

No. 20-55951

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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

v.

**WILLIAM P. BARR, ATTORNEY GENERAL, *et al.*,**  
Defendants-Appellants.

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**PLAINTIFFS-APPELLEES' OPPOSITION  
TO EMERGENCY MOTION TO STAY ORDER PENDING APPEAL**

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ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA  
CASE NO. 2:85-CV-04544-DMG-AGR

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## INTRODUCTION

On September 4, 2020, the district court properly held that the *Flores* Settlement Agreement (“Settlement”)<sup>1</sup> applies to children detained in hotels pending expulsion pursuant to Title 42. The court soundly rejected the Government’s fiction that these children are not in the “legal custody” of the Department of Homeland Security (“DHS”).<sup>2</sup> On September 9, 2020, the Government filed a notice of appeal and on September 11, 2020, an emergency motion for a stay pending appeal.

In attempting to satisfy the requirements for a stay, the Government grossly distorts the district court’s order. Notably, the district court did *not* “prohibit[] the government from using hotels to hold minors pending expulsion under the CDC order.” Emergency Motion Under Circuit Rule 27-3 for Administrative Stay and Stay Pending Appeal, September 11, 2020 (ECF 2-1) (“Mot. for Stay”) at 3. Further, the district court did *not* order the Government “to place minors into congregate facilities in direct contravention of the CDC order’s aims . . . .”

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<sup>1</sup> The Settlement, entered as a consent decree in 1997, provides “minimum standards for the detention, housing, and release of non-citizen juveniles who are detained by the government.” *Flores v. Sessions*, 862 F.3d 863, 866 (9th Cir. 2017).

<sup>2</sup> The Settlement binds DHS and the Department of Health and Human Services (“HHS”). *See Flores v. Barr*, 934 F.3d 910, 912 n.2 (9th Cir. 2019).

Mot. for Stay at 4-5. Lastly, the district court did *not* “grant[] Defendants’ request for a stay . . . to allow them to pursue a stay from this Court.” Mot. for Stay at ii.

The court *did* order the Government to abide by the Settlement, which requires that children be placed in “licensed facilities as defined in Paragraph 6 [of the Settlement] as expeditiously as possible.” Order Re Plaintiffs’ Motion to Enforce Settlement as to “Title 42” Class Members [920], September 4, 2020 (ECF 2-2) (“District Court Order”) at 17. Additionally, the district court *did* (i) stay its entire order for four days so that the Government could “file an ex parte application for a stay,” Transcript of Teleconference Proceedings, September 4, 2020 (ECF 4) (“Hearing Tr.”) at 15; (ii) allow the Government to continue placing children in hotels for seven days so it would have time “to seek whatever stay you wish whether that is before me or the Ninth Circuit,” *id.* at 16; and (iii) specifically invite the Government to present “facts that you think cause it to be either dangerous or difficult to be able to implement my order . . . in your ex parte application.” *Id.* at 17.

The Government’s motion fails to establish either that it will be irreparably injured absent a stay or that detaining children in hotels, rather than licensed facilities, would prevent or slow the spread of COVID-19. Similarly, the Government fails to establish a likelihood of succeeding on the merits of its

appeal. As the district court held, the Settlement is binding with respect to all children in Defendants’ “legal custody” and, as used in the Settlement, “legal custody” signifies “the right and responsibility to care for the well-being of the child and make decisions on the child’s behalf.” District Court Order at 6. The uncontroverted facts show that DHS controls where and how children are being detained, and it does so without the slightest involvement of the Centers for Disease Control and Prevention (“CDC”).

Strongly bolstering the lower court’s legal analysis is that Congress, in enacting the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 110 Pub. L. 457, 122 Stat. 5044, codified in pertinent part at 8 U.S.C. § 1232, (“TVPRA”) both preserved the Settlement inviolate *and* required *all* federal agencies to transfer unaccompanied minors to the Office of Refugee Resettlement (“ORR”) within three days so that they may be “promptly placed in the least restrictive setting that is in the best interest of the child.” *Id.*

The Government has not demonstrated that complying with the Settlement would increase the risks of transmission of COVID-19, whereas children will suffer substantial and concrete harm if they are denied the Settlement’s protections pending appeal. A stay should be denied.

## STANDARD OF REVIEW

“A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant.” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal citations and quotation marks omitted). The Court’s “analysis is guided by four factors: ‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’”<sup>3</sup> *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 769-70 (9th Cir. 2018) (quoting *Nken*, 556 U.S. at 433-34). As the party seeking the stay, the Government bears the “burden of showing that the circumstances justify an exercise of [the Court’s] discretion” to grant a stay. *Nken*, 556 U.S. at 434. The Government’s burden to show irreparable harm cannot be satisfied with “conclusory factual assertions and speculative arguments that are unsupported in the record.” *Doe # 1 v. Trump*, 957 F.3d 1050, 1059-60 (9th Cir. 2020).

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<sup>3</sup> “‘The first two factors . . . are the most critical,’ and the ‘mere possibility’ of success or irreparable injury is insufficient to satisfy them.” *East Bay Sanctuary Covenant*, 932 F.3d 742, 770 (9th Cir. 2018) (quoting *Nken*, 556 U.S. at 434); see also *Doe # 1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020).



## ARGUMENT

## I. THE MOTION IS PROCEDURALLY IMPROPER BECAUSE THE GOVERNMENT DID NOT FIRST MOVE FOR A STAY IN THE DISTRICT COURT.

A stay should be denied because the Government failed to move for a stay before the district court and has made no showing that “moving first in the district court would be impracticable.” Fed. R. App. P. 8(a)(1), (a)(2)(A)(i); *see also* Ninth Circuit Rule 27-3(c)(v). The Government’s request to the district court for a short stay to permit an application for emergency relief does not satisfy Rule 8 because the Government offered no substantive argument regarding the stay factors and did not ask for a full stay pending appeal. Hearing Tr. at 12-18. The district court stayed its order to allow time for a formal *ex parte* stay application and made clear that it would consider any new facts that would make it “dangerous or difficult” to implement the district court’s order. *Id.* at 12, 15-18.

It is especially important that the district court consider this motion in the first instance because the Government seeks to present arguments and evidence, including three new declarations, for the first time on appeal. *See NRDC v. Winter*, 502 F.3d 859, 865 n.29 (9th Cir. 2007) (striking declaration that “contains new evidence not presented to the district court” (citing Fed. R. App. P. 10(a))); *Chemical Weapons Working Group (CWWG) v. Dep’t of the Army*, 101 F.3d 1360, 1362 (10th Cir. 1996) (“[T]he fundamentally different roles of appellate and trial courts mandate consideration of the new evidence by the district court . . . before

Rule 8 proceedings in this court.”)<sup>4</sup> The district court has deep familiarity with the Settlement and is in the best position to evaluate the Government’s new evidence and arguments. *Nehmer v. U.S. Dep’t of Veterans Affairs*, 494 F.3d 846, 860 (9th Cir. 2007) (noting “the importance of the district court’s role in interpreting a consent decree” especially “when the district court has overseen a remedial decree for many years”).

II. THE GOVERNMENT WILL NOT BE IRREPARABLY INJURED ABSENT A STAY.

The Government also fails to meet its burden of demonstrating that “irreparable injury is likely to occur during the period before the appeal is decided.” *Doe # 1*, 957 F.3d at 1059; *see also Nken*, 556 U.S. at 434 (“[S]imply showing some possibility of irreparable injury fails to satisfy the second factor.”). This failure is fatal to the Government’s application for a stay.

First, the Government mischaracterizes the district court’s order. The district court did not require it to transfer all children held pursuant to Title 42 to congregate care—the order clearly requires transfer to *licensed facilities* and makes exceptions for short hotel stays. District Court Order at 17-18. The Government is

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<sup>4</sup> The Government offered no such evidence to the district court supporting its instant argument regarding purported difficulties in placing children in ORR and U.S. Immigration and Customs Enforcement (“ICE”) facilities, despite the fact that this issue relates directly to Settlement compliance. *See* District Court Order at 12; Settlement (ECF 2-3) ¶ 12.A.3 (requiring that children be placed in licensed programs “as expeditiously as possible” in case of “emergency or influx”).

free to place unaccompanied children in licensed foster care placements, of which it has many and which are not congregate care. Ex. 1, ORR Juvenile Coordinator Report, August 24, 2020 (D. Ct. Dkt. 932-2) (“Aug. JuvCo Report”) at 2 (noting ORR has 1,903 temporary foster care beds available and licensed shelters at 3% capacity with over 10,000 beds available).

Second, the Government improperly relies on the *speculative* harm of transferring children to licensed facilities. *See Doe # 1*, 957 F.3d at 1059-60 (“conclusory factual assertions and speculative arguments” insufficient to warrant stay). The Government’s speculative harm relies on a false premise: *i.e.*, that the district court’s order requires it to place *all* children designated for Title 42 expulsion in congregate care facilities. *See* Declaration of Russell Hott, Sept. 10, 2020 (ECF 2-6) (“Hott Decl.”) ¶ 7 (wrongly assuming “*all family units subject to Title 42* must be housed at FRCs . . .” (emphasis added)); Declaration of Raul L. Ortiz, Sept. 11, 2020 (ECF 2-4) (“Ortiz Decl.”) ¶ 7 (wrongly assuming “that the court’s order prohibits ICE from holding *any minor processed under the CDC Order* in hotels pending their return”(emphasis added)).

The Government next argues that implementing the district court’s order risks “unchecked introduction of COVID-19 into the United States,” Mot. for Stay at 17, but “fail[s] to demonstrate how hotels, which are otherwise open to the public and have unlicensed staff coming in and out, located in areas with high

incidence of COVID-19, are any better for protecting public health than licensed facilities would be.” District Court Order at 10; *see also id.* at 12, 15; Ex. 3, Interim Report of Independent Monitor and Dr. Paul Wise, August 26, 2020 (D. Ct. Dkt. 938) (“Aug. Interim Report”) at 16-17 (Independent Monitor reports DHS lacks formal protocols for managing COVID-19 at hotels); Ex. 2, Interim Report of Independent Monitor, July 22, 2020 (D. Ct. Dkt. 873) (“July Interim Report”) at 9, 12, 18 (MVM staff work in three rotating shifts, assist children with bathing, nutrition, and play; hotel staff clean children’s rooms once per day); Ex. 4, Declaration of Mellissa Harper (D. Ct. Dkt. 925-1) (“Harper Decl.”) ¶ 19 (MVM staff work in shifts).<sup>5</sup>

The Government has repeatedly asserted that ORR could safely detain children in congregate facilities during the pandemic when it was operating at 30% capacity. *See, e.g.*, Ex. 5, Declaration of Jallyn Sualog, March 27, 2020 (D. Ct. Dkt. 736-1) (“March 27 Sualog Decl.”) ¶¶ 15-31. And as of August 22, 2020, ORR’s congregate shelters were 97% empty. *See* Aug. JuvCo Report. The

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<sup>5</sup> Similarly, the Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists (“Closure Order”) does not address ORR or ICE facilities. The findings in the Closure Order are specific to concerns regarding implementation of screening, isolation, and social distancing practices at Customs and Border Protection (“CBP”) holding facilities. Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists, 85 Fed. Reg. 31,503, 31,507 (May 26, 2020).

Government has also represented that ORR has the ability to test and quarantine children, even when detaining far more children in congregate settings than it is now. *See* March 27 Sualog Decl. ¶¶ 15-31, 42 (ORR had 3,600 minors in care, or 28% occupancy, is highly “experience[d] with the identification, mitigation, and treatment of contagious diseases,” and has implemented “rigorous” COVID-19 protocols in depopulated shelters); *id.* ¶ 13 (ORR “ha[d] additional capacity and more opportunity to ensure social distancing and isolation within the care provider network.”); Ex. 6, Declaration of Dr. Amanda Cohn, March 27, 2020 (D. Ct. Dkt. 736-11) ¶¶ 23, 26 (“... ORR ha[d] adequate space within its facilities to isolate any UAC suspected of or confirmed to be infected with COVID-19 ... UAC[s] in ORR care are not at any significantly increased risk from COVID-19.”).

Given the foregoing, the Government’s claim that “ORR is already at its functional intake capacity,” Declaration of Jallyn Sualog, Sept. 11, 2020 (ECF 2-5) (“Sept. 11 Sualog Decl.”) ¶¶ 43-44, strains credulity. Of the 577 unaccompanied children the Government reports having detained in hotels from mid-April to July, it held 436 children for three or more days—a number that ORR could easily accommodate over four months. *See* Ex. 7, Declaration of Melissa Adamson, “Ex. 1 Title 42 Data Summary,” Aug. 28, 2020 (D. Ct. Dkt. 960-1) (“Adamson Decl. Data Summary”) at 6 (D. Ct. Dkt. 960-1 at 14). With 13,373 shelter and foster home beds, ORR could accommodate some 4,000 children before exceeding the

30% occupancy rate it has repeatedly represented as safe. And as of September 8, there were 1,097 children in ORR custody. *See* Aug. JuvCo Report at 2 (as of August 22, ORR had a total of 10,735 shelter beds, 2,004 transitional foster care beds, and 634 long-term foster care beds); Sept. 11 Sualog Decl. ¶ 42.

Given the vast number of vacant licensed beds at the Government’s disposal, and its repeated assurances that housing children in dramatically depopulated facilities is safe notwithstanding the pandemic, the Government’s instant claims of “irreparable harm” fall short. As the district court found, “All 197 unaccompanied minors hotelled in July could have been sent to ORR without making a dent in the facilities’ capacity—making Defendants’ claim that hoteling is necessary to alleviate an emergency ring especially hollow.” District Court Order at 13.

Finally, as the district court notes, DHS is itself transferring children, ostensibly detained under Title 42, to ORR facilities, including some who *test positive for COVID-19*. *See* District Court Order at 11. DHS officials, not public health officials, make these determinations.<sup>6</sup> *Id.* at 6-7. Given these uncontroverted facts, the Government has wholly failed to demonstrate that it would be irreparably injured absent a stay. *East Bay Sanctuary Covenant*, 932 F.3d at 778.

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<sup>6</sup> Notably, none of the Government’s declarants in support of its motion are public health officials.

III. THE GOVERNMENT HAS NOT DEMONSTRATED LIKELIHOOD OF SUCCESS ON THE MERITS.

The district court properly held that pursuant to the Settlement’s plain language,<sup>7</sup> the Settlement protects children DHS detains under Title 42 and requires that they be placed in a licensed facility expeditiously. District Court Order at 17. The Government’s detaining children in hotels for extended periods in lieu of licensed placement is a clear-cut violation of the Settlement.

**A. The Settlement protects children designated for expulsion under Title 42 because they are in DHS’s legal custody and wholly under DHS control.**

The Settlement covers “all minors who are detained in the legal custody of the INS.” *Flores v. Lynch*, 828 F.3d 898, 902 (9th Cir. 2016) (quoting Settlement ¶ 10). This Court has made clear that the Settlement protects *all* minors in the legal custody of the successors of the Immigration and Naturalization Service (“INS”). *Id.* at 905-06, 910.

The district court properly held that the Settlement uses “legal custody” as that term is used in family law: that is, as referring to the entity with decision-making authority over a child’s life. *See* District Court Order at 6 (citing Black’s

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<sup>7</sup> “The Settlement is a consent decree, which, ‘like a contract, must be discerned within its four corners, extrinsic evidence being relevant only to resolve ambiguity in the decree.’” *Flores v. Lynch*, 828 F.3d 898, 905 (9th Cir. 2016) (quoting *United States v. Asarco Inc.*, 430 F.3d 972, 980 (9th Cir. 2005)).

Law Dictionary (11th ed. 2019); Cal. Fam. Code §§ 3003, 3006). This is consistent with how the term is used throughout the Settlement. *See* District Court Order at 5-6 (citing Settlement ¶¶ 14-16, 19).<sup>8</sup>

The Government does not contest the district court’s finding that DHS exercises plenary decision-making power over children it purports to detain under Title 42, including control over their apprehension, detention, medical care, release, and even the choice whether to expel children under Title 42 or process them under Title 8.<sup>9</sup> *See* District Court Order at 6-8; *see also* Harper Decl. ¶¶ 1-2, 11, 13-20; Hott Decl. ¶ 12. This is precisely the decision-making authority the INS exercised under the Settlement. *See* Settlement ¶¶ 19-20. The CDC, by contrast, plays no discernable role in DHS’s control over children nominally detained under Title 42. *See* District Court Order at 6-8.<sup>10</sup>

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<sup>8</sup> The Government also acknowledged that when the parties entered into the Settlement the “distinction between legal custody and physical custody was clearly understood in California,” with “legal custody” referring to “the power to make major decisions affecting the life of the child.” Defs’ Response to Pls’ Report on Parties’ Conference re “Title 42” Class Members (D. Ct. Dkt. 900) at 5-6 n.2 (citing *In re Jennifer R.*, 17 Cal. Rptr. 2d 759, 763 (Ct. App. 1993)).

<sup>9</sup> It is undisputed that DHS and its component entities CBP and ICE are successors to the INS for purposes of the Settlement. *See* Mot. for Stay at 6.

<sup>10</sup> Even if children were in HHS’s legal custody through the CDC, unaccompanied non-citizen children would still be class members because the TVPRA transferred responsibility for the care and custody of unaccompanied children to HHS and HHS is bound by the Settlement. *See Flores v. Barr*, 934 F.3d at 912 n.2; 8 U.S.C. §§ 1232(b)(1), (c)(2)(A), (c)(3). The district court did not reach this argument in



The Government fails to offer *any* legal authority for its assertion that “the term ‘legal custody’ refers to the source of law that gives rise to the custody of the child.” Mot. for Stay at 11. The Settlement nowhere limits its coverage to children taken into custody under Title 8. *See* District Court Order at 8-9. Congress has provided that the Settlement remain binding even as it has itself enlarged the legal framework governing the Government’s detention of children. *See Flores v. Sessions*, 862 F.3d 863, 870-871, 879 (9th Cir. 2017) (holding that the Homeland Security Act (“HSA”) and the TVPRA preserved the Settlement).

Even were the statutory authority for detention relevant, the Closure Order covers *only* non-citizens whom DHS would otherwise detain under Title 8. *See* 85 Fed. Reg. at 31,507.<sup>11</sup> The Order nowhere intimates that the CDC will assume legal custody of anyone.

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light of its conclusion that “DHS unquestionably has legal custody of the minors within the meaning of the *Flores* Agreement.” District Court Order at 11 n.8.

<sup>11</sup> The Closure Order applies only to “[p]ersons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land or coastal Port of Entry (POE) or Border Patrol station” and excludes among others, U.S. citizens, green card holders, and individuals with valid travel documents. *See* 85 Fed. Reg. at 31,507. Notably, neither 42 U.S.C. § 265 nor its implementing regulation, 42 C.F.R. § 71.40, includes any reference to “detention” or “custody.” That the parties did not specifically anticipate the Government’s novel interpretation of 42 U.S.C. § 265 to justify the detention of non-citizen children pending expulsion does not mean that class members lack protection under the Settlement. *See Flores v. Lynch*, 828 F.3d at 906 (“[T]hat the parties gave inadequate attention to some potential problems of accompanied minors does not mean that the Settlement does not apply to them.”).

**B. The Government could simultaneously comply with the Settlement, the TVPRA’s placement provisions, and Title 42.**

The Government’s motion is premised on a flawed assumption that providing children appropriate placement and carrying out the Closure Order are zero-sum propositions. The Government has failed to show how a licensed placement “introduces” a child into the United States any more than detaining them in a hotel open to the general public does. District Court Order at 10, 12.

Nor is there any conflict between providing children licensed placement and the Closure Order, which is concerned with CBP facilities and mentions neither ORR nor ICE residential facilities. *See* 85 Fed. Reg. at 31,507. By all indications from the CDC, ORR is far better able to screen and isolate children exposed to COVID-19 than CBP. *Compare* Cohn Decl. ¶¶ 8, 20, 23, 26-27, *with* 85 Fed. Reg. at 31,507.

The DHS “hoteling” practice, by contrast, plainly conflicts with the TVPRA, which both (1) preserves the Settlement; and (2) directs *all* federal agencies to transfer the custody of unaccompanied minors to “the Secretary of Health and Human Services not later than 72 hours . . . ,” who must then “promptly” place them “in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. §§ 1232(b)(3), (c)(2)(A); *see also Flores v. Sessions*, 862 F.3d at 871 (TVPRA preserved and “partially codified the Settlement by creating statutory

standards for the treatment of unaccompanied minors” (quoting *Flores v. Lynch*, 828 F.3d at 904)).<sup>12</sup>

The Government fails to answer the district court’s finding that detention in hotels conflicts with the TVPRA. *See* District Court Order at 10. As the district court concluded, “The Court need not force a construction that would render the Agreement and the TVPRA incompatible with Title 42 when a perfectly reasonable interpretation that harmonizes them is available.” District Court Order at 10 (citing *Morton v. Mancari*, 417 U.S. 535, 551 (1974)).

**C. The Government is not placing children in licensed facilities as expeditiously as possible.**

The Settlement requires that children be placed in a non-secure facility with a state license to care for dependent children within 72 hours or, in the case of an “emergency or influx,” “as expeditiously as possible.” District Court Order at 12; Settlement ¶¶ 6, 12.A, 19. The district court recognized that “the COVID-19 pandemic presents an ‘emergency’ situation that could slow down the rate of

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<sup>12</sup> The Government has not disputed that unaccompanied children designated under Title 42 meet the statutory definition of an “unaccompanied alien child.” *See* 6 U.S.C. § 279(g)(2).

placements,” but correctly found that the Government makes no effort at all to transfer Title 42 children to licensed placements.<sup>13</sup> District Court Order at 12-13.

The Government never argued to the district court why it should have any difficulty transferring children to licensed placements within three days.<sup>14</sup> See Defs’ Opp. to Mot. to Enforce (D. Ct. Dkt. 925). New evidence and arguments raised for the first time on appeal are not properly before the Court and are not relevant to the Government’s likelihood of success on the merits. See *Greisen v. Hanken*, 925 F.3d 1097, 1115 (9th Cir. 2019); *Lowry v. Barnhart*, 329 F.3d 1019, 1024-26 (9th Cir. 2003).

IV. A STAY WOULD HARM HUNDREDS OF CHILDREN RELEGATED TO UNLICENSED AND UNMONITORED PLACEMENTS.

Both the Independent Monitor’s reports and Plaintiffs’ evidence establish that children will suffer irreparably if DHS continues to detain them for days or

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<sup>13</sup> The Government’s assertion that the district court “ignor[ed]” paragraph 12 and disregarded its prior rulings providing additional time for transfer is plainly inconsistent with the record. Mot. for Stay at 15; see District Court Order at 12-13.

<sup>14</sup> The Government alluded in a footnote to potential “downstream consequences” of an order requiring licensed placement. Defs’ Opp. at 19 n.8. But it cited a March 2020 declaration from a CDC official, who stated, “ORR has adequate space within its facilities to isolate any UAC suspected of or confirmed to be infected with COVID-19” because it is “operating at approximately 30% capacity.” Cohn Decl. ¶ 23. Given that ORR shelters are currently operating at 3% capacity, with over 10,000 vacant beds, the CDC’s declaration posits no obstacle whatsoever to licensed placement, but instead confirms that the Government could easily afford Title 42 children it detains more than three days licensed placement as the Settlement and the TVPRA require. See District Court Order at 13.

weeks in unlicensed and unmonitored hotel rooms where they are clearly being denied basic protections the Settlement requires. *See* District Court Order at 12, 15-16; Settlement ¶¶ 12, 19, 32, Ex. 1 A.3-7. The district court accordingly found that “hoteling [] does not meet a number of requirements of licensed programs under the Agreement, including providing an individualized needs assessment, education services, daily outdoor activity, and counseling sessions, among others.” District Court Order at 12.<sup>15</sup>

The Government admits to having detained children in hotel rooms for up to 28 days, and it has likely detained them in irregular facilities for even longer.<sup>16</sup> *See* District Court Order at 11; Aug. Interim Report at 12. As the district court found, “Children as young as 10 are left alone with an adult who has no qualifications or

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<sup>15</sup> This Court has recognized the importance of access to outdoor recreation even for adults. *See Thomas v. Ponder*, 611 F.3d 1144, 1152 (9th Cir. 2010) (“For over thirty years, we have emphasized that ‘some form of regular outdoor exercise is extremely important to the psychological and physical well-being of the inmates.’” (quoting *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979))). Children are even more vulnerable to psychological harm. *See* July Interim Report at 18 (“[I]solating a child alone in a hotel room for 10-14 days can have a more harmful emotional impact than that seen in adults.”).

