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JUL 01 2019

## CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

Clark, U.S. District & Bankruptcy  
Courts for the District of Columbia

<b>I. (a) PLAINTIFFS</b> H.U.C.U. and M.G.B.V. on their own behalfs and on behalf of their biological daughter, G.M.C.B. as her		<b>DEFENDANTS</b> William P. BARR, Attorney General of the United States; Kevin K. MCALEENAN, Acting Secretary, U.S. Department of Homeland Security; John SANDERS, Acting Commissioner, U.S. Customs and Border Protection. et. al.	
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)		COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>	
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)		ATTORNEYS (IF KNOWN)	

<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b>			
<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	PTF	DFT	PTF	DFT
<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	Citizen of this State <input checked="" type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State <input type="radio"/> 4	<input type="radio"/> 4
		Citizen of Another State <input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State <input type="radio"/> 5	<input type="radio"/> 5
		Citizen or Subject of a Foreign Country <input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation <input type="radio"/> 6	<input type="radio"/> 6

## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input checked="" type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<input checked="" type="radio"/> <b>E. General Civil (Other)</b> OR <input type="radio"/> <b>F. Pro Se General Civil</b>			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input checked="" type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609  <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Section 24B of the Flores Consent Decree, U.S. Constitution 5th Amendment; 8th Amendment; APA

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	<b>DEMAND \$</b> JURY DEMAND: <input type="checkbox"/>	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input type="checkbox"/>
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 07/01/2019	SIGNATURE OF ATTORNEY OF RECORD
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

H.U.C.U. and M.G.B.V, on their own behalfs and  
on behalf of their biological daughter, G.M.C.B. as  
her next friend,

*Plaintiffs,*

-against-

William P. BARR, Attorney General of the United  
States; Kevin K. MCALEENAN, Acting Secretary,  
U.S. Department of Homeland Security;  
John SANDERS, Acting Commissioner, U.S.  
Customs and Border Protection; Alex M. AZAR II,  
Secretary, U.S. Department of Health and Human  
Services; Jonathan HAYES, Acting Director,  
Office of Refugee Resettlement; Hector A.  
MANCHA, JR., El Paso Director of U.S. Customs  
and Border Protection Field Operations; and JOHN  
and JANE DOES # 1-5 CBP Officers at the Clint  
Border Facility,

*Defendants.*

Case No.

**PETITION FOR JUDICIAL REVIEW  
OF PLACEMENT DETERMINATION  
PURSUANT TO FLORES  
SETTLEMENT AGREEMENT**

**COMPLAINT SEEKING  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

1. This case challenges the placement decision by the United States government with regard to Plaintiff G.M.C.B., an inconsolable seven-year old girl who on June 15, 2019 was separated from her aunt and caretaker and thereafter unlawfully held in custody of U.S. Customs and Border Protection ("CBP") at the Clint Border Patrol Station in Clint, Texas for ten days, far in excess of the time permitted by law, and in horrific, abusive and neglectful conditions that have been widely reported in the media. G.M.C.B. was transferred late in the evening on June 25, 2019 to an Office of Refugee Resettlement ("ORR") program Upbring Transitional Foster Care. Plaintiffs, H.U.C.U. and M.G.B.V. are G.M.C.B.'s parents, both in the United States ready and

available to care for their daughter, and actively seek reunification of their family. G.M.C.B. has improperly been designated as an unaccompanied minor (“UAC”) for no legitimate or lawful reason, and ORR therefore has no statutory authority in any respect as to G.M.C.B. Finally, G.M.C.B. has been treated with deliberate cruelty and indifference to her physical and emotional well-being in violation of the law and the special protections afforded to minors in the custody of United States immigration authorities.

2. During the ten days that G.M.C.B. was in the care, custody and control of the CBP, and despite knowing her parent’s contact information and location, no efforts were made by any governmental official to place G.M.C.B. with her parents who reside in the United States in Washington D.C. Rather, G.M.C.B. was subjected to deplorable, unsafe, and unsanitary conditions during a prolonged and unlawful period of CBP detention. She lacked adequate food and supervision, enduring profound emotional trauma and distress. At one point, G.M.C.B. was unconscionably punished for losing a comb – one of two combs provided to a room full of children to address a lice infestation – by a CBP officer. The officer yelled at G.M.C.B., and, cruelly and unusually, punished the entire cell of jailed children by removing blankets and forcing the children, including seven-year old G.M.C.B. who had been diagnosed with the flu to sleep uncovered on a cold tile floor.

3. G.M.C.B. began to become dizzy and ill while in the Clint facility, where she received little food, and contracted influenza A in detention. She would only be removed from this torturous facility following media reports shed light on the horrible treatment of the nearly 300 children in the Clint facility, many of whom, like G.M.C.B., had been separated from relatives, and then unnecessarily and unlawfully subjected to degrading, unsafe, and traumatic conditions. However, upon being removed from the Clint facility, G.M.C.B. was not allowed to reunite with

her parents as required by law; rather she continues to be separated from them compounding her suffering, and held by ORR, an agency with no statutory authority to detain or condition her release from government detention. G.M.C.B. must be immediately reunited with her parents.

4. This is an individual action on behalf of G.M.C.B. pursuant to Paragraph 24B of the Flores Settlement Agreement (hereinafter “FSA” or the “Settlement”), arising from longstanding litigation in the matter of *Flores v. Sessions*, CV-85-4544 (C.D. Cal.). The Settlement gives Plaintiff G.M.C.B., a minor child, the right to challenge the improper and unlawful decision of the Department of Homeland Security (“DHS”) to place her in the custody of the ORR in transitional foster care at Upbring in El Paso, Texas, rather than reunifying her with her parents in the United States as is required by law.

5. The government in this case utterly failed to comply, or even attempt to comply, with its obligations under the FSA in nearly all respects most notably by: failing to (a) make and record a *prompt and continuous* effort toward family reunification and release; (b) release G.M.C.B. without unnecessary delay in accordance with the FSA order of preference, which *begins* with parents and *ends* with placement in a juvenile facility or foster setting; (c) treat this little girl with any dignity, respect and special concern for her vulnerability as a seven year old asylum-seeking child; (d) hold this child in a facility that was safe and sanitary as required by the FSA; (e) provide access to toilets and sinks, drinking water and food as appropriate, medical assistance, adequate temperature control and ventilation, adequate supervision and contact with her family members who were requested protection with her; or (f) uphold their promise and obligation to expeditiously process this seven-year old child or provide her with a notice of her rights.

6. Further, G.M.C.B. files this action against the United States government and its actors to ask this Honorable Court to determine and declare that she is not an “unaccompanied child”

under the meaning of the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and order her immediate release to her parents pursuant to paragraph 24B of the Flores Settlement Agreement which permits any child to challenge the government’s improper placement decision in a federal district court with jurisdiction and venue. Because G.M.C.B. is not an unaccompanied child, the Department of Health and Human Services, Office of Refugee Resettlement has wrongfully placed her in transitional foster care even though she has both parents ready and available to take custody of her and provide for her care. Her continued detention violates not only a consent decree and a statutory framework for unaccompanied children, but it violates her substantive due process rights to liberty and her and her family’s reciprocal rights to family integrity.

7. Since 1997, the Flores Settlement Agreement, a consent decree between children and the United States government, established a legal framework that all minors in immigration custody shall be treated with “dignity, respect and special concern for their particular vulnerability as minors.” CBP’s arbitrary and unlawful decision to hold G.M.C.B., a seven-year old girl, in a border jail for ten days and failing to, at any point, engage in placement efforts pursuant to the FSA, violated the conditions of the consent decree. In addition, the decision by DHS and the U.S. Department of Health and Human Services (“HHS”) to transfer G.M.C.B. to transitional foster care rather than immediately release her to her biological parents violates the Due Process Clause of the Fifth Amendment which does not, and cannot, permit the United States government to keep this child locked up, away from her parents, and her parents from their child.

8. The FSA contemplated a moment in history where DHS would ignore its obligations under the Settlement and the Constitution. That moment clearly has arrived. Incidents widely reported on the border as well as demonstrated in the instant complaint depict the rampant and

malevolent mistreatment of children in the custody of the defendants along the border, in some instances tantamount to torture. G.M.C.B. was detained at the Clint Border Patrol Station, a facility now infamous for its mistreatment of children.<sup>1</sup>

9. Paragraph 24B of the Settlement contemplates the government's inability to properly follow the agreement in individual cases, and provides a remedy to the most vulnerable of those in immigration custody, namely, a voice to an inconsolable seven-year old child to contest the horrific treatment she has been subjected to by Defendants, and to challenge the unsanctioned decision of the federal government to prevent her from returning to the care and custody of her mother and father.

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<sup>1</sup> "Clara Long, a senior researcher for Human Rights Watch, described what she said were 'unconscionable conditions' at a Border Patrol station in Clint, Texas, where unaccompanied minors were being held. 'The kids had colds and were sick and said they didn't have access to soap to wash their hands. It was an alcohol-based cleanser. Some kids who were detained for 2-3 weeks had only one or two opportunities to shower. One said they hadn't showered in three weeks,' she said. 'Hygiene and living conditions like this creates a risk of spreading infectious disease. It makes me very concerned about the public health emergency.'" *Lack of soap, filthy onesies and too few beds have created a 'health crisis' at border detention facilities, monitors warn*, CNN (June 21 2019) available at: <https://www.cnn.com/2019/06/20/politics/border-detention-facilities-health/index.html>.

"A 2-year-old boy locked in detention wants to be held all the time. A few girls, ages 10 to 15, say they've been doing their best to feed and soothe the clingy toddler who was handed to them by a guard days ago. Lawyers warn that kids are taking care of kids, and there's inadequate food, water and sanitation for the 250 infants, children and teens at the Border Patrol station.

The bleak portrait emerged Thursday after a legal team interviewed 60 children at the facility near El Paso that has become the latest place where attorneys say young migrants are describing neglect and mistreatment at the hands of the U.S. government.

Data obtained by The Associated Press showed that on Wednesday there were three infants in the station, all with their teen mothers, along with a 1-year-old, two 2-year-olds and a 3-year-old. There are dozens more under 12. Fifteen have the flu, and 10 more are quarantined.

Three girls told attorneys they were trying to take care of the 2-year-old boy, who had wet his pants and had no diaper and was wearing a mucus-smeared shirt when the legal team encountered him.

"A Border Patrol agent came in our room with a 2-year-old boy and asked us, 'Who wants to take care of this little boy?' Another girl said she would take care of him, but she lost interest after a few hours and so I started taking care of him yesterday," one of the girls said in an interview with attorneys.

...

Children told lawyers that they were fed oatmeal, a cookie and a sweetened drink in the morning, instant noodles for lunch and a burrito and cookie for dinner. There are no fruits or vegetables. They said they'd gone weeks without bathing or a clean change of clothes." *Attorneys: Texas border facility is neglecting migrant kids*, AP (June 21, 2019) (<https://www.apnews.com/46da2dbe04f54adbb875cfbc06bbc615>).

