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' REPLY TO DEFENDANT-APPELLANTS RESPONSE TO 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

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INTRODUCTION

Defendants' opposition does nothing to change the simple fact that the order on appeal is merely a district court's routine oversight of a consent decree and is therefore unappealable. The only portions of the district court order which Defendants argue are appealable under 28 U.S.C. § 1291 are those granting Plaintiffs' motion to enforce regarding temperature and lighting requirements under the *Flores* Settlement Agreement ("FSA" or "Settlement"). Order re Plaintiffs' Motion to Enforce [1575], Aug. 15, 2025 ("August 15 Order") at 11-12 [Dkt. 15.2 at 14-15]. However, Defendants cite no caselaw holding that *parts* of an order that clearly contemplates further litigation may constitute a final order under § 1291. The finality rule is specifically intended to prevent such piecemeal review and does not permit a party to break a non-final order into smaller intermediate pieces for review.

In any event, the temperature and lighting portion of the August 15 Order is not an appealable final order because it has no actual real-world ramifications for Defendants. It merely confirms an already-existing interpretation of the Settlement, which Defendants previously appealed, and this Court previously upheld. Because it resolves no novel legal questions and mandates no new action, the August 15 Order has none of the lasting ramifications that would make it reviewable under §

1291.

Defendants' argument that the order is an appealable interlocutory order under 28 U.S.C. § 1292(a) because it "functions as an order granting an injunction," Opp. at 14, fares no better. As a threshold matter, it is meritless to assert the district court somehow granted an injunction by *denying* Plaintiffs' motion to enforce regarding expeditious processing of class members. Moreover, the order contains no new mandates regarding expeditious processing, temperature, or lighting. It merely reiterates specific provisions of the FSA and therefore is not appealable under § 1292(a). *See Flores v. Barr*, 934 F.3d 910, 915 (9th Cir. 2019).

Because Defendants should not be permitted yet another bite of the apple on temperature and lighting and cannot bring an unripe appeal regarding expeditious processing, the Court should dismiss this appeal.

ARGUMENT

I. The August 15 Order does not constitute a final order pursuant to 28 U.S.C. § 1291 because it anticipates future orders and has no lasting ramifications.

Defendants agree that post-judgment orders enforcing consent decrees are appealable under § 1291 only when the order (1) does "not anticipate any further proceedings on the same issue" and (2) has "some real-world significance." Defs' Opp. at 1 (citing *Flores v. Garland*, 3 F.4th 1145, 1153 (9th Cir. 2021)). However, Defendants fail to demonstrate that the August 15 Order meets either element.

A. The August 15 Order does not constitute a final order because it contemplates future proceedings and carving it into separately appealable parts would necessitate impermissible piecemeal review.

Although Defendants concede "the district court contemplated further proceedings about the time spent in custody," they contend the district court's order is final under § 1291 as to "the temperature and lighting disputes". Opp. at 9, 10. However, Defendants cite no case law authorizing review of one discrete piece of an order that contemplates future proceedings on other related issues.

Indeed, Defendants explicitly acknowledge that the "finality requirement is intended to prevent 'piecemeal litigation' rather than to vindicate some purely technical definition of finality." *Id*. at 9 (quoting *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1064 (9th Cir. 2010)). Defendants' cherry-picking discrete issues from an order they *conceded* contemplates future proceedings will necessarily result in precisely the piecemeal review the finality requirement is designed to avoid. *See Prellwitz v. Sisto*, 657 F.3d 1035, 1038 (9th Cir. 2011) ("[T]he district court's order was not final because it did not dispose of the action as to *all* claims between the parties.") (citing Fed. R. Civ. P. 54(b)); *cf. Chacon v. Babcock*, 640 F.2d 221, 222 (9th Cir. 1981).

B. The August 15 Order is not a final order because it has no lasting ramifications.

Furthermore, the August 15 Order is not appealable even as to the temperature and lighting issues because even that aspect of the order fails to meet

the second requirement, that it has "some real-world significance" for Defendants. *Flores v. Garland*, 3 F.4th 1145, 1153 (9th Cir. 2021) (order was appealable because it had "significant, lasting ramifications").

First, in granting in part Plaintiffs' motion to enforce on the temperature and lighting issues, the court merely resolved a factual dispute regarding whether Defendants were actually dimming lights and maintaining adequate temperatures in certain facilities. August 15 Order at 11, 12, & n.9; 12. Thus, it is the underlying FSA that has lasting effects on Defendants, not the August 15 Order.

