# Exhibit 3

## REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

Detained

**EXHIBIT E** 

Morrison Paso Case Review dated September 17, 2017 20170917\_Morrison Paso\_CaseReviewx

			Case Review		
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Dete:

9/19/17

Legal screening completed?

@ Yes C No

Any possible legal relief

9/22/17

Identified?

C Yes & No

Specifyi

Minor has not been identified for legal relief at this time as of 11.17.17

#### Mental Nesith

Provide a short summary of the UAC's current functioning:

10/18/17-Minor continues to attend individual and group counseling weekly. Minor has been able to follow rules and regulations and is redirected easily. Minor expresses feelings and thoughts in session and reports what he needs in regards to his coping skills. Minor has not presented with any harm to self or other thinking. Clinician has no concerns at this time regarding minor and his functioning.

10/29/17-Minor continues to participate in program activities and requirements and follows all rules and regulations. Minor attend individual and group counsaling and provides input and discusses feelings. Minor has started family sessions with his aponsor and is willing to discuss his feelings and concerns when needed. Sponsor has been flexible and available for family sessions. Minor has begun to become industriegarding the details of his journey and discussion of his future. Minor reports zero harm to self or other thinking. There are no mental health concerns at this time.

11/17/17-Minor continues to comply with program rules and regulations. Minor has showed appropriate behaviors within the program and a high level of emotional intelligence. Minor has been able to attend outlings and show appropriate behavior in the community. Minor continues to report no thoughts of self harm or harm to others. Minor also has participated actively in individual, family and group therapy. Minor appears to remain receptive and compliant with expectations.

### Psychological Evaluation

Date of

Evaluation

Evaluator

Axis I:

Axis II

Axis Ili:

Auls IV:

Axis VI

Summary of Recommendations:

### Who planned/organized your Journey?

During initial intake, Minor stated that he and his mother planned the trip to the US, However, during sponsor assessment on 9/27/17. Minor's mother denied paying for minor's journey, as she stated that neither she, nor her parents, were aware that the minor had made the journey on his own accord. CM contacted minor's grandparents in COO on 9/28/17, who reported that they were not aware that the minor had made the journey to the US to see his mother, as they were originally notified by the minor's supervisor at the tortills shop, who wanted to know if the minor was going to come into work after missing the previous day of work. CM have informed the minor about this discrepancy and he continues to be adament that his mother paid for his journey (58,000 USD). Upon further assessment in program, minor disclosed that he saved \$600 USD and his friends lent him \$500 USD for his journey. Minor stated that he initially did not want to inform the pregram of his friend's names and stated that they were they once who arranged for his entire journey, including the arrangements for transport from Arizona to Florida to his mother. Minor stated that his is expected to payback his friends whenever he can have permission to work in the US and stated that there will be no consequences for him nor his family for delaying payment to his friends given his current situation.

#### What were you told about the arrangements before the Journey?

Minor reports that the guide did not explain details, he just told minor to get ready to leave around July 30 and to take just few clothes.

#### Did the arrangements change during the journey?

If yes, how?

Minor reports that everything went as planned during his journey across the border.

Does your family owe money to anyone for the journey?

#### If yes, how much?

#### Whom is the money owed?

N/A-During initial intake, Minor stated that he and his mother planned the trip to the US. However, during sponsor assessment on 9/27/17, Minor's mother denied paying for minor's journey, as she stated that neither she, nor her parents, were aware that the minor had made the journey on his own accord. CM contacted minor's grandparents in COO on 9/28/17, who reported that they were not aware that the minor had made the journey to the US to see his mother, as they were originally notified by the minor's supervisor at the tortilla shop, who wanted to know if the minor was going to come into work after missing the previous day of work. CM have informed the minor about this discrepancy and he continues to be adament that his mother paid for his journey (\$8,000 USD). Upon further assessment in program, minor disclosed that he saved \$600 USD and his friends lent him \$600 USD for his journey. Minor stated that he initially did not want to inform the program of his friend's names and stated that they were they ones who erranged for his entire journey, including the arrangements for transport from Arizona to Figrids to his mother. Minor stated that his is expected to payhock his friends whonever he can have permission to work in the US and stated that there will be no consequences for him nor his family for deleying payment to his friends given his current situation.

### Who is expected to pay?

Friend(s) in Mexico; \$600 USD.

### What do you expect to happen if payment is not made?

Minor stated that there will be no consequences if payment is delayed.

#### Coardion Indicators

Did anyone threaten your or your family?

You No

C CT Yes No

### If yes, who made the threats? Minor has NOT been threatened, however: During sponsor assessment on 9/27/17, sponsor reported that an 9/18/17 around 12PM EST, she was contacted by an unknown number by a person named Eric, who informed her that her son was at safe house somewhere in Arizona with a lady who was caring for him, where he was safe, and was instructed to send her \$800 dollars via bank D-50-8. Per aponsor, Eric stated that once the minor arrived to Florids visivan, she would have to pay an additional \$400 dollars in person. Sponsor stated that she did not send any money to the bank account, since she received a phone cell on 9/19/17 from Paso Program from Casa Managar, who allowed her to speak to her son. Per sponsor, she was relieved to hear her son's voice and was confused as to why the person on the phone was requesting monies, as she reports not being aware that minor had made the journey into the US, without the consent of the family. Furthermore, sponsor reports being apprehensive initially about the authenticity of PASO program as well, until she received an PRP packet in the mail on 9/21/17 and was able to watch the sponsor video (this sponsor was a victim of hurricane irms and reported connectivity issues in her area during this time.) Sponsor stated that as of 9/19/17, the unknown number contected her on two other occasions and left two voicemels allegedly threatening her to send the \$800 USD, or size "something bed" would happen to her son. As of 9/19/17, the sponsor reports that she has stopped using her old cell phone and is currently only using her home phone to communicate with PASO Program. Sponsor reports that she has continued contacting har parents in Mexico since 9/18/17, were her family denies being asked or threatened for any types of monies from anyone regarding the minor a elleged transportation costs. CM Created a Fraud SIR and notified Sebring PD, who instructed CM to notify the sporaor to contact them, if she fall like pressing charges and wanted police to become involved. CM relayed this information to sponsor; spansor stated that she would speak to her husband first before proceeding, as her family in COO, had not reported any type of harm by the alleged individuals in Arizona. Were you ever physically harmed? Yes No If yes, how? Was anyone around you ever physically harmed? If yes, who? Were you ever held against your will? 00 You No If yes, where? n/a Did anything bad happen to anyone sise in this situation or anyone sise who tried to leave? Yes No What happened and to whom? n/a Old anyone ever keep/destroy your documents? r 1 If yes, who and what? Did anyone ever threaten to report you to the police/immigration? If yes, who? n/s Are you warried anyone might be trying to find you? 00 Yas No If yes, who? n/s Debt Sondage/ Labor Trafficking Did you perform any work or provide any services? if yes, what and where? Back in COO, minor used to work every day in the fields from Monday to Saturday planting and gathering vegetables, and spreading positicide on the fields. Who arranged the work? Minor found that job through a neighbor who was already working in the fields. What type of work did you perform? Minor used to work planting and gathering vagetables, and spreading posticide on the fields What was the work schedule? Every day from Monday to Saturday from 5:00 am -12:00 pm Did work conditions change over time? is there a debt? Yes No If yes, has any debt amount increased? By how much? When did it increase? Why did it increase? Have you or your family ever been threatened over payment or work for the lourney? If yes, who threatened you and how? N/A



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If yes, provide a short summary:  If yes	n/a			
If yes, provide a short summary:  If yes	Based on the most recent sci	reening, has the child been a victim of physica	al or sexual abuse under circumstances that indicate that the child's health or welfare has been algoliscantly harm	
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# Exhibit 4

## REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1220 SW 3RD AVENUE, SUITE 500
PORTLAND, OR 97204

Case No.:

	Docket: PORTLAND DETENTION CENTER
RESPONDENT	IN REMOVAL PROCEEDINGS
CUSTODY ORDER OF TH	E IMMIGRATION JUDGE
	E OF SERVICE

Form EOIR 1 - 1T (Custody - REMOVAL)

In the Matter of:

# Exhibit 5

## REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

Case 285-cv-04544-DMG-AGR Document 420-1 Filed 04/23/18 Page 40 of 106 Page ID

## METROPOLITAN PUBLIC DEFENDER IMMIGRANT DEFENSE OREGON

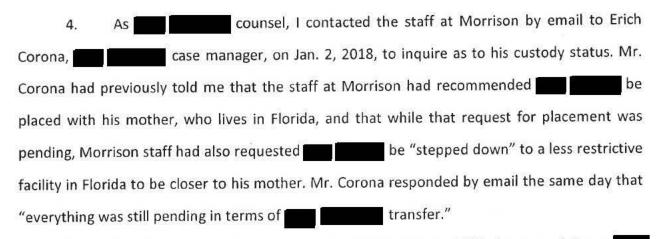
630 SW 5<sup>th</sup> Ave., Suite 500, Portland Or. 97204 Phone: 503-225-9100

### **DECLARATION OF LELAND BAXTER-NEAL**

I, Leland Baxter-Neal, declare and say as follows:

1.	I am an	n attorney in good standing barred to practic	e in the state of Oregon. My
bar numb	er is 155347	7. I am employed as a staff attorney at Metro	politan Public Defender, in a
non-profi	t immigration	n project called Immigrant Defense Oregon.	

- in his Dec. 19, 2017, "Flores bond hearing" pursuant to Flores v. Sessions, 862 F.3d 863 (9th Cir. 2017). is currently detained by the Office of Refugee Resettlement (ORR), at a "staff-secure" facility operated by Morrison Child & Family Services ("Morrison"). We continue to represent for the purposes of enforcing his rights under the settlement in Flores, et al., v. Sessions, et al., No. CV 85-4544 DMG (C.D. Cal.) ("the Flores settlement") and seeking his release to his mother.
- 3. The aforementioned *Flores* bond hearing was held on Dec. 19, 2017, at the Portland Immigration Court in front of Immigration Judge Richard Zanfardino. In advance of the Flores bond hearing, ORR counsel Thomas Pabst told me that that ORR would not be arguing at the bond hearing that is a flight risk because, when determining whether to release a minor in ORR custody to a sponsor, ORR does not consider whether that minor is a flight risk. ORR counsel affirmed the same in its briefing in advance of the hearing. At the hearing, ORR counsel told the immigration judge that his argument in support of detaining would be limited only to asserting that was a danger to the community. At the conclusion of that hearing, the immigration judge sided with and ruled that the he is not a danger to the community.



- I contacted Mr. Corona by email again on Jan. 9, 2018, for an update on 5. custody status. Mr. Corona replied, "We are currently working on transfer request," and described several factors that had delayed ORR's processing. On Jan. 19, 2018, Ms. Hernandez and I provided a demand letter via email to Scott Lloyd, Director of the Office of Refugee Resettlement, Maria Ivall, the Federal Field Specialist who oversees the staff secure center at Morrison, and Thomas Pabst, ORR counsel. In that letter, we demanded ORR to his mother's care, as continuing detention in immediately release a staff-secure facility and separation from his mother was in violation of the Flores settlement, statutory and constitutional rights. Our office provided ORR until Jan. 29, were not released, we would and asserted that, if 2018, to release take legal action to enforce his rights.
- 6. Ms. Ivall replied by email later the same day, Jan. 19, 2018, confirming receipt of the letter and stating that "the case has been elevated to ORR headquarters and we will get back to you." As of this date, our office has not received a reply to our letter.
- 7. On Jan. 30, 2018, I emailed Ms. Ivall again to inquire as to status.

  Ms. Rodriguez replied by email later the same day as follows:

"My apologies in advance, unfortunately I am unable to provide you with details of the case. Please feel free to make a formal request to ORR of the UC's file for more detailed information. I am more than happy to explain or discuss the

process of step down as well as reunification if needed, however I am including ORR's link below for information.

I can tell you that the goal for staff secure UCs is to step down for as long as it is warranted and it is safe to do so. At this time in this particular case, the step down request is in the process of being submitted to ORR for approval. As of yet I am not aware of any approved placements. The care provider will send you a notification when UC has been approved to transfer since they are in charge of informing all stakeholders. They should provide you with the location where this UC is being transferred if/when accepted since you are the representing attorney."

- 8. On Feb. 1, 2018, I contacted Mr. Corona at Morrison to confirm if he had any updated information as to custody status. Mr. Corona replied by email on Feb. 2, 2018, that, "Maria's email is the most current information we have on hand. We will notify you when the UC is discharged from our program once he is accepted by a shelter program in FL." Mr. Corona added that, "There is nothing we nor FFS can do at this time to expedite his transfer, we simply have to wait until a program has the capacity to accept him in FL."
- 9. The Morrison center where is detained is classified by ORR as "staff-secure." To schedule my visits and phone calls with it is a must contact the staff at Morrison in advance and request they schedule the call or visit. The entrance to the area of the building where the UAC children are detained is always locked, and I must press a buzzer and wait for security to allow me to enter. The door is locked from both sides, and so a staff member is also required to unlock the door and let me out so that I may leave at the conclusion of my legal visits.

that he has nothing concealed before he is allowed through the locked door that leads to the area where the youth are held. Based on my own direct experience, and conversations with , it is my belief that his movements from place to place are tightly restricted and closely monitored, and his behavior is subject to strict guidelines and punishment if he does not comply.

11. In the two months that Ms. Hernandez and I have represented have visited him in person or spoken with him by phone approximately 10 times. I have had the opportunity to get to know him and observe his moods and discuss with him his feelings. While I am not a mental health professional, I am deeply concerned that continued detention, paired with inconsistent information from ORR about if and when he will be reunited with his mother, are causing significant harm to his mental health and wellbeing.

has repeatedly been given timelines for his release that have then come and gone. For as long as I have represented him, he has been told by staff at Morrison that a request to transfer him to a lower security facility in Florida, to be closer to his mother, "is pending." Both he and I have been told at different points that his transfer to the lower security would happen within a matter of weeks, or, more recently, by Feb. 2, but when those dates come, nothing happens. has also been told previously that his release to his mother would happen in 30 days, only to have that date come and go as well. Following his bond hearing before an immigration judge, in which he was found not to be a danger to the community, has a three minor altercations with other boys at the detention center, mostly verbal altercations, written up as "Serious Incident Reports," called SIRs. Both and I were then told by staff that he would not be transferred out of the facility until he had at least thirty days without a SIR.

being locked in the detention center. He has expressed this directly to me on multiple occasions. Further, I have observed, and he has reported, increasing frustration that, dispute winning his bond hearing now nearly two months ago, he continues to be detained. This frustration appears to be leading to a lack of patience with other students and, at times, a sense of despair about his case. I believe, and he has expressed to me, that the three SIRs following his successful bond hearing were directly related to the negative effects of the continued detention and inconsistent reports about when and if he would be released.

14. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.

I, Leland Baxter-Neal, certify under penalty of perjury that the foregoing is true and correct. Executed on Feb. 6, 2018.

Leland Baxter-Neal

Oregon Bar No. 155347

# Exhibit 6

## REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

### **Leland Baxter-Neal**

**From:** Erich Corona < Erich.Corona@morrisonkids.org >

**Sent:** Tuesday, January 09, 2018 11:48 AM

**To:** Leland Baxter-Neal

Cc: Jenny Hernandez; Brittany Russ; Jessica Mena; Kenneth Ramirez; Maribel Reyes

Subject: RE:

**Importance:** High

Good morning Leland,

We are currently working on his transfer request. Please keep in mind that ORR is now getting back from VACA mode and will resume its normal operations. Furthermore, this minor was initially submitted for release on 10/30/17, however, due to some technical issues, ORR was not able to look at this case until 11/21/17.

When a the covering FFS reviewed this case on 11/21/17, the covering FFS requested a discretional HS. The Positive HS results were received on 12/27/17.

Furthermore, we have been experiencing technical issues with the UAC portal for the past couple of weeks, which as prevented us from creating the transfer online.

I am currently working on the transfer request, now that the minor's mother has attended her fingerprint appointment and her CA/N checks have been initiated (Items which needed to be initiated before UC could be transferred due to discretional HS recommendation).

We will notify you once FFS approves his transfer; thank you for continuing to advocacy for this youth.

Saludos,



Erich Corona | Case Manager 11035 NE Sandy Blvd. | Portland, OR 97220 (503) 258-4623(d)|(503) 896-1158(c)

Check out our website: Morrisonkids.org



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**From:** Leland Baxter-Neal [mailto:lbaxterneal@mpdlaw.com]

Sent: Tuesday, January 9, 2018 11:37 AM

To: Erich Corona < Erich. Corona@morrisonkids.org >

**Cc:** Jenny Hernandez < jhernandez@mpdlaw.com>; Brittany Russ < Brittany.Russ@morrisonkids.org>; Jessica Mena < Jessica.Mena@morrisonkids.org>; Kenneth Ramirez < Kenneth.Ramirez@morrisonkids.org>; Maribel Reyes

<Maribel.Reyes@morrisonkids.org>

Subject: RE:

Hi Erich,

### Case 2:85-cv-04544-DMG-AGR Document 420-1 Filed 04/23/18 Page 47 of 106 Page ID #:16467

I just wanted to follow up and check in on transferred to Florida, or is it still pending?

If it is still pending, is it currently pending at the stage of the field supervisor approving him to be stepped down, or has it been approved but is pending with the Florida shelter having everything ready to receive him?

Please update us with any details regarding the delay in stepping him down.

Thanks!

Leland

**From:** Erich Corona [mailto:Erich.Corona@morrisonkids.org]

**Sent:** Tuesday, January 02, 2018 3:32 PM

To: Leland Baxter-Neal

Cc: Jenny Hernandez; Brittany Russ; Jessica Mena; Kenneth Ramirez; Maribel Reyes

Subject: RE: Importance: High

Hello Leland,

Hope you had a good new year as well!

Everything is still pending in terms of transfer.

We will keep you posted before it is approved so that you may provide legal counsel over the phone.

We will provide the new program's info once he is accepted into another program.

Saludos,



Erich Corona | Case Manager 11035 NE Sandy Blvd. | Portland, OR 97220 (503) 258-4623(d) | (503) 896-1158(c)

Check out our website: Morrisonkids.org



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From: Leland Baxter-Neal [mailto:lbaxterneal@mpdlaw.com]

Sent: Tuesday, January 2, 2018 10:46 AM

**To:** Erich Corona < <a href="mailto:Erich.Corona@morrisonkids.org">Erich.Corona@morrisonkids.org</a> <a href="mailto:Cc: Jenny Hernandez <a href="mailto:Jhernandez@mpdlaw.com">Jhernandez@mpdlaw.com</a> <a href="mailto:Leich.Corona@morrisonkids.org">Leich.Corona@morrisonkids.org</a> <a href="mailto:Leich.Corona@morrisonkids.org">Leich.Corona@morrisonkids.org</a> <a href="mailto:Leich.Corona@morrisonkids.org">Leich.Corona@morrisonkids.org</a> <a href="mailto:Leich.Corona@morrisonkids.org">Leich.Corona@morrisonkids.org</a> <a href="mailto:Leich.Corona@morrisonkids.org">Leich.Corona@morrisonkids.org</a> <a href="mailto:Leich.Corona@mpdlaw.com">Leich.Corona@mpdlaw.com</a> <a href="mailto:Leich.Corona@mpdlaw.com">Leich.Corona@mpdl

Subject:

Hi Erich.

Happy new year! I wanted to check in and see how things are going with and his step down to Florida. If he hasn't been stepped down, are things on track and do you know when he might be transferred? And if he has been transferred, can we get the name and location of the facility and a point of contact there from you?

### 

Thanks! Hope you enjoyed the holidays.

Cheers,

Leland Baxter-Neal

Attorney | Immigrant Defense Oregon Metropolitan Public Defender 630 SW Fifth Ave., Suite 500 Portland, OR 97204 503.225.9100

# Exhibit 7

## REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

I, James M. Owens, declare and say as follows:

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1. All facts stated herein are of my own personal knowledge, and if sworn I could competently testify thereto.

- 2. I am an attorney licensed to practice law in the State of California. I am a Retired Assistant County Counsel from Los Angeles County, 1 retired in March of 2014. For the last 15 years of county service, I managed the Dependency Division in Los Angeles County. The Dependency Division handles child abuse and neglect cases for the Los Angeles County Department of Children and Family Services. We had 120 attorneys handling approximately 25,000 dependency cases and appeals. The attorneys staffed 20 courts and would routinely handle over 1,000 matters each court day. I am very familiar with laws and time lines relating to children detained by and placed in custody of California child welfare agencies.
- 3. In preparation for this declaration, I have reviewed a time line provided to me by Attorney Carlos Holguin. I have been asked to analyze the time frames and circumstances of the detention based upon federal and state laws applicable to the detention of dependent children and timelines child protection agencies typically follow when placing children with a non-offending parent after they have been removed from an unfit home. I am not familiar with federal immigration laws or how dependency law may be applicable to the instant case.
- 4. I am informed and believe that the has been detained in a non-licensed facility since September 18, 2017. I am also informed and believe that the child's mother is an appropriate custodian and is willing to provide care and supervision for the child. I am informed that there was a home study conducted on the mother's home on or about October 30, 2017. The home study recommended release to the child's mother. The results of the home study were received December 27, 2017.
- 5. Child welfare is state managed and federally funded. Many of the state laws designed to expedite placement of children are mandated by the federal funding statute commonly called the Adoptions and Safe Families Act. The requisite components of all state

- 6. The time frames for dependency hearings are very quick. If the social worker decides to detain a child. The social worker must file a petition with the court within 48 hours of the child's detention. See Welfare and Institutions Code sections 313. A hearing is scheduled on the next court day after the petition is filed with the court. See Welfare and Institutions Code section 315. The judge considers the grounds for detention. If there are no legal grounds for detention, the court shall order the release of the child from custody. See Welfare and Institutions Code section 319(b).
- 7. Were state child welfare agencies involved, the instant case would have presented issues involving the Interstate Compact on the placement of children as it involved a home study conducted in Florida. This may have delayed placement were this a California child dependency case as the local agency would be dependent on a Florida agency to complete the home study. Even so, the statute contemplates a state conducting a home study for another state pursuant to the Interstate Compact will complete the home study in 60 days. See Cal. Fam. Code section 7901.1. When another state requests Los Angeles County to perform a home study under the Interstate Compact, Los Angeles would take all steps to complete the home study within the time period contained in Family Code section 7901.1. When Los Angeles County receives a completed home study from another state approving placement with a parent, Los Angeles would

- 8. If the state placing a child is not requesting supervision by the receiving state, however, the Interstate Compact would not be applicable to a placement with a parent. In these circumstances, the child welfare agencies may handle such placements without the delays associated with coordinating interstate placement with the receiving state. In Los Angeles County, these placements are often effectuated before the 48-hour time for the filing of the petition expires.
- 9. I am advised that ORR may be continuing in federal custody because no one in his mother's household is a licensed driver. In my experience, the lack of access to a motor vehicle would not justify the continued detention of a health teen age child. If transportation was necessary, the child welfare agency would typically provide public transportation vouchers to the family to provide transportation for the child.
- 10. The goal of child welfare is to place children is safe, nurturing environments in a timely fashion. The Adoption and Safe Act requires placements foster families, relatives and other nonparents to meet licensing standards required of foster placements. These include criminal history checks on prospective care providers. 42 United States Code sections 671(19) and 671(20).
- 11. Continued detention in a non-licensed placement is very problematic in circumstances where the child could be placed with a parent who has no history of abuse, neglect, or unfitness, nor any legal impediment to receiving custody. Childhood is short, and children should receive parenting in a nurturing, permanent relationship. Too frequently children are placed in institutional settings where their day to day care is provided by a series of adult caretakers who lack any permanent connection to the children they care for. In these

to expedite placement with a child with a parent who could provide a safe and stable home.

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

Executed this 7th day of February 2018, in Long Beach, California.

In my experience, all involved in the dependency system would take every effort

permanent nurturing relationship, preferable with a parent or relative.

12.

James M. Owens

# **Exhibit 8**

### **Interim Guidance on Flores v. Sessions**

### I. Background

Flores is a lawsuit brought by unaccompanied alien children to enforce Paragraph 24A of the Flores Settlement Agreement. Paragraph 24A states: "A minor in [removal proceedings] shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates . . . that he or she refuses such a hearing." On January 20, 2017, a district court in the Central District of California ruled that the Government was in breach of Paragraph 24A and ordered the Government to henceforth come into compliance. Order re Pls' Mot. to Enforce, Flores v. Sessions, 2:85-cv-04544 (C.D. Cal. Jan. 20, 2017). On July 5, 2017, a panel of the Ninth Circuit affirmed the District Court's order. Flores v. Sessions, No. 17-55208, 2017 WL 2855813 (9th Cir. July 5, 2017).

This document is intended to provide interim guidance to the immigration courts on implementing the District Court and Ninth Circuit orders as they relate to conducting bond hearings for unaccompanied children in the custody of the Health and Human Services' ("HHS"), Office of Refugee Resettlement ("ORR"); however, this guidance is subject to change due to on-going implementation discussions and potential litigation.

### II. Scope of the Agreement and Orders

The *Flores* Agreement, including the District Court and Ninth Circuit's interpretation of it, applies nationwide. *See Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016). Therefore, this guidance applies to all immigration courts that handle cases involving juvenile respondents.

The Government has reached a preliminary agreement with Plaintiffs' counsel concerning implementation of the orders. Plaintiffs have agreed that the Government complies with the orders so long as the Executive Office for Immigration Review ("EOIR"), in coordination with ORR and the Department of Homeland Security ("DHS"), makes bond hearings available to:

- (1) Any child that ORR is holding in a staff-secure or secure facility; and
- (2) Any other child in ORR custody who has affirmatively requested a hearing by making a request with the immigration court or to an ORR care provider.

### III. Procedures for Scheduling *Flores* Bond Hearings

### A. Unaccompanied Children in Secure and Staff-Secure Facilities

The following process applies to children in secure and staff-secure facilities. ORR will automatically provide a notice entitled, "Notice of Right to Request a Bond Hearing," to all unaccompanied children in its staff-secure and secure facilities of their ability request a bond hearing. The child, a legal representative of the child, or a parent/legal guardian of the child may submit a written request for a bond hearing to ORR using the ORR form. If one of these individuals requests a hearing, ORR will notify the immigration court by filing a motion for a bond hearing. Note: this motion is specific to unaccompanied children in secure or staff-secure facilities. See Attachment A. For a list of the ORR secure and staff-secure facilities and the nearest immigration courts, see Attachment D.

For children in secure and staff-secure facilities, upon receipt of the motion from ORR, court staff should schedule a bond hearing and mail notice to the following individuals: (1) the child, care of the custodian in charge of the ORR facility where the child is located; (2) the child's legal representative, if any; and (3) ORR's Director's Office at the following address:

Director Scott Lloyd
Office of Refugee Resettlement
330 C. Street, S.W.
Washington D.C. 20201

Additionally, court staff should mail to both parties a copy of: (1) the motion and (2) any EOIR-28 that has been filed along with the notice of the scheduled bond hearing.

For the time being, HHS and ORR attorneys located in Washington D.C. will represent ORR during such bond hearings.

### B. Other Children in ORR Custody

Other children who are in ORR custody but who are not in secure or staff-secure facilities (e.g., shelters) are not automatically given a "Notice of Right to Request a Bond Hearing" but may still request a bond hearing by making an affirmative request with either ORR or with the immigration court.

If a child in non-secure care makes an affirmative request with ORR for a bond hearing, ORR will file a motion with the immigration court. That motion is different from the motion filed by ORR for children in secure facilities. **See Attachment B**. In these cases, ORR may submit a letter along with the motion stating that it has determined that the child is neither a danger nor a flight-risk and that ORR will release the child once a suitable sponsor is located. In such cases, court staff should provide the motion, and any accompanying documents filed by ORR, to the immigration judge for appropriate action. The immigration judge may enter an order

granting the child's release subject to placement with a suitable sponsor without conducting an in-person hearing. <sup>1</sup>

If a child appearing in immigration court makes an affirmative request for a bond hearing and no motion has been received from ORR, immigration court staff should send the notice contained in **Attachment C** to: (1) the child, c/o of the ORR custodian or care provider and the child's attorney, if any; and (2) ORR's Director's Office at the address above, informing ORR that an unaccompanied child in its custody has affirmatively requested a bond hearing and requesting that ORR respond within 10 days. Upon receiving a response from ORR, the child, or his or her attorney, court staff should provide the response to the immigration judge for appropriate action. ORR may respond that it has determined that the child is neither a danger nor a flight risk and that ORR will release the child once a suitable sponsor is located. If so, the immigration judge may enter an order granting the child's release subject to placement with a suitable sponsor without conducting an in-person hearing.

### IV. Guidance and Information for Immigration Judges

Generally, the District Court's Order contemplates that Immigration Judges will conduct bond hearings for unaccompanied children using the same standards and factors that apply to custody redetermination hearings conducted pursuant to 8 C.F.R. § 1236.1(d)(1); however, there are some additional considerations and differences.

### A. Representation

At this time, Department of Health and Human Services ("HHS") and ORR headquarters attorneys will represent ORR during these bond hearings; DHS attorneys will not be present. The HHS and ORR attorneys are located in Washington, D.C., and have very limited resources for appearing in-person at the immigration courts. As a result, they will likely request telephonic appearances. In order to ensure effective and efficient implementation of the Ninth Circuit's order, Immigration Judges should grant all requests from HHS/ORR, and any similar requests from the respondent or respondent's counsel, to appear telephonically unless there are specific and articulated reasons relating to due process concerns or another adverse impact on the efficient adjudication of the case. As outlined in Operating Policies and Procedures Memorandum (OPPM) 08-04, Guidelines for Telephonic Appearances by Attorneys and Representatives at Master Calendar and Bond Redetermination Hearings (July 30, 2008),

<sup>&</sup>lt;sup>1</sup> In some cases involving children in staff-secure care, ORR has also found that the child will be released to a suitable custodian but has made no finding of danger to self or community. ORR will inform the immigration judge if this is the case.

Immigration Judges must adjudicate each request for a telephonic appearance on a case-by-case basis.

The child may be represented by an attorney or other representative at no expense to the government consistent with 8 C.F.R. § 1003.16(b).

### B. Role of the Immigration Judge

During the hearing, an immigration judge decides whether the child poses a danger to the community or is a flight-risk. *See* Order re Pls' Mot. to Enforce 2, 2:85-cv-04544. The burden is on the child to demonstrate that he or she should be released because he or she does not pose a danger to the community or a flight risk. *Id.* In making this determination, immigration judges should apply the factors set forth in *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006). *Id.* An immigration judge's decision that the unaccompanied child is not a danger to the community supersedes an ORR determination on that question, unless the Board of Immigration Appeals overturns the judge's decision. *Id.* If an immigration judge also finds that the child is not a flight risk, ORR will consider that finding when assessing the child's placement and conditions of placement, but the decision does not affect release because ORR does not make a determination of flight risk for purposes of deciding whether a child will be released.

Despite the Immigration Judge's decision on the question of danger to the community and flight risk, in all cases, release from ORR custody cannot occur until ORR has identified, evaluated and approved an appropriate sponsor. *See* 8 U.S.C. § 1232(c)(3); *Flores*, 2017 WL 2855813, at \*3 ("determinations made at hearings held under Paragraph 24A will not compel a child's release. Regardless of the outcome of a bond hearing, a minor may not be released unless the agency charged with his or her care identifies a safe and appropriate placement.").

Additionally, although these hearings are known as "bond hearings," ORR does not require payment of any money in the event that bond is granted. Therefore, if release is appropriate, the Immigration Judge should not set a bond amount but should instead issue an order granting the child's release subject to ORR identifying, evaluating, and approving an appropriate sponsor.<sup>2</sup>

The District Court and Ninth Circuit orders provide no authority for an immigration judge to rule on the suitability of a sponsor or to release the child on his or her own recognizance. *Id*.

<sup>&</sup>lt;sup>2</sup> To prevent confusion for the child, it is critical that the immigration judge include a statement in the bond hearing order that child's release is subject to the condition that ORR identifies, evaluates, and approves an appropriate sponsor.

### C. Additional Information

Background information that may be useful concerning ORR's use of secure facilities is available on ORR's website at <a href="https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied">https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied</a> (last visited July 20, 2017). Specifically, "ORR has two levels of care for unaccompanied alien children who are assessed to be a danger to themselves or others, or who have been charged with having committed a criminal offense." *Id.* at Section 1.3.4. ORR only places an unaccompanied alien child in a secure facility if ORR determines the child poses a danger to self or others or has been charged with having committed a criminal offense. *Id.* ORR places a child in a staff-secure facility if the child "has been disruptive to the normal functioning of a shelter care provider facility such that transfer is necessary to ensure the welfare of the UAC or others; is an escape risk; has non-violent criminal or delinquent history not warranting placement in a secure care provider facility, such as isolated or petty offenses as described above; or is ready for step-down from a secure facility." *Id.* An Immigration Judge's decision that a child can be released (meaning that the immigration judge determines that the child is not a danger to community and need not remain in an ORR facility for that reason) supersedes a previous ORR decision. *Flores*, 2017 WL 2855813, at \*3.

### D. Appeals and Requests for a Second Bond Hearing

Immigration Judges should inform the parties of their ability to file an appeal with the Board. Either party may appeal the immigration judge's decision to the Board of Immigration Appeals ("BIA"). **Note**: If a child reserves appeal, it is prudent for Immigration Judges to inform the child (or his or her attorney) that the opposing party is HHS/ORR contrary to the current language in the appeal form (EOIR-26) which states that "the opposing party is DHS." Additionally, the EOIR-27 ("Notice of Entry of Appearance of Attorney or Representative Before the Board") does not currently list HHS-ORR on the proof of service. The child (or his or her attorney) should ensure that a copy of any EOIR-26 and/or EOIR-27 that is filed at the Board has been served on ORR (rather than DHS) at the above address.

If an immigration judge (or BIA, when appealed) determines that an unaccompanied alien child is ineligible for release, such decision is final unless the child can demonstrate a material change in circumstance to support a second request for a bond hearing. *See* 8 C.F.R. § 1003.19(e).

