

1 CENTER FOR HUMAN RIGHTS &
2 CONSTITUTIONAL LAW
3 Peter A. Schey (Cal. Bar No. 58232)
4 Carlos Holguín (Cal. Bar No. 90754)
5 256 South Occidental Boulevard
6 Los Angeles, CA 90057
7 Telephone: (213) 388-8693
8 Facsimile: (213) 386-9484
9 Email:pschey@centerforhumanrights.org
10 crholguin@centerforhumanrights.org
11 *Attorneys for Plaintiffs*

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

JENNY LISETTE FLORES; *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. CV 85-4544-DMG

**Joint Report in Response to Court
Orders of June 26, 2020 and July 25,
2020 [Docs. ## 833, 887]**

Hearing: August 7, 2020

[HON. DOLLY M. GEE]

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1
2 *Plaintiffs' counsel continued:*

3
4 USF SCHOOL OF LAW IMMIGRATION CLINIC
5 Bill Ong Hing (Cal. Bar No. 61513)
6 2130 Fulton Street
7 San Francisco, CA 94117-1080
8 Telephone: (415) 422-4475
9 Email: bhing@usfca.edu

10 LA RAZA CENTRO LEGAL, INC.
11 Stephen Rosenbaum (Cal. Bar No. 98634)
12 474 Valencia Street, #295
13 San Francisco, CA 94103
14 Telephone: (415) 575-3500
15 Email: srosenbaum@law.berkeley.edu

16 NATIONAL CENTER FOR YOUTH LAW
17 Leecia Welch (Cal. Bar No. 208741)
18 Neha Desai (CAL. RLSA NO. 803161)
19 Poonam Juneja (Cal. Bar No. 300848)
20 Freya Pitts (Cal. Bar No. 295878)
21 1212 Broadway, Suite 600 Oakland, CA 94612
22 Telephone: (510) 835-8098
23 Email: lwelch@youthlaw.org
24 ndesai@youthlaw.org
25 pjuneja@youthlaw.org
26 fpitts@youthlaw.org

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2 **I. ICE Juvenile Coordinator’s Report**

3 1. Joint Introductory Statement

4 This Court’s Order of June 26, 2020 (“June Order”) [Doc. # 833] provided
5 in part that the ICE Juvenile Coordinator shall report on compliance with the Order
6 to expeditiously release or transfer affected minors from the FRCs on or before
7 July 24, 2020. *Id.* at 5, ¶ 4.c. For each minor detained at an FRC for more than 20
8 days deemed a “flight risk,” and not released or transferred, the ICE Juvenile
9 Coordinator was required to give “a detailed individualized explanation of why
10 that minor is a flight risk (cursory explanations such as “in custody—pending IJ
11 hearing/decision,” ‘pending USCIS response,’ ‘plaintiff in a pending lawsuit,’ or
12 any other justification that the Court has already rejected as being insufficient
13 indicia of imminent removal shall not be acceptable explanations).” *Id.*

14 The June Order also provided that for each minor who remained detained at
15 an FRC for more than 20 days, the absence of a suitable sponsor, a
16 parent/guardian’s declination of waiver of Flores rights, or a prior unexplained
17 failure to appear at a scheduled hearing would be a satisfactory explanation for
18 continued detention “if that explanation is verified in a declaration by an ICE
19 representative under penalty of perjury.” *Id.* at 5, ¶ 4.d.

20 The June Order also required that the ICE Juvenile Coordinator report on the
21 status of conditions at the Cowlitz County Juvenile Detention Center (“Cowlitz”)
22 and Northern Oregon Regional Corrections (“NORCOR”) detention facilities,
23 including specific reasons why B.B.B., A.F.P.P., and K.J.A.B. remain in
24 detention.” *Id.* at 5, ¶ 4.e.

25 The June Order provided that after meeting and conferring, Plaintiffs and
26 Defendants may file a joint response to the Juvenile Coordinator Reports by July
31, 2020, regarding areas of dispute. June Order at 5, ¶5.

1 The Court also ordered that the parties file another joint status report by July
2 8, 2020, regarding the adoption and implementation of “proper written advisals and
3 other protocols to inform detained guardians/parents about minors’ rights under the
4 FSA and obtain information regarding, and procedures for placement with,
5 available and suitable sponsors ...” *Id.* at 6 ¶ 6. The parties did so. *See* ECF No.
6 846. On July 25, 2020, the Court ordered the parties to file another status report on
7 this issue by August 5, 2020. ECF. No. 887.

8 The Court’s June Order also required the parties’ counsel to continue to
9 meet and confer regarding (1) certain disclosures, including information
10 regarding existence of COVID-19 infection among Class Members, that should
11 be provided to minors’ immigration counsel; and (2) the quality of the data that
12 Defendants maintain and provide to Class Counsel pursuant to Paragraph 28A
13 of the FSA. *Id.* at 6 ¶ 7. By July 31, 2020, the parties were ordered to file a joint
14 status report regarding the outcome of their efforts to meet and confer in this
15 regard. *Id.*

16 Finally, the Court ordered that to the extent disagreements remain
17 between the parties after meaningful efforts to meet and confer on any of the
18 topics on which they are to submit joint status reports, “the parties may describe
19 those disagreements in the reports submitted to the Court and request
20 adjudication, mediation, or any other form of relief the Court may provide.” *Id.*
21 at 6 ¶ 8.

22 2. ICE Juvenile Coordinators Report

23 As required by the Court in its orders issued on April 24, May 22, and June
24 26, 2020, ICE Juvenile Coordinator Deane Dougherty submitted her interim report
25 on July 24, 2020. July 2020 Interim Report of Juvenile Coordinator Deane
26 Dougherty (“July 2020 Report”). [Doc. # 882-1]. The report provides an update on
the Class Members in the FRCs over 20 days, status of implementation of COVID-

1 19 guidances, a census of positive COVID-19 cases at the FRCs, and a description
2 of the conditions at two detention facilities holding ICE juvenile detainees. *Id.*
3 On July 30, 2020, Plaintiffs sent a draft of this proposed joint report containing
4 tentative positions from Plaintiffs regarding Plaintiffs’ issues with the ICE Report,
5 and informing Defendants that they were still assessing the issues in the report and
6 might make additional modifications to their positions. Given the short time
7 provided for Defendants to respond, Defendants have endeavored to respond to
8 Plaintiffs’ positions as stated in the draft document, but the parties did not meet
9 and confer about the issues raised by Plaintiffs.

10 Plaintiffs’ Position:

11 The ICE Juvenile Coordinator’s Report states that “[a]s of July 21, 2020,
12 there are: 73 Class Members who remain in custody beyond 20 days due to a final
13 order of removal and are subject to a stay;¹ 16 Class Members who remain in
14 custody beyond 20 days are subject to an expedited removal order and are pending a
15 credible fear interview; and 11 Class Members who remain in custody beyond 20
16 days, have a final order of removal, are not subject to a stay, and have been
17 manifested for removal within the next couple of weeks, which is the next
18 scheduled repatriation flight to their respective countries of origin.” July 2020
19 Report at 4.¹

20 However, this Court’s prior Orders including its June 26, 2020, Order have
21 made clear that “the ICE Juvenile Coordinator shall give a detailed individualized

22 ¹ Counsel in this case have been unsuccessful in winning the release of parents of
23 detained Class Members. Counsel for the *amici* have so far unsuccessfully sought
24 the release of Class Members’ parents in *OMG v. Wolff*, Case No. 1:20-cv-00786-
25 JEB (DDC) [Doc #722], and in *C.N. v. Pennsylvania Department of Human*
26 *Services*, No. 268 M.D. 2020 (Commonwealth Court of Pennsylvania),
Memorandum Opinion (July 7, 2020). [*Flores* Doc. # 882-1]. This case cannot
address the parents’ release because its scope is limited to the four corners of the
FSA and the class only includes “minors who are detained in the legal custody of
the INS.” FSA ¶ 10.

