrival to a non-priority facility.

Be sure the **ENVIRONMENT** is:
Clean and Safe
Amenities including toilets, sinks, and water fountains are in working order
An appropriate temperature, 69 – 83 degrees

LISTEN to requests for:
Medical care
Food/snacks/water
Additional Clothing
Communication with family, consulate or legal support

REPORT to your supervisor:
Unsafe conditions
Inappropriate conduct
The need for more supplies
Medical Issues or concerns

DOCUMENT in the detention module:
All medical care
All meals provided
Communication with family, consulate or legal support
Visits with family members also in the facility
Any items supplied to the minor ex: hygiene, clothing, baby supplies, etc.

EXHIBIT 4(d)

Summary of CBP *Flores* Agreement: RGV and El Paso Sectors

The Parties entered into this Agreement for the purpose of clarifying the Parties' understanding of the meaning of certain provisions of the *Flores* Settlement Agreement ("Settlement"), as they apply to conditions of CBP detention in the Rio Grande Valley (RGV) and El Paso Sectors of the U.S. Border Patrol. The provisions in question are Paragraphs 11 and 12A. "Juveniles" include all minors under the age of 18 in CBP custody, both accompanied and unaccompanied.

The information below has been summarized from the actual Agreement for training/orientation purposes. Exhibit 4 mainly addresses sections VII. Conditions at CBP Facilities, VIII. Extended Time in Custody, and Annex I. Since the Agreement applies to both CBP employees and contractors, the summarized information was organized into the following areas of responsibility: USBP Headquarters and El Paso and RGV Sector Management; U.S. Border Patrol Agents; CBP Procurement Directorate, and RGV and El Paso Contractors; the Juvenile Coordinator's Office; and the Office of the Chief Medical Officer. If additional information is needed, please refer to the Agreement.

Definitions

- A Juvenile Priority Facility is a facility, designated by CBP, as being the first option to hold juveniles until appropriate placement with ICE or HHS can be secured or release from CBP custody can be accomplished.
- Medical Priority Locations are any CBP facility with contracted medical personnel. All Juvenile Priority Facilities will be medical priority locations.

USBP Headquarters and RGV/El Paso Sector Management

<u>Facilities</u>

- CBP shall display Exhibit 1 (poster) in all CBP facilities in the RGV and El Paso Sectors where juveniles are held. The poster will be placed in close proximity to juveniles.
- Juvenile Priority Facilities
  - CBP shall identify at least one Juvenile Priority Facility in RGV Sector and one in El Paso Sector, notify Class Counsel of this designation, and begin utilizing those facilities. If CBP changes its juvenile priority facilities or commences operation of a new Juvenile Priority Facility in either the RGV or El Paso Sectors, CBP shall notify Class Counsel within thirty days.
  - All Juvenile Priority Facilities shall be designated as medical priority facilities.
  - CBP Juvenile Priority Facilities will have 24/7 access to contracted onsite medical support.
  - All juveniles not immediately returned voluntarily to their country of origin shall be transferred to juvenile priority facilities within 24 hours of arrival at a non-priority facility, or, in exigent circumstances, 48 hours.
  - All reasonable efforts shall be made to keep juveniles in Juvenile Priority Facilities while in CBP custody.

- Juvenile Priority Facilities shall work to reduce the use of fencing and enclosures that are not needed for security reasons.
- Juvenile Priority Facilities, to the extent possible, shall have areas that provide the least restrictive setting for juveniles appropriate to their age and special needs. These settings will be consistent with the need to ensure safety and security of everyone within the facility.
- The planning and construction of new CBP facilities in the RGV and El Paso Sectors will take into consideration that the facilities will be permanently or temporarily used as Juvenile Priority Facilities.
- Juvenile Priority Facilities shall work to reduce the use of fencing and enclosures not needed for security purposes.

- Non-Priority Facilities
  - Non-priority facilities shall maintain an adequate supply of items to accommodate the temporary holding of juveniles including:
    - Mats and blankets;
    - External garments, such as sweatshirts, and jackets;
    - Undergarments and clothing, such as sweatpants, t-shirts, and underwear;
    - Diapers of varying sizes and baby wipes;
    - Potable water, cups as appropriate, meals, and snacks;
    - Hygiene products to include soap and/or hand sanitizer, a mechanism for drying hands, toothbrushes, and toothpaste; and
    - Disposable baby bottles, baby formula, and baby/toddler food, cloth swaddling blankets, and beanies.

<u>Nutrition Standards</u>

- All facilities
  - Juveniles shall have access to age-appropriate meals and snacks that meet age-appropriate daily caloric needs and hydration needs. Food shall be in edible condition and not frozen, expired, or spoiled.
  - Food and water shall never be used as a reward or withheld as punishment.
  - Juveniles shall have ready access to clean drinking water and cups, as appropriate. There shall be a sufficient number of cups so that juveniles do not have to share cups. Portable water coolers shall be covered or enclosed and shall be washed or rinsed with warm water once during each shift and be thoroughly cleaned at least weekly. Portable water coolers shall be replaced when not working properly or unable to be cleaned due to age or deterioration.
  - Juveniles shall be offered snacks upon arrival to a CBP facility and meals at regularly scheduled intervals. Two of the meals shall be hot. Juveniles shall have regular access to snacks, milk, and juice.
  - Safe and hygienic age-appropriate food shall be provided to children under the age of two, including baby formula and baby foods.

- Disposable baby bottles, potable water, and formula mixing instructions shall be readily accessible along with instructions in English and Spanish and diagrams on how to mix formula.
- CBP shall record the availability of snacks and drinking water and the provision of meals in the appropriate electronic system of record.
- CBP shall support breast feeding as desired by mothers in custody with young children.
- CBP shall accommodate food allergies with simple, basic, readily available hypoallergenic alternatives.

- Juvenile Priority Facilities
  - At least one of the following shall be available to all juveniles outside of the common toilet area: functioning clean and hygienic water fountains, bottled water, or portable water coolers with cups available.
  - CBP shall ensure all food service contracts provide meals that meet USDA nutritional guidelines and all other USDA-consistent nutritional standards adopted by CBP, for both tender-age children (age 12 and under) and older children (age 13 and over).
  - CBP shall use best efforts to accommodate juveniles' dietary restrictions and preferences.
- Non-Priority Facilities
  - CBP shall work with the Juvenile Care Monitor to develop and implement appropriate guidelines for food provided to juveniles in non-priority facilities.

<u>Temperatures and Warmth – All Facilities</u>

- Temperature
  - CBP shall maintain a temperature range between 69°F and 83°F, with the target temperature being one that is considered generally comfortable.
  - Facilities shall closely monitor and record ambient temperatures via digital displays or a temperature reading device.
- Garments
  - All facilities will maintain a stock of age-appropriate clothing for juveniles in a variety of sizes, including t-shirts, underwear, socks, sweatshirts, sweatpants, jackets, etc.
  - Juveniles shall be provided clean, dry clothing if their clothing is wet or soiled or when their personal clothing is discarded or laundered.
  - Juveniles shall be allowed to retain possession of their warm clothing unless they pose a health or safety hazard.
  - Beanies in various sizes shall be available for children under the age of five.
  - Blankets shall be available for juveniles, including cloth swaddling blankets for infants and children under the age of two.

Sleep

- All Facilities
  - CBP shall make all reasonable efforts to provide juveniles with sufficient space and a mat and blanket during sleep hours, typically from 2200-0600 hours.
  - Juveniles shall be provided blankets or extra clothing for adequate warmth upon request or upon expressing general discomfort from cold or when observed shivering or huddling for warmth.
  - If there are no safety concerns and not physically impracticable to do so, facilities shall make reasonable efforts to dim the lights between 2200 hours and 0600 hours. Dimming can include turning off sections of lighting in cells or pods. The facilities shall always maintain sufficient light to enable agents, security officers, and caregivers to properly monitor all individuals in custody.
  - CBP shall make reasonable efforts to minimize noise and disruptions between 2200 hours and 0600 hours.
- Juvenile Priority Facilities
  - Clocks shall be placed in locations visible from each pod/cell unless there is no available space.

Hygiene and Sanitation

- All Facilities
  - Hygiene kits shall be available to all juveniles upon request and when showers are offered. Such kits shall include appropriate soap for hair and body, toothbrushes/toothpaste, and towels for showering.
  - Toothbrushes/toothpaste shall be provided daily or upon request. When juveniles are part of a family unit or family group, parents and other accompanying adult family members are responsible for the dental hygiene of the juveniles.
  - If laundry facilities are available or laundry services are contracted, soiled clothing shall be laundered if operationally practicable. Otherwise, clean clothing shall be available to replace soiled clothing, including swaddling blankets, sweatpants, etc.
  - Diapers in a variety of sizes and baby wipes shall be accessible.
  - All juveniles shall always have access to functioning toilets and sinks, toilet paper, soap and/or hand sanitizer, and feminine hygiene products. Juveniles shall have a way to dry their hands.
  - Janitorial and portable toilet contractors shall maintain toilets and had washing stations.
  - Adequate storage space for storing hygiene supplies shall be available.
- Juvenile Priority Facilities
  - CBP shall provide a shower to each juvenile shortly after their arrival at the facility, and additional showers at 48-hour intervals thereafter.
  - If space is available, infant changing stations shall be maintained.
  - In juvenile priority facilities where caregivers are available, caregivers shall assist unaccompanied class members in their hygiene routines, as needed.

- In juvenile priority facilities where caregivers are available, caregivers shall assist family groups or units as needed in their hygiene routines, to include caring for minor children while parents or other adult family members shower.

Child Appropriate Environment

- All Facilities
  - CBP shall treat all juveniles in custody with dignity, respect, and special concern for their particular vulnerability as minors and place each juvenile in the least restrictive setting appropriate to the juvenile's age and special needs.
  - Absent an articulable operational reason, juveniles apprehended with adult family members (including non-parents or legal guardians) shall remain with that family member during their time in CBP custody, in accordance with TEDS, as well as the requirements of TVPRA.
  - When there is an operational reason to house family members separately, CBP shall record the reasons for holding them apart and make all reasonable efforts to ensure that the family members are able to interact.
  - When family members are held separately, efforts shall be made to ensure interaction between family members, such as providing a common area for visiting during the day, allowing them to share meals together in a common area, or allowing them to participate in recreation.
  - CBP shall notify HHS/ORR of UCs who are related and in need of placement to try to have them placed together or in facilities that are close to each other to allow for family interaction.
  - CBP shall make all reasonable efforts to provide UCs daily access to a phone to permit contact with family members.
- Juvenile Priority Facilities
  - CBP shall make reasonable efforts to have televisions available in pods that routinely hold juveniles when the televisions can be secured in a location that minimizes damage to the televisions or possible injury to the persons in the facility.
  - Facilities shall try to have available age-appropriate toys/activities that do not pose a health or security risk to any person in the facility.
  - Facilities shall provide child appropriate furniture that does not pose a health/safety risk in areas holding tender age children when operationally feasible.
  - Facilities shall provide UCs with at least one daily message (in person or video) providing reassurance of their safety and orienting them to date, time, location, and general process/disposition/expectations.

Medical – All Facilities

- CBP shall promptly activate the 911 system or refer juveniles to the local health system whenever appropriate for evaluation and treatment. Further, CBP shall refer juveniles with urgent or emergent medical issues to the local health system.

- Agents in the field shall be trained to recognize and respond to signs/symptoms of injury or illness.
- CBP will coordinate with ICE and HHS ORR regarding the transfer of persons in custody with identified medical issues.
- CBP shall conduct a health intake interview on all juveniles in custody upon arrival at a U.S. Border Patrol facility. This interview shall identify juveniles who are tender age (12 and under); pregnant; or with an illness, injury, disease, or other medical issue.
- Medical assessments shall be conducted on all juveniles who are tender age; pregnant; or with an injury, illness, disease, acute needs associated with a disability or chronic illness, or other medical issue. If contract medical personnel are unavailable, individuals in custody may be referred to the local health system or other available health care providers for a medical assessment, as appropriate.
- Juveniles in isolation/quarantine shall be provided a means to communicate with accompanying family member who are not isolated/quarantined with them at least twice a day, so long as such communication will not jeopardize the health or safety of the juvenile or their accompanying family member. While a juvenile and their accompanying relative are in CBP custody, CBP will make best efforts to allow an accompanying adult relative to remain with a class member who requires quarantine, if medically appropriate and operationally feasible.
- Any juvenile who received medical care in CBP custody shall have an exit health interview conducted by CBP contracted medical personnel. CBP will provide appropriate summary documentation of medical events which occurred within CBP custody to the patient or parent/legal guardian upon leaving CBP custody.
- CBP shall ensure documentation provided by the emergency room or hospital is shared with or transferred to appropriate parties as people are transferred or released from custody.

<u>Extended Time in Custody – Over 72 Hours</u>

- All Facilities
  - Provide a supplemental health interview to all juveniles every 5 days.
  - Conduct enhanced medical monitoring on juveniles, as appropriate, as needed.
  - Continue to offer showers to juveniles every 48 hours.
  - Continue to provide toothbrushes/toothpaste to juveniles daily and upon request, as well as hygiene kits at the time showers are provided.
  - Continue to provide juveniles access to clean and dry clothes.
  - Continue to provide adequate food and clean drinking water. Make all reasonable efforts to provide additional variety in meals.
  - Continue to provide mats and blankets during hours of sleep, as well as making reasonable efforts to dim the lights in CBP facilities during hours of sleep.
- Juvenile Priority Facilities
  - Provide recreation and other child-appropriate activities daily. CBP shall make all reasonable efforts to provide outdoor recreation.

U.S. Border Patrol Agents

- CBP shall transfer all juveniles who are not immediately returned to their country of origin to a Juvenile Priority Facility as expeditiously as possible, in general, within 24 hours of arrival at a non-priority facility, but no longer than 48 hours after arrival at a non-priority facility.
- Juveniles held in each pod in a CPC or soft-sided facility will generally be able to move freely around that pod.
- Juveniles aged 14 and older and all accompanying adult family members of juveniles under 14 years old shall be informed of their rights under this agreement orally and by video. They shall be provided an I-770 in English and Spanish. If the juvenile or accompanying adult family member do not read or speak Spanish, the I-770 shall be read to them in their native language.
- CBP shall provide a list of free legal services to all juveniles.
- Facilities shall provide UCs with at least one daily message (in person or video) providing reassurance of their safety and orienting them to date, time, location, and general process/disposition/expectations.

Medical

- CBP shall promptly activate the 911 system or refer juveniles to the local health system whenever appropriate for evaluation and treatment. Further, CBP shall refer juveniles with urgent or emergent medical issues to the local health system. Agents in the field will recognize and respond to urgent medical issues requiring activation of 911/EMS or transport to local health system.
- CBP will coordinate with ICE and HHS ORR regarding the transfer of persons in custody with identified medical issues.
- CBP shall conduct a health intake interview on all juveniles in custody upon arrival at a U.S. Border Patrol facility. This interview shall identify juveniles who are tender age (12 and under); pregnant; or with an illness, injury, disease, or other medical issue.
- Medical assessments shall be conducted on all juveniles who are tender age; pregnant; or with an injury, illness, disease, acute needs associated with a disability or chronic illness, or other medical issue. If contract medical personnel are unavailable, individuals in custody may be referred to the local health system or other available health care providers for a medical assessment, as appropriate.
- Agents shall refer juveniles with medical concerns to contracted medical personnel or to the local health system, as appropriate, and shall conduct regular ‘welfare checks’ to include observation for medical concerns.
- Agents shall inform individuals in custody that they have a right to medical treatment and shall inform and encourage individuals in custody to self-refer or to refer family members or companions for medical care.
- Any juvenile who received medical care in CBP custody shall have an exit health interview conducted by CBP contracted medical personnel. CBP will provide appropriate summary

documentation of medical events which occurred within CBP custody to the patient or parent/legal guardian upon leaving CBP custody.