### **ATTACHMENT A:**

### Motion Requesting Bond Hearing for Unaccompanied Child

### **Secure or Staff-Secure Custody**

(ORR or ORR-funded care provider to complete and file with appropriate Immigration Court)

IN THE MATTER OF:	) _
Respondent:	) Date:
Alien Number:	) ) _) _)
	ND HEARING PURSUANT TO -CV-04544 (C.D. Cal. Jan. 20, 2017)
	5-CV-04544 (C.D. Cal. Jan. 20, 2017), the above n child who has requested a custody redetermination
Department of Health and Human Services'	Id in a secure or staff-secure facility operated by the Office of Refugee Resettlement. Accordingly, the hedule a bond hearing pursuant to the federal district
Please direct all correspondence regard and the bond order rendered by the Immigrat	arding this bond hearing, including hearing notices ion Court, to the following individuals:
Office of Refugee Resettlement 330 C. Street, S.W. Washington D.C. 20201 Attention: Director Scott Lloyd	
The respondent, care of the ORR representati	ive, at the following address:
Program Director of ORR-funded care provider:	der:
☐ Check box if the respondent is represented	by an attorney or accredited representative.
Name of Respondent's Attorney/Representat Address of Attorney/Representative:	ive:

### **ATTACHMENT B:**

### **Motion Requesting Bond for Unaccompanied Child**

### (Non-Secure) Shelter Care

(ORR or ORR funded-care provider to complete and file with appropriate Immigration Court)

(Oxfit of Oxfit funded care provided to complete and the with appropriate immigration county
IN THE MATTER OF:
Respondent: )
Alien Number: )
Date: ) )
REQUEST TO SET BOND HEARING PURUSANT TO
FLORES v. SESSIONS, 2:85-CV-04544 (C.D. Cal. Jan. 20, 2017)
Pursuant to <i>Flores v. Sessions</i> , 2:85-CV-04544 (C.D. Cal. Jan. 20, 2017), the above named respondent is an unaccompanied alien child who has requested a bond hearing.
The respondent is currently being held in a non-secure shelter operated by the Department of Health and Human Services' Office of Refugee Resettlement (ORR). The respondent requests that the Immigration Judge schedule a bond hearing.
Please direct all correspondence regarding this bond-hearing request, including hearing notices (if appropriate) and the bond order rendered by the Immigration Court, to the following individuals:
Office of Refugee Resettlement 330 C. Street, S.W. Washington D.C. 20201 Attention: Director Scott Lloyd
The respondent, care of the ORR representative, at the following address:  Program Director of ORR-funded care provider:  Address of ORR-funded care provider:
□ Check box if the respondent is represented by an attorney or accredited representative.  Name of Respondent's Attorney/Representative:  Address of Attorney/Representative:

### **ATTACHMENT C:**

### **Notice to HHS/ORR re Requested Bond Hearing**

(To be completed by Immigration court staff and submitted to BOTH (1) minor respondent's custodian and (2) ORR address below, as well as (3) Respondent's attorney, if relevant).

(1) Respondent:  Alien Number:	
C/o Custodian:	
Shelter:	
Shelter Address:	
(2) E. Scott Lloyd	
Director	
Office of Refugee Resettlement 330 C Street, S.W.	
Washington, D.C. 20201	
(3) Respondent's Attorney: Office:	
A diagon	
Address:	
(if relevant)	
IN THE MATTER OF:	
)	
Respondent: )	
Alien Number: )	
)	
Date:	
)	
NOTICE OF REQUEST FOR BOND HEARING PURUSANT TO	
FLORES v. SESSIONS, 2:85-CV-04544 (C.D. Cal. Jan. 20, 2017)	
The above named respondent is an unaccompanied alien child in your custody who affirmatively requested a custody redetermination hearing before the immigration court pursu to <i>Flores v. Sessions</i> , 2:85-CV-04544 (C.D. Cal. Jan. 20, 2017).	
Please submit a response to the immigration court, in writing, within 15 days regarding when or not:	ther
<ul> <li>□ HHS, ORR has determined that the respondent is a danger or a flight risk;</li> <li>□ HHS, ORR has determined that the respondent is not a danger or a flight risk; or</li> <li>□ HHS, ORR has not determined whether the respondent is a danger or a flight risk.</li> </ul>	

R/ORR plans t	to release the respo	ondent to a
F SERVICE		
` ′		
Attorney $\Box$ HH	(S	
By:	Court	Staff
	OF SERVICE onal Service (P) Attorney □ HH	onal Service (P) Attorney □ HHS

### **ATTACHMENT D:**

### **Staff-Secure and Secure Facilities and Immigration Court List**

State	Location	Facility/Shelter Name	<b>Immigration Court and Address</b>
			San Francisco Immigration Court
			100 Montgomery St., Suite 800
			San Francisco, CA 94104
			(415) 705-4415
CA	Fairfield	BCFS Fairfield	
			San Francisco Immigration Court
			100 Montgomery St., Suite 800
			San Francisco, CA 94104
			(415) 705-4415
	Woodland	Yolo County	
			Portland Immigration Court
			1220 SW 3rd Ave., Suite 500
			Portland, OR 97204
			(503) 326-6341
OR	Portland	Morrison Paso Staff-secure	
			Seattle Immigration Court
			1000 Second Ave., Suite 2500
			Seattle, WA 98104
WA	Renton	Friends of Youth	(206) 553-5953
			Seattle Immigration Court
			1000 Second Ave., Suite 2500
			Seattle, WA 98104
	Seattle	Selma Carson	(206) 553-5953
			Chicago Immigration Court
			525 West Van Buren Street
			Suite 500
			Chicago, IL 60607
IL	Chicago	Heartland IYC	(312) 697-5800
			San Antonio Immigration Court
			800 Dolorosa St., Suite 300
		BCFS San Antonio Staff-	San Antonio, TX 78207
TX	San Antonio	secure	(210) 472-6637
			Houston Immigration Court
			600 Jefferson Street, Suite 900
			Houston, TX 77002
	Manvel	Shiloh Treatment Center	(713) 718-3870
		GWHZ M. G. CC	Houston Immigration Court
	Houston	SWK Mesa Staff-secure	600 Jefferson Street, Suite 900

-	1		Houston, TX 77002
			(713) 718-3870
			Harlingen Immigration Court
			2009 West Jefferson Ave., Suite 300
		SWK Nueva Esperanza	Harlingen, TX 78550
	Brownsville	Staff-secure	(956) 427-8580
			New York Immigration Court
			26 Federal Plaza
			12th Floor, Room 1237
			New York, NY 10278
NY	Dobbs Ferry	Children's Village Staff-secure	(917) 454-1040
			New York Immigration Court
			26 Federal Plaza
			12th Floor, Room 1237
			New York, NY 10278
	Syosset	MercyFirst	(917) 454-1040
			Arlington Immigration Court
			1901 South Bell Street, Suite 200
			Arlington, VA 22202
VA	Staunton	Shenandoah Secure	(703) 603-1300

1 2 3 4 5 6	CARLOS R. HOLGUÍN (Cal. Bar No. 90754) PETER A. SCHEY (Cal. Bar No. 58232) Center for Human Rights & Constitutional 256 South Occidental Boulevard Los Angeles, CA 90057 Telephone: (213) 388-8693 Email: crholguin@centerforhumanrights.org	l Law		
7 8 9 10 11 12	LEECIA WELCH (Cal. Bar No. 208741) National Center for Youth Law 405 14th Street, 15th Floor Oakland, CA 94612 Telephone: (510) 835-8098 Email: lwelch@youthlaw.org  Listing continues on next page			
13 14 15	Attorneys for Plaintiffs			
16	UNITED STATES DISTRICT COURT			
17	CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION			
18	Jenny Lisette Flores, et al.,	Case No.	CV 85-4544-DMG (AGRx)	
19 20 21	Plaintiffs, v.  Jefferson B. Sessions, Attorney General,	ENFORCE S	IN SUPPORT OF MOTION TO SETTLEMENT (VOL. 2: EXS. GES 109-73, PUBLICLY FILED ONLY)	
<ul><li>22</li><li>23</li><li>24</li><li>25</li></ul>	et al.,  Defendants.	Hearing: Time: Room:	May 18, 2018 9:30 a.m. 1st St. Courthouse Courtroom 8C	
26 27				

### Case 2:85-cv-04544-DMG-AGR Document 409-3 Filed 04/16/18 Page 2 of 36 Page ID

Counsel for Plaintiffs, continued HOLLY S. COOPER (Cal. Bar No. 197626) Co-Director, Immigration Law Clinic CARTER C. WHITE (Cal. Bar No. 164149) Director, Civil Rights Clinic University of California Davis School of Law One Shields Ave. TB 30 Davis, CA 95616 Telephone: (530) 754-4833 Email: hscooper@ucdavis.edu ccwhite@ucdavis.edu 

I, Carlos Holguín, do hereby declare that true and correct copies of the following documents are attached hereto: INDEX TO EXHIBITS Description Page(s) <u>No.</u> Declaration of the Mother of Nicolás C., February 6, 2018 Declaration of Nicolás C., February 4, 2018 (proposed to be Morrison Paso Case Review re: Nicolás C., September 17, 2017 Custody Order of the Immigration Judge re: Nicolás C., December 19, 2017 (proposed to be filed partially under seal)............ 27-28 Declaration of Leland Baxter-Neal, February 6, 2018 (proposed Email from Erich Corona re: Nicolás C., January 9, 2018 Declaration of James M. Owens, February 7, 2018 (proposed to Declaration of Daniella Q., February 28, 2018 (proposed to be Declaration of Isabella M., December 1, 2017 (proposed to be filed partially under seal) 60-63 Supplemental Declaration of Isabella M., February 28, 2018 Declaration of the Mother of Isabella M., February 28, 2018 Declaration of Victoria R., February 28, 2018 (proposed to be iii

### Case 2:85-cv-04544-DMG-AGR Document 409-3 Filed 04/16/18 Page 4 of 36 Page ID #:15253

1 2	14	Declaration of David I., November 30, 2017 (proposed to be filed partially under seal) 80-84
3 4	15	Supplemental Declaration of David I., February 28, 2018 (proposed to be filed partially under seal)
5	16	Declaration of Eduardo A., March 1, 2018 (proposed to be filed partially under seal)
7	17	Declaration of Rosa L., December 1, 2017 (proposed to be filed partially under seal)
8 9	18	Supplemental Declaration of Rosa L., February 28, 2018 (proposed to be filed partially under seal)
10 11	19	Declaration of Gabriela N., December 1, 2017 (proposed to be filed partially under seal)
12 13	20	Supplemental Declaration of Gabriela N., February 28, 2018 (proposed to be filed partially under seal)
14 15	21	Declaration of Arturo S., February 28, 2018 (proposed to be filed partially under seal)
16	22	ORR Form Notice of Placement in a Restrictive Setting, February 5, 2018
17 18	23	ORR FAQ: July 2017 Bond Hearings for Unaccompanied Alien Children (UAC)
19 20	24	ORR FAQ: ORR Directors Release Decision, January 26, 2018 119-121
21 22	25	Letter from Carlos Holguín to Office of Immigration Litigation, December 19, 2017
23	26	Email from Sarah Fabian re: Flores Meet and Confer Discussion, January 12, 2018
<ul><li>24</li><li>25</li></ul>	27	Letter from Leecia Welch to Office of Immigration Litigation re: Psychotropic Medications, and Attachments, January 16,
<ul><li>26</li><li>27</li></ul>	28	2018 (proposed to be filed partially under seal)
28		102-104



### Notice of Placement in a Restrictive Setting Office of Refugee Resettlement

You are in the custody of the Office of Refugee Resettlement (ORR), and have been placed in a restrictive setting - a secure or staff secure facility, or a Residential Treatment Center (RTC). The reason you have been placed in a restrictive setting is listed below.

If you have any questions about this placement, please discuss them with your case manager, your attorney, or an ORR-funded legal service provider.

	UAC Name	Alien Number	Country of Birth	Date of Birth	Gender		
	Name of C	are Provider Facility		Type of Faci	ility		
co	self or others; or have been ch ommitted a criminal offense. ORR consi Are charged with, may be charged convicted of a crime; or are the sub-	re Care: ORR has determined that you pose a danger elf or others; or have been charged with having nitted a criminal offense. ORR considered that you: re charged with, may be chargeable, or have been provicted of a crime; or are the subject of delinquency		Staff Secure Care: ORR has determined that you require close supervision, but do not require placement in a secure care provider facility. ORR considered that you:  Have been disruptive to the normal functioning of shelter care facility such that transfer is necessary to			
	proceedings, have been adjudicated chargeable with a delinquent act <sup>1</sup> ; Have committed, or have made commit a violent or malicious act when the committed committed, threatened to committed to committed.	credible threats to ile in ORR custody; mit, or engaged in	ensure the welfare of ot  ☐ Are an escape risk; ☐ Have non-violent crimina warranting placement in	others; nal or delinquent history not n a secure care provider facility, so			
	self while in ORR custody; Have engaged in conduct that has printhe normal functioning of a staff secular were placed such that transfer may be your welfare or the welfare of others;	conduct that has proven to be disruptive of ioning of a staff secure facility in which you in that transfer may be necessary to ensure he welfare of others; ang involvement or display gang affiliation ed violent criminal history or gang in to placement in ORR custody that requires ent; and/or,	as isolated or petty offenses; or,  Could be stepped down from a secure facility.  Residential Treatment Center: ORR has determined that you have a psychiatric or psychological issue that cannot be addressed in an outpatient setting. A licensed psychologist or psychiatrist has indicated that you:				
.0	while in care; Have self-disclosed violent criminal hi involvement prior to placement in OR further assessment; and/or,		or display gang affiliation  Have not shown reasonable progress in the mental health symptoms after a signification outpatient treatment;  Demonstrate behavior that is a result of years.		able progress in the alleving after a significant period that is a result of your unc	nt period of time in	
Ц	Have a history of or display sexual predatory behavior, or have inappropriate sexual behavior.		<ul> <li>mental health symptoms and/or diagnosis and cannot be managed in an outpatient setting;</li> <li>Require therapeutic-based intensive supervision as a result of mental health symptoms and/or diagnosis that prevent you from independent participation in the daily schedule of activities; and/or,</li> </ul>				
			☐ Present a continued and	real risk of harm to self, the implementation of sh			

<sup>&</sup>lt;sup>1</sup> Excluding: isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person, or the use or carrying of a weapon (e.g., breaking and entering, vandalism, DUI, etc.); or petty offenses which are not considered grounds for a stricter means of detention in any case (e.g., shoplifting, joy riding, disturbing the peace, status offenses).

### 

Summary of placement decision or case	e review:			
				1
				1
		Ψ.		
acement. For more information on this processyou believe you have not been properly place burt to review your case. You may call a lawye	d or that you hav		y also ask a Fed	eral District
UAC's acknowledgement of receipt:				
LIACIa Sianatura		Data		
UAC's Signature		Date		

Exhibit 22 Page 115



### Division of Policy and Procedures FAQ: July 2017 Bond Hearings for Unaccompanied Alien Children (UAC)

Q: What is a bond redetermination hearing?

A: Traditionally, bond redetermination hearings (bond hearings) are used by aliens in DHS custody who wish to have an immigration judge (EOIR) determine whether the alien should remain in DHS custody or be released from custody.

Q: Are bond hearings for aliens in DHS custody the same for UAC in HHS custody?

A: No. Bond hearings for aliens in DHS custody are covered by statute and regulations under the Immigration and Nationality Act. *Flores* bond hearings for UAC in HHS custody are judicially created by the Federal courts under a Ninth Circuit Court of Appeals decision in *Flores v. Sessions*. However, *Flores* bond hearings for UAC in HHS custody fall under the same strictures as bond hearings for aliens in DHS custody.

Q: According to section 2.9, UAC have a right to a bond hearing to determine if they are a danger to the community. What information will ORR provide at the bond hearing for the immigration judge to determine if the UAC is a danger?

A: ORR will provide all information that went into making a placement decision based on danger to the community, and information used to justify continued placement in a restrictive level of care or to deny release based upon a danger to the community. This information can include placement documents, police and court records, relevant SIRs, assessments, etc. ORR is required to provide any evidence it uses to support a finding that a child is a danger to the community to the immigration court and to the UAC's representative prior to the bond hearing.

Q: Would a determination in a Flores bond hearing that a UAC is a danger negatively affect the UAC's legal case?

A: The *Flores* bond hearings are separate and apart from UAC immigration proceedings under the Immigration and Nationality Act (UAC "removal" hearings and any DHS custody hearings). Findings from a *Flores* bond hearing may address similar factors that will be considered in removal or DHS custody hearings. However, ORR is not a party to DHS proceedings.

Q: If a judge determines that a UAC is not a danger to the community, but the UAC is a Category 4 with no option for legal relief and no sponsor, would the shelter have to release the UAC?

- A: No. ORR will continue to base release decisions on existing policies. ORR is prohibited by law from releasing UAC on their own recognizance, even if an immigration judge finds that the child is not a danger to the community.
- Q: Are there costs involved for the UAC if he or she requests a bond hearing?
- A: Generally speaking, no.
- Q: Does this policy affect UAC in Residential Treatment Centers (RTCs)?
- A: RTCs will be treated as secure placements for purposes of this policy. RTC providers will provide notice of bond hearings to UAC placed in an RTC as if the child were placed into a secure care provider.
- Q: Does the policy apply to UAC in shelters or long term foster care?
- A: All UAC may request a *Flores* bond hearing. However, ORR places UAC in these types of care providers based on a determination that they are not a danger to the community. As a result, the *Flores* bond hearing would not affect the vast majority of UAC in shelters and foster care programs. If a UAC is stepped up to a secure facility or staff secure facility from a shelter or foster care program, the UAC is provided notice of the *Flores* bond hearings at the time of admission into the secure or staff secure facility.
- *Q*: Will the notice of a bond hearing form be available in languages other than English?
- A: Yes. ORR has distributed a Spanish language version of the flyer. Care provider should connect children who speak other languages to a translation line as used for other legal notifications. ORR is evaluating whether there is a need for additional translations of the notice.
- Q: If a judge determines that a UAC in secure is not a danger to the community, will ORR step the UAC down to a less restrictive level of care?
- A: Potentially, yes. ORR will work with programs directly to resolve these types of cases.



#### **Division of Policy and Procedures**

#### **FAQ: ORR Director's Release Decision**

Q: What UAC release decisions require elevation to the ORR Director before a final release decision can be made?

Under ORR Policy Guide, section 2.7, the ORR/FFS elevates release decisions to the ORR Director, or the Director's designee, for any UAC in a secure or staff secure facility, or for any UAC who had previously been in a secure or staff secure facility. The ORR Director or designee makes release decisions for children in these types of facilities.

Q: Does a release decision for a UAC who was previously placed into a staff-secure facility because of concerns that the UAC was a flight risk (but not dangerous) require elevation to the ORR Director under the policy?

Yes. The ORR Director makes a release decision for <u>any</u> case in which a UAC was previously placed in a secure or staff-secure facility or is currently placed in a secure or staff-secure facility, regardless of the reasons for the child's placement,.

Q: Does a release decision for a UAC who was previously placed into a secure facility based solely on an erroneous report that the child was affiliated with a gang require elevation to the ORR Director under the policy?

Yes. These cases require elevation to the Director even if the restrictive placement decision was based on incomplete, inaccurate or erroneous information.

Q: Do UAC who are in or were previously placed in a secure or staff-secure facility AND have prevailed in a <u>Flores</u> bond hearing on a question of dangerousness require a release decision elevated to the ORR Director under the policy?

Yes. However, in these cases the ORR Director is precluded from denying the release based on the UAC's dangerousness (because an Immigration Judge has ruled that the child is not a danger). There are other factors for the ORR Director to consider when making a release decision.

Q: Do UAC who are in or were previously placed in a secure or staff-secure facility AND have prevailed in a <u>Saravia</u> hearing related to their apprehension by DHS/ICE require a release decision elevated to the ORR Director under the policy?

No. UACs who prevail in *Saravia* hearings must be released immediately to their previous sponsor. The ORR/FFS verifies with staff from the Division of Policy and Procedures that the child received a valid *Saravia* order prior to the child's release from custody.

Q: Does the ORR Director deny all release decisions for cases from a secure or staff-secure facility or UAC previously placed in a secure or staff-secure facility?

No. The ORR Director assesses each case individually under the same ORR release policies used to approve or deny a release to a sponsor found in the ORR Policy Guide, section 2.7.

### 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

December 19, 2017

Sarah B. Fabian
Vinita B. Andrapalliyal
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044

Michael Johnson (or successor in office) Assistant United States Attorney 300 N. Los Angeles St., Rm. 7516 Los Angeles, CA 90012

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

Via email.

Re: Flores, et al., v. Sessions, et al., No. CV 85-4544 DMG (C.D. Cal.).

#### Dear Counsel:

Pursuant to ¶ 37 of the settlement¹ approved in the above referenced action on January 25, 1997 (Settlement), plaintiffs give notice of claims that Defendants are in breach of the Settlement in the following particulars:

<sup>&</sup>lt;sup>1</sup> Paragraph 37 provides in pertinent part as follows: "This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement."

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### 1) <u>Class-wide violations of ¶¶ 14 and 18: Denial of due process in declaring available</u> custodians unfit.

Paragraph 14 of the Settlement provides: "Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to: A. a parent; B. a legal guardian; C. an adult relative (brother, sister, aunt, uncle, or grandparent); D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship; E. a licensed program willing to accept legal custody; or F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility."

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

Plaintiffs are informed that Defendant ORR regularly refuses to release class members to custodians described in ¶ 14 on the ground that such proposed custodians are unfit.

Plaintiffs are advised that in deeming class members' proposed custodians unfit, ORR gives neither the class member nor the proposed custodian meaningful notice or an opportunity to be heard regarding the proposed custodian's fitness. Defendant ORR thereby ensures that class members are regularly continued in detention needlessly and in derogation of their rights under  $\P\P$  14 and 18 of the Settlement, as well as their right to placement in the least restrictive setting consistent with a juvenile's best interests, in violation of  $\S$  235(c)(2)(A) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 110 Pub. L. 457, 122 Stat. 5044, *codified at* 8 U.S.C.  $\S$  1232(c)(2)(A) ("TVPRA").

2) <u>Class-wide violations of ¶¶ 11, 19, 21, 23 and 24C: Peremptory placement of class members in unlicensed programs.</u>

Paragraph 19 of the Settlement provides: "Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. ..."<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> The Settlement defines a "licensed program" as a "program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care

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

Paragraph 24C provides: "... Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility."

Plaintiffs are informed that ORR regularly places class members in staff-secure or secure facilities without providing them meaningful notice and an opportunity to be heard, either before or after placement, regarding the reasons for placing them in facilities that are not licensed to care for dependent juveniles. Rather, ORR regularly places class members ICE re-arrests in unlicensed programs on the basis of untested accusation, typically unsubstantiated allegations of gang-involvement.

As regards class members initially placed in licensed programs and subsequently "stepped up" to staff-secure or secure facilities, ORR's practice is to awaken class members in the middle of the night, order them to gather their belongings, and summarily transfer them to an unlicensed placement. ORR and its contractors tell such class members little or nothing about the reasons they are being sent to an unlicensed program, and ORR provides class members no meaningful opportunity to see, explain, or rebut the evidence that ostensibly justifies such transfers. Often, ORR steps up class members to secure or staff-secure placement on the basis of alleged minor infractions or misbehavior that could be effectively addressed via less drastic means.

Once ORR places class members in an unlicensed program, it affords them little or no notice or opportunity to be heard regarding the propriety of continuing them in staff-secure or secure settings. ORR's periodic reviews of class members' placement in staff-secure or secure facilities are wholly perfunctory, permitting detained youth little or no opportunity to be heard regarding the grounds for continuing them in secure or staff-secure placement.

ORR's placing class members in staff-secure and secure facilities, and continuing them in such placements, without providing a meaningful notice and opportunity to be heard regarding the cause for such placement, ensures that class members are regularly continued in unlicensed placements needlessly and in derogation of their rights under  $\P$ 11, 19, 21, 23 and 24C of the Settlement, as well as their right to placement in the least restrictive setting consistent with a juvenile's best interests, in violation of § 235(c)(2)(A)

services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; ..."). Settlement Definition 6.

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of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 110 Pub. L. 457, 122 Stat. 5044, *codified at* 8 U.S.C. § 1232(c)(2)(A) ("TVPRA"), and their right to have their interests properly considered in decisions and actions relating to their care and custody, in violation of 6 U.S.C. § 279(b)(1)(B).

3) <u>Class-wide violations of ¶¶ 7 and 12 at Shiloh RTC: Involuntarily and inappropriately medicating class members and/or in derogation of parental prerogative.</u>

Paragraph 7 of the Settlement provides in pertinent part: "The INS shall assess minors to determine if they have special needs ..." A minor may have special needs "due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse."

Paragraph 12 of the Settlement provides in pertinent part: "Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor."

Plaintiffs are informed that class members with special mental health needs housed at Shiloh Residential Treatment Center (RTC) are regularly medicated involuntarily and inappropriately. Plaintiffs are advised that class members are consistently placed on multiple psychotropic medications and are uninformed as to what medications they are being given. Class members report suffering negative side effects without any meaningful way of objecting to the propriety or efficacy of the medications they are prescribed.

Plaintiffs are further advised that class members are frequently medicated against their will at Shiloh RTC. Class members report being told that if they refuse to take a medication, their detention at Shiloh will be extended. Some class members report being forcibly tranquilized and left in the middle of common areas until they recover; others report witnessing their peers being forcibly tranquilized. Some class members report that the treatment they receive at Shiloh is far from therapeutic. They report being subjected to inappropriate and abusive practices, including being screamed at, cursed at, and bullied by staff.

In addition, Plaintiffs are advised that ORR condones a policy and practice at Shiloh RTC whereby Shiloh case workers usurp class members' parents' authority to consent to medicating their children, even when such parents are readily accessible to ORR and/or Shiloh staff.

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Pursuant to Texas law, parents have the right to control their minor child's medical and dental care, as well as psychiatric, psychological and surgical treatment. Tex. Fam. Code Ann. § 151.001(a)(6). There are limited categories of non-parents that may consent to the health care treatment of a minor when the person having power to consent (parent or conservator) cannot be contacted and that person has not given express notice to the contrary. Tex. Fam. Code Ann. § 32.001. Within these categories, adults with "the actual care, control, and possession of the child" must still obtain "written authorization to consent from a person having the right to consent" in order to consent lawfully to a minor's receiving medical treatment. *Id*.

Plaintiffs are informed that Shiloh RTC staff, as a matter of policy and practice, do not obtain, nor even attempt to obtain, parental consent for the medical treatment of class members. Plaintiffs are advised that class members' parents have not given Shiloh RTC or ORR written permission to consent to class members' medical treatment, notwithstanding that class members' parents may be readily accessible to ORR and/or Shiloh RTC staff.

Plaintiffs are advised that Shiloh RTC staff have not been authorized by any court to consent to medical care on behalf of the class members. Instead, Shiloh RTC staff usurp parental prerogative to consent to medical treatment on behalf of class members as evidenced by the attached form.

Defendants are thereby in class-wide breach of  $\P\P$  7 and 12 of the Settlement, as well as applicable Texas law.

4) <u>Class-wide violations of ¶ 12 and Exhibit 1: Denying class members contact with family members</u>.

We are informed that Defendants are regularly separating class members from their parents shortly after arresting them as a family unit and thereafter denying such class members contact with their family members, even to the point of concealing the whereabouts of children from their parents and vice versa, as well as obstructing class members' ability to communicate with their parents telephonically.

As a result, Defendants are regularly detaining class members under conditions inconsistent with  $\P$  12 of the Settlement, as well as with  $\P\P$  A.11 and A.12 of Exhibit 1 to the Settlement.

5) <u>Class-wide violations of ¶¶ 11 and 14: Blocking fair and open access to long-term foster care benefits.</u>

Paragraph 11 of the Settlement provides: "The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, ..."

Plaintiffs are informed that Defendant ORR peremptorily—that is, without providing meaningful notice or an opportunity to be heard regarding eligibility for long-term foster

Sarah B. Fabian, *et al.*December 19, 2017
Page 6 of 7

care—denies class members services established pursuant to § 412(d) of the Immigration and Nationality Act, *codified at* 8 U.S.C. § 1522(d), and thereby needlessly continues class members in detention, in violation of ¶¶ 11 and 14 of the Settlement, 6 U.S.C. § 279(b)(3) and TVPRA § 235(c)(2)(A).

6) <u>Class-wide violations of ¶ 24: Denying class members legal assistance in matters relating to placement, detention and release.</u>

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

Paragraph 24B provides: "Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1."

Paragraph A.14 of Exhibit 1 to the Settlement requires licensed programs to provide class members with "[l]egal services information regarding the availability of free legal assistance, ..."

Plaintiffs are informed that ORR regularly precludes legal services providers funded through the Vera Institute of Justice, pursuant to appropriation implementing TVPRA  $\S$  235(c)(5), from representing class members in legal proceedings or matters relating to their placement, detention, or release.

As a practical matter, class members' rights to meaningful bond redetermination and judicial review of their placement are dependent on their having legal assistance. In many places, Vera Institute-funded providers are the only legal services class members have available. ORR's blocking Vera Institute-funded legal services providers from representing class members in legal proceedings or matters relating to their placement, detention, or release violate  $\P$  24 of the Settlement, as well as TVPRA § 235(c)(5).

\*\*\*\*

Sarah B. Fabian, *et al.*December 19, 2017
Page 7 of 7

In accordance with ¶ 37 and Rule 7-3 of the Rules of the United States District Court for the Central District of California, plaintiffs request that Defendants Attorney General, Department of Homeland Security (DHS), and Office of Refugee Resettlement of the U.S. Department of Health and Human Services ("Defendants") meet with plaintiffs telephonically within the next seven days, or in person in the Central District of California within the next fourteen days, in a good faith effort to resolve the matters discussed herein and avoid the need for litigation. Please advise regarding proposed dates and times you are available to confer.

Thank you,

Carlos Holguí

One of the attorneys for Plaintiffs

ccs: Peter A. Schey, CHRCL William C. Silvis, OIL

Flores Meet and Confer Discussion

Case 2:85-cv-04544-DMG-AGR Document 409-3 Filed 04/16/18 Page 29 of 36 Page ID #:15278

Subject: Flores Meet and Confer Discussion

From: "Fabian, Sarah B (CIV)" <Sarah.B.Fabian@usdoj.gov>

Date: Fri, 12 Jan 2018 21:00:08 +0000

To: Leecia Welch <a href="welch@youthlaw.org">welch@youthlaw.org</a>, Cooper Holly <a href="welch@youthlaw.org">hscooper@ucdavis.edu</a>, Poonam Juneja <a href="meigligg">pijuneja@youthlaw.org</a>, Neha Desai <a href="meigligg">ndesai@youthlaw.org</a>, Carlos Holguín <a href="meigligg">crholguin@centerforhumanrights.org</a> <a href="meigligg">CC: "Alsterberg, Cara E. (CIV)" <a href="meigligg">Cara.E.Alsterberg@usdoj.gov</a>, "Murley, Nicole (CIV)" <a href="meigligg">Nicole.Murley@usdoj.gov</a>, "Silvis, William (CIV)" <a href="meigligg">William.Silvis@usdoj.gov</a>>

#### Counsel:

During our meet and confer discussion on January 2, 2018, Defendants agreed to get back to you today regarding a few items from your meet and confer letter.

With regard to ORR's step-up process, ORR is willing to review the process to see if they believe that changes should be made, but do not commit to making any changes at this time. ORR also remains willing to review any examples you may provide regarding the issues you identified at Shiloh Treatment Center, which you had committed to providing to us by today.

With regard to the issue of facilitating communications, Defendants believe that a solution can be found to facilitate communications that is consistent with the Flores Settlement Agreement. Defendants are currently discussing a plan that would leverage existing technologies and address known issues. However, the details of the plan remain under discussion. Defendants agree to provide counsel with an update on the progress of this plan in thirty (30) days, or by Monday February 12.

In the meantime, to the extent counsel has known communications issues where minors have been unable to reach their parents or family members with whom the minor was arrested Defendants are willing to review these issues and facilitate communication if possible on an individualized basis. In these cases, inquiries should be provided to me, including names, citizenship, A numbers, and dates of birth, to assist the agencies in facilitating the communications more quickly.

Please let me know if you have any questions regarding the above, or would like to talk further regarding these issues.

Best regards,

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
Department of Justice
PO Box 868, Ben Franklin Station
Washington, DC 20044
(202) 532-4824

### REDACTED VERSION OF DOCUMENT FILED UNDER SEAL



#### National Center for Youth Law

Tuesday, January 16, 2018

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Office of Immigration Litigation – District Court Section P.O. Box 868, Ben Franklin Station Washington, DC 20044

Judith Haron

Department of Health and Human Services

Office of the General Counsel

330 Independence Ave., S.W., Room 4280-Cohen Bldg.

Washington, DC 20201

Via email.

Re: Flores, et al., v. Sessions, et al., No. CV 85-4544 DMG (C.D. Cal.).

Dear Counsel:

Thank you for considering measures to address the inappropriate administration of psychotropic medications to children in the custody of the Office of Refugee Resettlement ("ORR").

Psychotropic medications have profound and long-lasting impacts on children. As federal District Court Judge Laughrey recently explained,

Psychotropic drugs are powerful medications that directly affect the central nervous system. They are particularly potent when administered to children. Children administered psychotropic medications are at particularly serious risk of long-lasting adverse effects. They are more vulnerable to psychosis, seizures, irreversible movement disorders, suicidal thoughts, aggression, weight gain, organ damage, and other life-threatening conditions.

*M.B. v. Corsi*, No. 2:17-cv-04102-NKL, 2018 U.S. Dist. LEXIS 3232, at \* 4 (W. D. Mo. Jan. 8, 2018)

Many psychotropic medications have limited or no approved uses by the Food & Drug Administration ("FDA") for children and adolescents. For example, while a few antipsychotic medications have some FDA-approved uses with older children or adolescents, some, including several of those administered to the youth described below (e.g., Lurasidone and Ziprasidone), have no FDA-approved uses for persons below age 18. In addition, many antidepressants have a "black box" warning for children and youth. A black box warning is the strictest warning put in the labeling of prescription drug by the FDA when there is reasonable evidence of an association of a

405 14th Street, 15th Floor, Oakland, CA 94612-2701 | 510.835.8098 tel | 510.835.8099 fax

serious hazard with the drug. The black box warning for antidepressants advises that they may increase the risk of suicidal thinking and behavior in some children and adolescents.