1 explanation of why [a] minor is a flight risk (cursory explanations such as ‘In
2 custody—pending IJ hearing/decision,’ ‘pending USCIS response,’ ‘plaintiff in a
3 pending lawsuit,’ or any other justification that the Court has already rejected as
4 being insufficient indicia of imminent removal shall not be acceptable
5 explanations).” June Order at 5, ¶4.d; *see also Flores v. Sessions*, 394 F. Supp. 3d at
6 1067 (“The Court will order Defendants to comply with the unambiguous charge
7 of the Flores Agreement to make individualized determinations regarding a
8 minor’s flight risk rather than blanket determinations . . . even if the minor or her
9 parent is in expedited removal (i.e., awaiting a credible fear determination”); Order
10 of April 24, 2020, at 17 (“ICE has not submitted any actual evidence of
11 individualized evaluation of flight risk, despite the number of families currently in
12 detention who have had their orders of removal stayed.”). [Doc. # 784].²

13 On July 23, 2020, the Court in *D.A.M. v. Barr*, No. 20-1321 (D.D.C.) lifted
14 the administrative stay of removal relevant to *Flores* Class Members. *D.A.M. v.*
15 *Barr*, (July 23, 2020). [D.A.M. Doc. ## 33-34]. However, petitioners filed an
16 emergency motion for the entry of an administrative stay pending adjudication of
17 their second application for a temporary restraining order relating to a separate
18 claim for relief, and the Court entered a stay of removal. *D.A.M. v. Barr*, No. 20-
19 1321 (D.D.C.) filed July 23, 2020). It is highly unlikely that by issuing a temporary
20 stay of removals Judge Christopher R. Cooper intended ICE to interpret the stay as
21 meaning those granted a stay were therefore flight risks.

22 ICE has a valid reason not to release Class Members whose parents have not
23 identified relatives to whom they wish to have their children released under
24 Paragraph 14. However, not releasing Class Members merely because they have

25 ² “Furthermore, even if the initial parole determination is appropriately made, the
26 Court sees no evidence that ICE reevaluates Class Members for *Flores* release
rights at any point after the initial parole determination.” Order of April 24, 2020 at
16. [Doc. # 784].

1 final orders of removal subject to a stay, or who are pending a credible fear
2 interview, or have final orders of removal, or are subject to the MPP program, is
3 not in compliance with the FSA. *See, e.g.*, June Order at 5, ¶4.d; April 24, 2020,
4 Order at 13-14 (“The Court sees no reason why, if removal is not ‘ready to take
5 place,’ ORR should not release minors whose removal orders under the MPP are
6 under appeal”) [Doc. # 784]; Order of May 22, 2020 at 2 (“The information
7 submitted by ICE continues to show cursory explanations for denying minors
8 release under the FSA, including vague categories such as ‘USCIS/IJ Review,’
9 which the Court previously criticized.”) [Doc. # 799]. If deportation is indeed
10 imminent then the FSA does not require release of a Class Member. However,
11 “[t]he definition of ‘imminent’ is ‘ready to take place’ or ‘happening soon.’” Order
12 of April 24, 2020, at 13, *quoting* Merriam-Webster Online. [Doc. # 784].

13 The Court’s Orders have been clear that “the ICE Juvenile Coordinator shall
14 provide specific explanations for the continued detention of each minor detained at
15 an FRC beyond 20 days.” Order of May 22, 2020 at 3. [Doc. # 799]; *see also* Order
16 of June 26, 2020, at 5 (“For each minor detained at an FRC for more than 20 days
17 who is deemed a ‘flight risk,’ and not released or transferred pursuant to the above
18 directive requiring expeditious release, *the ICE Juvenile Coordinator shall give a*
19 *detailed individualized explanation of why that minor is a flight risk.*” [Emphasis
20 supplied]). [Doc.# 833]. The June Order also provides that for each minor who
21 remained detained at an FRC for more than 20 days, the absence of a suitable
22 sponsor, a parent/guardian’s declination of waiver of Flores rights, or a prior
23 unexplained failure to appear at a scheduled hearing would be a satisfactory
24 explanation for continued detention “if that explanation is verified in a declaration
25 by an ICE representative under penalty of perjury.” *Id.* at 5, ¶ 4.d. Defendants have
26 not provided any declarations by any ICE representatives made under penalty of
perjury “*detail[ing] [an] individualized explanation of why that minor is a flight*
risk.” June Order at 5, ¶ 4.d.

1 Indeed, the fact that ICE has determined that every minor detained is
2 ineligible for release under Paragraph 14 of the FSA because they will not appear
3 for future proceedings, may well discourage parents from identifying sponsors to
4 whom they believe their children should be released. There is no reason for a
5 parent to make the difficult decision to release a child and identify potential
6 sponsors ICE will then vet if in any event ICE will refuse to release their children
7 because it has found they are deemed ineligible for release because they
8 supposedly will not appear for future proceedings, all because they are in one or
9 another type of proceeding, a standard that covers virtually every Class Member in
10 custody.

11 Defendants' Position:

12 As Ms. Dougherty explained in her Report, ICE acknowledges that “100 Class
13 Members have been detained at an FRC 20 days or more[, and t]hese individuals,
14 and their accompanying parent(s) or legal guardian(s), may be subject to the Flores
15 waiver process about which this Court ordered the parties to meet and confer in its
16 June 26, 2020, Order.” Report, ECF No. 882-1 at 3. Because negotiations on the
17 waiver process remain ongoing, Ms. Dougherty could not provide reporting in the
18 specific manner ordered by the Court, and so she addressed this issue with Ms. Ordini
19 “who agreed that, for purposes of this report, the agency may provide a general
20 statement indicating the agency did not, and could not, conduct parole reviews while
21 awaiting the outcome of the meet and confer process, and subsequent to
22 implementation of any *Flores* waiver process. Once the process has been completed
23 and implemented, ICE will provide the information required by sections 1, 4(c), and
24 4(d) of the Court’s June 26, 2020 Order, including the number of those class
25 members whose parent/legal guardian waived their child’s *Flores* rights under
26 paragraph 14 of the FSA, or continue to be detained under the FSA, in its next
interim report. This report does include other information pertaining to those Class
Members who have remained in custody longer than 20 days.” *Id.*

1 Given that Ms. Dougherty’s ability to provide some of the reporting ordered
2 by the Court was precluded by the ongoing nature of the parties’ negotiations, and
3 that Ms. Dougherty therefore consulted with Ms. Ordin to ensure her reporting was
4 nonetheless sufficient in light of these concerns, Defendants request that the Court
5 find Plaintiffs’ concerns in this regard are unfounded, and allow Ms. Dougherty to
6 provide the requested reporting in a future report as appropriate.

7 **3. Cowlitz County Juvenile Detention Center and Northern Oregon**
8 **Regional Corrections**

9 The June Order also required that the ICE Juvenile Coordinator report on the
10 status of conditions at the Cowlitz County Juvenile Detention Center (“Cowlitz”)
11 and Northern Oregon Regional Corrections (“NORCOR”) detention facilities,
12 including specific reasons why B.B.B., A.F.P.P., and K.J.A.B. remain in
13 detention.” June 2020 Order at 5, ¶ 4.e.