- CBP shall ensure documentation provided by the emergency room or hospital is shared with or transferred to appropriate parties as people are transferred or released from custody.

Nutrition Standards

- Juveniles shall have accesses to age-appropriate meals and snacks. Food shall be in edible condition (not frozen, expired, or spoiled).
- Food and water shall never be used as a reward or withheld as punishment.
- CBP shall always provide ready access to clean drinking water and, as appropriate, cups. Drinking water may be provided via mechanisms such as functioning clean and hygienic water fountains, bottled water, or covered portable water coolers.
  - Sufficient cups shall be provided in all areas juveniles are held so that they are not required to share drinking cups with others.
  - Where portable water coolers are used, they shall be washed or rinsed with warm water once during every shift and thoroughly cleaned at least weekly.
- Juveniles shall be offered a snack upon arrival at a CBP facility. Juveniles shall have regular access to snacks, milk, and juice. Safe and hygienic age-appropriate food shall be provided to children under the age of two, including baby formula and baby foods.
- Juveniles shall be offered meals at regularly scheduled intervals. At least two of the meals shall be hot.
- Agents shall comply with food handling instructions included in any packaged food and shall wear gloves when preparing food.
- CBP shall record the availability of snacks and drinking water and the provision of meals for juveniles.
- CBP shall support breast-feeding as desired by mothers in custody with young children.

Temperature and Warmth

- The temperature range inside facilities shall be no less than 69°F and no more than 83°F.
- Agents shall record the temperature in the appropriate electronic system of record at appropriate intervals, no less than twice per day.
- If juveniles' clothing is wet or soiled, they shall be provided clean, dry clothing.
- If juveniles have their own warm clothing at the time of apprehension, they shall generally retain possession of it unless it poses a health or safety risk.
- Additional blankets shall be available upon request for the juvenile, their parents, or other accompanying family member.
- Juveniles shall be provided blankets or extra clothing for adequate warmth upon request or upon expressing general discomfort from cold or when observed shivering or huddling for warmth.

Sleep

- CBP shall make all reasonable efforts to provide juveniles with sufficient space, as well as a mat and blanket, during sleep hours (typically defined as from 2200 hours to 0600 hours).
- If there are no safety concerns and it is not physically impracticable to do so, CBP shall make reasonable efforts to dim the lights during sleep hours. Dimming can include turning off sections or lighting in the cells or pods.
- CBP shall make reasonable efforts to minimize noise and disruptions during sleep hours.

Hygiene and Sanitation

- Hygiene kits shall be available to juveniles upon request and will be provided to each juvenile when showers are offered.
- At Juvenile Priority Facilities, all juveniles shall be provided a shower as soon as possible upon arrival and additional showers at 48-hour intervals after that.
- Toothbrushes/toothpaste shall be provided daily and available upon request.
- All juveniles shall have access to functioning toilets and sinks, toilet paper, soap and/or hand sanitizer, and feminine hygiene products. Juveniles shall have a way to dry their hands.
- At juvenile priority facilities at which caregivers are present, caregivers can help unaccompanied juveniles with their hygiene routines if needed. Caregivers can also help family units with their hygiene routines if needed, such as watching minor children while the parent showers.

Child-Appropriate Environment

- CBP shall treat all juveniles in custody with dignity, respect, and special concern for their particular vulnerability as minors and place each juvenile in the least restrictive setting appropriate to the juvenile's age and special needs.
- Absent an articulable operational reason, juvenile apprehended with adult family members shall remain with that family member during their time in CBP custody, in accordance with TEDS, as well as the requirements of TVPRA.
    - Family members include parents, legal guardians or adult siblings, grandparents, cousins, aunts, uncles, great-aunts, or great-uncles.
- When there is an operational reason to house family members separately, CBP shall make and record the reasons for holding them apart. All reasonable efforts shall be made to ensure that family members have the opportunity to interact, such as providing a common area for visiting during the day, allowing them to share meals together in a common area, or allowing them to participate in recreation
- Agents shall inform juveniles that if they are housed separately from a family member, they can ask agents, guards, or caregivers to interact with that family member. This information must be provided orally.
- CBP shall notify HHS/ORR when there are UCs who are related and in need of placement.
- CBP shall make reasonable efforts to provide UCs daily access to a phone call to permit contact with family members.

Extended Time in Custody

When a juvenile remains in CBP custody for more than 72 hours, CBP shall:

- Provide a supplemental health interview to all juveniles every 5 days;
- Conduct enhanced medical monitoring on juveniles, as appropriate, as needed;
- Continue to offer showers to juveniles every 48 hours;
- Continue to provide toothbrushes and toothpaste to juveniles daily and upon request, as well as hygiene kits at the time showers are provided;
- Continue to provide juveniles access to clean and dry clothes;
- Continue to provide juveniles with adequate food and clean drinking water;
- Continue to provide mats and blankets during hours of sleep, as well as continue to make reasonable efforts to dim the lights in CBP facilities during hours of sleep; and
- In Juvenile Priority Facilities, provide opportunities for recreation and other child-appropriate activities daily. CBP shall make all reasonable efforts to provide juveniles with outdoor recreation.

CBP Procurement Directorate and RGV/El Paso Sector Contractors

Quality Assurance

- CBP shall assign a Contracting Officer Representative (COR) to oversee the contracts of each Juvenile Priority Facility.
- Contract terms shall not be inconsistent with the terms of this Agreement.
- The COR shall monitor the contracts and recommend corrective actions if deficiencies are noted.
- The COR shall also recommend increases in the services provided to ensure services are adequate even during a surge.
- Each contract shall have quality assurance measures to ensure all the standards in the contract statement of work are met. The COR will oversee the quality assurance process and collects logs documenting the existing process.
- CBP shall work toward training a limited number of COR level three representatives to provide a second level of observation and compliance for the contracts.

Caregivers

- General Provisions
  - All Juvenile Priority Facilities shall utilize caregivers.
  - Caregiver services shall be available on a 24/7 basis, to include weekends and federal holidays.
  - The contractor shall provide a mixed gender staff to include at least one male and one female staff member at all times. A supervisor shall be available at all times.
  - CBP shall provide an orientation to caregivers regarding the general requirements included in this Agreement as well as information on monitoring in CBP facilities, caregiver's role in observing and reporting inappropriate behavior, juvenile health conditions, and the recognition and referral of those juveniles displaying emotional and mental distress. Their training will also include Prison Rape Elimination Act (PREA) compliance, *Flores* compliance, and compliance with the CBP National Standards on Transport, Escort, Detention, and Search (TEDS).
- Additional Provisions
  - CBP will make best efforts to hire, contract for, or provide additional caregivers or other individuals sufficient to provide additional support for juveniles in custody.
  - Such additional Caregiver Support will include:
    - Assist juveniles in communicating with family members held in a separate cell or pod.
    - Monitor, change diapers, assist with toilet use and hand-washing, feed juveniles who cannot feed themselves, and tend to similar basic needs as they arise.
    - Provide supervision and support to juveniles during recreation and exercise activities.
    - Assist with distribution of meals.

- CBP shall make best efforts to provide caregiver staffing sufficient to:
  - Provide at least one caregiver for each holding pod or cell holding juveniles. For pods holding family units, the caregivers can be re-assigned if needed to supplement an emergent need to provide for special needs and tender age children.
  - Provide enough additional caregivers in place to assist with showers, meals, recreation time, and other responsibilities without depleting the pod staffing. The additional caregivers do not need to be available during hours in which these activities are not typically provided.
  - Provide additional staff during surges.

- Caregiver Responsibilities
  - Support general care to juveniles up to age 5.
    - Caregivers shall assist unaccompanied minors in their hygiene routines, as needed.
    - Caregivers shall assist family groups or units as needed in their hygiene routines, to include caring for minor children while parents or other adult family members shower.
  - Coordinate the collection and bagging of dirty laundry.
  - Issue and collect shower/hygiene supplies.
  - Monitor (i.e., maintain visual contact at all times) all juveniles going into and out of showers, from start to finish, taking care to adhere to DHS regulations implementing the PREA.
  - Assist in bathing juveniles.
  - Store clothing and issue it to juveniles to use while their clothing is washed.
  - Maintain inventory of the clothing, towels for showering, and hygiene kits available for use and notify CBP staff of any low inventories.
  - Refer any suspected or reported medical or mental health issues to USBP personnel or medical personnel onsite.
  - Maintain a safe working environment, observing and encouraging adherence to safety rules and health guidelines.
- Juveniles may ask caregivers for extra clothing, a blanket, a mat, snacks, juice, milk, drinking water, feminine hygiene products, soap, towels for showering, and a toothbrush and toothpaste, at any time.
- Juveniles may ask caregivers for help if they feel sick or need medical care, or if a family member needs medical care.
- If juveniles want to see a family member not held in the same room, they may ask a caregiver to contact that family member.
- Caregivers shall meet all required background checks and have sufficient experience and training to provide general support to juveniles in custody.

Food Service

- Food service contractors shall provide appropriate quality assurance, subject to CBP COR oversight.
- All meals shall be prepared in a safe and sanitary manner, considering all appropriate food safety requirements.
- Meals provided at priority facilities that are appropriate for tender-age children (age 12 and under) shall meet USDA nutritional guidelines and all other USDA-consistent nutritional standards adopted by CBP.
- Meals provided at priority facilities that are appropriate for older children/adults (age 13 and over) shall meet USDA nutritional guidelines and all other USDA-consistent nutritional standards adopted by CBP.

Medical

- Contracted medical personnel shall provide initial assessment, treatment, and referral to detained individuals.
- CBP shall conduct a health intake interview with all juveniles upon initial arrival at a U.S. Border Patrol facility in RGV and El Paso Sectors. This interview shall be conducted by contracted medical personnel or by Border Patrol agents, as appropriate.
    - CBP shall use a standardized form (CBP Form 2500) for this health interview, in addition to any forms utilized by CBP medical contractors.
    - During the health interview, CBP shall identify juveniles who are tender age (12 and under); pregnant; or with an illness, injury, disease, or other medical issue. For such juveniles, CBP will make the appropriate disposition, based on circumstances.
    - Juveniles will be assessed for current or unmet medication needs.
    - If a juvenile has medication with them, it will be assessed to determine validity, currency, and appropriateness. If the medication is deemed to be appropriate, it may be dispensed in a controlled manner. If there is any question about the appropriateness of the medication, the juvenile will be evaluated by medical personnel onsite or referred to the local health system as expeditiously as possible to evaluate medication requirements. If medication is required, a prescription will be obtained from onsite medical personnel or from the local health system and filled. Medication shall be held by CBP while a juvenile is in custody and dispensed in a controlled manner consistent with prescription instructions.
- Medical assessments shall be conducted on all juveniles who are tender age; pregnant; or with an injury, illness, disease, acute needs associated with a disability or chronic illness, or other medical issue. The assessment will be conducted by CBP contracted credentialed medical providers, when available. If providers are not available, individuals in custody may be referred to the local health system or to other available health care providers for a medical assessment, as appropriate. Complex or emergency issues shall be referred to the local health system.
    - Medical assessments shall include a detailed assessment for potential medical issues requiring further evaluation, including:

        - Targeted history, physical, vital signs, review of systems, assessment, disposition
        - Consideration of nutritional issues (such as potential acute malnutrition or dehydration) and mental or behavioral health issues. Juveniles in custody identified with a potential nutrition-related concern shall receive appropriate evaluation by onsite medical support personnel or referral to the local health system.
    - For juveniles identified as requiring additional medical evaluation or treatment, CBP will make the appropriate disposition based on circumstances.
- At Juvenile Priority Facilities, CBP contracted medical personnel shall always be onsite and able to provide evaluation and treatment for basic medical issues identified upon initial intake assessment or throughout time in custody.
- CBP contracted medical personnel shall provide follow-up care after referral to a local health system or hospitalization.
- CBP contracted medical personnel shall provide support to early identification, treatment, isolation, appropriate referrals, infection control, and public health support for infectious diseases in CBP facilities.
- CBP contracted medical personnel shall conduct exit health interviews for juveniles who receive medical treatment in CBP custody, as appropriate, to ensure persons in custody are fit for travel or transfer. CBP will provide appropriate summary documentation of medical events which occurred within CBP custody to the patient or parent/legal guardian.
- If a juvenile is in CBP custody for longer than 72 hours, CBP shall provide a supplemental health interview every 5 days. CBP shall also conduct enhanced medical monitoring on juveniles, as appropriate as outlined in Section I.D. of the attached Medical Annex.
- Medical personnel shall maintain visibility on medical issues within the juvenile population and be prepared to engage those in custody with medical issues.
- At medical priority CBP facilities with contracted medical support, CBP shall conduct enhanced medical monitoring of persons in custody identified with significant medical issues or concerns, with an emphasis on potentially vulnerable populations such as juveniles.
    - The timing and scope of the enhanced medical monitoring shall be tailored to the individual clinical situation or circumstance.
    - Enhanced medical monitoring shall consist of, at a minimum, symptom check and temperature check (plus additional vital signs as appropriate) by medical personnel.
    - Enhanced medical monitoring shall occur, at a minimum, every 4 hours.
    - Enhanced medical monitoring shall include a determination of the appropriate disposition after referral or discharge from local health system.
    - Enhanced medical monitoring shall include a process to track people subject to enhanced medical monitoring and turnover between shifts or rotation of providers.
    - Enhanced medical monitoring shall be documented appropriately.
    - Enhanced medical monitoring shall identify juveniles whose condition is deteriorating or who are not making expected progress, and prompt notification will be made to pediatric advisors or to the local health system, as appropriate.

- Juveniles shall be provided with a supply of medication or a prescription upon transfer or release, as appropriate, and instructions regarding use of the medication.
- CBP shall ensure appropriate documentation of medical information.
- CBP shall ensure documentation provided by the emergency room or hospital is shared with or transferred to appropriate parties as people are transferred or released from custody.
- CBP shall maintain a safe working environment, observing and encouraging adherence to safety rules and health guidelines.

Security Guards

- Security guards shall receive an orientation informing them, among other things, that they should refer juveniles with medical concerns to medical personnel.
- Juveniles may ask security guards for help if they feel sick or need medical care, or if a family member needs medical care.
- Juveniles may ask security guards for extra clothing, a blanket, a mat, snacks, juice, milk, drinking water, feminine hygiene products, soap, towels for showering, and a toothbrush and toothpaste, at any time.
- If juveniles want to see a family member not held in the same room, they may ask a security guard to contact that family member.

CBP Juvenile Coordinator's Office

- The CBP Juvenile Coordinator's Office (JCO) in coordination with the Office of the Chief Medical Officer, shall monitor adherence to CBP nutrition standards. Monitoring efforts shall include ongoing review of utilization of meals by tender-age children.
- When conducting site visits, JCO shall confirm that the temperature of all hold rooms where juveniles are present is within the appropriate temperature range. JCO shall also confirm that agents record whether the temperature is within range in the appropriate systems of record.
- JCO shall verify that facilities have a stock of garments during site visits.
- During site visits, JCO shall confirm availability of hygiene supplies in conformance with TEDS and guidelines established in this Agreement.
- JCO and the Office of the Chief Medical Officer shall rely on monitoring protocols approved by the Juvenile Care Monitor but retain discretion to update and amend such monitoring protocols as appropriate.
- JCO and the Office of the Chief Medical Officer shall engage with and address concerns raised by the Juvenile Care Monitor, as appropriate.