<sup>16</sup> There were significant inconsistencies in the Government’s data submissions regarding children held in hotels. *See* District Court Order at 4 n.2; Aug. Interim Report at 11 n.9; Adamson Decl. Data Summary at 1-4 (D. Ct. Dkt. 960-1 at 9-13). Its most recent data indicate that DHS detained two children at a hotel for 38 days. *See* Supplemental Declaration of Mellissa Harper, Attachment A, at 7 (under seal) (D. Ct. Dkt. 972) (minors S.V. and A.P.V. listed as detained at a hotel from 6/9/2020 to 7/17/2020).

training in childcare,”<sup>17</sup> “[t]here appear to be no separate standards for how 10-year-olds are cared for compared to 17-year-olds,” and “oversight of the hoteling program is vague and minimal.” District Court Order at 14.<sup>18</sup> In at least one instance, “the trauma [a] child endured as a trafficking victim was compounded by DHS’s treatment of the child and her placement in Title 42 proceedings.” Ex. 8, Declaration of Karla Marisol Vargas (D. Ct. Dkt. 920-2) ¶ 20.<sup>19</sup>

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<sup>17</sup> Children and families detained in hotels are constantly surveilled by contracted “Transportation Specialists” who, by the Government’s own admission, have had a mere 16 hours of training that is meant to cover 15 different topics ranging from “self-defense” and “child development” to “ethics and authority” and “bloodborne pathogens and respiratory viruses . . . .” Holt Decl. ¶ 12. Plaintiffs object to the Government’s use of these declarations on appeal because this evidence was not previously presented to the district court. *See NRDC*, 502 F.3d at 865 n.29; *Lowry*, 329 F.3d at 1024-26.

<sup>18</sup> The American Academy of Pediatrics has stated that DHS’s practice of detaining children in hotels is “traumatizing” for vulnerable immigrant children. Sally Goza, *AAP Statement on Media Reports of Immigrant Children Being Detained in Hotels*, Am. Acad. Pediatrics, July 23, 2020, <https://services.aap.org/en/news-room/news-releases/aap/2020/aap-statement-on-media-reports-of-immigrant-children-being-detained-in-hotels/> (“This practice is traumatizing to children who have already endured so much, who are not old enough to have made their own decisions about how to arrive at our border, and who cannot communicate their fears and needs.”) (as cited in D. Ct. Dkt. 920-1).

<sup>19</sup> According to one news report, J.B.B.C., a 16-year-old boy DHS detained for weeks at an El Paso hotel, stated, “I felt locked up. I felt alone and isolated . . . . I didn’t know what time of day it was. I didn’t know what day it was. I felt utterly disconnected from society. I just felt anxiety and depression.” Hamed Aleaziz, “*I Felt Alone*”: *The Story Of How An Immigrant Teenager Fought To Stay In The US While Under Guard In A Texas Hotel*, BUZZFEED, July 24, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-teenager-successfully-fights-to-stay-in-us> (as cited in D. Ct. Dkt. 920-1).

Compounding the foregoing is that DHS holds children in hotels virtually incommunicado, denying them meaningful access to counsel. Children's lawyers and families report having to overcome immense obstacles even to discover their whereabouts. District Court Order at 15-16. Staying the district court's order would cut off Plaintiffs' counsel and the Independent Monitor's ability to monitor the treatment and conditions children experience during Title 42 detention, leaving both to the unbridled discretion of DHS and its unlicensed MVM contractor.<sup>20</sup> With little or no access to counsel, children have no ability to defend themselves. The few Title 42 children who have managed to secure the assistance of counsel, by contrast, have succeeded in having DHS re-designate them as Title 8 detainees, whereupon they are promptly transferred to licensed facilities. *See* District Court Order at 7.

V. IMMEDIATE ENFORCEMENT OF THE SETTLEMENT SERVES THE PUBLIC INTEREST.

In 2008, some six decades after last visiting 42 U.S.C. § 265, Congress incorporated into federal law the public's interest in ensuring that children are

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<sup>20</sup> Settlement paragraph 32 requires the Government to allow Plaintiffs' counsel access to detained children to monitor compliance with the agreement. Presented with voluminous evidence that DHS has systematically violated the Settlement, the district court appointed the Independent Monitor to bolster compliance oversight. *See* Order Appointing Special Master/Independent Monitor, October 5, 2018 (D. Ct. Dkt. 494).

housed in safe and appropriate facilities through the TVPRA. *See* 8 U.S.C. § 1232; *see also Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (emphasizing “the interests of society to protect the welfare of children”); *Flores v. Sessions*, 862 F.3d at 881 (“[T]he HSA and TVPRA were intended to address the unique vulnerability of minors who enter this country unaccompanied, and to improve the treatment of such children while in government custody.”). Permitting the Government to circumvent the Settlement and the TVPRA is contrary to the public’s interest “in ensuring that statutes enacted by their representatives are not imperiled by executive fiat.” *East Bay Sanctuary Covenant*, 932 F.3d at 779 (internal citations and alterations omitted).

#### CONCLUSION

For the foregoing reasons, the Government’s motion should be denied.<sup>21</sup>

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<sup>21</sup> To the extent the Court is inclined to grant the Government’s motion, it should stay no more than paragraphs 2 and 3 of the District Court Order, such that monitoring of children held in hotels may proceed. Nothing in the Government’s motion suggests it would suffer irreparably should monitoring proceed pending disposition of their instant appeal.



Dated: September 15, 2020

CARLOS R. HOLGUÍN  
Center for Human Rights &  
Constitutional Law

LEECIA WELCH  
NEHA DESAI  
POONAM JUNEJA  
FREYA PITTS  
MELISSA ADAMSON  
National Center for Youth Law

/s/ Leecia Welch

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Leecia Welch

*Jenny L. Flores, et al. v. William P. Barr, et al.*  
Case No. 20-55951

**Exhibit Index to Plaintiffs'/Appellees'  
Opposition to Emergency Motion to Stay**

<b>Exhibit</b>	<b>Exhibit Description</b>	<b>District Court Docket No.</b>
1	August 24, 2020 ORR Juvenile Coordinator Report (“Aug. JuvCo Report”)	932-2
2	Interim Report on the Use of Temporary Housing for Minors and Families Under Title 42 by Independent Monitor, July 22, 2020 (“July Interim Report”)	873
3	Interim Report on the Use of Temporary Housing for Minors and Families under Title 42 by Independent Monitor and Dr. Paul Wise, August 26, 2020 (“Aug. Interim Report”)	938
4	Declaration of Mellissa Harper, August 21, 2020	925-1
5	Declaration of Jallyn Sualog, March 27, 2020	736-1
6	Declaration of Dr. Amanda Cohn, March 27, 2020	736-11
7	Declaration of Melissa Adamson, Title 42 Data Summary, August 28, 2020	960-1
8	Declaration of Karla Marisol Vargas, August 13, 2020	920-2

# **EXHIBIT 1**

# AUGUST 24, 2020 ORR JUVENILE COORDINATOR REPORT

## ORR JUVENILE COORDINATOR INTERIM REPORT

August 24, 2020

Aurora Miranda-Maese, ORR Juvenile Coordinator

### Introduction

On April 24, 2020, The Honorable Dolly M. Gee of The United States District Court for the Central District of California held a third hearing on the Motion for Temporary Restraining Order on Jenny L. Flores, et al. v. William P. Barr, et al., directing the undersigned designated as the Office of Refugee Resettlement (ORR), Juvenile Coordinator, Aurora Miranda-Maese, to file an Interim Report monthly during the pendency of the national health emergency related to the COVID-19 pandemic. ORR updated reports have continued to be filed as ordered and the last report was submitted by the undersigned on July 24, 2020. A Status Conference was held on August 7, 2020, at which time Your Honor granted the Juvenile Coordinator an extension to file the next report, thus the report is being submitted to the Court on August 24, 2020.

Subsequent to the Court Order, the undersigned continued in collaboration with the workgroup to assist in obtaining the data from all congregate care shelters and transitional foster care nationwide, on issues as they pertain to the six Court-ordered topics. Under the Juvenile Coordinator, this workgroup has continued using the same methodology to collect data with questionnaires requesting specific information as they pertain to the prior Court Orders. In addition, the Court Order dated August 7, 2020, directed the ORR Juvenile Coordinator to expand the requirements of the April 24, 2020 Order by detailing the reasons that release is delayed due to unavailable fingerprinting services or an inability to complete the home study for each minor.

During this reporting period, which covers July 14, 2020 through August 14, 2020, approximately 350 cases were reviewed individually. The census of minors in ORR custody has increased slightly since our last report as more minors were placed in ORR custody during the past month than during the periods covered in previous reports. From July 14 to August 14, 2020, 238 minors were placed in ORR custody. As of August 22, 2020, there were approximately 316 minors residing in congregate care facilities. The workgroup continued to collaborate with ORR grantee staff, Federal Field Specialists (FFS), and other ORR staff members to obtain the information needed from the ORR network.

Figure 1 below provides minors' census information and discharges since the onset of when the Juvenile Coordinator began tracking this information. Also listed below is Figure 2, which details ORR's total bed capacity by residence type as of August 22, 2020.

Figure 1: ORR Census & Discharges from March 15 to August 22, 2020<sup>1</sup>

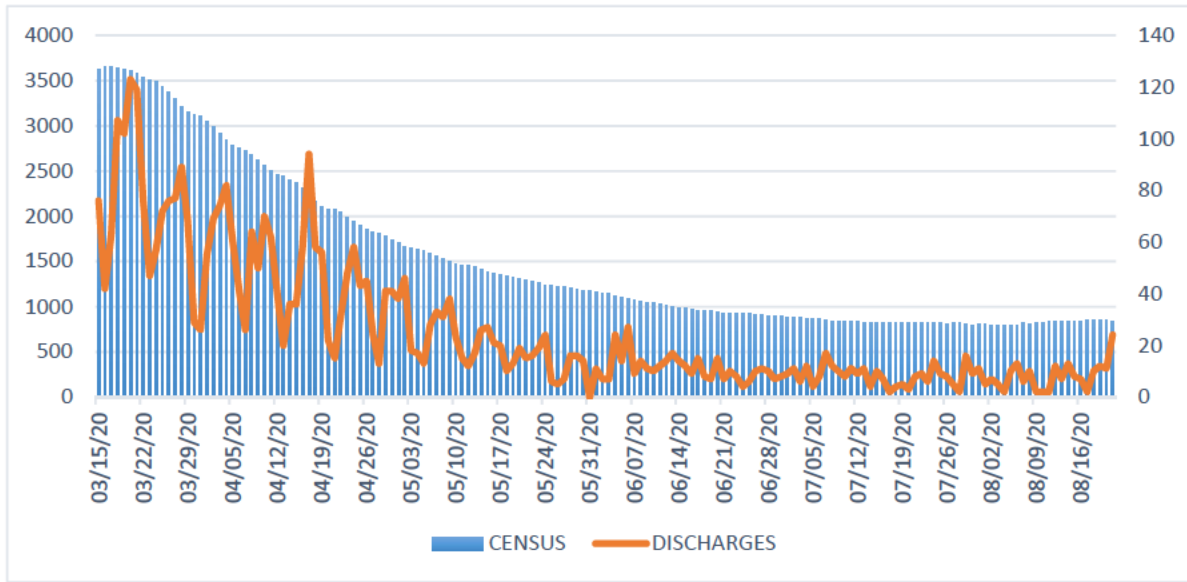


Figure 2: ORR Bed Capacity by Residence Type as of August 22, 2020<sup>2</sup>

ORR Program Type	Total Beds	# of Beds Occupied (% of total beds)	# of Beds Not Occupied (% of total beds)
Shelter	10,735	281 3%	10,454 97%
Staff Secure	162	20 12%	142 88%
Secure	34	9 26%	25 74%
RTC	50	6 12%	44 88%
TFC	2,004	101 5%	1,903 95%
LTFC	634	424 67%	210 33%
<b>TOTAL</b>	<b>13,619</b>	<b>841 6%</b>	<b>12,778 94%</b>

<sup>1</sup> The census reflected in Figure 1 is a snapshot of the minors in care from March 15 - August 22, 2020, in addition to the daily discharges.

<sup>2</sup> Census for minors in ORR custody constantly fluctuate as children are admitted, transferred, and discharged at all times of each day. Therefore, the census reflected in Figure 1 is a snapshot of the capacity at the exact time that the review was conducted.

This report provides updates to the six topics ordered to be covered by the Juvenile Coordinator, which follows below:

- I. Measures taken to expedite the release of Class Members to suitable custodians during the COVID-19 health emergency, including the status of fingerprinting and home study policies and practices, in compliance with this Order, and provide census data as to any minors who remain in custody due to lack of fingerprinting or home studies.

### Fingerprinting Policies and Practices

Per a prior Court Order, ORR amended its fingerprinting policy July 21, 2020 (attached in previous Juvenile Coordinator Report dated July 24, 2020).

As of August 21, 2020, all ORR digital fingerprinting sites are operational.

Fingerprinting services are among the initial criteria initiated in the family reunification process. In cases where fingerprinting is not immediately available but other reunification requirements are still pending, case managers continue to search for alternative locations within a reasonable distance and continue to communicate with the persons regarding their options. Where no reasonable alternative fingerprinting options are available and fingerprinting is the only requirement delaying release, ORR determines whether provisional release is appropriate.

### Status of Fingerprinting Delays Where Minors Remain in ORR Custody

As of August 17, 2020, there were no minors in ORR care whose release was delayed because COVID-19 closures made fingerprinting services unavailable to sponsors.

### Home Study Policies and Practices

ORR issued Home Study Practice Guidance due to COVID-19 on May 6, 2020 (attached in previous Juvenile Coordinator Report dated June 8, 2020). ORR is in alignment with the many states who have imposed restrictions on movement or shelter-in-place orders for residents due to the COVID-19 pandemic. It remains paramount that minors are released to a safe and healthy environment with a sponsor who is able to meet their needs. It is also important to protect the staff who conduct home studies and assure they feel safe and supported during this time as well.

ORR’s home study providers are to follow their respective state’s official guidance on conducting home visits/home studies for domestic minors. ORR honors the state’s guidance until further notice is provided to the shelter network from ORR. If no official state guidance has been issued on conducting home studies during the COVID-19 pandemic or if states require that the home visit be conducted in person, ORR home study providers can seek a waiver on the in-person home visit via the Federal Field Specialist (FFS) for that region. ORR continues to assess on an individual basis if a virtual home visit should take place in lieu of the in-person contact.

Home study reports must still be submitted within 10 business days of the receipt of the home study referral, and documentation is made in the minor's file as to which method was used to conduct the home study. As of August 17, 2020, there were no minors in ORR custody with home study delays due to COVID-19.

- II. Identify the location of any ORR facility that has had any individual, whether minor or staff member, test positive for COVID-19, and provide a status report and census of those infected at that facility during the reporting period.

Under the Juvenile Coordinator, the workgroup has continued to utilize the questionnaires to the ORR network with specific questions regarding the census of minors who tested positive for COVID-19. Additionally, follow up was conducted with the ORR field staff assigned to the programs to address the status of those infected to determine whether any minors remained in isolation, quarantine or had been medically cleared. Also, inquiries were made to the assigned field staff regarding activities, education and methods of socialization that were conducted with minors while in quarantine.

One of shelters that has minors in quarantine delivers general presentations and educational material provided by teachers throughout the morning and afternoon hours. Once classes are complete, minors participate in vocational classes (i.e. general arts and media) and then recreational and fitness activities in their rooms.

An example at one of the shelters describes the quarantined minors as having a room very similar to the other minors in care. The room is equipped with a twin size bed with colorful linens, a private in-room bathroom and child friendly artwork and decor. Each minor is able to draw with chalk, hang drawings and personalize their bedroom. Also, each child is provided a deck of playing cards, a journal to write in, a sketchpad, and a stress ball. Additionally, at their request, minors are provided with yarn for arts and crafts, materials to make key chains, puzzles, and coloring books with colored pencils. Religious material and an approved playlist of music is also offered if they choose. Depending on the interests of the minor, the shelter can also provide literature, dolls or other types of materials for arts and crafts (e.g. aluminum etching, beads for bracelets, threading, etc.). Additionally, the minors are offered approved options to watch movies, shows or videos at scheduled times. The shelter has a subscription to Disney Plus and can access shows in Spanish.

Another shelter reported while minors are in quarantine, they are allowed to leave their bedroom wearing a mask while maintaining social distancing. Minors are provided educational services, and daily indoor and outdoor recreation. Minors are also provided legal, medical, clinical, and case management services as needed via video call. Furthermore, psychoeducation groups are held via video with other minors in care.

While one minor was not permitted to go outdoors due to testing positive for COVID-19, he was provided puzzles and activities for indoor recreation. The minor was also able to obtain legal, medical, clinical, and case management services as well as participate in psychoeducation groups via video with other minors



on a weekly basis. Subsequently, the minor has been transitioned with other children in care since being removed from isolation with no restrictions.

Figure 3 below provides the census data for positive COVID-19 cases of minors throughout the shelter network.

Figure 3: Positive COVID-19 Minors Census Data<sup>3</sup>

Program Name and Type	Bed Capacity as of August 22, 2020	Census as of August 22, 2020	Positive COVID-19 Minors	Medical Vulnerabilities Reported	Release Delayed
██████████ (Shelter)	137	9	1	No	No
██████████ (Shelter)	435	25	1	No	Yes
██████████ (Shelter)	36	4	1	No	No
██████████ (Shelter)	75	12	1	No	No
██████████ (Shelter)	115	19	4	No	No
██████████ (Shelter)	90	7	1	No	No

As of July 23, 2020, there are no minors that have been diagnosed with COVID-19 that would be considered to be at high risk for severe COVID-19 disease, or at high risk of severe complications of COVID-19 disease.

As of August 22, 2020, ORR has nine minors in shelters who tested positive for COVID-19. The majority of these minors acquired COVID-19 prior to placement in ORR facilities. Upon their admission to ORR facilities, they were screened for COVID-19 during their initial medical examination (IME) and were quarantined. None of the minors were determined to have pre-existing medical conditions that would exacerbate their positive COVID-19 diagnosis.

Although ORR cannot require that staff disclose their private medical information as it relates to COVID-19, some staff voluntarily reported this information. Since collecting information, ORR has been notified of 714 (cumulatively) staff with positive COVID-19 test results as of August 20, 2020. Staff with suspected exposure to or positive COVID-19 test results are required to quarantine for at least 14 days. Furthermore, the staff are not permitted to have any contact with minors or other staff at the shelters until their quarantine has ended.

<sup>3</sup>Figure 3 is a result of the data gathered by the workgroup as it pertains to positive COVID-19 cases of minors throughout the shelter network. This information reflects the status as of August 22, 2020.

- III. With respect to minors placed at congregate facilities in which either a minor or staff member has tested positive for COVID-19, identify the specific reason the minors located there have not been released or transferred to a non-congregate setting.

For all the ORR network, transfers out of congregate care were not pursued due to the risk of potentially spreading or catching COVID-19 during the transfer process. The current low occupancy at all congregate shelters (316 occupied beds out of 10,981 congregate beds) allows for social distancing and provides a pool of staff available to care for the minors. ORR issued revised field guidance dated July 16, 2020 with regard to COVID-19 (attached in previous Juvenile Coordinator Report dated July 24, 2020).

ORR's policies require the release of minors to sponsors in a manner that promotes public safety, which includes concerns related to public health. The field guidance and ORR Policy Guide Section 3.4.8 Medical Clearance Prior to Release and Transfer, states:

*“Unaccompanied alien children who have serious physical or mental health issues or have had exposure to a communicable disease may not be transferred or moved until they have been medically cleared by a physician or ORR is consulted....”*

*Children who are infectious with communicable diseases of public health concern, which have potential to cause outbreaks, will not be released from ORR care until they are non-infectious.”*

- IV. Describe any policies and/or practices aimed at identifying and protecting minors who are at heightened risk of serious illness or death should they contract COVID-19.

ORR's Division of Health for Unaccompanied Children (DHUC) confirmed that as of July 23, 2020, there are no minors that have been diagnosed with COVID-19 that would be considered to be at high risk for severe COVID-19 disease, or at high risk of severe complications of COVID-19 disease.

Each facility has a unique process for staffing medical care for the individualized needs of the minors in care. Some directly hire licensed independent practitioners (e.g., pediatricians, family medicine physicians, pediatric nurse practitioners, registered nurses) who operate in clinics physically located at the facility, while some contract with community healthcare providers who either visit the facility or evaluate the minors in their clinics. Each care provider has an established network of healthcare providers, including specialists, emergency care services, mental health practitioners, and dental providers. Care providers are required to maintain state licensing and adhere to licensing requirements, including staffing requirements.

Each child in ORR care has an initial intake assessment within 24 hours of the minor's admission to a care provider facility, to obtain information about the minor, including whether there are any immediate medical and mental health concerns. Minors who are ill on arrival will receive prompt attention and medical care.

Each minor also receives an initial medical examination (IME) by a licensed primary care provider (e.g., physician, physician assistant, or nurse practitioner) within two business days of arrival. The IME is based on a well-child examination, adapted for the unaccompanied children population with consideration of screening recommendations from the American Academy of Pediatrics, the Centers for Disease Control and Prevention (CDC), and the U.S. Preventive Services Task Force (USPSTF).

The purposes of the IME are to assess general health, administer vaccinations in keeping with U.S. standards, identify health conditions that require further attention, and detect contagious diseases, such as influenza or tuberculosis. If a vaccination record is not located or a minor is not up-to-date, the minor receives all vaccinations recommended by the Advisory Committee on Immunization Practices (ACIP) catch-up schedule and approved by CDC, including seasonal influenza vaccine.

ORR's DHUC staff and ORR care providers routinely track and discuss children with existing medical conditions, including children with conditions that put them at increased risk of infection or could result in possible medical complications if infected. As part of these discussions, facilities caring for children with complex medical needs have been directed to:

- Maintain close contact with general and specialty medical providers of children with complex medical needs, and identify plans for continued care (e.g. utilization of telehealth services) in the event of office closures and other barriers to care during the pandemic.
- Create a safety plan for when a child might require in-person medical evaluation, such as in an outpatient clinic or at an emergency room.
- Ensure children have an adequate and ongoing supply of prescription medications.
- Continue to follow recommendations about infection prevention, including for respiratory diseases such as influenza and COVID-19, from medical providers overseeing the care of children with complex health needs.

V. Explain whether the medical professionals at ORR are making expeditious individual assessments about a Class Member's eligibility for release when a Class Member has been exposed to COVID-19 or has a sponsor whose household has a confirmed case of COVID-19, and provide the average time in which such individual assessments take place during the reporting period.

As of August 24, 2020, there was one minor whose release was delayed due to a positive COVID-19 diagnosis. This is the minor identified in Figure 3 above. Quarantine recommendations for minors who have been exposed to a confirmed COVID-19 case are made in collaboration with the local public health authority.

In accordance with the revised ORR field guidance, if a sponsor or a member of the sponsor's household has a suspected or confirmed COVID-19 infection, ORR postpones release until a medical or public health professional determines it is safe to release the minor to the sponsor household.

- VI. Explain whether ORR is making individualized assessments regarding its ability to release minors subject to removal orders under the MPP, including census data and reasons for non-release.

As of August 18, 2020, there were 29 minors identified by ORR as MPP cases. Out of the 29 minors, one minor was approved for release on August 20, 2020 and three minors were released between August 18, 2020 and August 21, 2020. Currently, there are seven minors who are engaged in the family reunification process, but it is not complete. The remaining minors are Category 4, with 14 of these minors placed in Long Term Foster Care (LTFC). The Juvenile Coordinator did not identify any cases from the reporting period where an MPP removal order was a sole basis for minor’s non-release.