14 Plaintiffs’ Position:

15 The Juvenile Coordinator’s Report explains why Class Member B.B.B.,
16 J.E.R.M., N.Y.C.C., and K.A.B. are not considered eligible for release under
17 Paragraph 14 of the FSA. July 2020 Report at 11-14. None face imminent age-out
18 dates.

19 Class Member A.F.P.P. was released on the eve of this 18th birthday. The
20 Juvenile Coordinator’s Report does not appear to address the situation of Class
21 Member K.J.A.B.

22 More importantly, it does not appear that ICE deportation officers who make
23 decisions regarding Class Members’ release from juvenile detention facilities have
24 been provided any instructions or protocols to follow to implement or record their
25 actions regarding FSA compliance.

26 Plaintiffs addressed their concerns with the detention of Class Members at
juvenile detention facilities *inter alia* in Plaintiffs’ Response to Defendants’ Notice
of Filing of ICE Juvenile Coordinator Report (June 17, 2020) at 13-17. [Doc. #

1 824]. Among other things Plaintiffs requested “notification through whatever
2 means this Court deems proper immediately upon placement of any [Class
3 Mmember] at Cowlitz or NORCOR juvenile detention facilities,” *id.* at 17; that the
4 Court order ICE “to make and record efforts to promptly release all youth detained
5 in juvenile jails or, in the alternative, to transfer them to the least restrictive
6 placement, prioritizing close proximity to family,” *id.* at 17; noted that “youth at
7 Cowlitz do not have access to the outdoors, nor do they have any access to family,
8 clergy, or mental health support,” *id.*; and raised the failure of ICE to provide
9 “ongoing individualized assessments” of detained Class Members’ flight risk status
10 or dangerousness. *Id.* at 16.

11 Plaintiffs urge the Court for now not to vacate the restriction contained in its
12 June 26, 2020 Order prohibiting the transfer of minors in ICE juvenile detention to
13 adult facilities when they age out of juvenile detention.

14 Plaintiffs propose that upon submission of the parties August 5, 2020, joint
15 report regarding release protocols and procedures to record actions taken at ICE
16 family detention facilities to comply with ¶ 14 of the FSA, the parties meet and
17 confer to address a protocol for ICE deportation officers to follow when assessing
18 Class Members held in juvenile detention facilities. Whatever protocols are
19 adopted for ICE family detention centers with regards making determinations of
20 dangerousness or flight risk, or procedures to follow if a Class Member is no
21 longer considered a danger or flight risk, may (or may not) provide a model for
22 protocols to be followed at juvenile detention facilities.

23 Defendants’ Position:

24 Plaintiffs’ proposal that procedures that might be appropriate for ICE FRCs
25 would also be appropriate for juvenile detention facilities is raised to Defendants for
26 the first time in this draft document, and is unfounded. While this Court has found
that minors in ICE FRCs are subject to Paragraph 14 of the Agreement, minors in
ICE juvenile detention facilities are not subject to release under that Paragraph, and

1 so the same procedures would not apply to both categories of class members. Rather,
2 Paragraph 14 excludes minors who ICE has determined are a flight risk or danger,
3 and Paragraph 21 then allows for detention of such minors in a juvenile detention
4 facility. *See* Agreement ¶ 14 (“Where the INS determines that the detention of the
5 minor is not required either to secure his or her timely appearance before the INS or
6 the immigration court, or to ensure the minor's safety or that of others, the INS shall
7 release a minor from its custody without unnecessary delay”; ¶ 21 (governing
8 the detention of minors in juvenile detention facilities). As Ms. Dougherty’s Report
9 explains, each of the four minors currently being held in an ICE juvenile detention
10 facility has been detained after ICE made a determination that he is a danger to the
11 community and/or a flight risk. Report. ECF No. 882-1 at 11-14. Thus, their
12 detention is lawful and in accordance with the Agreement.

13 Defendants note again that there is no pending motion regarding conditions at
14 Cowlitz or NORCOR, Plaintiffs have not identified any specific alleged violation of
15 the Agreement at these facilities, and Plaintiffs have not pursued resolution of any
16 issues with regard to these facilities with either urgency or consistency. Defendants
17 ask that the Court discontinue the restriction contained in its June 26, 2020 Order
18 prohibiting the transfer of minors in ICE juvenile detention to adult facilities when
19 they age out of juvenile detention and cease to be class members, and that the Court
20 further require that, if Plaintiffs wish to pursue any allegations that these facilities
21 violate the FSA, they identify specific alleged violations to Defendants, and pursue
22 resolution of those allegations through the procedures available in the Court’s
23 Monitoring Order, the Federal Rules of Civil Procedure, and the Local Rules.

24 **4. Information regarding existence of COVID-19 infection among Class
25 Members**

26 The Court’s June Order required the parties’ counsel to continue to meet
and confer regarding disclosures, including information regarding existence of
COVID-19 infection among Class Members, that should be provided to

1 minors' immigration counsel ..." Order of June 2020 at 6, ¶ 7.

2 Plaintiffs' Position:

3 Plaintiffs' position is that Defendants should promptly advise any Class
4 Members' counsel of record, Class Counsel, and the Independent Monitor (who in
5 turn may advise Dr. Wise) when any Class Member in ICE custody is placed in
6 quarantine because they are symptomatic or tests positive for COVID-19. The
7 parties have not made progress on this issue as Defendants have adopted the
8 position that information-sharing with class members' legal service providers is
9 not required by the Settlement.

10 Defendants' Position:

11 As discussed below, the parties have discussed this issue with regard to
12 minors in ORR custody; however, Plaintiffs' counsel has not raised any issues
13 regarding the sharing of this information for minors in ICE custody at any time
14 prior to including it in this joint report. In any event, Defendants' position
15 remains the same as reported in the April 23, 2020 joint report. ECF No. 778.
16 Given that the Agreement does not address the provision of information to
17 individual immigration counsel for class members, it remains Defendants'
18 position that Plaintiffs' assertions that such information should nonetheless be
19 provided are not properly addressed in the context of this case, nor the pending
20 litigation.

21 Nonetheless, Defendants also note that they have filed with this Court the regular
22 reporting that is being filed in *O.M.G. v. Wolf*, 1:20-cv-00786-JEB (D.D.C)
23 regarding COVID-19 cases in ICE FRCs. Defendants also are not aware of any
24 situation where the Independent Monitor or Dr. Wise have requested such
25 information that is has not been provided to them. Therefore, Plaintiffs' complaints
26

1 on this issue are unfounded and this Court should disregard Plaintiffs' requests for
2 more information.

3 **5. Quality of the data that Defendants maintain and provide to Class**
4 **Counsel**

5 The Court ordered that the parties continue to meet and confer and report
6 by July 31, 2020, regarding the quality of the data that Defendants maintain and
7 provide to Class Counsel pursuant to Paragraph 28A of the FSA. *Id.* at 6 ¶ 7.

8 Plaintiffs' Position:

9 Progress has been made and improved data is being provided to Class
10 Counsel. Plaintiffs still do not believe the data being provided complies with the
11 FSA and instructions issued to Defendants' employees regarding FSA compliance
12 also have not been provided to Class Counsel as required by the FSA ¶ 28.