### **SUBJECT MATTER JURISDICTION**

10. This case arises under the FSA, a consent decree to which the United States government is a party and G.M.C.B. is a protected class member. This Court has jurisdiction pursuant to ¶ 24(B) of the Flores Agreement; 28 U.S.C. § 1331 (federal question jurisdiction with a waiver of sovereign immunity pursuant to the Administrative Procedure Act, 5 U.S.C. §701 et seq.); and 28 U.S.C. § 1346 (United States as defendant). Jurisdiction lies to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

### **VENUE**

11. Plaintiff G.M.C.B. is presently detained in the custody of the HHS-ORR (via her placement in transitional foster care at Upbring, a non-profit facility contracted by ORR to provide such services to children designated as unaccompanied) rather than reunified with her parents, Plaintiffs H.U.C.U. and M.G.B.V., who reside in Washington, D.C.

12. Venue in the District Court for the District of Columbia is proper pursuant to the FSA consent decree which protects G.M.C.B. as a class member and provides that she “may seek judicial review in any United States District Court with jurisdiction and venue over the matter” to challenge both her placement by DHS and the conditions of her placement. Further venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because the defendant federal agencies are headquartered in this District.

### **PARTIES**

13. Plaintiff G.M.C.B. is a seven-year-old minor child. This action is brought on her behalf, by her parents, Plaintiffs H.U.C.U. and M.G.B.V., as next friends. Plaintiffs H.U.C.U. and M.G.B.V. have “next friend” standing to bring this action because G.M.C.B. is a minor and Plaintiffs H.U.C.U. and M.G.B.V., as her parents are dedicated to act in her best interests. *See Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990) (“First, a ‘next friend’ must provide an



adequate explanation . . . why the real party in interest cannot appear on his own behalf to prosecute the action. Second, the ‘next friend’ must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate”). G.M.C.B. is currently detained by the Defendants.

14. Plaintiffs Mr. H.U.C.U. and Ms. M.G.B.V are the biological parents of G.M.C.B. and are living in domestic partnership in Washington, D.C.

15. Defendant William P. Barr is the Attorney General of the United States and the head of the United States Department of Justice (“DOJ”). The DOJ is the federal agency responsible for the administration and enforcement of the immigration laws, and for advising the relevant federal Departments and agencies of their duties under the law. He is sued in his official capacity.

16. Defendant, Kevin K. McAleenan is the Acting Secretary of the Department of Homeland Security (“DHS”), the Department of the Executive Branch of the United States government that oversees the agencies responsible for enforcing the immigration laws of the United States.

Defendant McAleenan is the head of DHS and has ultimate responsibility for the administration and enforcement of the immigration laws by DHS agencies. In that capacity, Defendant McAleenan has direct authority over all policies, procedures and practices relating to the apprehension of immigrant children at the United States border and the decisions by DHS to designate children as “unaccompanied.” He is sued in his official capacity.

17. Defendant John Sanders is the Acting (outgoing) Commissioner of U.S. Customs and Border Protection (“CBP”), the agency within DHS that is responsible for the initial processing and detention of noncitizens apprehended near the United States Border. In that capacity, Defendant Sanders has direct authority over all CBP policies, procedures and practices relating to the apprehension of immigrant children at the United States border and the decisions by CBP to designate children as “unaccompanied.” He is sued in his in official capacity.

18. Defendant Alex M. Azar II is the Secretary of the U.S. Department of Health and Human Services (“HHS”), the Department of the Executive Branch of the United States government that oversees the division and office responsible for the care and custody of minors detained without their parents. Defendant Azar is the head of HHS, and has ultimate responsibility for the physical care and daily detention of minors in the custody of immigration authorities without their parents. He is sued in his official capacity.

19. Defendant Jonathan Hayes is the Acting Director of the Office of Refugee Resettlement (“ORR”), the office within the Administration for Children and Families (a division of HHS) that is responsible for providing care and placement for children detained by the United States government without their parents. In that capacity, Defendant Hayes has direct authority over all ORR policies, procedures and practices relating to the physical care and daily detention of minors detained without parents in ORR facilities. He is sued in his official capacity.

20. Defendant Hector A. Mancha, Jr., is the El Paso Director of CBP Field Operations. He exercises authority over CBP detention and enforcement activities in the El Paso sector. He is sued in his official capacity.

21. Defendants John and Jane Does numbers 1-5 are the CBP Officers responsible for G.M.C.B.’s custody at the Clint Border Patrol Station and Border Patrol Station 1 during her prolonged and unlawful detention from June 15, 2019 through June 25, 2019. They are sued in their official capacity.

**NOTICE REQUIRED BY THE FLORES SETTLEMENT AGREEMENT**

22. On June 26, 2019, counsel for the Plaintiff contacted the Office of the U.S. Attorney for the District of Columbia via telephone (spoke with Mr. Daniel F. VanHorn, Chief of the Civil Division) and facsimile, and provided notice of FSA violations as required by Paragraph 37 of the FSA, copying the Center for Constitutional Law, the National Center for Youth Law, the

Office of the U.S. Attorney for the Central District of California, and the Office of Immigration Litigation at the Department of Justice. The widespread and deliberate nature of the government's violations as thousands of children are being affected by the horrific conditions at the border suggests that the government is already well aware of these violations, and that any delay will be an exercise in futility that will only further irreparably harm the Plaintiffs. [Exhibit A – Required Notices to Parties Pursuant to FSA ¶ 37] Counsel further provided a courtesy copy of the notice letter directly to Sarah B. Fabian, a Senior Litigator with the DOJ's Office of Immigration Litigation, also on June 26, 2019.

#### **LEGAL FRAMEWORK OF THE FLORES SETTLEMENT AGREEMENT**

23. On January 28, 1997, a class-wide settlement agreement was reached in a case that is presently captioned *Flores v. Sessions*, CV-85-4544 (C.D. Cal.) (Flores Agreement). According to the stipulation of the parties in that Settlement, the terms of the FSA are in effect and remain in effect until the 45th day “following defendants’ publication of final regulations implementing” the Settlement itself. Regulations have never been published. [Exhibit B – Flores Settlement Agreement]

24. The FSA applies to “[a]ll minors who are detained in the legal custody of the INS.” *See* Flores Agreement ¶ 10. A “minor” is “any person under the age of eighteen (18) years who is detained in the legal custody of the INS.” *See id.* ¶ 4.

25. The FSA “sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS[.]” *See id.* ¶ 9. The immigration authorities must treat “all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors.” *See id.* ¶ 11.

26. Each Defendant is subject to compliance under the FSA. G.M.C.B. is *Flores* class member as a minor detained in the legal custody of the immigration authorities.

27. The FSA applies to all minors in immigration custody, regardless of whether the child is designated as unaccompanied. *See Flores v. Lynch*, 828 F.3d 898, 905-6 (9<sup>th</sup> Cir. 2016)

**Paragraph 11 Protections:**

28. Paragraph 11 of the FSA requires that “[t]he 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.”

**Paragraph 12 Protections:**

29. Paragraph 12 of the FSA requires “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.”

30. Defendants were required by law to expeditiously process G.M.C.B. to hold her only in facilities that are safe and sanitary, and that are consistent with the government’s claimed concern for the particular vulnerability of minors. The government Defendants were required to provide G.M.C.B. with access to toilets and sinks, drinking water and food as appropriate, medical assistance, adequate temperature control and ventilation, adequate supervision for her

protection, and contact with family members who were arrested with her (in this case, her aunt). With the exception of a hospital visit to confirm that G.M.C.B. had contracted influenza A in detention, the government Defendants utterly failed to uphold their legal obligations to G.M.C.B. Indeed, she was held in a room with an active lice infestation, and then punished for the loss of a lice comb the room full of children were expected to *share* by being cruelly and unusually stripped of blankets and bedding, and forced to sleep on a cold tile floor – during the period she was infected with influenza A.

**Paragraph 14 Protections:**

31. At all times, the Defendants must seek and work to release a minor. “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[.]” *See id.* ¶ 14.

32. Under the Flores Agreement, the release of the class member to his or her parent is the primary objective. *See id.* ¶ 14. Family unity is always the preferred option.

33. Paragraph 14 of the FSA requires “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.”

34. Plaintiffs H.U.C.U. and M.G.B.V. (“Parents”) are the biological parents of G.M.C.B. and domestic partners to one another who live in Washington, D.C. At all times relevant to this complaint, G.M.C.B.’s parents have always been, and continue to be, available to provide care to and take custody of their child “in the United States.” But for the interference of the unlawful placement decision by the government Defendants, they would be with their daughter at this instant.

35. There were no attempts to reunify G.M.C.B. with her parents, as required under the FSA. Rather, the Defendants willfully violated their legal obligations by designating G.M.C.B. as unaccompanied and transferring her to ORR to be placed in transitional foster care at Upbring. G.M.C.B. is, at this instant, with someone else’s family in foster care in El Paso, Texas.

36. The arbitrary and capricious placement decision made by the Defendants was not based on any objective discretionary determination but rather based on a blanket policy of designating any child detained without an accompanying parent as an “unaccompanied child” despite the fact that such a policy is inconsistent with the clear language of the TVPRA and results in violations of the family’s Constitutional right to family integrity.

37. In essence, the government Defendants’ wrongful designation of G.M.C.B. as an unaccompanied child in violation of the definitional language of the TVPRA directly resulted in her placement in ORR custody and an additional, burdensome reunification process without legal justification.

**Paragraph 18 Protections:**

38. Paragraph 18 of the FSA instructs the Defendants that “Upon taking a minor into custody, the [legacy] 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.

39. Defendants failed to begin prompt and continuous efforts at family reunification upon apprehension of this seven year old girl. In fact, they failed in any way to comply with the Settlement for the 10 days that G.M.C.B. languished in a border jail where she was cold, poorly fed, mistreated, unkempt, unshowered, inconsolably weeping and cruelly castigated by a CBP officer for losing a comb before being forced to sleep on a cold tile floor without a blanket as punishment. This was apparently the placement Defendants preferred. Meanwhile, G.M.C.B. wore around her wrist a green wristband with her father’s phone number and the words “US PARENT.” However, despite the fact that CBP called H.U.C.U., confirmed that he was G.M.C.B.’s father available in the United States, and permitted him to speak with her (until telling him that he was no longer allowed to speak with her for questioning the inhumane treatment she was subjected to as punishment for misplacing a comb). CBP never at any time attempted to arrange for him to pick up his daughter. Instead, Plaintiff H.U.C.U. was told that he would have to wait until G.M.C.B. was placed in ORR – unlawfully – to attempt to be reunited with his suffering seven-year girl.

**Paragraph 24B Protections:**

40. The Flores Agreement authorizes class members to challenge the placement and custodial decision regarding the minor 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 I.” *See id.* ¶ 24B of the FSA.

41. The standard of review for placement decisions is “*de novo*.” *See* ¶ 24C of the FSA.

42. G.M.C.B. contests the decision of DHS to place her in the custody of ORR based on her wrongful designation by CBP that she is an unaccompanied child, which is contrary to law.