Office of the Chief Medical Officer

- The CBP Chief Medical Officer shall engage in all aspects of CBP medical support efforts on an ongoing basis.
- JCO and the Office of the Chief Medical Officer shall engage with and address concerns raised by the Juvenile Care Monitor, as appropriate.
- CBP will continue to review the appropriateness of vaccine administration for class members in CBP custody in collaboration with other relevant government agencies and the Juvenile Care Monitor.
- CBP shall coordinate with and request assistance from other relevant stakeholders, such as the U.S. Department of Homeland Security (DHS), ICE, HHS ORR, the Centers for Disease Control and Prevention (CDC), and state/local health officials, as appropriate, for additional medical support.
- In particular, CBP shall coordinate closely with ICE and HHS ORR regarding transfer of persons in custody with identified medical issues, to include infectious diseases, mental health issues, and acute or chronic medical conditions.
- CBP shall engage with its federal partners, public health experts, and the Juvenile Care Monitor on appropriate protocols for addressing issues of public health concern.
- As part of its medical support approach, CBP (working with its broader network of medical support) shall abide by relevant medical and public health standards of care that the Juvenile Care Monitor agrees are consistent with CBP's obligations under this Agreement in its treatment of class members.
- **Trauma-Informed Care-** At Juvenile Priority Facilities, CBP shall take a trauma-informed approach to class members in custody. Recognizing the potential for trauma in their home communities and on their journey and that time in custody can be destabilizing and disorienting, CBP will make efforts to foster reassurance, resilience, orientation, recreation, and distraction.
- CBP has engaged board-certified Pediatricians to serve as contracted Pediatric Advisors to enhance CBP medical support for juveniles in custody. Pediatric Advisors will be assigned regionally based on operational risk management considerations described in the Agreement. Pediatric Advisors' roles/responsibilities include:
  - Advise on ongoing medical protocol development and refinement for juveniles in CBP custody.
  - Provide consultation support to medical staff for complex juvenile medical cases.
  - Develop and conduct juvenile focused in-service training and ongoing professional development for medical staff.
  - Contribute to Medical Quality Management (MQM) efforts through juvenile chart review and Ongoing Professional Practice Evaluation.
  - Monitor juvenile referral practices and patterns and coordinate with medical providers and local health system to optimize juvenile referral practices.
  - Work with CBP, contract medical teams, and local health system to establish primary referral sites with pediatric expertise.
- CBP has engaged credential Behavioral Health clinicians to serve as Behavioral Health Advisors to support CBP behavioral health efforts. These Behavioral Health Advisors will be assigned regionally based on operational risk management

considerations described in the Agreement. Behavioral Health Advisors' roles/responsibilities include:
  - Advise on ongoing behavioral health protocol development and refinement.
  - Provide consultation support to medical staff for complex behavioral health cases.
  - Develop and conduct behavioral health focused in-service training and ongoing professional development for medical staff.
  - Contribute to MQM efforts through behavioral health chart review and Ongoing Professional Practice Evaluation.
  - Monitor behavioral health referral practices and patterns and coordinate with contract medical providers and local health system to optimize behavioral health referral practices.
  - Work with CBP, contract medical teams, and local health system to establish primary referral sites with appropriate behavioral health expertise.
- CBP shall adopt policies requiring that juveniles who receive medical treatment in CBP custody leave CBP with appropriate information regarding their medical condition and treatment while in CBP custody.

Medical Quality Management

- CBP Chief Medical Officer provides CBP medical direction and oversight of MQM efforts.
- CBP Chief Medical Officer coordinates with DHS Office of the Chief Human Capital Officer for support to MQM efforts.
- CBP Chief Medical Officer shall work with the CBP Juvenile Coordinator to include medical support efforts in ongoing review activities.
- MQM elements:
  - Licensing and Credentials Review
  - Focused Professional Practice Evaluation (FPPE)
  - Ongoing Professional Practice Evaluation (OPPE)
  - Chart reviews
  - Inservice reviews
  - Sentinel Event reviews
- Physician Supervisors – CBP Physician Supervisors will play an integral role in the CBP MQM program through ongoing chart review, FPPE, OPPE, sentinel event review, and in-service programs.
- Pediatric Advisors – CBP Pediatric Advisors will play an integral role in the CBP MQM program, with a focus on care for juveniles, through ongoing chart review, FPPE, OPPE, sentinel event review, and in-service programs.
- Behavioral Health Advisors – CBP Behavioral Health Advisors will play an integral role in the CBP MQM program, with a focus on behavioral health, through ongoing chart review, FPPE, OPPE, sentinel event review, and in-service programs.
- Patient Safety/Quality Managers – CBP will engage contracted professional Patient Safety/Quality Managers to administer the MQM program and provide coordination and documentation of MQM program efforts.

Public Health/Infectious Disease Management

- CBP shall consult with partners and stakeholders, including DHS, HHS, CDC, and state and local health officials, as appropriate, to address public health/infectious disease issues in CBP facilities.
- CBP shall develop and maintain protocols regarding public health/infectious disease events in CBP facilities, to include consideration of isolation/cohorting/quarantine considerations, with an emphasis on class members.
- CBP will emphasize early identification and evaluation for public health/infectious disease issues in persons in custody, with an emphasis on class members.
- Infectious disease cases will be assessed and treated onsite (where contracted medical support personnel are available) or referred to the local health system as appropriate.

Medical Monitoring and Compliance

- The CBP Chief Medical Officer shall conduct medical direction and oversight of CBP medical support efforts.
- The CBP Chief Medical Officer shall work with the CBP Juvenile Coordinator to incorporate medical monitoring and compliance into ongoing Juvenile Coordinator review efforts.
- Representative examples of medical monitoring and compliance assessment may include:
    - Data points: (including age and diagnosis/disposition as appropriate)
        - Number of class members apprehended and in custody
        - Number of class members with Health Intake Interview
        - Number of class members with Medical Encounter
        - Number of class members referred to local health system
        - Number of class members admitted to hospital
        - Number of class member deaths in custody
    - Observation and Document Review:
        - Presence of medical support on site
        - Health intake interviews, Medical Assessments, Medical Encounters being conducted
        - Medication reviews being conducted; medications provided
        - Enhanced medical monitoring being conducted
        - Medical documentation being conducted

CERTIFICATE OF SERVICE

CASE NO. CV 85-4544-DMG (AGRx)

I certify that on May 21, 2022, I served a copy of the foregoing Exhibit on all counsel of record by means of the District Court's CM/ECF electronic filing system.

/s/ Peter Schey
PETER SCHEY

EXHIBIT E

YAAKOV ROTH
Acting Assistant Attorney General
DREW C. ENSIGN
Deputy Assistant Attorney General
Civil Division
WILLIAM C. SILVIS
Assistant Director
JOSHUA C. MCCROSKEY
Trial Attorney
CHRISTINA PARASCANDOLA
MICHAEL CELONE
KATELYN MASETTA-ALVAREZ
Senior Litigation Counsel
United States Department of Justice
Office of Immigration Litigation – General Litigation and Appeals Section
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
202-514-0120
Katelyn.Masetta.Alvarez@usdoj.gov
Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES; *et al.*,	Case No. CV 85-4544
Plaintiffs,	**DEFENDANTS' NOTICE OF MOTION TO TERMINATE SETTLEMENT AGREEMENT AND TO DISSOLVE INJUNCTION OF AGENCY REGULATIONS; MEMORANDUM OF POINTS AND AUTHORITIES**
v.	
PAMELA BONDI, Attorney General of the United States, *et al.,*	
Defendants.	Fed. R. Civ. P. 60(b)(4), (5) & (6)
	Hearing Date: July 18, 2025, 9:30 AM
	Place: Courtroom 8C, First Street Courthouse
	Honorable Dolly M. Gee, District Juge

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN that the U.S. Department of Justice (DOJ), the U.S. Department of Homeland Security (DHS), and the U.S. Department of Health and Human Services (HHS), by and through undersigned counsel, will bring this motion for hearing on July 18, 2025, at 9:30 a.m. or as soon thereafter as counsel may be heard, before United States Chief District Judge Dolly M. Gee, in Courtroom 8C, 8th Floor, at the Los Angeles – 1st Street courthouse located within the Central District of California.

COMPLIANCE WITH LOCAL RULE 7-3

This motion is made following a telephonic meeting of counsel pursuant to L.R. 7-3, and paragraph 37 of the Flores Settlement Agreement (FSA), which took place on May 13, 2025, and subsequent written correspondence. Plaintiffs oppose this motion. The parties agreed to a filing date of May 22, 2025, opposition on June 20, 2025, reply on July 3, 2025, and hearing on July 18, 2025.

MOTION TO TERMINATE SETTLEMENT AGREEMENT; MOTION TO DISSOLVE INJUNCTION OF AGENCY REGULATIONS

Defendants move to terminate the FSA under paragraph 40 of the FSA and Federal Rule of Civil Procedure 60(b)(4), (b)(5), and (b)(6). In light of the significant changes in circumstances since this Court entered the FSA 28 years ago, including the promulgation of regulations incorporating the goals of the FSA, and Supreme Court precedent that is inconsistent with continuing such a long-term decree, further continuation of the FSA is no longer equitable or in the public interest. The decree is also directly contrary to 8 U.S.C. § 1252(f)(1), as well as the Supreme Court's

decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022). Pursuant to Federal Rule of Civil Procedure 60(b)(4), (b)(5) and (b)(6), Defendants thus move to dissolve the FSA.

This motion is based upon the above Notice, the accompanying Memorandum of Points and Authorities, all pleadings and papers on file in this action, and such other matters as may be presented to this court at the time of the hearing on the motion. Pursuant to Local Rule 7-15, Defendants do not waive oral argument.

DATED: May 22, 2025

Respectfully submitted,

YAAKOV ROTH
Acting Assistant Attorney General
DREW C. ENSIGN
Deputy Assistant Attorney General
Civil Division
Office of Immigration Litigation
WILLIAM C. SILVIS
Assistant Director

/s/ Katelyn Masetta-Alvarez
KATELYN MASETTA-ALVAREZ
CHRISTINA PARASCANDOLA
MICHAEL CELONE
Senior Litigation Counsel
JOSHUA C. MCCROSKEY
Trial Attorney
United States Department of Justice
Office of Immigration Litigation – General Litigation and Appeals Section
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
202-514-0120
Katelyn.Masetta.Alvarez@usdoj.gov

Attorneys for Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendants, in their official capacities, move to terminate the FSA completely and with respect to all Defendants, and to dissolve the Court's injunction of DHS's regulations for apprehension, processing, care, and custody of alien minors, ECF No. 690, as follows.

INTRODUCTION

After 40 years of litigation and 28 years of judicial control over a critical element of U.S. immigration policy by one district court located more than 100 miles from any international border, it is time for this case to end.

Courts issuing injunctive relief in institutional-reform cases have a duty "to ensure that 'responsibility for discharging the [government's] obligations is returned promptly to the State and its officials' when the circumstances warrant." *Horne v. Flores*, 557 U.S. 433, 450 (2009) (citation omitted). "[T]he longer an injunction or consent decree stays in place, the greater the risk that it will improperly interfere with [government's] democratic processes." *Id.* at 453. Indeed, prolonged enforcement of consent decrees "may 'improperly deprive future officials of their designated legislative and executive powers.'" *Id.* at 450 (citation omitted). The Supreme Court has thus admonished lower courts considering Rule 60 motions simply to ascertain whether ongoing enforcement of the original order "[i]s supported by an ongoing violation of federal law" and not to focus on compliance with "the original order." *Id.* at 453-54.

These principles apply with even greater force to the federal government, especially to its enforcement of immigration laws: the Judiciary must not intrude

into the Executive's core foreign relations functions with indefinite oversight and micromanagement. *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

This case exemplifies the harms imposed by ongoing judicial management of Executive agencies. This Court entered the FSA as a consent decree in 1997 and amended it in December 2001. The FSA has governed the care and custody of unaccompanied alien children (UACs) ever since, notwithstanding intervening legislation by the U.S. Congress and agency regulations. In 2015, this Court expanded the FSA to *accompanied* children, *see Flores v. Lynch*, 828 F.3d 898, 906, 909 (9th Cir. 2016), even though it is obvious from the FSA's terms that the parties did not contemplate their inclusion. Thus, as to accompanied children, the national policy has long been set by a district court (and not the President or Congress), notwithstanding that the consent decree providing the basis for district-court supervision does not claim to regulate this class of aliens. That simply cannot be.

During the 28 years that this Court has controlled federal policy regarding the custody of alien children who are in the United States without immigration status, enormous, cardinal changes have occurred: surges of aliens have entered the U.S. in between ports of entry across the southwest border, including large groups of aliens who voluntarily surrendered to Border Patrol—surrenders orchestrated by traffickers; the demographics of aliens arriving at the border have shifted to include significantly higher numbers from countries outside the Western Hemisphere and higher numbers of children; a global pandemic necessitated the government's utilization of its expulsion authority to protect public health; and the subsequent lifting of the policy led to an upheaval in immigration policy for over two years.

Moreover, the conditions for UACs—the original plaintiffs in this case—have substantially improved from those that precipitated this suit four decades ago. The parties reasonably could not have foreseen such developments, let alone the cumulative effect of such developments, in 1997.

The Executive has not been able to react fully and meaningfully to these changes because the FSA has ossified federal-immigration policy. Successive Administrations have tried unsuccessfully to free themselves from the strictures of the consent decree and this Court's gloss on it. But detention of juvenile aliens continues to be—as it has been for more than a generation—dominated by the strictures of a 1997 agreement. This Court is obliged under *Horne* and other precedents to end this intrusive regime.

The legal and policy landscape has also changed beyond recognition. Plaintiffs claimed, in 1985, that the government's alleged policy or practice to condition bail for UACs on the child's parents or guardians appearing before an agent of the former Immigration and Naturalization Service (INS) violated due process and the Immigration and Nationality Act (INA). Plaintiffs cited the absence of established procedures for the conditions of custody or for reuniting children with parents or legal guardians. *See Reno v. Flores*, 507 U.S. 292, 295–96 (1993); *Flores v. Meese*, 934 F.2d 991, 995 (9th Cir. 1990), *rev'd Flores*, 507 U.S. at 292. In the FSA, the parties agreed to basic procedures addressing both matters. But since then, the legal basis for the agreement has withered away: Congress enacted legislation protecting UACs, and the agencies promulgated detailed standards and regulations implementing that legislation and the terms of the FSA.

The FSA itself has changed the immigration landscape by removing some of the disincentives for families to enter the U.S. unlawfully. Unlawful family migration barely existed in 1997. Since then, it has become widespread. U.S. Border Patrol reported a total of 614,020, 993,940, and 996,070 encounters with individuals in family units for FY2022, FY2023, and FY2024, respectively. Declaration of Marc Rosenblum, attached as Ex. B.