13 Paragraph 28 of the *FSA* requires DHS to "maintain an up-to-date record
14 of all minors who are placed in proceedings and remain in [its] custody for
15 longer than 72 hours. Statistical information on such minors shall be collected
16 weekly from all [facilities]" where Class Members are detained. Pursuant to
17 Paragraph 28A and the Court's Orders, Defendants' data provided to Class
18 Counsel on a monthly basis must include: (1) biographical information such as
19 each minor's name, date of birth, and country of birth, (2) date placed in
20 [Defendants'] custody [which usually commences with CBP custody and
21 sometimes with ICE custody], (3) each date placed, removed or released [by
22 ORR, CBP, or ICE], (4) to whom and where placed, transferred, removed or
23 released [by CBP, ORR, or ICE], (5) immigration status, and (6) hearing dates
24 [if any]. See Paragraph 28A. Plaintiffs do not believe full and accurate data has
25 been provided for Class Members including those held in irregular locations
26 such as ICE unlicensed "hold rooms" and "hotels."

1 On July 14, 2020, class counsel Carlos Holguin wrote to Defendants’
2 counsel *inter alia* addressing data collection as follows:

3 DHS’s April 2020 ¶ 29 report “Notes” state: “This summary includes the
4 entire detention history for juveniles who were booked into an FRC, Hold
5 room, MVM transport or Authorized Juvenile IGSA Facility through April
6 2020 who have a length of stay of 3 days or more” and “includes individuals
7 booked into an FRC, Hold room, MVM transport or Authorized Juvenile
8 IGSA Facility who have a book-out between 4/1/2020 and 4/30/2020 or
9 were in custody as of 4/30/2020” (emphasis added).

10 Additionally, the April report purports to provide information for
11 unaccompanied juveniles “defined as an individual who was a juvenile at the
12 time of initial book-in to an ICE facility and was not accompanied with a
13 parent or legal guardian at apprehension.”

14 The April report lists 29 unaccompanied children as “Title 42 Return” in the
15 “Release Reason” column.

16 In contrast, DHS’s May 2020 ¶ 29 report “Notes” state: “This summary
17 includes the entire detention history for juveniles who were booked into an
18 FRC or an Authorized Juvenile IGSA Facility who have a book-out between
19 5/1/2020 and 5/31/2020 or were in custody as of 5/31/2020.”

20 Although this language omits hold rooms and MVM transport, the report
21 does include some records for hold rooms and MVM transport. It is
22 therefore unclear whether all records for hold rooms and MVM transport are
23 included in this report.

24 In any event, DHS’s May 2020 ¶ 29 report (1) omits information regarding
25 unaccompanied juveniles, and (2) fails to report any class members subject
26 to Title 42 return regardless of the time spent in immigration-related
custody, all which are in apparent violation of Settlement ¶ 29.

1 Plaintiffs accordingly request the Parties confer in a good faith effort to
2 avoid litigation over the completeness of Defendants’ ¶ 29 reports.

3 The parties have met and conferred regarding class counsel’s July 14,
4 2020, correspondence. Plaintiffs have received Defendants’ updated May 2020
5 ¶ 29 ICE report listing class members subject to Title 42 return.

6 Under Paragraph 28 the Juvenile Coordinator is also required *for each*
7 *detained Class Member* to “collect information regarding the reasons for every
8 placement of a minor in a detention facility ...”

9 Paragraph 29 states that Defendants “shall” provide to Class Counsel
10 “the information collected pursuant to Paragraph 28 ... *and* each ... policy or
11 instruction issued to [Defendants’] employees regarding the implementation of
12 this Agreement.” (emphasis added). Defendants have not provided Class
13 Counsel with the information regarding the reasons for every placement of a
14 minor in a detention facility nor have they provided class counsel with each
15 policy or instruction issued to Defendants’ employees regarding the
16 implementation of the FSA.

17 Plaintiffs explained all of the above concerns to Defendants in detailed
18 correspondence dated February. 11, 2020 [Doc. # 738, Exhibit Q], and in
19 numerous subsequent communications. The parties have met and conferred on
20 these issues on a conference call in which Defendants’ counsel included
21 Defendants’ “data collection” experts. Not all issues were resolved during that
22 meet and confer. While Plaintiffs hoped to share their further concerns with
23 Defendants by June 24, 2020, the flurry of *ex parte* applications and other fast-
24 moving parts of this case prevented Plaintiffs from communicating further
25 concerns other than class counsel’s correspondence of July 14, 2020. However, as
26 Defendants obviously know, they have *not* yet agreed to provide the data required
under Paragraphs 28 and 29 discussed above.

1 In short, progress has been made and Plaintiffs propose that the parties
2 continue to confer on these reporting issues and submit a further joint report on or
3 before August 21, 2020, two weeks after the scheduled August 7, 2020, status
4 conference.

5 Defendants' Position:

6 Defendants provided updated reporting in response to the issues raised in
7 Mr. Holguin's July 14, 2020 letter on July 23, 2020. Mr. Holguin sent follow up
8 questions regarding that data on July 26, 2020. Defendants are working on
9 responding to those follow up questions and expect to provide those responses
10 within the next seven business days.

11 With regard to any other issues raised above, despite repeated requests from
12 Defendants Plaintiffs failed to notify Defendants that any issues other than the ones
13 noted in Mr. Holguin's letter remain with regard to the updated data reports, and
14 Defendants are learning of Plaintiffs' continued concerns for the first time in this
15 draft report and need time to consider them before they can respond. As a general
16 matter, however, Defendants object to the manner in which Plaintiffs' counsel are
17 pursuing this issue without adhering to agreed-upon deadlines or providing any
18 clarity as to how this issue can finally be resolved. On June 15, 2020, the parties
19 jointly explained to this Court that they had met and conferred, and that
20 Defendants had updated their reporting based on the concerns raised by Plaintiffs.
21 ECF No. 820. The parties agreed that Plaintiffs would notify Defendants of any
22 additional concerns they had with the updated reporting on or before June 24, 2020
23 and that they would then meet and confer regarding those concerns. *Id.* Plaintiffs
24 raised no concerns to Defendants on or before that date.

25 Nonetheless, on Friday June 26, 2020, Plaintiffs' counsel sent an email
26 asking to meet and confer on the data issue the following week. On Monday June
29, 2020, Defendants noted that Plaintiffs had missed the agreed upon deadline but
agreed they would meet and confer if Plaintiffs would send any issues that required

1 discussion by COB on June 30, 2020. At the end of the day on June 30, counsel
2 responded that he would “try to give [Defendants] feedback by end of the week.”
3 No such feedback was provided.

4 Other than the July 14, 2020 letter from Mr. Holguin, Defendants have not
5 received anything further from Plaintiffs on this issue. Defendants believe that they
6 have addressed the issues initially raised by Plaintiffs with their updated reporting,
7 and they are working to resolve the issues raised in Mr. Holguin’s letter even
8 though those issues were not raised until July 14, 2020, well after the deadline the
9 parties had previously agreed upon. With the exception of those limited issues,
10 Defendants ask that the Court determine this issue has been resolved, and that
11 Plaintiffs should not be permitted to continue to raise ad hoc challenges to the
12 substance of Defendants’ reporting unless they are contending that the reporting
13 contains errors or is otherwise inaccurate.

14 **II ORR Juvenile Coordinator’s Report.**

15 On July 29, 2020, the Parties met and conferred in an effort to resolve
16 Plaintiffs’ counsel’s responses to the ORR Juvenile Coordinator’s Interim Report
17 (“July 2020 ORR Report”) of July 24, 2020 [Doc. # 882-2]. Regarding the
18 following portions of the Court’s April 24, 2020 order [Doc #784], Plaintiffs sent
19 comments stating the following:

- 20 1) Part 4.a.iii of the Order and “Failure to identify minors who have tested
21 positive for COVID-19.”
- 22 2) Part 4.a.iii of the Order and “Failure to state specific reasons minors in
23 COVID-impacted facilities have not been released.”
- 24 3) Part 4.a.iv of the Order and “Failure to state what ORR considers “medical
25 vulnerabilities” and define “children with complex medical needs.””
- 26 4) Part 4.a.iv of the Order and” Failure to describe each facility’s “unique”
policies and/or practices aimed at identifying and protecting minors who are

1 at heightened risk of serious illness or death should they contract COVID-
2 19.”