**Paragraph 36 Protections:**

43. The FSA also provides a reservation of rights provision which permits a class member to exercise any “independent rights” she may have as contemplated by the settlement. *See* ¶ 36 of the FSA: “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.”

44. Plaintiffs’ fundamental rights to family integrity were grossly violated when the government Defendants failed to reunify them as required by the FSA, knowing that G.M.C.B. was not properly designated as a UAC.

**THE HOMELAND SECURITY ACT AND  
THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT**

45. In 2002, Congress enacted the Homeland Security Act (the “HSA”), 6 U.S.C. § 279. The HSA transferred a number of the functions relating to the care of unaccompanied minors from the former INS to the Director of [ORR] of the Department of Health and Human Services. As relevant here, the HSA sets forth the definition of “unaccompanied alien child” (“UAC”). Under § 279(g)(2), a UAC is a child who: (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal



guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

46. The framework of and rationale for the statute comports with the significant procedural safeguards that traditionally accompany attempts by the Government to intervene in the relationship between a parent and child. *See, e.g., Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (holding that “parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody”).

47. In order to meet the statutory definition of a UAC each of the three prongs—(A), (B), and (C) must be met. Here, prong (A) appears to be met because G.M.C.B. is without lawful immigration status. Likewise, prong (B) is met because the child is only seven years old. However, prong (C) fails because G.M.C.B. has had, at all times relevant to this Complaint, two parents in the United States available and willing to provide care and physical custody to their daughter. *Id.* § 279(g)(2)(C)(ii). The HSA makes ORR responsible for “making placement determinations for all [UACs] who are in Federal custody by reason of their immigration status.” 6 U.S.C. § 279(b)(1)(C).

48. Based on a plain reading of the definition above G.M.C.B. is not an unaccompanied minor. Therefore, ORR has no basis for taking custody of her no authority to detain her, and certainly no authority to withhold custody of her from her parents. Every second of her continued detention is unlawful. As G.M.C.B. is not an unaccompanied minor she must immediately be reunified with her parents by the Defendants.

#### **LEGAL FRAMEWORK FOR CONSTITUTIONAL DEPRIVATIONS**

49. Plaintiff G.M.C.B., again, a seven-year old child, has been — and continues to be — unlawfully “in custody” for civil immigration purposes without having been provided a constitutionally adequate process to justify considerable intrusions into her liberty and property

rights. The government Defendants' process of blanket designation of any child at the Southern border presenting without a parent as "unaccompanied" (in which the government errs as a matter of law) is unlawful, their treatment of children at the southern border abusive and abhorrent, and their callousness has shocked the conscience of the nation.

50. "The Due Process Clause 'imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Fifth Amendment.'" *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)).

51. The Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zavydas v. Davis*, 533 U.S. 678, 693 (2001). This includes a vulnerable seven-year old girl unlawfully being held in the custody of the government Defendants.

52. In evaluating alleged violations of procedural due process arising under the Fifth Amendment, the courts employ the balancing test set forth by the Supreme Court in *Mathews v.*, 424 U.S. at 332.

53. Under the *Mathews* framework, a court must consider: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

54. The Supreme Court has made clear that parents have a fundamental liberty interest in family integrity, and in the care, custody, and control of their children. *See Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) ("The liberty interest at issue in this case – the interest of parents in

the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.”); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

55. Rather than placing G.M.C.B. in the least restrictive setting, Defendants have continued to withhold custody of this child from her parents in a manner that absolutely prevents her parents from providing care to, or exercising custody and control over, their daughter. G.M.C.B. therefore can demonstrate that Defendants’ actions substantially encroach on her fundamental right to family integrity.

56. It is not precisely clear what the Government interest to be weighed against Petitioners’ interests are, or if there in fact are any. The government undoubtedly has an interest in the constitutional application of law. “It is, after all, not the Department of Prosecution but the Department of Justice . . . . [T]he interest of the Government . . . is not that it shall win a case, but that justice shall be done.” *Doe v. United States*, No. 17-1841 (2d Cir. Feb. 14, 2019) citing Robert F. Kennedy, Att’y Gen., Address to the National Conference on Bail and Criminal Justice 2 (May 29, 1964) (available in the John F. Kennedy Library).

57. Under the APA, “final agency action for which there is no other adequate remedy in court [is] subject to judicial review.” 5 U.S.C. §704. The reviewing court “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “unsupported by substantial evidence.” 5 U.S.C. §706(2)(A),(E). The designation of G.M.C.B. as a UAC was plainly an arbitrary and capricious decisions that has prejudiced her family’s rights to family unity as well

as her right to liberty – the government has no authority to detain G.M.C.B. as ORR has no authority with respect to G.M.C.B. unless she is properly designated as a UAC.

58. Defendants violated the rights of the Plaintiffs, most specifically a seven-year old child who was forced to suffer to her physical and mental detriment horrendous conditions of confinement because the Defendants failed in their minimal obligations to provide safe and sanitary conditions, to treat children with dignity and respect, and to upon apprehending a child, attempt to reunify her with her parents. In doing so, and continuing to do so, the government has violated her independent rights under the FSA and the Due Process Clause of the Fifth Amendment.

59. The Plaintiffs, as a biological family unit, have a fundamental right to family integrity under the Due Process Clause of the Fifth Amendment to be together. G.M.C.B. has the right to be comforted and loved by her mother and father as they are willing and able to care for her - rather than subject her to continued foster care or having subjected her to border facility conditions such as a “hielera” [icebox] or those described by the affiants and those descriptions in media reports.

### FACTS

60. G.M.C.B. is a seven-year-old girl. She is a native and citizen of El Salvador. She is an asylum-seeking child.

61. G.M.C.B.’s parents reside in Washington, D.C. and are available, now and at all times since G.M.C.B. has been in the United States, to provide care for and take custody of their daughter.

62. G.M.C.B. was cared for by her aunt in El Salvador. Their household became subject to severe domestic violence endangering G.M.C.B. and her aunt’s safety. G.M.C.B. describes that

there were “people who had eyes on her,” and that she was no longer safe going to school. As a result, they came to the border of the United States to seek asylum.

63. On or about June 15, 2019, G.M.C.B. was apprehended by CBP with her aunt and a female cousin. Their family had sought out U.S. border officials to turn themselves in. That night G.M.B.C. and her aunt were made to sleep on the floor of a tent. When G.M.C.B. awoke, her aunt was no longer by her side. [Exhibit C – Declaration of Katherine Hagan at ¶ 5].

64. Thereafter, G.M.B.C. was instructed to get into a car by herself. She was not permitted to remain with her aunt or her cousin. Reflecting upon this moment causes G.M.B.C. great trauma and pain, as she is often unable to talk about this moment without intense emotion and crying. *Id.*

65. G.M.B.C. was placed in the Clint Border Station in Clint, Texas following this period in a tent. On information and belief, this occurred on June 16, 2019. While she was detained at this border station, she was without her accompanying family and was placed with hundreds of other children in deplorable conditions.

66. In detention, her wrist was adorned by a green wristband. On the wristband were written the words “US PARENT” and accompanying that phrase was her father’s phone number in the United States. [Exhibit D –Declaration of Clara Long]. CBP knew at all times that G.M.C.B. had parents in the United States, and failed to use that information to timely conduct a proper placement.

66. Monitors operating pursuant to the FSA were granted access to the facility and conducted inspections on or about the week of June 17, 2019. “The situation we found is unacceptable. US Border Patrol is holding many children, including some who are much too young to take care of themselves, in jail-like border facilities for weeks at a time without contact with family members, regular access to showers, clean clothes, toothbrushes, or proper beds. Many are sick. Many,

including children as young as 2 or 3, have been separated from adult caretakers without any provisions for their care besides the unrelated older children also being held in detention...Some of the children we spoke with were sleeping on concrete floors and eating the same unpalatable and unhealthy food for close to a month: instant oatmeal, instant soup and a previously-frozen burrito. Children should spend no more than a few hours in short-term border jails to be processed and US law limits their detention under typical circumstances to 72 hours.” See <https://www.cnn.com/2019/06/24/opinions/children-migrant-centers-at-border-long-austin-hillery/index.html>.

67. The inspectors noted that many of the children in Clint, like the Plaintiff, have family and even parents in the United States. “Based on our interviews, officials at the border seem to be making no effort to release children to caregivers-- many have parents in the US -- rather than holding them for weeks in overcrowded cells at the border, incommunicado from their desperate loved ones.” *Id.*<sup>2</sup>

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<sup>2</sup> Media reports are replete with articles describing the horrendous conditions in Clint. Many are referenced in Footnote 1. In addition, Elora Mukherjee, a professor at Columbia Law School and the director of the school’s Immigrants’ Rights Clinic provided a first hand account to the Atlantic, “**Children were dirty, They Were Scared, They Were Hungry.**” She provided her observations, “An overwhelming number of children who I interviewed had not had an opportunity for a stable shower or bath since crossing the border [days or weeks earlier]. They were wearing the same clothing that they had crossed the border in. Their clothing was covered in bodily fluids, including urine and breast milk for the teenage moms who are breastfeeding.

Nearly every child I spoke with said that they were hungry because they’re being given insufficient food. The food at Clint is rationed on trays. Everyone gets an identical tray regardless of if you’re a 1-year-old, or you’re a 17-year-old, or a breastfeeding teenage mother who has higher caloric needs. The same food is served every single day, and none of the children receive any fruit and vegetables or any milk... At Clint, I found that hard to do because there was a stench emanating from some of the children. It was filthy and disgusting and there was, as of last week, **a flu epidemic at Clint and a lice infestation. And children do not have the ability to wash their hands with soap at Clint.**” See <https://www.theatlantic.com/family/archive/2019/06/child-detention-centers-immigration-attorney-interview/592540/>.

68. Flores monitors were permitted to meet with G.M.C.B. They have provided sworn declarations which are being attached to this complaint. *See* Exhibits C & D. The monitors were so troubled with the emotional stability of G.M.C.B. that she became labeled in media reports as the “inconsolable” girl.<sup>3</sup>

69. G.M.C.B. initially was unable to participate in monitoring, beginning on June 17, 2019. Declarant Clara Long states that G.M.C.B.’s eyes were “red” and she was “quiet. Upon being asked a question she began to wail. In fact, not only cry, but to scream in a “high pitched wail” loudly for 10 to 15 minutes. Because of her inability to remain stable, she was not able to be interviewed by inspectioner at that time. *See* Declaration of Clara Long at Exhibit D ¶¶ 4-5.