The numbers of UACs also increased during that time, with Border Patrol reporting 149,093 encounters with UACs on the Southwest border in FY2022, 131,519 in FY2023, and 99,704 in FY2024. Declaration of John Modlin, attached as Ex. A, ¶ 8. In those hundreds of thousands of cases, adults and children made the ill-conceived decision to entrust their children or themselves to human traffickers and embark on a dangerous journey to the U.S. southern border, which is recognized as the "world's deadliest migration land route."[1] Such conduct, often with the expectation of a quick release into the United States and avoidance of immigration enforcement, is due in large part to the FSA, which has prevented the federal government from effectively detaining and removing families. The FSA—which was designed to address the much narrower issue of finding custodians and

[1] International Office of Migration, US-Mexico Border World's Deadliest Migration Land Route (Sept. 12, 2023), available at https://www.iom.int/news/us-mexico-border-worlds-deadliest-migration-land-route (Sept. 12, 2023) (viewed Apr. 7, 2025), attached as Ex. C. The loss of human life has been devastating, with 686 deaths and disappearances of migrants on the U.S.-Mexico border in calendar year 2022 alone, based on available—and incomplete—data. *Id.*

providing temporary care for UACs—removes the disincentives enacted by Congress to making this dangerous journey.

The law governing consent decrees cuts strongly against the FSA's longevity. No reasonable basis exists for one court to oversee all children in the custody of DHS and HHS—a major driver of the immigration system for 28 years, and subject to the self-interested monitoring and motions filed by lawyers appointed over a generation ago. Over the past decade, the government has paid more than $4.25 million to class counsel, either in awards for attorney fees and costs or in settlements to obtain releases from attorney-fee claims arising out of litigation in this case.[2] Courts are obliged under *Horne* and other precedents to discontinue such a regime.

It is time for the era of the *Flores* consent decree to end. Through this Rule 60(b) motion, Defendants seek to terminate the decree on multiple grounds, though any one alone would suffice. Relief is warranted under Rule 60(b) because: (1) under 8 U.S.C. § 1252(f)(1) this Court lacked jurisdiction to enter a class-wide injunction as to DHS and, with the benefit of recent Supreme Court precedent, clearly lacks jurisdiction to enforce the FSA now; (2) events following the FSA, including an intervening Act of Congress and the implementation of *Flores* principles and policies, obviate the need for the FSA; (3) continued enforcement of the FSA violates the Constitution's separation-of-powers principles by indefinitely entangling the Judiciary in the management of national-immigration policy; (4) the

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[2] These payments include $540,000 to class counsel for a release from attorney-fee claims arising out of class counsel's motion to enforce the FSA during the COVID-19 pandemic, ECF No. 1325, and $577,000 for a release from attorney-fee claims arising out of a motion to enforce at emergency-intake sites, ECF No. 1340.

FSA's terms violate the Administrative Procedure Act (APA); and (5) the FSA is no longer equitable given the dramatic changes that have occurred since 1997, including the creation of detailed custodial systems, which did not exist in 1997, for UACs and families who entered the United States unlawfully. For these reasons, this Court should grant this motion and dissolve the FSA in its entirety.

BACKGROUND

The 1985 Complaint

In 1984, in response to a huge uptick in illegal immigration and increased numbers of UACs, the former INS's Western Regional Office adopted an ad hoc policy permitting the release of detained minors—but only to their parents or lawful guardians, except in extraordinary cases when the juvenile could be released to individuals who agreed to care for the child's wellbeing. *See Flores*, 507 U.S. at 296.

On July 11, 1985, four plaintiffs, ages 13-16, who were citizens of El Salvador, in immigration custody, and unaccompanied by their parents or legal guardians, initiated this action. Compl. ¶¶ 12–15. They sought certification of a class defined as "all persons under the age of 18 who have been, are, or will be arrested and detained pursuant to [former] 8 U.S.C. 1252 by the INS within INS' Western Region and who have been, are, or will be denied release from INS custody because a parent or legal guardian fails to personally appear to take custody of them." *Flores*, 934 F.2d at 994–95.

The four plaintiffs alleged that they were required to share sleeping quarters with unrelated adults, provided no educational materials or recreational activities, received no medical examinations, and were denied reasonable visitation with

family and friends. Compl. ¶¶ 7, 42, 43, 45. Two plaintiffs alleged that their parent would not appear in person to accept physical custody of them because they feared being deported, and the third plaintiff alleged that her parents were in El Salvador, *id*. ¶¶ 28, 34, 40. The fourth plaintiff alleged that, after she met with her attorneys, INS agents strip-searched her. *Id*. ¶ 46. All four plaintiffs alleged that Defendants did not assess the qualifications of non-parent adults who were willing to take custody and care for them, and that, therefore, INS policy and practice was "a thinly veiled device to apprehend parents of incarcerated juveniles and to punish children for allegedly having entered the United States without lawful authority," *id*. ¶¶ 6, 8. Plaintiffs claimed that conditioning bond on their parents' or legal guardians' personal appearance violated their substantive-due-process right to be free from physical restraint, violated procedural due process by not requiring an individualized determination of the juvenile's best interests, and exceeded the Attorney General's authority under the former-immigration-detention statute, 8 U.S.C. § 1252 (repealed 1996), which permitted the INS to release aliens on bond or conditional parole.

The 1988 Rule

In October 1987, INS initiated a rulemaking to adopt procedures relating to detention and release of juvenile aliens. 52 Fed. Reg. 38,245 (Oct. 15, 1987). In November 1987, the parties entered into a Memorandum of Understanding (1987 MOU) regarding detention conditions, under which minors in immigration custody for more than 72 hours would be housed in facilities that met or exceeded certain standards. *See* Memorandum of Understanding Re Compromise of Class Action:

Conditions of Detention, *Flores v. Meese*, No. 85–4544–RJK (C.D Cal., Nov. 30, 1987).

In May 1988, INS issued the rule, *Detention and Release of Juveniles*, 53 Fed. Reg. 17,449 (May 17, 1988) (the 1988 Rule). The 1988 Rule provided that alien juveniles generally "shall be released, in order of preference, to: (i) a parent; (ii) a legal guardian; or (iii) an adult relative (brother, sister, aunt, uncle, grandparent) who are not presently in INS detention." 8 C.F.R. § 242.24(b)(1) (1992). If the only listed individuals were also in INS detention, INS would consider simultaneous release of the juvenile and custodian "on a discretionary case-by-case basis." *Id.* § 242.24(b)(2). Under the rule, INS could hold minors in a detention facility designed for juveniles pending efforts to identify "suitable placement … in a facility designated for the occupancy of juveniles." *Id.* § 242.24(c).

For juveniles who were not released, the INS required a designated INS official, the "Juvenile Coordinator," to locate "suitable placement ... in a facility designated for the occupancy of juveniles." *Id.* § 242.24(c). INS could briefly hold the minor in any "INS detention facility having separate accommodations for juveniles," *Id.* § 242.24(d), subject to the terms of the 1987 MOU.

***The Supreme Court's Remand in* Reno v. Flores *(1993)*.**

After this Court granted summary judgment in favor of Plaintiffs' challenge to the 1988 Rule, the Supreme Court intervened, reversing the Ninth Circuit's affirmance of this Court's decision. *Flores*, 507 U.S. at 315. The Supreme Court rejected Plaintiffs' substantive-due-process claim, noting that "'juveniles, unlike adults, are always in some form of custody' . . ., and where the custody of the parent

or legal guardian fails, the government may (indeed, we have said must) either exercise custody itself or appoint someone else to do so." *Id.* at 302 (citation omitted). As to Plaintiffs' procedural-due-process claim, the Supreme Court found the Constitution was satisfied by an INS process entitling alien juveniles to a hearing on detention before an immigration judge. *Id.* at 309. This Court likewise rejected Plaintiffs' statutory-authority argument. *Id.* at 312.[3]

The 1997* Flores *Settlement Agreement

Though the Supreme Court rejected all of Plaintiffs' claims, the parties agreed to a settlement on remand. The FSA became effective on January 28, 1997, upon this Court's approval, and provides that "the court shall retain jurisdiction over this action." FSA, attached as Ex. J, ¶ 35. When the parties signed the FSA, INS was responsible for arresting, processing, detaining or releasing, and removing aliens, including UACs.

The purpose of the FSA was to establish a "nationwide policy for the detention, release, and treatment of minors in the custody of the INS." FSA ¶ 9. The parties expanded the settlement class beyond the Western Region, to cover "[a]ll minors who are detained in the legal custody of the INS." *Id.* ¶ 10. A "minor" is defined as "any person under the age of eighteen (18) years who is detained in the legal custody of the INS," but excludes minors who have been emancipated or incarcerated due to a criminal conviction as an adult. *Id.* ¶ 4. The detention of many

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[3] The 1988 Rule remains in effect today, although, in 1997, INS moved it to 8 C.F.R. § 236.3. *See* 62 Fed. Reg. 10,312, 10,360 (Mar. 6, 1997). In 2002, INS transferred relevant authority to the Director of the Office of Juvenile Affairs. *See* 67 Fed. Reg. 39,255, 39,258 (June 7, 2002).

alien minors occurred under what was, at the time, the discretionary-detention statute. *See Flores*, 507 U.S. at 309.

The FSA's terms reflect that the parties intended it to be a stopgap measure until Defendants promulgated regulations governing the care and custody of UACs. *See K.O. by & through E.O. v. United States*, 651 F. Supp. 3d 331, 338 (D. Mass. 2023) (observing that the FSA was intended to be a stopgap measure); *Bunikyte, ex rel. Bunikiene v. Chertoff*, No. A-07-CA-164-SS, 2007 WL 1074070, at *2 (W.D. Tex. Apr. 9, 2007) (same). The FSA was originally set to expire within five years, but, in December 2001, this Court entered the parties' stipulation to amend the termination date to "45 days following defendants' publication of final regulations implementing this Agreement." ECF No. 13.

Significant Changes in Circumstances Since 1997

Since the FSA was entered in 1997, the United States' public-policy interests have shifted. Events such as the September 11, 2001 terrorist attacks, and the growth of national-security threats such as drug trafficking and human smuggling by transnational criminal organizations, have necessitated policy responses that could not have been reasonably contemplated in 1997.

In 2002, Congress abolished INS and transferred its functions to the newly created DHS. *See* Homeland Security Act (HSA), Pub. L. No. 107–296, §§ 441, 451, 471, 116 Stat. 2135, 2205, 2308 (Nov. 25, 2002) (6 U.S.C. §§ 251, 271, 291, 542). With respect to the care of UACs, Congress transferred responsibility from the INS's UAC program to the Office of Refugee Resettlement (ORR) within HHS. 6 U.S.C.

§ 279.[4] ORR became responsible for coordinating and implementing the care and placement of UACs, making and implementing placement determinations, overseeing the infrastructure and personnel of UAC facilities, and other functions. 6 U.S.C. § 279(b).

In the wake of 9/11, DHS ended the practice of "catch-and-release."[5] Previously, families apprehended at the border generally were released rather than detained because of limited bed space. *Bunikyte*, 2007 WL 1074070, at *1 (citation omitted). The catch-and-release practice created enforcement vulnerabilities, namely that smugglers reportedly brought children across the border with groups of smuggled strangers and presented them as family units, in order to avoid detention if apprehended. Ex. C ¶ 7. Catch-and-release also incentivized families to bring children on a dangerous journey. *Id*. To maintain family unity, ICE opened family residential centers (FRCs). *Id*. ¶¶ 8, 9. At the time, ICE used the 2000 INS Detention Standards, blended with traditional juvenile standards, to establish a baseline of performance requirements and oversight procedures for FRCs. *Id*. ¶ 15.

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[4] ORR is a program of the Administration for Children and Families (ACF) that was created with the enactment of the Refugee Act, Pub. L. No. 96-212, 94 Stat. 102 (Mar. 17, 1980).

[5] Declaration of Timothy L. Perry, Deputy Assistant Director, Detention Management Division, Office of Detention and Removal Operations, ICE (Mar. 16, 2007), *Bunikyte*, No. A-07-CA-164-SS (W.D. Tex.), ECF No. 17-1, attached as Exhibit C ¶ 6. Under the catch-and-release policy, the government issued aliens apprehended at or near the border notices to appear in removal proceedings and released them on their own recognizance or bail. *Id*.

In the meantime, the numbers of alien minors arriving in the United States each year increased significantly. While the numbers fluctuate from year to year, they remain significantly higher than the approximately 7,000 to 8,000 entering each year in the early 1990s. *See Flores*, 507 U.S. at 294 (recognizing that a surge of "more than 8,500" alien minors represented a "serious" problem). From FY1993 until FY2011, the numbers of UACs apprehended by the government stayed relatively consistent year-over-year. Declaration of Toby Biswas, attached as Ex. D ¶ 4. In FY2012, DHS referred 13,625 UACs to ORR. *Id*. In FY2023, ORR received 118,938 referrals—a thirteenfold increase from the time the FSA was entered. *Id*.

The need to "hous[e] family units," which was not contemplated by the parties in 1997, *see Flores*, 828 F.3d at 906, became a significant issue. U.S. Customs and Border Protection (CBP) reported 14,855 Border Patrol encounters of individuals in family units (FAMUs) along the Southwest border in FY2013. Ex. A ¶ 8. CBP reported 614,020 Border Patrol encounters with individuals in family units in FY2022, 993,940 individuals in family units in FY2023, and 996,070 in FY2024. Ex. B.

More recently, the numbers of encounters along the border have decreased, but they remain higher than they were in the early 1990s. In the first six months of FY2025, Border Patrol reported 22,662 encounters with UACs and 50,662 with individuals in FAMUs along the Southwest border. Ex. A, ¶ 8. Even with stronger enforcement and significantly fewer unlawful entries, however, the FSA continues to frustrate CBP's ability to carry out its mission of protecting the border. *See id.*, ¶ 18. Stronger enforcement has required Border Patrol to keep people in custody

longer. [cite] Increases in encounters and the numbers of UACs and FAMUs in custody are difficult to plan for because the increases are neither steady nor predictable. *See generally* Ex. A.

Since 1997, Congress and the agencies enacted protections for UACs in government custody. DHS must notify HHS within 48 hours of the apprehension or discovery of a UAC and transfer them to HHS's custody within 72 hours, absent exceptional circumstances and except when a UAC from a contiguous country is permitted to withdraw his or her application for admission. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457 § 235, 122 Stat. 5044, 5074 (Dec. 23, 2008) (8 U.S.C. § 1232(b)(2), (3)). Further, UACs in HHS custody must be promptly placed in the least restrictive setting that is in the child's best interest, and, if placed in a secure facility, the placement shall be reviewed monthly. 8 U.S.C. § 1232(c)(2)(A). Other provisions govern legal-orientation presentations and access to counsel. *Id.* § 1232(c)(4) & (5).

In 2014, pursuant to the Prison Rape Elimination Act (PREA), DHS issued regulations to prevent, detect, and respond to sexual abuse and assault in DHS confinement facilities.[6] *See* 79 Fed. Reg. 13,100 (Mar. 7, 2014) (6 C.F.R. § 115.10-95 (detention facilities), *id.* § 115.110-195 (holding facilities)). Under DHS's PREA regulations, juveniles must be detained in the least restrictive setting appropriate to the juvenile's age and special needs, and facilities must hold juveniles apart from adult detainees, unless the juvenile is in the presence of an adult family member, and

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[6] Congress enacted PREA in 2003. *See* Pub. L. No. 108-79, 117 Stat. 972 (Sept. 4, 2003), codified at 34 U.S.C. § 30301, *et seq*.

provided the arrangement presents no safety or security concerns. 6 C.F.R. §§ 115.14(a), (b) (detention), 115.114(a)(b) (holding). Further, each facility must supervise detainees through appropriate staffing levels and, where applicable, video monitoring to protect detainees against sexual abuse, and must develop and document comprehensive-supervision guidelines. 6 C.F.R. § 115.13, 115.113. ORR issued similar regulations with respect to UACs in its custody. *See* 79 Fed. Reg. 77,768 (Dec. 24, 2014), codified at 45 C.F.R. pt. 411.