3 5) Part 4.a.v of the Order and “Failure to “[e]xplain whether the medical
4 professionals at ORR are making expeditious individual assessments about
5 a Class Member’s eligibility for release when a Class Member has been
6 exposed to COVID-19 or has a sponsor whose household has a confirmed
7 case of COVID-19, and provide the average time in which such individual
8 assessments take place during the reporting period.” April 24 Order at 20
9 [Doc. # 784].”

10 6) Part 4.a.vi of the Order and “Failure to explain the reasons why each of the
11 30 MPP detainees have not been released.”

12 7) ORR’s revised fingerprinting waiver policy which Plaintiffs’ counsel
13 contends “does not appear to comply with the Court’s order requiring ORR
14 “to provide for a less onerous chain of approvals or show cause to the Court
15 why the policy, as written, is imperative.” June Order at 5 [Doc. # 833]. The
16 revised policy included as Attachment B to the ORR Report now requires
17 approval of a waiver by both the Director for Unaccompanied Children's
18 Operations and the ORR Director and accordingly appears even more
19 onerous than its prior policy.”

20 8) Plaintiffs’ counsel’s comments on “Failure to disclose information to class
21 members’ immigration counsel.”

22
23 The results of the Parties efforts are as follows:

24 **1. Part 4.a.iii.**

25 The Court ordered ORR as follows: “With respect to minors placed at
26 congregate facilities in which either a detainee or staff member has tested positive
for COVID-19, identify the specific reason the minors located there have not been

1 released or transferred to a non-congregate setting. . .” April 24 Order at 20.

2 Plaintiffs’ position.

3 The ORR Report lists 13 class members in COVID-19 quarantine as of July
4 23, 2020. July 2020 ORR Report at 8. The ORR Report does not identify the
5 infected class members, and Plaintiffs accordingly have no way to verify the
6 information the report provides regarding these minors.

7 Plaintiffs contend that ORR should disclose such minors’ identities either to
8 Plaintiffs or to the Independent Monitor and Dr. Wise so that they may monitor
9 the treatment of class members with COVID-19.

10 Defendants’ position.

11 Although Plaintiffs’ counsel point to the Juvenile Coordinator’s report of 13
12 minors quarantined, the Juvenile Coordinator Report also notes that during the
13 reporting period 4 minors tested positive and of those, two were medically cleared.
14 Report at 5-6. Nothing in the Court’s Order or the Agreement obligates ORR to
15 inform Plaintiffs’ counsel about the individualized details of the health conditions
16 of each minor in ORR custody. Nor was Ms. Miranda-Maese directed to identify
17 these minors in her Report. Defendants have no objection to providing requested
18 information to Ms. Ordin and/or Dr. Wise that they find necessary in the course of
19 conducting their court-ordered monitoring of ORR facilities. Defendants are not
20 aware of any occasion where Ms. Ordin or Dr. Wise have requested information on
21 this topic and been refused by Defendants. Accordingly, Defendants believe that
22 Plaintiffs’ concerns are unfounded.

23 **2. Part 4.a.iii.**

24 The Court ordered ORR as follows: “With respect to minors placed at
25 congregate facilities in which either a detainee or staff member has tested positive
26 for COVID-19, identify the specific reason the minors located there have not been

1 released or transferred to a non-congregate setting; . . .” April 24 Order at 20.

2 Plaintiffs’ position.

3 With respect to transfer, the ORR Report states, “For all the ORR network,
4 transfers out of congregate care were not pursued due to the risk of potentially
5 spreading or catching COVID-19 during the transfer process.” July 2020 ORR
6 Report at 6. This apparently blanket policy against transfers out of congregate care
7 does not satisfy the Court’s order to provide specific reasons that minors have not
8 been transferred out of congregate care. Further, the ORR Report fails to specify
9 the reasons the minors located in such impacted facilities have not been released.
10 The report accordingly fails to comply with the Court’s April 24 order.

11 Defendants’ position.

12 Plaintiffs did not ask about the transfer language when the parties met and
13 conferred, but appear to misunderstand its meaning. The sentence Plaintiffs identify
14 above is not a “blanket policy against transfers out of congregate care” as Plaintiffs
15 suggest, but rather it explains why ORR did not pursue a blanket policy of
16 transferring all minors out of congregate care facilities to non-congregate care
17 providers. This language does not mean that ORR never transfers minors out of
18 congregate care facilities. In fact, as the Report notes elsewhere, as of July 22, 2020
19 more than 500 minors are in long term or transitional foster care, while the minority
20 (only 291) remain in congregate care facilities. The Report further explains that “the
21 current low occupancy at all congregate shelters (291 occupied beds out of 10,987
22 congregate beds) allows for social distancing and provides a pool of staff available
23 to care for the minors.” Report at 6.

24 With regard to release, the ORR Report explains that for the 4 minors who
25 tested positive, the positive test did not delay release (one of the minors would be
26 transferred to long-term foster care – meaning that the minor did not have a viable
sponsor). Report at 5-6. Defendants explained to Plaintiffs’ counsel at the meet and

1 confer that the Report shows that those minors who remained in custody were still
2 undergoing the reunification process. None of them remained in care due to
3 specific delays related to COVID-19, and there is no reason that a COVID-19
4 positive test would delay release once reunification processes completed.
5 Defendants note that the affirmative, blanket reporting Plaintiffs’ counsel
6 continuously seeks is not within the four corners of the Agreement. Defendants
7 also note that Paragraph 28.B of the Agreement provides a more individualized
8 process in those cases where Plaintiffs have information showing that they have
9 “reasonable cause to believe that a minor in INS legal custody should have been
10 released pursuant to Paragraph 14.”³ Plaintiffs should be required to adhere to the
11 terms of the Agreement and not continue to ask this Court to order Defendants to
12 provide reporting that the Agreement does not require.

13 **3. Part 4.a.iv.**

14 The Court ordered ORR to “[d]escribe any policies and/or practices aimed
15 at identifying and protecting minors who are at heightened risk of serious illness
16 or death should they contract COVID-19; . . .” April 24 Order at 20.

17 Plaintiffs’ position.

18 The ORR Report states, “None of the minors who tested positive for
19 COVID-19, as indicated above, were at heightened risk of serious illness or
20

21 _____
22 ³Defendants also note that after initially ordering ORR to produce detailed
23 information on specific reunification efforts, ECF No. 740 at 14, the Court later
24 concluded: “Plaintiffs no longer argue that ORR fails to make and record
25 continuous efforts toward release. ORR case managers keep detailed notes on each
26 minor’s potential sponsors, efforts to reach out to those sponsors, and the sponsors’
progress—or lack thereof—toward submitting a family reunification packet. The
Court commends ORR on doing a yeoman’s job of making a record of its efforts to
release minors and reunify families in this challenging environment.” ECF No.
784, n.5.

1 death.” July 2020 ORR Report at 7. The ORR Report does not disclose what
2 criteria ORR uses to determine whether class members are at heightened risk of
3 serious illness or death.