### Summary

The undersigned respectfully submits this report to the Court pursuant to the Court Order dated August 7, 2020. The undersigned will continue to work independently and with the Special Master, and will continue to file interim reports per the Court’s directive to monitor facilities to assure adherence to CDC-compliant and ORR guidelines are maintained.

# **EXHIBIT 2**

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8 *Independent Monitor*

9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 JENNY LISETTE FLORES, *et al.*,

13 Plaintiffs,

14 v.

15 WILLIAM P. BARR, Attorney  
16 General of the United States, *et al.*,

17 Defendants.  
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CASE NO. CV 85-4544-DMG (AGR<sub>x</sub>)

**NOTICE OF FILING OF INTERIM  
REPORT ON THE USE OF  
TEMPORARY HOUSING FOR  
MINORS AND FAMILIES UNDER  
TITLE 42 BY INDEPENDENT  
MONITOR**

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On October 5, 2018, the Court ordered the appointment of Andrea Sheridan Ordin as Special Master/Independent Monitor (“Monitor”) and ordered the Monitor to file formal Reports and Recommendations to the Court. [Doc #494.]

On June 26, 2020, Judge Dolly Gee in her Order [Doc. #833] among other things required:

“Dr. Paul Wise and the Independent Monitor Andrea Ordin shall continue to provide enhanced monitoring of the care of the minors at the FRCs and shall have ability to (a) request and obtain copies of medical care data and policies; (b) have teleconference or videoconference access to persons most knowledgeable at the FRCs with whom they can discuss the baseline of custodial medical care, health care protocols, and (c) consider protocols for identifying minors who have serious medical conditions that may make them more vulnerable to COVID-19; (d) interview minors with serious medical conditions or, as appropriate, their guardians; and (e) make such recommendations for remedial action that they deem appropriate.”

In accordance with the Court’s Orders, the Monitor submits the attached Interim Report on the Use of Temporary Housing for Minors and Families under Title 42.

DATED: July 22, 2020

Respectfully submitted,

Andrea Sheridan Ordin  
STRUMWASSER & WOOCHEER LLP

By /s/ Andrea Sheridan Ordin  
Andrea Sheridan Ordin

*Special Master / Independent Monitor*





In the United States District Court  
Central District of California – Western Division

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

v.

WILLIAM P. BARR, *et al.*, Defendants.

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

Hon. Dolly M. Gee, United States District Judge

**Interim Report on the Use of Temporary Housing  
for Minors and Families under Title 42  
by Independent Monitor**

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Special Master/Independent Monitor  
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Los Angeles, California 90024  
(310) 576-1233

## INTRODUCTION

On June 26, 2020, Judge Dolly Gee in her Order (Doc. 833) among other things required:

“Dr. Paul Wise and the Independent Monitor Andrea Ordin shall continue to provide enhanced monitoring of the care of the minors at the FRCs and shall have ability to (a) request and obtain copies of medical care data and policies; (b) have teleconference or videoconference access to persons most knowledgeable at the FRCs with whom they can discuss the baseline of custodial medical care, health care protocols, and (c) consider protocols for identifying minors who have serious medical conditions that may make them more vulnerable to COVID-19; (d) interview minors with serious medical conditions or, as appropriate, their guardians; and (e) make such recommendations for remedial action that they deem appropriate.”

## ACTIVITIES OF THE MONITOR JUNE 27, 2020 - JULY 22, 2020

On July 9, 2020, Dr. Paul Wise and the Independent Monitor conducted teleconferences with ICE Juvenile Coordinator Diane Dougherty and ICE leadership to discuss, among other things, COVID-19 practices at Karnes Family Residential Center (Karnes FRC). In addition, the Independent Monitor and Dr. Wise engaged in correspondence with Karnes FRC staff and attorneys from RAICES and Proyecto Dilley. The Independent Monitor also took a virtual tour of the facility and conducted video interviews with several family members on July 14, 2020. During these interviews, the Independent Monitor and Dr. Wise spoke with residents housed in the general population area as well as residents in the quarantine facility, including a resident with family members who had tested positive for

COVID-19. In addition to describing their experience at Karnes, some individuals also discussed their experience with temporary hoteling prior to their transfer to the FRC. Dr. Wise also reviewed documentation of the medical conditions and care of Karnes residents.

The week of July 19, 2020, the Independent Monitor also reviewed and analyzed statistics of FRC residents whose stay exceeded 20 days.

In the course of fulfilling the requirements of the above Monitoring Order, Dr. Wise and the Independent Monitor became aware of the conditions under which both unaccompanied and accompanied minors have been temporarily detained in hotels in McAllen and El Paso, Texas, and Phoenix, Arizona, for periods of two to eleven days, beginning in late-March 2020. The minors were detained pursuant to a March 21, 2020 Presidential Order under Title 42, Section 265 of the United States Code.

## **TITLE 42 EXPULSIONS OF BOTH UNACCOMPANIED AND ACCOMPANIED MINORS INSTITUTED BY THE GOVERNMENT BY REGULATION AND IMPLEMENTING ORDER**

As explained on the website of the U.S. Customs and Border Protection (CBP),<sup>1</sup> the statistics on nationwide enforcement encounters in 2020 include a program entitled “Title 42 Expulsions.” As stated:

“On March 21, 2020 the President, in accordance with Title 42 of the United States Code Section 265, determined that by reason of existence of COVID-19 in Mexico and Canada there is a serious danger of further introduction of COVID-19 into the United States; that prohibition on the introduction of persons or property in whole or in part, from Mexico and Canada is required in the interest of public health.”

In response, CBP issued guidance to its agents to implement the order of the Director of the Centers for Disease Control and Prevention (CDC) to prohibit certain persons from the United States who, due to the existence of COVID-19 in countries or places from which persons are traveling, create a serious danger of the introduction of the disease into the United States.

From mid-March through June 30, 2020, the CBP website reports a total of 69,210 U.S. Border Patrol (USBP) expulsions along the Southwest Border and 2,793 Office of Field Operations (OFO) expulsions. For the same

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<sup>1</sup> U.S. Customs and Border Protection, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last accessed July 20, 2020).

time period, 189,937 aliens were apprehended by USBP and 46,601 aliens were declared inadmissible by OFO under Title 8.

**U.S. Border Patrol Southwest Border Enforcement Encounters  
(Title 42 Expulsions and Title 8 Apprehensions)<sup>2</sup>**

Enforcement Action	March	April	May	June	FY 20 TD
Title 42 Expulsions	6,927	14,870	19,909	27,504	69,210
Title 8 Apprehensions	23,309	1,175	1,589	2,796	189,937

**Office of Field Operations Southwest Border Enforcement Encounters  
(Title 42 Expulsions and Title 8 Inadmissible Aliens)<sup>3</sup>**

Enforcement Action	March	April	May	June	FY 20 TD
Title 42 Expulsions	69	519	851	1,354	2,793
Title 8 Inadmissible Aliens	3,993	405	793	858	46,601

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<sup>2</sup> U.S. Customs and Border Protection, *U.S. Border Patrol Monthly Enforcement Encounters 2020: Title 42 Expulsions and Title 8 Apprehensions*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last accessed July 20, 2020).

<sup>3</sup> U.S. Customs and Border Protection, *Office of Field Operations Monthly Enforcement Encounters 2020: Title 42 Expulsions and Title 8 Inadmissible Aliens*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last accessed July 20, 2020).

Of the total USBP enforcement encounters on the Southwest Border between March and April including Title 42 and Title 8 actions, 6,177 encountered were unaccompanied minors and 6,698 encountered were family units. However, because statistics for the total number of unaccompanied minors and families encountered do not specify whether those encounters involved enforcement actions under Title 42 and Title 8, it is unclear how many of the total number of unaccompanied minors and family units encountered by USBP and OFO were detained under Title 42.

**U.S. Border Patrol Southwest Border Encounters<sup>4</sup>**

Demographic	March	April	May	June	Total March-June
Unaccompanied Child	2,956	697	960	1,564	6,177
Family Units <sup>5</sup>	3,455	714	971	1,558	6,698

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<sup>4</sup> U.S. Customs and Border Protection, *U.S. Border Patrol Southwest Border Encounters FY 2020*, available at <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last accessed July 21, 2020).

<sup>5</sup> “Family Unit” represents the number of *individuals* (either a child under 18 years old, parent, or legal guardian) deemed inadmissible with a family member by the Office of Field Operations.

OFO encounter statistics reported 405 unaccompanied minors and 1,373 family units at the Southwest Border for the same March-June period.<sup>6</sup>

**Office of Field Operations Southwest Border Encounters<sup>7</sup>**

Demographic	March	April	May	June	Total March-June
Unaccompanied Child	247	29	42	87	405
Family Units	1,180	22	73	98	1,373
Accompanied Minor Child <sup>8</sup>	40	18	30	55	143

It has been claimed that recent enforcement under Title 42 violates the Trafficking Victims Protection Act (TVPRA), 8 U.S.C. Section 1232, and the Administrative Procedure Act, 5 U.S.C. Sections 706 (1) and 706 (2)(A). *J.B.B.C., a Minor, v. Wolf, et al.* 1:20-cv-01509 (D.D.C.).

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<sup>6</sup> U.S. Customs and Border Protection, *Office of Field Operations Southwest Border Encounters FY 2020*, available at <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last accessed July 21, 2020).

<sup>7</sup> U.S. Customs and Border Protection, *Office of Field Operations Southwest Border Encounters FY 2020*, available at <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last accessed July 21, 2020).

<sup>8</sup> “Accompanied Minor Child” represents a child accompanied by a parent or legal guardian and the parent or legal guardian is either a U.S. Citizen, Lawful Permanent Resident, or admissible alien, and the child is determined to be inadmissible.

This Report is not designed to examine any such claim, but will detail aspects of the temporary housing portion of the Title 42 program that the Independent Monitor and Dr. Paul Wise believe warrant recommendations for remedial action under the June 26, 2020 Order of Judge Gee (Doc. 833) and Order of April 24, 2020 (Doc. 784).

### **A. Program Structure**

ICE utilizes contracts with MVM, Inc. (MVM) through the Juvenile and Family Residential Management Unit (JFRMU) to transport and temporarily house unaccompanied minors and family units pending removal under Title 42. This program is an extension of regular transportation services for aliens between custodial settings instituted in 2014. Initially, the program required only brief stays in hotels prior to deportation flights, and prolonged stays in temporary housing were rare occurrences before the implementation of the Title 42 expulsion protocols. However, since implementation of the CBP-issued expulsion protocols, unaccompanied minors and families routinely spend multiple days temporarily housed in hotels. The program regularly uses three hotels in McAllen and El Paso, Texas, and Phoenix, Arizona, but temporary housing in additional locations can be utilized when necessary.

Once in temporary facilities, contracted “Transportation Specialists” (Specialists) provide oversight of the minors and families. Specifications for a Specialist position includes possession of an associate’s degree or a high



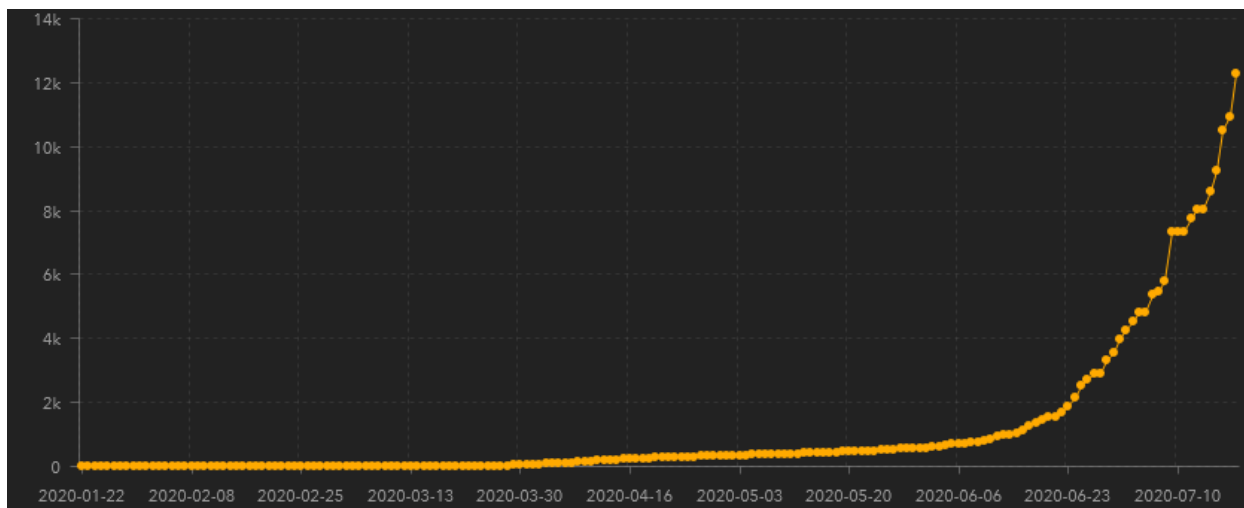
school diploma and at least one year of relevant work experience. All Specialists are required to undergo a background check and training including specific training on COVID-19 precautions and protocols.

Protocols require Specialists work in three rotating shifts so that each minor is accompanied by at least one Specialist at all times. The protocols also require unaccompanied minors to be within the line of sight of a Specialist at all times. Minors are separated into rooms by age and gender. Same-gender siblings may reside in adjoining rooms with the connecting door open. Cross-gender siblings may also reside in adjoining rooms, but the connecting door must remain closed at night. ICE reserves empty rooms on either side of any room in which detainees are held to create a perimeter that ensures minimal interaction with public hotel guests. Specialists and all other MVM staff members are required to be dressed in non-identifying, business casual clothing.

Children and families are not usually taken outside during their time in hotels. Younger children may sometimes play in enclosed pool areas for short supervised periods, but generally, residents have little to no access to recreation. Minors in temporary housing also lack access to education and therapy/counseling. Visitation is not permitted, but residents can call or video chat friends, family, and legal counsel upon request.

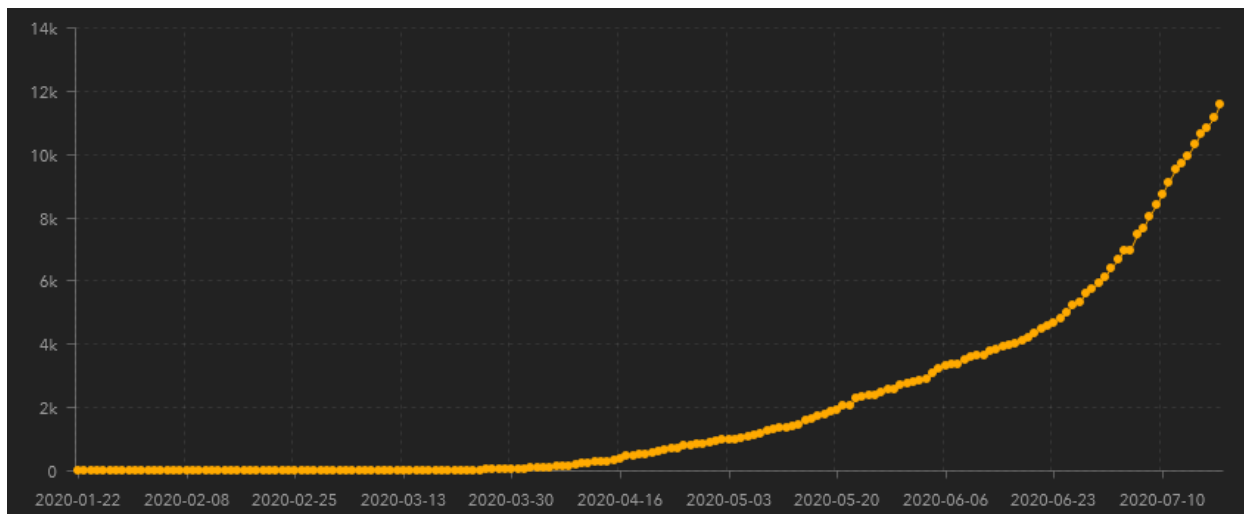
Deane Dougherty, ICE Juvenile Coordinator, reported to the Independent Monitor that, as of July 16, 2020, the hotel in McAllen, Texas, was housing 22 unaccompanied minors and 21 families, and the hotel in El Paso, Texas was housing 10 unaccompanied minors and no families. Below are the COVID-19 caseload trends for the Texas counties where the utilized hotels are located:<sup>9</sup>

### Hidalgo County (McAllen)



<sup>9</sup> Data is current as of July 19, 2020, courtesy of The Johns Hopkins Coronavirus Resource Center.

### El Paso County (El Paso)



### B. Length of Stay

Statistics provided by ICE indicate that, as of June 16, 2020:

- One unaccompanied minor had been held in a hotel for 11 days.
- The longest length of stay for any family unit was 7 days.
- Six families had been held at a hotel for a 7-day length of time.

*Figure A* depicts a snapshot of data on length of stay in hotels also as of June 16, 2020. Statistics provided by ICE describe the 14 families and 23 single minors in the hotels on this date. On average, residents were held in hotels for a period of 4 to 5 days. Although the program aims to house residents for no more than 72 hours, 61% of single minors and 86% of families exceeded this length of stay, and 57% of all residents remained in hotels for more than 4 days (96 hours).

**Figure A**

	Average Length of Stay	Longest Length of Stay	>2 Days (48 Hours)	>3 Days (72 Hours)	>4 Days (96 Hours)
Single Minors	4.5 Days (109 Hours)	11 Days (264 Hours)	74%	61%	57%
Families	5.1 Days (123 Hours)	7 Days (168 Hours)	86%	86%	57%

**C. Nutrition and Hygiene**

The contract provides for three hot meals per day. Snacks including fresh fruit, popcorn, are required. Specialists use electronic tablets to track “milestones” throughout the day including food intake, bathing, temperature, handwashing, etc. Rooms are cleaned once per day by hotel staff, and additional cleaning supplies are available in each room.

**D. Medical System and COVID-19 Protocols**

The protocols require that Specialists’ temperatures are taken before every shift, and face masks are required at all times. All children and adults are assigned both a surgical and N95 mask, and gloves and hand sanitizer are made available. Before moving residents from a CBP facility, Specialists take each person’s temperature and ask the following questions:

- Are you sick?
- Do you have any body aches?
- Do you have flu-like symptoms?

Specialists receive alerts on their tablets throughout the day reminding them to take children's temperatures and make sure they wash their hands. Each hotel has a dedicated room for medical services, and a medical professional from ICE Health Service Corps is required to give each child a basic health screening daily. Contracted health care providers include registered nurses, advanced practice providers, physicians, pharmacists, and behavioral health professionals are available as needed. Social distancing is required.

The protocols do not require testing for COVID-19 prior to or upon arrival at a hotel. Many families and children receive a COVID-19 test in preparation for their deportation flight. At least one family tested positive for COVID-19 while detained in a hotel in San Antonio, Texas. According to ICE and MVM, there are no formal protocols in place for housing COVID-19 positive families and minors in hotel settings.

The Independent Monitor and Dr. Paul Wise interviewed the father of a family scheduled for deportation under Title 42, who had been held for at least 8 days in San Antonio, Texas before his wife and daughter tested positive for COVID-19. The family was then transferred to Karnes FRC and placed in separate quarantines. In his interview on July 14, 2020, the father stated that Specialists in the hotel wore masks and took his temperature, but he stated he did not see a doctor or receive medical care while at the hotel.

His wife and daughter were held in a different room, and although he was told about their elevated temperatures, he said he was not updated on their condition. He said he was not allowed to leave his room while at the hotel.

### **OVERALL ASSESSMENT**

Begun as a relatively small, stop-gap measure to assist in the transfer of children to ICE flights, the temporary housing program has been transformed by the Title 42 expulsion policies into an integral component of the immigration detention system for UACs in U.S. custody. Program leadership noted in discussions that the hotel settings provided a preferable conditions than the conditions routinely found in CBP facilities or Central Processing Centers (CPC). Nevertheless, even recognizing the increased amenities of hotels, there are concerns that require scrutiny and remediation:

**(1) Oversight.** An governmental audit of the hotel facilities is currently underway and ICE expects recommendations shortly. To date, assessment of the performance of MVM personnel overseeing the UACs housed in hotels has not yet been possible. However, there appears to be a lack of formal oversight of the performance of the Specialists. It is not clear that there exists sufficient oversight of the practices, performance, and adequacy of staffing to address an extension of the program to a larger number of locations and an increase in the number of UACs and families placed in any given hotel.

**(2) No limits on facility census or length of stay.** It remains unclear whether there are any limits on the number of detainees permitted to be housed in any given hotel. The concern is that the allocation of supervision and medical staff may not be sufficient as the census in the hotel grows. Further, the recently-imposed requirement of documenting COVID-19 status prior to deportation has generally extended the hotel length of stay.

**(3) Medical care.** ICE Health Services Corps provides medical oversight of the children and families housed in hotels. The current medical protocols may be sufficient if the number of UACs and families is relatively low, for example less than 20 in any given location.<sup>10</sup> However, the ability of the health program to provide appropriate medical oversight would become inadequate when the number of children and families rises, or residents begin experiencing COVID-19 symptoms while staying in a hotel.

**(4) COVID-19 precautions.** The temporary housing program is using the recommendations of the CDC as the basis for protective measures against COVID-19. A direct assessment of how well the recommended protocols have been implemented to protect UACs has not yet been possible. One concern is that hotel employees, including maintenance and

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<sup>10</sup> As referenced above, the Independent Monitor was informed by the Juvenile Coordinator that, as of July 16, 2020, the hotel in McAllen currently housed 22 unaccompanied minors and 21 family units, and the hotel in El Paso housed 10 unaccompanied minors and no family units.

housekeeping personnel, fall outside MVM or ICE monitoring protocols or MVM supervision. In addition, the physical plant may not be amenable to social distancing and ongoing monitoring of distancing and mask use (such as via video feeds for monitoring).

**(5) Tender age UACs.**<sup>11</sup> There does not seem to be any formal lower age limit for UACs to be housed in hotels. Consistent or formal care requirements have not been developed regarding the special needs of young children, including hygiene, nutrition, or emotional well-being. Apart from the good intentions of individual personnel, adequate care demands formal and specialized protocols and oversight to ensure safe and sanitary conditions. The lack of limits on the number of children placed in hotels and the length of stay only enhance these general concerns. It is also important to recognize that a detention experience need not require mistreatment to be traumatic for a young child. Tender age UACs are inherently vulnerable in an extended expulsion process.

**(6) COVID-19 positive UACs.** There have been family members detained in the temporary housing program who have tested positive for COVID-19. Virtually all individuals in hotels awaiting ICE deportation

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<sup>11</sup> While the definition of “tender age” has usually been confined to children less than 13 years of age, the custodial concerns noted in this report advocate for the definition be extended to all children less than 15 years of age.



flights will be tested for COVID-19 prior to deportation to comply with testing requirements imposed by the home countries for returning deportees. These tests are generally administered approximately 4 to 5 days prior to the scheduled flight in order to allow sufficient time for test results to be made available. As noted previously, at least one family was transferred to the Karnes FRC after 2 symptomatic members tested positive for COVID-19. Other families with members who tested positive have remained in the hotel setting. It is not clear what criteria are being used to decide whether a family should stay at a hotel or be transferred to an ICE FRC where they would be isolated in medically supervised areas of the facility. It is also unclear how MVM and ICE could provide appropriate care for UACs who test positive for COVID-19.

**RECOMMENDATION: EXCLUDE ALL UACS FROM THE CURRENT TEMPORARY HOUSING PROGRAM.**

The custodial management of UACs requires well-established, formal systems of care and oversight, particularly if UAC time in custody is protracted. These requirements exist regardless of the intentions and qualifications of program staff. The enhanced vulnerability of UACs in immigration custody has long been recognized and requires significant augmentation to safety and security provisions within all detention systems with responsibility for minors. While this recommendation pertains to all UACs, it is particularly directed at UACs below the age of 15 years. The

temporary housing program was not constructed to serve as a major detention system to care for large numbers of young children for protracted periods of time.