In October 2015, CBP issued its Transport, Escort, and Detention Standards (TEDS), implementing a CBP-wide policy setting nationwide standards to govern CBP's interaction with detained individuals. *See* TEDS, Ex. F. Under the TEDS policy, detainees generally should not be held for more than 72 hours in a CBP facility. *Id.* § 4.1. TEDS establishes national standards for medical screening, gender separation, segregation of juveniles from adult populations (unless the adult is an immediate relative or legal guardian), and family unity. *Id.* § 4.3. It also establishes standards for detainee privacy, hold-room conditions, consular access, lists of legal-services providers, telephone access, bedding, hygiene, and access to food, water, and restrooms. *Id.* §§ 4.6-4.15.

In 2020, ICE updated its standards governing FRCs, the Family Residential Standards (FRS), which likewise set the standards for the care and custody of FAMUs and juveniles. *See* Declaration of Dawnisha Helland, attached as Ex. G; FRS, attached as Ex. H.

In January 2025, President Trump signed the Laken Riley Act into law. Pub. L. 119-1, 139 Stat. 3 (2025). It expanded the category of aliens who are subject to

mandatory detention. *Id.* Most importantly, States can now sue for injunctive relief if a decisions by DHS harms the State or its residents, which adds pressure on DHS to end catch-and-release and ensure compliance with the mandatory-detention provisions required under the INA.

Flores *Litigation Related to DHS*

Since 1997, there has been significant litigation over the FSA's terms, most of which arose from class counsel's fifteen motions to enforce the FSA. Below are examples of the litigation that has occurred in the past decade.

- *Flores v. Johnson*, 212 F. Supp. 3d 864 (C.D. Cal. 2015) (granting Plaintiffs' Motion to Enforce, ECF No. 100, and ruling that the FSA applies to all alien minors in government custody, including those in FAMUs);
- *Flores*, 828 F.3d. at 902–903 (upholding this Court's conclusion that the FSA applies to accompanied-alien minors and that during an emergency or influx, minors must be transferred "as expeditiously as possible" to a non-secure, licensed facility);
- *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1063-67 (C.D. Cal. 2017) (interpreting the FSA to require ICE to make and record continuous efforts to release accompanied minors in expedited-removal proceedings—even though such minors are subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) or (iii)(IV). This Court also concluded that Defendants must assess each individual class member in expedited-removal proceedings for discretionary, humanitarian parole);

- *Flores v. Barr*, 407 F. Supp. 3d 909, 916–20 (C.D. Cal. 2019) (permanently enjoining DHS's and HHS's the 2019 Rule implementing the FSA[7] because this Court found that the provisions related to the detention of UACs and the licensing of family-detention facilities were inconsistent with the FSA), *aff'd in part*, *rev'd in part*, *Flores v. Rosen*, 984 F.3d 720, 737 (9th Cir. 2020) (upholding permanent injunction of the 2019 Rule applicable to the care and custody of accompanied minors, based upon its conclusions that the regulations differed substantially from the FSA, but reversing and remanding this Court's decision as to most of the provisions related to Border Patrol custody and UACs, because those provisions were consistent with the FSA);
- ECF No. 1406 at 11 (granting in part Plaintiffs' Motion to Enforce, ECF No. 1392, based on its finding that alien juveniles waiting in Outdoor Congregation Areas (OCAs)—plots of land along the U.S.-Mexico border that are not controlled or owned by CBP—are detained in CBP custody, and ordering CBP to cease "holding" alien children in these sites, and monitor

[7] On August 23, 2019, DHS and HHS published final regulations to implement the FSA. *See* 84 Fed. Reg. 44,392–535 (Aug. 23, 2019) (2019 Rule). The 2019 Rule included two sets of regulations: one issued by DHS and the other by HHS. *Id*. at 44,515-30 (DHS); *id*. at 44,530-35 (HHS). The DHS regulations govern the apprehension and processing of unaccompanied and accompanied minors, and the care and custody of accompanied minors. The HHS regulations governed the care and custody of UACs.

compliance with the FSA with respect to any alien juveniles present at OCAs).[8]

Resumption of Operations in FRCs

In March 2025, ICE resumed the operation of FRCs to house family units, for the purpose of increasing compliance with immigration obligations, reducing the number of absconders, and housing members of the same family together. *See* Ex. G ¶¶ 13-15. Without FRCs, ICE's ability to monitor immigration cases and execute removal orders is compromised.[9] *Id.* ¶¶ 15-28. FRCs provide a safe setting for family units awaiting removal together while advancing the public-policy interests in reducing the number of absconders and enabling ICE to better manage its resources. *Id.* ¶¶ 19, 20, 23.

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[8] Beginning in October 2022, large groups of aliens began to enter the United States through Mexico, and congregate in the areas east of the San Ysidro Port of Entry, known as OCAs, including remote areas that are not reachable by bus or car and lack basic amenities, like shade and drinking water. Ex. A ¶ 18. There, the aliens waited until Border Patrol agents could arrive. *See* ECF No. 1406 at 1-3. The groups consisted of dozens to hundreds of aliens, often believed to be assisted by cartel-affiliated smuggling organizations. ECF No. 1398-1 ¶ 7. The OCAs were neither established nor maintained by CBP. ECF No. 1479-1 ¶ 6.

[9] The most reliable factor for determining whether an alien is removed when a final order is issued is whether the alien is in detention when this occurs. 84 Fed. Reg. at 44,488. In many cases when an alien was at large when a final order of removal was issued, ICE expended significant resources to locate, detain, and subsequently remove the alien in accordance with the final order. *Id.*

According to ICE data, family units on ATD tend to abscond at a higher rate than non-family unit participants. *Id.* (noting that the absconder rate for FAMUs was 30 percent, while the absconder rate for non-FAMUs was 19 percent).

This Court's Retention of Jurisdiction over ORR's Implementation of the FSA at Secure, Heightened Supervision, and Out-of-Network Facilities

On April 30, 2024, HHS issued a rule governing the placement, care and custody of UACs. *Unaccompanied Children Foundational Rule*, 89 Fed. Reg. 34, 384 (Apr. 30, 2024) (Foundational Rule). Defendants moved to terminate the FSA as to HHS, under Rule 60(b)(5), based on the Foundational Rule. ECF No. 1414. On June 28, 2024, this Court conditionally and partially terminated the FSA as to HHS, except for FSA ¶¶ 28.A, 32, and 33, which concern collection of certain information about UACs, attorney-client visits, and site visits, and as to the FSA provisions governing secure, heightened supervision, and out-of-network facilities. ECF No. 1447. This Court also held that termination was contingent on the Foundational Rule not being subsequently rescinded or modified inconsistent with the FSA, and retained jurisdiction to modify its order, "should further changed circumstances make it appropriate." *Id.* at 21.

With respect to UAC placements at secure, heightened supervision, and out-of-network facilities, the Court ruled that the Foundational Rule failed to implement the FSA by: (1) "appear[ing] to impermissibly allow isolated or petty offenses to be considered in the decision to place [UACs] in a heightened supervision facility"; (2) "appear[ing], impermissibly, to allow placement in a heightened supervision facility solely because a child is ready to 'step down' from a secure facility"; and (3) "fail[ing] to provide substantive protections for the children placed at [out-of-network] facilities," and failing to ensure that out-of-network placements are governed by the same standards as those in network providers. *Id.* at 12-13. As to

Defendants' argument that the parties did not contemplate out-of-network facilities in the FSA, this Court concluded that out-of-network facilities have "typically" been considered a form of secure placement, and did not consider that any out-of-network facility must be State licensed. *See* 45 C.F.R. § 410.1001.

2025 ORR Policy Guidance

On May 19, 2025, HHS promulgated policy guidance in response to this Court's concerns in its Order Partially Terminating the FSA as to HHS, ECF No. 1447. Ex. D ¶¶ 5-17. Although ORR has been implementing the Foundational Rule in accordance with this Court's June 28, 2024 order, these updates explicitly establish that it is doing so through formal guidance. First, ORR revised the UAC Policy Guide to delete references to isolated and petty offenses as a basis for placement in a heightened-supervision facility. Ex. D ¶ 7. Second, ORR updated its UAC Policy Guide to remove a provision that previously listed the step-down of children from a secure placement to a heightened-supervision facility as a possible justification alone for placement. *See id*. ¶¶ 8-9. Third, ORR clarified that the same standards that apply to in-network providers will generally apply to out-of-network placements. *See id*. ¶¶ 10-18; Policy Guide § 3.3. The UAC Policy Guide update also clarifies that behavior-management policies, as described in the Foundational Rule and Policy Guide, will apply to out-of-network placements. Ex. D ¶ 13.

LEGAL STANDARDS

"Pursuant to Rule 60(b)(4), a litigant may attack a judgment as void due to lack of subject matter jurisdiction." *Wages v. IRS*, 915 F.2d 1230, 1234 (9th Cir. 1990).

Rule 60(b)(5) provides that a court "may relieve a party ... from a final judgment, order, or proceeding" when "the judgment has been satisfied, released, or discharged" or when "applying it prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). The Supreme Court has explained that the disjunctive language of Rule 60(b)(5) clarifies that each of these grounds for relief is "independently sufficient." *Horne*, 557 U.S. at 454. Under the first clause of Rule 60(b)(5), relief from judgment is appropriate when a judgment has been satisfied according to its own provisions.

In contrast, the "equitable" clause of Rule 60(b)(5) allows a court to modify or vacate an order if "a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest." *Id.* at 447 (cleaned up). Where the government seeks relief from an "institutional-reform" decree, courts must apply a "flexible approach" to "ensure that responsibility for discharging the [government's] obligations is returned promptly to the [government] and its officials when the circumstances warrant." *Id.* at 448–50 (internal quotation marks and citation omitted). A flexible approach is necessary for several reasons. First, "the passage of time frequently brings about changed circumstances—changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts, and new policy insights—that warrant reexamination of the original judgment." *Id.* at 447–48. Second, these types of decrees often involve core-government responsibilities and raise separation-of-powers concerns. *Id.* at 448. Last, "public officials sometimes consent to, or refrain from vigorously opposing, decrees that go well beyond what is required by federal law." *Id.* Future officials

then "inherit overbroad or outdated consent decrees" that unduly constrain "their ability to fulfill their duties as democratically-elected officials." *Id.* at 449.

When determining whether to vacate an injunction under Rule 60(b)(5), courts must also consider "whether ongoing enforcement of the original order [is] supported by an ongoing violation of federal law." *Id.* at 454. Further, if the government has implemented a "durable remedy," judicial oversight should cease. *Id.* at 450. Rule 60(b)(5) also permits modification of a decree if it is "suitably tailored" to resolve problems created by changed circumstances. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992).[10] Once a party carries its burden to show that changed circumstances warrant relief from a consent decree, "a court abuses its discretion when it refuses to modify an injunction or consent decree in light of such changes." *Horne*, 557 U.S. at 447 (internal quotations and citation omitted).

Rule 60(b)(6) permits relief from judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). It permits the district court to vacate judgments "whenever such action is appropriate to accomplish justice." *Henson v. Fid. Nat'l Fin., Inc.*, 943 F.3d 434, 443–44 (9th Cir. 2019) (internal quotations and citation omitted). Relief under the rule is available only in "extraordinary circumstances."

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[10] "To the extent *Rufo* and *Horne* differ as to the appropriate course of action when a party seeks a Rule 60(b)(5) modification to an order in an institutional reform case," the Court should follow *Horne* because Defendants seek the FSA's termination, not a partial modification, and because "*Horne* is the latest ruling in a trend of decisions that lower the threshold for defendants to obtain a modification to, or the dissolution of, orders in long-lasting institutional reform cases." *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1199–1201 (10th Cir. 2018).

Buck v. Davis, 580 U.S. 100, 123 (2017). But "[i]n determining whether extraordinary circumstances are present, a court may consider a wide range of factors," such as "the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process." *Id.* at 123 (internal quotations and citation omitted).

ARGUMENT

I. Dissolving the FSA as to DHS and Vacating the Permanent Injunction as to the 2019 DHS Rule Are Required under § 1252(f) and the Supreme Court's Decision in *Aleman Gonzalez*.

This Court must dissolve the FSA as to DHS and lift its injunction enjoining the 2019 DHS Rule because this Court lacked jurisdiction to enjoin the 2019 Rule or enter the FSA in the first place with respect to the former INS, and ICE and CBP as its successors, under 8 U.S.C. § 1252(f)(1). The Supreme Court's decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022) has resolved any doubt that § 1252(f)(1) divested courts of jurisdiction to restrain the operation of the immigration-detention provisions in the INA. Relief is thus warranted under Rule 60(b)(4) because the injunction is void for lack of jurisdiction and under Rule 60(b)(5) due to a change in decisional law. Indeed, "[a] court errs [under Rule 60(b)(5)] when it refuses to modify an injunction or consent decree in light of" "changes in either statutory or decisional law." *Agostini v. Felton*, 521 U.S. 203, 215 (1997).

Section § 1252(f)(1) divests lower federal courts of authority to enjoin or restrain the operation of the detention provisions of the INA. In 2022, the Supreme

Court held that "§ 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Aleman Gonzalez*, 596 U.S. at 548–50. The Court also explained that "injunctive relief on behalf of an entire class of aliens" enjoining or restraining the operation of the INA's detention provisions "is not allowed[.]" *Id.* at 550–51 (holding that a class-wide injunction requiring the Government to provide bond hearings for class members detained under 8 U.S.C. § 1231(a)(6) were "barred" because they "interfere with the Government's efforts to operate § 1231(a)(6)[.]"). That holding clarifies that the FSA and this Court's 2019 injunction were inappropriate exercises of jurisdiction.

Section 1252(f)(1) codifies section 242(f)(1) of the INA, which refers to "the provisions of chapter 4 of title II" of the INA (as amended by IIRIRA), *i.e.*, sections 231 through 244 of the INA, 8 U.S.C. §§ 1221–1231 and 1252–1254a. *Galvez v. Jaddou*, 52 F.4th 821, 830 (9th Cir. 2022). These sections include the sources of DHS's authority to detain class members, which are in §§ 1225(b)(1)(B)(ii), 1225(b)(1)(B)(iii)(IV), 1225(b)(2)(A), 1226, and 1231(a). The applicable detention authority depends upon the status of the alien's immigration proceedings and the alien's criminal history.

Specifically, aliens in expedited-removal proceedings "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Likewise, inadmissible aliens seeking admission "shall be detained for a proceeding under

section 1229a." *Id.* § 1225(b)(2)(A). Outside of expedited-removal proceedings, the Government has discretion to detain or release an alien on bond pending a decision on whether he or she is to be removed, *id.* § 1226(a), unless detention is mandatory under § 1226(c) due to certain criminal offenses.