As described in Plaintiffs' letter of December 19, 2017, class members with special mental health needs, particularly those housed at the Shiloh Residential Treatment Center ("Shiloh RTC"), are regularly placed on multiple psychotropic medications, told little or nothing about these medications, and often suffer negative side effects from such medications without recourse. The evidence also shows that children are often medicated at Shiloh RTC without the consent of parents who are present in the United States and accessible to facility and ORR staff.

During the parties' meet-and-confer of January 2, 2018, Defendants requested that Plaintiffs supply specific examples of these allegations; we do so below.

came into federal immigration custody on February 21, 2016. Attachment 1. He was transferred to Shiloh RTC on March 14, 2016, Attachment 2, where he remained until April 12, 2016. Attachment 3.

While at Shiloh RTC, was prescribed multiple psychotropic medications: Prazosin, Quetiapine,

While at Shiloh RTC, was prescribed multiple psychotropic medications: Prazosin, Quetiapine, Sertraline, and Olanzapine. Attachment 4. This combination of drugs includes two antipsychotics, an antidepressant, and an antihypertensive (sometimes prescribed for adults for anxiety or posttraumatic stress disorder ("PTSD")). The concurrent administration of more than one antipsychotic medication and/or multiple classes of psychotropic medications conflicts with professional association guidelines. Children administered multiple psychotropic medications at the same time suffer from an increasing number and severity of adverse effects. Published research also confirms that the administration of an antipsychotic and antidepressant concurrently to children or youth substantially increases the likelihood they will develop Type II diabetes and other cardiovascular problems.

Parents of youth prescribed these drugs are cautioned to weigh carefully the risks and benefits of taking them. For example, the National Institute of Health cautions parents of youth prescribed Quetiapine as follows: "[Y]our parent, or your caregiver should talk to your doctor about the risks and benefits of treating your condition with an antidepressant or with other treatments. You should also talk about the risks and benefits of not treating your condition. You should know that having depression or another mental illness greatly increases the risk that you will become suicidal." National Institute of Health, U.S. National Library of Medicine, available at Medline Plus, available at https://medlineplus.gov/druginfo/meds/a698019.html.

Plaintiffs' review of	ORR file, produced December 27, 20	017, uncovered nothing to indicate this his
mother had consented to	being given psychotropic medica	ations. Nothing prevented Shiloh RTC from
seeking mother's co	nsent to medicating him. Shiloh RTC	C knew that Lutheran Social Services had
already begun evaluating	mother as a potential custodian	for him, Attachment 5, and that his mother
resided in Nebraska. Attachme	ent 6. Shiloh RTC also logged	numerous phone calls to his mother,
Attachment 7, foreclosing the 1	possibility that Shiloh RTC staff could	d not have reached her via telephone.

Plaintiffs' review of ORR file uncovered nothing to indicate that at Shiloh RTC himself had consented to taking psychotropic medications. When he was later transferred to Yolo County Juvenile Detention Facility, his ORR file notes that "he does not want to continue taking the medication as he feels it is pointless." Attachment 8. The Yolo County case management notes report the following response to objection: "I informed youth that we continue to work towards his goal of reunification but has to do his part in being medication compliant." <i>Id</i> .
came into federal immigration custody in January 2016. He was transferred to Shiloh RTC in June of 2016 where he remained until December 2016.
During his time at Shiloh RTC, was placed on numerous psychotropic medications including Duloxetrine, Clonazepam, Olanzapine, Geodon, Latuda, Divalproex, and Haloperidol. Attachment 9. This combination of drugs includes four different classes of medication, the majority of which, four of the six, are antipsychotics with very limited FDA-approved uses in children and adolescents. The use of multiple antipsychotic medications at the same time is inconsistent with medical guidelines. Moreover, the use of Clonezepam (trade name Klonipin) indicates that the other drug combination may have caused significant adverse effects – such as akathisia, a severe movement disorder.
ORR Records indicate that, at times, was simultaneously placed on six psychotropic drugs, plus two additional drugs "as needed." Attachment 9. In addition to the regular psychotropic medications he was placed on, was forcibly medicated on several occasions at Shiloh RTC, as well. Plaintiffs' review of file revealed nothing to indicate that either or any family members provided consent for any of these medications.
An independent psychologist who evaluated concluded that the multiple diagnoses was assigned while at Shiloh RTC were not justified based on his behavior and clinical presentation. For example, was diagnosed with Psychotic Disorder when he displayed none of the typical features of a psychotic disorder, but instead presented with autoimmune encephalitis and pneumonia. During his time at Shiloh RTC, the Shiloh psychologist identified multiple diagnoses, including Psychotic Disorder, Obsessive Compulsive Disorder and Bipolar Disorder assigned to that were inconsistent with his behavior. These diagnoses resulted in the prescription of inappropriate medications that had adverse side effects, including weight gain of almost 100 pounds. After arrived at Yolo County Juvenile Detention Facility, the Yolo psychologist recommended that he taper off of his medications. Attachment 10. Records indicate that health and behavior improved after his medications were reduced. Attachment 11.
The foregoing examples are no aberration, rather they are representative of medication practices prevailing at facilities in which ORR regularly places class members. Detaining class members at Shiloh RTC—as regards the administration of psychotropic medications and in numerous other respects—is peculiarly at odds with Defendants' obligation to house children in facilities that are "safe and sanitary and that are consistent with [a]

concern for the particular vulnerability of minors." Flores Settlement ¶ 12. We accordingly urge ORR to stop placing class members at Shiloh RTC entirely. Should it decline to do so, ORR should at a very minimum

In December 2015, the U.S. District Court for the Southern District of Texas had this to say about the Daystar facility:

[Texas Child Care Licensing] has closed one facility in the past five years, but it is a story of horror rather than optimism regarding enforcement. The Daystar facility in Manvel, Texas had a capacity of 141 children. Between 1993 and 2002, three teenagers died at Daystar from asphyxiation due to physical restraints. In most cases, the children were hog-tied. Beyond these deaths, there were reports of sexual abuse and staff making developmentally disabled girls fight for snacks. Numerous stakeholders, including the district attorney, spoke out against Daystar, but the facility kept its license. In November 2010, a fourth child died in what was ruled a homicide by asphyxiation due to physical restraints. Daystar's license was still not revoked until January 2011. [Texas Department of Family and Protective Services] allowed this facility—that was responsible for four deaths, numerous allegations of sexual abuse, and unthinkable treatment of developmentally disabled children—to operate for 17 years. ... The Court understands DFPS's concern that enforcement might affect placement availability. The Court does not understand, nor tolerate, the systemic willingness to put children in mortal harm's way. The Court finds that [Texas Department of Family and Protective Services'] inadequate licensing and inspecting causes an unreasonable risk of harm to [Licensed Foster Care] children.

M.D. v. Abbott, 152 F. Supp. 3d 684, 803-04 (S.D. Tex. 2015).

In December 2014, the Houston Chronicle published an expose about the Shiloh RTC itself. Carroll, *Federal agency's shelter oversight raises questions*, Houston Chronicle (US & World), Dec. 19, 2014, *available at* www.houstonchronicle.com/news/article/Federal-agency-s-shelter-oversight-raises-5969617.php (last visited December 28, 2017).

Shortly thereafter, Congresswoman Sheila Jackson Lee, a senior member of the House Homeland Security and Judiciary Committees and Founder and Co-Chair of the Congressional Children's Caucus released the following statement:

I am appalled by record of abuse and mistreatment of children at the Shiloh Treatment Center in Manvel documented by the Houston Chronicle in an expose published December 19, 2014. The abuses documented in that report – ranging from physical violence, unreasonable and excessive use of physical restraints, administering emergency medications without notice to governmental authorities, and several deaths of minor children while in custody – is not reflective of the quality of care and support that should be provided to the at-risk children, including the dozens of unaccompanied immigrant children, committed to its care.

<sup>&</sup>lt;sup>1</sup> The Shiloh RTC is owned and operated by the same entity that formerly operated Daystar Treatment Center, also in Manvel, Texas.

dramatically increase its scrutiny of the treatment and conditions children experience during ORR custody at Shiloh RTC.

We look forward to Defendants' response to the foregoing.

Sincerely

Leecia Welch

One of the attorneys for Plaintiffs

jacksonlee.house.gov/media-center/press-releases/shiloh-treatment-center-in-manvel-should-be-closed-by-hhs-for (last visited December 28, 2017).

### 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

February 16, 2018

Sarah B. Fabian
Cara E. Alsterberg
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044

Via email.

Re: Flores, et al., v. Sessions, et al., No. CV 85-4544 DMG (C.D. Cal.).

#### Dear Counsel:

Plaintiffs' counsel are in receipt of your email dated January 12, 2018, elaborating upon Defendants' positions with respect to certain of the matters discussed during the parties' meet-and-confer of January 2, 2018.

You therein stated that ORR is prepared to review its procedures for "stepping up" class members to staff-secure and secure facilities.

You further invited Plaintiffs to provide examples of class members' being obliged to take psychotropic medications without their parents' consent. On January 16, 2018, Plaintiffs forwarded a letter detailing two such cases and providing Defendants with full documentation corroborating the salient facts of both examples.

We have heard nothing from Defendants since regarding these matters.

You also agreed to provide Plaintiffs with an update on a plan to facilitate communication between class members and their parents and other adult relatives separated following arrest. Yesterday you advised that Defendants have "preliminarily discussed a framework" for such a plan and that Defendants "anticipate [they] ... will further discuss the plan," but provide no time frame within which Defendants expect to have mechanisms for such communication in place.

Plaintiffs remain hopeful that Defendants will remedy the foregoing violations of the *Flores* settlement, but we are unwilling to postpone formal enforcement indefinitely.

We accordingly ask that Defendants advise if they intend to afford class members greater process before they are denied licensed placements, and if so, what form such process will take and when and how it will be provided.

Sarah B. Fabian, *et al.* February 16, 2018 Page 2 of 2

We also ask that Defendants respond to our correspondence of January 16, 2018, detailing what changes, if any, ORR is prepared to make with respect to administering psychotropic drugs to class members and when such changes, if any, will be put into effect.

Finally, we ask that Defendants explain how they intend to facilitate communication between class members and their parents and other relatives and provide an approximate date by which a plan for doing so will be put into effect.

Thank you,

Carlos Holguín

One of the attorneys for Plaintiffs

ccs: Leecia Welch, NCYL Neha Desai, NCYL Poonam Juneja, NCYL

Holly Cooper, U.C. Davis Legal Clinic

Peter A. Schey, CHRCL William C. Silvis, OIL

RE: Flores Meet and Confer Discussion

### Case 2:85-cv-04544-DMG-AGR Document 409-3 Filed 04/16/18 Page 34 of 36 Page ID #:15283

Subject: RE: Flores Meet and Confer Discussion

From: "Fabian, Sarah B (CIV)" <Sarah.B.Fabian@usdoj.gov>

Date: Sat, 3 Mar 2018 00:52:47 +0000

To: "crholguin@centerforhumanrights.org" <crholguin@centerforhumanrights.org>

CC: "Leecia Welch" <|welch@youthlaw.org>, "'Cooper Holly'" <hscooper@ucdavis.edu>, "'Poonam Juneja'" <pjuneja@youthlaw.org>, "Neha Desai'" <ndesai@youthlaw.org>, "Silvis, William (CIV)" <William.Silvis@usdoj.gov>, "Schey Peter" <pschey@centerforhumanrights.org>, "Murley, Nicole (CIV)" <Nicole.Murley@usdoj.gov>, "Alsterberg, "Als

Cara E. (CIV)" <Cara.E.Alsterberg@usdoj.gov>

#### Carlos:

As Defendants previously explained by email and by phone, Defendants believe that existing processes in place comply fully with the *Flores* Settlement Agreement. Accordingly, with regard to the issues raised in your letter, while Defendants continue to review these processes to determine if any changes should be made, Defendants do not commit to making any changes to these existing processes at this time.

That said, although Defendants believe that their efforts towards facilitating communication between parents and their children who are separated while in Government custody go beyond the requirements of the *Flores* Agreement, Defendants continue to move forward with those efforts. Specifically, HHS, CBP, and ICE all have identified their existing policies and processes related to facilitating such communication, have discussed how those existing policies and processes can be used to coordinate between the agencies to facilitate such communication, and are taking steps to ensure compliance with those policies and processes. In so doing, HHS also considers the fact that its efforts to facilitate communication also must be consistent with its mandate under the TVPRA to provide for the care and custody of UAC. To further ensure that existing policies and processes are consistently applied, CBP and ICE are working together to develop automation in applicable technology systems to efficiently identify and prioritize communication at the earliest possible time Defendants do not have a final date for implementation of this fix, but intend to develop a timeline shortly.

Please let me know if you have any further questions regarding the above information. Please be aware that I will be out of the country, with limited access to email, from March 5-19. Therefore, during that time please ensure that my colleague Nicole Murley, who is cc'ed above, is included on any communications regarding this case.

Best regards, Sarah

Sarah B. Fabian Senior Litigation Counsel Office of Immigration Litigation – District Court Section (202) 532-4824

**From:** Carlos Holguin [mailto:crholguin@centerforhumanrights.org]

Sent: Friday, February 16, 2018 2:45 PM

To: Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>; Alsterberg, Cara E. (CIV) <caalster@CIV.USDOJ.GOV>

Cc: 'Leecia Welch' < lwelch@youthlaw.org>; 'Cooper Holly' < hscooper@ucdavis.edu>; 'Poonam Juneja'

<pjuneja@youthlaw.org>; 'Neha Desai' <ndesai@youthlaw.org>; Silvis, William (CIV) <WSilvis@civ.usdoj.gov>; Schey

Peter <pschey@centerforhumanrights.org>

Subject: Re: Flores Meet and Confer Discussion

Please see attached correspondence.

Exhibit 29
Page 166
<sub>3/7/18, 12:36 PM</sub>

RE: Flores Meet and Confer Discussion

Case 2:85-cv-04544-DMG-AGR Document 409-3 Filed 04/16/18 Page 35 of 36 Page ID #:15284

Thank you.

Carlos Holguín **General Counsel** Center for Human Rights & Constitutional Law 256 S. Occidental Blvd. Los Angeles, California 90057 213.388-8693 x.309 (v) 213.386.9484 (fax) http://www.centerforhumanrights.org

Fabian, Sarah B (CIV) wrote:

#### Counsel:

I write with an update regarding the agencies' work towards facilitating communication. I was traveling this week, so I apologize that this is a couple of days later than stated below.

CBP, ICE and HHS have preliminarily discussed the framework for a plan that would allow minors to have communications with family members with whom they were arrested. This framework is intended to encompass the ranges of facilities in which individuals can be processed and held, both as minors and adults. Additional internal operational discussions are occurring this week to discuss available resources. In the next month, we anticipate the three agencies will further discuss the plan, with the goal of partial or full implementation in facilities where communication can be readily facilitated, and a plan to address the remaining areas so that communication between minors and family members across the range of facilities can be accomplished.

Please let me know if you have any follow up questions at this time.

Best regards, Sarah

Sarah B. Fabian Senior Litigation Counsel Office of Immigration Litigation – District Court Section (202) 532-4824

From: Fabian, Sarah B (CIV)

Sent: Friday, January 12, 2018 4:00 PM

To: Leecia Welch < lwelch@youthlaw.org>; Cooper Holly < hscooper@ucdavis.edu>; Poonam Juneja

<pjuneja@youthlaw.org>; Neha Desai <ndesai@youthlaw.org>; Carlos Holguín

<crholguin@centerforhumanrights.org>

Cc: Alsterberg, Cara E. (CIV) <caalster@CIV.USDOJ.GOV>; Murley, Nicole (CIV) <a href="mailto:</a> <a href="mailto:NMurley@civ.usdoj.gov">NMurley@civ.usdoj.gov">NMurley@civ.usdoj.gov</a>; Silvis, William (CIV) <a href="mailto:NSIIvis@civ.usdoj.gov">NSIIvis@civ.usdoj.gov</a>;

Subject: Flores Meet and Confer Discussion

Counsel:

During our meet and confer discussion on January 2, 2018, Defendants agreed to get back to you

RE: Flores Meet and Confer Discussion

Case 2:85-cv-04544-DMG-AGR Document 409-3 Filed 04/16/18 Page 36 of 36 Page ID #:15285

today regarding a few items from your meet and confer letter.

With regard to ORR's step-up process, ORR is willing to review the process to see if they believe that changes should be made, but do not commit to making any changes at this time. ORR also remains willing to review any examples you may provide regarding the issues you identified at Shiloh Treatment Center, which you had committed to providing to us by today.

With regard to the issue of facilitating communications, Defendants believe that a solution can be found to facilitate communications that is consistent with the Flores Settlement Agreement. Defendants are currently discussing a plan that would leverage existing technologies and address known issues. However, the details of the plan remain under discussion. Defendants agree to provide counsel with an update on the progress of this plan in thirty (30) days, or by Monday February 12.

In the meantime, to the extent counsel has known communications issues where minors have been unable to reach their parents or family members with whom the minor was arrested Defendants are willing to review these issues and facilitate communication if possible on an individualized basis. In these cases, inquiries should be provided to me, including names, citizenship, A numbers, and dates of birth, to assist the agencies in facilitating the communications more quickly.

Please let me know if you have any questions regarding the above, or would like to talk further regarding these issues.

Best regards,

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
Department of Justice
PO Box 868, Ben Franklin Station
Washington, DC 20044
(202) 532-4824

U.S. Department of Homeland Security

Warrant for Arrest of Alien

Pile No.

Event No:MCS1602000568

FINS #:1200597984

Date: February 22, 2016

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

	(Pull same of slies)		
an alien who entered the Unit	ed States at or near	HIDALGO, TEXAS (Port)	on
February 21, 2016 (Date)	_ is within the country in	violation of the immlgration	laws and is
therefore liable to being taken	into custody as authorized	d by section 236 of the Immig	ration and
Nationality Act.			
By virtue of the authority vest	ed in me by the immigrati	on laws of the United States a	and the
regulations Issued pursuant th	ereto, I command you to to	ake the above-named alien int	o custody fo
proceedings in accordance wi	th the applicable provision	s of the immigration laws and	l regulations
		(Signature of Designated Immigration Officer) WILLIAM A. RAMSEY	
	ê <u>'an ê 'an</u>	(Print name of Designated Immigration Office	:41)
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tify that following such service, shed a copy of this warrant.	the alien was advised con	cerning his or her right to cou	insel and wa
		FELIX GARCIA	_
		Signature of officer serving warrand)	
	1	Border Patrol Agent	
	* <del></del>	(Title of officer serving warrant)	

Shiloh Treatment Center

Psychosocial History Office of Refugee Resettlement

Have you ever been tak	cen to the hosp	oital or e	mergency room bed	cause you were hur	t?	
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identified?
Specify:

Mental Health
Provide a short summary of the UAC's current functioning:
05/12/2016 was transferred to NOVA from Shiloh RTC on 4/12/2016, but he came into ORR care on 02/23/2016. During this time, he moved from a shelter, to a psychiatric hospital, to a residential treatment center, ultimately being placed in NOVA secure. Upon arrival, initially presented with severe depression and complications associated with a traumatic head injury, resulting in psychiatric hospitalization for crisis stabilization and a recommendation for on-going inpatient treatment. He was also prescribed seroquel and zoloft to manage his mood and sleep. However, while at Shiloh, began exhibiting aggressive behaviors towards staff and peers, which resulted in the move to NOVA.  Upon his arrival, exhibited symptoms of depression and he reported symptoms of PTSD. He also refused to leave his room and made threats against staff and peers. However, it seemed that, as a result of his traumatic experiences, was afraid to leave his room and would use threats to avoid having to leave. He was assessed by the psychiatrist, who added Minipress to his medication regimen to treat his PTSD. Clinician also recommended a slow integration into the community to ease his anxiety about being in a secure environment. In the past two weeks, has reported an improvement in depression, anxiety and sleep and a decrease in threatening and destructive behavior. He also reported a decrease in intrusive thoughts. He has been able to attend school every day for almost all of the school day. Finally, he participates appropriately in therapy and is committed to continuing his medication regimen. If he is able to maintain this behavior, clinician will discuss whether to refer the UC back to a residential treatment center for intensive treatment or to a staff secure program.
Date of
Evaluation:
Evaluator:
Axis I:
Axis II:
Axis III:
Axis IV:
Axis V:
Summary of Recommendations:
Trafficking

Trafficking	
Who planned/organized your journey?	
What were you told about the arrangements before the journey?	
Did the arrangements change during the journey?	C @ Yes No
If yes, how?	763110
Does your family owe money to anyone for the journey?	r e
	Yes No
If yes, how much?	
Whom is the money owed?	
Who is expected to pay?	
What do you expect to happen if payment is not made?	
Coercion Indicators	
Did anyone threaten your or your family?	て (F Yes No
If yes, who made the threats?	
Were you ever physically harmed?	<u>ر</u> و
If yes, how?	Yes No
Was anyone around you ever physically harmed?	C.e.
If yes, who?	Yes No
Were you ever held against your will?	r 6
	Yes No.
If yes, where?	00/321
Did anything bad happen to anyone else in this situation or anyone else who tried to leave?	C 6 Yes No
What happened and to whom?	
Did anyone ever keep/destroy your documents?	r 6
	Yes No
If yes, who and what?	
Did anyone ever threaten to report you to the police/immigration?	て ら Yes No
If yes, who?	
Are you worried anyone might be trying to find you?	C G Yes No
If yes, who?	res no
Debt Bondage/ Labor Trafficking	
Did you perform any work or provide any services?	C 6 Yes No
	Yes No

04/04/2016

#### Patient Profile - Active Medications

Client:

Teaching Home: 58-B

Physician: JAVIER RUIZ-NAZARIO, MD Allergies: No Known Drug Allergy

Rx #	Medication		Instructions	Start Date
		***	Psychotropic Medications ***	
53227	PRAZOSIN HCL	CAP 2MG	TAKE 1 CAPSULE BY MOUTH DAILY at 9:00 PM	03/16/2016
53285	QUETIAPINE	TAB 200MG	TAKE 1 TABLET BY MOUTH DAILY at 9:00 PM	03/29/2016
53249	SERTRALINE	TAB 50MG	TAKE 1 & 1/2 TABLETS BY MOUTH DAILY at 7:45 AM	03/22/2016
		*** ÞI	RN Psychotropic Medications ***	
53294	OLANZAPINE	TAB 10MG	TAKE 1 TABLET BY MOUTH EVERY 6 HOURS AS NEEDED FOR MILD AGITATION	03/30/2016
53300	OLANZAPINE	TAB 10MG ODT	DISSOLVE 1 TABLET BY MOUTH EVERY 6 HOURS AS NEEDED FOR MODERATE AGITATION	03/31/2016
		*** No	on-Psychotropic Medications ***	
53230	BAC/NEO/POLY	OIN	APPLY TO AFFECTED AREA ON FEET TWICE A DAY at 7: 45 AM and 9:00 PM	03/16/2016
53229	DEEP SEA	SPR 0.65%	INHALE 2 SPRAYS INTO NOSTRIL TWICE A DAY AS NEEDED at 7:45 AM and 9:00 PM	03/16/2016
53295	OLANZAPINE	INJ 10MG	INJECT 10MG INTRAMUSCULARLY EVERY 6 HOURS AS NEEDED FOR SEVERE AGITATION	03/30/2016

Case 2:85-cv-04544-DMG-AGR Document 420-2 Filed 04/23/18 Page 30 of 49 Page ID #:16556

Admission Assessment Shiloh Treatment Center, Inc. Name:

Case#:

Honduras. He tried again on 1-31-16, leaving alone and on foot, and paying his own way. He stopped in Mexico a few times to work in construction and to save up more money for the remainder of his trip. He asked other travelers along the way for directions, and traveled with other groups of travelers when he could. He crossed the border near Hidalgo by swimming across the river and then walking through the desert. He was apprehended by border guards on 2-21-16 and sent to shelter at Lutheran Social Services while his case could be evaluated.

He was placed at Lutheran Social Services in New York on 2-23-16, where he made runaway threats and suicidal threats with a plan and he was sent to Bellevue Hospital for psychiatric inpatient services on 2-26-16. During his treatment at previous facilities, he has also shared that he has suffered from many traumatic events. He reported that he has intruding flashbacks from witnessing his uncle getting shot in the leg by gang members, and eventually having to have that leg amputated. He also reported witnessing several other gang related incidences which included his grandmother getting injured, and being robbed by gang members while riding the train through Mexico. LSS has referred him to Shiloh Treatment Center for subacute care and a 30-day psychiatric evaluation while his mother is attempting to be approved as his sponsor so that they can reunite.

Aliases:

None reported

Marital Status:

Single

Abuse, Neglect, Persecution, or Exploitation:

Abandonment by father. History of severe traumatic events instigated by gang members in home country, and while traveling to the US.

Typical Day in Home Country:

reports that he would wake up at 5am, eat breakfast, and go to work in the fields. He quit school in 2012 so that he could work and save money to come to the US. Work ended at 2pm, when he would return home, relax, listen to music, and clean up and get ready for dinner at 6:30. Depending on how tired he was, he would go to bed between 8 and 11.

Physical Characteristics:

He is of average weight and height, and appears his stated age.

Size:

5'-7"" 170 lbs.

Characteristics:

He has a medium complexion with brown eyes and black hair that he wears short and spiked up. He has some scars on his head from injuries sustained in home country.

Shiloh Treatment Center

Psychosocial History Office of Refugee Resettlement

	Recreation and Leisure, Extracurricular Activities or Vocational Interests: <u>Usten to Music,</u>							
•	V , , , , , , , , , , , , , , , , , , ,							
•	Sexually Active:		/es □No					
	Sexually Orientation:		Heterosexual Homosex	kual ∐Bi	-sexual			
	History of Sexual Activity:	egan fe	xualactnity o	it age	- (2			
Legal H	distory	7 2	, , , ,	. 1	`			
J	☐Denles Any Involvement Wit	th Legal System ,	<u>-</u>					
	Arrests: Was detain	eel HATT (1	)). Clientstat	erit i	ucs mistaken			
	Pending Charges (None) 1 d	lentity. 21	nd-time be cauc	fe due	nt was detain			
	Pending Court Case: Now							
	Probation: 1		Probation Officer:	N/A				
	Relationship Between Present	ing Conditions and		/_A-	A AAAA			
	The state of the s		g	7	- 1.12 -			
•				x				
Family	History Birthplace (City, State, Country Current place of residence (City)							
_	List Family Members and Pers	sons Living in <b>Hom</b>	e Country.					
	Name		Relationship to Client	Age	Country			
		, ,	nd mother but	( )	Honduras			
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•	List Family Members and Pers	cons Living in the H	Inited States	I				
-	Name		Relationship to Client	Age	City, State			
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		5	Thire	<del>                                     </del>	1 Transcription			
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Shiloh Treatment Center, Inc.

#### Monthly Phone Log

Client:									
Month:	April		1	Year:	016				
Record all call	Record all calls made or received by the client, as well as all calls Shiloh staff makes or receives on behalf of the client.								
Source of Call	Date	Time	Call From / To	Individual(s) Called or Calling List All	Duration	Reason For / Details of Call	Client Initials		
☐Initiated ☐Received	16	11:35 AM	Client Service Director	Golom	15 nar	Weekly (all			
☐Initiated ☐Received	16	11:50	☐Client ☐Service Director	Sponsor	15 nu	Weekly			
Initiated Received	14	1:00 PM	Client Service Director	Sponsor	15 mon	weekly			
☐Initiated ☐Received			Client Service Director						
☐Initiated ☐Received		·	Client Service Director						
☐Initiated ☐Received			☐Client ☐Service Director		-				
□Initiated			☐Client ☐Service Director						
☐Initiated ☐Received			□Client □Service Director						

Revised 01/22/15

# Yolo County Juvenile Detention Facility Office of Refugee Resettlement Program: Yolo Secure Facility Case Management Notes

Youth Name:				
 	DOB:	<b>/2000</b>		

Date:	Met with youth to discuss recent behavioral issues. Youth reported he has been
11/18/2016	frustrated with the actions of other youth in his housing unit and his current case
Case Manager:	status. Youth was reminded of what has been requested in his case and the
Jose C.	completion of an Interpol check. Youth reported he does not want to continue taking
	medication as he feels it is pointless. We discussed his concerns and how he should
	follow up with the Dr. for clarification on medication and possible adjustment. Youth
	stated he is not interested in speaking with the Dr. I informed youth that we
	continue to work towards his goal of reunification but has to do his part in correcting
	his behavior and being medication compliant. Youth was provided a phone call to his
	mother for an update and to discuss his recent behavioral issues. Was reminded that
	his Clinician will be facilitating family session as well.
Date:	
Click here to	
enter a date.	
Case Manager:	
Choose an item.	
Date:	
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enter a date.	
Case Manager:	
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Date:	
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Click here to	
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Case Manager:	
Choose an item.	
Date:	
Click here to	Exhibit 27
	Page 153

12/12/2016

#### Patient Profile - Active Medications

Client:
Physician: JAVIER RUIZ-NAZARIO, MD

Teaching Home: 58-A

Allergies:

Rx #	Medication		Instructions	Start Date
		*** p	sychotropic Medications ***	
53713	BENZTROPINE	TAB 1MG	TAKE 1 TABLET BY MOUTH DAILY at 9:00 PM	07/05/2016
54435	CLONAZEPAM	TAB 2MG.	TAKE 1 TABLET BY MOUTH TWICE A DAY at $7:45$ AM and $9:00$ PM	12/12/2016
54434	DIVALPROEX	TAB 500MG ER	TAKE 1 TABLET BY MOUTH TWICE A DAY at 7:45 AM and 9:00 PM	12/12/2016
53974	DULOXETINE	CAP 60MG	TAKE 1 CAPSULE BY MOUTH DAILY at 7:45 AM	09/14/2016
54427	GUANFACINE	TAB 2MG ER	TAKE 1 TABLET BY MOUTH DAILY at 7:45 AM	12/06/2016
54384	LATUDA	TAB 120MG	TAKE 1 TABLET BY MOUTH DAILY FOR 4 DAYS THEN INC at 9:00 PM	11/29/2016
54385	LATUDA	TAB 40MG	TAKE 1 TABLET BY MOUTH DAILY (TAKE ALONG WITH 160MG AFTER BEING ON 120MG 4 DAYS) at 9:00 PM	11/29/2016
		*** PRN	Psychotropic Medications ***	
53580	GEODON	INJ 20MG	INJECT 20MG INTRAMUSCULARLY EVERY 8 HOURS AS NEEDED FOR AGGRESSIVE BEHAVIOR	06/02/2016
53997	OLANŽAPINE	INJ 10MG	INJECT 10MG INTRAMUSCULARLY EVERY 6 HOURS AS NEEDED SEVERE AGITATION, PHSICAL AGRESSION	09/20/2016
53998	OLANZAPINE	TAB 10MG ODT	DISSOLVE 1 TABLET BY MOUTH EVERY 6 HOURS AS NEEDED FOR AGITATION AND AGGRESSION	09/20/2016
		*** No	n-Psychotropic Medications ***	
54399	MEAL REPLAC	EMENT SHAKE	GIVE 1 SHAKE 3 TIMES DAILY (OFFER TO REPLACE A MEAL) at 7:45 AM, 12:00 PM and 6:00 PM	11/30/2016

1 2/13/W

06/13/2016

### Patient Profile - Active Medications

Client:

Teaching Home: 58-A

Physician: JAVIER RUIZ-NAZARIO, MD

Allergies:

- #	Medication		Instructions	Start Date
Rx #	Medicación		*** Psychotropic Medications ***	
53577	BENZTROPINE	TAB 0.5MG	TAKE 1 TABLET BY MOUTH DAILY at 9:00 PM	06/02/2016
53578	HALOPERIDOL	TAB 1MG	TAKE 3 TABLETS BY MOUTH DAILY at 9:00 PM	06/02/2016
53579	LORAZEPAM	TAB 1MG	TAKE 3 TABLETS BY MOUTH 3 TIMES DAILY at 7:45 AM, 3:30 PM and 9:00 PM	06/02/2016
53606	LORA ZEPAM	TAB 2MG	TAKE 1 & 1/2 TABLETS BY MOUTH 3 TIMES DAILY at 7: 45 AM, 4:00 PM and 9:00 PM	06/08/2016
			PRN *** ****-Psychotropic Medications ***	
53580	GEODON	INJ 20MG	INJECT 20MG INTRAMUSCULARLY EVERY 8 HOURS AS NEEDED FOR AGGRESSIVE BEHAVIOR	06/02/2016

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PROGRESS NOTES

CFMG SOAP1

S - SUBJECTIVE O - OBJECTIVE A - ASSESSMEN P - PLAN		California Forensic Medical Group
NAME:	(Last)	00   DOB: BOOKING NO.:
PROBLEM(S) TREATED	DATE	PROGRESS NOTES
A.110	12.18.16	New Intake - Writer met with Youth on B-Pod for new intake. Youth reports that
A14	0940(m)	he was transferred to this facility due to maladaptive bhx in his previous
	04 1000	placement. Youth denies any current or past MH Rx, though his chart reveals that
		this incorrect. Youth is currently Rx'd Cymbalta, Atarax, Depakote, Klonopin,
		Latuda, and Cogentin. Youth denies any family hx of mental illness or suicide.
	•	Youth denies any current thoughts of SI/HI or SIB. He clearly contracted for
		safety. He denies any past SA. Youth denies any current sxs of depression or
		anxiety though this appears incongruent as it was reported to this writer by
		medical staff that Youth was very tearful upon intake. Youth denies any past
		substance abuse. Youth will be placed on MHMD s/c. MH F/U x4 weeks or PRN.
		He is aware of s/c process.
		The location of the process.
		MSE: Youth presented with good eye contact, but a flat and guarded affect/mood.  Insight and judgment are poor. Thoughts were clear and linear, goal oriented. No psychosis sxs observed or expressed. Speech was clear. No acute distress.
		B. Halsted, Len
***		
		PROGRESS NOTES
CFMG SOAP1	Page   1	

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**PROGRESS NOTES** 

OFMG SOAP1

## Exhibit 43

## REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

#### 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 12, 2018

Cynthia Nunes Colbert Chief Operating Officer/President Catholic Charities of the Archdiocese of Galveston-Houston 2900 Louisiana Street Houston, Texas 77006

Paola Midence, Esq.
Katherine Chapman, Esq.
St. Frances Cabrini Center for Immigrant Legal Assistance
2707 North Loop West, Suite 300
Houston, TX 77008
Via email

Anne Marie Mulcahy Program Director, Legal Services for Unaccompanied Children Vera Institute of Justice 233 Broadway, 12th Floor New York, NY 10279

E. Scott Lloyd, Director Office of Refugee Resettlement U.S. Department of Health & Human Services Mary E. Switzer Building, 330 C ST SW Washington DC 20201

Sarah B. Fabian, Esq.
Cara E. Alsterberg, Esq.
William C. Silvis
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Via email

Re: Flores, et al., v. Sessions, et al., No. CV 85-4544 DMG (C.D. Cal.).