70. Inspectors returned to find G.M.C.B. concerned for her emotional well being. On Thursday June 20, 2019, she was again met by inspectors in Clint, Texas. This time she remained tearful and at times hysterical. She described being separated from her caretaker. She described being punished for losing a comb by CBP officers, wherein they forced her to sleep on a cold tile

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3 *See*: <https://www.apnews.com/ac73320c272a4a159f9eaf90ec8502bd> Girl who was in gov’t custody inconsolable, lawyer says. “Attorneys had said the girl seemed to be at high risk for emotional trauma last week, when she was found hysterical, despondent and unkempt in a Clint, Texas, Border Patrol station... ‘All she can do is cry and cry so much it sounds like she’s drowning,’ said the girl’s father...The little girl caught the attention of attorneys interviewing children in the Clint station last week, where they said she burst into tears when they asked her a question. They called her father after finding his phone number written on a bracelet she wore labeled “U.S. parent.” But she could barely talk to him on the phone...He said when they spoke Saturday she was coughing and told him that guards had made her sleep on the floor as punishment for misplacing a lice comb a nurse had given children in her cell.”

*See also*: <https://www.cnn.com/2019/06/24/opinions/children-migrant-centers-at-border-long-austin-hillery/index.html>. “We went to a border detention center for children. What we saw was awful,” In describing G.M.C.B. they note “A second-grader we interviewed entered the room silently but burst into tears when we asked who she traveled with to the US. ‘My aunt,’ she said, with a keening cry. A bracelet on her wrist had the words “US parent” and a phone number written in permanent marker. We called the number on the spot and found out that no one had informed her desperate parents where she was being held. Some of the most emotional moments of our visit came witnessing children speak for the first time with their parents on an attorney’s phone.”

floor without a blanket or cover. “She recalled that the guard said in an angry voice, ‘que si no lo hallábamos que íbamos a quedar sin cama y sin cobija’ [that if we didn’t find it we were going to end up without beds and without blankets].” *See* Declaration of Katherine Hagan at Exhibit C, ¶ 6.

71. In recounting the “people” who came into her room, and removed everything, she became completely distraught. *Id.* They even took the blanket that the children had use to hold up as a “curtain” while a child had to use the bathroom. As a result, they were forced to use the bathroom in open view.

72. G.M.C.B. requested to take a nap during the inspection visit. She slept with her head resting on a table for at least 40 minutes, likely due to exhaustion. [Exhibit C –Declaration of Katherine Hagan at ¶ 9]. Additionally, G.M.C.B. indicated during this visit that she was not feeling well, and in fact she was dizzy. *Id.* at ¶ 14. Officers guarding the visit had to be notified that she was in need of medical attention and sufficient food. *Id.*

73. On information and belief, G.M.C.B. was briefly taken to a hospital on June 20, 2019 and diagnosed with Influenza. She was thereafter returned to the deplorable conditions at Clint for days thereafter. On information and belief, G.M.C.B. moved out of Clint and was “in transit” with no information given to H.U.C.U. or M.G.B.V. for four days, at least some of that time in CBP El Paso Border Station 1 and back to Clint for an undisclosed period of time. She was not placed in an ORR facility until June 25, 2019. The placement was Upbring in El Paso, a transitional foster care situation. At no time were her parents called by CBP to offer placement pursuant to the FSA.

74. G.M.C.B. remains detained at Upbring today, for no rational, lawful or humane reason. Her proper placement is, and always has been, with her parents in Washington D.C.



## **CLAIMS FOR RELIEF**

### **COUNT I: VIOLATION OF THE FLORES AGREEMENT – PLACEMENT DECISION UNDER PARAGRAPH 14**

75. All previous paragraphs are incorporated as though fully set forth herein.
76. The prolonged border detention and horrific treatment of Plaintiff G.M.C.B. at the hands of CBP violates multiple provisions of the FSA.
77. There were no attempts by the government Defendants to reunify G.M.C.B. with her parents or any other family member, as required under the FSA. Nor did the government Defendants engage in any individualized custody determinations concerning G.M.C.B. with regards to family unity, or even any analysis of whether or not she should have been designated “unaccompanied.”. Rather, the government Defendants willfully violated their legal obligations to G.M.C.B. under the FSA.

### **COUNT II: VIOLATION OF THE FLORES AGREEMENT – PARAGRAPH 24(B) VIOLATION**

78. All previous paragraphs are incorporated as though fully set forth herein.
79. The FSA permits a child to contest the placement decision of Defendants. G.M.C.B. is exercising this right.
80. In 1993 Justice Scalia in *Reno v. Flores* (507 U.S. 292) emphasized the importance of ensuring that minors will be cared for during the pendency of removal proceedings.
81. In addition, state laws provide both substantive and procedural protections of the rights of parents to care for their children, and of children to be with their parents, such that children may only be separated from their parents as a matter of last resort.

82. The FSA requires the federal government to place children in custody in the least restrictive setting that is in the best interests of the child, and to grant preference to parents—without regard to the parents’ immigration status—above all other forms of release.

83. Therefore, the decision to place G.M.C.B. at Upbring in the custody of ORR violated the FSA.

**COUNT III: VIOLATION OF THE FLORES AGREEMENT –  
PARAGRAPH 12 VIOLATION**

84. All previous paragraphs are incorporated as though fully set forth herein.

85. G.M.C.B. was, horrifically, deprived of the ability to communicate her parents by CBP as a form of punishment. In so doing, the government Defendants violated her rights to communicate freely with her family members as laid out in Paragraph 12 of the FSA.

**COUNT IV: VIOLATION OF DUE PROCESS**

86. All previous paragraphs are incorporated as though fully set forth herein.

87. The Due Process Clause of the Fifth Amendment applies to all “persons” in the United States and applies to G.M.C.B., a minor children.

88. The designation of G.M.C.B. as an “unaccompanied child” and the failure to release her to her parents following the trauma inflicted by Defendants unlawful conduct violated the Plaintiffs; substantive due process because it furthered no legitimate purpose, nor any compelling governmental interest.

89. The designation of G.M.C.B. as an “unaccompanied child” and the failure to release her to her parents also violated the Plaintiffs’ procedural due process because it occurred without the required individualized assessment under the FSA, without justification nor hearing.

**COUNT V: VIOLATION OF THE EIGHT AMENDMENT**

90. All previous paragraphs are incorporated as though fully set forth herein.

91. The Eighth Amendment to the United States Constitution states that “cruel and unusual punishments [shall not be] inflicted.”

92. The treatment of G.M.C.B. by the Defendants was inhumane, cruel, unusual, inflicted without authority, and an egregious abuse of a position of power against a vulnerable seven-year old child.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs request that the Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Declare that Plaintiff G.M.C.B. is not a UAC as defined in the TVPRA, and that ORR have no legal authority to detain her or condition her release to her parents in any manner;
- C. Pending adjudication of this Petition, ORDER G.M.C.B. immediate reunification with her parents at Defendants expense;
- D. Declare the conduct of Defendants with respect to Plaintiffs to violate the Fifth and Eighth Amendments to the U.S. Constitution;
- E. Enjoin Defendants from redetaining Plaintiffs without providing a Constitutionally adequate meaningful process in advance of any effort to re-detain, including meaningful advance notice and an opportunity to be heard before a neutral decisionmaker;
- F. Award Plaintiffs reasonable attorney’s fees and costs pursuant to 28 U.S.C. § 2412; and
- G. Award all other relief to Plaintiffs that it deems just, equitable, and proper.

Respectfully submitted this 1st day of July, 2019.

Respectfully Submitted,

By: /s/ Benjamin G. Messer

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*\*Motions pro hac vice forthcoming*

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\*ADMITTED IN ILLINOIS

June 26, 2019

**VIA FACSIMILE (202) 252-2599**

Office of the United States Attorney, Civil Division  
555 4th Street, NW  
Washington, D.C. 20530

**RE: NOTICE OF VIOLATIONS OF THE FLORES SETTLEMENT AGREEMENT**

Dear Sir or Madam:

This letter is to confirm that I represent G.M.C.B., A#203-766-091, DOB 08/05/2011, a seven-year old girl, who has been unlawfully detained by the U.S. Department of Homeland Security at one or more CBP Border Holding Facilities in violation of the Flores Settlement Agreement and her Constitutional rights to due process of law and family integrity. My G-28, Notice of Appearance as Attorney signed by G.M.C.B.'s father and a copy of his identification and her birth certificate, are attached. G.M.C.B. was originally detained on June 16, 2019, separated and removed from the care of her aunt with whom she was traveling on June 17, 2019, and then held for more than a week at the Clint Border Facility. First, G.M.C.B. is not and has never been an "unaccompanied child" as defined in the TVPRA, because she has, at all times, had both of her biological parents (who are married to one another and reside together) available and ready to take custody of her in the United States. Second, for the past four days G.M.C.B.'s frantic parents have been told via the office of Rep. Veronica Escobar that she has been "in transit," originally moved from the Clint facility on Sunday, June 23, 2019 supposedly en route to an ORR placement in Combes, Texas until Tuesday, June 25, 2019 (a 72-hour transit for a 12-hour drive), her ORR placement was purportedly canceled yesterday, she was then allegedly sent back to the Clint facility, supposedly to be placed in ORR custody in San Antonio, and then supposedly placed in ORR custody in El Paso, and now supposedly being placed in ORR custody in San Antonio again, etc. We have no accurate information regarding her whereabouts for the past four days, and G.M.C.B. has had no communication with her parents during that time.

By way of background, G.M.C.B. is the child referred to in various media reports as follows "*A second-grader we interviewed entered the room silently but burst into tears when we asked who she traveled with to the US. 'My aunt,' she said, with a keening cry. A bracelet on her wrist had the words 'US parent' and a phone number written in permanent marker. We called the number on the spot and found out that no one had informed her desperate parents where she was being held.*" <https://www.cnn.com/2019/06/24/opinions/children-migrant-centers-at-border-long->

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[austin-hillery/index.html](#) and “*We received reports from children of a lice outbreak in one of the cells where there were about twenty-five children, and what they told us is that six of the children were found to have lice. And so they were given a lice shampoo, and the other children were given two combs and told to share those two combs, two lice combs, and brush their hair with the same combs, which is something you never do with a lice outbreak. And then what happened was one of the combs was lost, and Border Patrol agents got so mad that they took away the children's blankets and mats. They weren't allowed to sleep on the beds, and they had to sleep on the floor on Wednesday night as punishment for losing the comb. So you had a whole cell full of kids who had beds and mats at one point, not for everybody but for most of them, who were forced to sleep on the cement,*” Warren Binford, a law professor at Willamette University who interviewed several children at the facilities told the *New Yorker*.” <https://www.newsweek.com/border-patrol-allegedly-turning-down-donations-soap-diapers-toys-texas-facilities-housing-1445660> G.M.C.B. was one of the children punished by being forced to sleep on the cold tile floor without blankets, was crying on the phone with her father after she was told of her punishment for this, and the father spoke to the CBP Officer to request that this inhumane treatment of his daughter stop immediately. According to the father, the CBP Officer on the line stated that, for so doing, he would no longer have contact with his daughter, and hung up the phone. G.C.M.B.’s family has been unable to speak to her since that time.