4 Plaintiffs contend that ORR should disclose such criteria to the Court or to
5 the Independent Monitor and Dr. Wise so that they may evaluate whether ORR’s
6 criteria comport with CDC guidelines.

7 Defendants’ position.

8 As Defendants already informed Plaintiffs at the meet and confer, Defendants
9 have no objection to providing any information to Ms. Ordin and/or Dr. Wise should
10 they concur that they need that information to conduct their court-ordered
11 monitoring of ORR facilities. In that discussion, Ms. Ordin agreed that she would
12 reach out to Dr. Wise so that he could consult with Plaintiffs’ counsel regarding
13 their concerns and then follow up with ORR as appropriate. As noted above,
14 Defendants are not aware of any occasion where Ms. Ordin or Dr. Wise have
15 requested information on this topic and been refused by Defendants. Accordingly,
16 Defendants believe that Plaintiffs’ concerns are unfounded.

17 **4. Part 4.a.iv.**

18 The Court ordered ORR to “[d]escribe any policies and/or practices aimed
19 at identifying and protecting minors who are at heightened risk of serious illness
20 or death should they contract COVID-19. . .” April 24 Order at 20.

21 Plaintiffs’ position.

22 The Juvenile Coordinator’s report provides no more than a generalized
23 statement of ORR’s medical intake procedure and provides no information about
24 what it does specifically to identify or protect minors who are at heightened risk of
25 serious illness or death. As stated above, the report also fails to specify the criteria
26 ORR uses to determine whether a child is at heightened risk of serious illness or
death.

1 Plaintiffs contend that ORR should disclose such criteria to the Court or to
2 the Independent Monitor and Dr. Wise so that they may evaluate whether ORR's
3 criteria and policies comport with CDC guidelines.

4 Defendants' position.

5 Defendants would refer the Court to the ORR Report, which explains: how
6 ORR designed the initial medical examination; the involvement of the Division of
7 Health of Unaccompanied Children (DHUC); the process for ORR care providers
8 tracking and discussing children with existing medical conditions including those
9 that put them at medical complications for any contagious diseases; and the
10 measures care providers take to address children with complex health needs.
11 Report at 6-7. Also, during the meet and confer, Ms. Miranda-Maese explained
12 that she speaks with each care provider with a positive COVID-19 test to
13 determine medical vulnerability, and receives specific answers from such care
14 providers. *See also* ORR Report at 1.

15 As Defendants already informed Plaintiffs' counsel at the meet and confer,
16 Defendants have no objection to providing information to Ms. Ordin and/or Dr.
17 Wise if they agree that they need it to conduct their court-ordered monitoring of
18 ORR facilities, and Defendants are not aware of any occasion where Ms. Ordin or
19 Dr. Wise have requested information on this topic and been refused by Defendants.
20 Accordingly, Defendants believe that Plaintiffs' concerns are unfounded.

21
22 **5. Part 4.a.v.**

23 The Court ordered ORR to "[e]xplain whether medical professionals at
24 ORR are making expeditious individual assessments about a Class Member's
25 eligibility for release when the Class Member has been exposed to COVID-19 or
26 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

1 reporting period;. . .” April 24 Order at 20.

2 Plaintiffs’ position.

3 The ORR Report provides no information regarding whether medical
4 professionals are making expeditious individual assessments about class member’s
5 eligibility for release, and instead provides only general information about
6 children in COVID-19 quarantine and their possibilities for release. July 2020
7 ORR Report at 7-9. The ORR Report accordingly fails to comply with the Court’s
8 April 24 order.

9 Defendants’ position.

10 The Report explains that “quarantine recommendations for minors who
11 have been exposed to a confirmed COVID-19 case are made in collaboration with
12 the local public health authority.” The report further explains that for the majority
13 of minors, exposures to COVID-19 are not delaying release, and explains the
14 specific steps being taken for others. In one case, the report explains the exact date
15 that a parent and child will be retested, Report at 8, and that release would
16 continue upon completion of quarantine. For another minor, the report explained
17 that the minor had already quarantined for 14 days, the minor was awaiting results
18 of a follow-up test, and ORR would continue with the steps to release the minor
19 upon the completion of her quarantine. Report at 9. Defendants therefore disagree
20 that the Report fails to comply with the Court’s order.

21 At the meet and confer, Defendants explained that if the reunification
22 process has not yet been completed, then a quarantine or exposure to COVID-19
23 would not require an individualized assessment as the case is not yet ready for
24 release. Plaintiffs have not explained what additional information they believe is
25 needed, but in any event Defendants contend that the Report is specific and
26 complies with the April 24, 2020 Order.

1 **6. Part 4.a.vi.**

2 The Court ordered ORR to “[e]xplain whether ORR is making
3 individualized assessments regarding its ability to release minors subject to
4 removal orders under the MPP, including census data and reasons for non-
5 release.” April 24 Order at 20.

6 Plaintiffs’ position.

7 The ORR Report advises that ORR released 16 class members with MPP
8 cases but continues to detain 30 such minors. The ORR Report states only that
9 these 30 children “are still going through the reunification process,” July 2020
10 ORR Report at 9, but fails to identify these children, disclose how long their
11 reunification process has been going on, the reasons the process has not been
12 completed, or when ORR expects it will complete the reunification process.

13 In Plaintiffs’ view, ORR’s disclosing the foregoing should be required in
14 order to permit verification that “reunification” delays are not pretextual.

15 Defendants’ position.

16 Defendants explained to Plaintiffs’ counsel at the meet and confer that only
17 3 of these 30 minors subject to an MPP removal is actually in a congregate care
18 facility so as to be implicated by the Court’s recent orders related to COVID-19,
19 and since the Report was compiled 4 have been released, with 3 more approved
20 for release. Defendants also explained that half of the minors with MPP removal
21 orders are in long-term foster care (meaning a viable sponsor was not identified).
22 Defendants noted that the Court’s order regarding MPP addresses “Class Members
23 who have suitable custodians” ECF No. 784 at 18. As such, if the
24 reunification process has not yet been completed and no viable sponsor if
25 available then the Court’s order would not be implicated. The ORR Report
26 explains that the minors subject to MPP removal orders are “still going through
the reunification process.” Report at 9.

1 Plaintiffs have provided no evidence to show that Defendants have ever used
2 delays in the reunification process as a pretext to avoid releasing a minor subject to
3 removal under MPP. Plaintiffs’ accusations in that regard are unfounded and
4 without merit. This Court has previously rejected Plaintiffs’ requests for ongoing
5 blanket reporting beyond the four corners of the Agreement, and the Court should
6 decline to order additional reporting based on counsel’s speculation. Defendants
7 refer, as well, to the above discussion of Paragraph 28.B should Plaintiffs’ counsel
8 have information showing that they have “reasonable cause to believe that a minor
9 in INS legal custody should have been released pursuant to Paragraph 14.”7.7.777.

10 **7. Fingerprint waiver policy.**

11 The Court directed ORR to “institute provisional release of Class Members
12 with Category 2B and Category 3 sponsors whose name-only background checks
13 yield no red flags and for whom fingerprinting is unavailable,” so long as the
14 sponsors agree to fingerprinting post-release. April 24 Order at 18-19.

15 Thereafter, ORR issued a fingerprinting waiver policy. Exhibit E to
16 Plaintiffs’ Statement re ORR Juvenile Coordinator’s Second Report, June 17,
17 2020, at 122-126 [Doc. # 823].

18 Following Plaintiffs’ complaint that the fingerprint policy was needlessly
19 onerous, the Court ordered ORR to “review and amend its fingerprinting policy to
20 provide for a less onerous chain of approvals or show cause to the Court why the
21 policy, as written, is imperative. . .” June Order at 5.