The challenge of protecting UACs from COVID-19 only underscores the urgent need to exclude UACs from the temporary housing program. Certain elements of the protective protocols can have distinct implications for younger children. For example, isolating a child alone in a hotel room for 10-14 days can have a more harmful emotional impact than that seen in adults. In addition, the need to assist children in custody with bathing, nutrition, play or other essentials may place special burdens on the protective protocols and equipment currently implemented in the hotel program.

It is also likely that at some point, a UAC will test positive for COVID-19. It is unclear what the custodial care of children with COVID-19 will be in a hotel setting, particularly given the minimum 14-day isolation period. While the risk of severe disease is lower for young children and many will be asymptomatic, the risk that many of these children will feel sick is, nevertheless, relatively high. Careful medical monitoring is essential, as is enhanced caretaking for children falling ill. These requirements for care of UACs also require more extensive use of masks and other personal protective equipment (PPE), not to mention special procedures to reduce the risk to MVM and hotel staff.

## CONCLUSION

In sum, the recommendation of the Independent Monitor and Dr. Wise to exclude UACs from the Temporary Housing Program is based on (1) the formal care and oversight requirements for children in immigration custody for protracted stays; (2) the difficulties inherent in providing strict protective measures for COVID-19 in hotel settings for protracted stays; and (3) the lack of appropriate medical and custodial capabilities to care for children with COVID-19 disease in hotel settings.<sup>12</sup>

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<sup>12</sup> Recognizing the role of the Independent Monitor is to report on the safety of the minors and not to propose alternatives for the Government, in this case, the Independent Monitor believes there exists a compelling alternative: referral to the Office of Refugee Resettlement (ORR). This recommendation is based on three basic observations: (1) ORR is specifically designed to process and care for younger UACs; (2) ORR facilities are at historically low occupancy; and (3) custodial capabilities in CBP facilities are designed to process and refer UACs, generally within 72 hours of apprehension.

# **EXHIBIT 3**

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 Facsimile: (310) 319-0156  
 E-mail: aordin@strumwooch.com

5 *Independent Monitor*

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 7 **UNITED STATES DISTRICT COURT**  
 8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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 10 JENNY LISETTE FLORES, *et al.*,  
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 12 Plaintiffs,  
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 14 v.  
 15 WILLIAM P. BARR, Attorney  
 16 General of the United States, *et al.*,  
 17  
 18 Defendants.

CASE NO. CV 85-4544-DMG (AGR<sub>x</sub>)

**NOTICE OF FILING OF INTERIM  
 REPORT ON THE USE OF  
 TEMPORARY HOUSING FOR  
 MINORS AND FAMILIES UNDER  
 TITLE 42 BY INDEPENDENT  
 MONITOR AND DR. PAUL WISE**

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1 On June 26, 2020, Judge Dolly M. Gee ordered (Doc. 833), among other  
2 things, that:

3 Dr. Paul Wise and the Independent Monitor Andrea Ordin shall  
4 continue to provide enhanced monitoring of the care of the minors at  
5 the FRCs and shall have ability to . . . make such recommendations  
6 for remedial action that they deem appropriate.

7 On July 25, 2020, this Court issued another Order (Doc. 887)  
8 requiring, among other things:

9 The Independent Monitor, Andrea Ordin, may in the exercise of her  
10 monitoring duties request such further information regarding safe and  
11 sanitary conditions and/or Defendants’ continuous efforts at release as  
12 she deems appropriate pursuant to her authority under Paragraph  
13 B(1)(c)(iii) of the October 5, 2018 Order appointing her, and in  
14 consideration of the concerns outlined in this Order and the Court’s  
15 June 27, 2017 Order regarding minors in prolonged detention at any  
16 stage of expedited removal proceedings. [Doc. ## 363, 494.]

17 On August 7, 2020, this Court issued yet another Order (Doc. 914)  
18 affirming the Independent Monitor’s authority to monitor the hotelling issue:

19 Dr. Paul Wise and the Independent Monitor Andrea Ordin shall  
20 continue to provide enhanced monitoring of the FRCs’ care of minors,  
21 and shall have the ability to . . . make such recommendations for  
22 remedial action that they deem appropriate. They shall also continue to  
23 monitor the hotelling of minors, under the authority discussed in the  
24 Court’s July 25, 2020 Order. [Doc. # 887.]

25 In accordance with the Court’s Orders, the Monitor submits the attached  
26 Interim Report on the Use of Temporary Housing for Minors and Families  
27 under Title 42.  
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DATED: August 26, 2020

Respectfully submitted,

Andrea Sheridan Ordin  
STRUMWASSER & WOOCHEER LLP

By /s/ Andrea Sheridan Ordin  
Andrea Sheridan Ordin

*Special Master / Independent Monitor*

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**CERTIFICATE OF SERVICE**

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

I am a citizen of the United States. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024. I am over the age of 18 years, and not a party to the within action.

I hereby certify that on August 26, 2020, I electronically filed the following documents with the Clerk of the Court for the United States District Court, Eastern District of California by using the CM/ECF system:

**NOTICE OF FILING OF INTERIM REPORT ON THE USE OF TEMPORARY HOUSING FOR MINORS AND FAMILIES UNDER TITLE 42 BY INDEPENDENT MONITOR AND DR. PAUL WISE**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct. Executed on August 26, 2020, at Los Angeles, California.



Jeff Thomson



In the United States District Court  
Central District of California – Western Division

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

v.

WILLIAM P. BARR, *et al.*, Defendants.

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

Hon. Dolly M. Gee, United States District Judge

**Interim Report on the Use of Temporary Housing  
for Minors and Families under Title 42  
by Independent Monitor and Dr. Paul Wise**

Andrea Sheridan Ordin  
Special Master/Independent Monitor  
Strumwasser & Woocher LLP  
1094 Wilshire Boulevard, Suite 2000  
Los Angeles, California 90024  
(310) 576-1233

## INTRODUCTION

On June 26, 2020, Judge Dolly M. Gee ordered (Doc. 833), among other things, that:

Dr. Paul Wise and the Independent Monitor Andrea Ordin shall continue to provide enhanced monitoring of the care of the minors at the FRCs and shall have ability to...make such recommendations for remedial action that they deem appropriate.

On July 25, 2020, this Court issued an Order (Doc. 887) requiring, among other things:

The Independent Monitor, Andrea Ordin, may in the exercise of her monitoring duties request such further information regarding safe and sanitary conditions and/or Defendants' continuous efforts at release as she deems appropriate pursuant to her authority under Paragraph B(1)(c)(iii) of the October 5, 2018 Order appointing her, and in consideration of the concerns outlined in this Order and the Court's June 27, 2017 Order regarding minors in prolonged detention at any stage of expedited removal proceedings.

On August 7, 2020, this Court issued yet another Order (Doc. 914), affirming the Independent Monitor's authority to monitor the hotelling issue:

Dr. Paul Wise and the Independent Monitor Andrea Ordin shall continue to provide enhanced monitoring of the FRCs' care of minors, and shall have the ability to (a) request and obtain copies of medical care data and policies; (b) have telephone or videoconference access to persons most knowledgeable at the FRCs with whom they can discuss the baseline of custodial medical care, health care protocols, and COVID-19 prevention practices; (c) consider protocols for identifying minors who have serious medical conditions that may make them more vulnerable to COVID-19; (d) interview minors with serious medical conditions or, as appropriate, their guardians; and (e) make such recommendations for remedial action that they deem appropriate. They shall also continue to monitor the hotelling of

minors, under the authority discussed in the Court's July 25, 2020 Order.<sup>1</sup>

In the Independent Monitor's Report filed July 22, 2020, the Independent Monitor and Dr. Paul Wise reported on the temporary housing portion of the Title 42 programs and recommended remedial action under the authority of the June 26, 2020 Order of Judge Gee (Doc. 833) and Order of April 24, 2020 (Doc. 784). That Report described the operation of the program in three hotels, one in McAllen Texas, one in El Paso Texas and one in Phoenix Arizona. Statistics provided by ICE demonstrated that 14 families and 23 single minors were residing in the mentioned hotels as of June 16, 2020.

Dr. Paul Wise and the Independent Monitor, after reporting on the structure of the program and the length of stays of the single minors in hotels, recommended excluding all single minors from the current temporary housing program while expressing particular concern for the vulnerability of single minors below the age of 15.

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<sup>1</sup> On October 5, 2018, the Court, among other things, ordered the appointment of Andrea Sheridan Ordin as Special Master/Independent Monitor ("Monitor") (Doc. 494):

If the Monitor has a good faith basis to believe that there is a significant violation of the Court's Orders that cannot reasonably be addressed through a Report and Recommendation due to its exigency, the Monitor shall file on the case docket an interim report and recommendation ("Interim Report and Recommendation"), including any recommendations for steps necessary to improve Defendants' compliance and the reason for the urgency. Prior to filing the Interim Report and Recommendation, the Monitor shall afford the Parties a reasonable opportunity to be heard and to expeditiously cure any violation.

After the August 7, 2020 hearing, the Court set a briefing schedule relating to the Title 42 hotelling issue, directing that Plaintiffs file a motion to enforce the FSA and ordering Dr. Paul Wise and the Monitor to monitor the hotelling of minors under the authority of the Court's July 25, 2020 Order. The Court also ordered that any report and recommendation be filed by August 24, 2020, but subsequently extended that date.

This Interim Report provides information on the monitoring pursuant to that Order and provides a more complete picture of the scope of the program.

### **ACTIVITIES OF THE MONITOR JULY 23, 2020 - AUGUST 18, 2020**

Since the July 22, 2020 Report, the Independent Monitor has been provided comprehensive data on minors in Family Residential Centers (FRCs) and hotels under Title 42. On August 6, 2020, Dr. Paul Wise and the Monitor conferred with ICE Juvenile Coordinator Deane Dougherty and ICE officials and statisticians regarding points in need of clarification in *Flores* data from March through June of 2020. On August 15, 2020, the Monitor received updated data specifically summarizing the number of single minors, family units, and family groups in hotels under Title 42.

Through the reporting period, the Monitor and Dr. Wise corresponded and attended virtual meetings with counsel for minors at the FRCs, and with lawyers for the defendants. The Monitor participated in meet and confers among the lawyers, and reviewed drafts and pleadings. The Monitor and Dr. Wise participated in a virtual tour of both facilities at Dilley and Karnes, and interviewed at length parents and their children. As part of their review of medical care at both facilities, Dr. Wise and the Monitor had access to the medical leadership at each facility, and with the consent of the patients were

able to review medical records. The next Interim Report will focus on the current medical care for the minors in the FRCs.

**TITLE 42 EXPULSIONS OF BOTH UNACCOMPANIED AND ACCOMPANIED MINORS**

From March 1, 2020 through July 31, 2020, the CBP website reports a total of 105,331 U.S. Border Patrol (USBP) expulsions and 4,290 Office of Field Operations (OFO) expulsions along the Southwest Border. USBP expelled 35,056 individuals in July, which represents a 24% increase from the previous month. OFO expulsions saw roughly a 10% increase from 1,359 in June to 1,492 in July.

**U.S. Border Patrol Southwest Border Enforcement Encounters  
(Title 42 Expulsions and Title 8 Apprehensions)<sup>2</sup>**

Enforcement Action	March	April	May	June	July	FY 20 TD
Title 42 Expulsions	7,075	14,987	19,985	28,228	35,056	105,331
Title 8 Apprehensions	23,309	1,175	1,568	2,493	3,291	192,907

<sup>2</sup> U.S. Customs and Border Protection, U.S. Border Patrol Monthly Enforcement Encounters 2020: Title 42 Expulsions and Title 8 Apprehensions, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last accessed August 26, 2020).

**Office of Field Operations Southwest Border Enforcement Encounters  
(Title 42 Expulsions and Title 8 Inadmissible Aliens)<sup>3</sup>**

Enforcement Action	March	April	May	June	July	FY 20 TD
Title 42 Expulsions	69	519	851	1,359	1,492	4,290
Title 8 Inadmissible Aliens	3,987	405	793	855	907	47,488

Of the total USBP enforcement encounters on the Southwest Border from March through July, including Title 42 and Title 8 actions, 8,661 of the individuals encountered were unaccompanied minors and 8,713 of the individuals encountered were members of family units. However, because statistics for the total number of unaccompanied minors and families encountered do not specify whether those encounters involved enforcement actions under Title 42 and Title 8, it is unclear how many of the total number of unaccompanied minors and family units encountered by USBP and OFO were detained under Title 42. The total number of USBP enforcement actions against unaccompanied minors increased by 52% and the total number of USBP enforcement actions against family units increased by 26% from June to July.

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<sup>3</sup> U.S. Customs and Border Protection, Office of Field Operations Monthly Enforcement Encounters 2020: Title 42 Expulsions and Title 8 Inadmissible Aliens, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last accessed August 26, 2020).

**U.S. Border Patrol Southwest Border Encounters<sup>4</sup>**

Demographic	March	April	May	June	July	Total March-July
Unaccompanied Child	2,973	712	965	1,592	2,419	8,661
Family Units <sup>5</sup>	3,455	716	975	1,577	1,990	8,713

OFO encounter statistics reported 492 unaccompanied minors and 1,434 family units at the Southwest Border for the same March-July period. OFO data also reported 212 accompanied minor children during this time.<sup>6</sup>

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<sup>4</sup> U.S. Customs and Border Protection, U.S. Border Patrol Southwest Border Encounters FY 2020, available at <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last accessed August 26, 2020).

<sup>5</sup> Family Unit represents the number of individuals (either a child under 18 years old, parent, or legal guardian) apprehended with a family member by the U.S. Border Patrol.

<sup>6</sup> “Accompanied Minor Child” represents a child accompanied by a parent or legal guardian and the parent or legal guardian is either a U.S. Citizen, Lawful Permanent Resident, or admissible alien, and the child is determined to be inadmissible.

**Office of Field Operations Southwest Border Encounters<sup>7</sup>**

Demographic	March	April	May	June	July	Total March-July
Unaccompanied Child	247	29	42	87	87	492
Family Units	1,180	22	73	98	61	1,434
Accompanied Minor Child	40	18	30	56	68	212

**CURRENT STATUS OF TEMPORARY HOUSING OF SINGLE MINORS IN HOTELS UNDER TITLE 42**

**A. Program Structure**

As described in the Independent Monitor’s Report filed July 22, 2020, the Temporary Housing Program (THP) involves the housing of single minors (children less than 18 years of age) and families in hotels while they await deportation under Title 42 expulsion protocols. While the basic structure and procedures of the THP have not changed since the Independent Monitor’s July 22, 2020 Interim Report, the program is much larger than reflected in that report. Currently, minors are housed in more than 25 hotels in 3 states, according to a report provided by the Juvenile Coordinator for ICE.

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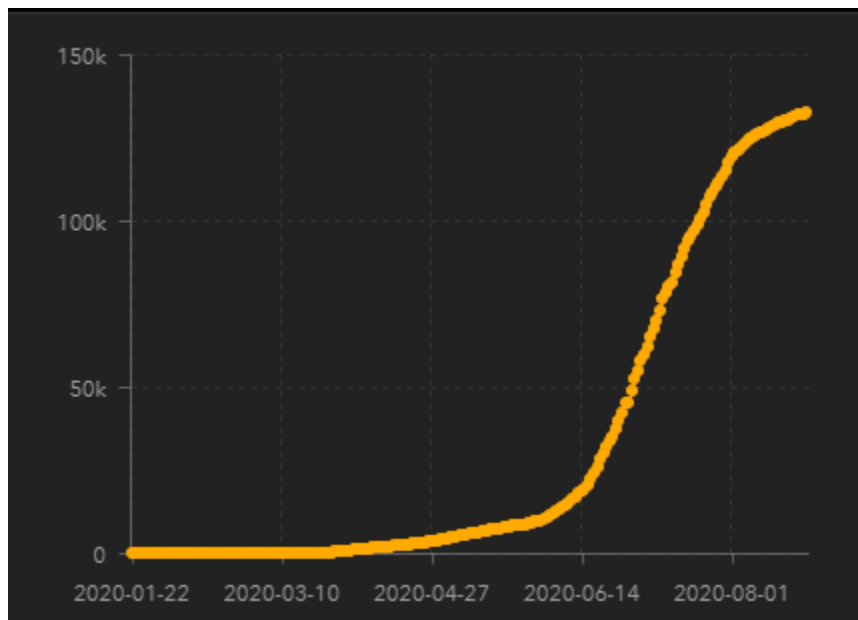
<sup>7</sup> U.S. Customs and Border Protection, Office of Field Operations Southwest Border Encounters FY 2020, available at <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last accessed August 26, 2020).



**B. The Updated Snapshot of Covid-19**

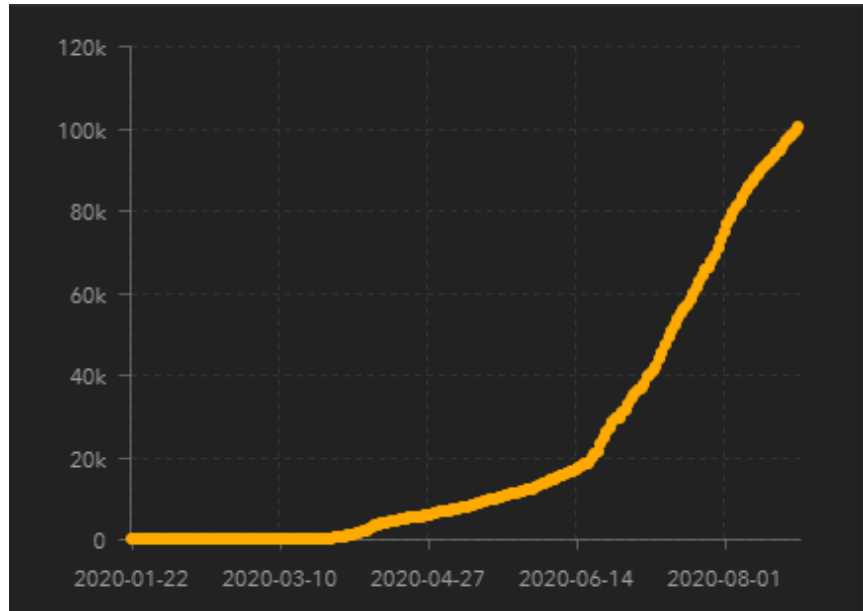
The hotels housing single minors and families are located in cities and counties continuing to experience high Covid-19 caseloads. Indeed, Maricopa County, where Phoenix is located, is ranked number 2 nationwide by Johns Hopkins on a list of top 50 counties with the most number of confirmed cases.<sup>8</sup> Harris County, where Houston is located, is ranked number 5. Bexar County, where San Antonio is located, ranks number 15.

**Covid-19 Cases in Maricopa County, Arizona (Phoenix)**

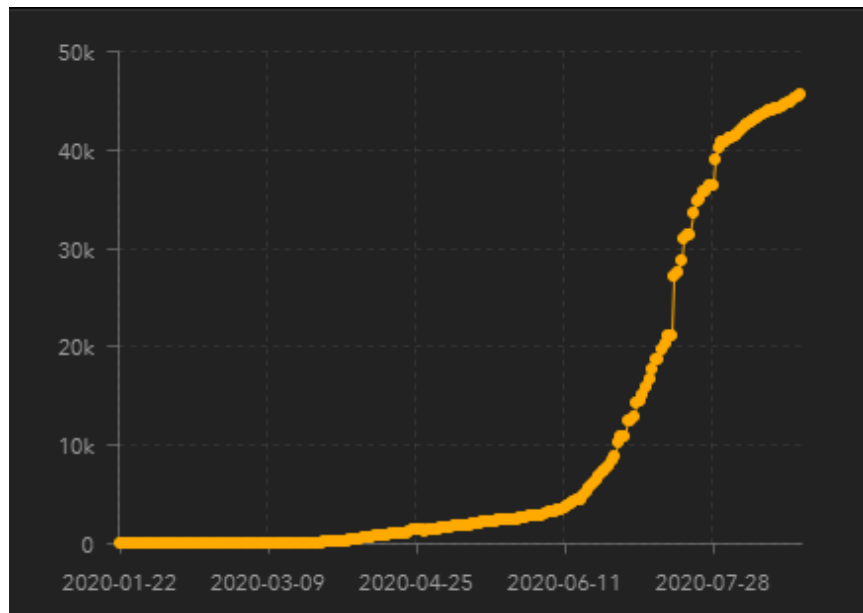


<sup>8</sup> Data is current as of August 26, 2020, courtesy of The Johns Hopkins Coronavirus Resource Center.

### Covid-19 Cases in Harris County, Texas (Houston)

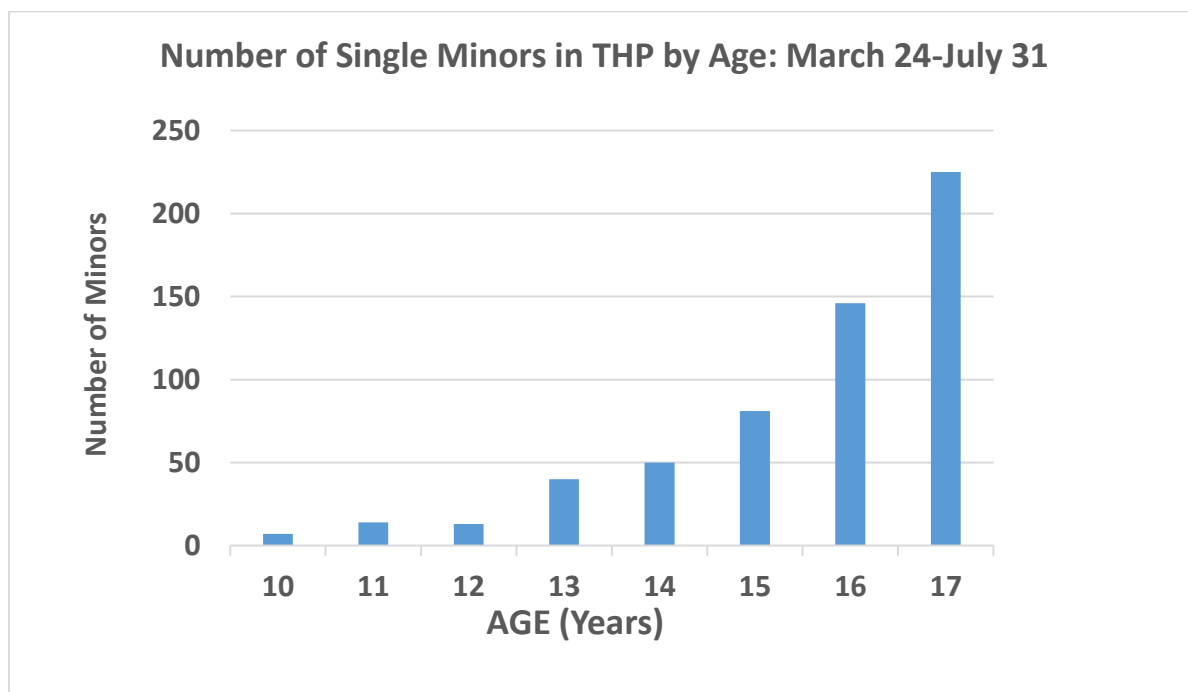


### Covid-19 Cases in Bexar County (San Antonio)



### C. Number of Minors

Based on the data provided,<sup>9</sup> there were 577 single minors entering the THP for the period March 24, 2020 through July 31, 2020. The youngest child was 10 years of age. There were 7 children 10 years of age; another 14 were 11 years of age; 13 were 12 years of age. Of all single minors, 126 (22%) were below 15 years of age. The full age distribution is presented below:



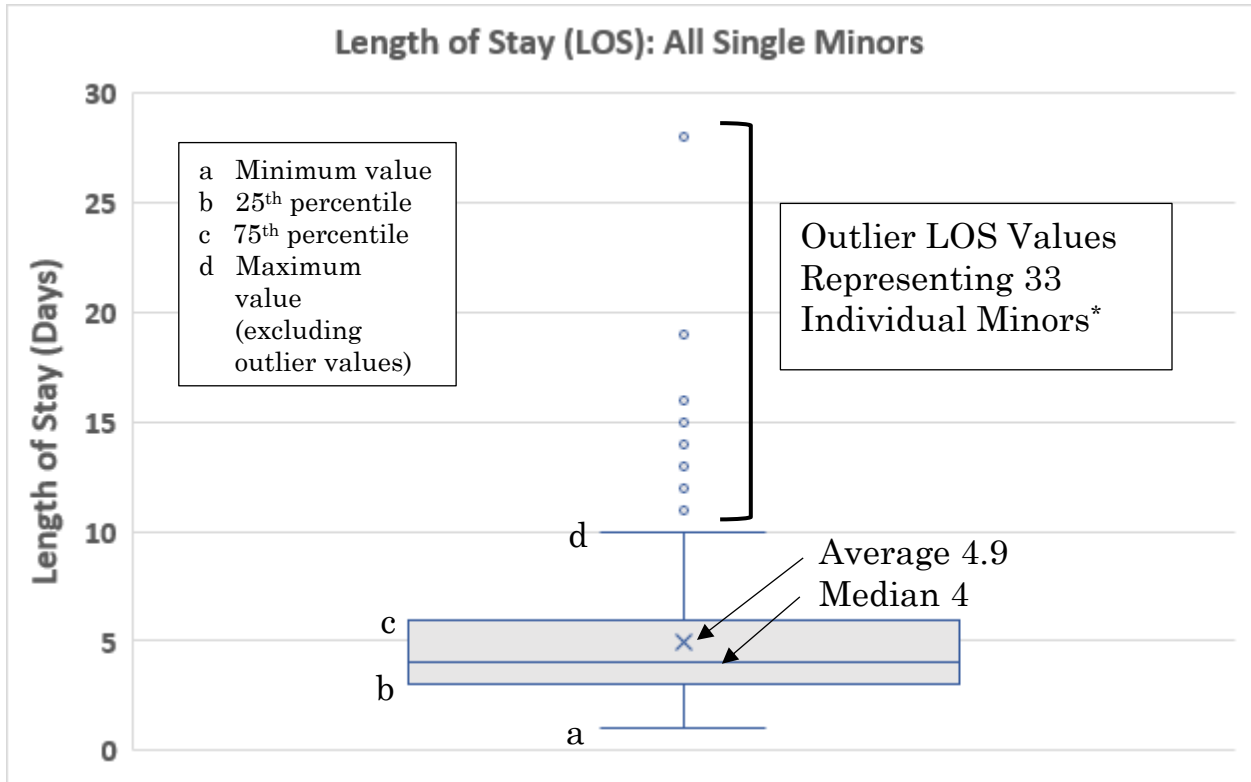
<sup>9</sup> For this analysis and going forward, the Independent Monitor is relying on the data provided by the Juvenile Coordinator for ICE, which listed 660 minors in the program as of July 31, 2020, 577 who were identified as single minors between the ages of 10 and 17. This information was also filed with the Court under seal as Attachment A to the Declaration of Mellissa Harper (Doc. 925-1). However, there are some inconsistencies between those reports and the monthly *Flores* reports provided to the Independent Monitor and Plaintiffs. The inconsistencies have been brought to the attention of ICE, and the Independent Monitor expects to receive any corrections or explanations prior the Court’s September 4, 2020 hearing.