Second, the order does not "compel[] CBP to do more" than it claimed to have already been doing. Opp. at 11. As a remedy, the court did nothing more than order Defendants to comply with the requirements of "Paragraphs 11 and 12.A of the FSA," which of course they were already obligated to do, by holding minors "in facilities that are safe and sanitary and are consistent with its concern for the particular vulnerability of minors." August 15 Order at 14.

Third, Defendants' claim that they are "unlikely to have any opportunity to appeal" is disingenuous. Opp. at 11. They already appealed the 2017 order on these same issues, and this Court already affirmed that "sleep deprivation as a result . . . [of] constant lighting" and "cold temperatures" violate the FSA. *Barr*, 934 F.3d at 915. Under Defendants' theory, the government may simply refuse to comply with district court orders that it appealed and this Court affirmed and, when Plaintiffs

move to enforce compliance, should be permitted to appeal the same issue again and again. That cannot be. Regarding lighting and temperature, Defendants had their chance and lost.

Fourth, the August 15 Order has nothing akin to the "lasting ramifications" the Ninth Circuit contemplated in *Garland*, where the appealed order answered a novel question and required a drastic shift in Defendants' practices at the time. There, Plaintiffs brought a motion to enforce to prevent Defendants' practice of detaining children in hotels pending their expulsion under Title 42. *Flores v. Garland*, 3 F.4th 1145, 1148 (9th Cir. 2021). Defendants argued that because the children were held pursuant to the Title 42 Order issued by the CDC, they were in CDC, not DHS, custody and thus were not class members. *Id*. at 1154. The district court held the children were in DHS custody and found the hoteling program violated the FSA. *Id*. at 1156. The order on appeal was final because it "has a significant impact because it makes clear that the Agreement applies to minors expelled under the Title 42 Order and requires the government to comply with the Agreement as to those minors." *Id.* at 1153.

The order at issue in *Garland* established that the family law definition of legal custody applied to the Settlement and applied that conclusion to novel facts to resolve a legal dispute as to whether a particular set of children in government custody were class members. Importantly, the order required Defendants to begin

to treat as class members children it had previously disclaimed custody of. These lasting ramifications are wholly absent from the August 15 Order regarding temperature and lighting, which only reiterates Defendants' preexisting obligations under the FSA. August 15 Order at 10-11.

Armstrong also does not help Defendants. There, this Court held the order on appeal was final because it "govern[ed] future interactions between defendants" and the class, "did not contemplate further orders," and if the Court did not exercise jurisdiction, "it is unclear that there would be any future opportunity for them to appeal." *Id*. at 1065. Like the order in *Garland*, the order in *Armstrong* settled a disputed *legal* question with lasting ramifications that are wholly absent from the temperature and lighting aspects of the August 15 Order.

At most, these portions of the order are merely a reiteration of Defendants' existing obligations regarding temperature and lighting. Thus, the August 15 Order does nothing more than resolve a discrete factual dispute and does not create any new real-world impact as required by the finality rule.

II. The August 2015 Order is not an appealable interlocutory injunction under 28 U.S.C. § 1292(a)(1) because it does not direct Defendants to take any new, specific action.

The Court should reject Defendants' meritless argument that the August 15 Order is an appealable interlocutory order because it "functions as an order granting an injunction" for purposes of § 1292(a)(1). Opp. at 14.

As a threshold matter, Defendants' position that the order's interpretation of the FSA's expeditious processing requirements "functions as an order granting an injunction" and added "new mandates," Opp. at 14-15, is undermined by the undeniable fact that the court explicitly *denied* "Plaintiffs' MTE insofar as they request new relief on this issue" pending forthcoming, previously ordered monitoring reports. August 15 Order at 8. It defies logic to argue that an order denying a motion to enforce somehow *grants* an injunction.

In any event, Defendants concede that this Court held in *Flores v. Barr* that an order that "did not direct the government to take specific steps" but merely "noted whether Plaintiffs' motion to enforce was 'granted' or 'denied'" was not an appealable interlocutory order. Opp. at 14 (citing *Flores v. Sessions*, 394 F. Supp. 3d at 1072-73; *Barr*, 934 F.3d at 914). Defendants suggest that the present order is different because it "ordered CBP and DHS to take actions," unlike the order at issue in *Barr*. Opp. at 15. The supposed distinction is imaginary.