22 The ORR Juvenile Coordinator attached a revised fingerprint waiver policy
23 to her report. July 2020 ORR Report at 16-19.

24 **Plaintiffs’ position.**

25 ORR’s revised fingerprint waiver process remains needlessly burdensome
26 and cannot help but delay children’s release unnecessarily. Rather than amending
its policy to provide for a less onerous chain of approvals, ORR has added a new

1 requirement that a fingerprint waiver be approved by the ORR Director. *See* July
2 2020 ORR Report at 18-19.

3 Pursuant to its revised policy, ORR requires support for a fingerprinting
4 waiver from a class member’s case manager, Contract Field Specialist (“CFS”),
5 Federal Field Specialist (“FFS”), and the Director for Unaccompanied Children’s
6 Operations (in consultation with the Division of Policy and Procedure), and
7 additionally requires approval from the ORR Director. July 2020 ORR Report at
8 17-19. ORR’s prior, overly restrictive policy, did not require ORR Director
9 approval. *See* Exhibit E to Plaintiffs’ Statement re ORR Juvenile Coordinator’s
10 Second Report [Doc. # 823 at 125]. The revised policy fixes no time limit by
11 which the ORR Director must grant or withhold approval of a waiver, and whether
12 to waive fingerprinting appears wholly discretionary. The new policy does not
13 appear to require a finding “that fingerprinting is necessary to address a
14 documented risk of safety to the minor.” April 24 Order at 19.

15 This Court has previously disapproved a much less redundant and onerous
16 approval chain as needlessly extending children’s detention. Order re Plaintiffs’
17 Motion to Enforce Class Action Settlement, July 30, 2018 [Doc. # 470], at 27-29
18 (“an extra layer of review” by the ORR Director before class members’ release
19 “would inevitably prolong their detention”). Defendants have not shared with
20 Plaintiffs what specific safety concerns are mitigated by ORR Director approval.

21 Plaintiffs continue to believe that ORR has failed to meaningfully comply
22 with the Court’s April 24 Order. ORR should be required to submit a revised, and
23 less onerous, fingerprint waiver policy for the Court’s approval without further
24 delay.

25 Defendants’ position.

26 ORR amended the review procedures in accordance with the Court’s order.
Plaintiffs provide no evidence that the revised procedures are not in compliance

1 beyond speculation that the inclusion of Director review will delay release
2 decisions. In fact, ORR has reviewed these cases and confirms that Director review
3 and approval has not resulted in delays in the release process. As Plaintiffs'
4 counsel have acknowledged in oral argument, unlike a foster care agency, ORR is
5 unable to resume custody after a minor is released to a sponsor; as such, ORR has
6 maintained that the provisional release of minors without fingerprinting raises
7 concerns about the safety of the minors being released. The ORR Report identified
8 the case of A.G.L.C. where the sponsor has not responded to ORR's follow up
9 communication attempts. There is no basis to find that the inclusion of Director
10 sign-off is, in and of itself, a violation of the Agreement. Director sign-off is not
11 delaying release, ORR is waiving an otherwise important child welfare safety
12 protection, ORR cannot resume custody following release, and ORR has otherwise
13 reduced the chain of approvals in its fingerprinting procedures. For all of these
14 reasons, Director sign off is important, and comports with the Agreement.
15 Plaintiffs provide no basis to find otherwise.

16 **8. Disclosures to class members' immigration counsel.**

17 The Court ordered that the parties continue to meet and confer and report
18 by July 31, 2020, regarding "certain disclosures, including information
19 regarding existence of COVID-19 infection among Class Members, that should
20 be provided to minors' immigration counsel." June Order at 6 ¶ 7.

21 Plaintiffs' position.

22 To Plaintiffs' knowledge and belief, ORR and its care providers continue to
23 keep class members' legal service providers in the dark regarding COVID-19
24 protocols and whether their clients have been exposed to COVID-19. *See*
25 Declaration of Claire Doutre, July 29, 2020 (Exhibit A); *see also* Plaintiffs'
26 Statement re ORR Juvenile Coordinator's Second Report at 6-8 [Doc. # 823];
Declaration of Ana Devereaux, Exhibit D to Plaintiffs' Statement [Doc. # 823 at

1 23-34]. The parties have not made progress on this issue as Defendants have
2 adopted the position that information-sharing with class members' legal service
3 providers is not required by the Settlement.

4 Defendants' position:

5 Defendants position remains the same as reported in the April 23, 2020
6 joint report. ECF No. 778 (explaining: that ORR is not aware of any situations
7 where an attorney of record has requested COVID-19 information, the
8 unaccompanied minor agrees that such information should be shared, and
9 programs are failing to provide the information; the contract with the Vera
10 Institute of Justice and ORR contact with Vera; Vera access to the UAC Portal
11 page containing a full list of COVID-19 field guidance provided to care
12 providers; and legal service providers' ability to work with Vera for
13 information). *See also* 837-3 (Annual ORR Juvenile Coordinator Report
14 explaining that most legal service provides do not act as individual
15 representatives, that attorneys of record have unlimited telephone access to
16 their clients, and the child advocate program). At a meet and confer on July 29,
17 2020 the parties discussed this issue as it pertains to ORR, and Plaintiffs'
18 counsel once again provided no explanation that would show how the
19 information Plaintiffs are seeking is related to any requirement under the *Flores*
20 Agreement. Given that the Agreement does not address the provision of
21 information to individual immigration counsel for class members, it remains
22 Defendants' position that Plaintiffs' assertions that such information should
23 nonetheless be provided are not properly addressed in the context of this case,
24 nor the pending litigation.

25 In the June 26, 2020, Order, the Court stated: "[I]f the Court determines that
26 relevant facts are being presented to the Court for the first time without having
been shared in advance with the opposing side in an effort to achieve resolution,

1 the Court will not address the issues to which those facts pertain.” Order Paragraph
2 5. The attached declaration was emailed to Defendants’ counsel at 6:38 pm Eastern
3 Time on the day the joint report was due. Given this timing, Defendants do not
4 agree that this information has been shared in advance in any good faith effort to
5 achieve resolution of the issues contained therein, and object to the Court’s
6 considering the issues to which these facts pertain.

7
8 Respectfully submitted,

9 Dated: July 31, 2020

/s/ Peter Schey
Peter A. Schey
Carlos R. Holguin
CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Class Counsel for Plaintiffs

13
14 /s/ Sarah Fabian (with permission)
Sarah B. Fabian
Senior Litigation Counsel
U.S. DEPARTMENT OF JUSTICE
Office of Immigration Litigation
District Court Section

18 *Counsel for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2020, I served the foregoing pleading on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Peter Schey
Peter A. Schey
CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Class Counsel for Plaintiffs

EXHIBIT A

1 I, Claire Doutre, declare as follows:

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

6
7 2. My name is Claire Doutre and I am an attorney licensed to practice in the
8 State of Texas. This declaration describes my experiences and observations working
9 with unaccompanied migrant youth detained at Southwest Key Programs' Casa
10 Sunzal in Houston, Texas.