#### **D. Length of Stay**

Based on the data provided, there was a substantial range in the amount of time single minors were held in the THP. For all single minors, the shortest length of stay (LOS) was 1 day and the longest was 28 days with an average of approximately 5 days. For minors less than 15 years of age, the shortest LOS was also 1 day and the longest LOS was 15 days. Among the 10 year old minors, the average LOS was approximately 4 days with a maximum of 7 days.

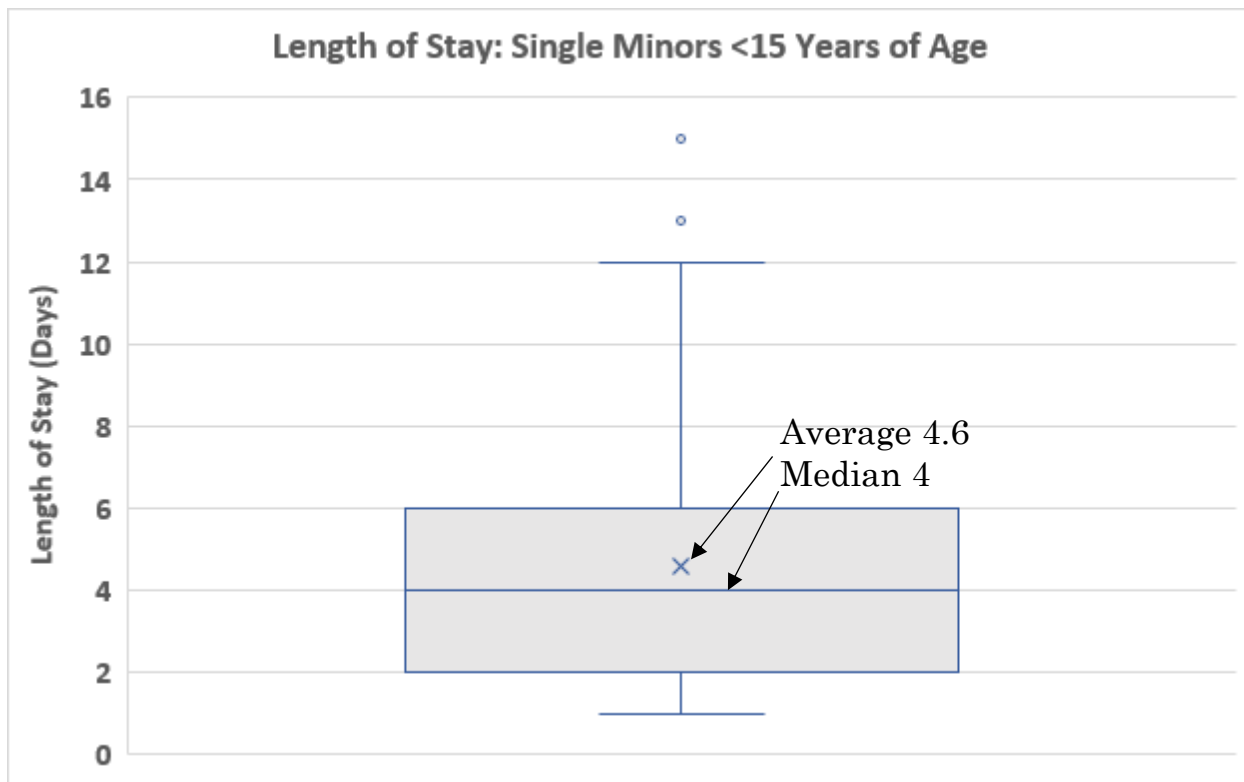
Significantly, the distribution of LOS was quite broad for all age groups. The box plots presented below provide a statistical visualization of these distributions. Box plots (also known as Box and Whisker plots) are helpful in assessing the distribution of values within a dataset. They reveal more than an average and identifies how the values congregate within a distribution.

The elements of the Box plots are arranged around what is called the Interquartile Range (IQR), which is a measure of variability or spread in the data, by separating the distribution into 4 quartiles. For all single minors (see figure below), the first quartile is the range from the minimum value (labeled “a” on the graph) of 1 day to the 25<sup>th</sup> percentile (labeled “b”) of 3 days. The second quartile is from the 25<sup>th</sup> percentile to the 50<sup>th</sup> percentile, which is the median of 4 days. The third quartile is from the median to the 75<sup>th</sup> percentile (labeled “c”) of 6 days. The fourth quartile is from the 75<sup>th</sup> percentile to the modified maximum value (labeled “d”) of 10 days. The maximum value here is considered “modified” because it excludes values, or “outliers” that fall far outside the main distribution. By statistical convention, outliers are defined as falling less or more than 1.5 times the IQR. These outlier values for the LOS distribution for all single minors range from 11 days to 28 days and represent the LOS values for 33 different minors.



\* Outliers are considered as being outside the main distribution of values. Outliers are calculated as having LOS greater than 1.5 times the Interquartile Range which is c-b and in this plot equals 10 days.

The second Box plot depicts the same analytic approach but confines the analysis to only those minors less than 15 years of age. There was a total of 126 children less than 15 years of age held in custody in the THP from March 24 to July 31, 2020. There were 4 children identified as outliers with LOS of 13 or 15 days.



The age and LOS data suggest that the THP includes children of a variety of ages and developmental stages. The largest portion of single minors in the THP were adolescents 15-17 years of age. However, approximately 1 in 5 single minors were less than 15 years old and approximately 1 in 20 were 12 years old or less. The youngest single minors reported to have been held in the THP were 10 years of age.

The LOS data for single minors had a wide distribution. The average LOS was approximately 5 days. The median was 4 days, implying that 50% of single minors had a LOS of less than 4 days and the other 50% greater than 4 days. Almost one-third of all single minors had a LOS of greater than 6 days with a maximum of almost 1 month in the THP. This skewed upper range of the distribution, with a substantial number of children experiencing extended stays of more than 10 days, suggests that there does not appear to be any formal limit on the LOS in the THP and that even relatively young children can be held in the hotels for extended periods of time.

## E. Amenities

The helpful declaration of Mellissa Harper filed with Defendants' Response in Opposition to Plaintiffs' Motion to Enforce (Doc. 920) listed a number of important amenities provided to minors in the THP. These include supervision by contractor MVM personnel, the provision of beds, temperature control, hygiene materials, hot meals and snacks, bathrooms, and access to ICE medical personnel. The hotels being utilized by the THP are mainstream facilities of hotel chains that provide mid-level accommodations for visitors and business travelers. The quality of the provided amenities has been subject to internal inspections and MVM quality control activities. As detained minors and parents have not yet been made available for interview, an independent assessment of detainee experiences has not been possible to date.

## F. Overall Assessment

While the legal provisions of the Title 42 expulsion policy will be deliberated elsewhere, it seems clear that the Temporary Housing Program is not fully responsive to the safe and sanitary requirements of young children.

- **Age limits.** The inclusion of young, single minors in the THP remains of concern. Tender age single minors require specialized supervision and services and are inherently vulnerable to the potential psychological harm of an extended expulsion process. The current THP procedures and amenities make no distinction based on the age or developmental capacity of the child in custody. Diapers and other essential items for young children are provided to parents in family units. However, there is no information regarding the systems of care required by children who cannot care for themselves. Moreover, it is unclear how the THP custodial elements for a 10 year old differ from those provided to a 17 year old. There is a vast body of pediatric and psychological evidence documenting sharp differences in the requisite custodial needs and developmental vulnerabilities of children over this range of ages.

It is important to note that according to the data provided, the youngest single minor housed in the THP was 10 years old. This would appear to reflect some assessment by CBP, ICE, or MVM that referral to the THP of children less than 10 years of age would be inappropriate.

This raises two considerations:

1. **Appropriate lower age limit.** The apparent exclusion of children of 9 years of age and younger suggests that there exists some operational consensus that the THP is not an appropriate mechanism for holding young children in custody. However, it is not clear upon what developmental or custodial grounds this age limit was based nor what technical guidance was utilized to make the decision to exclude children aged 9 but include those aged 10.
  2. **No formal age limit policy.** The restriction of the THP to children greater than 9 years of age while clearly helpful, does not appear to have been adopted formally as policy. This in turn implies that this lower age limit is fundamentally discretionary and could be altered to include infants and very young children at any time.
- **Facility census and length of stay.** It remains unclear whether there are any limits on the number of minors permitted to be housed in any given hotel. The concern is that without formal limits the number of minors in a facility could surpass the supervisory and medical capabilities of the program. Although the THP has been constructed to hold individuals for relatively short periods of time, there does not appear to be any formal limit to the length of stay for single minors. This suggests that the length of time single minors could be held in the THP would be structurally vulnerable to increased numbers of entrants and the vicissitudes of flight availability.
  - **Covid-19.** Concerns for the protection of minors in the THP from acquiring Covid-19 remain. Since the inception of the THP, three single minors tested positive for Covid-19 while in the custody of ICE at a hotel. Of those three, two were transferred to ORR. The third juvenile was a 16 year old who spent a total of 23 days in ICE custody at the hotel, including a 14-day quarantine period. It is not clear how the decisions regarding these cases were made as there appears to be



no formal policy regarding the procedures for single minors who do test positive for Covid-19 while in the THP. Children who are feeling sick with Covid-19 could remain in the THP hotel as long as their medical condition does not require referral to an outside hospital. The rates of new cases in the areas surrounding the primary THP hotels appear to have stabilized or fallen, although they remain worrisome. The most recent information is that testing is confined to individuals with relevant symptoms and that most single minors in the THP are not required by their home countries to receive a Covid-19 test prior to expulsion.

**RECOMMENDATION: EXCLUDE SINGLE MINORS FROM THE TEMPORARY HOUSING PROGRAM.**

While the amenities provided by the THP are appreciated, a list of amenities is not a system of care for children of different ages and developmental stages. There remains no assurance that the THP can provide adequate custodial care for single minors, who by definition are being moved through the immigration system alone and without familial support or protection. Formal systems of custodial care for children have been well defined and require specialized custodial elements, continuous oversight, and specialized training of relevant personnel. These specialized services and formal protocols seem particularly important for children who test positive for Covid-19. While the recommendation to exclude single minors from the THP pertains to all single minors, it is particularly directed at single minors below the age of 15 years. The current informal practice of excluding single minors less than 10 years of age, while welcomed, is not fully responsive to the safety and sanitary vulnerabilities of young children, including children aged 10 through 14 years of age. Simply put, the lower age limit for single minors assigned to the THP should be formalized and raised urgently from 9 to 14 years of age and alternative custodial programs for all single minors should be pursued.

# **EXHIBIT 4**

# Defendants' Exhibit 1

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES, <i>et al.</i> ,	)	Case No.: CV 85-4544-DMG
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
WILLIAM BARR, Attorney General of the	)	
United States, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF MELLISSA HARPER**

I, Mellissa Harper, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records and reasonably relied upon in the course of my employment, relating to the above-captioned matter, hereby declare as follows:

1. I am the Chief of the Juvenile and Family Residential Management Unit (JFRMU), Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security. JFRMU addresses issues confronting unaccompanied alien children (UAC) and alien family groups who come into ERO custody. JFRMU develops policies sensitive to the various vulnerabilities and needs of these populations. JFRMU trains, monitors, and advises Field Office Juvenile Coordinators. JFRMU oversees and monitors the implementation of nationwide court orders that impact this population, including

those in the present case.

2. Responsibilities within my purview include oversight of the housing of minors and family groups/units in hotels.<sup>1</sup> This is accomplished through a contract with MVM Inc. (MVM), a company specializing in the transportation and care of this vulnerable population. Minors and family groups/units are housed in hotels in and around McAllen, Texas; El Paso, Texas; and, Phoenix, Arizona.

3. MVM hires “Transportation Specialists” who interact and care for minors and family groups/units while in the hotel. These Specialists must meet the following requirements in order to provide care in hotel settings: 1) Possess an associate degree in an appropriate discipline from an accredited college (a high school diploma with one or more years of extra relevant experience may be substituted for an associate degree); and, 2) Have at least two years of documented experience in a field related to law, social work, detention, corrections, or similar occupational area; as well as certification, licensure, and credentials applicable to the professional accreditation of the position if applicable (a minimum of three years of experience in a related field is required when a high school diploma with one or more years of relevant experience is substituted for an associate degree).

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<sup>1</sup> A family “groups” refers to siblings, minors with aunts/uncles, etc., and family “units” are traditional parent/child units.

### **Placement into hotels**

4. When a single minor or family group/unit is completely processed by U.S. Customs and Border Protection (CBP), JFRMU and MVM are notified that the single minor or family group/unit is ready for transfer to ICE. Based on the specifics of the single minor(s) or family group/unit ready for transfer, MVM assigns staff to respond. MVM normally takes custody of a single minor or family group/unit within hours of notification and they are transported to a local hotel.

### **ICE oversight of hotel placements**

5. MVM has management on-site at the hotels and additional levels of management that conduct random drop-ins at the hotels. Additionally, MVM quality control compliance specialists are on-site to ensure compliance with agreed-upon detention standards.

6. There are, at minimum, two Transportation Specialists assigned to each room, with at least one Transportation Specialist the same gender as the minor(s) in the room. Each minor has their own bed; therefore, room configuration determines the number of minors in a room. Transportation Specialists must remain inside the rooms within the line-of-sight of the minors or family members.

7. Transportation Specialists are assigned to safeguard the minors and family groups/units and to ensure that COVID-19 protocols are followed.

8. Parents are responsible for the care of their children with the assistance of the Transportation Specialists.

9. The Transportation Specialists interact with single minors in ways such as playing board or video games or watching television and movies (chosen by the minor) in order to keep them comfortable, engaged, and at ease.

10. Most Transportation Specialists are native Spanish speakers and, thus, are able to keep the minors and family groups/units informed and are able to respond to any questions they may have.

11. An ICE Supervisory Detention and Deportation Officer is the contractual local Compliance Officer and oversees all aspects of the operations. In addition, in McAllen, Texas, the location of the largest operation, there are ICE personnel assigned to the MVM operation. ICE personnel regularly visit the hotels to ensure compliance.

12. Additionally, ICE JFRMU's independently contracted inspection team for the family residential centers and ICE juvenile facilities has created a *Flores*-based inspection tool specific to the hotel program. Unannounced virtual inspections have been conducted in all three cities to verify conditions at the hotels are humane and safe. As a result of these inspections, additional *Flores* compliance has been achieved and improvements have been made to the hotel program to include

streaming religious services, if desired by the minor or family group/unit, as well as virtual exercise programs through streaming video.

**Personal care items, food and sanitary measures (COVID-19 protections) provided**

13. When the MVM Command Center receives notification from CBP that a minor or family group/unit processed under Title 42 is ready for transfer to MVM care, a travel kit is created for each minor or family member. The kits are gender and age specific. A kit includes a toothbrush, toothpaste, comb/brush, body soap, shampoo, deodorant, lip balm, and feminine hygiene products (if female minor over 10). Additionally, depending on the age(s) and composition of a family group/unit, the kit may also include: diapers, wipes, diaper rash ointment, formula, bottles, pacifiers, and baby blankets. Climate appropriate clothing items such as gloves, hats, and jackets are also included, if necessary.

14. Sets of new clothing and shoes are provided daily for all minors and family members. Clothing sets generally consist of undergarments, socks, shirts, sweatpants or jeans, t-shirts, sweatshirts or light jacket, and “croc” or sneakers. Climate appropriate clothing items such as gloves, hats, and jackets are also included, if necessary.



15. Each minor receives a backpack containing their hygiene kit, clothing and shoes, and any toys/books issued. The backpack is also provided for storage of any personal items the minor or family member may have with them.

16. Snacks and water are always available during transport. Snacks, such as chips, crackers, cookies, fruit gummies, etc., water, juice, milk, and fruit are available 24/7 in the room. Three hot meals delivered from local restaurants, and chosen by the detainees, are served per day. Meals designed to meet nutritional standards are catered from various local area restaurants and include entrees and sides.

17. All hotel rooms are equipped with showers, and minors are reminded by the Transportation Specialists to bathe daily. Additionally, hand washing is required and encouraged regularly. Signs showing proper hand-washing procedures are posted by MVM personnel when preparing the hotel room.

18. Personal protective equipment, namely, masks, gloves, hand sanitizer, and cleaning wipes, are available 24/7. Sanitizing of the flat surfaces and commonly touched areas in the hotel room is conducted throughout the day pursuant to a regular schedule. Additionally, games, books, toys, remote controls, and video game controllers are wiped clean with sanitizer regularly throughout the day. Masks are required to be worn at all times except when eating or drinking, and social distancing is enforced.

19. In addition to the measures described above, other COVID-19 related practices are in place including, but not limited to:

- a. Prior to the beginning of their shift, temperatures of Transportation Specialists are taken, and they are asked COVID-19 related questions.
- b. Thereafter, the Transportation Specialists take their own temperature every four hours and at the end of their shift.
- c. Prior to taking family groups/units and minors into custody, their temperatures are taken, and they are asked COVID-19 related questions.
- d. If a minor or family group/unit develops symptoms of COVID-19, or has been diagnosed with COVID-19, the minor or family group/unit is provided and wears an N95 mask instead of the surgical mask, and the Transportation Specialist wears the N95 mask, gloves, gowns, shoe covers, and face shields.
- e. If a minor or family unit has been in the hotel room and tested positive for COVID-19, the room is sanitized every three days using the “Halo Fogger.”<sup>2</sup>
- f. If a minor or family group/unit is taken to an urgent care center or local emergency room and tests positive for COVID-19, the positive

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<sup>2</sup> <https://halosil.com/#>

individual will be moved to a separate room and kept away from others. If it is a member of a family group/unit, the positive family member will be cared for separately, unless there is a tender age child present, in which case a parent will remain in the room to care for the child. Under these circumstances, the Transportation Specialist notifies ICE and the MVM Site Manager immediately.

### **Medical care available to minors at hotels**

20. A medical professional from the ICE Health Services Corps (IHSC) is on-site at the hotels to check the health of both minors and adults housed at the hotel. Each day, all minors and family members are seen, and screened for any medical issues, by the on-site IHSC medical professional. Medical professionals include registered nurses and/or advanced practice providers. These providers can consult with an on-call physician, if necessary. Additionally, temperatures of minors and family members are taken and recorded every 4 hours. Urgent care centers or local emergency rooms are used in the event of a medical emergency or in cases where behavioral health services are needed. If an emergency occurs when no medical staff is present, MVM informs IHSC immediately and transports the adult or minor to local health resources as stated in the previous sentence.

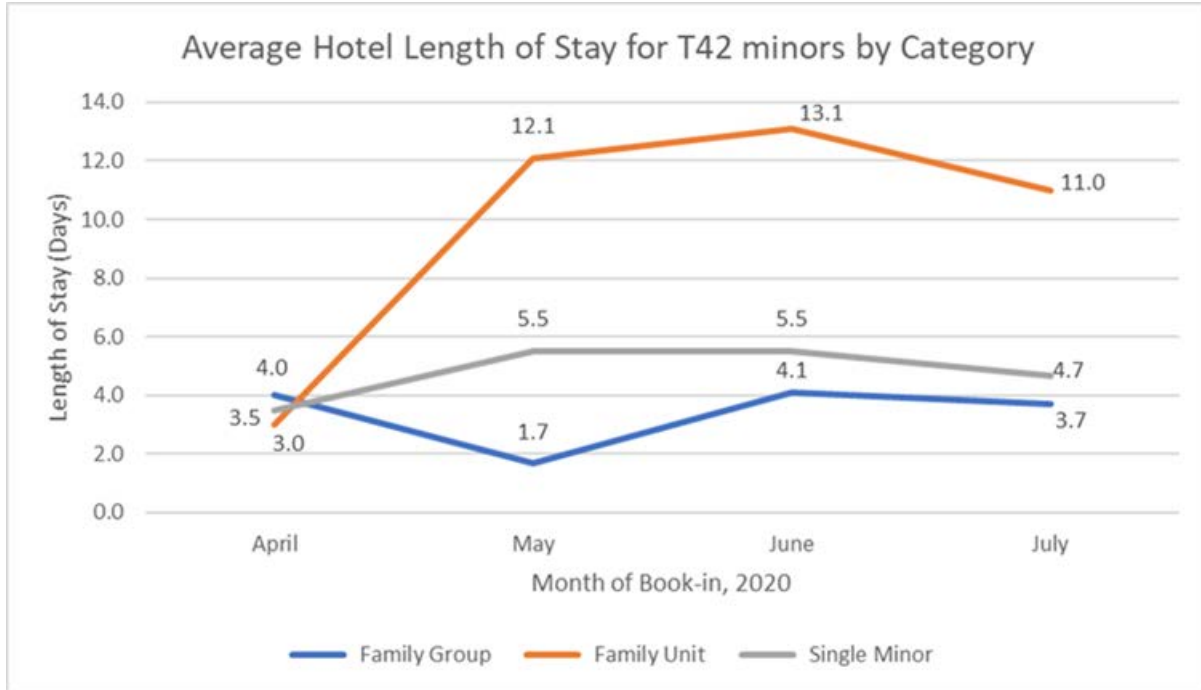
### **Access to counsel and family**

21. Every minor or family group/unit housed in a hotel is given a minimum of one phone call a day. They can call any family member, domestic or international. Additionally, phone calls are granted upon request without limitations. If an attorney has a Form G-28 (“Notice of Entry of Appearance as Attorney or Accredited Representative”) on file, or if a request for an attorney call is relayed to JFRMU or MVM, the call is scheduled and facilitated as soon as possible.