Because the detention of class members by ICE and CBP is pursuant to provisions governed by § 1252(f)(1), *Aleman Gonzalez* makes plain that this Court lacked jurisdiction to enter the FSA. *See Florida v. United States*, 660 F. Supp. 3d 1239, 1267 (N.D. Fla 2023) (recognizing that *Flores* may be causing violations of § 1225(b) and chastising the government for failing to move for relief in this Court under *Aleman Gonzalez*). The same is true of this Court's permanent injunction of DHS's 2019 regulations, which DHS issued pursuant to sections of the INA that govern immigration custody. This Court has not previously wrestled with *Aleman Gonzalez* and did not have the benefit of the Supreme Court's clarification on the scope of § 1252(f)(1) when it approved the FSA in 1997 or permanently enjoined the 2019 DHS rule. But it must do so now given that courts must account for "changes in either statutory or decisional law," *Agostini*, 521 U.S. at 215, especially where the changes establish that the court lacks jurisdiction. Under *Aleman Gonzalez*'s construction of § 1252(f)(1), this Court must dissolve the FSA as to ICE and CBP and the 2019 injunction of DHS's Rule. Fed. R. Civ. P. 60(b)(4)-(5).

II. This Court Should Dissolve the Consent Decree Because Its Terms Have Been Substantially Satisfied as to HHS and DHS.

A. HHS's Recent Policy Guidance Makes Plain that It Has Satisfied the Conditions of the FSA.

HHS's policy guidance establishes that it is implementing the Foundational Rule in accordance with this Court's concerns as to placement of UACs in secure, heightened supervision, and out-of-network facilities, as articulated in this Court's June 28, 2024 order. ECF No. 1447.

Specifically, this Court concluded that the Foundational Rule was inconsistent with the FSA in that it allowed ORR to consider isolated or petty offenses when placing a UAC in a heightened-supervision facility. *Id*. at 12. ORR has now clarified that isolated and petty offenses are not a basis for such placement. *See* Ex. D-3 - UAC Policy Guide § 1.2.4. ORR further clarified that it will consider whether the child "has a non-violent criminal or delinquent history not warranting placement in a secure facility but which evidences a behavioral concern that requires an increase in supervision" when determining whether to place a UAC in such a facility. Ex. D ¶ 7.

HHS also has responded to this Court's conclusion that HHS appeared to allow placement in a heightened-supervision facility "solely because a child is ready to 'step-down' from a secure facility." ECF No. 1447 at 12. ORR has foreclosed such an interpretation in its updated policy guidance by removing the provision at issue. *See* Ex. D ¶ 8.

ORR also addressed this Court's conclusion that the Foundational Rule "fail[ed] to provide substantive protections for the children placed" at out-of-network facilities and to ensure that out-of-network placements are governed by the same standards as in-network providers, ECF No. 1447 at 13. In response, ORR has updated its Policy Guide to explicitly establish that it applies the same standards to out-of-network placements that apply to in-network placements, taking into account the specialized nature of out-of-network facilities and ORR's single-case agreements with such facilities for individual children. In particular, ORR updated its UAC Policy Guide § 1.4.6 and the definition of an OON to make clear that, wherever possible, the same standards applicable to in-network providers apply to out-of-network placements. *See* Ex. D ¶¶ 10-18.

Because the new policy guidance eliminates any basis for concluding that the Foundational Rule does not satisfy the FSA, this Court must dissolve the FSA as to HHS. Fed. R. Civ. P. 60(b)(5).

B. DHS Has Substantially Satisfied the Terms of the FSA.

Termination is likewise necessary as to DHS because DHS has substantially satisfied the terms of the FSA. As this Court has recognized, termination of the FSA is appropriate "so long as the requisite legal standards for termination are met." ECF No. 1447 at 16 (terminating portions of the FSA as to HHS). As the parties stipulated in 2001, the terminates automatically "45 days following defendants' publication of final regulations implementing this Agreement." Ex. J.

In the context of institutional-reform litigation, the Supreme Court has criticized lower courts for focusing too narrowly on the terms of the consent decree

rather than the broader question, "whether, as a result of important changes during the intervening years, the [government] was fulfilling its obligations under the [law] by other means." *Horne*, 557 U.S. at 439. Indeed, the *Horne* Court recognized that it "was error" for the lower courts to not consider that a government may fulfill the principal goals of the underlying decree, "even without having satisfied the [verbatim terms of the] original order." *Id.* at 466. So too here.

This Court should terminate the FSA with respect to DHS in light of DHS's 2019 regulations, which are the latest in decades of efforts aimed at the original goal of the FSA: to create a comprehensive scheme to protect alien juveniles in U.S. custody. *See*, *e.g.*, *Flores v. Huppenthal*, 789 F.3d 994, 1001 (9th Cir. 2015) (observing that the critical question in that case was whether the objective of the district court's order—satisfaction of the underlying federal law—had been achieved); *United States v. City of Miami,* 2 F.3d 1497, 1505 (11th Cir. 1993) ("A court faced with a motion to terminate . . . a consent decree must begin by determining the basic purposes of the decree."). Further, continued enforcement of the FSA instead of the policies of the people's representatives is not in the public interest because continued enforcement interferes with the Executive Branch's authority to enforce the immigration laws. *See infra* Section III.A.

The conditions of confinement today are far from the conditions that prevailed in the original litigation. Today, there is a routine policy of minimizing the "practice of commingling harmless children with adults of the opposite sex," *Flores*, 507 U.S. at 328 (Stevens, J. dissenting) (citing evidence from the 1980s about conditions of confinement in INS custody), and the law provides protective and safe custody for

minors in either DHS or HHS custody, *see* 6 U.S.C. § 279; 8 U.S.C. § 1232; 6 C.F.R. §§ 115.10–.195; 8 C.F.R. §§ 236.3; 45 C.F.R. pts. 410, 411. More specifically, under the regulations governing ICE custody, FRCs provide children with the very "education, recreation, [and] visitation" provisions that were lacking when the Supreme Court initially heard this case. *Flores*, 507 U.S. at 328; *see* 8 C.F.R. § 236.3(i)(4)(iv) (education); § 236.3(i)(4)(vi) (recreation time); § 236.3(i)(4)(xi), (xii), (xiii), and (xv) (visitation); *see also* Ex. H, FRS § 5.2 (setting forth requirements to ensure that FRCs provide education for all residents 4 to 17 years of age, regardless of English proficiency or disability).

Beyond resolving the concerns that instigated this lawsuit, the DHS regulations generally incorporate the portions of the FSA that the parties contemplated in 1997 and should go into effect. Previously, this Court deemed only two of the DHS provisions to be inconsistent with the FSA: the provisions related to "expeditious release" of accompanied minors (FSA ¶¶ 14, 18); and the licensing requirements for FRCs (FSA ¶ 19). *Flores*, 407 F. Supp. 3d at 916–20, *aff'd in part, rev'd in part* 984 F.3d 720. This Court did not find that any of the other DHS regulatory provisions were inconsistent with the FSA. *See generally id.* While the DHS regulations do not mirror the expeditious-release provision of the FSA, as this Court has interpreted it to apply to accompanied children, the FSA was intended to provide for prompt release of UACs to a parent or caregiver. The law surrounding the treatment of UACs has changed entirely to address this central concern of the FSA, evidenced by Congress's definition of UACs, 6 U.S.C. § 279(g)(2), and mandates for protecting UACs, including 8 U.S.C. § 1232. DHS should not remain

subject to the FSA based on this Court's conclusion that DHS's regulations governing the custody of accompanied children do not mirror an agreement that was never designed to cover that population.

Further, incorporating the FSA's expeditious-release provisions for accompanied children would contravene current federal statutes. *Rufo*, 502 U.S. at 384 (courts should modify a decree due to a "significant change . . . in law."). On April 1, 1997, two months *after* the parties agreed to the FSA, the mandatory-detention provisions in §§ 1225(b) and 1226(c) went into effect. *See supra* Section I. These provisions were a stark change from the detention statute in place during the initial *Flores* litigation, negotiations, and the signing of the FSA, as the previous statute permitted, during deportation proceedings: continued detention; release under bond in the amount of not less than $500; or release on conditional parole. 8 U.S.C. § 1252(a) (1996). Although this Court determined that the parties were aware of these changes when they signed the FSA, *see Flores*, 394 F. Supp. 3d at 1065 n.15, the Supreme Court has since clarified that § 1252(f)(1) strips this Court of jurisdiction to enjoin or restrict the expeditious-release provisions in the FSA on a class-wide basis. *See supra* Section I (discussing *Aleman Gonzalez*, 596 U.S. at 550-51). Given these legal changes, requiring DHS to incorporate the FSA's expeditious-release provisions for all accompanied children would contravene federal law. This Court therefore cannot require that DHS include such a provision in its regulations where doing so would be unlawful. 5 U.S.C. § 706(2)(A).

Likewise, requiring DHS to comply with independent-licensing requirements for FRCs amounts to an impossible task. State licensing of such facilities is in most

cases impossible because family detention is not something that states license. *See Flores*, 394 F. Supp. 3d at 1069. Of course, family detention generally only arises in the immigration-law context.

The FSA is also silent about licensing requirements for family detention—indeed, it is silent about family detention altogether. The FSA speaks only to licensing of facilities for "dependent children," FSA ¶ 6, *i.e.*, UACs. *See Flores*, 828 F.3d at 906 (agreeing that dependent children were UACs, but erroneously finding that accompanied children could somehow be placed in those same licensed facilities). Given the changed circumstances warranting FRCs—the pronounced increase in family-unit apprehensions since 2013 and perverse incentive that the lack of detention creates, leading hundreds of thousands of children to be taken on the most dangerous migration journey in the world—this Court should recognize the imperative that the government have the flexibility necessary to administer and enforce immigration law, and allow the licensing regulation to take effect.

Moreover, all FSA provisions that are consistent with the 2019 DHS regulations must be terminated. *Flores*, 984 F.3d at 744 (stating that the DHS regulations that were consistent with the FSA "may take effect."). The Ninth Circuit found that only two of the DHS provisions were inconsistent with the FSA (the provisions related to "expeditious release," as applied to accompanied minors, FSA ¶¶ 14, 18, and the licensing requirements for FRCs, FSA ¶ 19). *Id.* at 737–40. On that basis alone, the FSA should be terminated in full except as to Paragraphs 14, 18, and 19 as they apply to accompanied children. The permanent injunction should

further be lifted from the corresponding sections of the 2019 Rule, for the reasons explained *supra*.

Further, this Court must terminate the FSA in its entirety as to CBP and lift the injunction on DHS's regulations related to CBP, as the Ninth Circuit explicitly found the regulations primarily governing CBP custody to be consistent with the FSA. *Id.* at 737 (concluding that 8 C.F.R. § 236.3(f) and (g)(2) were consistent with the FSA and "may take effect"). These provisions mirror the requirements in FSA ¶¶ 11, 12, and 25. The mandate on the Ninth Circuit's opinion issued on July 26, 2021. ECF No. 93. Accordingly, by the clear terms of the FSA, ¶¶ 11, 12, and 25 have terminated.[11]

Additionally, because the substantive terms of the FSA are terminated as to CBP, this Court should also relieve CBP of the FSA's administrative and monitoring obligations. Thus, this Court must relieve CBP of Sections X (reporting), XI (attorney-client visits), and XII (facility visits) of the FSA, as well as the transportation obligations of Section VIII (incorporated in 8 C.F.R. § 236.3(f), which has not been found inconsistent with the FSA) and terminate this Court's jurisdiction over CBP as to this litigation. *See Horne*, 557 U.S. at 450 (cautioning that federal-court decrees should be limited to "reasonable and necessary implementations of federal law."); *see also Patterson v. Newspaper & Mail Deliverers' Union of New York*, 13 F.3d 33, 39 (2d Cir. 1993) (explaining that, once a decree has served its purpose, "all of its provisions may be ended").

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[11] The Court, therefore, must terminate the 2022 CBP Settlement, ECF No. 1254-1, as the Settlement interprets FSA ¶¶ 11 and 12.

III. Termination of the FSA Is Warranted Because Prospective Application Is No Longer Equitable.

A. This Court Should Terminate the FSA Because It Improperly Commits Immigration Enforcement and Detention Decisions to the Judiciary Rather Than to the Executive.

Courts must ensure that a consent decree "does not put the court's sanction on and power behind a decree that violates Constitution, statute, or jurisprudence." *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 846 (5th Cir. 1993) (en banc) (citation omitted). The Ninth Circuit has held that "a district court may not approve a consent decree that conflicts with or violates an applicable statute." *Conservation Nw. v. Sherman*, 715 F.3d 1181, 1185 (9th Cir. 2013) (internal quotations and citation omitted). Likewise, although the Attorney General has the authority to settle litigation, this authority "does not include license to agree to settlement terms that would violate the civil laws governing the agency." *United States v. Carpenter*, 526 F.3d 1237, 1242 (9th Cir. 2008) (citation omitted); *cf. Biodiversity Assocs. v. Cables*, 357 F.3d 1152, 1169-70 (10th Cir. 2004) ("If the statute changes, the parties' rights change, and enforcement of their agreement must also change. Any other conclusion would allow the parties, by exchange of consideration, to bind not only themselves but Congress and the courts as well."). Because the FSA—through its terms, interpretation and applications, as well as its duration—is contrary to law, it is no longer equitable and must be terminated.

1. Enforcing the FSA Is Inequitable Because It Indefinitely Entangles the Judiciary in Managing Immigration Policy.

The FSA violates the separation of powers by permitting ongoing judicial micro-management of immigration matters committed to the Executive Branch. Judicial incursions into the realm of immigration affairs represent "substantial intrusion[s]" into the workings of the political Branches entrusted to implement policies towards migrants. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18 (1977). The Supreme Court has explained—in this very case—"[f]or reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political Branches of the Federal Government." *Flores*, 507 U.S. at 305 (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1976)). One of the underpinnings for this long-recognized proposition is that immigration policy involves "changing political and economic circumstances" that are appropriate for the political Branches to address, not the Judiciary. *Mathews*, 426 U.S. at 81; *see also San Francisco v. USCIS*, 944 F.3d 773, 809 (9th Cir. 2019) (Bybee, J., concurring) ("In the immigration context . . . [w]e are limited . . . in our ability . . . to shape our immigration policies. We lack the tools of inquiry, investigation, and fact-finding that a responsible policymaker should have at its disposal.").

This is one reason Congress enacted § 1252(f)(1). "For more than a century," it has been well settled that a matter implicating foreign relations—such as immigration policy—is a "fundamental sovereign attribute" of the government's Executive and Legislative Branches and "largely immune from judicial control."

Trump v. Hawaii, 585 U.S. 667, 702 (2018) (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)); *see also Shaughnessy*, 342 U.S. at 588–89 ("[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations . . ."). For these reasons, even aside from the jurisdictional bar to class-wide injunctive relief under § 1252(f)(1), respect for the political Branches' authority over immigration policy dictates a narrow standard of judicial review over executive and legislative decisions in the realm of immigration. *Fiallo*, 430 U.S. at 792, 796; *Mathews*, 426 U.S. at 81–82.