#### Dear Madams and Sir:

This office serves as counsel for minors in ORR custody with respect to their rights under the class-wide settlement in the above referenced action.

Cynthia Nunes Colbert, *et al.* March 12, 2018 Page 2 of 3

On February 28 through March 1, 2018, counsel interviewed class members detained at the Shiloh Residential Treatment Center in Manvel, Texas, and the Southwest Key Mesa staff-secure facility in Houston, Texas.

We wish to notify you that the following class members have a *prima facie* need for legal representation in (1) bond hearings pursuant to  $\P$  24A of the *Flores* settlement; (2) with respect to ORR's housing them in staff-secure or treatment facilities that are not licensed to house dependent minors; and/or (3) with respect to ORR's administering psychotropic drugs to juveniles without parental consent:



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

Paragraph 24B provides: "Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1."

Paragraph A.14 of Exhibit 1 to the *Flores* settlement requires licensed programs to provide class members with "[l]egal services information regarding the availability of free legal assistance, …"

Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 110 Pub. L. 457, 122 Stat. 5044, *codified at* 8 U.S.C. § 1232(c)(5), directs the Secretary of the Department of Health & Human Services to "ensure, to the greatest extent practicable ... that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not [from contiguous countries], have counsel to represent them in legal proceedings or matters and protect them from mistreatment ..."

The aforementioned class members accordingly request that HHS, through its contractor, the Vera Institute of Justice, and its subcontractor, the St. Frances Cabrini Center for Immigrant Legal Assistance, provide them legal representation in the legal matters enumerated above.

Cynthia Nunes Colbert, *et al.*March 12, 2018
Page 3 of 3

Please advise at your earliest convenience whether you intend to honor this request, and if not, the reasons for denying class members legal repr**g** sentation as herein requested.

i ilgani, y

Carlos Holguín

One of the attorneys for Plaintiffs

ccs: Leecia Welch, NCYL

Neha Desai, NCYL Poonam Juneja, NCYL Crystal Adams, NCYL

Holly Cooper, U.C. Davis Legal Clinic

Peter A. Schey, CHRCL

## Exhibit 53

1	Pages <b>1 - 95</b>								
2	UNITED STATES DISTRICT COURT								
3	NORTHERN DISTRICT OF CALIFORNIA								
4	Before The Honorable Vince Chhabria, Judge								
5	ILSA SARAVIA, AS NEXT FRIEND )								
6	FOR A.H., A MINOR, AND ON HER ) OWN BEHALF,								
7	Plaintiff, )								
8	VS. NO. CV 17-03615-VC								
9	JEFFERSON B. SESSIONS, et al., )								
10	Defendants. )								
11									
12	San Francisco, California Thursday, June 29, 2017								
13	TRANSCRIPT OF PROCEEDINGS								
14	APPEARANCES:								
15	For Plaintiff:								
16	AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, INC.								
17	39 Drumm Street San Francisco, CA 94111								
18	BY: WILLIAM S. FREEMAN, ESQUIRE JULIA H. MASS, ESQUIRE								
19	For Defendants:								
20	U.S. DEPARTMENT OF JUSTICE Civil Division								
21	P.O. Box 868  Ben Franklin Station								
22	Washington, DC 20044 <b>BY: SARAH B. FABIAN, ESQUIRE</b>								
23									
24									
25	Reported By: Pamela A. Batalo, CSR No. 3593, RMR, FCRR Official Reporter								
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#### Thursday - June 29, 2017 2:04 p.m. 1 2 PROCEEDINGS ---000---3 4 JAMES DE LA CRUZ, called as a witness for the Defendant, having been duly sworn, 5 6 testified as follows: 7 THE COURT: The only thing I will say is I'm not sure that microphone works, so if you want to do it from there, you 8 should make sure you speak up. 9 10 MS. FABIAN: Testing. THE COURT: It is working. 11 THE CLERK: For the record, please state your first 12 13 and last name. 14 THE WITNESS: My name is James De La Cruz. 15 THE CLERK: Please spell the last name. 16 THE WITNESS: Sure. James, J-A-M-E-S. De La Cruz is 17 D-E space L-A space C-R-U-Z. THE CLERK: Thank you. 18 19 **DIRECT EXAMINATION** 20 BY MS. FABIAN: Good afternoon, Mr. De La Cruz. Can you explain to the 21 22 Court what your position is with HHS? 23 Yes, ma'am. I am the Senior Federal Field Specialist A. Supervisor. 24 25 And what are -- generally describe your duties. Q.

- A. My duties are to provide supervision for the other Field Specialists Supervisors in the field, and I also supervise Intakes.
- Q. What is a Federal Field Specialist?
- A. A Federal Field Specialist a person who is designated by ORR to work in a specific geographical location and ensure that programs in that geographical location operate within the policies and procedures of the Office of Refugee Resettlement.
- **Q.** Where are you located?
- A. I'm located in Washington, D.C.
- **Q.** Are you familiar with the case of A.H.?
- 12 A. Yes, ma'am, I am.

- **Q.** How did you become familiar with that case?
  - A. I became familiar with that case because the day that this case was initially referred to us by DHS, I learned that one of our -- the Field Specialist Supervisors had received a call from Intakes, and Intakes had received information from DHS, and based on our procedures, evaluated that that young person should be in a secure facility.

And then what happened later, after that decision was made, after the Intakes --

THE COURT: Hold on, before you get there, can you provide a little more detail about -- you said you received information.

Who did you receive information from? Who did they

receive the information from? Can you be a little bit more specific? Provide a little bit more detail about the information that you got in that conversation with -- I think you said it was another Field Specialist Supervisor.

THE WITNESS: Sure.

What had happened was we had received a couple of referrals from DHS that were considered secure referrals. We had noticed that some of these secure referrals were coming from the New York area and that they had been making a sweep of children in that location.

So Intakes, as a matter of course, was just keeping me updated and saying, "Hey, we received a couple of referrals."

THE COURT: Who and what is Intake?

THE WITNESS: Intake specifically is a smaller division within the ORR that works specifically with the Division of Unaccompanied Children Operations.

Their specific responsibility is to receive initial referrals from DHS. What I mean by that is whenever DHS or another federal entity as a matter of fact wants to make a referral of a child into ORR's custody, our Intakes Unit would receive that information and work according to our procedures to find a placement or designated placement for that child.

THE COURT: And so the referral for a secure placement came from DHS. In other words, DHS communicated to ORR that We're sending you someone and there should be a secure

placement for that person?

THE WITNESS: Yes.

#### BY MS. FABIAN:

- Q. Is that common, for DHS to make a referral or a custody-level recommendation?
- A. It's -- it would be -- for -- for -- for someone from ICE or a unit from Border Patrol, it could be, because I think someone who has been doing this long enough and they know our operations would know that there is information that we would know about or we would take into consideration for making a placement.

So, you know, I don't want to -- it's a matter of semantics where I don't want to say that DHS called and said specifically, Hey, we want you to put this kid into detention or into secure, but when we received a referral, I do know for a matter of fact that the information they gave us, that this young person had been arrested and that this young person had some pending charges and that this young person had a level of concern that was beyond what we would normally -- the concerns were beyond what we would normally identify for children in a shelter placement.

- Q. Do you rely on DHS's recommendation regarding secure placement?
- A. We rely on the information that they provide us to base our recommendation -- to base our decision.

Q. And you mentioned that the information in this case was related to some arrests. How did you become aware of the information on which the recommendation was based?

A. What happened was we received a couple of referrals, and so we had identified okay, you know, which -- where kids were getting placed. In the matter of the course of business, when we -- when cases come into us, what we try to do is make sure that we also work with the care providers to make sure that -- I'm going to back up a little bit.

One of the things that ORR is required to do is to place children in licensed facilities. All of our licensed facilities are licensed by the state, the particular state where they exist.

So what happens is that when we receive children with specific concerns and we place them in a specific provider -- could be a mental health facility, it could be a secure facility -- we also make sure that when we do place a child, we make a referral to that particular agency that it's going to be within the guidelines that they have to follow under their license.

For instance, we might have a shelter in Texas who might be able to take children under certain circumstances, but we might have a shelter in California that might not be able to take that same child because that shelter in California is not licensed to do -- to take that child. And it's the same thing

with secure.

- **Q.** Is the decision to place a child in secure governed by ORR policy?
  - A. Yes.
  - **Q.** And can you -- what is the ORR policy with regard to placing a child into secure custody?
    - A. Generally it's a child who has a level of behavior that's chargeable or has been charged, including an act of violence, including gang-type behavior.
    - Q. How do you, when making an initial secure detainment determination -- how does ORR receive the information it uses to determine if a child meets those initial criteria?
    - A. What happens is when -- when DHS makes a referral to ORR, we receive some general information. There is also some -- some information that -- that's in our referral that DHS fills out that will lead us to believe that we need to ask additional questions.

So in the case of a young person of similar age as this case, once we see that, say, for instance, he's been apprehended and there's some charges, there's been some arrests, then what our Intakes office will do, whoever the staff who is assigned that day -- we have a placement tool.

What happens is that Intake staff will call the DHS, if -you know, if we don't have sufficient information and we have
to ask additional questions, but what they'll do is they'll

call back to that DHS officer and ask specific information. It could include things like, you know, has the child been arrested, what is he arrested for, what type of crime, is it a crime where there is an act of violence, is it a crime of weapons.

And so based on that placement tool, they'll -- they'll rank that -- they'll score that child's background. And if that child's background falls into a certain score, then that will help us decide whether that child should be referred to secure, whether they should be referred to staff secure or to shelter. And that's what happened in the case of A.H.

- Q. When you say that's what happened, can you describe what you mean by that's --
- A. What had happened was the Intake staff had scored this young person to be appropriate for secure.
- MR. FREEMAN: Your Honor, I'm going to note a continuing objection to hearsay.

THE COURT: Understood. I'm going -- everyone is sort of doing this last minute, so I can decide later what I think is appropriate to consider, but I'm going to allow the flow to continue.

But on that note, how do you know that that's what happened in this particular case? What did you do to learn about the process that was -- the decision-making process relating to A.H.?

THE WITNESS: Well, what had happened was his attorney on the East Coast reached out. The attorney was looking for a child, and I guess somehow she knew to call me. We do have our names public, you know, as a matter of public -- public information.

So I received a call from his attorney saying she was looking for his client, and the understanding was that A.H. had been apprehended by DHS. She wasn't sure why her client was being placed. She stated that she had some concerns.

I do recall that she had said that he had, I think, an SIJS case pending, and so I did look into it and I did link her to the field specialist that is in this region and informed her that we had designated placement for A.H. to come to California and also had informed her that based on our information, based on our procedures for placing A.H. into a secure facility, that's where he was going.

THE COURT: What specific information do you have about the kinds of inquiries the folks at Intake made before -- about A.H. in particular, not about generally what they do?

THE WITNESS: My recollection is they had information that he was referred to ORR. They had -- they had the record and looked into the portals that he had a marijuana charge that was pending, there was a weapons charge unknown. I did notice that. It just said unknown weapons charge. And that there was also an intimidation charge that was pending, but I had also

1	seen that he was also affiliated or ICE had identified him as
2	being affiliated with the MS-13 in Suffolk County.
3	MS. FABIAN: Your Honor
4	THE COURT: Go ahead.
5	MS. FABIAN: may I confer with opposing counsel? I
6	have an exhibit I want to make sure they don't want to
7	THE COURT: Sure.
8	MS. FABIAN: Your Honor, his name appears in the
9	exhibit, which I would need to either redact or submit the
10	document under seal. What would the Court prefer?
11	THE COURT: Well, you can we can you can just
12	use it right now to elicit testimony from the witness without
13	using the name of the of the detainee, and then we can
14	MS. FABIAN: I'm happy to then submit it redacted.
15	THE COURT: Yes. After the hearing.
16	MS. FABIAN: In consultation with opposing counsel.
17	THE COURT: Tomorrow or whenever you can submit it
18	under seal.
19	MS. FABIAN: Okay. We can consult before we submit it
20	about what you might want to
21	MR. FREEMAN: As long as the name of the of our
22	client is appropriately stricken, we have no objection to the
23	introduction.
24	THE COURT: Okay.
25	MR. MASS: And the A number also.

THE COURT: The what number? 1 The A number. 2 MR. MASS: THE COURT: Well, I'm going to have you all submit --3 whatever documents you use here today that I admit, what we'll 4 do is we'll have you meet and confer and submit them jointly 5 with any appropriate redactions. 6 MS. FABIAN: May I approach the witness? 7 8 THE COURT: Yes. And you don't need to ask me if you can approach the witness. You're free to do so. 9 MS. FABIAN: He's not afraid of me, so . . . 10 (Defense Exhibit 1 marked for identification) 11 BY MS. FABIAN: 12 Mr. De La Cruz, I have handed you what has been marked as 13 14 Exhibit 1. Do you recognize this document? Have you seen this 15 document before? 16 Α. Yes, ma'am. 17 And can you turn to the second -- well, I suppose it's sort of the second page into the first page. 18 What is that document? 19 20 I guess I'm looking at the bottom of the first page. Α. 21 Starting with all the information of the second page -- that information now? 22 23 Q. Yes. What that information is is information that we would have 24 Α. received from the DHS officer who was making the referral of 25

A.H. into ORR's care.

- 2 Q. And who is -- who is Stephanie who is the signatory on
- 3 the -- first of all, what type of document is this?
- 4 A. What this is is basically it's a communication to -- I see
- 5 that that information -- it was an email. It's a standard
- 6 communication from Intakes to a number of us in ORR's office,
- 7 | but also to Yolo County staff. And I'm seeing -- yeah. That
- 8 appears to be all of ORR's staff. I'm seeing if there is any
- 9 DHS on here.

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- 10 But they're basically Intakes -- that person Stephanie is
- 11 an Intake Specialist, and she's basically -- what she's doing
- 12 is giving notice that this young person has been identified
- into a secure placement, and that secure placement has agreed
- 14 | to accept him into their care.
- 15 Q. Is this email something -- this type of email something
- 16 you frequently receive in the course of your business?
- 17 **A.** Yes, ma'am.
- 18 Q. And do you know where the information in the email comes
- 19 | from?
- 20 **A.** Yes, ma'am.
- 21 **Q.** How do you know that?
- 22 **A.** Because this is the same information that's in our portal
- 23 system. We have a standard operating procedure with DHS that
- 24 | either CBP or ERO, which is ICE, Immigration Enforcement and
- 25 Removal -- what they'll do is they'll go into their data

system -- well, in this case, it was DHS.

The DHS officer went directly into our portals. They have access to it. And they entered this information into the Intake's portion of the portals and gave notice to the Intake's team that they had entered that information to make a placement referral to ORR and were waiting for us to gather that information and make a decision.

- Q. And is this -- sorry. Strike that.
- Do you receive several of these emails in the course of your business?
- A. Yes, ma'am.

- **Q.** And you said DHS enters the information directly into the portal?
  - A. In this specific case, yes, ma'am. I mean, what I want to be clear about is that some of our federal partners provide us information in different ways. It all goes into the portals.

CBP, they have their own data system, and we work with CBP at the border. Well, they'll enter information into their own data system, and that information several times a day is pushed into ORR's data system, and in this case, because it's ERO, they would have entered this information directly into the portals.

- Q. And is it regular practice for HHS to rely on information entered into the portal by DHS?
- A. Yes, ma'am.

Is it regular practice for HHS to make the initial custody 1 Q. determination based on the information entered into the portal? 2 3 Α. Yes. Does HHS receive additional supporting information 4 Q. regarding the information that's entered into the portal from 5 DHS? 6 7 Not consistently, ma'am. In other words, what you're A. seeing is what we would receive as far as a standard placement. 8 There might be a time where we might receive some information 9 and we might ask to see if they could provide us with 10 11 additional information. But in this case, I can't say that we did because it was 12 sufficient information there. 13 14 Q. Does HHS -- well, strike that. 15 Talking about the initial -- what's the next email, I quess, later in time in this document? 16 17 A. What this basically is, this is from -- and to be specific, the email that's -- that's -- that would have been 18 dated Monday, June 12th, 2007 at 2:52 p.m., that's notification 19 20 from the Yolo staff notifying all parties on this email that the UAC has been accepted into placement at Yolo. They've 21 agreed to take this child. 22 23 Is there any other documentation that's created in the Q.

course of determining that a minor should be placed in secure

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custody?

1 A. No. Now, after the initial secure placement --2 Q. 3 **THE COURT:** Did you want to move this into evidence? MS. FABIAN: Yes. Sorry, Your Honor. 4 THE COURT: Any objection? 5 I do object to the hearsay nature of the 6 MR. FREEMAN: 7 document. THE COURT: I think it's admissible because this is --8 I take this as not being offered to prove that he was an MS-13 9 gang member or that he had this problem at Lincoln Hall Boys' 10 11 Haven or that he was in fact a self-admitted gang member. I take this to be admissible to show that this is 12 information received from DHS that HHS relied upon in making 13 14 its determination. 15 Whether it proves to be true or not, we don't know, but 16 it's relevant because it's information that HHS relied on. And 17 so I think it's admissible for a non-hearsay purpose, and it's admitted. 18 (Defense Exhibit 1 received in evidence) 19 20 **THE COURT:** Go ahead. Sorry. 21 MS. FABIAN: Just to be clear, Your Honor, do you want 22 him to also talk a little bit about the next steps in the 23 process? 24 THE COURT: Yes. That would be great. 25 **MS. FABIAN:** Okay.

- Q. Following the initial decision -- well, after the secure placement was made, how many secure facilities are there in -- that ORR utilizes?
- A. At this time, two.

- Q. And why was Yolo chosen for a placement of A.H.?
- A. Because of the -- the charges. Primarily because of the charges. Specifically it shows that this young person was arrested for possession of marijuana. It shows that he was arrested for intimidation pending, and it shows that the -- there is also the -- I think I missed something. The weapons, the intimidation, and marijuana.

So to me what stands out about that is that's saying that he was arrested and charged. I'm not saying in this case that these are just -- the extent of his crime. We're not making a judgment that these are good or terrible charges or that type of thing.

What we're looking at is that because we work with two facilities and two different areas, and like I said earlier, we have to also work with our -- with our facilities based on what they can do as they are licensed.

Yolo County is able to take youth -- only take youth who are charged or an obvious threat to the community, whereas Shenandoah has more of an open -- has more of an ability to take children who might not necessarily have been charged.

As a matter of course in our business, sometimes we do

receive young -- we do receive minors into our jurisdiction who we believe or who have confessed to having committed murder and those types of things in other countries, but they aren't necessarily charged in the United States. So we do have to work with a program, for instance, Shenandoah, who does have a little more flexibility to be able to take children who might have engaged in those types of acts.

And so when we have a young person who can go into a facility and they can only go when they've actually been arrested or they've been deemed a threat to the community, we're going to have to place with them.

Q. When you say them, what do you mean?

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- **A.** We'll have to place with Yolo County.
- Q. The initial placement into secure custody, can you -- how is that -- what is the next step in that placement decision?
- A. Well, after the young person is moved from -- well, okay.
- I'm going to get a little bit to the -- I guess the granular
  level because --
- 19 Q. Let's start out just -- I want to focus on this case, on
- 20 A.H. so -- and so my question was too broad. That's my fault.
  - For A.H., having been placed into Yolo, what is the next step or what is currently occurring with regard to reviewing his placement decision?
  - A. Okay. What's happening right now, there should be two things that are happening. One is the facility should be

gathering information to determine whether he can be stepped down or whether he should remain in secure.

The other thing that should be happening is they should be looking into -- well, they will initiate the -- the -- they'll initiate working with -- making a determination if he can be released to a parent or another responsible adult who's in the United States.

- Q. And with regard to the decision whether he can be stepped down, what information does ORR look at for that determination?
- A. They'll -- a number of things. What they'll do in general is what -- they'll look at his behaviors, they'll see how he is adjusting in a secure facility, they'll be looking at also -- they'll do -- they complete an assessment to determine does he have any specialized mental health needs.

They'll also look at whether or not he might have been trafficked or could be someone who could -- you know, identified as someone who would be vulnerable to trafficking.

The other thing that they'll look at is what his behaviors were like or what has gone on with him prior to coming into ORR's care.

Our understanding is that he is charged, and so we will be reaching out to DHS to find out is he being charged, are there any, you know, types of crimes or anything that we should be aware of in making a release decision.

And then the other thing that we'll be doing is making

sure that the mom is aware of those things and evaluating where -- if he is charged, is she able to basically ensure that this young person deals with his charges, is part of that process for having been charged.

We'll also look at whether or not, you know, the past -since he's been released, we released him once before, now
we're being asked to release him again. We'll look at what's
happened, you know, since that release from then until now.

Every time we release a child, we do have something called conditions of release where we basically ask sponsors to ensure that young people that we release to them continue on with things like education, housing, if there's anything like court, in particular, the immigration court, are they participating in those types of things, and that would be part of our evaluation process.

- Q. Do you receive information from sources other than DHS in continuing this review?
- A. We can. And -- as, you know -- I'll give you an example.

We had almost 60,000, you know, children come into our jurisdiction in 2016. Not all of the youth that we had had issues that might have been relevant, as in this case.

So when we do see that children have specialized needs or concerns -- it could be anything. It could be medical needs.

It could be mental health needs. Our concerns from the past -- or familial. It could be CPS returns.

If we're going to release that young person back into the community or to the people that were once caring for them, we have to go back and make sure that that person receives the support, is able to basically care for that child.

- Q. And when you say we want -- we have to go back and look at that, how does ORR look at that?
- A. What we would do is in this case, you know, this person was referred to us, you know, as an MS-13 gang member. As far as we know, he's part of a sweep, so what we could do is go back and reach out to the community, to the law enforcement community.

We would also ask the school. We would gather information from as many resources as we could. We would ask his mom does she have anyone who could support her recommendation for -- her request for us to release him back into her care, and we would take that information into consideration.

- Q. Is A.H. also being evaluated by staff at the facility?
- A. Yes. He would be evaluated by -- well, a case manager and the clinicians. For the majority, the clinician.

The clinician, again, should have a process in place where they would talk to the -- they would read any kind of behavioral SIRs. They would take into consideration has he asked to go to a nurse. They would take into consideration what they experienced in, you know, one-to-one type of therapy.

They would also take into consideration information from

the staff about how he's done with other youth in the program, what he responds to. They'd also take into consideration, you know, information learned, you know, does he demonstrate gang-type of behavior, non-gang type of behavior, you know, how does he deal with dealing with peers in incidents where there is a conflict, a verbal conflict, physical conflict.

And, you know, how can he basically be -- you know, how could someone help him manage his own type of behavior, and those types of things. There is quite a few things that a clinician would review in making -- evaluating how that young person would do or what he needs.

Q. Does A.H. have any behavioral issues that have arisen while he is in Yolo?

MR. FREEMAN: Your Honor, I'm going to object to this. It's not necessary to this hearing. It's potentially prejudicial, and we have not had any opportunity to review this. I don't see the relevance as to what happened after he was placed in a secure facility.

THE COURT: I think it's relevant to the extent you are seeking relief relating to the kind of inquiry they need to conduct now to determine where he should be.

I mean, it might not be relevant to relief you are seeking based on the initial decision to send him to Yolo, but to the extent you're seeking relief about what they should do going forward and what kind of inquiry they need to conduct before

keeping him there, which I think is part of the relief you are 1 seeking, I think it is relevant. 2 You can go ahead and answer the question, but explain how 3 you know also -- know the information. 4 5 THE WITNESS: Okay. I know the information for this specific case or in general? 6 7 THE COURT: This specific case. 8 THE WITNESS: Okay. For this specific case, I know about it because we know about this TRO. Basically feel like 9 it's my responsibility to work with Elicia to know why this 10 young person is in our case, what kind of issues might come up, 11 and it's also a part of our responsibility to look at are we 12 13 actually doing the right thing by keeping this young person in 14 secure right now. 15 So I did look at the SIRs. 16 THE COURT: What is SIR? 17 THE WITNESS: Serious Incident Report. So I looked at the Serious Incident Reports myself and I 18 saw that there were basically Serious Incident Reports for this 19 20 young man. 21 MS. FABIAN: Your Honor, may -- I don't need to ask. 22 I'm going to hand --23 THE COURT: Go ahead. MS. FABIAN: I'll ask this be marked as Exhibit 2. 24 (Defense Exhibit 2 marked for identification) 25

BY MS. FABIAN:

- **Q.** What is this document?
- 3 **| A.** Ma'am?

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- **Q.** I'm sorry. What is this document?
- A. This is -- this is a Serious Incident Report that

  describes an incident that A.H. was involved in on June 20th,
  - Q. And how are Serious Incident Reports created?
  - A. Serious Incident Reports are -- these documents are created when a youth becomes involved into an -- in some kind of incident. It could be a physical altercation. It could be verbal. It could be an allegation against other children, against other staff, basically something -- a concern that is of serious -- that needs to be looked into by the care facility and/or the FFS, and it's documented in our portal system.
  - Q. And so this paper document -- it reflects information from the portal system; is that correct?
- 18 A. Yes, ma'am.
  - **Q.** Who enters the information into the portal system?
    - A. In this case, it would have been the case manager or the clinician. The portal is -- SIRs can be generated by either a clinician or a case manager or a staff in the facility with the proper clearance to be able to do that.
    - Q. How does the person who enters the information into the portal -- how are they aware of the information that they're

entering? 1 They are typically the first -- the person who -- who 2 directly has to engage in intervening in that child's behavior 3 or it might be the person who a child disclosed information to, 4 but it's typically a first-line person who -- who's dealing 5 6 with that event. 7 And is the information entered -- when is the information 8 entered into the portal in relation to the events that the document would reflect? 9 An SIR is required to be entered within the first hour or 10 11 so and reported to ORR no less than 24. MS. FABIAN: Your Honor, I would like to move the 12 admission of Exhibit 2. 13 14 THE COURT: Any further objection? MR. FREEMAN: Objection. It's a multiple hearsay 15 16 document. 17 THE COURT: Okay. Well, again, same thing. I think it's admissible to show what information -- what has been told 18 to ORR which relates to ORR's decision about what to do with 19 20 the child. So it's admitted for that non-hearsay purpose. (Defense Exhibit 2 received in evidence) 21 22 BY MS. FABIAN: 23 And so the Incident Report that I handed you, what -- what behavioral issue does this Incident Report -- sorry. Strike 24 25 that.

What does this Incident Report -- what incident does this 1 2 report reflect? 3 What it reflects is that A.H. became engaged into an altercation. 4 5 MR. FREEMAN: I'm sorry to interrupt, but I do have the same objection as to hearsay. 6 7 THE COURT: You can say what the -- if you feel it's 8 necessary, you can say what the report says. I don't think you have any personal knowledge whether it actually happened, and 9 I'm not considering this document for the fact that it actually 10 happened. I'm considering this document for what it reports. 11 So I'm fine for you to testify about what it reports and 12 13 what -- how you -- what import you place on that information. 14 **THE WITNESS:** Okay. 15 What this -- this report basically says is that A.H. 16 became involved in an altercation with another youth. In the 17 course of dealing with this, the staff needed to physically intervene on the case of A.H. and use some restraints to 18 19 basically help him de-escalate. 20 BY MS. FABIAN: 21 And how would this information be considered in your -- in 22 ORR's overall assessment of a custody decision for A.H.? 23 This is one incident. And so what the field specialist Α. would do -- normally, it's the shelter staff are the ones who 24

deal with this. And what they would normally do is they would

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see this is one incident of a particular child's conduct in the 1 2 facility. 3 They should use it objectively which is, you know, this young person became engaged in a fight. This is one time. 4 anything came out of this, the concern would be -- is that they 5 know that this young person might need some help in learning 6 how to de-escalate himself when he becomes involved in 7 8 another -- in a conflict. And that's what this one particular document would do. We wouldn't base any totality of any kind 9 10 of decision based on one event. 11 I'm going to ask to mark this as Exhibit MS. FABIAN: 3. 12 13 (Defense Exhibit 3 marked for identification) 14 BY MS. FABIAN: 15 And is this also a Significant Incident Report? Q. 16 Α. Yes, ma'am, it is. 17 MS. FABIAN: I'd like to move the admission of Exhibit 3 on the same basis. 18 19 MR. FREEMAN: Same objection, Your Honor. THE COURT: Admitted on the same basis. 20 21 MR. FREEMAN: I also should say that we have a continuing objection to the admission of these documents to the 22 23 extent that they do not black out the name and A number of the petitioner --24 25 THE COURT: Well, as I specified earlier, they may not

be placed into the record until that information is blacked 1 out. 2 3 MR. FREEMAN: Thank you. (Defense Exhibit 3 received in evidence) 4 BY MS. FABIAN: 5 Just briefly, can you describe what this document states? 6 7 What this document basically states, that this is an incident where he was involved in a verbal altercation as it 8 was reported by staff and that it was an incident of verbal 9 altercation that occurred due to gang affiliations. 10 And how would this incident report be considered as far as 11 0. the overall custody determination that ORR is making? 12 13 Α. Again, this is something that we would take into 14 consideration, not -- among other facts and other information. 15 As I said, he's -- A.H. would be assessed on a number of 16 other issues. So -- but this is something that the facility 17 would take into consideration, as does he, you know -- he seems -- appears to have some gang affiliation. 18 19 THE COURT: Can you show me where in this report is a description of his conduct that suggests gang affiliation? 20 21 THE WITNESS: Sure. I quess somewhere -- I quess I 22 would call it the second page, the third paragraph. You asked 23 me specifically about gang. I'm looking on here and I do see the spitting part. 24 25 THE COURT: Sorry. Where?

THE WITNESS: On, I want to say it's about -- it's 1 almost on the bottom of the first third portion of the second 2 3 page. 4 THE COURT: Okay. 5 THE WITNESS: It says, "Approximately 1000 hours after Youth Arnold was secured in his room, youth H.A.M. was also let 6 7 out of his room to speak with ORR staff" --8 THE COURT: Hold on, hold on. Couple things. First, I'm still having trouble figuring out where you 9 are -- first, I'm having trouble figuring out where you are, 10 11 and, second, you've got to go a little slower for the court 12 reporter. 13 THE WITNESS: Sorry. 14 THE COURT: Let's see. Approximately what hours? 15 THE WITNESS: One thousand. 16 THE COURT: "At approximately 1000 hours after Youth A was secured in his room"? 17 THE WITNESS: Yes, sir. 18 19 THE COURT: Okay. 20 MR. FREEMAN: I'm sorry. How many lines from the top 21 or bottom are we talking about? 22 THE COURT: It looks like it's about 12. 23 MR. FREEMAN: Okay. Thank you. THE COURT: It starts in about the middle of the page, 24 "At approximately a thousand hours." 25

MR. FREEMAN: We have it. Thank you, Your Honor. 1 2 THE COURT: Okay. "After Youth A was secured in his room, youth H.A.M. was 3 also let out." 4 5 Go ahead and read whatever you want to read, without mentioning anybody's names. 6 7 THE WITNESS: Okay. Let me see. "1,000 hours, Youth A was secured in his room with Youth 8 H.A. and also let out of his room to speak with ORR staff. 9 approached Room B-13" --10 11 THE COURT: A little slower. THE WITNESS: -- "where youth H.A. roam" --12 "roamed" -- I think it meant to say "roamed." "And he kicked 13 14 his door and started yelling at him in Spanish. At 10:30 15 hours, I noticed nurse" -- "a nurse and advised her of the 16 Youth H.A. had been spit on. At 10:35 hours, the nurse entered 17 into B-Pod and assessed youth H.A. A gold medical slip was 18 filled out on behalf of Youth H.A. Due to Youth" -- I guess, our A.H. -- "spitting on Youth H.A. and deciding to fight, 19 20 Youth A will receive a hearing." In other words, how I perceive that is that youth -- our 21 youth that we're talking about, A.H., is going to receive a 22 23 hearing because -- if he's been inciting this fight. "Due to Youth E.H., Youth R inciting Youth A to fight for 24 25 failure to follow staff instructions" --

1 THE COURT: What does any of that have to do with 2 gangs? THE WITNESS: That's -- it's not clear from the 3 documentation. 4 THE COURT: I see there's something a little bit later 5 talking about Youth H.A., who I guess is the person that A.H. 6 7 got in the fight with? 8 THE WITNESS: Right. THE COURT: "Once secured, Youth H.A. began kicking 9 his door and yelling 'fuck MS-13' continuously." 10 11 So that's the one reference to anything gang related that I see. 12 13 Okay. 14 THE WITNESS: All right. 15 BY MS. FABIAN: 16 ο. I'm not sure where we were exactly. 17 How would this document be considered as part of ORR's overall custody assessment of A.H.? 18 This is one more incident of a behavior that we -- we 19 Α. 20 would look at to see how he interacts with other youth. 21 program should be working with him on these types of issues, on 22 how to engage himself when he needs to basically engage other 23 youth. It's a little difficult that there is gang affiliation, 24 25 but it's still something that the shelter would work with him.

What I mean on -- what I mean by that is that sometimes in an 1 engagement, you know, kids just have impulse control, and if 2 they just have poor impulse control by nature, then it's 3 getting them to remember hey, if somebody bothers you and 4 upsets you, then this is how you need to handle it and then how 5 you need to basically engage and conduct yourself in working 6 7 things out. When it's an issue of gang behavior, it's now two issues. 8 It's one -- it's like hey, now you're engaging in an 9 affiliation with a certain group of people which can cause 10 That's one issue. But now you have to deal with 11 problems. this second issue of -- is when you do deal with that 12 13 affiliation and you encounter a group of people, then what's 14 going to happen is you're going to have to be able to control 15 yourself not to get in their fights. 16 So now you have -- instead of just somebody with impulse 17 control, you now have to deal with the other issue of gang 18 affiliation as well, and it becomes a little bit more complex. MS. FABIAN: Your Honor, I have one more -- I just --19 my aim is not to pile on here. 20 THE COURT: That's fine. 21 MS. FABIAN: It's to get the evidence. I believe 22 23 we're at.-THE COURT: This was admitted. I did say this is 24 25 admitted on the same basis as the previous one, yes.