### **Data regarding minors in Title 42 proceedings**

22. On August 12, 2020, ICE conducted a data analysis of minors held in hotels for purposes of Title 42 expulsion. This data reflects minors subject to the Title 42 process who were housed in hotels from April 18, 2020, until July 31, 2020. The data reflects that minors under age 10 have been accompanied by a family member. The data is attached to this declaration for the court’s review as Exhibit 1 (note, in Exhibit 1, references to “FAMGR” refer to family “groups” [siblings, minors with aunts/uncles, etc.], as compared to the typical FAMU reference, which is a traditional parent/child unit).

23. The below graph and table show the Average Length of Stay in a hotel by both month and category:



Book-in Month	Category			Average
	Family Group	Family Unit	Single Minor	
April	4.0	3.0	3.5	<b>3.5</b>
May	1.7	12.1	5.5	<b>6.2</b>
June	4.1	13.1	5.5	<b>6.0</b>
July	3.7	11.0	4.7	<b>5.3</b>
<b>Average</b>	<b>3.6</b>	<b>11.5</b>	<b>4.9</b>	<b>5.5</b>

24. The below table details the count(s) of T42 minors held in hotels by

Age and Category:

Category	Age			Total
	< 10 years old	10 - 14 years old	15 - 17 years old	
Family Group	24	-	-	24
Family Unit	44	9	6	59
Single Minor	-	124	453	577
<b>Total</b>	<b>68</b>	<b>133</b>	<b>459</b>	<b>660</b>

Source: ICE Title 42 enforcement data from March 20, 2020 through July 31, 2020.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 21, 2020



Mellissa Harper. Unit Chief,  
Juvenile and Family Residential  
Management Unit  
U.S. Immigration and Customs Enforcement

# **EXHIBIT 5**

# DEFENDANTS'

# EXHIBIT A



UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUCAS R., *et al.*,

Plaintiffs,

v.

ALEX AZAR, Secretary of U.S. Dep't of Health  
and Human Services, *et al.*,

Defendants.

Case No.: 2:18-CV-5741 DMG (PLAx)

District Judge Dolly M. Gee

**DECLARATION OF JALLYN SUALOG, DEPUTY DIRECTOR, OFFICE OF REFUGEE  
RESETTLEMENT**

I, Jallyn Sualog, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am the Deputy Director of the Office of Refugee Resettlement (“ORR”), an Office within the Administration for Children and Families (“ACF”), U.S. Department of Health and Human Services (“HHS”).

2. I have held the position of Deputy Director since June 2018. I was previously the Director of Children’s Services from September 2013 through June 2018. I have worked at ORR since February 2007. I have a Master’s of Arts in Clinical Psychology. Before joining ORR, I worked as a mental health professional and managed the child welfare and social services programs for Hawaii’s largest non-profit organization.

3. As the Deputy Director of ORR, I have responsibility for the oversight of the Unaccompanied Alien Children (“UAC”) program, including all aspects of operations, planning and logistics, medical services, and monitoring. My job duties include the formulation and implementation of ORR’s response to COVID-19 across its network of grantee care-provider facilities.

4. My testimony in this declaration is based upon my personal knowledge of ORR’s response to COVID-19, information obtained from records and systems maintained by ORR in the regular course of performing my job duties, and CDC guidance documents regarding COVID-19, which I obtained from the CDC’s official website and reviewed in connection with the performance of my duties.

5. I am testifying in this declaration to the best of my knowledge, and understand that this declaration is for use in the *Lucas R.* case.

1 *Background*

2 6. ORR is the agency charged with the care and custody of UAC pursuant to 8 U.S.C. § 1232(c)  
3 and other provisions. As such, ORR is committed to providing for the safety and well-being of all UAC  
4 in its care, as well as protecting the health and safety of the communities in which these children live—  
including from the risk of COVID-19.

5 7. To carry out its mission, ORR relies on a network of grantee care-provider facilities located  
6 across the country. There are a total of 107 facilities in the ORR grantee care-provider network that house  
7 UAC in a congregate setting: 98 shelters, 6 staff secure facilities, 1 secure facility, and 2 residential  
8 treatment centers (“RTCs”).

9 8. Although each care-provider facility is unique in terms of its physical layout and  
10 capabilities, the ORR Guide generally defines a shelter as “a residential care provider facility in which all  
11 of the programmatic components are administered on-site, in the least restrictive environment.”<sup>1</sup>

12 9. A staff secure facility is generally defined as “a facility that maintains stricter security  
13 measures, such as higher staff to unaccompanied alien children ratio for supervision, than a shelter in order  
14 to control disruptive behavior and to prevent escape. A staff secure facility is for unaccompanied alien  
15 children who may require close supervision but do not need placement in a secure facility. Service  
16 provision is tailored to address an unaccompanied alien child’s individual needs and to manage the  
17 behaviors that necessitated the child’s placement into this more restrictive setting. The staff secure  
18 atmosphere reflects a more shelter, home-like setting rather than secure detention. Unlike many secure  
care providers, a staff secure care provider is not equipped internally with multiple locked pods or cell  
units.”<sup>2</sup>

19 10. A secure facility is generally defined as “a facility with a physically secure structure and  
20 staff able to control violent behavior. ORR uses a secure facility as the most restrictive placement option  
21 for an unaccompanied alien child who poses a danger to self or others or has been charged with having  
22 committed a criminal offense. A secure facility may be a licensed detention center or a highly structured  
therapeutic facility.”<sup>3</sup>

23 11. An RTC is generally defined as “a sub-acute, time limited, interdisciplinary, psycho-  
24 educational, and therapeutic 24-hour-a-day structured program with community linkages, provided through  
25

26 <sup>1</sup> ORR, Children Entering the United States Unaccompanied: Guide to Terms (Mar. 21, 2016), “Shelter care,” available at  
<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Shelter Care>.

27 <sup>2</sup> *Id.*, “Staff secure care,” available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Staff Secure Care>.

28 <sup>3</sup> *Id.*, “Secure care,” available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Secure Care>.

1 non-coercive, coordinated, individualized care, specialized services and interventions. Residential  
2 treatment centers provide highly customized care and services to individuals following either a community  
3 based placement or more intensive intervention, with the aim of moving individuals toward a stable, less  
4 intensive level of care or independence. ORR uses a RTC at the recommendation of a psychiatrist or  
5 psychologist or with ORR Treatment Authorization Request (TAR) approval for an unaccompanied alien  
6 child who poses a danger to self or others and does not require inpatient hospitalization.”<sup>4</sup>

7 12. As of March 25, 2020, there are a total of 3,374 UAC in ORR care. This includes 439 UAC  
8 in long-term foster care and 374 UAC in transitional foster care, which are not congregate settings. For  
9 congregate settings only, there are 2,505 UAC in shelter facilities, 28 in staff secure facilities, 12 in secure  
10 facilities, and 16 in RTCs.

11 13. Currently, ORR’s care-provider facilities are operating significantly below their maximum  
12 capacity and historical highs. For example, at this time last year (March of 2019), ORR was receiving  
13 approximately 8,000 monthly referrals and had almost 12,000 minors in care with an 87% occupancy rate  
14 (including influx and variance beds). In contrast, February referrals from 2020 were approximately 2,000  
15 per month with approximately 3,600 minors in care, and a 28% occupancy rate (including influx and  
16 variance beds). As a result, ORR currently has additional capacity and more opportunity to ensure social  
17 distancing and isolation within the care provider network.

18 14. In addition, CDC recently issued an order under Public Health authorities suspending  
19 introduction of certain persons into the United States.<sup>5</sup> As a result, for the near-term, ORR is likely to have  
20 sufficient capacity to continue to implement necessary social distancing and/or isolation.

21 *ORR Infection Control Measures in Care Provider Facilities*

22 15. ORR has significant historical experience with the identification, mitigation, and treatment  
23 of contagious diseases affecting UAC, including seasonal influenza (flu), mumps (parotitis), chicken pox  
24 (varicella), and tuberculosis. Accordingly, ORR has policies pertaining to infectious disease control that  
25 predate the COVID-19 pandemic.

26 16. ORR’s general, long-standing policies concerning the management of communicable  
27 disease require the routine assessment of travel history when a child arrives at a care-provider program;  
28 medical screenings and vaccinations within 48 hours of arriving at ORR shelters; ability to isolate or

<sup>4</sup> *Id.*, “Residential Treatment Center (RTC),” available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#Residential Treatment Center>.

<sup>5</sup> CDC Order Under Sections 362 and 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268), available at <https://www.cdc.gov/quarantine/order-suspending-introduction-certain-persons.html>.

1 quarantine individuals for the purpose of infectious disease control; hand hygiene and respiratory etiquette  
2 education efforts; and established communicable disease reporting to the local health authority.<sup>6</sup>

3 17. Since the first reports of COVID-19 in the U.S., ORR has monitored the public health  
4 reporting on COVID-19 in the jurisdictions in which grantee care-provider facilities operate. ORR has  
5 provided regular updates to grantee care-provider facilities on infection prevention and control, and issued  
6 guidance regarding the screening and management of UAC, facility personnel, and visitors who have  
7 potentially been exposed to COVID-19. All of these measures are rooted in CDC guidance.<sup>7</sup>

8 18. To prevent those who may have been exposed to, or who may be infected with COVID-19  
9 from entering ORR facilities, ORR has mandated that all visitors and staff seeking to enter any grantee  
10 care-provider facility answer COVID-19 screening questions and submit to a mandatory temperature  
11 check. With the exception of UAC who are being processed for admission, grantee care-provider facilities  
12 are required to deny access to anyone with a fever of 100°F or above; or who exhibits signs of symptoms  
13 of an acute respiratory infection, such as a cough or shortness of breath; or who has had contact with  
14 someone with a confirmed diagnosis of COVID-19 in the previous 14 days; or who has been tested for  
15 COVID-19 and is awaiting test results; or who, in the previous 14 days, has traveled to a country identified  
16 by the CDC as having widespread, sustained community transmission of COVID-19.

17 19. In addition, UAC entering ORR care are screened for COVID-19 exposure or symptoms  
18 during their initial medical examination (“IME”), which has been expanded to include a COVID-19 health  
19 screening protocol consistent with CDC COVID-19 guidelines.

20 20. UAC at risk of COVID-19 exposure based on reported travel history, but without symptoms,  
21 are quarantined and monitored for 14 days. UAC who exhibit COVID-19 symptoms during their IME are  
22 isolated and tested in consultation with the local health authority.

23 21. ORR has also instituted a rigorous symptom-monitoring regime to ensure that any UAC in  
24 any facility who begins exhibiting potential symptoms of COVID-19 after their IME is immediately  
25 identified and appropriately isolated in consultation with the local health authority.

26 22. Since March 19, 2020, ORR has required each grantee care-provider facility to monitor the  
27 temperature of every UAC in care. UACs’ temperatures are taken twice daily, once in the morning and  
28 again in the evening, and are recorded in a master census temperature report that each facility is required  
to maintain. If any UAC is found to have a temperature above 100°F, the grantee care-provider is required

<sup>6</sup> See ORR Policy Guide § 3.4.6 Management of Communicable Diseases, § 3.4.7 Maintaining Health Care Records and Confidentiality, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3>.

<sup>7</sup> CDC, Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases, <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>.

1 to immediately alert ORR. The grantee care-provider is required to alert ORR each day that any child has  
2 a temperature over 100°F. So for example, if a UAC has a 101°F fever for three days, ORR will be alerted  
3 of this fact every day for the duration of the child’s fever. Early identification of potential COVID-19 cases  
4 allows for early introduction of appropriate public health measures.

5 23. Any UAC exhibiting symptoms consistent with COVID-19, such as coughing, fever, or  
6 difficulty breathing, at any point during their time in ORR care are to be immediately isolated and referred  
7 for evaluation by a licensed medical provider, in consultation with the local health authority. If a UAC is  
8 recommended for testing by the healthcare provider or public health department, the UAC will receive  
9 testing.

10 24. The same isolation procedures are used for any UAC determined to be at risk for COVID-  
11 19 exposure or infection, whether based on information collected during the IME, or through subsequent  
12 monitoring. The affected UAC will be provided with a private room, with a closed door and bathroom  
13 access, preferably a private bathroom that is not used by other staff or UAC. State and local health  
14 departments, along with ORR’s Division of Health for Unaccompanied Children (“DHUC”) are  
15 immediately notified and consulted for additional guidance on risk assessment, symptom monitoring, and  
16 isolation or quarantine.

17 25. Facility personnel who enter an occupied isolation room are required to wear personal  
18 protective equipment, including an N95 respirator and goggles or a face shield, per CDC guidelines.

19 26. If a UAC in isolation needs to leave the isolation room for any reason (e.g., to attend a  
20 medical appointment, etc.), the UAC must wear a surgical mask for the duration of their time outside the  
21 isolation room.

22 27. If a UAC must be transported to a health clinic or other off-site location, the facility must  
23 notify the local health department for guidance on proper precautions during transport. The facility is also  
24 required to alert the intended destination so that proper infection control measures may be implemented  
25 prior to the UAC’s arrival.

26 28. UAC are required to remain in isolation until cleared by the local health department or  
27 DHUC. During this time in isolation, UAC receive the same services as their non-isolated peers in the  
28 same facility, although services—particularly education services—may be adjusted to accommodate  
proper infection-control procedures.

29. Any room, object, or vehicle used by a UAC in isolation is thoroughly sanitized afterwards.<sup>8</sup>

<sup>8</sup> See CDC, Disinfecting Your Facility if Someone is Sick, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html>.

1           30. To assess whether each grantee care-provider facility has appropriate stores of personal  
 2 protective equipment (“PPE”) to safely respond in the event COVID-19 is detected within their facility, on  
 3 March 13, 2020, ORR inventoried all care providers for their current levels of PPE (e.g., surgical masks  
 4 and gowns, face shields, N95 respirators) and cleaning/disinfecting supplies, as well as the number of staff  
 5 who are involved in cleaning and maintenance activities. Any facility that encounters difficulty  
 6 maintaining adequate levels of COVID-19 related supplies may request additional stores from FEMA, and  
 ORR may assist in facilitating any such requests.

7           31. Program staff will provide an affected UAC with notice of the isolation requirement and  
 8 address questions or concerns the child may have about medical isolation, as well as potential delays to  
 9 anticipated transfers or discharge plans. In order to protect the health of UAC and the local community,  
 10 *UAC cannot be transferred either to another facility or released to a sponsor until cleared by local health  
 authorities and DHUC.*

11           *ORR Suspensions of Placements and Releases*

12           32. Beginning on March 9, 2020, ORR stopped placements of UAC on a rolling basis in the  
 13 states of California, New York, and Washington due to the ongoing outbreaks of COVID-19 among the  
 14 general public in those states. ORR is continually monitoring the jurisdictions in which its grantee care-  
 15 provider facilities operate to determine whether the conditions in the community surrounding the facility  
 16 warrant the suspension of placements due to concerns related to COVID-19.

17           33. In addition, ORR is prioritizing local placements for all new referrals from DHS in order to  
 18 limit the need for UAC to travel on commercial airliners, which poses a risk of exposing passengers  
 19 (including UAC) to COVID-19. Care providers may still use air travel to reunify a UAC with their sponsor  
 20 if it is safe to do so. However, care providers are required to assess the safety of the UAC’s ultimate  
 21 destination, in order to anticipate logistical issues associated with COVID-19 disruptions. Care-provider  
 22 facilities are required to consult with their Federal Field Specialist (“FFS”), or delegee, if a UAC will be  
 23 traveling to a jurisdiction with widespread community transmission of COVID-19 or that is subject to a  
 24 community-wide “lock down,” such as California. In such cases, release should be postponed until it is  
 25 determined to be safe for the UAC to travel to their destination. This safety assessment includes  
 consideration of the particular UAC’s unique medical needs and vulnerabilities, and the UAC’s respective  
 medical specialists are consulted in the safety planning process.

26           34. Prior to the COVID-19 pandemic, ORR was working on a telehealth initiative to increase  
 27 UAC’s access to healthcare resources that may not be physically present in their locality. In light of the  
 28 state orders restricting the movement of people generally in California, New York, and elsewhere, ORR  
 has rolled out its telehealth capabilities ahead of schedule in numerous jurisdictions in order to ensure care-

1 provider facilities are able to provide UAC with access to medical care without having to leave their  
2 facilities. Those jurisdictions are: California, New York, Connecticut, Maryland, Massachusetts, New  
3 Jersey, Pennsylvania, Texas, and Virginia. Further, ORR is awaiting final approval from telehealth  
4 providers in Arizona, Florida, Illinois, Michigan, Washington, and Oregon, and anticipates the service will  
be available in these locations in the near future.

5 *COVID-19 Cases in ORR Grantee Care Provider Facilities*

6 35. As of March 26, 2020, there have been four confirmed COVID-19 cases among UAC across  
7 all ORR care-provider facilities. All four cases were in a single facility in New York state, and the affected  
8 UAC are currently in isolation, per ORR and CDC guidelines, and are receiving appropriate monitoring  
9 and medical care.

10 36. Currently, 18 UAC in the care-provider network have been tested. As noted, four tested  
positive for COVID-19, 11 tested negative for COVID-19, and three have test results pending.

11 37. Pursuant to CDC Guidance, any UAC who has undergone COVID-19 testing is considered  
12 presumptively positive until results are available (typically within 3-4 after testing) and are placed in  
13 isolation as a precautionary measure.

14 38. In addition, a total of eight program staff, contractors or foster parents at five care-provider  
15 programs across New York, Washington, and Texas have self-reported testing positive for COVID-19.  
16 ORR’s medical team and the affected programs have worked in close coordination with the local public  
17 health departments on appropriate public health measures, which typically involve self-quarantine at home,  
18 and the tracking and monitoring of the affected staff members’ contacts within the care-provider facility,  
per CDC guidance.<sup>9</sup>

19 39. In addition to the COVID-19 protocols described above, care-provider facilities are directed  
20 to follow any local requirements issued by the state licensing agency or other local public health authority  
21 related to the identification, reporting, and control of communicable diseases that are more stringent than  
22 ORR’s protocols.

23 *Assessment of Plaintiffs’ Assertions*

24 40. In their March 22, 2020 correspondence, Plaintiffs stated that they “are advised that  
25 *congregate care is inherently incongruent with the recommendations of the Centers for Disease Control*  
26 *and Prevention*, state health authorities, and epidemiologists, all of whom recommend (if not mandate)  
social distancing and related safety precautions that are difficult, if not impossible, to observe in facilities

27 \_\_\_\_\_  
28 <sup>9</sup> CDC, Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus  
Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases,  
<https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>.

1 housing more than ten Class Members.” See Ltr. from C. Holguin (Ctr. for Human Rights & Const. Law),  
2 to D. Shieh (DOJ), dated Mar. 22, 2020, at 2 (emphasis added), attached hereto as “Exhibit A.”

3 41. CDC, however, has issued guidance on COVID-19 containment in various congregate  
4 settings, including colleges,<sup>10</sup> nursing homes,<sup>11</sup> prisons,<sup>12</sup> and homeless shelters.<sup>13</sup> ORR has implemented  
5 such guidance to the extent that it can be applied to its grantee care-provider facilities. Further, ORR has  
6 consulted with CDC regarding ORR’s COVID-19 containment and mitigation strategies and has been told  
7 by CDC that they are consistent with CDC’s recommendations.

8 42. I have serious concerns about the proposals in Plaintiffs’ March 22 correspondence that call  
9 for the expedited release of UAC to potential sponsors. In particular, the immediate, blanket release of  
10 UAC to sponsors located in jurisdictions with widespread community transmission of COVID-19 would  
11 pose a risk to the health and welfare of the UAC. UAC are currently housed in settings where infection  
12 control protocols are rigorously enforced. In contrast, upon release, UAC may be exposed to COVID-19  
13 in airports or transit systems, or through sponsors who have been exposed to COVID-19, or through  
14 circulation in communities with widespread community transmission of COVID-19.

15 43. Many sponsors are also located in states that are currently under “lock down” in which  
16 residents’ freedom of movement has been significantly curtailed in an effort to control the spread of  
17 COVID-19, such as California, Washington, and New York. If anything, the current ORR approach is  
18 consistent with those “lock down” orders in that UAC are shielded from UAC community transmission.

19 44. ORR’s efforts to safely release UAC to safe, approved sponsors remain ongoing. But  
20 Plaintiffs’ proposal to release UAC to sponsors who are still undergoing vetting would materially increase  
21 the risk of release to a sponsor who potentially cannot or will not shelter in place with the UAC, or who  
22 may not adhere to appropriate infection control practices (e.g., social distancing), or who may circulate  
23 with the UAC in areas with widespread community transmission of COVID-19, all of which increase the  
24 health risks to the UAC. Plaintiffs’ proposal would also increase the risk of release to a sponsor who,  
25 because vetting has not yet completed, is, or will become unable to financially support the UAC due to  
26 COVID-19-related business closures, layoffs, or furloughs.

27 <sup>10</sup> CDC, Interim Guidance for Administrators of U.S. Higher Education, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-ihe-response.html>.

28 <sup>11</sup> CDC, Preventing the Spread of COVID-19 in Retirement Communities and Independent Living Facilities (Interim Guidance), <https://www.cdc.gov/coronavirus/2019-ncov/community/retirement/guidance-retirement-response.html>.

<sup>12</sup> CDC, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

<sup>13</sup> CDC, Interim Guidance for Homeless Service Providers to Plan and Response to Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.



1 45. The immediate, blanket release of UAC to sponsors who are still undergoing vetting would  
2 also deprive these UAC of access to the significant medical resources of ORR (including testing for  
3 COVID-19). Once they leave ORR’s care they are limited by the resources of their sponsor’s household  
4 and local community, at a time when important medical resources may be in short supply.<sup>14</sup>

5 46. Plaintiffs propose that ORR can expedite the release of UAC to potential sponsors on  
6 Plaintiffs’ terms while adequately vetting the sponsors for the new child welfare and public health concerns  
7 that have arisen in recent months and are continuing to evolve. Plaintiffs, however, do not identify the  
8 safeguards that ORR can jettison from the sponsor vetting process without putting UAC at risk.

9 47. Plaintiffs also overlook the fact that fingerprinting remains a key component for many  
10 sponsors in the sponsor vetting process, particularly sponsors who are not parents or close relatives. Such  
11 fingerprinting has been affected by the recent closures of some digital fingerprinting sites due to COVID-  
12 19.

13 48. Thirty-nine digital fingerprinting sites in 21 states<sup>15</sup> have, as of March 24, 2020, either  
14 closed, curtailed their hours of operation, or switched to an “appointment only” system in response the  
15 public health threat posed by COVID-19. Fingerprinting is a key component of the background check  
16 process that is needed to fulfill the requirements of the TVPRA and ensure UAC are not released into the  
17 custody of sponsors with disqualifying criminal histories, such as convicted human traffickers and  
18 pedophiles. Potential sponsors for whom ORR requires fingerprints (including those who are not Category  
19 1 or 2A sponsors)<sup>16</sup> must be able to undergo fingerprinting in order for background checks to be performed.

20 49. To compensate for the reduced availability of digital fingerprinting, ORR’s has directed  
21 care providers to automatically mail fingerprint cards to all individuals identified in family reunification  
22 applications, so that given limited hours at digital fingerprint locations, potential sponsors are aware of the  
23 ability to have fingerprints taken on fingerprint cards, including at a local law enforcement agency. While  
24 fingerprint cards are often used, this alternative to digital fingerprinting could take longer for potential  
25 sponsors to execute given the additional steps involved, and the reliance on the mail system to transmit the  
26 cards.

27 <sup>14</sup> ORR is aware of one instance in which 3 UAC who were recommended for COVID-19 testing were unable to immediately  
28 obtain a COVID-19 test due to the particular community’s system for allocating tests among primary care providers. DHUC  
is monitoring this situation and will intervene as necessary to assure the UAC have prompt access to COVID-19 testing.