As G.M.C.B.’s counsel, I request that you immediately provide me with a timeline of her detention including all of her location(s), a timeline of her four days of transit around the state of Texas, and confirmation of her current state of health by the end of the day. Per her rights as a Flores class member, we request that she immediately be allowed to contact her family via telephone. Further, as we intend to file a Bivens claim against the CBP Officer who punished her by forcing her to sleep on the floor and depriving her of blankets, and intentionally violating her rights under the Flores Settlement Agreement by cutting off her communication with her family, we request that you provide the name of the CBP Officer(s) responsible for Genesis on the day of her last telephone call with her family, which was June 22, 2019.

The decision of the Department of Homeland Security to designate G.M.C.B. as a UAC when both of her biological parents are in the United States, ready and available to take custody of her, the failure to conduct an individualized determination of G.M.C.B.’s needs, the failure to attempt to reunify G.M.C.B. with a parent or other family member, and the extended detention of G.M.C.B. at one or more Border Holding Facilities, ostensibly in order to place her in the custody of the Office of Refugee (which has still not occurred) was and is improper and unlawful. G.M.C.B. will imminently seek federal judicial review of her “placement” or in this case, the government’s unlawful extended border detention and failure to place her with her parent or another relative, in the United States District Court for the District of Columbia pursuant to paragraph 24B of the Flores Settlement Agreement among other claims. This letter serves to notify you of the government’s breach of numerous provisions of the Flores Settlement Agreement including but not limited to paragraphs 11, 12, 14, 24B and 36.

Please contact me immediately to conference via telephone; given the urgency of the matter and the intentional and deliberate nature of the government’s actions, we intend to file a complaint

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in federal district court, as well as a request for an Emergency TRO and Preliminary Injunction, as soon as practicable, but no later than tomorrow.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Amy Maldonado', written in a cursive style.

Amy Maldonado  
Attorney at Law  
Licensed in Illinois

AM/adr

cc: Center for Constitutional Law - (213) 386-9484  
National Center for Youth Law – (510) 835-8099  
Office of the U.S. Attorney, Central District of California – (213) 894-0141  
DOJ Office of Immigration Litigation – (202) 305-7000

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al, Plaintiffs

v.

JANET RENO, Attorney General of the United States, et al., Defendants

Case No. CV 85-4544-RJK(Px)

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 the 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. 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 a 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.

24A. 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 providers compiled pursuant to INS regulation (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 minor 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 defendants have 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 \$\_\_\_\_\_, 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 from the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with the Agreement, except the following: 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.

#### **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.

EXHIBIT 1  
Minimum Standards for Licensed Programs

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

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.
4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with

appropriate reading materials in languages other than English for use during the minor's leisure time.

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

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

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 2  
Instructions to Service Officers re:  
Processing, Treatment, and Placement of Minors

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



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

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

**(b) General policy.** The INS treats and shall continued 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 them 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 minor 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 so 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 (l) 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) where 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 must 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 in which he either affirmatively requests, or fails to request or refuse, such a hearing on the Notice of Custody Determination. 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 in the form attached, and (2) the list of free legal services providers compiled pursuant to 8 C.F.R. § 292a.

**(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 Service 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.** All INS district offices and Border Patrol stations must report to the Juvenile Coordinator statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours. 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. The Juvenile Coordinator must also be informed 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 lawyers for the *Reno v. Flores* plaintiff class to visit minors even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

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

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

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

### EXHIBIT 3 Contingency Plan

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in licensed 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 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 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, and (3) date placed in INS custody.
3. Within one business day of the emergency or influx the Juvenile Coordinator, or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their

availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

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

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

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

#### EXHIBIT 4 Agreement Concerning Facility Visits Under Paragraph 33

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

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

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

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

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



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

Exhibit 5  
List of Organizations to Receive Information re: Settlement Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 6  
Notice of Right to Judicial Review

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

## **DECLARATION OF KATHERINE HAGAN**

I, Katherine Hagan, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection:

1. My name is Katherine Hagan, and I am providing my observations as a person who met and interpreted for children during a monitoring visit of children in the custody of U.S. Customs and Border Protection.
2. I hold a Masters of Theological Studies from Harvard Divinity School, for which I completed coursework in counseling, grief, and trauma. I also hold a Masters of Science in Clinical Psychology from the University of Oregon and am entering my fourth year of doctoral study in this same domain. As part of my graduate study I provide undergraduate-level course instruction on children's development, with focus in the areas of early communication, emotion regulation in children, and child-caregiver attachment. Additionally, I am certified as a Spanish-language healthcare interpreter by the Certification Commission of Healthcare Interpreters and hold certificates in legal, medical, and community interpreting from Boston University's Interpreter Program. I have functioned as a Spanish-language interpreter in a range of demanding settings, from inpatient psychiatric units to in-home social work visits. I have also served as an interpreter during depositions, investigative interviews, and Grand Jury testimony.
3. During the week of June 10, 2019, I served as an interpreter during interviews of children in the custody of U.S. Customs and Border Protection (CBP) in McAllen, Texas. These interviews constituted part of scheduled monitoring of CBP compliance with the terms of the Flores Settlement Agreement. During the subsequent week of June 17, 2019, I interpreted for Flores monitors who were interviewing class members in and around El Paso, Texas, including children at the CBP facility in Clint, Texas.
4. I met Genesis Madai Coreas-Blanco mid-morning on Thursday, June 20, 2019. I asked for Genesis' permission to ask her some questions about the experiences she had had since coming to the United States. She sat in a chair in the conference room we were in. I recall that she sat with her back glued to the back of the chair and each hand wrapped around an armrest. She appeared to brace herself.

5. I asked Genesis about why she came to the United States, and she recalled with solemnity that there were people who “had eyes on her” whenever she went to school in her home country of El Salvador. She walked me through the night that she spent in a cold tent after she and the adult family members she was with sought out border police and climbed into a Border Patrol vehicle. She was tearful as she remembered waking up and finding that her aunt was no longer next to her on the floor of the tent. She cried, too, as she described the moment that she was instructed to get into a car by herself rather than being allowed to remain with her aunt or return to the side of her aunt’s female cousin.
6. I asked her what had happened the night immediately before the morning that we met. She explained that a nurse had brought two combs, and that one of them was for lice, and another was a “normal” hairbrush just for brushing your hair. Her eyes were cast slightly down as she spoke. She glanced up at me occasionally. She told me the story in a quiet voice, with no sense of drama or enjoyment in recounting it. She told me, with gravity, that a guard had come to retrieve both the lice comb and hairbrush, and that when the brush did not show up, the guard said that he would give them ten minutes to find it. She recalled that the guard said in an angry voice, “que si no lo hallábamos que íbamos a quedar sin cama y sin cobija” [that if we didn’t find it we were going to end up without beds and without blankets]. When she recalled this, her bottom lip quivered and she began to cry. I asked her if she wanted to take a break to blow bubbles or color with crayons, and she looked with sadness at the crayons and bottle of bubbles and shook her head “no,” as if she couldn’t stomach it.
7. I asked her what happened next. She explained that neither she nor the other kids in the room could find the missing brush, and that when the guard came back, they had to say so. She exhibited intense distress on recalling that people immediately came into the room and began taking away “everything.” She buried her face in the inner creases of her arms and cried, still sitting in the conference room chair, with her arms and face now down on the conference table. She appeared completely distraught.
8. Genesis said that the people who came in carried away all of the blankets. When she brought her chin to rest on her elbows, she volunteered that there was one blanket that the children in the room used as a curtain or cover

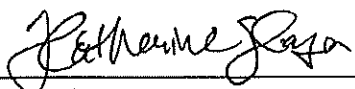
when they used the toilet, and that this blanket, too, was taken away. She answered a handful of questions with her head resting on her arm, facing me. Her eyelids became heavy, and I asked her if she wanted to take a nap. Her eyes fluttered open briefly, and she nodded "yes."

9. I would estimate that Genesis slept like that, with her head resting on the conference table, for at least 40 minutes, and quite possibly for as long as 90 minutes.
10. When Genesis woke up, I explained that I wanted to make sure that I correctly summarized what she told me. I read her declaration back to her in Spanish, looking up after each sentence to say, "Is that what happened?" or "Is that right? Was it like that?" She said "yes" and gave serious nods in affirmation. She cried when I read back to her her account of the guard's punishment and sleeping without blankets on the floor.
11. Genesis signed her declaration, sticking her tongue out in concentration as she did so.
12. Genesis asked for water, and I brought her a bottle of water. As I began to move around the room to tidy up, Genesis again began to cry, this time in a whimper, and said that she wanted to talk to her daddy. I read Genesis' father's phone number off of a neon, paper bracelet that Genesis had around her wrist. This was the second phone call that she made to her father during her time in the conference room that morning. I recall that her father reassured her that when he saw her again that they would get her a nice bed to sleep in. She sobbed during both phone calls, and her father tried to console her. She told him during this second phone call that she was feeling dizzy when waking up in the morning, and he told her to tell someone about this and to make sure to eat enough.
13. It is important to note that I have not yet concluded my doctoral training in clinical psychology, which means that I am a clinical trainee or student therapist, authorized to conduct assessments only under the supervision of a licensed psychologist. I met with Genesis in my capacity as an interpreter. It is my interaction with Genesis in this role that forms the basis for my observations. My impression from Genesis' account is that she felt

overwhelming fear, urgency, and helplessness at being told that she and her peers would be without beds or blankets as punishment for the misplacement of a brush. I fear for the effects that this sustained fear and helplessness may have for Genesis.

14. When it came time to step outside to the hallway for Border Patrol officers to escort Genesis back to the room where she was being held, it was explained to the officers present that Genesis had just reported to her father that she was experiencing dizziness on waking. As the officers were told of Genesis' need for medical attention and sufficient nutrition, she stood close to me, crying, clinging to my waist, and pressing her forehead into my side.
15. For what it may be worth, I believe that experts in attachment would likely be concerned by Genesis exhibiting this kind of attachment behavior towards an adult that she met a few hours before, as this effort to maintain proximity to me—a relative stranger—indicates not only fear, but the absence of an adult in her immediate environment that she can trust to protect her.
16. A male officer prepared to accompany Genesis back to the room where she had spent the last four days, and Professor Warren Binford (a Flores Monitor) asked me and Genesis to step back into the conference room for just one moment. Professor Binford asked Genesis if the man that was about to take her back to the room was the same guard who had yelled and confiscated the blankets the day before. Genesis said that it was not him. I recalled the description that Genesis had given me (“pelón y chelito” [bald and white]), and she nodded. Having confirmed this, Professor Binford and I opened the door to the hallway, and Genesis walked tearfully but dutifully toward the officer.

I, Katherine Hagan, swear under penalty of perjury that the above declaration is true and correct to the best of my abilities.