1 MS. FABIAN: We're at 4. (Defense Exhibit 4 marked for identification) 2 BY MS. FABIAN: 3 Is this another Significant Incident Report? 4 Q. 5 A. Yes, ma'am, it is. MS. FABIAN: I'm going to move to admit it on the same 6 7 basis as the prior two. 8 **THE COURT:** Any further objection? MR. FREEMAN: Same as before, Your Honor. 9 THE COURT: Okay. Admitted on the same basis. 10 (Defense Exhibit 4 received in evidence) 11 BY MS. FABIAN: 12 13 Q. Can you briefly describe or state what this report --14 What this basically is is a report is that the youth 15 engaged in disruptive and disrespectful behaviors. 16 0. And how would this incident report be considered in ORR's 17 overall consideration of whether A.H. should be held in 18 custody? What this basically is is an indicator of -- is you have a 19 detention facility, adult staff, who is basically giving a --20 A.H. some routine instructions not to do something or to do 21 something, and his response was inappropriate by -- by him 22 23 basically, you know, saying sexual innuendo and inappropriate things to the staff, which is a concern because this is the 24 25 conduct that you wouldn't typically expect from the average

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custody or be stepped down?

person in any environment. And so how would this behavior -- well, how would this behavior figure into ORR's custody evaluation? Well, again, there's two separate issues that we would be Α. evaluating. We would be evaluating whether or not we could -- it would be appropriate to step A.H. down into a less restrictive environment. The other issue is would we -- if the mom or another adult sponsor was to come forward, would we release A.H. to that sponsor. Would that person be able to basically engage with A.H. to intervene, so -- and in a way that he didn't -- he was able to be safe in a community, in school, and those types of things. 0. When will ORR make its -- its -- I quess it would be the second custody determination -- custody-level determination for A.H.? Α. Sure. So not dealing with the issue of whether he should remain in secure, but dealing with the issue of release? Sorry. I'm not using the right language then. Q. No. Not dealing with reunification, dealing with the guestion of level of custody in secure, when will ORR at the latest issue a determination on whether A.H. should remain in secure

- A. On approximately 7 -- July 13th, of 2017. In other words,30 days after his initial placement into ORR.
- Q. And on the other side, the reunification determination, what -- where is A.H. in the reunification process?
- A. The most recent information that I have is that on June 22nd -- well, prior to June 22nd -- now, let me restart this.

When A.H. came into our jurisdiction, my understanding is that the care provider reached out to the mother, and with the effort -- with the goal to let her know that he is now in our jurisdiction and where he is.

And what they would also do is find out where she lived, find out whether she was interested in becoming a sponsor. And they would have provided that information to her by sending it to her or working with someone because she could also, you know, download it off of our Internet website. She would be able to gather that information and also provide whatever documentation is required under the reunification process.

My understanding is that it wasn't clear to the program, to the care provider, that she wasn't being responsive to the request, and it's not clear why she stopped being responsive. But my understanding is that on June 22nd, she had stated that she was looking at either still sponsoring herself or locating another sponsor.

MR. FREEMAN: Objection. Move to strike. Hearsay as

1 to the mother's statement. THE COURT: Statement of a party opponent. She's the 2 Why isn't it a statement of a party opponent? 3 petitioner. MR. FREEMAN: The hearsay, though -- he didn't hear 4 5 that statement. It comes through a third person. THE COURT: Yeah. That's right. Okay. Granted. 6 7 THE WITNESS: Okay. 8 MS. FABIAN: And, Your Honor, just so you know, I'll ask a follow-up question, I think. We don't contend at this 9 time that she's not intending to -- we have no position whether 10 she intends to seek reunification or that she's not 11 12 participating. 13 But what I'll ask is to your knowledge, has she yet -- has 14 she yet filed a reunification package requesting 15 reunification -- has plaintiff? 16 A. She's not completed all of the documentation that's 17 required. THE COURT: Why would she need to do that, having 18 already been -- the child already having been placed with her? 19 20 THE WITNESS: Because, one, things change. People's 21 circumstances change. I think it's been a year since he's been with those. But for one, he left and he came back. 22 23 And this is -- this is now -- we treat this somewhat as a new case because it's not every day -- it does happen for 24 different reasons, but usually when a child comes back to us, 25

it's because something has happened in their home, so we would be required to go back and restart the reunification process all over again to ensure that we don't miss out on something that could have happened from the time he was first released to now.

THE COURT: Okay.

## BY MS. FABIAN:

- Q. Does ORR have a separate process in place for an individual who had previously been in custody and been released?
- A. It's pretty much the same process, yes.
- MS. FABIAN: Your Honor, have we elicited the testimony that the Court needs? I'm just trying to make sure I have the scope of what we're trying to get out here.

THE COURT: Well, I mean, I'm jumping in and asking questions when I need to, and I'll presumably do that during cross-examination, and we'll see where we are after that.

THE WITNESS: I have to clarify something because it could cause some confusion.

When A.H. initially came to us, the process that we used would have likely been, because it's goes -- you know, it was the mom. What would have happened was -- and if we didn't have any information like we do now, what would have happened is we do the same process. We gather information. We gather, you know, the documentation that we normally would for all

releases.

But now because it's -- it's -- you know, we have the behavior issues -- if we had known there were behavior issues the first time, we would have considered doing a home study, we would have considered doing post-release services.

But, again, now because this is a case where it's a second referral, we have more information, then we would be likely providing additional services to the home study, post-release services. And post-release would only happen if we did make a decision to release, but more than likely, we would do a home study before we made a release determination of -- either to deny or to approve.

## BY MS. FABIAN:

- Q. With regard to the determination to place A.H. in secure, you said that a determination would be made on or around July 7th; correct?
- **A.** 13th.
- **Q.** Thirty days after the initial intake?
- **A.** Yes, ma'am.
- Q. Is there -- is that the final decision? Is there a subsequent review of that --
- A. No. We're required to do that every 30 days, and in addition, if he's in our care for 90 days, then a supervisor would review that as well.
  - If at any time he decides that he doesn't agree with our

decision, he can make an appeal directly to the ORR director.

- Q. And is there a timeline for any appeal to the ORR director?
  - A. No. In other words, how I would say that is, is that it's always continuing. Let's say, for instance, in the first 30 days we make a decision to not step him down, then it starts going into 60 days. And let's say it gets to 60 days and we decide we still haven't made a determination that we could step him down, then he could make -- he could invoke that request, you know, on day number 100 or 105.

So there is no statute -- there is no limitation of when he could ask for that. Does that make sense? Yeah. Okay.

- Q. With regard to the decision that's still early in the process, but if ORR determines after review that it cannot reunify A.H. with his mother, is there an appeal process for that decision?
- A. Yes.

- 18 Q. Can you describe that appeal process?
  - A. Yes. Generally what can happen is -- and this is a fairly new process. These have changed a little bit.

So if A.H. invoked, I want to say this might be the first time I'm aware that it's being done, but what would happen is if we made a decision to deny, then the mom could basically ask the ORR director for an appeal. And that -- yeah. Generally that could happen at any time.

Q. And how is that appeal conducted? Sorry.

First, how is the denial communicated to A.H. and his mother?

A. What would happen is first what happens is once we receive all the documentation -- and in this case, it's likely going to be a home study. Once we receive that, we would have approximately 30 days to get back to -- to -- to them with the final decision.

In the course of that, we do -- in headquarters, we do have somebody that would staff that with other -- like panel the decision, and they would come up with the decision and they would make that recommendation to the ORR director.

The ORR director would then take that into consideration and decide whether they should deny it or whether they should go ahead and proceed with the release.

If we don't release the child, then what would happen is he would receive notice through the shelter and then the mother would receive notice through the shelter, but she would also receive written documentation and she would also receive information on how to appeal that case.

- Q. And then you said the first appeal is to the director.

  How is that appeal conducted?
- A. Well, he -- he -- my understanding is he would also panel that. He would ask for additional information. And he would ask for a panel to also review the case as well and provide

their recommendation. 1 Will he issue a decision? 2 Q. 3 Α. Yes. One way or the other. And if the director at this level of appeal denies 4 Q. 5 release, is there a subsequent level of appeal? I believe so, yes, ma'am. There is now. Again, it's a 6 7 new procedure, it's a new policy, so I would feel better if I 8 went back and looked up the details on that. Where is that located? Q. 9 It would be only in our ORR policies and procedures. 10 Α. Would I be correct to say -- is that the assistant 11 12 secretary level? 13 Α. Yes, ma'am. 14 MS. FABIAN: And I would be happy to point the Court; 15 otherwise, I believe it's in our briefing as to the section. I 16 won't ask him to have it memorized. 17 THE COURT: That's fine. MS. FABIAN: I have no further questions. 18 19 THE COURT: Okay. Why don't we take a five-minute 20 break and then do -- go ahead and proceed -- I assume you want to do some cross-examination? 21 MR. FREEMAN: Yes, Your Honor. Thank you. 22 23 THE COURT: Be back in about five minutes. (Recess taken at 3:09 p.m.) 24 25 (Proceedings resumed at 3:20 p.m.)

1 THE COURT: Mr. De La Cruz, you can go ahead and have Every witness does that. 2 a seat. 3 THE WITNESS: I'm not special, I guess. 4 **THE COURT:** Go ahead. MR. FREEMAN: Your Honor, if I may ask, due to the 5 slightly unusual nature of the proceedings today, when I'm 6 7 done, if Ms. Mass has a couple of questions, can she ask them? 8 **THE COURT:** Not a problem. MR. FREEMAN: It's easier than passing me notes. 9 10 **CROSS-EXAMINATION** 11 BY MR. FREEMAN: 12 Q. Mr. De La Cruz, good afternoon. 13 The first question I have for you is at some point, A.H. 14 went from being in the custody of ICE to being in the custody 15 of ORR. When exactly did that happen? That would have been -- my recollection is that DHS made 16 Α. 17 the referral to ORR on June 12th, and he was intaked physically at the Yolo Center in the afternoon on the 13th, I believe. 18 19 I'd like to be as precise as I can with the times that 20 things happened. So when was the intake? 21 You know, I'd have to -- I really apologize. I'd have to Α. look at a record to be able to give you that information. 22 23 Well, the Exhibit 1 shows an email at 2:50 in the 24 afternoon on June 12th. MS. FABIAN: I took the witness' copy. 25

MR. FREEMAN: I'm happy to give you mine. 1 MS. FABIAN: I have it. 2 3 MR. FREEMAN: Thank you. THE WITNESS: All right. Thank you. 4 BY MR. FREEMAN: 5 Does that help you remember when the intake occurred? 6 7 Well, the timeline, a little bit, but it's not quite 8 complete. Do you know when the arrest of A.H. by ICE took place on 9 June the 12th? 10 It would have happened before 2:32. I want to say, if I 11 recollect, that the apprehension date would have happened 12 13 around 12:00 or a little bit sooner than that. 14 Q. So around noon on the 12th? That's my belief, yes, sir. 15 Α. 16 0. And when did -- when did your office determine that A.H. 17 should be sent to a secure facility? Α. I'm reviewing this record. 18 On the record that you gave me, on the bottom part of the 19 20 first page, looking at the date, June 12th, 2017, at 2:32:24 p.m -- I'm reviewing this -- that Intakes is 21 22 notifying -- had received notification from DHS through the 23 portals that a referral had been made. I want to say that at approximately noon, DHS would have apprehend him, sometime 24 25 between noon and this time at June 12th.

And I'm reviewing this with incomplete records, but I'm looking at the timeline I would normally look at -- is that between 120'clock and 2:32, ICE would have entered the information into our portal system and made it known that they were taking that initial step to refer A.H. into ORR's jurisdiction.

From what I see here is somewhere in that time, Intakes would have reviewed this information that's on the second page. They would have looked at the information about criminal charges, made the determination, using our policy, that he -- that A.H. was appropriate for secure care, and then when I look at this up here, I see the email from Mr. Castaneda at Monday, June 12th, 2017 at 2:52, and they're basically saying that UC has been accepted for placement in the Yolo County.

So at that point, we would have communicated to DHS that A.H. has been designated for placement at Yolo County, and we would have given them that notification, and they would have started the transportation piece for transporting him from, I want to say, New York to -- to Yolo County in California.

- Q. Now, that's 2:52 Eastern time; correct?
- A. Yes, sir.

- Q. So within three hours of his arrest, give or take, you've made -- your office has made a determination that he should be sent to a secure facility; correct?
- A. Yes, sir.

1 THE COURT: I'm sorry. Could I ask one clarification 2 question? So this information on page 2 of Exhibit 1, arrested for 3 4 intimidation, arrested for possession of an unknown weapon, arrested for possession of marijuana, self-admitted gang 5 member, that is information that DHS entered into your system? 6 7 THE WITNESS: Yes, sir. 8 THE COURT: Okay. And so then ORR employees pull it up on the system, and that is where they get the information? 9 THE WITNESS: Yes, sir. 10 THE COURT: Okay. So there wasn't any actual 11 12 conversation then between somebody from DHS and somebody from 13 ORR? THE WITNESS: Not that I'm aware of. 14 15 THE COURT: Okay. And in the normal course, there 16 would not have been a conversation between somebody at DHS and 17 somebody at ORR? There would just be a review by somebody at ORR of the information that DHS input into the system? 18 THE WITNESS: Yes, sir. 19 THE COURT: Okay. 20 21 THE WITNESS: And I'm looking at the information that's here contained in this email, which is information that 22 23 is sufficient to make a determination. THE COURT: Got it. 24 And your position is that this -- this information and the 25

way it's been transmitted to ORR is sufficient to comply with 1 the requirements of the statute? 2 3 THE WITNESS: Yes, sir. THE COURT: Okay. The 8 U.S.C. Section 1232? The 4 TVPRA? 5 THE WITNESS: Yes, sir. 6 7 THE COURT: Okay. Thank you. BY MR. FREEMAN: 8 So could you explain to me at the bottom of page 1 on 9 Exhibit 1 where it says, "from ACF ORR DUCS Intakes"? 10 Yes, sir. 11 Α. What is that? 12 Q. 13 A. That's our Intakes hotline. ACF -- ORR DUCS -- the 14 division used to be titled Division of Unaccompanied Children 15 Services, and so that email -- the resource box has remained 16 that way for the last 12, 13 years. 17 Q. But that's -- a human being sends that information to you or is that just generated by a machine? 18 19 Α. This information would have been sent to us by a person. 20 And that person is who? 0. 21 From here, from the signature on the second page, a young Α. lady by the name of Stephanie. 22 23 Okay. Now, during the three hours between the arrest --Q. 24 and I'm being generous because you probably got information 25 after the arrest. But between the arrest and the time he was

- determined to be sent off to Yolo, did you or anyone at ORR ask 1 anyone at DHS about the information that they had input? 2
  - I do not have a recollection of that, sir.
- Okay. It wouldn't be your typical practice to call up DHS 4 Q. 5 or ICE and say, Can you tell us more about this arrest or that incident? 6
  - I want to say -- go back to the substance that's here on the second page. Is -- there is sufficient information for us to be able to make a placement determination.
  - That wasn't my question, sir. Did anybody ask for more detail about the information that was provided to you?
- 13 A. From DHS, not that I'm aware of sir, no.
- 14 Q. Now, you now know that some of that information is wrong, 15 don't you?
- 16 Α. I can't say that it is or isn't, sir.
  - Take a look at the 5/25/2017 arrested for possession of an Q. unknown weapon.
- 19 Α. Right.

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Q.

- 20 You now know that took place actually not in 2017, but in 0. 2016; correct? 21
- Α. My understanding is I believe that that's accurate. 22
- 23 Which is accurate? Q.
- That it could have happened before. I did see a record 24 Α. 25 somewhere after placement that it was made in 2016.

- Have you looked at the declaration of Daniel Loechner 1 Q. submitted by the defendants in which it says, quote, "According 2 to records provided by local law enforcement, in May 2016, A.H. 3 was arrested by the Amityville, New York Police Department for 4 medicine and possession of a weapon"? 5
  - I don't have that record, sir. Α.
- 7 I'm happy to hand you my copy. Please forgive my markings Q. on it.
- Α. Okay. 9

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- Do you know see that Mr. Loechner contradicts the 10 information that is contained in Exhibit 1? 11
- 12 This is the first time I've seen it so if I could have a A. 13 few minutes to review it, would that be okay?
- 14 Q. Certainly.
- 15 Α. (Witness reviews document.) 16 Okay. I see it, sir.
  - Q. Is it now your understanding that the information about the date of the arrest in Exhibit 1, the arrest for possession of a weapon and intimidation, is wrong?
- 20 I received -- I see that the dates are wrong -- or Α. there's -- what I see is there is two conflicting dates. 21
- 22 One of them is sworn under oath; correct? Q.
- 23 A. Yes.
- 24 Q. May I?
- 25 Α. Sure.

- Q. Did you or anyone under your supervision at the time -around the time of receiving Exhibit 1 know that that charge
  from 2016 had been -- was dismissed in contemplation of
  adjournment in the state of New York, which means there was no
  finding?
- A. No. What I do want to say is -- and I believe -- I do want to say that when the -- when A.H.'s attorney initially contacted me, she basically said, Hey, I have a concern.

  There's some proceedings that are going on in New York. I'm his attorney, and some of the charges that, you know, ICE is picking him up on could be incorrect, so what I recollect is that -- telling her about our reunification procedures, and that once this young man came into our jurisdiction, we would be gathering more information about him and then we would come to some kind of decision -- we would use that information to come to some kind of a decision.
- Q. But by that time, by the time you had the conversation with A.H.'s attorney, Stephanie Gibbs, that was 5:00 the following afternoon, Tuesday the 13th; correct?
- **A.** Approximately, yes.

- Q. Now, during the time between when you got notice of the arrest and a decision was made to send A.H. to Yolo -- first of all, it was within the knowledge of DHS that A.H. was represented by an attorney; correct?
- **A.** I wouldn't know that.

Okay. Well, at the time Ms. Gibbs talked to you the 1 Q. following day, she sent you the forms that showed she had 2 entered an appearance on behalf of A.H.; correct? 3 I believe she had. 4 Α. And those forms would be somewhere in the records of the 5 Q. 6 executive office for immigration and review -- somewhere in the 7 immigration system there was information that A.H. was 8 represented by an attorney; correct? I would assume so. Α. 9 10 Was any effort made to reach out to the attorney between 11 the time A.H. was arrested and the time he was sent to Yolo? 12 Α. Could you restate the question again? 13 Q. Was any effort made by anybody to reach out to A.H.'s 14 attorney between the time he was arrested and the time he was 15 sent to Yolo? 16 I don't have recollection of that --17 THE COURT: Hold on a second. MS. FABIAN: Objection. I don't think he has 18 19 testified that he is aware --20 MR. FREEMAN: To your knowledge. MS. FABIAN: He doesn't work for DHS. 21 22 THE WITNESS: Right. To my knowledge, I wouldn't. 23 BY MR. FREEMAN: 24 Q. I'm only seeking your knowledge.

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Α.

Sure.

- 1 Q. Are you aware that A.H. repeatedly asked the -- his ICE
- 2 arresters and the people who had him at the Varick Street
- 3 | facility in New York and elsewhere to speak to an attorney?
- 4 Were you aware of that?
- 5 **A.** No, sir.
- 6 Q. Presumably you were not aware that those requests were
- 7 | denied; correct?
- 8 A. Yes, sir.
- 9 Q. Were you -- was any effort made to reach out to the
- 10 custodian to whom A.H. had been released under an agreement --
- in other words, A.H.'s mother -- was any effort made to reach
- out to her before sending A.H. off to Yolo County?
- 13 A. I can't speak to DHS, but I can say that any attempts to
- 14 contact a mother prior to him coming into our jurisdiction -- I
- 15 do not believe anyone contacted her.
- 16 Q. I'm talking about prior to the time he was sent to a
- 17 | facility across the country.
- 18 A. Right. I have no --
- 19 Q. Okay. At the time, ORR had a custody agreement with the
- 20 mother; correct?
- 21 | A. We had released -- we had previously released A.H. to his
- 22 mother, right. That's correct.
- 23 | Q. I misspoke. It's a sponsor agreement; correct?
- 24 **A.** Yes, sir.
- 25 Q. And is it ORR policy not to contact sponsors before taking

their children out of the jurisdiction?

- 2 A. We rely on DHS's determination to -- to identify that a
  3 child is an unaccompanied child who belongs in federal
  4 jurisdiction and that's what we rely on.
  - Q. So no effort was made to contact the mother?
  - A. No, sir.

- Q. Now, was any effort made to talk to the arresting officer who appears somewhere in all of these records to have said that this young person on arrest admitted to being a gang member -- was there any effort made to corroborate information to see whether that was true?
- **A.** Okay. To my knowledge, no.
  - Q. Okay. To this day, has there -- has anyone within the Government, to your knowledge, reached out to the county police or the local police who made this arrest in which it's alleged that A.H. admitted to being a gang member -- has anyone in the Government, to your knowledge, reached out to the arresting officer to ask if that's true?
  - A. To my knowledge, no.
  - Q. I'm going to ask you about the marijuana charge as well.

    Did you have knowledge -- or to your knowledge, did

    anybody know at the time A.H. was being considered for secure

    treatment -- secure detention, that the marijuana charge had

    been dismissed in contemplation of adjournment?
- A. No, sir.

- Q. Did anyone know that the -- that A.H. had been in a supervised work program and that the supervisor in the work program had said he was a very commendable participant in the program?
- A. No, sir.

- Q. So basically all you had was some information input by ICE that nobody in your organization really cross-examined; is that correct?
- A. Yes, sir.
- Q. Now, you referred to a -- you'd received a bunch of secure referrals because DHS was doing a sweep. Do you recall that testimony?
- A. Yes. And so DHS was telling ORR, We believe that these are people affiliated with gangs and they should be securely detained?
- A. In not those exact words, but yes, sir.
- Q. Okay. Do you have any procedures for reviewing or challenging that recommendation in the three hours between notice of the arrest and the time that you make a decision to send -- to send a youth off to secure detention?
- 21 A. If we believe that we have complete information, no, sir.
  - Q. Now, the gang piece -- am I correct that the ORR policies were just recently changed -- in fact, on June 12th -- to include gang affiliation as a factor in determining what kind of detention should be ordered?

- 1 A. Sure. They were approved and put into effect on that 2 date.
  - Q. So that's the day that A.H. was arrested; correct?
  - A. Yes, sir.

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- Q. To this date, to your knowledge, has anybody been in communication with the mother directly in person about the
- 7 circumstances of her son's arrest and transfer?
  - A. My understanding is -- my understanding is that the Yolo County facility staff have made contact with the mother.
- 10 Q. In person or by email or by sending --

in San Francisco for ORR; correct?

- 11 **A.** It would have been telephonic.
- Q. You mentioned, I think at the beginning of your testimony, that Ms. Elicia Smith, who has been sitting here patiently in court all day -- she is the field -- federal field specialist
- 16 **A.** Yes, sir.
  - Q. So she has jurisdiction over the San Francisco -- over the detention of persons under ORR supervision within this geographic area?
    - A. She's responsible for ensuring that the program follows its policies or ORR's policies and procedures.
- Q. With respect to A.H. and anyone else within this geographic area; correct?
- 24 **A.** Yes, sir.
- 25 Q. And she would be responsible for detentions that happened

to occur in the Yolo Center?

- **A.** If you could define *responsibility* and *detention*, that would help me answer the question a little bit more directly.
  - Q. Well, why don't you explain what her responsibility is.
  - A. What her responsibilities are, are that when a young person -- well, it's to ensure that children placed under the auspices of the Offices of Refugee Resettlement receive the services required by the Office of Refugee Resettlement, and that the programs that are in her geographical -- geographical location assigned to her follow ORR's policies and procedures in ensuring that those services are provided to any particular child in that geographical location.
  - Q. Okay. So -- but she's -- she's -- other people report to her, but she's the top person within this geographical location to make sure that that happens?
- A. Yes.
  - Q. Now, if Stephanie Gibbs had not called you at 5:00 the day after the arrest, what would your normal procedure be for alerting the attorney of an unaccompanied child to the fact that he had been picked up and detained?
  - A. ORR funds legal services in all of the jurisdictions where we have children, so under most circumstances, children come into our jurisdiction and they don't have a legal representative.
    - So normally what would have happened is when a child comes

into our care, the legal representatives, what they do is they check in every once in a while to see if any new kids have come in, but we also ensure that -- the facility knows that if a child comes in is that we would engage our funded legal representatives to engage with that child to do a screening and a know-your-rights presentation.

In some cases, when a child has a legal representative and we find out by happenstance, then sometimes it's our legal rep that will reach out to the attorney because it's questionable whether or not that attorney is still engaged, whether there is anything going on, but if we find out a child -- the child says, Hey, I have legal representation, and they identified that they have legal representation, then the facility would reach out to that legal representative.

- Q. But there's -- what I think I'm understanding is that there's no process within ORR, even when an unaccompanied child has an attorney, in pending immigration court proceedings to find -- affirmatively find that attorney and contact him or her?
- A. If a child says that he or she has a legal representative, then yes, we would do that.
- Q. But barring that, what I'm saying is if you just don't know, there's no affirmative outreach, even though the attorney may have information already in the system and notices of representation?

- A. I guess what you're asking me is as part of our screening and our interview, we would ask a child if they have a legal representative? No, we don't.
  - Q. Now, I want to go to the phone call that you had with A.H.'s attorney, Stephanie Gibbs, at about 5:00 on June 13th. You recall that she -- there was another person on the line, a law professor?
  - A. Yes, sir.

- Q. Okay. And do you recall Ms. Gibbs requesting that A.H. not be interviewed by anybody unless she was present or had an opportunity to be present by telephone?
- **A.** Yes. I remember that clearly.
- Q. And what did you tell her in response to that request?
- A. Well, we actually had a discussion. What I will say is when she called, this is an attorney who's reaching out. She's an appropriate -- she is an attorney who seems to want to engage in the best interests of her client.

My response is to, you know, give her and -- try to be as helpful as I can to her. So she -- she asked us about -- she was on the phone with the law professor, and I can't remember the complete details, but she said -- basically she goes, Are you going to interview my client? And I said, Let me explain the process to you.

Because what I -- what I recall having a discussion about is that she was concerned that maybe we would do some kind of

an interview, sort of like a -- what do you call that? Evidence type of interview like law enforcement.

THE COURT: Interrogation.

THE WITNESS: An interrogation.

So what I explained to her was that all of our programs are licensed, and they're licensed facilities, and so we require our programs to interview -- do an intake assessment and to interview children to be able to find out things: are they sick, why are they here, that kind of thing.

So what I also recall is sending her our policy for secure placement, and I also sent her a citation in an email that said here is what we -- what the care providers will -- I guess it's a warning for -- not a disclaimer, but basically informing them that they have to be careful about what they tell us in that anything that -- any kind of information could affect their case.

So I did provide her with an email about that. But I did say to her we have to also be able to gather information per our licensing standards and per our -- just to make sure that this young person knows where he is and that kind of thing, and we had a discussion about that.

## BY MR. FREEMAN:

- Q. Now, he has -- he was interviewed when he arrived at Yolo; correct?
- A. Yes.

1 Q. And his attorney was not present or -- by telephone or in 2 person? 3 THE COURT: You haven't asserted that he had the right to have his attorney present in this discussion, have you? 4 MR. FREEMAN: We have asserted --5 THE COURT: It's not a claim based on that. 6 7 MR. FREEMAN: We have asserted in our Complaint his 8 right to counsel in his ongoing proceedings, yes, both in family court and in immigration. 9 THE COURT: Yes. But not based on asking him 10 questions outside the presence of his attorney when he's in 11 12 their custody; right? 13 MR. FREEMAN: Well, it's certainly part and parcel of 14 that, Your Honor, and we can amend to make that assertion, 15 but --16 THE COURT: I'm not sure you need to amend to bother 17 to make a constitutional claim on that. Of course, you're free 18 to, if you want. 19 I wouldn't dwell too much on asking him questions outside the presence of his attorney. I would move on, if I were you. 20 21 MR. FREEMAN: Very good. Understood, Your Honor. I do want to ask you about some of -- not all of them. 22 23 One of the SIRs in particular. I think that was Exhibit 3. That was the one with the long passage of text where we had to 24 search for parts of it that involved our client, A.H. 25

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The first page of Exhibit 3 under Synopsis of Event, I'll Quote, "Youth involved in verbal altercation, and it was reported by staff that incident occurred due to gang affiliations, " close quote. Do you see that? Not in front of me now, but I do want to say I recall that. MS. FABIAN: Here. MR. FREEMAN: I'm sorry. I didn't realize you didn't have the exhibits. THE WITNESS: Just to save me a little time, could you show me where that is on here? Or save us a little time? Okay. Thank you. BY MR. FREEMAN: And if it will help you, I'm going to ask you whether you recall stating in your declaration essentially the same thing, that -- paragraph 6, "In the third incident on June 22, A.H. was involved in a verbal altercation and staff reported that the incident occurred due to gang affiliations." Do you recall that being in your declaration? Α. Yes. Now, we've looked at this in some detail. In this entire report, did A.H. say anything about gang affiliations? Α. In this document? Yes, correct. Q.

- 1 Α. My understanding is he did. Show us where, please. 2 Q. "Once secured, youth A.M. began kicking" --3 Α. THE COURT: Whoa, whoa, whoa. 4 MR. FREEMAN: Five lines from the bottom, Your Honor. 5 You are referring to an alleged statement by youth H.A.M., 6 0. 7 who is not our client. He is someone else; correct? Α. 8 Right. Q. So is there anywhere in that report where A.H. said 9 anything about gang affiliations? 10 11 That's correct. Α. 12 Q. And under Synopsis of Event at the top, it says it was 13 reported by staff -- it's all passive tense, but who is the staff who reported that? Is there some way to know that? 14 15 Well, to find out the specifics, the closest we would have 16 is to look at the bottom of page 2, and it has the name of the 17 staff filling out the report. 18 That's Brenda Moreda? 19 Α. Correct. 20 But do we know whether Ms. Moreda was the person who 0. 21 reported that the incident occurred due to gang affiliations? 22 Not without further investigation. Α. 23
  - Q. Okay. Let's talk -- and I'm coming close to wrapping up.

    Let's talk about the two processes that you've identified going forward, one for the every 30-day step-down process and

one for the reunification process.

Does A.H. have access to the information that's being used by ORR to determine whether he can be stepped down before the determination is made?

A. First, A.H. would know why he's in secure placement, and what -- part of -- part of the reason why that's important is because he would -- he would -- the clinician would have to know to make sure that he knows why he's in that facility.

Then what would happen is he would also be informed that he is being evaluated on whether he would be stepped down or not.

So at some point in those discussions, in those staffings, the staff would have to be up front with him and tell him, Hey, this is the reason why you're here and these are the reasons -- these are some of the behaviors that have occurred, these are some of the concerns that -- that is if he's not going to get stepped down.

They would basically work with him as best as they could to make sure that he knew what the behaviors were, and then what they would also do is they would also try to build some kind of a specialized individual service plan for him to help him understand what kind of behaviors could help him move towards either stepping down and being more successful in his placement.

So that information -- they would have to go over with him

what -- how -- how those incidents are basically affecting our 1 decisions because we would be trying to work with him to 2 eventually move toward stepping down. 3 4 Q. My question was a little bit narrower, sir. 5 Α. Sorry. That's okay. 6 0. 7 Before a decision-maker makes a decision on stepping down, 8 does A.H. get to see the documents that the decision-maker looks at? 9 They would -- I wouldn't say that he sees the documents, 10 11 no, sir. 12 Q. Does he get to look at the SIRs? 13 Α. He would be informed about the SIR, yes, sir. Well, the reason I ask the question is because there is 14 Q. 15 some questionable stuff in these SIRs, in my humble opinion. 16 Does he get to take a look at the SIRs? 17 Α. No, sir, I don't believe so. Does the attorney get to take a look at the SIR? 18 Q. 19 The attorney would get a copy of the SIRs. Α. 20 Does the attorney get a copy of the SIR before the 0. decision is made? 21 22 She could make a request to get that information. Α. 23 Would she get that information before a decision was made? Q.

If she made a request today, would she get that information?

That would go to our records department. To my knowledge,

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Α.

Exhibit 53

**Page 349** 

she would. 1 Is that a policy or is that just something that you do on 2 3 the fly? 4 Α. It should be in our policy. Does the mother get a copy of the information that the 5 Q. 6 decision-maker looks at? 7 She would be informed. Α. 8 Q. Does she get a copy of the documents, sir? Α. She can make a records request as well. 9 Same process? 10 Q. Yes, sir. 11 Α. 12 Q. How quickly are those requests turned around? 13 Α. Well, typically 30 days. But if an attorney gave his 14 information and said hey, they really need to know this for 15 some particular reason or not, they could work with us and we 16 would expedite that. 17 Q. But decisions are made every 30 days, aren't they? 18 So let me be clear. We would inform the attorney and the mother in a timely manner. I would have to go back and look at 19 20 our policy to see if there is a specific time that we would 21 inform them of an SIR. So they could technically receive 22 information within 24 hours. 23 And the other thing that would influence that is the

licensing of that program. I would have to go back and do some

research and see if they're required under their license to

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have to report that information. 1 So communicating information and searching it and making a 2 receipt -- and receiving it, that information in a written 3 form, are two different things. So --4 Did -- I didn't mean to cut you off. I want to make sure 5 Q. you're done. 6 7 Α. Okay. Does counsel have the right to appear at a hearing before 8 Q. the step-down determination is made? 9 10 Counsel would have the right to have a meeting and be informed, and it wouldn't necessarily be in a hearing. 11 So there is no confrontation of witnesses or any kind of a 12 Q. 13 formal process like we have today? 14 Α. Not with the 30-day process. 15 Okay. What about the reunification process? Same 16 question. Does counsel have a right to be -- to actually have 17 a role in that process before a decision is rendered? Counsel has the right to be informed. And they also have 18 a right to be informed of why we're going to make a decision. 19 20 And we would also think that the -- that the -- that would happen simultaneously with the parent, but they would -- they 21 would be informed of that information. 22 23 They're informed of the decision after it's made? Q. Yes -- well, it just depends on counsel because sometimes 24 Α. 25 counsel -- we've had counsel work with a parent and work with

the child, and they might participate by sharing information with the care provider.