<sup>15</sup> Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Louisiana, Massachusetts, Maryland, Missouri, North  
Carolina, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Washington.

<sup>16</sup> ORR Policy Guide § 2.2.1, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.2.1> (defining Category 2A sponsors; Category 1 sponsors are parents or legal guardians; Category 1 and 2A sponsors generally do not require fingerprinting, unless there is a special concern).

1           50. My opinion is that ORR cannot safely release UAC to sponsors absent vetting that includes  
 2 the completion of fingerprint-based background checks where required, or other protective measures, such  
 3 as home studies, which are required in certain instances by the TVPRA. This is especially true during the  
 4 current public health emergency. The jettisoning of core safeguards in the sponsor vetting process in order  
 5 to effectuate the immediate release of UAC would expose UAC to not only public health dangers but also  
 6 material child welfare and safety risks.

7           51. Plaintiffs also request a full adversarial hearing in order for UAC to challenge failures to  
 8 (yet) release to individuals applying to be sponsors (including individuals still undergoing vetting). In my  
 9 opinion, the creation and operation of such an adversarial hearing process during the current public health  
 10 emergency would require ORR to redeploy federal and grantee staff from program operations, and  
 11 materially degrade the ability of ORR to conduct sponsor vetting and work with grantee care-provider  
 12 facilities to maintain appropriate infection control measures and protect the health and safety of UAC at  
 13 the facilities. My opinion is that to maximize child welfare during the current public health emergency,  
 14 the federal and grantee staff need to focus on program operations with the goal of releasing UAC to  
 15 sponsors only when it is safe to do so.

16 Executed on March 27, 2020.

17   
 18 \_\_\_\_\_  
 19 Jallyn Sualog

# Exhibit Q, Attachment A

March 22, 2020 Letter from Plaintiffs' Counsel

## CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

256 S. OCCIDENTAL BOULEVARD  
LOS ANGELES, CA 90057  
Telephone: (213) 388-8693 Facsimile: (213) 386-9484  
www.centerforhumanrights.org

March 22, 2020

Daniel Shieh  
Benjamin Mark Moss  
Marina C. Stevenson  
Civil Division, Office of Immigration Litigation  
United States Department of Justice  
P.O. Box 878  
Ben Franklin Station  
Washington, DC 20044

*Via email.*

Re: *Lucas R. et al. v. Azar et al.*, 2:18-cv-05741-DMG-PLA.

Dear Counsel:

Plaintiffs request that the parties meet and confer tomorrow, March 23, 2020, to explore ways in which the parties may cooperatively address the grave risk that Class Members<sup>1</sup> in the above-referenced action are now facing, or will shortly face, in ORR congregate care facilities as a result of the COVID-19 pandemic and public health national emergency. Absent a cooperative agreement, Plaintiffs will need to file a temporary restraining order (“TRO”) immediately seeking relief from the Court, as described below.

Plaintiffs are advised that congregate care is inherently incongruent with the recommendations of the Centers for Disease Control and Prevention, state health authorities, and epidemiologists, all of whom recommend (if not mandate) social distancing and related safety precautions that are difficult, if not impossible, to observe in facilities housing more than ten Class Members.

We accordingly wish to discuss expediting the release of Class Members to available custodians. We, of course, appreciate the need to protect children against abuse or neglect following release, but believe that such risks need to be balanced against the substantial and immediate dangers that children would face as COVID-19 spreads through congregate care facilities. *See* TVPRA, 8 U.S.C. § 1232(c)(2)(A) (requiring ORR “promptly” place detained children “in the least restrictive setting that is *in the best interest of the child*” (emphasis added)).

We are already aware that Class Members have been exposed to COVID-19 at the MercyFirst and Abbott House programs in New York. We have also been informed that ORR has stopped

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<sup>1</sup> Class Members include all youth within any of the five classes the Court certified in its order of November 2, 2018 (ECF No. 126), as modified by order entered December 27, 2018 (ECF No. 141).

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Benjamin Mark Moss  
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March 22, 2020  
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placing Class Members at numerous other shelters in New York, as well as some in California, Washington, Oregon and Pennsylvania, though we do not know whether Class Members at shelters in these states have likewise been exposed to COVID-19.

As such, it is no longer in the best interest of many, if not all, Class Members to remain housed in congregate care, particularly where recommended and/or mandatory safety precautions are not observed and Class Members' exposure to COVID-19 is highly likely. *See* TVPRA, 8 U.S.C. § 1232(c)(2)(A). During this rapidly expanding and unprecedented public health crisis, Class Members' health and welfare must be paramount, as mandated by the TVPRA and state, local, and national authorities, among others.

We accordingly propose that the parties discuss the following:

- 1) The steps ORR has taken and is taking to ensure the safety of Class Members in light of the COVID-19 pandemic.
- 2) Whether, with respect to all members of the "unfit custodian class," as defined in the Court's order of December 27, 2018 (ECF No. 141) ("Unfit Custodian Class Members"), absent good cause based on articulable facts to believe that available custodian(s) would harm or neglect a class member, or that an individual class member presents a current danger to the public, ORR would be amenable to expediting release of all Unfit Custodian Class Members to available custodians who have been vetted and meet the safety threshold noted above, or else place such Unfit Custodian Class Members in non-congregate care.
- 3) Whether, with respect to Unfit Custodian Class Members whom it fails to release or place in non-congregate care, ORR would be amenable to amending Policy Guide § 2.7.8, *available at* [www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.7](http://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.7) (last visited March 22, 2020), effective immediately, to provide as follows:
  - a. All Unfit Custodian Class Members shall have the right of administrative appeal without regard to the degree of family affinity of their available custodians.
  - b. The Assistant Secretary for Children and Families, or his or her designee, shall afford each administratively appealing Unfit Custodian Class Member —
    - i. a reasonable opportunity to examine ORR's evidence and reasons for the Unfit Custodian Class Member's continued detention in advance of any hearing;
    - ii. the right to be represented by counsel;
    - iii. a reasonable opportunity to submit documentary evidence and testimony in support of release;

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iv. an opportunity to be heard via teleconference or video conference within five business days of filing an administrative appeal; and

v. a written decision issued no later than three business days following the administrative hearing directing the Unfit Custodian Class Member's immediate release, transfer to non-congregate care, or else setting out the reasons for continued custody and placement in congregate care.

Plaintiffs sincerely hope the parties can work jointly to protect the health and welfare of Class Members under increasingly difficult conditions, but are prepared to pursue all available legal remedies should such cooperation prove unsuccessful. Accordingly, Plaintiffs intend to apply for a TRO and order to show cause re: preliminary injunction by no later than the close of business on March 24, 2020, in the event the parties have not reached an agreement on the above. The requested relief will include all items discussed herein.

Should Defendants decline this invitation to confer, pursuant to Local Rule 7-19, Plaintiffs ask that Defendants advise whether they oppose the application for a TRO.

Thank you,

*s/ Carlos Holguín*

Carlos Holguín  
One of the attorneys for Plaintiffs

# **EXHIBIT 6**

# DEFENDANTS'

# EXHIBIT M



UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUCAS R., *et al.*,

Plaintiffs,

v.

ALEX AZAR, Secretary of U.S. Dep't of Health  
and Human Services, *et al.*,

Defendants.

Case No.: 2:18-CV-5741 DMG (PLAx)

District Judge Dolly M. Gee

**DECLARATION OF DR. AMANDA COHN, CHIEF MEDICAL OFFICER, NATIONAL  
CENTER FOR IMMUNIZATIONS AND RESPIRATORY DISEASES,  
CENTERS FOR DISEASE CONTROL AND PREVENTION**

I, Amanda Cohn, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am currently on detail serving as the Acting Director, National Center for Birth Defects and Developmental Disabilities. My permanent position is the Chief Medical Officer, National Center for Immunizations and Respiratory Diseases (NCIRD). I also serve as the Executive Secretary, Advisory Committee on Immunization Practices (ACIP), which sets U.S. immunization policy. Since January 3, 2020, I have served as a Deputy Incident Manager for the CDC COVID-19 response, which became a full Emergency Operations Activation the week of January 19, 2020.

2. I have held the position of Chief Medical Officer, NCIRD since early 2019. Prior to 2019, I was a Senior Advisor for Vaccines and Executive Secretary, ACIP, and served as the Deputy Director for Immunization Services Division, NCIRD. I have been a medical officer focused on vaccine-preventable diseases and respiratory diseases at CDC since 2004.

3. I received my medical degree from Emory School of Medicine in 2001. From 2001-2004, I completed an internship and residency in Pediatrics at Boston Children's Hospital and Boston Medical Center. From 2004-2006, I was an Epidemic Intelligence Service Officer at CDC, where I received specialized training in epidemiology, outbreak control, and vaccine-preventable diseases.

4. In my current role, I am responsible for the Influenza Coordination Unit and Vaccine Policy in NCIRD. In addition to my role as the Executive Secretary, ACIP, I am an internal CDC subject matter resource for cross-cutting immunization issues, including immunization in shelter settings. Additionally,

1 I have led and overseen planning and preparedness for pandemic influenza and other respiratory disease  
 2 threats. I have been the NCIRD lead for border health issues, including supporting government agencies  
 3 in prevention and control of vaccine-preventable diseases among staff and persons in custody of the U.S.  
 4 government. As the Deputy Incident Manager of the CDC COVID-19 response, I am responsible for  
 5 guidance related to healthcare settings, worker safety, community mitigation, and at-risk populations. I  
 6 have also provided oversight on movement and monitoring guidance for persons exposed to COVID-19,  
 as well as the guidance for mass gatherings.

7 5. In the course of performing my job duties, I have reviewed and am familiar with CDC’s  
 8 guidance regarding COVID-19, including the CDC guidance applicable to various congregate settings  
 9 including institutes of higher education, detention facilities, nursing homes, and homeless shelters, all of  
 10 which is available on CDC’s website.

11 6. In addition, in the course of performing my job duties, I have consulted with the Office of  
 12 Refugee Resettlement (“ORR”) on multiple clinical issues over the years. As a result of those  
 13 consultations, I have general familiarity with the structure and operations of ORR, the population of  
 14 unaccompanied alien children (“UAC”) in ORR care, and the ORR network of grantee care provider  
 facilities.

15 7. In 2014, I was the Vaccines Task Force lead for the CDC’s effort to support ORR’s response  
 16 to the influx of UAC at the Southwestern Border. I was a co-author on a report “Multistate Outbreak of  
 17 Respiratory Infections Among Unaccompanied Children, June 2014-July 2014” published in the journal  
 18 Clinical Infectious Diseases. I have provided technical comments on many ORR guidance documents over  
 19 the years and consulted with ORR on multiple issues around immunization, vaccine-preventable disease  
 outbreaks, and influenza prevention and control.

20 8. More recently, I reviewed ORR’s guidance to care provider facilities on COVID-19 to  
 21 confirm that it aligned with CDC’s guidelines and recommendations, and the best practices for preventing  
 22 and controlling the spread of COVID-19 within residential facilities. This includes guidance related to  
 23 symptom and temperature monitoring of staff and children, cleaning and hygiene guidance, and ensuring  
 24 the ability to isolate ill UAC and quarantine potentially exposed UAC. As part of my review, I conferred  
 25 with ORR’s Director of the Division of Health for Unaccompanied Children (“DHUC”), Dr. Michael  
 26 Bartholomew, on how to best ensure the health and safety of UAC and staff. Over the last two weeks, I  
 27 have received and responded to multiple requests from ORR for consultation to ensure their guidance is  
 consistent with the most up to date and rapidly evolving CDC guidance.

28 9. My testimony in this declaration is based upon my personal knowledge; information about  
 ORR’s response to COVID-19 that I received in emails from and phone calls with the relevant ORR

1 personnel in the regular course of performing my job duties; and CDC guidance documents regarding  
2 COVID-19, which I obtained from the CDC’s official website and reviewed in connection with the  
3 performance of my job duties. In preparing this declaration, I also reviewed the declaration of ORR Deputy  
4 Director Jallyn Sualog, and the memorandum of law and declarations submitted by the Plaintiffs in support  
5 of their request for a temporary restraining order in the *Lucas R.* case.

6 10. I am testifying in this declaration to the best of my knowledge, and understand that this  
7 declaration is for use in the *Lucas R.* case.

8 *Background Regarding COVID-19*

9 11. COVID-19 is a novel coronavirus that originally caused an outbreak of respiratory illness  
10 in Wuhan, China. COVID-19 is spread primarily by person-to-person contact through droplets produced  
11 when an infected person coughs or sneezes. COVID-19 may also spread through contact with  
12 contaminated surfaces or objects, and there is emerging evidence that there may be asymptomatic or pre-  
13 symptomatic transmission.

14 12. Since the initial outbreak in Wuhan, China, COVID-19 has spread across the globe. On  
15 January 30, 2020, the Director-General of the World Health Organization declared that COVID-19  
16 constitutes a Public Health Emergency of International Concern. On March 11, 2020, the World Health  
17 Organization classified COVID-19 as a pandemic.

18 13. COVID-19 now presents a significant public health risk in the United States. On January  
19 31, 2020, the Secretary of HHS declared that a public health emergency exists under section 319 of the  
20 Public Health Service Act. On March 13, 2020, the President issued a Proclamation on Declaring a  
21 National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. As of March 16,  
22 2020, all 50 states and several local and territorial jurisdictions declared states of emergency.

23 14. There are currently confirmed COVID-19 infections in every state and the number of  
24 confirmed infections is increasing on a daily basis. Globally and in the United States, the groups at risk  
25 for severe disease, and a majority of the morbidity and mortality, is older adults and persons with multiple  
26 co-morbidities.

27 15. CDC believes that there is currently community-based transmission of COVID-19 ongoing  
28 in many communities across the United States. Several cities and states have widespread transmission  
where the healthcare systems and public health are overwhelmed.

*CDC Guidances to the Public and Institutions*

16. To protect the public health, CDC has issued guidance to the general public advising  
individuals to limit non-essential travel and social contacts, and to practice social-distancing when outside  
their homes (i.e., maintain a distance of at least six feet from others while in public). Essentially, this

1 guidance encourages all Americans to practice the shelter-in-place strategy now mandated in certain states.  
2 CDC, however, does not recommend that individuals within the same domicile, or living unit, attempt to  
3 practice social distancing unless there is a known exposure to COVID-19.

4 17. CDC’s guidance to the general public related to limiting the size of gatherings is intended  
5 to complement, not supersede, the more detailed guidance intended for specific congregate settings such  
6 as institutions of higher education, nursing homes, prisons, and homeless shelters. In all of these guidance  
7 documents related to congregate living settings, CDC recommends institutions implement practices  
8 tailored to their particular circumstances.

9 18. In general, the various CDC guidance documents for specific congregate settings adopt a  
10 two-pronged approach of reducing the potential for a case to occur in a facility (prevention) and limiting  
11 the spread of cases in a facility if a case occurs (containment). Prevention refers to precautions facilities  
12 can take to prevent individuals infected with, or possibly exposed to COVID-19, from entering in the first  
13 place—thus, reducing the risk of exposure to those inside. Effective prevention measures for congregate  
14 settings include screening visitors for COVID-19 risk factors, such as travel to a heavily infected area,  
15 contact with a confirmed case of COVID-19, or exhibiting symptoms of the disease (i.e., fever, cough,  
16 shortness of breath). Prevention also entails the adoption of rigorous hygiene practices within facilities,  
17 including more frequent cleaning, particularly of high-traffic surfaces and shared spaces.

18 19. Containment focuses on limiting spread from any potential infections that may emerge  
19 within a facility, by regularly monitoring the population within the facility for signs of COVID-19  
20 infection. In the event any individual exhibits possible symptoms of COVID-19 infection, the individual  
21 is to be immediately isolated and tested. In addition, any contacts that individual may have had with others  
22 should be traced, and those individuals should be monitored, and possibly isolated depending on the nature  
23 of the contact. Like any contagious disease, the risk of acquiring COVID-19 from contact with a confirmed  
24 case depends on the nature and extent of the contact.

25 20. ORR’s current COVID-19 procedures are consistent with CDC guidances for congregate  
26 settings; they direct grantee care-provider facilities to implement both prevention and containment  
27 measures. In some respects, ORR’s current COVID-19 procedures actually exceed those set forth in the  
28 CDC guidances to congregate care facilities. For example, ORR’s twice-daily temperature monitoring  
regime goes beyond what CDC has recommended for other congregate settings. Additionally, ORR  
facilities have preparedness plans that ensure immediate care is provided to ill children.

21 21. Further, ORR’s stop-placement orders in California, New York, and Washington are  
22 consistent with CDC and other public guidance recommending that non-essential travel and public  
23 movements be avoided, especially to areas in the U.S. with widespread transmission. For example, the

1 White House recently issued guidance that all persons who recently travelled to New York should be under  
2 home quarantine for 14 days. These three states are currently in the acceleration phase of the epidemic;  
3 the expectation is that in the next several days to weeks these areas will be in a deceleration phase and other  
4 states may be in the acceleration phase.

5 22. My understanding is that the Plaintiffs in this case have requested the expedited release of  
6 UAC in ORR custody to sponsors located throughout the United States. Moving UAC children outside of  
7 custody likely increases risk of exposing UAC to COVID-19 relative to remaining in custody, given that  
8 they are currently housed in well-controlled environments and may be transferred to areas where there is  
9 widespread community transmission, or to homes where there may be persons who have been exposed.

10 23. In addition to the prevention and containment practices ORR has already implemented, it is  
11 my understanding that ORR has adequate space within its facilities to isolate any UAC suspected of or  
12 confirmed to be infected with COVID-19, given that the ORR network of grantee care-provider facilities  
13 is currently operating at approximately 30% capacity. Moreover, the CDC's recent order prohibiting the  
14 introduction of certain aliens into the U.S. is anticipated to reduce the number of new UAC entering ORR's  
15 care. Given the amount of space within the ORR network and the relatively static nature of its current  
16 population, maintaining their current living situation and not releasing UAC to communities with  
17 widespread transmission is the most prudent measure to reduce the risk of infection among the current  
18 population of UAC. Although there is a risk of cases of COVID-19 in a UAC facility among UAC or staff,  
19 with all of the protective measures ORR has implemented and the current space available in facilities to  
20 manage ill UAC, based on currently available information the overall risk to UAC is lower in the facilities  
21 than traveling and placing children in home environments in some locations in the U.S. at this time.

22 24. Requiring UAC to travel significant distances (presumably, via plane, train, or bus) and  
23 enter new living environments poses a significant risk of exposing UAC to COVID-19 both in transit, and  
24 upon arrival into their sponsor's household, where it is uncertain how vigorously the occupants have  
25 avoided exposure to COVID-19 themselves. Given the high prevalence of COVID-19 in the general  
26 community, removing UAC from their current living environments presents a serious risk of exposing them  
27 to COVID-19.

28 25. Fortunately, the vast majority of individuals who become infected with COVID-19 will  
experience only mild symptoms, and there have been very few reports of serious illness among children  
and adolescents globally. The general advice to those with mild cases of COVID-19 is the same advice  
that would be given to an individual with a bad cold or flu: stay at home and avoid contact with others;  
rest; drink plenty of fluids; manage symptoms with over-the-counter-medications, and seek medical  
attention if symptoms worsen.

1           26.    The population of UAC in ORR care are not at any significantly increased risk from  
 2 COVID-19, and have access to strong medical care that is equal to or greater than what they would have  
 3 in the community should they need it. UAC are primarily healthy adolescents, which currently available  
 4 information indicates are not at an increased risk of experiencing serious or severe cases of COVID-19 that  
 5 would require hospitalization or mechanical respiratory support.

6           27.    CDC is committed to continuing to work with ORR to ensure that its COVID-19 procedures  
 7 are informed by the latest CDC guidance, which in turn is shaped by the latest epidemiological information  
 8 available about the ongoing pandemic.

9 Executed on March 27, 2020.

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 12 Amanda Cohn, MD  
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# **EXHIBIT 7**

# EXHIBIT A



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13 UNITED STATES DISTRICT COURT  
 14 CENTRAL DISTRICT OF CALIFORNIA  
 15 WESTERN DIVISION

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

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

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

I, Melissa Adamson, declare as follows:

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

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

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

Data Inconsistencies

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

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

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

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

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

#### 13 14 July Flores Data Report Analysis

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Melissa Adamson

# EXHIBIT 1

## TITLE 42 DATA SUMMARY

### I. Introduction

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

### II. Data Inconsistencies

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

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

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

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



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

### 1. Missing Children

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

Attachment A listed a total of 46 children detained in hotels under Title 42 in the month of April. However, the following 12 children were listed as “Title 42 Return” in the April Flores report<sup>3</sup> but were not included in Attachment A. All 12 children were held in hotels.