  
\_\_\_\_\_  
Katherine Hagan

June 25, 2019

\_\_\_\_\_  
Date

## **DECLARATION OF CLARA LONG**

I, Clara Long, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection:

1. My name is Clara Long and I am a senior researcher with the US Program at Human Rights Watch focusing on immigration and border policy. My reports have covered such issues as deaths in immigration detention linked to poor medical care, the treatment and dismissal of asylum seekers at the US border, and the detention of children and families.
2. Prior to joining Human Rights Watch, I was a Teaching Fellow with the Stanford Law School International Human Rights and Conflict Resolution Clinic. I also am the co-producer of an award-winning documentary, Border Stories, about perspectives on immigration enforcement from both sides of the U.S.-Mexico border. I graduated with honors from Harvard Law School and hold a masters degrees from the London School of Economics in Environment and Development and from Stanford's Graduate Program in Journalism.
3. On June 17, 2019 I was able to visit a facility operated by U.S. Customs and Border Protection (CBP) in Clint, Texas to perform monitoring of compliance with the Flores Settlement Agreement. I am providing a declaration based on my observations and interaction with Genesis Madai Coreas-Blanco, a seven year old girl who was in CBP custody.
4. When we met, Genesis had been in the facility for a little over 24 hours. Her eyes were red and she was quiet. She was wearing leopard print leggings.
5. When I asked her with whom she came to the United States, she said her aunt. At this point, she began to cry, and cried so hard she could not continue to speak. She was almost keening, and her cries consisted as a constant stream of high pitched wailing coming out of her mouth. Her wailing lasted at least 10 minutes, maybe 15 minutes. A tissue we gave her quickly disintegrated as she rubbed it into her eyes.
6. At this point I was unable to continue to interview Genesis because she was far too upset.



7. While I was sitting with her, I observed that she had a green bracelet on her wrist with the words "US PARENT" in permanent marker and the phone number of her father, Hugo. We took the opportunity to call the number, and he did not know where his daughter was being detained.

I, Clara Long, swear under penalty of perjury that the above declaration is true and correct to the best of my abilities.



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Clara Long

June 27, 2019

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Date

## **DECLARATION OF ATTORNEY TAYLOR LEVY**

I, Taylor Levy, Esq., declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection:

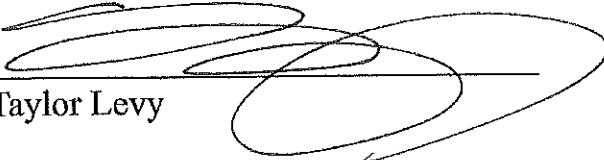
1. My name is Taylor Levy and I am an immigration attorney in El Paso, TX. I am providing my declaration to provide my observations and understanding of the situation of Genesis Madai Coreas-Blanco, a seven-year-old girl whom I had the opportunity to observe in immigration custody.
2. I am a licensed attorney in Texas and a member in good standing of the Texas Bar practicing primarily immigration law in the El Paso area. I was previously the Legal Coordinator for Annunciation House, a charitable nonprofit in the El Paso-Juarez border community. I have worked and volunteered with Annunciation House for more approximately ten years and currently advocate and represent persons and families in immigration proceedings and before the Executive Office for Immigration Review and the Department of Homeland Security.
3. On June 22, 2019, I was asked to assist with the case of a child named Genesis Madai Coreas-Blanco ("Genesis"), a seven-year-old girl who was in the custody of U.S. Customs and Border Protection (CBP), primarily at the Clint Border Patrol Station.
4. On June 26, 2019, I was notified that Genesis had been moved from the Clint Border Patrol Station to a shelter for Unaccompanied Minors contracted by the Office of Refugee Resettlement, a part of the U.S. Department of Health and Human Services called Upbring (the "ORR Facility").
5. I worked with Genesis' legal team to secure a visit with Genesis as I am the only member of the legal team who resides in El Paso, Texas. We submitted a G-28 form to the ORR facility and the Department of Justice and were subsequently notified that the visit was permissible.
6. I arrived at the ORR Facility at approximately 2:45 pm on June 26, 2019 and was promptly permitted to speak to my client, Genesis, in a private conference room with a closed door and a two-way mirror.

7. Genesis began softly crying almost immediately upon meeting me. She appeared scared of me and apprehensive to talk with me. I tried to gain her trust by explaining that I had been sent by her parents to help her. This made her cry more.
8. I spent approximately 45 minutes speaking with Genesis. Genesis spent almost the entire duration of our conversation crying so hard that she was having difficulty speaking to me and often could not form words.
9. It was difficult to communicate with Genesis given her emotional state, as she would mostly only respond to my questions by nodding her head or with quiet whispers. Therefore, I spent a significant portion of our meeting attempting to comfort Genesis and gain rapport rather than questioning her extensively about her past few days.
10. I asked Genesis if she wanted to see pictures of her family and she shook her head no and started to cry harder. I asked if she declined to see the pictures because it would make her sad and she said yes. I asked her both near the beginning and end of the meeting and both times, her response was the same.
11. Genesis got particularly sad when I asked her about her aunt, with whom she had travelled to the United States. She was completely unable to respond to these questions and cried harder with a quivering lip and shaking her head.
12. I was given permission by the ORR staff to have a video call with her parents. We had a video call with her parents for approximately 10 minutes, and once again, during that time, Genesis never stopped crying.
13. She went through several tissues and had a hard time speaking to her parents because every time she would try to say anything, she would cry harder.
14. Her parents had a hard time understanding what Genesis was saying over the phone, because she would always speak in a whisper while choking back tears. Genesis barely spoke at all to her parents, and did not offer any additional dialogue or elaboration; she answered simple questions in one-word whispers. Genesis did not want to show her parents the picture that she had colored.
15. After we hung up the phone, Genesis began crying even harder. For approximately 5 minutes, she was crying so hard that she was making a low

pitch steady whining/wheezing sound. This behavior surprised me, because it appeared as though Genesis was trying to cry as quietly as possible while also being unable to stop sobbing.

16. Overall, beyond her emotional state, Genesis appeared to be in decent physical condition. She was thin and small in stature. Her hair was neatly groomed, and her clothing was clean.
17. Genesis informed me that she had stayed with a foster family ["muchacha que me cuidaba"], and that she had arrived with that foster family after dark on June 25, 2019.
18. Genesis said that the woman who took care of her for the night was nice and had given her a burrito for dinner, and that she was given her own bed with two blankets and a pillow. Genesis said that there was another child at the house and that she had been talking to her.
19. Genesis said that in the morning of June 26, 2019, she had cornflakes and milk for breakfast, and she was then taken to the ORR facility, which is where I interviewed her.
20. Based upon my conversation with Genesis, it is my belief that she is suffering emotionally and psychologically from her separation from her aunt with whom she crossed the border, from her time in custody, and from her ongoing separation from her parents who are ready and willing to be reunited with her as soon as possible.

I, Taylor Levy, swear under penalty of perjury that the above declaration is true and correct to the best of my abilities.

  
Taylor Levy

June 26, 2019

\_\_\_\_\_  
Date

RECEIVED

JUL 01 2019

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

H.U.C.U. et al.,

*Plaintiffs,*

-against-

BARR et al.,

*Defendants.*

Case No.

**APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER**

1. Plaintiffs in this matter are G.M.C.B., a child widely reported in national news media as an “inconsolable seven-year old” girl unlawfully separated from her relatives and then detained in horrific, abusive and abjectly cruel conditions at U.S. Customs and Border Protection (“CBP”) Clint Border Patrol Station, and her parents, H.U.C.U. and M.G.B.V, who are desperate to be reunited and to be able to care for their vulnerable and traumatized child.

2. Defendants are the federal agencies and officials who unlawfully detained G.M.C.B. in deplorable, unsafe, and unsanitary conditions, in violation of federal law, regulations, the Flores Settlement Agreement<sup>1</sup> (hereinafter “FSA” or the “Settlement”), and the Fifth and Eighth Amendments to the United States Constitution. Defendants include the following agencies and their culpable officials: U.S. Department of Homeland Security (“DHS”); U.S. Immigration and Customs Enforcement (“ICE”); U.S. Customs and Border Protection (“CBP”); U.S. Department of Health and Human Services (“HHS”); and U.S. Office of Refugee Resettlement (“ORR”).

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<sup>1</sup> Arising from longstanding litigation in the matter of *Flores v. Sessions*, CV-85-4544 (C.D. Cal.).

3. By this application for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b), Plaintiffs seek the immediate de-designation of G.M.C.B. as an “unaccompanied alien child” (“UAC”), ordering the return to the status quo ex ante prior to G.M.C.B.’s unlawful detention and the re-unification of seven-year old G.M.C.B. with her parents pending the adjudication of their claims.

4. In compliance with Rule 65(b) and Local Civil Rule 65.1(a), undersigned counsel notified defense counsel of this application and furnished to defense counsel all documents filed in this case, as described on the last page of this document.

#### **RELIEF REQUESTED**

5. Plaintiffs seek a temporary restraining order requiring Defendants to:
- a. immediately declare that Plaintiff G.M.C.B. is not an UAC within the statutory definition provided by the “Homeland Security Act (the “HSA”), 6 U.S.C. § 279(g)(2);
  - b. immediately return to the “status quo ante” in which G.M.C.B. has not been designated a UAC or placed in a restrictive detention setting – the “ante” formulation of the status quo in the realm of equities required to prevent Defendants seeking shelter under a current “status quo” precipitated by its wrongdoing;<sup>2</sup>
  - c. provide Plaintiffs with frequent, easily facilitated, and confidential communication pending their reunion.

#### **FACTS**

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<sup>2</sup> See *Holt v. Cont'l Grp., Inc.*, 708 F.2d 87, 90 (2d Cir. 1983) (referring to reinstatement of benefits as “restoration of the status quo ante”); accord *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004) (en banc) (per curiam) (“requir[ing] a party who has disturbed the status quo to reverse its actions ... restores, rather than disturbs, the status quo ante, and is thus not an exception” to the ordinary standard for preliminary injunctions).

6. G.M.C.B. is a seven-year-old girl. She is a native and citizen of El Salvador. She is an asylum-seeking child.
7. G.M.C.B.'s parents reside in Washington, D.C. and are available, now and at all times since G.M.C.B. has been in the United States, to provide care for their daughter.
8. G.M.C.B. was cared for by her aunt in El Salvador. Their household became subject to severe domestic violence endangering G.M.C.B. and her aunt's safety. G.M.C.B. describes that there were "people who had eyes on her," and that she was no longer safe going to school. As a result, they came to the border of the United States to seek asylum.
9. On or about June 15, 2019, G.M.C.B. was apprehended by CBP with her aunt and a female cousin. Their family had sought out U.S. border officials to turn themselves in. That night G.M.B.C. and her aunt were made to sleep on the floor of a tent. When G.M.C.B. awoke, her aunt was no longer by her side. *See* Declaration of Katherine Hagan at ECF No. 1-3 ¶ 5.
10. Thereafter, G.M.B.C. was instructed. to get into a car by herself. She was not permitted to remain with her aunt or her cousin. Reflecting upon this moment causes G.M.B.C. great trauma and pain, as she is often unable to talk about this moment without intense emotion and crying. *Id.*
11. G.M.B.C. was placed in the Clint Border Station in Clint, Texas following this period in a tent. On information and belief, this occurred on June 16, 2019. While she was detained at this border station, she was without her accompanying family and was placed with hundreds of other children in deplorable conditions.
12. In detention, her wrist was adorned by a green wristband. On the wristband were written the words "US PARENT" and accompanying that phrase was her father's phone number in the United States. *See* Declaration of Clara Long at ECF No. 1-4. CBP knew at all times that she

had parents in the United States and failed to use that information to timely conduct a proper placement.