We've had counsel reach out to affiliates for services in certain areas and help the parent go out, and let's say if it's a gang prevention type of program, they could -- they -- they're open to helping the parent find resources. They've done things like that before.

So if that's the kind of engagement that we have and the kind of relationship the attorney has with the program and they're not prohibited from having, then what would happen is they would know ahead of time how the outcome is going to be, but I can't say as a matter of course that that's part of our ongoing procedures to do that.

- Q. Now, in terms of the release process, I think I understood you to say that the mother has to go through a whole lot of process basically to resubmit information to determine whether she's a suitable caretaker?
- 18 A. That's correct.
  - **Q.** Sponsor?

- A. Yes, sir.
- **Q.** Now, HHS has already made that determination before; 22 right?
  - A. Right.
    - Q. Do you go back and basically take the information she gave you before and program that in yourself, or does she have to

provide it all again? 1 She would -- she would be given a new reunification packet 2 and be asked to provide current information. 3 4 Q. You basically treat it as a new process, don't you? 5 Α. Yes. MR. FREEMAN: Ms. Mass does have a couple of 6 7 questions. 8 Thank you very much, Mr. De La Cruz. THE WITNESS: 9 Sure. 10 **CROSS-EXAMINATION** 11 BY MR. MASS: 12 Q. Good afternoon, Mr. De La Cruz. 13 Just to follow up on a couple questions -- a few 14 questions, you talked about how A.H.'s attorney reached out to 15 you on the 13th and mentioned to you that some of the charges 16 that ICE was relying on to make the arrest were incorrect. 17 Have you taken any steps to look into that since that phone call? 18 19 I've asked Elicia to work with the program to gather information about that. And that's something that they would 20 do as a standard as well, standard practice. 21 And that's a 30-day time frame to get -- to get all that 22 23 together and make a decision with it; is that correct? 24 Α. Yes. And before ORR made the decision to transfer A.H. to Yolo 25 Q.

- to the secure facility, did anyone from ORR speak to A.H. about the reason that you were making that decision?
  - A. No one would have contacted A.H. prior to him actually physically arriving in ORR's custody.
  - Q. In Yolo County; is that correct?
- 6 **A.** Yes, ma'am.

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Q. And so just -- I know that my co-counsel was trying to pin this down.

When do you consider that he actually became in ORR's custody? Was it when he was admitted into Yolo County?

- A. When they do an intake, yes, ma'am.
- Q. But ORR made the decision to send him there before he was in your custody; is that right?
  - **A.** That's correct.
    - Q. And then you spoke about the basis for the decision to send him to a secure facility being that there were pending charges.
- 18 A. Correct.
- 19 **Q.** And I was wondering what counts as pending for the purposes of that decision.
  - A. What counts as pending is receiving information from DHS that he was arrested, and it's up to the court or the jurisdiction where those offenses would have occurred for them to decide whether to actually charge him with those things.
  - Q. So the fact that he -- at the time we know that you

- DE LA CRUZ365 CROSS / MASS didn't -- ORR was not aware that those charges had been resolved at the time that you had the information that they were pending; is that right? Α. Yes, ma'am. And would it have mattered to ORR that had you known in Q. fact those charges weren't pending but had actually in fact already been terminated? Α. They would have caused us to review that decision. And if there's an arrest but there's no factual finding of Q. quilt or any kind of admission, does the fact that the arrest is for something serious -- is that enough to put -- was that enough to put A.H. into secure custody? A. Yes. Q. You mentioned that your programs are licensed. Α. Yes, ma'am.
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  - 0. Is there a difference between the term licensed and the term secure for purposes of ORR custody?
  - Well, licensed -- licensed is the authority to provide a service; in other words, an entity goes to -- an agency goes to a state entity, licensing entity, and they receive authority to provide a particular service.
    - Secure is a type of service.
  - And are you familiar with the requirements of the Flores Q. consent decree?
    - Α. For the most part, yes, ma'am.

- Q. And under that decree, there is a presumption of releasing minors to their -- to their parents or to a guardian; right?
- A. That's correct.

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- Q. And people -- and minors who are not released to their parents are supposed to be -- generally supposed to be in nonsecure facilities; is that correct?
- **A.** Generally, yes.
  - Q. So under that decree, is it your understanding that ORR's responsible for complying with that settlement agreement also?
  - A. Could you restate the question again?
  - Q. Does ORR aim to comply with the Flores settlement agreement when they make decisions about secure custody?
- 13 **A.** Yes.
- Q. And is it your understanding that secure custody is allowed under that agreement for mere arrests and mere allegations of criminal activity?
  - A. When we placed A.H., we placed him according to our policies, and our policies do allow us to place children who are -- have gang affiliation into secures. And also crimes -- you know, particular chargeable/nonchargeable crimes.
  - Q. But you've also said mere allegations of gang affiliation and mere allegation of criminal activity is enough to place a child in a secure facility; is that right?
  - A. Information that we receive and according to our policy is something that we take into consideration, yes, ma'am.

- Q. And in this case, you really only had allegations of gang affiliation and allegations of criminal charges; is that correct?
  - A. What we received is information that we basically construed as fact, which is that when that determination was made for placement, the information that we provided was that A.H. had been arrested for possession of marijuana.

We also received that he was arrested for possession of a weapon, which was pending, and we also received information that he was arrested for gang intimidation, which was pending.

And at the time that we received the information, that's not always sufficiently time for us to be able to establish what that means or whether that's fact or not. What I'm saying is we have to take DHS on what they're providing us, and that's pretty much what we did.

- Q. Do you have ORR staff based in New York?
- A. Yes.

- Q. You mentioned that in the decision to release a child to his or her guardian or to the sponsor, that there's a packet of information that gets put together and that the director makes the decision based on what's in the packet; is that correct?
- A. For secure children, yes, ma'am.
- Q. Yes. And does the child have access to that packet before the decision is made or at any time?
- A. As a matter of standard operating procedures, the shelter

does not provide that to them.

Q. Okay. But just -- okay.

And does the child's attorney get access to the packet that the ORR director depends on to make his decision before the decision is made?

A. That's not an easy yes-or-no question. Sometimes the attorney fills out the packet with the parent.

So I think what you're asking is when we make a release decision, do we have a procedure where we give the attorney a packet of information and we say ahead of time, We're giving this to you; we're telling you ahead of time that we're going to make this decision. I think that's what you're asking me.

Am I correct?

- Q. I'm asking whether the child or his representatives have any access to the derogatory information that the ORR director relies on to make a decision about custody?
- A. The child and the parent would know ahead of time what information has been provided. Do we give them a packet of what the parent has turned in? No.
- Q. I'm asking if you would make the same information available to the child and his or her representatives as you make available to the ORR director --
- A. No. Okay.
- **Q.** Thank you.
- **A.** Sure.

I just want to clarify the record. Did you testify that 1 Q. it was your understanding that A.H. had been arrested for gang 2 intimidation? 3 4 Α. Yes, ma'am. And that's based on Exhibit 1? The information that was 5 Q. in the email from Stephanie, the Intake specialist? 6 7 The email that is dated -- well, it's two pages, 8 but it's on June 12th, 2017, 2:32. Q. And where is it in this email that it says that he was 9 arrested for gang intimidation? 10 Oh, I see what you're saying. No. It says -- well, he 11 Α. was arrested for intimidation on 5/25, and he was identified as 12 13 a member of the MS-13 by Suffolk County. 14 Q. Okay. 15 No further questions. 16 THE COURT: I have a couple follow-up questions. 17 EXAMINATION OF DE LA CRUZ 18 BY BY THE COURT: So I apologize if you answered this question already, but 19 I just want to get clarification of it. 20 Did ORR know, during this period where it had been 21 22 referred A.H. and before it decided to send A.H. to Yolo -- did 23 ORR know that it had previously placed A.H. with his mother? Yes, sir, I believe so. 24 Α.

Okay. So that information was in the possession of the

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Q.

- people who decided -- the people at ORR who decided that he needed to go to Yolo?
  - A. Yes, sir.

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- Q. Okay. But there was no phone call to the mother before making a decision to send him to Yolo?
  - A. From ORR?
- 7 **|| Q.** Yes.
- 8 **A.** No, sir.
- 9 **Q.** And he was being held, you said, in New York. He was at an ICE facility in New York?
- 11 A. That was my understanding and the staff's understanding,
  12 yes, sir.
  - Q. Okay. What were the other facility options that ORR had at the time? Where are the other places that he could have been sent other than Yolo?
  - I'm not talking about only secure facilities; I'm talking about other facilities. What would be the next step down in terms of --
  - A. It could have been a staff secure placement. We have a staff secure in New York. We also have a -- we have staff secure in New York. We have one in Chicago.
- Q. Talk to me about what a staff -- quote, "staff secure,"
  unquote, is?
  - **A.** A staff secure program is a program that relies more on staff intervention and pragmatic-type of intervention to be

able to help direct a youth in their daily activities. And the difference is that a secure facility would rely more on the physical aspect of being able to help redirect a youth.

In other words, if somebody's upset and somebody's hostile, they have it in their ability and their license to be able to escort somebody, have to use more -- have to use restraints, if necessary. Or to actually place them in a room by themselves and lock the door until they calm down.

And so that's what I mean by the physical part.

Whereas a staff secure program is a program where, for instance, keeping the kids more busy, having a lower staff ratio where the staff would be there to intervene more quickly and be able to give more individualized attention to that particular child.

There would be more emphasis on that type of an intervention.

- Q. So is the child detained in that, quote/unquote, "staff secure" facility? In other words, the child is not permitted to leave that facility?
- A. Yes. In other words, all of our facilities, from my understanding -- historically is that all of our facilities are considered detention, even our shelters.
- Q. And the staff secure facility is -- does the child have a roommate?
- A. Yes.

- Q. One roommate, multiple roommates?
- 2 A. If -- if -- yes, they could.
- That's something that we would program in. All of -- yes.
- 4 All of our staff secures and our shelters would have that,
- 5 but --

- 6 O. Would have what?
- 7 **A.** Well, like, if we have a child who is transgender or we
- 8 have a child who -- and doesn't feel comfortable or we have a
- 9 child who maybe engages in more type of, you know, sexually
- 10 | inappropriate type of behaviors, then we would have to, like,
- 11 | not have a roommate for that particular child.
- 12 Q. Okay. So there is flexibility at the staff secure
- 13 programs?
- 14 **A.** Yes.
- 15 **Q.** And does staff -- is staff armed?
- 16 **A.** No.
- 17 **Q.** Staff is not armed?
- 18 A. In a staff secure facility, no.
- 19 Q. What's the age range of people, children, held in the
- 20 staff secure facility?
- 21 | A. Typically, it's usually someone who's between 12 to 17.
- 22 | Q. Is it different age ranges for different facilities?
- 23 **A.** Yes. It depends on their license. An example is there is
- 24 some shelters who can take, you know, children from 0 to 17.
- 25 Same thing with foster homes.

So it just depends on what that program, that particular program, is licensed to be able to work with.

- Q. And it's not ORR staff, but it's somebody with whom ORR has contracted; is that right?
- A. Yes.

- Q. Okay. So a county facility or a private facility?
- A. Yes. Typically the secure facilities -- for instance,
  Yolo County is a county facility, and I believe Shenandoah in
  Virginia is as well.
- 10 Q. What about New York?
- **A.** That is a nonprofit agency so they're private.
- **Q.** Okay.
- **A.** So as an entity, they operate as a private entity, but they're licensed by the state.
  - Q. Okay. And do you know anything about their criteria for who they will take, who they can take, what type of person they can and can't take or will and won't take?
  - A. Sure. They would also -- they would be a facility that would take a child who could respond to interventions, to staff interventions, and someone who's basically -- they don't either have any information or any belief that this person would engage in physical violence and that type of thing. Or someone who might have had that in their background but has made progress in being able to start, you know -- self-regulating when they have to get in some kind of a conflict.

- Q. Okay. As you sit here today, looking at Exhibit 1 again and the information that the DHS folks -- do you still have that in front of you?
- A. I do.

Q. The information that the DHS folks entered into ORR's system, I want to go through and ask you whether -- which information you now know -- have confirmed as accurate and which information you've confirmed is inaccurate.

So the arrest for possession of marijuana -- and it says "in the fifth." Do you know what "in the fifth" is?

- A. Let me see. Well, to me it looks like it's probably part of that particular state's penal code, "in the fifth."
- Q. Okay. And it says he was arrested for possession of marijuana. Have you confirmed now that that is correct, that he was arrested for possession of marijuana?
- A. What I'd have to do is go back and reference the original affidavit that the gentleman provided to me, and I'd like to reference that again because I do know that the dates are wrong.

But now that you're asking me the question, it doesn't say that he wasn't arrested. It says he was arrested on a different date.

- Q. Okay. Which affidavit are you referring to?
- A. There was one -- I think it was the testimony provided from -- I think his name was Loechner.

Q. Okay. Why don't you give him that again. Okay. So other than Loechner's declaration and your review of this Exhibit 1, you don't have any -- that's the only information you have about whether these -- the items in this -- in this Exhibit 1 are accurate? Yes, sir. That's the only known information that I have. 7 Okay. All right. Then I don't think I need to go through it with you. I just need to know that that's all that has been done to confirm whether this stuff is accurate or inaccurate. The only other piece that I don't know has happened is has the program actually reached out and obtained a record from the jurisdiction that originally arrested this young man.

- Q. When you say the program, who are you referring to?
- 14 Α. Yolo County.

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- Is there a reason the people at Yolo County would do that Q. as opposed to somebody from ORR?
  - Well, they would do it as our requirement. In other Α. words, Yolo County -- Yolo County is, I guess, acting under our procedures and our policies. And one of our requirements would be that they gather information to be able to make a recommendation for release so that we would ask them to do that, and if they weren't able to obtain that, then they would let an FSS or Elicia know and she or her supervisor could reach out to the entity where -- that actually did the arrest, actually conducted the arrest, and ask them if they will

provide us with the record.

- Q. Again, so the people at Yolo County are -- the county employees at that facility are expected to understand ORR policies regarding the custody of unaccompanied minors?
- A. That's correct.
- Q. And it's Ms. Smith's -- Elicia's responsibility for making sure that those policies regarding the custody of unaccompanied minors are followed by those county officials?
- A. Yes, sir.

Q. Okay. How common is it that you'll be referred somebody from DHS who you have already placed with family members? DHS arrests somebody and refers them to you, and they've already been placed with family members.

I assume that the most -- by far the most common is somebody who ORR has not come into contact with yet; is that right?

- A. Yes. It -- it's happened -- well, first -- I guess one of the other things that we -- we also recognize is the Homeland Security Act and the definition of an unaccompanied alien child, which is, you know -- you have to be under the age of 17 -- I'm sorry -- under the age of 18. You have to be in the United States without any kind of legal status, and you also have to not be in the accompaniment of your parent or legal guardian or they are otherwise unavailable.
  - So, you know, that -- from time to time we will receive a

referral from DHS and they will inform us that they have a child who they are having to separate from their parent, and it could be for different reasons.

We've had parents who physically are sexually abusing their own child. We've had incidents where the parent has criminal charges and they're getting detained and so they'll make the referral to us. Or they'll also make a referral to us and say that the parent is -- is not, you know, coming forward to pick up their child and they've given them notification, which happens sometimes because parents aren't documented and they don't want to get detained themselves.

So for us to get a referral for a child and that child is going to be separated from their parent is not uncommon.

Q. Okay.

- A. And I can say, now that you've gotten me thinking about it, it happens almost every other day.
- Q. Okay. And what about this type of situation where DHS simply arrests somebody based on a warrant that they are removable and refer them to you? How often does it turn out that that person has already been placed by you with a family member?
- A. I'd have to say at this moment, not very -- that I can recall, not frequently.
  - Q. Can you recall any instance in which that's happened?
  - A. Where DHS has made a referral to us and they removed the

child from the parent and it's just simply over -- for purposes of immigration?

Q. Yes.

A. No, because normally there is -- there is some reason for that.

You know, when I go -- if I was to go back and look at cases where we received a referral a second time, it's usually because there's something else that's going on. Again, it's either because the parent is -- there is some kind of abuse issue, there is a neglect issue, there is an abandonment issue, or the child has gotten picked up from local law enforcement and that local law enforcement has basically referred the case over to DHS and DHS has made the determination to -- to ask us to take custody of that child.

Q. Okay. Let me think. I think that was it.

Do you know if DHS had any reason to believe, when DHS referred A.H. to you that -- do you know if DHS had any reason to believe that A.H. had already been placed by you with family?

A. Okay. That's not a simple question so I'm going to have to answer you, okay, to be -- to be forthcoming.

When we -- when a child is in our jurisdiction and we release a child to a sponsor, whether it's a -- whether it's -- it could be any adult. It could be a distant family member. It could be someone with a relationship. It could be the

mother, the father --1 Are you thirsty, by the way? 2 Q. Sure, I will take some water. 3 A. You can continue. 4 0. 5 Α. Okay. So whenever we release a child, we notify DHS that the 6 7 child is being released from us to a particular person. And that's something that we do for all of our cases. 8 For every single child that we release out of our jurisdiction, we 9 10 give DHS notification before we do the release and we also give 11 them notification that the child has been released. Okay? Now -- so when we talk about, you know, do we give --12 13 would DHS have been notified, yeah, we would have notified the 14 field office juvenile --15 What you are going to say is you don't have any reason to 16 believe that the particular ICE agents who picked him up and 17 sent him to you knew of the information that you had previously 18 transmitted to DHS? That's correct. 19 Α. 20 0. Okay. All right. 21 They could have, they might not have, but we also have to look at even if they know, are they making a decision that that 22 23 parent is unavailable. Q. Right. Okay. Okay. 24

Does anybody have anything, very, very briefly, before we

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finish? 1 MR. FREEMAN: No, thank you. 2 MS. FABIAN: No, Your Honor. 3 THE COURT: You can step down. Thank you. 4 All right. We're going -- we're going to take -- we will 5 take a five-minute break, and then I'm going to come out and 6 tell you whether I'm going to rule from the bench or whether I 7 will take it under submission and issue a ruling like tomorrow 8 or something like that. 9 10 MR. FREEMAN: Thank you. (Recess taken at 4:28 p.m.) 11 12 (Proceedings resumed at 4:41 p.m.) 13 THE COURT: Okay. In light of the time sensitivity, 14 I'm just going to issue a ruling right now from the bench. 15 First, on the issue of proper respondent, I think it's a 16 close question, and my ruling is without prejudice to the 17 Government asking me to revisit it at a later stage in the litigation, if necessary, but I am concluding that Ms. Smith is 18 19 the appropriate respondent. 20 As I said earlier, I do not believe that the distinction between immigration habeas cases and other core habeas cases, 21 22 criminal cases, the Padilla case -- I don't believe that 23 distinction is convincing or the reasons for that distinction are convincing. 24 25 But I do believe that it is appropriate, at least -- and I

believe -- it's a close question, and, like I said, you can ask me to revisit it, but I do believe that it is appropriate to distinguish between situations where the Government is holding someone in its own facility and situations where the Government is holding someone in a contracted-out facility.

I also think that in a situation where the Government is holding someone in a facility run by some other entity, some other government entity or some private entity, there are a lot of reasons, as we discussed today, for not having the head of that facility be named the respondent in a habeas case.

Moreover, I think the testimony here made clear that in this context, Ms. Smith really is the custodian because Ms. Smith is responsible for how things go with the custody of the child.

There are all these ORR policies about the way in which the child is held in custody and the procedures for holding the child in custody, and Ms. Smith is in charge of that, in charge of overseeing that, much like a warden would be in charge of it in a more conventional scenario.

Moreover, I became even more convinced this must be the right answer upon hearing that -- basically it appears that every facility that ORR uses is a facility operated by somebody other than ORR, including these private not-for-profit corporations.

So it seems like the Government's argument in this case

for who is the proper respondent would stand for the proposition that if somebody's in a nonprofit group home like the one described in New York, the only appropriate respondent in a habeas petition would be the person who works for that nonprofit organization who's in charge of running that group home.

And that, it seems, can't be right and particularly when we now have testimony about how it's really ORR officials, the ORR district director, who is responsible for making sure that the ins and outs of custody are handled properly by the people who are under contract with ORR.

So that is my conclusion about the proper respondent, and so we're in the right district, and so I won't be, at least at this stage, again without prejudice to the Government making the argument later, if necessary -- I am concluding that we're in the right district, and I won't be transferring the case to the Eastern District of California.

With respect to the merits, I think on most of the issues raised by the petitioner, the petitioner has not established a likelihood of success or raised serious questions on the merits.

I think also with respect to the access-to-counsel issue and the access-to-courts issue, in addition to not establishing strong likelihood of success on the merits, the petitioner hasn't established irreparable harm because of all the issues

we discussed this morning and early afternoon regarding getting a continuance.

However, with respect to one issue and that is -- sorry; give me a second -- that is the issue relating to 8 U.S.C.

Section 1232 -- by the way, before I forget, let me hand these exhibits back to Kristen.

With respect to the TVPRA, I believe that under the sliding-scale approach that exists in the Ninth Circuit, the petitioner has raised serious questions going to the merits. I wouldn't say made a strong showing of a likelihood of success, but has raised serious questions going to the merits on whether the TVPRA was violated by not giving adequate consideration to whether A.H. should be placed into custody and placed into a secure facility.

I say that with the caveat that -- as I said, I think it's a close issue, even as to this child, but I say it without regard to what the requirements are in the vast, vast majority of cases. I mean, one of the things that the testimony established here is that this is a highly, highly unusual case.

But this is a case in which ORR had already screened the child, screened the mother, made a decision that the child could be placed with the mother, and entered into a contract with the mother regarding the care of the child.

In those circumstances and given that ORR knew at the time it received the referral from DHS that it had already engaged

in this screening process, it had an obligation to investigate the information it was receiving from DHS about A.H.

Obviously it doesn't need to be reached, but I think it's fair to assume at least that in normal circumstances, ORR might not need to look behind the information it receives from DHS about an unaccompanied minor that DHS has picked up for the first time and that ORR has been referred for the first time and that ORR has never had any contact with before.

But in a case like this, ORR had an obligation under the statute, given the information that it had, to do more, to make sure that the child should be in custody and that the child should be in -- that being in a secure facility was the least restrictive setting that is in the best interests of the child.

And so I believe that in a Temporary Restraining Order, that violation or possible violation ought to be remedied, and here's what I'm going to order ORR to do:

I'm going to require ORR to look much more carefully than it has done up until now into whether it should have taken the child into custody on -- June 12th, was it?

MR. FREEMAN: Yes, Your Honor.

THE COURT: And whether it should have -- if it should have taken the child into custody, whether it should have placed the child in a secure facility on June 12th.

I'm going to require ORR, number three, to look much more carefully into whether -- even if it was appropriate to take

the child into custody on June 12th, whether it remains appropriate under the statute to keep the child in custody, and if so, where.

If so, number four, should the child remain in custody in a secure facility.

So just to be clear, what I'm asking -- what I'm ordering ORR to go back and look at carefully is, number one, whether it should have retained, on June 12th, the child in custody at all.

Number two, whether it should have sent the child to a secure facility.

Number three, whether the child should remain in custody today.

And number four, if so, whether the child should remain in a secure facility as opposed to, say, the facility in New York that we discussed.

I'm going to require ORR to make that determination by July 7th.

And among other things -- I mean, it's obviously up to ORR whether it wants to be more thorough than I'm requiring, but at a minimum -- at a minimum -- ORR must conduct a careful check of the accuracy of the information it received from DHS, including obtaining police reports, if possible, and court records, if possible, and including contacting the appropriate local law enforcement officials who might have information

about the child's status as a member or affiliate of MS-13.

ORR must give the child an opportunity to be heard in the presence of his attorney and must give his attorney the opportunity to be heard in connection with this decision.

ORR must give the attorney access to all the information on which the decision would be based and give her an opportunity to respond to that information before the final decision is made by July 7th.

Those are all the requirements that come to mind that I want to impose on ORR in connection with this reconsideration, but I'm willing to hear other suggestions, if anybody wants to make any other suggestions about what ORR should be required to do.

MS. FABIAN: Your Honor, one question.

And I'm only guessing here if July 7th was based on testimony from my client. The 30-day process is already under way and sort of --

THE COURT: I'm concerned --

MS. FABIAN: -- anticipated to close on the 13th, and only because of the holiday next week would ask if perhaps the Court would allow them to complete it --

THE COURT: No. I'm ordering it to be done by

July 7th, and I'm very concerned about the adequacy of that

process, which is why I included some specific requirements for
things that ORR needs to do and things that ORR needs to look

into. 1 2 MS. FABIAN: Okay. And then I guess I would ask -- and I -- I apologize. You 3 asked ORR to -- I understand the requirements with what they 4 5 need to do and the process that that they need to follow. think that makes sense. 6 7 You initially said to review the initial decision and --8 so that their initial custody determination and then their -make a new determination. And you said consistent with the 9 statute. 10 Is that consistent with their own policy as they've 11 interpreted the statute, or is there another sort of 12 13 interpretation of the statute that you're asking them to apply? 14 THE COURT: I don't have in mind any requirement that 15 they make a determination that is different from how they would 16 do it pursuant to their policy, except to the extent that the 17 policy is inconsistent with anything that I just said. Is that fair? 18 MS. FABIAN: That's helpful, Your Honor. Thank you. 19 20 THE COURT: Anything else? 21 MR. FREEMAN: Thank you, Your Honor. Just a logistical question purely, and we understand the 22 23 order. In terms of opportunity for counsel to have input and 24

respond, I take it that that's something that happens before

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the 7th and that there's a report that needs to be submitted by 1 ORR to this Court and to us by the 7th? 2 THE COURT: Well, so clearly what is baked into my 3 4 order that I just announced is that ORR needs to provide the child's attorney with the information that will go into 5 whatever decision they will be making well enough before the 6 7 7th to give the attorney an opportunity to respond. 8 The child himself, as I said, must be given an opportunity to be heard. 9 You seem to be asking is ORR required to submit a report 10 by the 7th. 11 12 MR. FREEMAN: Right. I'm not trying to be obtuse. 13 I'm just trying to figure out where does this go and who does it get to and when. 14 15 THE COURT: I think it's -- it can be that ORR submit 16 a report, it can be that the parties come back for a Status 17 Conference on the Tuesday after -- actually, I don't believe I'm going to be -- where am I going to -- I'm not going to be 18 19 here. 20 I mean, we could have -- am I going to be here that 21 Friday, the 7th? We could have a Status Conference on Friday, the 7th, or ORR can provide a written report -- what would 22 23 be --MS. FABIAN: I will be in L.A. on the 7th. 24 25 THE COURT: We could have a telephonic Status

Conference on the 7th.

Would you rather do that or would you rather submit something in writing on the 7th?

MS. FABIAN: I believe if my client is going to issue a decision, it would make sense for us to at least submit that to opposing counsel, if not submit it to the Court, and then follow up with a Status Conference from there so that -- so I don't believe we would be able to provide that any earlier, and that way the parties could talk about what we would propose to the Court happen from there.

THE COURT: Okay. So what does that mean? Status Conference on Friday?

MR. FREEMAN: Friday afternoon, the 7th? Friday morning?

MS. FABIAN: I guess what I'm saying is if my client issues something on the 7th, having a Status Conference might be premature on that Friday, only because we'll all sort of review it when it's issued and then perhaps talking after that to determine now that that is there, what do we believe should happen next.

THE COURT: Okay. I'm somewhat hopeful -- back when I worked for the Government, if I was the litigator in a case like this, I would then be involved in the decision that was going to be issued afterwards. I'm hopeful that you are going to be involved as well.

MS. FABIAN: Absolutely, Your Honor. Because I'm in court and across the country from my clients on that day and assuming it is issued that day, that would be the day -- the earliest I would then be able to discuss that with opposing counsel. I think if we're doing that for the first time with the Court, it may be less productive in terms of seeing where the parties --

THE COURT: I assume one of two things is going to happen: Your client will make a decision that they're happy with or your client will make a decision that they're not happy with.

And if they're not happy with it, presumably they will want to seek further relief here, and if they want to seek further relief here, that -- it's going to take time for them to prepare their submission and all that stuff. They're not -- I assume they're not going to be seeking relief on Friday afternoon.

But I think what I would like to do is set a Status

Conference for Friday afternoon on the 7th at 3:00. And if you

mutually decide that there is no value in having that Status

Conference at that time, you can move to continue it to

Wednesday, the 12th.

We have Case Management Conferences on Wednesday the 12th that week; right? Why are you looking so troubled?

THE CLERK: We have four items at 1:30; one item at

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2:30.
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               THE COURT: That's not too bad.
           Why don't we say 2:30 on Friday the 7th, and you can move
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      it, if you want, to 2:30 on Wednesday, the 12th.
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               MS. FABIAN: That sounds fine.
 5
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               MR. FREEMAN: Thank you, Your Honor.
 7
               THE COURT: Okay.
               MR. MASS: And is that going to be in person or
 8
      telephonic?
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               THE COURT: I assume telephonic would be better.
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               MS. FABIAN: It would need to be, yes.
               MR. MASS: Okay. Thank you.
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               THE COURT: All right. Thank you.
                   (Proceedings adjourned at 5:02 p.m.)
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CERTIFICATE OF REPORTER I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. DATE: Monday, July 10, 2017 Pamela A. Batalo Pamela A. Batalo, CSR No. 3593, RMR, FCRR U.S. Court Reporter 

## Exhibit 54

Case 2:855-cas-0:4544-50N16,-ACFR6/2001cl.unitent.0480924:17F,ilekt.0411/6/19-1P.Rgeg.0.09761259 Page ID #:15394

Case 3:17-cv-03615-VC Document 61-3 Filed 09/25/17 Page 112 of 181

# EXHIBIT C TO DECLARATION OF ASHLEY CORKERY

[B. Cardall Responses to RFAs]

### Case 2:855@se0:4544-5JM165-A631R6/200d@untern10480924:17F,ilekt194/11/6/19-1P.Roged.18:861259 Page ID #:15395

	Case 3:17-cv-03615-VC Document 61-3 Filed 09/25/17 Page 113 of 181													
1	PHILIP J. POGLEDICH, COUNTY COUNSEL (State Bar No. 197110) OFFICE OF THE COUNTY COUNSEL													
2	625 Court Street, Room 201 Woodland, CA 95695													
3	Telephone: (530) 666-8172 Facsimile: (530) 666-8279													
4	Attorneys for Defendant/Respondent BRENT CARDALL,													
5	Chief Probation Officer of Yolo County In His Official Capacity													
6														
7														
8	UNITED STATES DISTRICT COURT													
9	NORTHERN DISTRICT OF CALIFORNIA													
10	TODENIA GOVERA													
11	LORENZA GOMEZ, as next friend for J.G., a minor, and on her own behalf, et al.,													
12	Petitioners/Plaintiffs on behalf of themselves individually and PEFENDANT BRENT CARDALL'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSION, SET ONE													
13	of themselves individually and others similarly situated,  REQUEST FOR ADMISSION, SET ONE													
14 15	v.													
16	JEFFERSON B. SESSIONS, et al.,													
17	Respondents/Defendants.													
18														
19	PROPOUNDING PARTY: PETITIONERS/PLAINTIFFS													
20	RESPONDING PARTY: Defendant/Respondent BRENT CARDALL, Chief Probation													
21	Officer of Yolo County, in his official capacity													
22	SET NO.: ONE													
23	Defendant/Respondent Brent Cardall ("Defendant") hereby responds to Plaintiffs' Requests													
24	for Admission (Set One) as follows. All capitalized terms set forth below shall have the meaning													
25	set forth in the Definitions section of Plaintiffs' Requests for Admission.													
26														
27														
28														
	DEFENDANT'S DESCONSES TO BLAINTIES'S DEOLIEST FOR ADMISSION													

Case 3:17-cv-03615-VC Document 61-3 Filed 09/25/17 Page 114 of 181 REQUESTS FOR ADMISSION 2 REQUEST FOR ADMISSION NO. 1: 3 Admit that prior to August 26, 2017 the federal government sent at least seven 4 UNDOCUMENTED TEENAGERS to YOLO. 5 RESPONSE: 6 Admit. 7 REQUEST FOR ADMISSION No. 2: 8 Admit that prior to August 26, 2017 the federal government failed to provide evidence of alleged gang affiliation with respect to at least seven UNDOCUMENTED TEENAGERS sent to 9 YOLO within 30 days of their arrival at YOLO. 10 RESPONSE: 11 12 Admit. REQUEST FOR ADMISSION No. 3: 13 14 Admit that the federal government failed to provide evidence of alleged gang affiliation with respect to A.H. and J.G., the two UNDOCUMENTED TEENAGERS sent to YOLO who are named 15 in the AMENDED COMPLAINT, within 30 days of their arrival at YOLO. 16 17 RESPONSE: 18 Defendant admits this request in part and denies it in part, as follows. The federal 19 government provided some information on A.H.'s alleged gang affiliation on July 3, 2017, 20 days after his arrival at YOLO. The information is contained in documents that will be produced 20 21 concurrently with the service of these responses (Bates Nos. 0762-67). Defendant takes no position as to whether the information provided on July 3, 2017 is sufficient to establish the alleged gang 22 affiliation of A.H. 23 REQUEST FOR ADMISSION No. 4: 25 Admit that prior to August 26, 2017 the Yolo County Probation Department could not verify gang affiliations for most of the UNDOCUMENTED TEENAGERS sent to YOLO. 26 27 28 DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSION

### Case 2:85@as-@4594-50M46,-A6916/200d@unite:n1.048092417F;ilekt19.4/11/6/19-1P.Rgegel.12/06/1259 Page ID #:15397

	Case 3:17-cv-03615-VC Document 61-3 Filed 09/25/17 Page 115 of 181
1	RESPONSE:
2	Admit.
3	REQUEST FOR ADMISSION No. 5:
4	Admit that prior to August 26, 2017 the Yolo County Probation Department reached out to
5	local law enforcement agencies where the UNDOCUMENTED TEENAGERS were first arrested
6	but often found corroboration of gang allegations from these agencies to be lacking or insufficient.
7	RESPONSE:
8	Admit.
9	REQUEST FOR ADMISSION No. 6:
10	. Admit that prior to August 26, 2017 the Yolo County Probation Department concluded it did
11	not have just cause to detain most of the UNDOCUMENTED TEENAGERS sent to YOLO.
12	RESPONSE:
13	Admit. In responding to this Request for Admission, the responding party has interpreted
14	"just cause" in a manner consistent with Section 1.2.4 of the ORR Guide (describing the
15	circumstances under which it is appropriate to place a child in a "Secure Care Facility") available
16	on the internet at the following link: https://www.acf.hhs.gov/orr/resource/children-entering-the-
17	united-states-unaccompanied.
18	
19	Dated: September 20, 2017
20	PHILIP J. POGLEDICH
21	County Counsel, County of Yolo Attorneys for Defendant Brent Cardall
22	
23	
24	
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	DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSION

Case 2:85-cas-0:4544-50M45-A&FR6/200d@unite:n1048092417F;ilekt04x11x6/19-1P.Rgegel13:051259 Page ID #:15398

Case 3:17-cv-03615-VC Document 61-3 Filed 09/25/17 Page 117 of 181

# EXHIBIT D TO DECLARATION OF ASHLEY CORKERY

[B. Cardall Supplemental Responses to RFAs]

	11.13033								
	Case 3:17-cv-03615-VC Document 61-3	Filed 09/25/17 Page 118 of 181							
1	PHILIP J. POGLEDICH, COUNTY COUNSEI OFFICE OF THE COUNTY COUNSEL	(State Bar No. 197110)							
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3	Telephone: (530) 666-8172 Facsimile: (530) 666-8279								
4	Attorneys for Defendant/Respondent BRENT C	ARDALI							
5	Chief Probation Officer of Yolo County In His Official Capacity	nazini,							
6	In this official capacity								
7									
8	UNITED STATES	DISTRICT COURT							
9	NORTHERN DISTR	ICT OF CALIFORNIA							
10									
11	LORENZA GOMEZ, as next friend for J.G., a	Case No. 3:17-cv-03615-VC							
12	minor, and on her own behalf, et al.,	DEFENDANT BRENT CARDALL'S							
13	Petitioners/Plaintiffs on behalf of themselves individually and	RESPONSE TO PLAINTIFF'S REQUEST							
14	others similarly situated,	FOR ADMISSION, SET ONE, REQUEST FOR ADMISSION NO. 3							
15	V.								
16	JEFFERSON B. SESSIONS, et al.,								
17	Respondents/Defendants.								
18		27							
19	PROPOUNDING PARTY: PETITION	ERS/PLAINTIFFS							
20	RESPONDING PARTY: Defendant/	Respondent BRENT CARDALL, Chief Probation							
21	Officer of	Yolo County, in his official capacity							
22	SET NO.: ONE								
23	Defendant/Respondent Brent Cardall (")	Defendant") hereby supplements and corrects his							
24	original response to Plaintiffs' Requests for Admission (Set One), Request for Admission No. 3, as								
25	follows. All capitalized terms set forth below s	hall have the meaning set forth in the Definitions							
26	section of Plaintiffs' Requests for Admission.								
27									
28									
- Carrier 1									
	DEFENDANT'S SUPPLEMENTAL RESPONSE TO	O PLAINTIFF'S REQUEST FOR ADMISSION NO. 3							

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Case 3:17-cv-03615-VC Document 61-3 Filed 09/25/17 Page 119 of 181 SUPPLEMENTAL (CORRECTED) RESPONSE 2 TO REQUEST FOR ADMISSION NO. 3 3 REQUEST FOR ADMISSION No. 3: Admit that the federal government failed to provide evidence of alleged gang affiliation with 5 respect to A.H. and J.G., the two UNDOCUMENTED TEENAGERS sent to YOLO who are named in the AMENDED COMPLAINT, within 30 days of their arrival at YOLO. 6 7 **ORIGINAL RESPONSE:** 8 Defendant admits this request in part and denies it in part, as follows. The federal government provided some information on A.H.'s alleged gang affiliation on July 3, 2017, 20 days after his arrival at YOLO. The information is contained in documents that will be produced concurrently with the service of these responses (Bates Nos. 0762-67). Defendant takes no position as to whether the information provided on July 3, 2017 is sufficient to establish the alleged gang affiliation of A.H. SUPPLEMENTAL (CORRECTED) RESPONSE: Defendant admits this request as to J.G. With respect to A.H., Defendant responds that the federal government provided some information on A.H.'s alleged gang affiliation on July 3, 2017, 20 days after his arrival at YOLO. The information is contained in documents produced concurrently with the service of Defendant's original response to Plaintiff's First Set of Requests for Admission (Bates Nos. 0762-67). Defendant takes no position as to whether the information provided on July 3, 2017 is sufficient to establish the alleged gang affiliation of A.H. Dated: September 21, 2017 PHILIP'J. POGLEDICH County Counsel, County of Yolo Attorneys for Defendant Brent Cardall

DEFENDANT'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION NO. 3

## Exhibit 56

### REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

01/09/2018

#### Patient Profile - Active Medications

Client: Teaching Home: WOOD HOUSE

Physician: JAVIER RUIZ-NAZARIO, MD

Allergies: IBUPROFEN; SPICY FOODS , FISH , SOUR CREAM

Rx #	Medication	Instructions	Start Date							
*** Psychotropic Medications ***										
56169	BUPROPION TAB 100MG SR	TAKE 1 TABLET BY MOUTH DAILY at 8:00 PM	12/19/2017							
56100	GABAPENTIN CAP 100MG	TAKE 1 CAPSULE BY MOUTH 3 TIMES DAILY at 8:00 AM, 2:00 PM and 8:00 PM	12/05/2017							
	*** ]	Non-Psychotropic Medications ***								
56127	CALCIUM PLUS	TAKE 2 TABLETS BY MOUTH DAILY at 8:00 PM	12/06/2017							
56126	COREPLEX WITH IRON	TAKE 2 TABLETS BY MOUTH WITH BREAKFAST DAILY at 8: 00 AM	12/06/2017							
56124	OMEGAPLEX	TAKE 1 CAPSULE BY MOUTH WITH BREAKFAST AND DINNER TWICE A DAY at 8:00 AM and 4:00 PM	12/06/2017							
56125	PROBIOTIC RESTORE ULTRA	TAKE 1 CAPSULE BY MOUTH WITH BREAKFAST DAILY at 8:	12/06/2017							

## Exhibit 57

### REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

11/27/2017

#### Patient Profile - Active Medications

Client: Physician: JAVIER RUIZ-NAZARIO, MD

Teaching Home: 58-A

Allergies: NKDA

Rx #	Medication	Instructions	Start Date
	***	Psychotropic Medications ***	
56042	CLONIDINE TAB 0.1MG	TAKE 1 TABLET BY MOUTH DAILY at 8:00 PM	11/21/2017
56007	ESCITALOPRAM TAB 20MG	TAKE 1 TABLET BY MOUTH DAILY at 8:00 PM	11/14/2017
56009	QUETIAPINE TAB 100MG	TAKE 1 TABLET BY MOUTH DAILY at 8:00 PM	11/14/2017
56043	QUETIAPINE TAB 50MG	TAKE 1 TABLET BY MOUTH (TAKE WITH THE 100MG TABLET TO MAKE 150MG DOSE) DAILY at 8:00 PM	11/21/2017
	*** No	on-Psychotropic Medications ***	
55904	CALCIUM PLUS	TAKE 2 TABLETS BY MOUTH DAILY at 8:00 PM	10/18/2017
55903	CORRELEX	TAKE 2 TABLETS BY MOUTH DAILY WITH BREAKFAST at 8: 00 AM	10/18/2017
55901	OMEGAPLEX	TAKE 1 CAPSULE BY MOUTH TWICE A DAY WITH BREAKFAST AND DINNER at 8:00 AM and 4:00 PM	10/18/2017
55902	PROBIOTIC RESTORE UNTRA	TAKE 1 CAPSULE BY MOUTH DAILY WITH BREAKFAST at 8: 00 AM	10/18/2017
56011	DIPHENHYORAM INJ 50MG/ML	INJECT 25MG INTRAMUSCULARLY EVERY 6 HOURS AS NEEDED FOR AGII'ATION/ANXIETY (USE WITH ATIVAN)	11/14/2017
56010	LORAZEPAM INJ 2MG/ML	INJECT 0.5ML INTRAMUSCULARLY EVERY 6 HOURS AS NEEDED FOR AGITATION/ANXIETY (USE WITH BENADRYL)	11/14/2017



## Exhibit 58

### REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

07/31/2017

#### Patient Profile - Active Medications

Client:

Teaching Home: 58-c

Physician: JAVIER RUIZ-NAZARIO, MD Allergies: No Known Drug Allergy

Rx #	Medication .	Instructions	Start Date
		*** Psychotropic Medications ***	
55501	ARIPIPRAZOLE TAB 10MG	TAKE 1 TABLET BY MOUTS DAILY at 8:00 PM	07/18/2017
55353	BENZTROPINE TAB 1MG '	TAKE 1 TABLET BY MOUTH TWICE A DAY at $8:00$ AM and $8:00$ PM	06/07/2017
55522	CHLORPROMAZ TAB 25MG	TAKE 1 TABLET BY MOUTH DAILY at 8:00 FM	07/25/2017
55354	DESMOPRESSIN TAB 0.2MG	TAKE Z TABLETS BY MOUTH DAILY at 8:00 PM	06/07/2017
55503	ESCITALOPRAM TAB 20MG	TAKE 1 TABLET BY MOUTR DAILY at 8:00 AM	07/18/2017
55524	LAMOTRIGINE TAB 25MG	TAKE 2 TABLETS BY MOUTH DAILY FOR 7 DAYS, THEN INCREASE AT 8:00 PM ON HOUS GOSE ST	07/25/2017 MRHED 7-30
55525	LAMOTRIGINE TAB 25MG	TAKE 3 TABLETS BY MOUTH (75MG) DAILY FOR 7 DAYS, THEN INCREASE, BEGIN LITHIUM DECREASE, at 8:00 PM	07/25/2017
55526	LAMOTRIGINE TAB 25MG	TAKE 4 TABLETS BY MOUTH (100MG) DAYLY at 0:00 PM	07/25/2017
55504	LITHIUM CARE CAP 300MG	TAKE 1 CAPSULE AFTER TWICE A DAY at 8:00 AM and 8:	07/18/2017
55527	LITHIUM CARB CAP 300MG	TAKE 1 CAPSULE BY MOUTH DAILY FOR 7 DAYS THEN D/C (BEGIN DECREASE ON 3RD WEEK OF LAMOTRIGINE) at 8:	07/25/2017
		*** PRN Psychotropic Medications ***	
55428	ARIPIPRAZOLE TAB 5MG	TAKE 1 TABLET BY MOUTH EVERY 8 HOURS AS NEEDED HALLUCINATIONS	06/28/2017
55505	TRAZODONE TAB 50MG	TAKE 1 TABLET BY MOUTH DAILY AS NEEDED FOR SLEEP at 8:00 PM	07/18/2017
		*** Non-Psychotropic Medications ***	
55351	DOK CAP 100MG	TAXE 1 CAPSULE BY MOUTH DAILY at 8:00 AM	06/07/2017
55430	BANOFHEN CAP 50MG	TAKE 1 CAPSULE BY MOUTH EVERY 8 HOURS AS NEEDED	06/28/2017
55357	BANOPHEN CRE 2-0.1%	APPLY TO AFFECTED AREA EVERY 8 HOURS AS NEEDED	06/07/2017

A suly

## Exhibit 59

### REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

Shiloh Treatment Center, Inc. Admission Packet Office of Refugee Resettlement

#### **Medication Information and Reconciliation**

Include all medication the client is currently prescribed.

				9-	28-17	1		Tabath	a Ketr	1er		
Client Name				Date of Completion · F				Form Completed By				
. Source of Med		nformation:	-	Pharmacy L	abel	☐Parent or Clie	ent	□Pl	ysician Pre	scription	l	
Check All That Apply			Discharge S	ummary/Re	cords From Transferring	g Facility	Facil	ity:			_	
		•		Other:					,			-
Medication at Admiss	sion					•			For Use b	y Clinic	Staff	
Name of Medication	Dose	Frequency	Route	Prescriber	Date Prescribed	Target Symptoms	Last Dose  Date Time	Quantity Provided at Admit	Quantity Received at Admit	Order on Admit	Change on Admit	Discontinue on Admit
Topiramate	200 neg	B10	Po	Villalobos	8-14-17	Serve	9/22 Am	66	66	Y	N.	N
Levetiracetam	lovoma		PG	Villalobos		Seizure	9/28 AM	31	31	γ	N	N
Divalproex ER	Same	BID	PO	Villalobos	l	Service	928 AM	67	67	X	$\mathcal{N}$	$\Delta$
Oxcarbozepine	150 me	BIO	PO	Torres	9-15-17		9/28 Am	33	33	Ϋ́	N	N
Sertraline	50me	daily	Po	Torres	9-15-17	Depressien J	9/28 An	1 1	17	y	N	· N
Pro-Air HFA	90mcg	2 puff gy		V Shortness o	F Breath	Asthma	unk -	1	1.	Y	N	N
Diastat Acadial	long	PRN-	Redal	Election	8-28-17	Service	eun -	<u> </u>		7_	N	N
						14000000						
							<u> </u>	<u> </u>				7
			Mode	Then	<u> </u>			9-22	[] 3-17			
<del></del>			Parent, (	Guardian, or Co	nservator			Da	ite			
For Use by Cli Review of Med	ication C	Conducted E	-	Sheri	Pitts	Date:	9-28-			50 Pr		
Physician Appr Change in Med	•		_	Rafael Guerrero,	MD □V	ictor Oderinde, MD	⊠Javier Rui	z, MD	□Vernor	n Walling	э, MD 	

Shiloh Treatment Center, Inc. Admission Packet Office of Refugee Resettlement

Over-the-Counter	(OTC)	Medication	Release
------------------	-------	------------	---------

Client Name:		
	non-prescription (OTC) medications may bason for use without a written order from a	
Check box if	you do not wish to be treated with any o	of the medications listed.
Do Not Use	Medication	Reason for Use
	Acetaminophen 325mg Tablet (ages 12 and over)	Fever > 100° Minor aches and pains Headache
	Acetaminophen Liquid (ages 2 – 11 years)	Fever > 100° Minor aches and pains
(BK)	Ibuprofen 200mg Tablet (ages 12 and over) Allergy	Mild pain Menstrual cramps
	Hibiclens (Liquid)	Minor cuts, scrapes and abrasions
	Insect Repellant (Aerosol)	Prevent insect bites
	Triple Antibiotic Ointment	Minor cuts scrapes abrasions
	Milk of Magnesia (Liquid)	Constipation
	Pepto Bismol	Upset stomach
	Swimmer's Ear (Solution).	Prevent infection from swimming
Off-site Day Car	npuses Only	
	Benadryl	Allergic Reaction EPS Symptoms
	Jalan Retner RV	9-29-17
	Parent, Guardian, or Conservator	Date

## Exhibit 60

### REDACTED VERSION OF DOCUMENT FILED UNDER SEAL



Shiloh Treatment Center, Inc. . Admiss

Office of Refugee Resettlement

Admission Packet			M			ion and Reconci		on					
					9-7-	,	ibed.		Sh	eru.	L	tt	<u>)</u>
Client Name		$\lambda$	•	Date of	f Completio	n		Fo	rm Complet	ted By			
Source of Me Check All Tha		nformation:		7~	ummary/Re	□Parent or Clie: cords From Transferring	Facili		Facili	iysician Pre			-
Medication at Admis	sion									For Use I	y Clini	c Staff	
Name of Medication	Dose	Frequency	Route	Prescriber	Date Prescribed	Target Symptoms	Last D		Quantity Provided at Admit	Quantity Received at Admit	Order on Admit	Change on Admit	Discontinue on Admit
Fluoxetine	12000	t Open	20	PA Petru	8/14/17	depression	9/4	HS	38	38	У	N	N
Melatoria	3m		10	111, 1-10-0	3 - 7 - 9 - 1	sleep	9/6	НЗ		4860	У	N	N
		Jan	balk	Shelw	RN	,			9-7-	- / 7 ate			
For Use by 0 Review of Me Physician Ap Change in M	edication ( proving M	ff Conducted : Iedication:	Ву:	Guardian, or Co	reri P	7 .#+5 Date:			,		n Walli		- -

Rev. 09/10

Copy to Medical Chart and Copy Completed Form to Pharmacy

R-1

1	(	
	CARLOS R. HOLGUÍN (Cal. Bar No. 90754)	
2	PETER A. SCHEY (Cal. Bar No. 58232) Center for Human Rights & Constitutional	Law
3	256 South Occidental Boulevard	
4	Los Angeles, CA 90057	
5	Telephone: (213) 388-8693 Email: crholguin@centerforhumanrights.o:	rø
6	pschey@centerforhumanrights.org	· 5
7	LEECIA WELCH (Cal. Bar No. 208741)	
8	National Center for Youth Law	
9	405 14th Street, 15th Floor Oakland, CA 94612	
10	Telephone: (510) 835-8098	
11	Email: lwelch@youthlaw.org	
12	Listing continues on next page	
13	Attorneys for Plaintiffs	
14		
15		
16	UNITED STATES I	DISTRICT COURT
17	CENTRAL DISTRICT OF CALIF	ORNIA - WESTERN DIVISION
18	Jenny Lisette Flores, et al.,	Case No. CV 85-4544-DMG (AGRx)
19	Plaintiffs,	EXHIBITS IN SUPPORT OF MOTION TO
20		ENFORCE SETTLEMENT (Vol. 5: Exs.
21	V.	61-89, PAGES 408-655, REDACTED
22	Jefferson B. Sessions, Attorney General,	EXHIBITS ONLY)
23	et al.,	Hearing: June 29, 2018 Time: 9:30 a.m.
24	Defendants.	Room: 1st St. Courthouse Courtroom 8C
25		Court oom oc
26	REDACTED VERSIONS OF DOC	CUMENTS FILED UNDER SEAL
27		

### Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 2 of 70 Page ID #:16726

Counsel for Plaintiffs, continued HOLLY S. COOPER (Cal. Bar No. 197626) Co-Director, Immigration Law Clinic CARTER C. WHITE (Cal. Bar No. 164149) Director, Civil Rights Clinic University of California Davis School of Law One Shields Ave. TB 30 Davis, CA 95616 Telephone: (530) 754-4833 Email: hscooper@ucdavis.edu ccwhite@ucdavis.edu 

### Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 3 of 70 Page ID

I, Carlos Holguín, do hereby declare that true and correct copies of the following 1 documents are attached hereto: 2 3 INDEX TO EXHIBITS 4 Description Page(s) No. 5 Declaration of the Mother of Nicolás C., February 6, 2018 1 6 7 Declaration of Nicolás C., February 4, 2018 (filed partially 2 8 9 Morrison Paso Case Review re: Nicolás C., September 17, 2017 3 10 11 Custody Order of the Immigration Judge re: Nicolás C., 4 12 13 Declaration of Leland Baxter-Neal, February 6, 2018 (filed 5 partially under seal) 29-34 14 Email from Erich Corona re: Nicolás C., January 9, 2018 (filed 6 15 partially under seal) 35-38 16 Declaration of James M. Owens, February 7, 2018 (filed 7 17 partially under seal) 39-43 18 ORR Interim Guidance re: Custody Hearings, July 18, 2017..........44-55 8 19 9 Declaration of Daniella Q., February 28, 2018 (filed partially 20 under seal) 56-59 21 Declaration of Isabella M., December 1, 2017 (filed partially 10 22 under seal) 60-63 23 Supplemental Declaration of Isabella M., February 28, 2018 11 24 25 12 Declaration of the Mother of Isabella M., February 28, 2018 (filed partially under seal) 69-75 26 27 13 Declaration of Victoria R., February 28, 2018 (filed partially under seal) 76-79 28 iii

## Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 4 of 70 Page ID #:16728

1 2	14	Declaration of David I., November 30, 2017 (filed partially under seal)	30-84
3 4	15	Supplemental Declaration of David I., February 28, 2018 (filed partially under seal)	35-88
5	16	Declaration of Eduardo A., March 1, 2018 (filed partially under seal) 89-93	
6 7	17	Declaration of Rosa L., December 1, 2017 (filed partially under seal) 94-97	
8 9	18	Supplemental Declaration of Rosa L., February 28, 2018 (filed partially under seal)	3-100
10 11	19	Declaration of Gabriela N., December 1, 2017 (filed partially under seal)	-104
12 13	20	Supplemental Declaration of Gabriela N., February 28, 2018 (filed partially under seal)	5-108
14 15	21	Declaration of Arturo S., February 28, 2018 (filed partially under seal)	<b>)</b> -112
16	22	ORR Form Notice of Placement in a Restrictive Setting, February 5, 2018	3-115
17 18	23	ORR FAQ: July 2017 Bond Hearings for Unaccompanied Alien Children (UAC)	5-118
19 20	24	ORR FAQ: ORR Directors Release Decision, January 26, 2018 119	-121
21	25	Letter from Carlos Holguín to Office of Immigration Litigation, December 19, 2017	2-129
22 23	26	Email from Sarah Fabian re: Flores Meet and Confer Discussion, January 12, 2018	)-131
<ul><li>24</li><li>25</li></ul>	27	Letter from Leecia Welch to Office of Immigration Litigation re: Psychotropic Medications, and Attachments, January 16, 2018 (filed partially under seal)	) 161
<ul><li>26</li><li>27</li><li>28</li></ul>	28	2018 (filed partially under seal)	

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1 2	29	Email from Sarah Fabian re: Flores Meet and Confer Discussion, March 2, 2018	165-168
3 4	30	Declaration of Javier C., November 15, 2017 (filed partially under seal)	169-173
5	31	Declaration of Carlos A., November 16, 2017 (filed partially under seal)	174-177
6 7	32	Declaration of Miguel B., November 16, 2017 (filed partially under seal)	178-181
8	33	Declaration of Luis D., November 15, 2017 (filed partially under seal)	
10	34	Declaration of Andrés D., July 11, 2017 (filed partially under seal)	
12	35	Declaration of Jorge E., July 11, 2017 (filed partially under seal)	
13 14	36	Declaration of Gustavo H., July 11, 2017 (filed partially under seal)	
15 16	37	Declaration of Roberto F., July 11, 2017 (filed partially under seal)	
17 18	38	Declaration of Natalia T., November 21, 2017 (filed partially under seal)	
19 20	39	Declaration of Ricardo U., November 21, 2017 (filed partially under seal)	224-226
21 22	40	Declaration of Sofia O., December 1, 2017 (filed partially under seal)	227-231
23 24	41	Declaration of Gloria P., December 1, 2017 (filed partially under seal)	
25	42	Declaration of Edwin B., March 1, 2018 (filed partially under seal)	
<ul><li>26</li><li>27</li><li>28</li></ul>	43	Letter from Carlos Holguín to Cynthia Nunes Colbert, <i>et al.</i> , re: Legal Representation for Specified Class Members, March 12, 2018 (filed partially under seal).	
		V EXHIBITS IN SUPPORT ENFORCE	

## Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 6 of 70 Page ID #:16730

1 2	44	Declaration of Samuel W., October 26, 2017 (filed partially under seal)	247-250
3 4	45	Declaration of Jaime V., October 26, 2017 (filed partially under seal)	251-254
5	46	Declaration of Mateo X., October 26, 2017 (filed partially under seal)	255-256
6 7	47	Declaration of Mario Y., October 26, 2017 (filed partially under seal)	257-260
8 9	48	Declaration of Maricela J., November 30, 2017 (filed partially under seal)	261-264
10 11	49	Declaration of Teresa K., November 30, 2017 (filed partially under seal)	265-268
12 13	50	Declaration of Diego E., January 16, 2018 (filed partially under seal)	269-273
14	51	Declaration of Daniel F., March 21, 2018 (filed partially under seal)	274-278
15 16	52	Declaration of Alejandro G., March 21, 2018 (filed partially under seal)	279-285
<ul><li>17</li><li>18</li><li>19</li></ul>	53	Transcript of Testimony of James De La Cruz, <i>Saravia v. Sessions</i> , Case No. 3:17-cv-03615-VC (N.D. Cal. June 29, 2017), Dkt. No. 28	286-382
20 21	54	Defendant Brent Cardall's Responses to Plaintiff's Request for Admission, Set One, <i>Saravia v. Sessions</i> , Case No. 3:17-cv-03615-VC (N.D. Cal. Sept. 20-21, 2017), Dkt. No. 61-3	383-390
22   23	55	Declaration of Camila G., April 3, 2018 (filed partially under seal)	
<ul><li>24</li><li>25</li></ul>	56	Patient Profile – Active Medications of Victoria R., January 9, 2018 (filed partially under seal)	397-398
<ul><li>26</li><li>27</li></ul>	57	Patient Profile – Active Medications of David I., November 27, 2017 (filed partially under seal)	399-400
28			

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1 2	58	Patient Profile – Active Medications of Rosa L., July 31, 2017 (filed partially under seal)	401-402
3	59	Medication Information and Reconciliation and Over-the-	
4		Counter Medication Release Forms for Isabella M., September 28-29, 2017 (filed partially under seal)	403-405
5	60	Medication Information and Reconciliation Form for Gabriela	
6		N., September 7, 2017 (filed partially under seal)	406-407
7 8	61	Medication Information and Reconciliation Form for Sofia O., September 18, 2017 (filed partially under seal)	408-409
9	62	Yolo County Juvenile Detention Facility Parental Medical	
10	02	Authorization Form for Julio Z., December 14, 2016 (filed partially under seal)	410-411
11	63	Patient Profile – Active Medications of Julio Z., December 12,	
12	03	2016 (filed partially under seal)	412-413
13 14	64	Declaration of Julio Z., November 13, 2017 (filed partially under seal)	414-424
15 16	65	Declaration of Sister of Victoria R., March 13, 2018 (filed partially under seal)	425-431
17 18	66	Declaration of Proposed Sponsor of Victoria R., March 13, 2018 (filed partially under seal)	432-435
19 20	67	Declaration of Grandfather of Gabriela N., March 15, 2018 (filed partially under seal)	436-441
21	68	Custody Order of the Immigration Judge re: Santiago H.,	
22		February 21, 2018 (filed partially under seal)	442-443
23	69	Order of the Immigration Judge with Respect to Custody re:	111 116
24		Santiago H., March 20, 2018 (filed partially under seal)	444-446
25	70	Email from Toby Biswas re: Santiago H. Follow Up, February 23, 2018 (filed partially under seal)	447-449
26	71	Case Review re: Santiago H., November 29, 2017 (filed	
27	, 1	partially under seal)	450-452
28	1		

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1 2	72	ORR Information Memo re: Community Safety Initiative for the Unaccompanied Alien Children Program, August 16, 2017	453-457
3 4	73	Declaration of John Doe 1, John Doe 1 v. Shenandoah Valley Juvenile Ctr. Comm'n, Case No. 5:17-cv-00097-EKD-JCH,	.=0
5		(W.D. Va. Jan. 17, 2018), Dkt. No. 34-1	458-464
6 7	74	Declaration of John Doe 2, John Doe 1 v. Shenandoah Valley Juvenile Ctr. Comm'n, Case No. 5:17-cv-00097-EKD-JCH, (W.D. Va. Jan. 5, 2018), Dkt. No. 34-2	465-471
8	75	Declaration of John Doe 3, John Doe 1 v. Shenandoah Valley Juvenile Ctr. Comm'n, Case No. 5:17-cv-00097-EKD-JCH (W.D. Va. Jan. 5, 2018), Dkt. No. 34-3	472-478
<ul><li>10</li><li>11</li><li>12</li></ul>	76	Declaration of D.M, <i>John Doe 1 v. Shenandoah Valley Juvenile Ctr. Comm'n</i> , Case No. 5:17-cv-00097-EKD-JCH, (W.D. Va. Jan. 2, 2018), Dkt. No. 34-5	479-484
13 14	77	Declaration of R.B., <i>John Doe 1 v. Shenandoah Valley Juvenile Ctr. Comm'n</i> , Case No. 5:17-cv-00097-EKD-JCH, (W.D. Va. Jan. 8, 2018), Dkt. No. 34-6	485-490
<ul><li>15</li><li>16</li></ul>	78	Transcript of Jonathan White, <i>Saravia v. Sessions</i> , Case No. 18-15114 (9th Cir. Oct. 27, 2017), Dkt. No. 9-2	491-548
<ul><li>17</li><li>18</li><li>19</li></ul>	79	Exhibit 1 to Appellees' Request for Judicial Notice, <i>Saravia v. Sessions</i> , Case No. 18-15114 (9th Cir. March 16, 2018), Dkt. No. 20	549-555
20	80	Stipulated Settlement Agreement, <i>Flores v. Reno</i> , Case No. CV 85-4544-RJK(Px)	556-584
21 22	81	Declaration of Justin Mixon, October 19, 2017	585-591
23	82	Email from Sarah Fabian re: Correspondence re: Legal Representation for Flores Class Members, March 23, 2018	502 504
24	0.2		392-394
<ul><li>25</li><li>26</li></ul>	83	Letter from James De La Cruz to Flores Counsel re: Psychotropic Medications, April 2, 2018 (filed partially under	595-601
27		seal)	373-001
28			

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1 2	84	Individual Service Plan – Residential Treatment for Victoria R., Shiloh Treatment Center, Inc., December 26, 2017 (filed partially under seal)	602-606
3 4	85	Declaration of Lorelei Alicia Williams, previously filed in this case in Docket No. 239-2, August 5, 2016	607-618
5 6	86	Declaration of Megan Stuart, previously filed in this case in Docket No. 239-2, August 1, 2016	519-646
7	87	Declaration of Carlos Holguín, April 10, 20186	647-649
8 9	88	ORR Authorization for Medical, Dental, and Mental Health Care for Carlos A., July 31, 2017 (filed partially under seal)6	650-652
10	89	Declaration of Carter White, April 14, 2018, attaching Shiloh	
11		Treatment Center Consent to Medical Care Form6	553-655
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### Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 10 of 70 Page ID

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of April, 2018, at Santa Clarita, California. Respectfully submitted, Carlos Holguín /s/ Carlos Holguín 

Shiloh Treatment Center, Inc. Admission Packet Office of Refugee Resettlement

### Medication Information and Reconciliation

Include all medication the client is currently prescribed.