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

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

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

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

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

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

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

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

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

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

## 2. Inconsistent Dates of Detention

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

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

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

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

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

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

### 3. Inconsistent Locations of Detention

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

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

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

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

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

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

#### 4. Inconsistent Subject ID Numbers

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

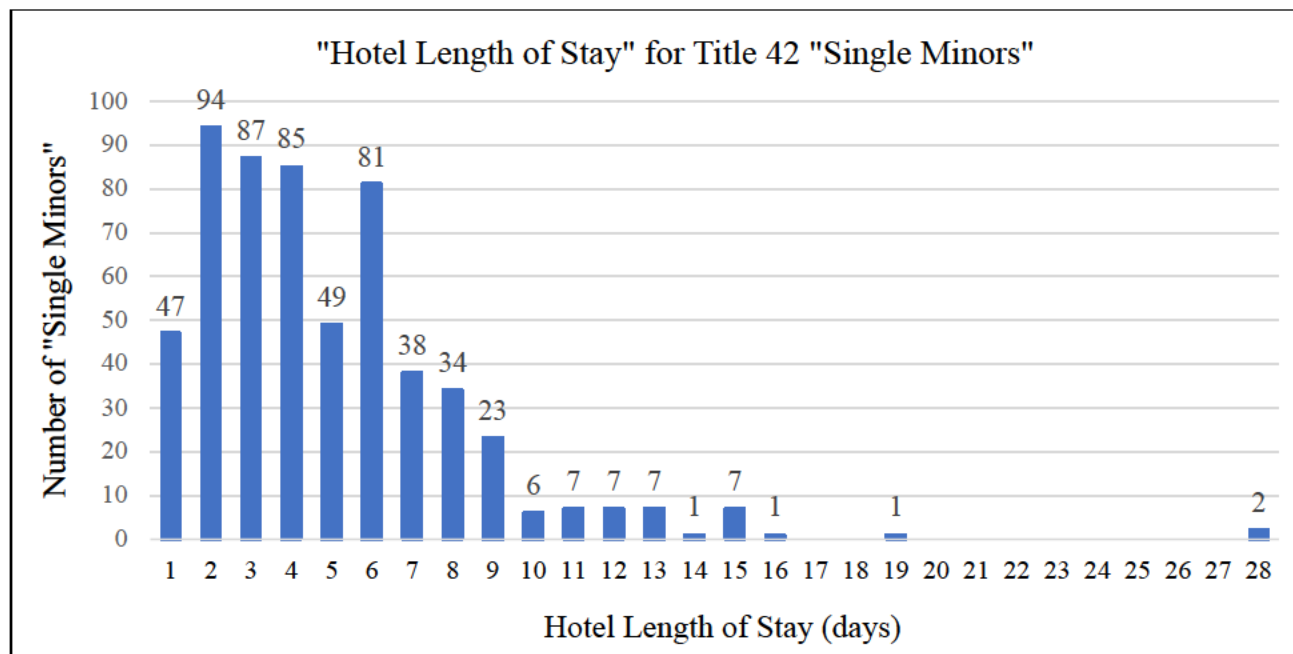
- J.D.C.
  - April Flores report: [REDACTED]
  - Attachment A: [REDACTED]
- G.J.P.
  - April Flores report: [REDACTED]
  - Attachment A: [REDACTED]

### III. Attachment A Analysis

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

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

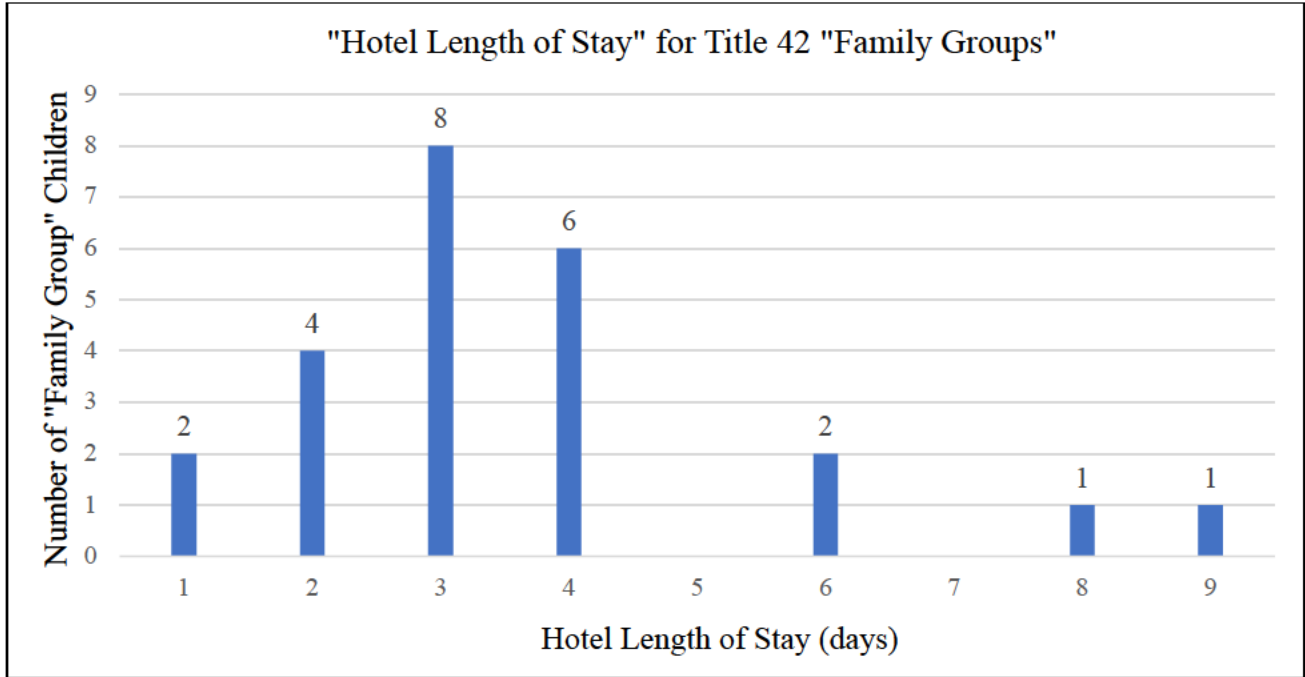
Figure 1: “Hotel Length of Stay” for Title 42 “Single Minors”



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

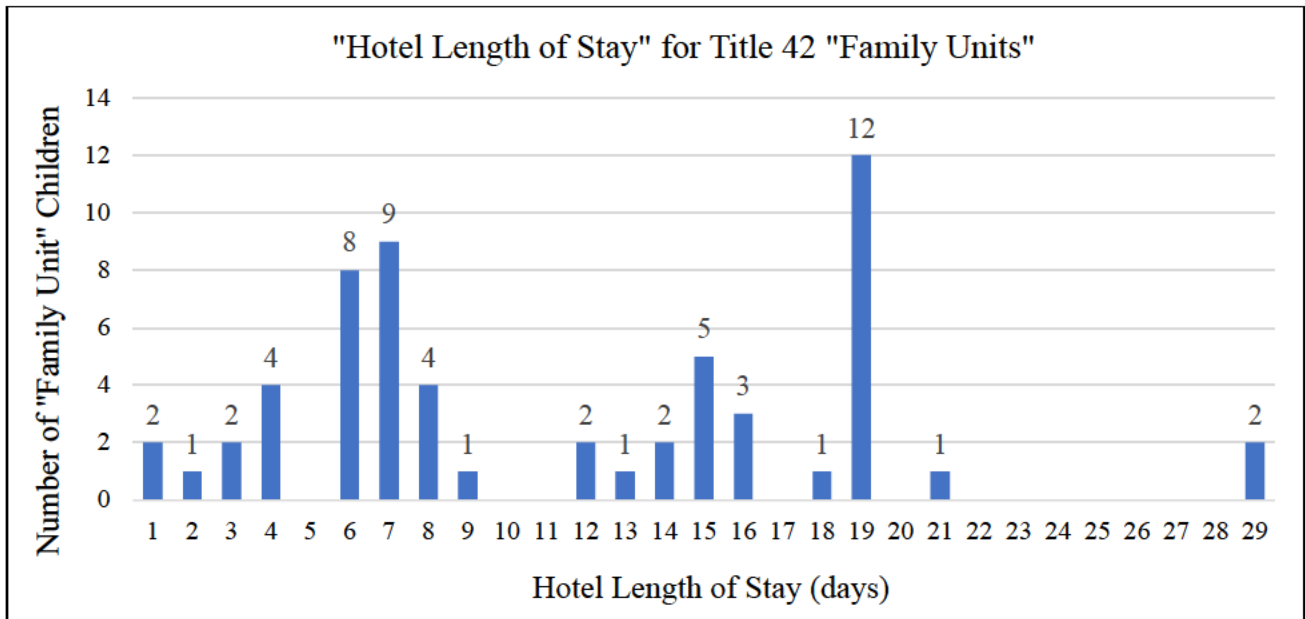
<sup>5</sup> Defendants state that “family ‘groups’ refer to siblings, minors with aunts/uncles, etc., and family ‘units’ are traditional parent/child units.” *Harper Decl.* at 3 n.1.

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



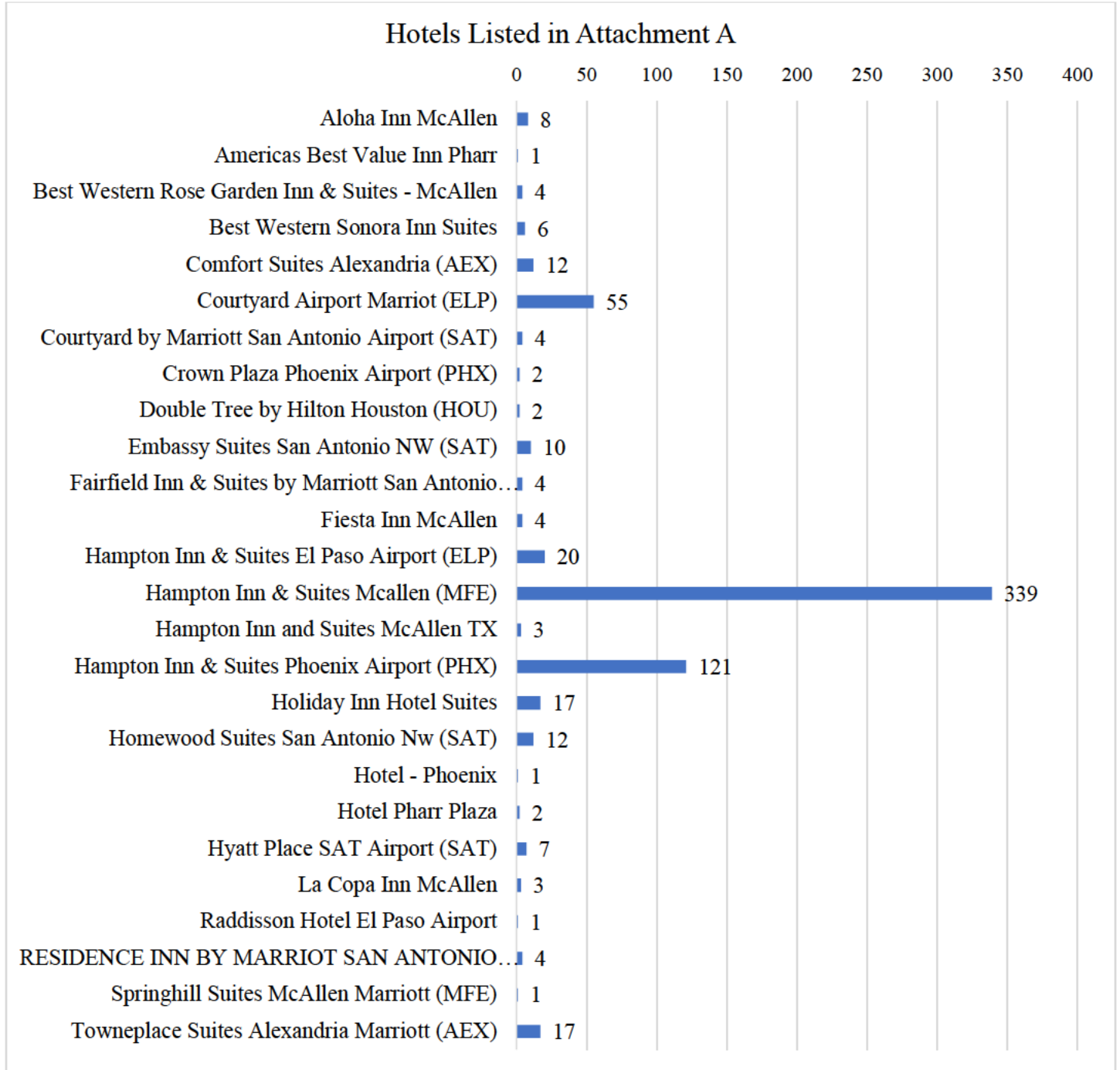
Of the 24 total "family group" children that were held in hotels, 18 children were held for three or more days (75%).

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



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

Figure 4: Hotels Listed in Attachment A<sup>6</sup>



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

**IV. Flores Data Summary: July 2020**

This summary is based on the July *Flores* data report and includes information regarding the following categories of children for July 2020.<sup>7</sup>

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

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

**A. Unaccompanied Children Expelled Under Title 42**

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

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

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

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

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



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

For example:

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

**B. Unaccompanied Children Awaiting Expulsion Under Title 42**

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

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

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

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

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

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

For example:<sup>13</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>18</sup> L.P. ( ) was not included in Attachment A.

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

<sup>20</sup> T.P.Z. ( ) was not included in Attachment A.

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

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

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

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

For example:

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

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

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

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

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

<sup>22</sup> D.V.A. ( [REDACTED] ) was not included in Attachment A.

<sup>23</sup> F.P.M. ( [REDACTED] ) was not included in Attachment A.

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

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

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

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

Four of these children were held at hotels or other unlicensed placements as well as at Karnes before they were expelled under Title 42.<sup>24</sup>

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

<sup>24</sup> These four children were not included in Attachment A.

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

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

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

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

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

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

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

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

<sup>25</sup> These four children were not included in Attachment A.

<sup>26</sup> These four children were not included in Attachment A.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

<sup>29</sup> L.L. ( ) was not included in Attachment A.

<sup>30</sup> F.B. ( ) was not included in Attachment A.

<sup>31</sup> A.S.J.P. ( ) was not included in Attachment A.

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

## 6. CBP Custody

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

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

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

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

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

# EXHIBIT 2

**From:** Fabian, Sarah B (CIV) Sarah.B.Fabian@usdoj.gov  
**Subject:** RE: Act v ty n Case 2:85-cv-04544-DMG-AGR Jenny L Flores v. Edw n Meese Sea ed Dec arat on n SupportDec arat on  
**Date:** August 27, 2020 at 1:22 PM  
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**Cc:** Andrea Sheridan Ord n aordn@strumwooch.com, Leeca Welch wech@youthaw.org, Neha Desa ndesa@youthaw.org, Melissa Adamson madamson@youthaw.org, Peter Schey pschey@centerforhumanrghts.org, Murrey, Nicole (CIV) Nicole.Murrey@usdoj.gov, S v s, W am (CIV) W am.S v s@usdoj.gov, Fentje, August (CIV) August.Fentje@usdoj.gov



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

Best,  
Sarah

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

[Redacted]

[Redacted]

[Redacted]

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

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

Sarah,

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

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

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

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

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

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

Thank you.

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

All:

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

Thank you all and have a nice weekend.

Sarah B. Fabian  
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**From:** [cacd\\_ecfmail@cacd.uscourts.gov](mailto:cacd_ecfmail@cacd.uscourts.gov) <[cacd\\_ecfmail@cacd.uscourts.gov](mailto:cacd_ecfmail@cacd.uscourts.gov)>  
**Sent:** Friday, August 21, 2020 9:21 PM  
**To:** [ecfnef@cacd.uscourts.gov](mailto:ecfnef@cacd.uscourts.gov)  
**Subject:** Activity in Case 2:85-cv-04544-DMG-AGR Jenny L Flores v. Edwin Meese Sealed Declaration in SupportDeclaration

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Notice of Electronic Filing**

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

**Case Name:** Jenny L Flores v. Edwin Meese

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

**Filer:** Edwin Meese

**WARNING: CASE CLOSED on 10/11/2018**

**Document Number:** [927](#)

**Docket Text:**

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

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

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

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

**Document description:**Main Document

**Original filename:**\\civ-lpl-fls-01\oil-dcs\$\sfabian\My Documents\C.D Cal\Flores Enforcement-Amendment Proceeding\2020 TRO COVID\Title 42\For Filing\Application to Seal Attachment A 8\_21\_20\_SBF Declaration.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=8/21/2020] [FileNumber=30394117-0] [94985dbf5eaf4dc67f2c7f9d05418b08162869d5604bd483414c458561a25b0446cd1dceba70645d72888ch7d3410a6950792b426f6435c01484fafc0d1f78e111]

**Document description:**Unredacted Document

**Original filename:**\\civ-lpl-fls-01\oil-dcs\$\sfabian\My Documents\C.D Cal\Flores Enforcement-Amendment Proceeding\2020 TRO COVID\Title 42\For Filing\Copy of Summary T42 minors in Hotels through 07\_31\_20.pdf

**Electronic document Stamp:**

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<Summary T42 minors in Hotels through 07\_31\_20.xlsx><927 - UNDER SEAL Declaration in Support and Unredacted Exhibit A.pdf>



8\_27\_20 - Update...20.x sx

# **EXHIBIT 8**

# EXHIBIT A

**DECLARATION OF KARLA MARISOL VARGAS, SENIOR STAFF ATTORNEY,  
RACIAL AND ECONOMIC JUSTICE PROGRAM, TEXAS CIVIL RIGHTS PROJECT**

I, Karla Marisol Vargas, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct. If called as a witness, I could and would testify as follows.

1. I am an attorney licensed to practice law in Texas. Since November 2018, I have been employed at the Texas Civil Rights Project (“TCRP”) as a senior staff attorney in its Racial and Economic Justice Program. As part of my employment, I engage in the direct representation of noncitizen children and supervise attorneys and other staff at TCRP who represent immigrants, including children, whose civil rights have been violated.

2. I have been practicing law since 2011. I focus my practice on civil rights law, with a focus on immigrants and the violation of the rights of children. Prior to joining TCRP, I worked as an attorney at various Texas nonprofits, including the Refugee and Immigrant Center for Education and Legal Services (“RAICES”) where I represented individuals, including children, in affirmative and defensive requests for immigration relief.

**TCRP’s Mission and Scope**

3. TCRP is a nonprofit legal and advocacy civil organization with offices throughout Texas. TCRP believes that legal advocacy and litigation are critical tools to protect and advance the civil rights of everyone in Texas, particularly our State’s most vulnerable populations, and to effect positive and lasting change to law and policy. We believe that by serving the rising social justice movement in Texas with excellent legal representation and bold strategies, we can respond to the needs of the communities we serve.

4. For thirty years, TCRP has been dedicated to upholding the human and civil rights of all persons in Texas. The Racial and Economic Justice Program routinely represents immigrant and asylum-seeking families and unaccompanied children.

5. A central part of TCRP's mission is providing free consultations and legal services to immigrant families and unaccompanied children detained in the Rio Grande Valley in South Texas. Until recently, this work has involved assisting families who were separated under the Zero Tolerance Policy, representing immigrant families and unaccompanied children who have been harmed while held in federal immigration detention, and, when necessary, representing separated families throughout the process of obtaining medical care in detention and family reunification.

6. TCRP also represents immigrant children in other settings, such as in connection with complaints to the Office of Civil Rights and Civil Liberties regarding their treatment in detention and, when necessary, representing them throughout the process of obtaining relief from the federal government for violations of their rights in detention.

7. In addition to our legal team, TCRP leverages its expertise by working directly with pro bono attorneys on many cases to ensure that unaccompanied children and immigrant families have access to representation. In the last year, TCRP has assisted over one hundred immigrant families by securing pro bono representation in their asylum and related immigration proceedings.

8. In addition to free legal services, TCRP also advocates for its clients outside of the courts. Through advocacy, education, and outreach, TCRP aims to ensure the safety and fairness of the immigration and asylum system. TCRP often conducts "Know-Your-Rights" presentations for immigrants and their families and engages in research and fact finding related to the systemic rights violations that deny families and children the right to safely apply for asylum in the United States.

9. In the last two years, more than half of my legal cases have been on behalf of immigrants and their families, including unaccompanied children whose rights have been violated.

10. Our goal in all our work on behalf of immigrants is to ensure that every person has a fair opportunity to establish their eligibility for protection and ensure no one is wrongfully removed to a place where they may face persecution or torture. Reaching and effectively representing unaccompanied children is essential to our mission of ensuring that they have a chance to fully develop and present their claims.

**Our Work Defending Children Facing Expulsion under Title 42**

11. On March 26, 2020, the Centers for Disease Control and Prevention (“CDC”) issued an order citing the public health provisions of Title 42 of the U.S. Code “to suspend the introduction of all individuals seeking to enter the U.S. without proper travel documentation”<sup>1</sup> across the northern and southern borders. The CDC has since extended the order indefinitely.

12. Since this order was issued, the Department of Homeland Security (“DHS”) and its subcomponents Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”) have held unaccompanied children who cross the southern border in hotels.

13. As part of our work to protect the rights of unaccompanied children, TCRP is currently counsel for G.Y.J.P., an unaccompanied minor who was expelled to El Salvador under this practice, in the lawsuit captioned *G.Y.J.P. v. Wolf, et al.*, 1:20-CV-01511-TNM, in the District of Columbia.

14. In the few instances where TCRP has learned of a child being held for expulsion under Title 42, it has only been because the child has a family member in the United States who contacts us for help. These family members reach out to us as they desperately attempt to find their children. Having not heard from their children in days or weeks, they fear whether their children are even alive. Although these children are in DHS custody, DHS provides no notice to the

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<sup>1</sup> 85 FR at 16,563; *see* 42 C.F.R. § 71.40(a).



children's families that it has their children. In the few cases where DHS did notify the families of their children's apprehension, DHS provided no information about the child's location and did not allow the child to speak with their family. DHS has simply informed the family that their child would be removed, even when the child has directly stated to DHS that they would be killed if returned to their country. DHS has ignored family's pleas to not remove children and has summarily placed the children in Title 42 proceedings.

15. The families that have reached out to TCRP are desperate and terrified, especially after having been informed their children would be removed. In some instances, the families have noted clear and visible medical concerns that were ignored by DHS, who still removed the children while in need of medical attention. The burden has fallen on the families to find their children and find legal support to ensure their children's rights are protected.

16. Whenever we have identified a child in the United States who we have reason to believe is being held subject to Title 42, we have advocated with DHS and the Department of Justice ("DOJ") on their behalf in a number of ways, always racing against the clock to try to get to the children before they are expelled.

17. In some cases, we either contacted counsel for CBP in the Rio Grande Valley Sector, requesting that the child be removed from Title 42 or filed a Temporary Restraining Order on their behalf. In other cases, we have asked the American Civil Liberties Union ("ACLU") to contact DOJ attorneys requesting the same. In all of the cases that we have been involved with, it has been DHS—not CDC—that has made the determinations about whether to classify the children as Title 42 or reclassify children from Title 42 to Title 8. We are not aware of any role that the CDC has played in cases involving Title 42 children.

18. In one recent case, we advocated on behalf of three Guatemalan children who were about to be expelled. The children's mother contacted TCRP in a desperate attempt to prevent the removal of her children back to harm's way. The mother was in distress and terrified for her children. She despaired over not knowing what the fate of her children would be, where they were, if they were appropriately cared for, and over the trauma that she knew her children were experiencing.

19. These three children fled their home country and, upon apprehension by DHS, were immediately facing expulsion. The children were shuffled between CBP processing centers and hotels, further confusing and terrifying the children. We contacted officials within DOJ and DHS, who agreed to process these three siblings under Title 8. We were able to prevent this expulsion, we were told, on the day these children were scheduled to be expelled. As in previous cases, we were not aware of any involvement by any CDC personnel in this entire process; it was handled by DHS and DOJ officials.

20. In another recent case, we worked on behalf of a Honduran teenager who was trafficked and raped for months during her attempt to seek safety in the United States. The months of sexual trafficking resulted in a pregnancy, for which the child requires medical attention. Despite her ordeal and her eligibility for relief under U.S. law, she was about to be expelled when we became involved in her case. Upon apprehension, the child was placed in a CBP processing center and DHS notified the child's mother that she was in their custody, but did not allow the child to speak with her mother. The mother was distraught and wanted to speak with her child, as she had not heard from her daughter throughout the months the child was trafficked. The call from DHS was the first time the mother heard that her child was still alive. Despite the mother's pleas, DHS planned to summarily remove this child. We were able to advocate with DHS and DOJ officials

on the child's behalf and prevent her imminent expulsion. However, the trauma the child endured as a trafficking victim was compounded by DHS's treatment of the child and her placement in Title 42 proceedings. The child's mother notes that her child is experiencing severe trauma and has lost her ability to speak.

21. In the last two weeks, we have received an increasing number of requests for assistance with Title 42 cases from immigration attorneys and service providers in South Texas. Some days, we receive more than one request per day. In every instance, we ask the ACLU to contact the DOJ attorneys, and at the same time we contact DHS officials, usually counsel for CBP and ICE, and request that the child or children not be expelled under Title 42 and instead be processed under Title 8 and sent to ORR.

22. On July 23, 2020, TCRP attorneys sought to offer free legal services to children who DHS was holding at the Hampton Inn Hotel in McAllen, Texas. Unidentified men, who appeared to be contractors of DHS, refused to permit TCRP attorneys to offer any legal services to these children. In one instance, after a TCRP attorney attempted to offer legal representation to the children, these men shoved and removed a TCRP attorney using force. These men did not wear any identification and refused to identify themselves, ignoring repeated requests and thwarting TCRP's ability to identify those individuals who are responsible for guarding the children in their custody.

23. Because TCRP was not allowed to directly offer legal services to the children, we were forced to stand on the sidewalk outside of the hotel and hold up a banner with a hotline. Our understanding is that the children are not permitted to make phone calls other than those authorized to relatives by DHS; indeed, no unaccompanied child has contacted us since we began holding up these banners outside the hotel.

24. There is no way for us to know with certainty whether the Hampton Inn is the only unlicensed, non-official site in the Rio Grande Valley Sector in which DHS is holding children prior to expulsion. Additionally, there is no way to know whether DHS will transfer a child to another site before expelling the child. We have reason to believe that children are being held under Title 42 at other undisclosed sites in McAllen. We do know, however, that there are thousands of empty state-licensed beds available through the ORR network. The result is that, even if TCRP is able to contact a child, it is uncertain whether TCRP will be able to continue to know the location of the child or accurately be able to report that location to a family member.

25. Our experience suggests that it will be virtually impossible for TCRP to identify most children prior to their removal under Title 42—even children who have family in the United States and face severe risk of harm in their countries of origin.

26. DHS's decision to hold children in hotels under Title 42 and deny attorneys access to the hotel thwarts the children's ability to raise their asylum and protection claims and denies them the protections that the Flores Settlement Agreement affords. Again, based on TCRP's understanding, this Title 42 decision is entirely within the purview of DHS and CDC plays no role in this decision-making.

27. The harm that children experience under this Title 42 process is profound and multifaceted. Amongst other things, children are being denied their right to licensed placements under *Flores*, the ability to be located by their family through the immigration detention tracker, access to attorneys, and the ability to apply for asylum. The far-reaching and potentially life altering implications of this harm cannot be overstated.



Karla Marisol Vargas

Executed this 13th day of August 2020