Contravening these well-settled principles of the limited judicial role, the FSA has created a substantial and unprecedented intrusion of the Judiciary into the Executive's administration of immigration policy. The scope of the FSA was too broad from the start and its overbreadth exacerbated when it is interpreted to apply to the very different context of *accompanied* children. The FSA "sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS." FSA ¶ 9. It governs an open-ended, ever-changing, and never-ending class of "[a]ll minors who are detained in the legal custody of the INS." *Id.* ¶ 10. This class has included millions of people over the years.[12] The FSA—originally designed to address a very specific set of narrow circumstances—has been interpreted to address the custody of all minors at all stages. *Id.* ¶¶ 12, 14–19, 21–27. It specifies details

[12] In practice under this class definition, the class's legal goals are not determined by named individual Plaintiffs with concrete interests at stake. Rather, the advocacy organizations acting as class counsel have been deciding the objectives of the litigation. The United States respectfully submits that no class counsel is adequate to such a monumental task. *See* Fed. R. Civ. P. 23(g).

about conditions of custody at various facilities, procedural provisions, and release policies. *Id.* Paragraph 9 of the FSA mandates rulemaking and provides that "[t]he final regulations shall not be inconsistent with the terms of this Agreement." *Id.* ¶ 9. And the FSA puts no temporal limit on the judicial intrusion. Instead, amended Paragraph 40 states that the FSA "shall terminate 45 days following defendants' publication of final regulations implementing this Agreement," *id.* ¶ 40 (as amended Dec. 7, 2001, Ex. J), which criteria can only be satisfied by a determination by the judiciary that the executive's regulations are sufficient. As explained below, publishing final regulations implementing the FSA to meet criteria determined by the judiciary—without regard to any comments received or to any changed circumstances since 1997—would be contrary to the APA.

While the scope of the FSA was broad from the beginning, this Court's interpretation and enforcement of the FSA have significantly expanded it beyond lawful bounds. Even when the FSA has been silent or unclear, this Court has issued specific directives to the government about managing nationwide-immigration enforcement. For example, while the FSA "does not address the potentially complex issues" of housing family units, "does not contain standards related to the detention of . . . family units," and "gave inadequate attention to some potential problems of accompanied minors," *Flores*, 828 F.3d at 906, this Court nonetheless applied the FSA to FAMUs and required release of accompanied minors under specified deadlines and standards irrespective of the custody status of their parents or legal guardians. Also, in 2020, this Court recognized that "Paragraph 12.A does not enumerate which rights must be included in a notice." ECF No. 987 at 6. Yet this

Court nonetheless interpreted Paragraph 12.A to require a very specific "notice of rights pertaining to custody and release." *Id.* In contrast, when ruling on the OCA issue, this Court held that the FSA's use of the phrase "following arrest" did not require any actual "arrest" to be triggered. *See* ECF No. 1406 at 10. In practice, the FSA has effectively been interpreted as if it were an open-ended grant of authority to the *Judiciary* to set policy regarding alien children. That is not equity.

Further compounding the judicial intrusions upon the authority of the Executive, this Court has repeatedly applied the FSA to situations the parties did not anticipate, such as to aliens held pending expulsion pursuant to the Title 42 public health order issued during the pandemic. *See* ECF No. 976. This Court also interpreted the FSA's terms to apply to placements in out-of-network facilities, ECF No. 1447 at 13, despite the absence of any mention of such facilities or any indication that the parties even contemplated out-of-network facilities in 1997. And in 2024, this Court applied the FSA's requirements to OCAs, a novel situation that this Court called "open-air detention sites," despite acknowledging that "it may be true that CBP did not initially *intend* for these locations to become" detention sites and CBP did not actually hold anyone in detention at the sites. ECF No. 1406 at 9.

This Court has also tried to prohibit the use of FRCs because they are not state-licensed, even though state-licensing of those facilities is in most cases literally impossible and not legally necessary. *See Flores*, 394 F. Supp. 3d at 1069. It is well settled under the intergovernmental-immunity doctrine that "the activities of the Federal Government are free from regulation by any state." *Mayo v. United States*, 319 U.S. 441, 445 (1943); *see also Trump v. Vance*, 591 U.S. 786, 829–31, 831 n.5

(2020) (Alito, J., dissenting) (collecting cases showing that "two centuries of case law prohibit the States from taxing, regulating, or otherwise interfering with the lawful work of federal agencies, instrumentalities, and officers"). It follows that immigration detention should not be required to be governed by state-licensing standards.

This Court also has stretched the FSA to dictate how the Government may implement the immigration-detention statutes. It required the Government to show that it detains families only for the amount of time needed to expeditiously screen family members for reasonable or credible fear, a requirement absent in any statute, *Flores*, 394 F. Supp. 3d at 1070. It placed temporal limits on times in custody irrespective of the Government's enforcement needs, *see* ECF No. 833 at 3 (requiring ICE to release children detained at FRCs for more than 20 days), *modified*, ECF No. 1024. Likewise, although the expedited-removal statute does not require an individualized assessment of release for accompanied children placed in expedited removal, this Court ordered the government to individually assess those accompanied children for release where federal law does not permit release. *Flores*, 394 F. Supp. 3d at 1066–67; *Flores v. Barr*, 934 F.3d 910, 916–17 (9th Cir. 2019); ECF No. 784 at 16. In addition, though the FSA explicitly grants flexibility to the government during times of influx, this Court has rendered that flexibility illusory. *See*, *e.g.*, *Flores*, 212 F. Supp. 3d at 916 ("Defendants shall not selectively apply the "influx" provision . . . ."). Although reversed by the Ninth Circuit, this Court sought to expand the FSA to require the government to release parents from immigration

detention. *See Flores v. Lynch*, 212 F. Supp. 3d 907, 916–17 (C.D. Cal. 2015), *aff'd in part, rev'd in part*, 828 F.3d 898.

Beyond dictating how the Government must enforce the immigration-detention statutes, this Court also has overridden the agencies' expert judgments regarding the actions necessary to protect class members and the community. This Court prohibited ORR from placing children in particular secure facilities based on gang affiliation. ECF No. 470 at 19–20. This Court further ordered ORR to stop its uniform requirement that post-release services be in place in the community before releasing a child to a sponsor. *Id.* at 30. It ordered ORR to cease elevating release decisions to the ORR Director or his designee, for children previously placed in restrictive settings. *See id.* at 29. It further ordered Defendants to transfer all class members out of residential-treatment centers "unless a licensed psychologist or psychiatrist has determined or determines that a particular Class Member poses a risk of harm to self or others." *Id.* at 14. And, during the COVID-19 pandemic, this Court required ORR to release children to sponsors without conducting the fingerprint-background checks that ORR believed necessary to address "the dangers" inherent to releasing unaccompanied youth to "improperly vetted sponsor[s]." ECF No. 784 at 11–12; *see also* ECF No. 833 at 5 ("ORR shall review and amend its fingerprinting policy to provide for a less onerous chain of approvals or show cause to this Court why the policy, as written, is imperative[.]"). More broadly, during the pandemic, this Court interpreted the FSA to afford it greater authority to "require heightened inspections" of government facilities and to require the release of class members. ECF No. 740 at 9, 11.

By engaging in such wide-ranging management of Executive agencies, this Court has exceeded the Constitutional limits on the judicial role. The FSA's general terms and expansive interpretations have encouraged Plaintiffs' systemic challenges, seeking "*wholesale* improvement . . . by court decree"—"properly matters that should be pursued in the 'offices of the Department[s] [of Homeland Security and Health and Human Services] or the halls of Congress, where programmatic improvements are normally made.'" *Whitewater Draw Nat. Res. Conservation Dist. v. Mayorkas*, 5 F.4th 997, 1011 (9th Cir. 2021) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990)). Plaintiffs' counsel may "think that the third branch is more convenient or accessible," but the traditional, customary mode of operation of the courts—consistent with Article III—is limited to controversies reduced to more manageable proportions. *Id.* at 1012; *see Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 841 (1994) (Scalia, J., concurring) (equitable courts historically lacked jurisdiction to require performance of anything "'more than a single affirmative act'" and did not "issue" relief "that required ongoing supervision"). This Court, by contrast, has exercised general supervisory authority over the federal-immigration agencies and directed changes by the agencies through court decree.

This Court has often characterized its longstanding and increasingly intrusive interference as mere enforcement of the FSA. *See*, *e.g.*, *Flores*, 407 F. Supp. 3d at 928. But the "Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment." *New York v. United States*, 505 U.S. 144,

182 (1992). And the FSA "is no ordinary contract," because it is now effectively open-ended and, as interpreted in response to Plaintiffs' insistence, "it requires continuing supervision by the district court." *Evans v. City of Chicago*, 10 F.3d 474, 477–78 (7th Cir. 1993) (en banc) (plurality opinion). Indeed, in its recent ruling concerning termination of the FSA as to HHS, this Court concluded that it "also retains jurisdiction to modify the [FSA] or this Order should further changed circumstances necessitate"—essentially retaining never-ending jurisdiction over the FSA. ECF No. 1447 at 20. This Court's "decrees implicate the citizenry's interests as well as those of the parties and bear directly on the salubrious operation of public institutions." *In re Pearson*, 990 F.2d 653, 658 (1st Cir. 1993); *see Rufo*, 502 U.S. at 381 (noting that consent decrees "reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions" (quoting *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989)).

For these reasons, "[c]onsent alone is insufficient to support a commitment by a public official that ties the hands of his successor." *Evans*, 10 F.3d at 478; *see David B. v. McDonald*, 116 F.3d 1146, 1150 (7th Cir. 1997) ("[I]in a democracy the people may vote out politicians whose acts displease them, and elect new representatives who promise change."); *cf. Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 497 (2010) ("Perhaps an individual President might find advantages in tying his own hands . . . He cannot, however, choose to bind his successors by diminishing their powers . . ."). As the D.C. Circuit has explained, there are "potentially serious constitutional questions about the power of the Executive Branch to restrict its exercise of discretion by contract with a private

party." *Nat'l Audubon Soc., Inc. v. Watt*, 678 F.2d 299, 301 (D.C. Cir. 1982). Thus, the government's consent to the FSA 28 years ago—*i.e.*, five Presidential Administrations ago—does not render lawful the breach of the separation-of-powers that the FSA continues to impose.

In addition, institutional-reform decrees, such as the FSA, may not exist in perpetuity because they remove authority from the elected branches of government to the judicial branch. In *Horne*, the Supreme Court expressed concern that "[i]njunctions of this sort bind state and local officials to the policy preferences of their predecessors and may thereby improperly deprive future officials of their designated legislative and executive powers." 557 U.S. at 449 (internal quotations and citation omitted). The Supreme Court therefore criticized the lower courts for failing to consider "whether, as a result of important changes during the intervening years, the State was fulfilling its obligations under the [law] by other means." *Id.* at 439. And the Court went on to observe that a "flexible approach" to modifying such consent decrees allows courts to "ensure that responsibility for discharging the State's obligations is returned promptly to the State and its officials when the circumstances warrant." *Id*. at 450 (quotations and citations omitted).

Focusing on the terms of the original injunction, instead of the underlying federal law, causes the court to "improperly substitute[] its own educational and budgetary policy judgments for those of the state and local officials to whom such decisions are properly entrusted." *Id.* at 455. To avoid this danger, courts must consider "whether ongoing enforcement of the original order [is] supported by an ongoing violation of federal law." *Id.* at 454. If the government has implemented a

"durable remedy," judicial oversight should cease. *Id*. at 450. Additionally, "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate [federal law] or does not flow from such a violation." *Id.* (alteration in original) (citation omitted); *see also United States v. Washington*, 573 F.3d 701, 710 (9th Cir. 2009) ("The [Supreme] Court has repeatedly reminded us that institutional reform injunctions were meant to be temporary solutions, not permanent interventions, and could be kept in place only so long as the violation continued."); *Evans*, 10 F.3d at 480 ("[E]ntry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law.").

Here, the FSA and its enforcement by this Court implicate each of the Supreme Court's concerns in *Horne*. The FSA raises sensitive separation-of-powers concerns and involves immigration and foreign policy—areas of core Executive Branch responsibility. For nearly three decades, the FSA has improperly divested Executive Branch officials of their full legitimate policymaking powers. Even if concerns about violations of the Constitution existed in 1997, the agencies have addressed them by promulgating regulations that far exceed the constitutional floor. *See generally* 2019 Rule; Foundational Rule; *see also* Ex. D (describing further updates to ORR's UAC Policy Guide to establish policies consistent with the court's June 28, 2024 order as to HHS). Indeed, the Supreme Court found that the former INS's *1988 Rule* did not violate alien minors' substantive or procedural due process rights. *Flores*, 507 U.S. at 315. So the FSA is in many respects void *ab initio*.

But, despite its manifold actions to enforce the FSA over the last twenty-eight years, this Court has not analyzed "whether ongoing enforcement of the original order [is] supported by an *ongoing violation of federal law*" for decades now. *Horne*, 557 U.S. at 454 (emphasis added). Nor has it asked whether its enforcement of the FSA is inhibiting the legitimate policymaking discretion of the Executive Branch in immigration matters where the federal government must be able to adapt to changing circumstances. *See Mathews*, 426 U.S. at 81; *Flores*, 507 U.S. at 305. This Court instead has been zealously focused on the original terms of the FSA. This incorrect focus (*Horne*, 557 U.S. at 455) has frozen federal officials' ability to address and respond to a series of immigration crises since 2014, contributing substantially to the intolerable situation on the Southern Border.

The Court should thus dissolve the FSA because it is precisely the type of institutional-reform injunction that the Supreme Court cautioned against: it prevents the government from exercising its constitutional powers to develop new policies to address the changes in immigration to the United States. The FSA divests the Executive of its power to respond to new situations and foreign-relations concerns and transfers that power to the Judiciary, which is not equipped to change nor responsible to the public for its failures.

Moreover, the public interest is not served by permitting the unelected class counsel to wield litigation to facilitate this Court's indefinite supervision of the American immigration system, which involves multiple agencies, hundreds of thousands of class members, and vast taxpayer resources. This Court should end its

superintendence of this aspect of immigration policy and return responsibility for determining and executing immigration policy to the political branches.

2. Enforcing the FSA Is Inequitable Because It Prescribes the Substantive Result of Agency Rulemaking

In addition to exceeding a proper judicial role, the FSA impermissibly mandates the substantive results of agency rulemaking. Paragraph 9, which requires the Government to "publish the relevant and substantive terms of this Agreement as a Service regulation," and Paragraph 40, which provides the termination of the FSA after publishing such regulations, create an obligation that exceeds the Executive Branch's authority to bind successors.

In 2019, the government published regulations to set forth a nationwide policy addressing the custody and care of children in immigration custody. *See* 2019 Rule, 84 Fed. Reg. 44,392. This was performed consistently with the government's understanding that the FSA required it to engage in a rulemaking process regarding the treatment of detained minors—but not that the FSA required any foreordained result. ECF No. 639 at 26, 46–51.

This Court disagreed. It interpreted Paragraphs 9 and 40 of the FSA to mean that the final regulations must match *exactly* the substantive terms of the FSA—as well as this Court's subsequent interpretation of those terms. *See Flores*, 407 F. Supp. 3d at 925 ("Since '[c]onditions subsequent are not favored by the law, and are construed strictly,' and the New Regulations do not codify numerous relevant and substantive terms of the *Flores* Agreement, the *Flores* Agreement remains fully intact." (alteration in original) (quoting 17A C.J.S. *Contracts* § 451 (2019))). As

interpreted by this Court in 2019, the FSA requires any future Executive Branch officials to adopt the specific policies in the FSA that were agreed to by the Clinton Administration over 25 years ago. Even more concerning, this Court suggested in 2024 that the FSA could continue to bind agencies' policy choices forever, even *after* the publication of consistent regulations and the Agreement's termination. *Id.* ("The Court's termination of the FSA as to HHS is therefore *conditional* on there not being a recission of those regulations, such as the Foundational Rule, in a manner inconsistent with the FSA.") (emphasis added). Consequently, if voters express a preference for an alternative, they are without recourse. Voters' preferences and the sovereign interests of the Executive are irrelevant. That is no way to run a democracy.