11 Experience Serving Youth in ORR Custody

12
13 3. Founded in 2008, KIND is the leading national organization that works to
14 ensure that no refugee or immigrant child faces immigration court alone. KIND
15 provides children with legal representation at no cost, and works for positive systemic
16 change in law and policy to improve the protection of unaccompanied immigrant and
17 refugee children. KIND also engages in programming in Central America and Mexico
18 to promote the best interests and protection of migrant children throughout the region.
19 Since 2009, KIND has received referrals for more than 20,000 children from 70
20 countries. KIND has field offices in ten cities: Los Angeles, San Francisco, Atlanta,
21 Baltimore, Boston, Houston, Newark, New York City, Seattle, and Washington, DC.
22 Legal services professionals who serve children through KIND provide defense in
23 removal proceedings and pursue immigration benefits and relief for which their clients
24 may be eligible. KIND also employs social services coordinators throughout the
25 country, providing unaccompanied children with the support they need outside of the
26 courtroom. Many of KIND's clients have fled severe violence and threats to their
27 lives in their countries of origin and may be eligible for asylum, special immigrant
28 juvenile status, or other forms of humanitarian protection. Most of these children

1 arrived in the U.S. unaccompanied by a parent or legal guardian, but some are
2 members of families separated at the border.

3 4. I am the managing attorney overseeing the Houston, Texas office of KIND.
4 I have worked at KIND since November 2015.

5
6 5. KIND's offices in Seattle, Houston, San Francisco, and New York serve
7 unaccompanied children in the legal custody of the Office of Refugee Resettlement
8 ("ORR"). Since 2019, KIND's Houston office has served unaccompanied children in
9 the legal custody of ORR who have been placed by ORR at Southwest Key Programs'
10 Casa Sunzal, a shelter care facility within the ORR network of care providers.

11 6. As the legal services provider for children at Casa Sunzal, our attorneys and
12 legal staff provide Know-Your-Rights presentations concerning the rights of detained
13 minors, conduct legal screenings to assess their eligibility for immigration relief,
14 provide direct representation and/or facilitate pro bono representation to certain
15 children, and assist unrepresented children by monitoring the status of family
16 reunification, providing "friend of court" assistance for those who attend immigration
17 court hearings while in ORR custody, and providing legal referrals upon children's
18 release from ORR custody. Our staff maintain regular contact with all children at Casa
19 Sunzal throughout their stay. Since March of 2020, due to COVID-19, KIND staff
20 have been providing all services remotely, primarily via video calls.

21
22 7. KIND's Houston office where I have served as managing attorney since
23 August 2017, serves children in three counties. The Houston office, working with a
24 network of over 700 pro bono attorneys, currently serves over 600 children.

25 Recent Observations Regarding Quarantine of Youth Pending COVID-19 Test Results

26
27 8. In June of 2020, our staff learned through one of the children at Casa Sunzal
28 that the family member of a Casa Sunzal staff member tested positive for COVID-19.

1 As a result, the shelter initiated the quarantine of all three children placed at the
2 facility, pending testing and receipt of test results. KIND was not notified by Casa
3 Sunzal staff or ORR that the children would be tested or subject to quarantine. The
4 same week that KIND learned of the quarantine through the children, we were told by
5 Casa Sunzal staff that due to low census, staffing was also low and therefore, staff was
6 unable to accommodate video calls between KIND and the children. As a result, we
7 were only able to have contact with the children by phone.

8 9. KIND staff learned more about the conditions of quarantine at Casa Sunzal
9 through speaking directly with the children. The quarantine was initiated June 19,
10 2020, and all three children were tested on June 23, 2020. Initially, the children
11 understood they would receive test results within a matter of days, although they
12 ultimately did not receive the test results until early July. The children reported to
13 KIND that Casa Sunzal told them their test results were negative on July 3, 2020. The
14 quarantine continued for three more days after the children received their negative
15 results.

16 10. During the first week of their quarantine, the children were required to
17 remain in separate bedrooms with the door closed. The bedrooms in which the
18 children were quarantined consist of four white concrete walls, a heavy door with a
19 small window opening near the top, and a small screened-in window to which there is
20 no access. The bedrooms are not decorated, nor is there a clock or calendar to keep
21 track of the time or day. Each room is outfitted with four small beds and a bathroom,
22 with minimal floor space. The children were only allowed to leave the room to make
23 their twice-weekly phone call to a family member. Children at Casa Sunzal are
24 allowed two phone calls per week for 10 minutes. Therefore, during the first week of
25 quarantine they were only allowed to leave their rooms twice for 10 minutes. The
26 children did not leave their room during the majority of the days they were
27 quarantined. They were not allowed outside or to any other area inside the shelter. As
28 a replacement for recreation time and physical education, a staff member stood outside

1 the door and instructed the children to do exercises. All snacks and meals were eaten
2 in their rooms off a tray, since there is no table or similar surface in the bedrooms. As
3 a replacement for school, each morning the children were provided worksheets to
4 complete educational assignments, to be completed in their rooms without any
5 instruction from teachers. The children were provided face masks when allowed out
6 of their rooms to make their phone calls. In the two weeks the children were
7 quarantined, the children reported to us that their only human interaction was with one
8 of their counselors who was fully dressed “like an astronaut” in personal protective
9 equipment.

10 11. It is my understanding from communications with staff of Casa Sunzal that
11 the facility did not receive any formal guidance from ORR on appropriate conditions
12 of quarantine. Rather, Casa Sunzal sought and followed guidance from its own
13 medical unit.

14 12. Out of concern for the level of isolation the children were being subject to,
15 our office sought additional information from the Federal Field Specialist (“FFS”)
16 who oversees Casa Sunzal. The FFS confirmed that ORR had not issued formal
17 guidance regarding conditions of quarantine.

18 13. I believe the children at Casa Sunzal were significantly impacted by the
19 extreme isolation during their quarantine. One child reported that she began talking to
20 herself and hearing voices, and another reported losing track of the days. One child
21 spoke with KIND’s Social Services Coordinator and reported that she had recurring
22 traumatic thoughts about her past during the period of isolation. Although it is
23 possible that these symptoms are unrelated to quarantine, I believe that they were
24 exacerbated by the severe level of seclusion, particularly in the first week.

25 14. In communications with both the FFS and Casa Sunzal staff, KIND
26 requested that the children be given accommodations to alleviate the level of isolation
27 pending test results. Specifically, we requested that they be allowed additional calls to
28 family members/authorized adults, be permitted to go outside at least once per day,

1 and that staff accommodate video calls (rather than phone calls only) to KIND staff
2 notwithstanding the low staffing. During the second week of the quarantine, the
3 children were allowed to go outside on some days when the weather permitted, and to
4 the auditorium when it was not. They were also provided an additional call per week.

5 15. In total, the children at Casa Sunzal were quarantined for over two weeks
6 while they awaited test results. According to my notes, the children were quarantined
7 from June 19, 2020 thru July 6, 2020, which is a total of 18 days. Although the
8 conditions did improve during the latter half of that period (with an allowable 30
9 minutes outside or to the auditorium), the lack of clear or uniform guidance from ORR
10 to care providers governing parameters of quarantine is concerning and creates the
11 risk of extreme measures of isolation.

12 16. As the legal service provider serving children in ORR custody, it is critical
13 that we receive up-to-date information and guidance from ORR regarding its policies
14 impacting the safety, welfare, and release of our clients in order to effectively advise
15 them of their rights during this time. KIND staff was not directly informed that our
16 clients had been exposed to COVID-19, or that they would be tested and subject to
17 quarantine. Rather, we learned directly from the children about the exposure and
18 circumstances. The lack of formal guidance from ORR regarding parameters of
19 quarantine resulted in extreme conditions for the children while the care provider
20 sought out direction on appropriate conditions.

21 17. I declare under penalty of perjury that the foregoing is true and correct.
22 Executed on July 29, 2020 in Houston, Texas.

23 *Claire Doutre*
24 _____

25 Claire Doutre
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