13. Monitors operating pursuant to the FSA were granted access to the facility and conducted inspections on or about the week of June 17, 2019. “The situation we found is unacceptable. US Border Patrol is holding many children, including some who are much too young to take care of themselves, in jail-like border facilities for weeks at a time without contact with family members, regular access to showers, clean clothes, toothbrushes, or proper beds. Many are sick. Many, including children as young as 2 or 3, have been separated from adult caretakers without any provisions for their care besides the unrelated older children also being held in detention...Some of the children we spoke with were sleeping on concrete floors and eating the same unpalatable and unhealthy food for close to a month: instant oatmeal, instant soup and a previously-frozen burrito. Children should spend no more than a few hours in short-term border jails to be processed and US law limits their detention under typical circumstances to 72 hours.” *See* <https://www.cnn.com/2019/06/24/opinions/children-migrant-centers-at-border-long-austin-hillary/index.html>.

14. The inspectors noted that many of the children in Clint, like the Plaintiff, have family and even parents in the United States. “Based on our interviews, officials at the border seem to be making no effort to release children to caregivers-- many have parents in the US -- rather than holding them for weeks in overcrowded cells at the border, incommunicado from their desperate loved ones.” *Id.*<sup>3</sup>

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<sup>3</sup> Media reports are replete with articles describing the horrendous conditions in Clint. Many are referenced in Footnote 1. In addition, Elora Mukherjee, a professor at Columbia Law School and the director of the school’s Immigrants’ Rights Clinic provided a first hand account to the Atlantic, “ **Children were dirty, They Were Scared, They Were Hungry.**” She provided her observations, “An overwhelming number of children who I interviewed had not had an opportunity for a stable shower or bath since crossing the border [days or weeks earlier]. They were wearing the same clothing that they had crossed the border in. Their clothing was covered in bodily fluids, including urine and breast milk for the teenage moms who are breastfeeding.



15. Flores monitors were permitted to meet with G.M.C.B. They have provided sworn declarations which are being attached to this complaint. *See* Exhibits 3 & 4. The monitors were so troubled with the emotional stability of G.M.C.B. that she became labeled in media reports as the “inconsolable” girl.<sup>4</sup>

16. G.M.C.B. initially was unable to participate in monitoring, beginning on June 17, 2019. Declarant Clara Long states that G.M.C.B.’s eyes were “red” and she was “quiet. Upon being asked a question she began to wail. In fact, not only cry, but to scream in a “high pitched wail” loudly for 10 to 15 minutes. Because of her inability to remain stable, she was not able to be interviewed by the inspector at that time. *See* Declaration of Clara Long at Exhibit 4 ¶¶ 4-5.

17. Inspectors returned to find G.M.C.B. concerned for her emotional well-being. On Thursday June 20, 2019, she was again met by inspectors in Clint, Texas. This time she remained tearful and at times hysterical. She described being separated from her caretaker. She described

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Nearly every child I spoke with said that they were hungry because they’re being given insufficient food. The food at Clint is rationed on trays. Everyone gets an identical tray regardless of if you’re a 1-year-old, or you’re a 17-year-old, or a breastfeeding teenage mother who has higher caloric needs. The same food is served every single day, and none of the children receive any fruit and vegetables or any milk... At Clint, I found that hard to do because there was a stench emanating from some of the children. **It was filthy and disgusting and there was, as of last week, a flu epidemic at Clint and a lice infestation.** And children do not have the ability to wash their hands with soap at Clint.” *See* <https://www.theatlantic.com/family/archive/2019/06/child-detention-centers-immigration-attorney-interview/592540/>.

<sup>4</sup> *See*: <https://www.apnews.com/ac73320c272a4a159f9eaf90ec8502bd> Girl who was in gov’t custody inconsolable, lawyer says. “Attorneys had said the girl seemed to be at **high risk for emotional trauma last week, when she was found hysterical, despondent and unkempt in a Clint, Texas, Border Patrol station...** ‘All she can do is cry and cry so much it sounds like she’s drowning,’ said the girl’s father... The little girl caught the attention of attorneys interviewing children in the Clint station last week, where they said she burst into tears when they asked her a question. **They called her father after finding his phone number written on a bracelet she wore labeled “U.S. parent.”** But she could barely talk to him on the phone... **He said when they spoke Saturday she was coughing and told him that guards had made her sleep on the floor as punishment for misplacing a lice comb a nurse had given children in her cell.”**

*See also*: <https://www.cnn.com/2019/06/24/opinions/children-migrant-centers-at-border-long-austin-hillery/index.html>. “We went to a border detention center for children. What we saw was awful;” In describing G.M.C.B. they note “**A second-grader we interviewed entered the room silently but burst into tears when we asked who she traveled with to the US. ‘My aunt,’ she said, with a keening cry. A bracelet on her wrist had the words “US parent” and a phone number written in permanent marker. We called the number on the spot and found out that no one had informed her desperate parents where she was being held.** Some of the most emotional moments of our visit came witnessing children speak for the first time with their parents on an attorney’s phone.”

being punished for losing a comb by CBP officers, wherein they forced her to sleep on a cold tile floor without a blanket or cover. “She recalled that the guard said in an angry voice, ‘que si no lo hallábamos que íbamos a quedar sin cama y sin cobija’ [that if we didn’t find it we were going to end up without beds and without blankets].” *See* Declaration of Katherine Hagan at Exhibit 3, ¶ 6.

18. In recounting the “people” who came into her room, and removed everything, she became completely distraught. *Id.* They even took the blanket that the children had use to hold up as a “curtain” while a child had to use the bathroom. As a result, they were forced to use the bathroom in open view.

19. G.M.C.B. requested to take a nap during the inspection visit. She slept with her head resting on a table for at least 40 minutes, likely due to exhaustion. *See* Declaration of Katherine Hagan at Exhibit 3, ¶ 9. Additionally, G.M.C.B. indicated during this visit that she was not feeling well, and in fact she was dizzy. *See* Declaration of Katherine Hagan at Exhibit 3, ¶ 14. Officers guarding the visit had to be notified that she was in need of medical attention and sufficient food. *Id.*

20. On information and belief, G.M.C.B. was briefly taken to a hospital on June 20, 2019 and diagnosed with Influenza. She was thereafter returned to the deplorable conditions at Clint for days thereafter. On information and belief, G.M.C.B. was held in Clint and another place in El Paso (El Paso 1) for periods of time. She was not placed in an ORR facility until June 25, 2019. The placement was Upbring in El Paso, a transitional foster care situation. At no time were her parents called by CBP to offer placement pursuant to the FSA.

21. G.M.C.B. remains detained at Upbring today, for no rational, lawful or humane reason. Her only lawful proper placement is, and always has been, with her parents in Washington D.C.

## **JURISDICTION**

22. The Court has jurisdiction to enjoin unconstitutional action by the Defendant federal agencies. *Trudeau v. Fed. Trade Commn.*, 456 F.3d 178, 190 (D.C. Cir. 2006). The government has waived sovereign immunity from suits directly under the Constitution that seek equitable relief. *Id.* at 186 (citing 5 U.S.C. § 702). Plaintiffs invoke this jurisdiction to redress Defendants' Fifth and Eighth Amendment violations.

## **STANDARD OF REVIEW**

23. "The court considers the same factors in ruling on a motion for a temporary restraining order and a motion for preliminary injunction." *Baker DC v. Nat'l Labor Relations Bd.*, 102 F. Supp. 3d 194, 198 (D.D.C. 2015).

24. Courts "consider four factors when deciding whether to grant a preliminary injunction: whether the plaintiff will be irreparably harmed if the injunction does not issue; whether the defendant will be harmed if the injunction does issue; whether the public interest will be served by the injunction; and whether the plaintiff is likely to prevail on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 392 (1981).

25. These factors "interrelate on a sliding scale and must be balanced against each other." *Davenport v. Int'l Bhd. of Teamsters*, 166 F.3d 356, 361 (D.C. Cir. 1999). "A district court must balance the strengths of the requesting party's arguments in each of the four required areas." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

26. The court may include mandatory relief regarding immigration detention in a temporary restraining order. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451, 469 (S.D.N.Y. Aug. 2, 2018); *Mahmood v. Nielsen*, 17-cv-8233, 2018 WL 2148439 at \*2 (S.D.N.Y. May 9, 2018).

## ARGUMENT

27. Plaintiffs seek their lawful entitlement to the law, and that the law be lawfully applied – Defendants arbitrary and capricious decision to designate G.M.C.B. as a UAC is clearly contrary to law. Defendants cruel and harmful treatment of G.M.C.B. in violation of the FSA, the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and HSA, the Fifth and Eighth Amendments, and basic human decency in their conscious shockingly appalling treatment of G.M.C.B. during her prolonged unlawful detention is served by no legitimate government purpose, and all factors for issuing granting immediate relief favor Plaintiffs in the most profound manner.

### *Plaintiffs are Suffering Immediate, Ongoing, Irreparable Harm*

28. The facts surrounding Defendants’ treatment of the Plaintiffs have profoundly shocked the national conscious – for good reason. Defendants’ treatment of G.M.C.B. and her parents are not simply unlawful, but malevolent and despicable – no vulnerable seven-year old child, recently torn from her caretaker, who contracts influenza due to the unsafe and unsanitary conditions in detention – jailed in facilities for 10-days that are only permitted to be used for 72-hours – should be forced to sleep on the cold floor without any blankets or bedding as punishment for losing a comb provided to a crowded room of children to share during a lice outbreak. The government utterly failed in treating G.M.C.B. with any manner of dignity. No legitimate or rational purpose supports doing anything other than immediately returning G.M.C.B. to the care of her parents, uniformly depicting irreparable harm that justice

29. The trauma suffered by G.M.C.B., as detailed above, has been profound, and the encroachment on her right to family unity, the multiple violations of the FSA calculated to protect vulnerable children such as G.M.C.B, demonstrate irreparable harm and a plea of humanity to law to immediately stop the continuing injustice.

30. Courts uniformly recognize that separation causes trauma, as does uncertainty about family members. *See also Stanley v. Illinois*, 405 U.S. 645, 647 (1972) (“[P]etitioner suffers from the deprivation of h[er] child[], and the child[] suffer[s] from uncertainty and dislocation.”); *J.B. v. Washington County*, 127 F.3d 919, 925 (10th Cir.1997) (“[F]orced separation of parent from child, even for a short time, represents a serious infringement upon both the parents' and child's rights.”); *Nicolson v. Pappalardo*, 685 F. Supp. 2d 142, 145-46 (D. Me. 2010) (“[e]very additional day” of separation causes further harm).