In *Barr*, the district court "interpret[ed] paragraph 12A," which requires safe and sanitary conditions consistent with a special concern for the vulnerability of minors, "to require Border Patrol stations provide… adequate sleep, essential hygiene items, and adequate, clean food and water." *Barr*, 934 F.3d at 915. On appeal, Defendants conceded that the order "did not grant… an injunction," but argued that it modified the FSA. *Id.* at 914. This Court rejected Defendants'

argument that this constituted a "modification of the Agreement rather than an interpretation of it" and held that, as a result, it "lack[ed] jurisdiction over this claim." *Id.* at 915-16. That is exactly the case here.

Defendants incorrectly claim that this order "added specific new mandates." Opp. at 15. They first point to the portion of the order stating that, if Defendants determine that "prompt and continuous effort toward release and reunification requires transfer to another facility," that such transfer must be done "expeditiously." *Id*. (quoting August 15 Order at 14). However, the quoted portion makes clear that such transfer is required only when *Defendants* determine that compliance with their existing obligations under paragraphs 12A, 14 and 18 "requires transfer to another facility." FSA ¶¶ 14, 18 (Defendants must make "prompt and continuous efforts" toward "release."). This is similar to the order in *Barr* interpreting paragraph 12A to require Defendants to provide necessities like hygiene items.

The same is true for the statement in the August 15 Order that DHS "shall not 'restart the clock'" for time-in-custody "when it transfers a class member from one unlicensed, secure facility to another, regardless of which DHS component agency operates the facility." Opp. at 15 (citing August 15 Order at 14). Again, this merely describes Defendants' existing obligations – "expeditious processing" under the FSA begins when DHS takes a child into custody and must "continue

from apprehension through the child's release from Defendants' custody." August 15 Order at 14; FSA § 12.A.

The fact that the Court explicitly *denied* Plaintiffs' motion regarding "new relief" as to time in custody should resolve any lingering doubt whether those portions of the order merely interpret and reiterate the FSA's expeditious processing requirements. August 15 Order at 8. If the court intended to mandate new action, it would have granted those portions of the motion.[1]

Regarding the only portions of the order in which the district court actually granted Plaintiffs' motion – lighting and temperature – Defendants argue that the statement that, where dimmers are not available, CBP should "make reasonable efforts to turn off some of the lights to darken the pod areas" is a "new mandate." Opp. at 15 (citing August 15 Order n. 10). A requirement of "reasonable efforts" cannot be considered a "new mandate." This aspect of the order is merely a commonsense accommodation *to Defendants* to account for the limitations in some CBP facilities.

Finally, the August 15 Order is nothing like "the district court order in

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[1] Defendants' assertion that the "district court ordered CBP's and ICE's Juvenile Coordinators to provide supplemental reporting to the court that the FSA does not require" through the August 15 Order is plainly false. *Id.* at 13. As the district court explicitly stated, it had "already ordered both the CBP and ICE Juvenile Coordinators to file supplemental reports" prior to its August 15 Order. August 15 Order at 13.

Flores v. Lynch," Opp. at 15, over which this Court exercised appellate jurisdiction under § 1292. *Flores v. Lynch*, 828 F.3d 898, 910 (9th Cir. 2016). That order granted a motion to enforce regarding a substantive legal dispute—whether accompanied children are class members—and ordered that "a class member's accompanying parent shall be released with the class member" absent certain extenuating circumstances. *Flores v. Lynch*, 212 F. Supp. 3d 907, 916 (C.D. Cal. 2015), *aff'd in part, rev'd in part and remanded*, 828 F.3d 898 (9th Cir. 2016)). The *Lynch* order addressed undoubtedly new questions and stemmed from an order *granting* a motion to enforce. Thus, the *Lynch* order is far closer to the appealable orders in *Garland* and *Armstrong* than it is to the order in *Barr* or the August 15 Order.

The August 15 Order is not an appealable interlocutory injunction because it imposed no new injunctive relief.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court dismiss Defendants' appeal.

Dated: March 23, 2026

s/ Sarah Kahn

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the word limit of Cir. R. 27-1 because: this motion contains 2,308 words and it is 10 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 23, 2026

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