Despite HHS's publication of regulations implementing the FSA, this Court retained jurisdiction "to modify the Agreement or this Order should further changed circumstances necessitate, to ensure that the Rule faithfully implements the FSA as the parties originally contemplated." *Id.* Thus, this Court interpreted the FSA to require the government to engage in rulemaking with a preordained result, and to bind the government to that result in perpetuity.

Requiring the agencies to adopt a substantive policy through rulemaking when the agency has legitimate policymaking discretion to make other policy choices exceeds the judicial role. "[C]ourts cannot invade the jurisdiction of the other departments of government in matters of policy, and for a court to substitute its judgment or discretion for that of a member of the executive branch of government would amount to such an invasion." *Huntt v. Gov't of Virgin Islands*, 382 F.2d 38,

45 (3d Cir. 1967). As a general matter, courts considering whether to ratify consent decrees have been careful to emphasize that a permissible decree does not mandate the substantive result of any subsequent rulemaking. *See Housatonic River Initiative v. EPA*, 75 F.4th 248, 267–68 (1st Cir. 2023) ("Importantly, as the Petitioners concede, the Settlement did not legally constrain the EPA in deciding what provisions to include in the final permit."); *Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1121, 1129 (D.C. Cir. 1983) (holding that a consent decree was permissible when it "did not specify the substantive result of any regulations EPA was to propose" and did not "prescribe the content of the regulations"). Under its interpretation of the FSA, this Court has forced the agencies to adopt a specific substantive rule or else forever be subject to this Court's jurisdiction and management. This Court, however, has no authority to exercise such control.

Mandating the substantive result of rulemaking through a settlement also violates the APA, which renders prospective application of the FSA inequitable and contrary to the public interest. Section 4 of the APA, 5 U.S.C. § 553, prescribes a three-step procedure for "notice-and-comment rulemaking." First, the agency must issue a "[g]eneral notice of proposed rule making." *Id.* § 553(b). Second, after the required notice, the agency must "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." *Id.* § 553(c). "An agency must consider and respond to significant comments received during the period for public comment." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015); *see Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (agencies "examine[] 'the relevant data' and articulate[] 'a satisfactory

explanation' for [the] decision, 'including a rational connection between the facts found and the choice made'" (citation omitted). Third, when promulgating the final rule, the agency must include in the rule's text "a concise general statement of [its] basis and purpose." 5 U.S.C. § 553(c).

"The process of notice and comment rule-making is not to be an empty charade." *Conn. Light & Power Co. v. Nuclear Regul. Comm'n*, 673 F.2d 525, 528 (D.C. Cir. 1982). Interested parties must have the opportunity "to participate in a meaningful way in the discussion and final formulation of rules." *Id.* Therefore, APA rulemaking does not permit a contractual agreement to preordain any specific outcome. Indeed, "a binding promise to promulgate [final regulations] in the proposed form would seem to defeat Congress's evident intention that agencies proceeding by informal rulemaking should maintain minds open to whatever insights the comments produced by notice under § 553 may generate." *NRDC v. EPA*, 859 F.2d 156, 194 (D.C. Cir. 1988).

Likewise, the Ninth Circuit has held that a court must not enter or enforce a consent decree that would require an agency to violate "procedural requirements" for rulemaking set by statute. *Conservation Nw.*, 715 F.3d at 1186. In *Conservation Northwest*, the Ninth Circuit considered "whether a district court may approve resolution of litigation involving a federal agency through a consent decree, which substantially and permanently amends regulations that the agency could only otherwise amend by complying with statutory rulemaking procedures." *Id.* at 1183. The Ninth Circuit held that the district court had abused its discretion by approving

that kind of consent decree, which "impermissibly conflicts with laws governing the process for such amendments" to the regulations. *Id.* at 1189.

Here, as interpreted by this Court, the FSA requires the agencies to close their eyes to alternatives and to adopt the provisions of the FSA in the final rule without regard to any comments received, changed circumstances since 1997, or new policy insights. *See* FSA ¶ 9 ("The final regulations shall not be inconsistent with the terms of this Agreement."). If the government were to engage in rulemaking while irrevocably committed to those specific terms, the final rule would be subject to challenge for failing to comply with the APA's rulemaking process. Thus, the FSA is improper because it "impermissibly conflicts with laws governing the process" for rulemaking. *Conservation Nw.*, 715 F.3d at 1189. The Executive officials did not have the authority to agree to the FSA as so interpreted, *see Carpenter*, 526 F.3d at 1242, and consequently this Court does not have the authority to enforce the FSA prospectively, *see Conservation Nw.,* 715 F.3d at 1185.

The judicial involvement in this case has been excessive and has continued for too many years. Therefore, prospective application of the FSA is not equitable. This Court should grant this request for relief under Rule 60(b)(5) and terminate the FSA. In the alternative, this Court should grant relief from judgment under Rule 60(b)(6) because this case presents the kind of "extraordinary circumstances" that cause injustice to the parties and risk "undermining the public's confidence in the judicial process." *Buck*, 580 U.S. at 123.

B. Termination of the Consent Decree Is Warranted Due to Changes in Factual and Legal Circumstances

The Executive Branch and its agencies must respond to changes in immigration trends and foreign relations to effectively administer and enforce the immigration laws. But the FSA prevents the Executive from exercising this authority. Refusing to terminate the FSA despite the changes in immigration priorities and migration influxes "insulate[s] the policies embedded in the order . . . from challenge and amendment" merely because it was written as a consent decree rather than a regulation. *See Horne*, 557 U.S. at 453. Dramatic changes in migration trends, foreign policy, and immigration priorities counsels against continued judicial enforcement of the FSA. DHS's 2019 regulations address many of these changes and fully respect the constitutional and statutory rights of alien minors, and they should control.

Current immigration policies to limit unlawful entry further justify termination of the FSA. Immigration policy by definition involves "changing political and economic circumstances," making it particularly appropriate for political maintenance and control. *Mathews*, 426 U.S. at 81. A "significant change" in factual circumstances or law "renders continued enforcement of the judgment detrimental to the public interest." *Horne*, 557 U.S. at 453 (citation omitted). And such significant changes in circumstances are present here.

The number of children crossing or attempting to cross the Southwest border rose to unprecedented numbers in FY2024, and the FSA hamstrung the government

in addressing this catastrophic illegal migration.[13]. In FY2024, the total number of family-unit apprehensions at the Southwest border was 555,578 (Ex. A ¶ 8)—compared to 473,682 in FY2019, when this Court last considered the government's motion to modify the FSA—a nearly 40% increase in family-unit apprehensions when reported on an annual basis.[14] Likewise, UAC crossings have increased: in FY2023, the total number of UAC apprehensions at the southwest border was 131,519, and in FY2024, almost 100,000, compared to 76,020 in FY2019. Ex. A ¶ 8; Ex. H. The surge in border encounters of accompanied and unaccompanied minors undermines the ability of DHS to comply with the FSA. Ex. A ¶¶ 16-18, 32-34.

In considering termination of the FSA, the relevant timeline is the change from when the FSA was entered. The border situation is nothing like what it was in 1997. In the 1990s, INS encountered 7,000 to 8,000 alien minors each year at the border. Ex. D-1 at 1. Given the stability in alien-minor entries during the 12 years of litigation, the parties reasonably agreed that an "influx" occurred when the INS had more than 130 minors in its custody. FSA ¶ 12A. These numbers demonstrate the stark contrast between the situation today and the situation in 1997, when the FSA

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[13] The government recognizes that this Court has previously found that these changes in the landscape of immigration are not significant enough, on their own, to warrant termination or amendment of the FSA, ECF Nos. 177, 455. But border encounters are constantly evolving, and spikes in encounters that overwhelm the agencies and prevent faithful enforcement of the immigration statutes are important changes in circumstances that the Court should consider. Ex. A ¶¶ 7, 8, 14-18.

[14] *See* CBP, Southwest Border Migration FY2019, https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions-fy2019 (updated Nov. 3, 2023) (viewed May 20, 2025), attached as Ex. H.

was entered. Nothing in the FSA suggests that the parties anticipated that the government would eventually encounter hundreds of thousands or even tens of thousands of alien minors per year. The antiquated FSA simply does not account for today's border encounters and need for placements.

Mandating continued adherence to the obsolete FSA is particularly inequitable because—as the Ninth Circuit has expressly recognized—the FSA "does not address the potentially complex issues involving the housing of family units and the scope of parental rights for adults apprehended with their children." *Flores*, 828 F.3d at 906. Nevertheless, even though the FSA never contemplated regulation of *accompanied* children, this Court has relied upon the FSA to dictate national policy for them for the last decade. Imposing regulations on the custody of children with their parents or legal guardians, while admittedly blind to their distinct needs and interests—and those of their parents and legal guardians—is fundamentally inequitable.

Further, the changed conditions of confinement warrant the termination of the FSA, or at the very least the FSA provisions related to custody conditions. In years leading up to the FSA, alien minors detained in INS facilities had "virtually no access to health care or personal counseling[,] no access to formal education . . . [and] little access to attorneys, telephones, or other means to prepare their legal cases." Michael A. Olivas, Unaccompanied Refugee Children: Detention, Due Process, and Disgrace, 2 Stan. L. & Pol'y Rev. 159, 160 (1990); *see generally* Compl. The original challenge in this case was to the conditions of UAC confinement—Plaintiffs alleged that their detention violated their due-process right because they: (1) did not

receive any educational materials; (2) did not have access to medical or mental-health care; (3) lacked access to phones and could not communicate with family members or attorneys; (4) received zero recreation time; (5) were denied family visitation; (6) were subject to strip searches; (7) were held with unrelated adults; and (7) could not be released from these conditions unless a parent or legal guardian submitted to an interrogation. *See generally* Compl. It is undeniable that conditions have drastically improved.

Under the HHS's and DHS's own policies and regulations, the agencies provide all the relief originally sought in the complaint to the extent permitted by law. Alien minors receive formal education, have routine access to doctors, dentists and psychologists, and have access to regular phone calls to talk to family and attorneys. *See* 8 C.F.R. § 236.3(i)(4); 45 C.F.R. §§ 410.1302, 410.1307, 410.1309; FRS § 4.3. They have food menus designed by dieticians, access to showers, clean clothing, toys, television, recreation time, and more. *See* 8 C.F.R. § 236.3(i)(4); 45 C.F.R. 410.1302; FRS § 4.1. Strip searches are prohibited, and minors are no longer held with unrelated adults. 8 C.F.R. § 236.3(g); 6 C.F.R. §§ 115.10-95, 115.110-195; TEDS §§ 3.0, 4.0; FRS § 2.6-2.7. As to UACs, HHS releases minors without unnecessary delay to a vetted sponsor—who need not be a parent or legal guardian—so long as release from detention is permitted by statute and does not present a danger to the minor or to others and the minor is not a flight risk. 45 C.F.R. § 410.1201. Because the government's custody regulations and policies now provide the precise relief sought in the original complaint, judicial oversight is no longer equitable. *Horne*, 557 U.S. at 466.

The FSA has thus warped federal policy in a manner that few could defend: even though its terms were admittedly set without ever *considering* the unique issues presented by accompanied children, it nonetheless has dictated national policy concerning them. It does a profound disservice to those children and their parents and legal guardians to saddle them with policies that were designed without any consideration of their actual needs. Continued application of such unreasoned policy is not remotely equitable.

It also does a profound disservice to those who may be harmed by illegal aliens. In January 2025, Congress and President Trump recognized this harm by enacting the Laken Riley Act. The FSA, as amended in 2001, could not have considered such an Act. Now, DHS could be sued because it decides to release an illegal alien subject to mandatory detention. The FSA does not permit DHS the flexibility to ensure compliance with this new statute.

As the Supreme Court recognized in *Horne*, where officials "inherit overbroad or outdated consent decrees that limit their ability to respond to the priorities and concerns of their constituents, they are constrained in their ability to fulfill their duties as democratically-elected officials." *Horne*, 557 U.S. at 449. The FSA, however, is an inherently overbroad and outdated consent decree that has constrained subsequent administrations from responding to continuous surges in family-unit apprehensions. Even though the FSA is silent about family detention or release provisions for accompanied minors, this Court has interpreted the FSA to provide the same rights of release to accompanied minors as UACs, even though their parents and guardians were not subjects of the FSA. *See supra*, section II.B.

As of March, 2025, DHS has re-instituted FRCs, which will house accompanied minors and their accompanying family members, to ensure proper custodial conditions for family units who are subject to detention and to ensure the United States retains its ability to enforce immigration laws. Ex. F ¶ 13. These FRCs are necessary to ensure that DHS can comply with the mandatory-detention authorities, as well as keep families together while they await a decision on their immigration proceeding. *Id.* ¶¶ 15, 29.

The FRCs are also preferable compared to keeping families in CBP custody while they await a decision in their immigration proceedings, as the FRCs have more amenities and are better equipped for longer-term detention. *See* Ex. A ¶¶ 17, 56 (stating that CBP facilities are not designed for long-term care). When FRCs are unavailable, CBP must house families in facilities that are not designed for long-term detention and lack the amenities of FRCs. To avoid detaining family units at CBP facilities during their immigration proceedings—while also allowing the government to comply with the mandatory-detention statutes—this Court should terminate the FSA and permit the previously enjoined DHS regulations to go into effect so that DHS can utilize FRCs.

The FSA as interpreted by this Court and the Ninth Circuit would require DHS to present parents and/or legal guardians of accompanied minors with a binary choice to either waive the child's right to be released under the FSA or waive her parental right and permit her child to be temporarily released to someone else's care and custody. While holding accompanied children in immigration detention may contravene the FSA, it is consistent with the detention statutes and does not violate

class members' due process rights or any other federal law. *Flores*, 507 U.S. at 302, 309, 315. Given the reopening of FRCs that are equipped to hold children and families, this change in factual circumstance warrants the termination of the FSA provisions related to release.

CONCLUSION

For the foregoing reasons, Defendants request that this Court terminate the FSA as to all Defendants and dissolve this Court's injunction of DHS's regulations for apprehension, processing, care, and custody of alien minors, ECF No. 690.

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Respectfully submitted,

YAAKOV ROTH
Acting Assistant Attorney General
DREW C. ENSIGN
Deputy Assistant Attorney General
Civil Division
WILLIAM C. SILVIS
Assistant Director

/s/ Katelyn Masetta-Alvarez
KATELYN MASETTA-ALVAREZ
CHRISTINA PARASCANDOLA
MICHAEL CELONE
Senior Litigation Counsel
JOSHUA C. MCCROSKEY
Trial Attorney
United States Department of Justice
Office of Immigration Litigation – General Litigation and Appeals Section
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
202-514-0120
Katelyn.Masetta.Alvarez@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on May 22, 2025, I served a copy of the foregoing pleading on all counsel of record by means of the District Court's CM/ECF electronic filing system.

/s/ Katelyn Masetta-Alvarez
Senior Litigation Counsel
U.S. Department of Justice
Office of Immigration Litigation

CERTIFICATE OF COMPLIANCE

I certify that this brief contains 14,883 words. Defendants have filed concurrently with this motion an ex parte application for leave to file an oversized memorandum of points and authorities not to exceed 15,000 words.

/s/ Katelyn Masetta-Alvarez
Senior Litigation Counsel
U.S. Department of Justice
Office of Immigration Litigation