31. “[L]oss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mills v. Dist. of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (citations omitted). As a result, “[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” 11A WRIGHT & MILLER, FED. PRAC. & PROC. § 2948.1 (2d ed. 2004).

32. “Except in the most dreadful circumstances, a court should not countenance the cruelty of the separation of a parent and child by the government.” *D.J.C.V. v. U.S. Immigration and Customs Enforcement*, No. 18 Civ. 9115, ECF No. 21 (S.D.N.Y. Oct. 15, 2018) (Hellerstein, J.); *see also Cruz Paz v. Lloyd et al.*, No. 18 Civ. 8993, ECF No. 11 (S.D.N.Y. Oct. 5, 2018) (Crotty, J.); *Paixao v. Sessions et al.*, No. 18 Civ. 4591, ECF No. 16 (N.D. Ill. July 5, 2018) (Shah, J.); and *Souza v. Sessions et al.*, No. 18 Civ. 4412, ECF No. 23 (N.D. Ill. Jun. 26, 2018) (Shah, J.).

33. Plaintiffs therefore clearly establish continuing irreparable harm that strongly favors the Court granting their request for immediate relief.

*Plaintiffs Are Likely to Success on the Merits of their Claims*

34. Plaintiffs will almost certainly prevail on their claims that G.M.C.B.'s detention by ORR is not lawful because she is not a UAC, and therefore no provision of the HSA or TVPRA empowers ORR to detain a child who, like G.M.C.B., is not a UAC. Without statutory power, ORR has no authority over G.M.C.B. *See La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374, (1986). ("But 'an agency literally has no power to act . . . unless and until Congress confers power upon it.") Accordingly, G.M.C.B. must be immediately released into the custody of her parents who seek to provide her the care she has not been provided by Defendants.

35. Pursuant to the HSA and TVPRA, ORR is responsible for the custody and placement of UACs. The HSA defines a UAC as a child who has "no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2).

36. The TVPRA incorporates the HSA's definition of UAC by reference. *See* 8 U.S.C. § 1232(g). Given that G.M.C.B.'s parents are present in the United States and desperate to provide her care, she is not a UAC. *See* 6 U.S.C. § 279(g)(2)(C)(i).

37. As the Plaintiffs' are almost certain to succeed on establishing the fact that G.M.C.B. is not a UAC, Plaintiffs are very likely to succeed on challenging ORR's detention or conditions imposed prior to releasing G.M.C.B. as no provision of the HSA or TVPRA empower ORR to detain a child who, like G.M.C.B., is not a UAC.

38. Plaintiffs are also likely to succeed on the merits of their challenges to Defendants' violations of the FSA. Defendants have consistently violated the FSA for years. *See Flores v. Barr et al.*, No. Civ. 85-4544-DMG, Order (C.D. Cal. June 28, 2019) (detailing prior court orders finding CBP continuing to breach FSA over time, and plaintiffs' claims that CBP continued to

commit the same violations). Indeed, they continue to do so with regards to G.M.C.B. today, and every second she is not placed with her mother and father.

39. Finally, Plaintiffs will also succeed on their claims that Defendants have violated the Fifth and Eighth Amendments. The punishment of a seven-year old recently diagnosed with influenzas of being forced to sleep on the cold tile floor for losing a comb by a CBP officer is conscious shocking, cruel, unusual, and outrageous government conduct in violation of the Fifth and Eighth Amendments.

*The Balance of Harms and Public Interest Favor Ending Defendants Cruel Separation of Plaintiffs' Family*

40. The government itself, of which Defendants are a part, has an important interest in promoting family integrity:

the state also shares the interest of the parent and child in their family's integrity, *see Santosky [v. Kramer]*, 455 U.S. 745, 766-67 (1982)] ("the parens patriae interest favors preservation, not severance of natural familial bonds"), because the welfare of the state depends in large part on the strength of the family.

*Jordan by Jordan v. Jackson*, 15 F.3d 333, 346 (4th Cir. 1994); *see also id.* ("The forced separation of parent from child, even for a short time, represents a serious impairment on [parental] rights."). This basic commitment to family values, enshrined in our Constitution, expresses the public interest in this case. *See League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("[T]here is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations.'" (citation omitted)).

41. Defendants cannot name any harm that they could face by an order requiring them to comply with the law and immediately de-designate G.M.C.B. as a UAC, release her from ORR

custody, to effectuate a return to the *status quo ex ante*. The Defendants have wholly lost credibility as to any argument in delaying reuniting the Plaintiffs' family due to any purported safety or health concerns.

### CONCLUSION

42. Plaintiffs urge the Court to enter immediate relief and order the de-designation of G.M.C.B. as a UAC and the reunification of Plaintiffs' family while the other claims in their Petition are adjudicated by the Court.

Respectfully submitted this 1st day of July, 2019.

Respectfully Submitted,

By: /s/ Benjamin G. Messer

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ATTORNEYS FOR THE PLAINTIFF  
*\*Motions pro hac vice forthcoming*

**CERTIFICATE OF NOTICE TO DEFENDANTS**

I, Benjamin G. Messer, counsel for Plaintiffs, certify that I took the following actions to furnish the information and documents to the adverse parties as required by Local Civil Rule 65.1(a):

On June 28, 2018, I informed Sarah B. Fabian, Senior Litigation Counsel in the U.S. Department of Justice's Office of Immigration Litigation by email on [sarah.b.fabian@usdoj.gov](mailto:sarah.b.fabian@usdoj.gov). I informed Ms. Fabian that I represent the Plaintiffs in a case. I indicated that Plaintiffs intend to seek a temporary restraining order and offered to email her all filings to date, or to communicate this information to any other appropriate counsel at Department of Justice. Ms. Fabian ~~responded that~~ *did not respond*.

[XXXXXXXXXXXXXXXXXXXXX]

If the Court sets this application for hearing, undersigned counsel will immediately notify Ms. Fabian by email and telephone.

I also certify that I will serve Defendants with all documents as required by the Federal Rules of Civil Procedure.

/s/ Benjamin G. Messer  
Benjamin G. Messer (DC Bar No. 1026815)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

H.U.C.U. et al. ,

*Plaintiffs,*

-against-

BARR et al.,

*Defendants.*

Case No.

**[PROPOSED] ORDER**

Upon consideration of Petitioners' Application for a Temporary Restraining Order pursuant to pursuant to Federal Rule of Civil Procedure 65(b) and Local Civil Rule 65.1(a), the Petition for Judicial Review of Placement Determination Pursuant to Flores Settlement Agreement and Complaint Seeking Declaratory and Injunctive Relief ("Petition") (ECF No. 1) and exhibits thereto, IT IS HEREBY ORDERED that:

1. Defendants are ORDERED to de-designate G.M.C.B. as a "unaccompanied alien child" ("UAC");
2. Defendants are ORDERED to return Plaintiffs to *the status quo ex ante*, in which G.M.C.B. has not been designated a UAC or placed in a restrictive detention setting – permitting her to immediately be reunited with her parents;
3. Defendants are ORDERED to provide Plaintiffs with frequent, easily facilitated, and confidential communication pending their reunion.
4. Defendants shall file a return on Plaintiffs' Petition by \_\_\_\_\_;

5. Plaintiffs shall have the opportunity to file a reply, if any, by \_\_\_\_\_;
6. This matter shall be heard by the Court on \_\_\_\_\_;
7. And such other and further relief as the Court may find appropriate;
8. It is further ORDERED that security in the amount of \$\_\_\_\_\_ be posted by the  
Petitioner prior to \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day;
9. Service of this Order shall be effected by Petitioner by electronic mail on the United  
States Attorney for the District of Columbia by \_\_\_\_\_ am/pm on \_\_\_\_\_ and shall  
constitute good and sufficient service.

IT IS SO ORDERED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

H.U.C.U. and M.G.B.V, on their own behalfs and  
on behalf of their biological daughter, G.M.C.B. as  
her next friend,

*Plaintiffs,*

-against-

William P. BARR, Attorney General of the United  
States; Kevin K. MCALEENAN, Acting Secretary,  
U.S. Department of Homeland Security;  
John SANDERS, Acting Commissioner, U.S.  
Customs and Border Protection; Alex M. AZAR II,  
Secretary, U.S. Department of Health and Human  
Services; Jonathan HAYES, Acting Director,  
Office of Refugee Resettlement; Hector A.  
MANCHA, JR., El Paso Director of U.S. Customs  
and Border Protection Field Operations; and JOHN  
and JANE DOES # 1-5 CBP Officers at the Clint  
Border Facility,

*Defendants.*

Case No.

**PETITION FOR JUDICIAL REVIEW  
OF PLACEMENT DETERMINATION  
PURSUANT TO FLORES  
SETTLEMENT AGREEMENT**

**COMPLAINT SEEKING  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**MOTION FOR LEAVE TO FILE UNDER PSEUDONYM**

Counsel for the Plaintiffs in the above captioned matter hereby respectfully request leave to file this action under a pseudonym pursuant to to LCvR 5.1(h). A proposed order is attached.

Plaintiffs consist of a seven year old immigrant child seeking asylum, who is contesting her placement and treatment by the United States government. Her parents are plaintiffs to this matter, as well as appearing next friend. The treatment of children on the border is currently a subject of great importance with great interest throughout the country and in the media. In fact, the minor child has already been the subject of many media reports.

As such, revealing the name of the child, or even her parents, subjects them to great harm and even further harm should GMCB ever be subjected to removal from this country. They are persons who have left a country suffering tremendous violence, and indeed, GMCB is seeking protection in the United States. Revealing their identities could subject them to undo danger here and if they were to ever return to their home country.

Accordingly, Plaintiffs, through counsel, request the ability to prosecute this action while maintaining confidentiality of their identities. Furthermore, Plaintiffs include a minor child being represented in this action by their parents. Plaintiffs are thus especially vulnerable and require confidentiality of identity to protect them from further trauma, harm or humiliation.

Respectfully submitted this 1st day of July, 2019.

Respectfully Submitted,

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ATTORNEYS FOR THE PLAINTIFF

*\*Motions pro hac vice forthcoming*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

H.U.C.U. and M.G.B.V, on their own behalfs and  
on behalf of their biological daughter, G.M.C.B. as  
her next friend,

*Plaintiffs,*

-against-

William P. BARR, Attorney General of the United  
States; Kevin K. MCALEENAN, Acting Secretary,  
U.S. Department of Homeland Security;  
John SANDERS, Acting Commissioner, U.S.  
Customs and Border Protection; Alex M. AZAR II,  
Secretary, U.S. Department of Health and Human  
Services; Jonathan HAYES, Acting Director,  
Office of Refugee Resettlement; Hector A.  
MANCHA, JR., El Paso Director of U.S. Customs  
and Border Protection Field Operations; and JOHN  
and JANE DOES # 1-5 CBP Officers at the Clint  
Border Facility,

*Defendants.*

**PROPOSED ORDER**

**IT IS HEREBY ORDERED** that the Plaintiff's motion for leave to proceed under Pseudonyms  
is GRANTED

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**UNITED STATES DISTRICT JUDGE**