Client Name					9-18-17 of Completion			For	abatha	ted By	CRI	V	-
Source of Med Check All That		nformation:		Apharmacy Discharge	Label Summary/Re	□Parent or C cords From Transferr	ing Facili	ty	∑Pr Facil	nysician Pre			- 
Medication at Admiss	ion					······································	· · · · · · · · · · · · · · · · · · ·		<del></del>	For Use	y Clini	c Staff	
Name of Medication	Dose	Frequency	Route	Prescriber	Date Prescribed	Target Symptoms	Last D	ose	Quantity Provided at Admit	Quantity Received at Admit	Order on	Change on Admit	Discontin on Admit
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Hydroxyzine HCL Fluoxetine HCL	25m		Po	Koshes	9-1-17		9/19	EURIL		13	У	N	N
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-		Sal	<u> à Va</u>	Kellot Guardian, or	D RW				9-18	7-17 ate			
For Use by Cl Review of Med Physician App Change in Me	dication ( roving N	ff Conducted ledication:	Ву:	Sherri	Pitts		9-	.18- er Rui		ime:	<i>3: 00</i> on Wallir	PNL ng, MD	

Rev. 09/10

Copy to Medical Chart and Copy Completed Form to Pharmacy

R-1

## YOLO COUNTY JUVENILE DETENTION FACILITY PARENTAL MEDICAL AUTHORIZATION

DATE OF BOOKING:	12.14.16	-				TIME O	F BOOKING: 1525 Hour
		.16	/200	0 M		Guatemala	
Minor's N	AME	AGE	BIRTH DA	TE GEND	ER -	ETHNICITY	ALIEN NUMBER
PARENT'S NAME:	F. Ray Simm Director, Gu	-	itutional Se	ervices So	CIAL S	ECURITY#:	Not Applicable
WORK PHONE: _(	530) 406-4706	HOME	PHONE: N	ot Applicabl	e	CELLULAR P	HONE: (530) 383-4518
NAME AND NUMBER	OF INSURANCE C	ARRIER;		Refugee Reset s Services (O			naccompanied ington, DC
MEDICAL STATUS:	⊠ No	Y	ES PO	E Number:	_1	V/A	
DATES OF IMMUN	IZATION TO C	нігрноо	D DISEASES	S:			
Polio	DPT		MM	R		TETANUS B	OOSTER
IS IN CUSTODY AT T MADE TO CONTACT	THE YOLO COUR ME IF ANYTHING ONSIBLE FOR ALL	NTY JUVEN COTHER TI L MEDICAL	NILE DETENT HAN ROUTINE L EXPENSES I SEEN BY A PR D K C D	TION FACILITY. E TREATMENT E INCURRED BY T	I UNI ECOMI THIS CH AN OR I	DERSTAND THA ES NECESSARY HLD WHILE IN DENTIST.	RING THE TIME THIS CHIL AT EVERY EFFORT WILL E I UNDERSTAND THAT I A CUSTODY. I UNDERSTAN
O Concret Manage	LA NEEDO			atuda 80mgs			
<ol> <li>SPECIAL MEDIC</li> <li>PAST MEDICAL</li> </ol>	AL NEEDS: OR PSYCHOLOGIC	'AL CONDE	*****	one			
4. ALLERGY INFOR		CALICONDI		IKDA			
AUTHORIZATION TO	PASS OUT TYLEN	OL (ACETA	AMINOPHEN)	DATE AND	Гіме:	12.14.16	5 @1720
Type of Medical C	ONSENT RECEIVE	ED		ONE CONSENT		TE/TIME TE/TIME	2.14.16 @1720
WRITTEN MEDICAL DETENTION FACILITY							UARDIAN TO THE JUVENIL BAL CONSENT.
DETENTION OFFICER	RECEIVING TEL	EPHONE CO	DNSENT:			Section of the sectio	<b>T</b> §.
Parent's/Guardian	i's Signature C	ONSENT:		1/2			by h 12.15.20
SIGNATURE CONSENT	r Witness (Dete	NTION OF	TCER):				

JH604 PARENTAL MEDICAL AUTHORIZATION WHITE - MEDICAL STAFF / PINK - MINOR'S FILE

12/12/2016

### Patient Profile - Active Medications

Client:

Teaching Home: 58-A

Physician: JAVIER RUIZ-NAZARIO, MD Allergies:

Rx #	Medication		Instructions	Start Date
		*** p	sychotropic Medications ***	
53713	BENZTROPINE T	AB 1MG	TAKE 1 TABLET BY MOUTH DAILY at 9:00 PM	07/05/2016
54435	CLONAZEPAM T	AB 2MG	TAKE 1 TABLET BY MOUTE TWICE A DAY at 7:45 AM and 9:00 PM	12/12/2016
54434	DIVALPROEX T	AB 500MG ER	TAKE 1 TABLET BY MOUTH TWICE A DAY at 7:45 AM and 9:00 PM $$	12/12/2016
53974	DULOXETINE C	AP 60MG	TAKE 1 CAPSULE BY MOUTH DAILY at 7:45 AM	09/14/2016
54427	GUANFACINE T	AB 2MG ER	TAKE 1 TABLET BY MOUTH DAILY at 7:45 AM	12/06/2016
54384	LATUDA T	AB 120MG	TAKE 1 TABLET BY MOUTH DAILY FOR 4 DAYS THEN INC at 9:00 PM	11/29/2016
54385	LATUDA T	AB 40MG	TAKE 1 TABLET BY MOUTH DAILY (TAKE ALONG WITH 160MG AFTER BEING ON 120MG 4 DAYS) at 9:00 PM	11/29/2016
		*** PRN	Psychotropic Medications ***	
53580	GEODON I	NJ 20MG	INJECT 20MG INTRAMUSCULARLY EVERY 8 HOURS AS NEEDED FOR AGGRESSIVE BEHAVIOR	06/02/2016
53997	OLANŽAPINE I	NJ 10MG	INJECT 10MG INTRAMUSCULARLY EVERY 6 HOURS AS NEEDED SEVERE AGITATION, PHSICAL AGRESSION	09/20/2016
53998	OLANZAPINE T	AB 10MG ODT	DISSOLVE 1 TABLET BY MOUTH EVERY 6 HOURS AS NEEDED FOR AGITATION AND AGGRESSION	09/20/2016
		*** Non	-Psychotropic Medications ***	
54399	MEAL REPLACEME	NT SHAKE	GIVE 1 SHAKE 3 TIMES DAILY (OFFER TO REPLACE A MEAL) at 7:45 AM, 12:00 PM and 6:00 PM	11/30/2016

1 stistu

### U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT 1901 SOUTH BELL STREET, SUITE 200 ARLINGTON, VA 22202

IN THE MATTER OF:	FILE:
	Docket: ARLINGTON, VA
RESPONDENT	IN REMOVAL PROCEEDINGS
CUSTODY ORDER OF T	HE IMMIGRATION JUDGE
Request having been made for a change in the custo 236.1(c) and having considered the representations Services/ORR and the respondent, it is HEREBY C	of the Department of Health and Human
No Action	
ORDERED No Jurisdiction	
ORDERED that the request for a change	in custody status be denied.
ORDERED that the request be granted an	â.
released from custody under bond of \$	
V OTHER RISTO "Step	sed DOWN to A
OTHER RISTO STEE VEHER RESTRICTIVE  BY THE STAFF	FACILITY AS REC
BY THE STAFF	JOHN M, BRYANT
Report HIST	Immigration Judge Z170818
Appeal: WAIVED / RESERVED (A / H / B)	
Appeal Due By:	4 DANGER TO TITE
THIS DOCUMENT WAS SERVED BY: MAIL (	TE OF SERVICE  M) PERSONAL SERVICE (B) PAX (F)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Off	icer [P] Alien's ATP/REP [P)/HHS/ORR )_
Attachments: [ ] EOIR-33 [ ] EOIR-28	BY: COURT STAFF  [ ] Legal Services List [ X ] Other
I 200 Miles 100	

# UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT ARLINGTON, VA

FILE:

IN THE MATTER OF:

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby ORDERED that the request for a change in custody status be denied. ORDERED that the request be granted and that respondent be: released from custody on his own recognizance released from custody under bond of \$ 1,500 OTHER Copy of this decision has been served on the respondent and the Department of Homeland Security. APPEAL: waived -- reserved ARLINGTON -- ARLINGTON DETAINED LOCATION Date: Mar 20, 2018 KAREN DONOSO-STEVENS

Immigration Judge

XS

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202

RE: DATE: Mar 20, 2018

TO:

DHS/ICE/FARMVILLE P.O BOX N FARMVILLE, VA 23901

Please take notice that the above captioned case has been scheduled for a VIDEO hearing before the Immigration Judge on Apr 11, 2018 at 08:30 A.M.. The alien will be present via tele/video. All other parties and witnesses should report to:

1901 S. BELL STREET, 4th FLOOR, COURTROOM 15 ARLINGTON, VA 22202

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is accredited to represent persons before an Immigration Judge. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Department of Homeland Security and held for further action. OR (2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that you or your attorney have been provided this notice and you are removable.

IN THE EVENT YOU ARE RELEASED FROM CUSTODY, WITHIN FIVE DAYS OF YOUR RELEASE, YOU MUST PROVIDE TO THIS IMMIGRATION COURT A WRITTEN NOTICE/EOIR-33 OF THE ADDRESS AND TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 240-314-1500.

	CERTIFICATE OF SERVICE	
THIS DOCUMENT WAS	SERVED BY: MAIL (M) PERSONAL SERVICE (P)	
TO: [ ] ALIEN [ DATE:	] ALIEN c/o Custodial Officer [ ] ALIEN'S ATT/REP BY: COURT STAFF	[ ] DHS
Attachments:	[] EOIR-33 [] EOIR-28 [] Legal Services List	[ ] Other VW

### **Becky Wolozin**

From: Biswas, Toby R M (ACF) <Toby.Biswas@ACF.hhs.gov>

Sent: Friday, February 23, 2018 5:59 PM

To: Becky Wolozin

Cc: Rachel Nadas; Mansilla, Jessie (ACF)

Subject: FW: Follow Up

Ms. Wolozin:

Please be aware that the *Flores v. Sessions* decision only applies to the question of dangerousness as it applies to release. An immigration judge's order may be taken under advisement when making a placement decision but is not binding on ORR as it would be on the issue of release. See, ORR Policy Guide, section 2.9 Bond Hearings for Unaccompanied Children:

"...ORR also takes into consideration the immigration judge's decision in the bond hearing about the youth's level of danger when assessing the youth's placement and conditions of placement.<sup>12</sup>"

For a more thorough legal analysis of this issue please review Section IV of ORR's Pre-Hearing Brief in this case.

At this time ORR does not plan to change placement.

Thank you,

Toby

Toby R. M. Biswas, ESQ.
Unaccompanied Alien Children Policy Supervisor

U.S. Department of Health and Human Services Administration for Children and Families Office of Refugee Resettlement Office of the Director – Division of Policy and Procedures

(202) 205-4440 (O) (301) 356-5470 (C) (202) 401-1022 (F)

From: Becky Wolozin [mailto:becky@justice4all.org]

Sent: Friday, February 23, 2018 5:31 PM

To: Mansilla, Jessie (ACF) < Jessie. Mansilla@acf.hhs.gov>

Cc: Rachel Nadas < rnadas@justice4all.org>

Subject: Follow Up

Hi Ms. Mansilla,

### Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 52 of 70 Page ID

I left you a couple of messages following up on a case regarding a child, who recently won his Flores bond hearing. The judge determined he was not a danger to the community, thus invalidating any authority to hold him in a secure setting. I am cc'ing my colleague, Rachel Nadas, who will be following up about sprompt step down next week while I am out of town. Please keep us informed about any development in his transfer to a less secure setting.

Thank you,

Becky Wolozin Attorney Immigrant Advocacy Program Legal Aid Justice Center 6066 Leesburg Pike, Suite 520 Falls Church, VA 22041 Ph: (703) 720-5606

Cell: (571) 373-0518 Fax: (703) 778-3454 becky@justice4all.org

### Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 54 of 70 Page ID

		Casi	Review	
		UAC Bas	ic Information	
First Name:				
Last Name:				
AKA:				
Status:	ADMITTED			
Date of Birth:	/2000		Gender:	M
A No.:			LOS:	68
Age:	17		Current Program:	Shenandoah Valley Juvenile Center
Country of Birth:	Guatemala		Admitted Date:	11/29/2017
	30 day Case F	Review C Discharge C Transfer	Are there any changes?:	C Yes     No
Previous Placement:				
SWK Montezuma 11/20/17 to 11/29/17	7			
Religious Affiliation:	,			
None Cose Managery				
Case Manager:				
Emily Twigg				
Clinician:				
Melissa Cook				
Document any new information re	egarding the UAC	not indicated in the UAC Assessm	ent and/or the previous case su	mmary below
			Medical	
List any allergies:				
UC does not report any allergies.				
Do you feel unwell?				
C Yes © No				
If yes, what are your symptoms?				
N/A  Additional medical information:				
	:4:-11:1			d all management and disable hands at CANIV Management
Immunizations received on 11/22/17.			raised during this intake. UC received	d all necessary medical checks at SWK Montezuma.
Medical History	The testing comple	ted on 11/22/17, results negative.		
Condition	Yes/NO	Date of Diagnosis/Clarification		
Pregnant	C Yes © No	Date of Diagnosis/ Clarification		
Tuberculosis		Positive TP test LIC will not receive	LTDI troatment since he will ago out	before treatment can be completed.
	⊙ Yes C No	Positive 18 test. OC will not receive	Libi treatment since he win age out	before treatment can be completed.
Varicella	C Yes © No			
Measles	C Yes   No			
Mumps	C Yes © No			
Rubella	C Yes © No			
Asthma	C Yes © No			
Diabetes	C Yes   • No			
Cancer	C Yes © No			
Cardiac	C Yes € No			
Issues				
Sexually	C Yes    No			
Transmitted				
Disease				
Respiratory/Lung Disorder	C Yes © No			
	C Y C N-			
Physical Disability	C Yes © No			
Medication History				
Medication	Dosage	Timeframe	Medical Condition	
			Legal	
Know Your Rights Presentation			<del></del>	
provided?	○ 1C3 ○ NO			
Date:	12/01/2017			
Legal screening completed?	⊙ Yes ○ No			
Date:	12/01/2017			

### Case 2:85-cv-04544-DMG-AGR Document 420-5 Filed 04/23/18 Page 55 of 70 Page ID

Any possible legal relief

🗅 Yes 何 No

#16779

identified? Specify:

Pending further legal consults to determine legal eligibility

**Mental Health** 

Provide a short summary of the UAC's current functioning:

No SIRs this period.

MENTAL HEALTH UPDATE 12/29/18: Minor has been doing well. He is quiet and observant. He is slowly becoming more relaxed and participates in school and activities with a relish for learning. He recently participated in a school play where he sang songs in English. UC did very well and was proud of his accomplishments but shy for praise. UC stated he has not done anything like this since childhood. Youth continues to present as stable and well balanced. He does not present with any mental health concerns. He gets along well with others and is respectful to his peers and staff.

SIR: UC recanted previous disclosure of gang involvement. UC reported that he was told to say these things to have a better chance at winning a legal case to stay in the United States.

#### Mental Health Update 1/29/18

Minor continues to do well. He has exemplary behavior. Minor is beginning to show signs of stress and anxiety over his age out. He openly processes this with clinician and clings to hope and positivity as best he can. Minor battles cultural and language barriers on a daily basis. He is aware of this and is beginning to ask more questions and clarify when he does not understand something. This is compared to his early days at SVJC when he agreed with everything and nodded his head in agreement when he did not understand things due to language barriers. Minor works hard in school and is an exemplary young man who responds maturely to harassment or being picked on by peers.

Minor was given a psychological evaluation by Dr. Gustavo Rife. There are no concerns and the minor is not considered a risk after a full evaluation was completed.

Clinician highly recommends that the minor be stepped down as his behavior does not merit secure and his psychological evaluation does not consider him a risk to self or community.

Psycho	logical	l Eva	luati	ion
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Date of 1/4/2000

**Evaluation:** 

Evaluator: Dr. Gustavo Rife

Axis II:
Axis III:
Axis III:
Axis IV:

Axis V:

Summary of Recommendations:

The following Diagnostic Impression, Summary and Recommendations is taken from the Psychological Evacuation by Dr. Gustavo Rife

#### "DIAGNOSTIC IMPRESSION

The clinical interview did not find indications of any mental health problems at this time. did not exhibit any antisocial or violent traits, instead was cooperative in his interviewer. It is my opinion within a reasonable degree of psychological certainty that the profile of symptoms present does not meet criteria for any DSM-5diagnosis at this time.

CONCLUDING SUMMARY AND RECOMMENDATIONS

is 17-year-old, Hispanic, male, from Guatemala. Came to the U.S. to find work and, possibly, get an education. acknowledged lying to Immigration Officers about past association with gangs and committing crimes in his country, and he appeared sincerely remorseful and truthful about such false statements. is not at risk to harm others or engage in criminal behavior in the community. He is hoping to reunify with his aunt, who lives in the community. Tennessee, before he ages out on 2018.

In terms of his functioning, does not present with significant mental health problems that might be of concern at this time. He may, or may not have, a problem with alcohol; however, his drinking does not appear significant as stated during the clinical interview. scored in the Below Average Range of intelligence on a nonverbal intelligence measure. His IQ of 82 fell in the 12th percentile, indicating that he is performing better than 12% of his same-aged peers. 's scores may be somewhat restricted given his personal background, upbringing, language limitations in Spanish. appears to be functioning pretty well given and there is no reason to suspect that he has any specific mental health problem at this time. Given the results of this psychological evaluation, the following recommendations are made:

Placement and Risk: will benefit from reunification with his aunt in assist with acculturation.

He will need some initially transitional supportive services to help him transition into the U.S. culture and to assist with acculturation.

does not appear to present a risk to himself or the community at this time."

#### **Trafficking**

#### Who planned/organized your journey?

UC planned his own journey.

What were you told about the arrangements before the journey?

His aunt lent him some money.

Did the arrangements change during the journey?

Yes No

If yes, how?

Does your family owe money to anyone for the journey?

C C

If yes, how much?

Whom is the money owed?

Who is expected to pay?

What do you expect to happen if payment is not made?

**Coercion Indicators** 

Did anyone threaten your or your family?

C G Yes No

If yes, who made the threats?



#### **Information Memo**

**TO:** Domestic Policy Council

**FROM:** Department of Health and Human Services, Administration for Children and

Families, Office of Refugee Resettlement

**DATE:** August 16, 2017

**SUBJECT:** Community Safety Initiative for the Unaccompanied Alien Children Program

### **ISSUE**

This memorandum provides an overview of the Community Safety Initiative being undertaken by the Office of Refugee Resettlement to address concerns regarding gang involvement by former unaccompanied alien children.

This memo is for your information only and does not ask you to take any action.

### **BACKGROUND**

The Office of Refugee Resettlement (ORR) is responsible for receiving in its custody all unaccompanied alien children (UAC) referred by the Department of Homeland Security (DHS) within 72 hours of referral, and providing each child received with care consistent with law. ORR is required by statute and the *Flores* Settlement Agreement to place each child in the least restrictive setting consistent with the child's individual requirements and, if possible, identify a responsible adult, or sponsor, to provide care for the child prior to the UAC's immigration court proceedings.

In recent months, there has been public and congressional concern with the Mara Salvatrucha, or MS-13, Central American street gang in American communities, and the involvement in that gang of some individuals who were previously in the ORR UAC Program. This followed outcry at murders committed by MS-13 members, particularly in the Suffolk County, Long Island, area, as well as other U.S. communities including the Washington, D.C., and Houston metropolitan areas. Rep. Peter King, whose district includes Suffolk County, has raised the issue of the number of MS-13 members on Long Island who entered the United States as UAC, and on July 28, the President gave a speech about MS-13 in Suffolk County. ORR has actively responded to this concern with policy and procedural changes aimed at reinforcing community-safety protections in the program.



UAC who are determined to pose a danger to themselves, to others in communities, or pose a flight risk are placed by ORR in secure or staff secure facilities. Secure facilities are ORR's most restrictive level of care, with staffing and infrastructure comparable to juvenile criminal justice facilities, and are in fact state or local juvenile halls to which ORR has awarded contracts or grants to provide secure UAC custody. Staff secure programs are programs with higher levels of staffing to manage UAC who for reasons of self-harm, disruptive behavior, criminal history, or flight risk are not suitable for residential shelter programs, but do not currently require secure-level care.

### **DISCUSSION**

The great majority of UAC in ORR custody do not pose a safety risk to the public and are not affiliated with gangs. Many UAC come to the United States to escape violence and gangs in their home communities. On June 9, 2017, ORR reviewed of the UAC in its secure and staff secure facilities. From that review, ORR determined that of the 138 UAC in those facilities on June 9, 35 were voluntarily involved with gangs. Four additional UAC had reported that they had been forced into gang participation. In the context of the nearly 2,400 UAC in ORR custody on that date, this means that gang members were approximately 1.6% of all UAC in care.

However, while the proportion of UAC who have gang affiliation is small, ORR recognizes the importance of planning and programmatic interventions to manage that sub-population in a way that does not compromise the program and does not put American communities at risk.

### **Community Safety Initiative**

In the current Administration, ORR has initiated a Community Safety Initiative, a comprehensive review of program policies and procedures from the lens of the safety of American communities into which UAC are reunified with sponsors.

As elements of the unfolding Community Safety Initiative, ORR has made a number of policy and procedure changes made to date. These include:

- No current gang members are eligible for release to a sponsor from the program.

  UAC with gang history upon attaining their 18th birthday are transferred to DHS

  Immigration and Customs Enforcement (ICE) for detention as adults. In some cases, such as Bond Hearings or habeas lawsuits, courts may order UAC released despite ORR decision to retain UAC in care.
- All UAC identified as having current or past gang affiliation are placed in secure facilities. There, further assessment occurs to verify the gang affiliation and determine the dangerousness of the UAC. UAC may be stepped down to staff secure or other level of care based on the evaluation in secure settings.



- ORR's Deputy Director for Children's Programs and the ORR Director now review and approve releases from secure or staff secure facilities.
- ORR is working on a Memorandum of Agreement (MOA) with DHS to improve existing processes of consultation on the suitability of releases from secure and staff secure facilities, and on the suitability of sponsors. At present, 24 hours prior to release of a UAC from ORR custody, ORR notifies DHS of the sponsor's identity, location, and relationship to the child, and asks for DHS input regarding safety of the release for the child and the community. ORR again notifies DHS 24 hours after the minor's release. In the MOA discussions, ORR and DHS are reviewing how the two departments communicate to strengthen ORR's decision-making on releases of UAC at higher risk of violence or criminal activity in the community where they are placed with a sponsor.
- ORR instituted a policy of notification to local authorities of release from secure and staff secure facilities. Another goal of the Community Safety Initiative is increased coordination with and support for local authorities in communities in which UAC are released to sponsors. In July, ORR made a policy change to allow notification of local authorities when UAC from secure and staff secure facilities are released in their communities. ORR is currently working through requirements for implementation of this policy, which it expects to implement in the fall.
- Programs are adding the GREAT gang prevention program to their curricula. ORR is also focusing on interventions while minors are in ORR custody designed to help prevent later gang involvement post-release. A specific gang prevention program for youth recommended by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Gang Resistance Education and Training (GREAT) curriculum, is being piloted in facilities. ORR anticipates expansion of the GREAT program to other ORR residential care facilities based on lessons learned from the pilot.
- Gang prevention resources are being added to post-release services. ORR is also undertaking to increase the protections against gang involvement by UAC that can be incorporated into safe discharge and post-release services for those UAC who receive post-release services. ORR has partnered with DHS to deliver DHS-provided trainings to ORR's post-release services providers on how to identify MS-13 and other gang colors and signs, as well as whom to notify if providers become aware of gang activity.
- **ORR field staff is integrating with local anti-gang task forces.** Some ORR Federal Field Specialists have begun attending local and regional anti-gang task forces to strengthen partnerships with law enforcement and stay informed about MS-13 and other gang activity in their areas. ORR is actively participating in the interagency gang task force on Long Island, and is in the process of expanding this effort, including current



outreach efforts to Northern Virginia and Texas gang task forces.

- ORR is in direct contact with Suffolk County, NY, Police Commissioner Sini. In the case of Suffolk County, New York, the ORR Director has been in personal contact with Suffolk County Police Commissioner Timothy Sini on a number of occasions. ORR has assisted Suffolk County police with their investigation of MS-13 members by providing information on who, among gang suspects identified by local police, have come through the ORR UAC Program. The Suffolk County Commissioner in turn has agreed to inform ORR whether gang involvement began before, during, or after time in ORR care, if that information surfaces during local investigations. ORR is working to inform Suffolk County of releases of UAC into that community. Following the President's speech about MS-13 at Suffolk County police academy on July 28, the Commissioner was quoted in a Fox News report describing response from ORR as "encouraging."
- ORR is in the process of expanding its secure bed capacity. At present, ORR has 58 secure beds nationwide, in two juvenile justice facilities: one operated by a regional criminal justice consortium in Virginia, and the other operated by a county in California. Due to increased numbers of domestic apprehensions, particularly from DHS enforcement operations targeting gang members, as well as ORR's new policies regarding initial designation to secure beds of all UAC with past or present gang affiliation, additional secure beds are required. ORR is in the process of obtaining additional secure beds by a new contract mechanism.

1	PROCEEDINGS
2	OCTOBER 27, 2017 12:56 P.M.
3	000
4	THE COURT: All right. Ready to call your next
5	witness?
6	MS. MURLEY: Yes, your Honor. Our next witness is
7	Jonathan White from ORR.
8	MS. MASS: Just a question for the Court. Would you
9	prefer that we reserve any objections and present them as
10	Mr. Schenker did?
11	THE COURT: I think that worked out very well. Thank
12	you.
13	MS. MASS: Thank you.
14	JONATHAN WHITE,
15	called as a witness for the defendants herein, having been duly
16	sworn, testified as follows:
17	THE WITNESS: Yes, ma'am, I do.
18	THE CLERK: Please be seated.
19	Please state your name clearly and spell your name for the
20	record.
21	THE WITNESS: My name is Commander Jonathan White.
22	That's J-O-N-A-T-H-A-N, W-H-I-T-E.
23	DIRECT EXAMINATION
24	BY MS. MURLEY
25	Q. Good afternoon, Mr. White. Where are you currently

1 employed?

- 2 A. I'm an officer in the United States Public Health Service
- 3 Commission Corps and I am stationed at the U.S. Department of
- 4 | Health and Human Services, Administration for Children and
- 5 Families, Office of Refugee Resettlement.
- 6 Q. And in that, what is your current job title?
- 7 | A. I'm posted as the Deputy Director for Children's Programs.
- 8 Q. And how long have you been in that position?
- 9 A. I've only been in that position since the 9th of January,
- 10 | although I have been at the Administration for Children and
- 11 | Families since 2010 and have worked on unaccompanied alien
- 12 | children issues for ACF since 2012.
- 13 | Q. And in your current role, what are your current -- what
- 14 | are your day-to-day duties?
- 15 A. I'm the senior career, as opposed to political appointee,
- 16 person for --
- 17 **THE COURT:** Can you pull the microphone a little bit
- 18 | farther away --
- 19 **THE WITNESS:** Sure.
- 20 **THE COURT:** -- from your face? Thank you.
- 21 **THE WITNESS:** Is that better?
- 22 **THE COURT:** Great. Thanks.
- 23 | A. I'm the senior career person for the Unaccompanied Alien
- 24 | Children Program. I manage the three divisions under that
- 25 program.

I ensure that the program has sufficient capacity to 1 respond to the number of UAC referred every day by DHS and that 2 all of the staff who work in the program have the resources 3 they need to execute the policies of ORR. 4 5 And you mentioned three divisions in that that you manage? Q. 6 Α. Correct. And what are those? 7 0. The first is the Division of Unaccompanied Children 8 Operations, which oversees all of the different grant funded 9 shelter and other programs nationwide. 10 The second is the Division of Health for Unaccompanied 11 Children, which oversees public health and medical services for 12 children in our care. 13 And the third is the Division of Planning and Logistics, 14 15 which is the emergency management function of the program and 16 plans for surge events. 17 And what qualifications do you have that qualify you for your current job? 18 I'm a licensed clinical social worker. 19 I'm an emergency And my professional training and background is as an 20 21 emergency manager specializing in the needs of children. And I have a professional background in trauma informed 22 human services for children and vulnerable populations. 23

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Are you familiar with the October 11th, 2017 letter from

ORR Director E. Scott Lloyd to the mother of F.E., a plaintiff

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in this case?
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          I am.
     Α.
                            Your Honor, I have copies of this
               MS. MURLEY:
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     document. Part of it was submitted in the record, but not the
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 5
     whole thing.
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               THE COURT:
                           Okay.
               MS. MURLEY: I don't have a properly redacted
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               I'm going to meet-and-confer with plaintiff's
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     version.
     counsel and get that on the record probably Monday.
 9
               THE COURT:
10
                           Okay.
               MS. MURLEY: And it's Defendants' Exhibit 7.
11
               THE COURT:
12
                           Okay.
          (Defendants' Exhibit 7 marked for identification)
13
                           So this is everything that accompanied
14
               THE COURT:
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     the letter that was to the mother?
16
               MS. MURLEY: Yes, your Honor.
17
               MS. MASS:
                         Do you have one for yourself?
               MS. MURLEY: I do. Give me one second.
18
          (Brief pause.)
19
20
     BY MS. MURLEY
          Mr. White, do you recognize this document?
21
          I do.
22
     Α.
23
          Is this the letter that was sent to F.E.'s mother by
     Director Lloyd?
24
                This is the official Letter of Denial that was sent
25
     Α.
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- 1 to the mother of the child, who I understand in court we're
- 2 referring to as F.E., and in our system this would be a Letter
- of Denial of Category 1 Sponsor.
- 4 | Q. And what is your level of familiarity with that document?
- 5 **A.** I was involved in the decision-making process which
- 6 resulted in the creation of this document and I assisted in the
- 7 drafting of the document.
- 8 Q. And what is the information that Director Lloyd would have
- 9 received in order to make this determination?
- 10 **A.** So the determination rests on a range of different sources
- of information. These include the school records from the high
- 12 | school that the UAC attended while he was living in the
- 13 | community. Also, court and police materials produced by --
- 14 | provided to us by Suffolk County Police Department, as well as,
- 15 of course, the record of his time in care with us since his
- 16 referral by DHS.
- 17 | Q. And specifically talking about referral, when a UAC such
- 18 | as F.E. is referred to ORR custody from DHS, what is the
- 19 | initial intake process?
- 20 **A.** So the initial intake process for any UAC would be that
- 21 | our intakes desk, which is staffed 24/7 365, would be contacted
- 22 | by the referring federal agency. That's typically Customs and
- 23 | Border Protection or Immigration and Customs Enforcement. Far
- 24 more often the former than the latter.
- 25 The DHS referring agency then provides, typically

electronically, information referring the child to our care. Intakes receives that information and makes an initial recommendation as to the appropriate level of care in our system, which includes determinations about the level of restrictiveness of the setting.

That decision is -- is reviewed by a federal field specialist, which is a federal -- a federal official with a regional responsibility to confirm that in the case of those placements, such as that that would apply in the case of F.E., where that initial designation is to a more restrictive level of care than our standard shelter setting.

- Q. And so ORR relies initially on information from DHS to make that initial placement?
- A. We must rely on the information that we receive in that initial referral. I think -- I think it's well known in the context of this case that we have a 72-hour statutory time frame during which we must receive the child, but in practice the referral process must be very rapid. And we do rely on the information provided by the referring agency for initial designation.

I'm sure we'll talk about this more, but initial designation is only the first in a series of administrative decisions that ORR makes affecting the appropriate level for the child in care consistent with our legal requirement to have children in the least restrictive setting consistent with their

- needs and the needs of the program with regard to the safety of ther UAC in care.
  - Q. When you say "level of care," what does that mean?
  - A. We have a number of different types of residential facilities --
    - THE COURT: And I'll just interrupt and say that I'm familiar with the different grades of residential facilities and what they involve, so you can skip that.

## 9 BY MS. MURLEY

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- 10 Q. So in this case, F.E. was placed in an initial -- a secure
  11 facility?
- A. He was placed in a secure facility at his initial

  placement based on information that he had a current gang

  affiliation as provided by DHS and other potential indications

  of danger.
  - MS. MASS: Your Honor, I'm sorry to interrupt Ms.

    Murley, but just in the interests of time, my understanding was that this witness was being brought to testify about the supplemental information that was added just recently and so I -- I don't know what the scope is.
  - THE COURT: I don't have any objection to testifying to something beyond that, but what I do not want is what occurred on direct examination of the last witness, which is largely a repeat of what's already in the submissions.
    - MS. MURLEY: Okay. Understood.

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All I want this to be the testimony THE COURT: adding to the information that's already been placed in the record. MS. MURLEY: Okay. Thank you, your Honor. understand, your Honor. BY MS. MURLEY When in this process does ORR begin to identify a suitable sponsor? For any UAC, whether they come in as a secure -- the very small percentage that come in with initial designation as secure or UACs at other levels of care, for every UAC the identification of a sponsor begins when they first arrive in our care and is a continuous process throughout the time that they spend in our care; that we identify a viable sponsor and proceed to the case management process for reunification wherever possible. Now, for a UAC that had previously been in ORR's care that had a sponsor fill out that information, why would his previous sponsor have to fill out a second reunification package if that was the identified sponsor? Because the information may have changed. So let me --Α. let me just explain that for a minute. So consistent --THE COURT: Sorry to interrupt. Can you ask the question again? I want to make sure I understood that question.

## BY MS. MURLEY

Q. For a UAC in ORR custody, like F.E., who had previously been released from ORR custody, why would a -- his previous sponsor have to fill out a second reunification package?

A. So consistent with sort of the challenges of the child welfare work involved in the sponsor case management process, sponsor suitability is not a lifetime situation. That's not true -- that's true in our program. It's true in any child welfare context in the country. Individuals become more or less suitable to provide what in our case is a standard, which is to meet the emotional and financial needs to support the child. That is a -- that is a variable set of facts.

Now, we have some UAC who we've previously reunified where the sponsors come back to us. We call them re-referrals or second referrals. In most cases that is not a result of a criminal apprehension, in this case, but that is one of the ways that that can happen.

The reason that we are required to go through the reunification process, including the submission of the family reunification application by the sponsor, is because the facts may have changed with regard to suitability.

And, in fact, as a general rule, when a UAC comes back to us, something has happened. Most UAC don't come back to us.

But those that do, it's generally because something has happened regarding the suitability of the sponsor. And in

the -- in terms of the child welfare realities of children in the care in the community, much may have changed.

Among the things, for example, that we have to reassess are the -- the household composition may have changed. We do vetting and background check of every adult in the household and it may that be there is a new adult living in the household who was not living in the household a year ago or two years ago or two-and-a-half years ago when we reunified the child. It may be that the employment circumstances for the adult has changed. It may be that the adult now is involved in a relationship with -- with someone else who poses a threat to the child. It may be that the adult has new and problematic behaviors that didn't exist there before.

So there are a whole host of reasons that we would not simply re-reunify a child.

We do work with sponsors that we've previously reunified a child with to facilitate their getting that application in.

And there are certain elements of what they submit that are enduring facts, such as relationship verification. If we already determined you're the biological mother of a child, we don't need to reinvestigate that biological maternity.

But there are many facts which may have changed and we do have to go through the process.

Q. How often are -- after the initial placement in your care, are placement decisions made?

A. I'm sorry. Say it again?

Q. Once a UAC enters your care and say, like, F.E. ends up in a secure facility, how often are placement decisions made whether or not that individual needs to be stepped down or stepped up to different levels of care?

A. Sure. So for any UAC in our physical custody and care there is an ongoing process of evaluation about whether step-down is appropriate, if they are in a restrictive setting like secure or staff secure. We are required to do that within 30 days and we do that within 30 days.

Because due to the policy where we have -- we are now receiving more initial designations to secure on the basis of allegations of gang affiliation, we've determined internally that for those UAC, we really want our internal standard to be faster than the 30 days that's in the policy. Because if we determine that that child doesn't require secure, that's a long time in secure if they don't need secure.

So our internal aspirational goal is to do that as quickly as possible, and we strive to do that in five days. That's not a policy, but that's our analysis of the fastest, just logistically, that the processes can be done.

So for the staff that work on that in our grantee programs, we do strive to complete that evaluation to determine whether they should be stepped down in those initial days following the designation of secure.

- 1 Q. And is the placement decisions that are ongoing, is that
- 2 | a -- is that separate from the reunification --
- 3 **A.** Yes.

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- 4 Q. -- process?
- A. Yes. That's a separate decision-making process, although they weigh some of the same factors.

So there are multiple sort of decisions that we're talking about here. The first is the initial designation decision.

That's made at the point of intakes. In that decision we have really generally access to the least information of all of the administrative determinations we're going to make. We have really in most cases what's in the referral.

Then we have for those who are referred to secure, our preliminary evaluation that we try to make within those first few days following placement in secure. We have more information for that.

For any UAC who is in secure, staff secure, we have a 30-day review. It's a recurring 30-day review to determine their current requirements.

And then, of course, separate from all of those is the decision regarding release. That is itself a decision with two different dimensions. For the vast majority of UAC and care the issue is only the suitability of a sponsor. For those UAC who are in secure or staff secure settings or have been in secure or staff secure settings, there is a second

determination about the safety issues to ensure that their 1 release does not create a community safety hazard. But that is 2 a separate decision from the decision about levels of care 3 while in our system. 4 5 As part of the reunification process, does ORR require a home study be done? 6 7 A home study is required in some cases. There are three triggers for a home study --8 9 THE COURT: Sorry. Let me interrupt again. 10 THE WITNESS: Sorry. 11 THE COURT: If you could keep the microphone away, back from you a little bit? 12 13 THE WITNESS: Yes, sir. Some UAC require a home study as a matter of statutory 14 15 requirement under TVPRA. We call those TVPRA mandated. 16 for example, includes UAC who have a disability or UAC who 17 have -- who have experienced human trafficking, or UAC where there is some evidence of significant risk to safety of the 18 19 child from the parents. There are also UAC who require home study, who are what we 20 call ORR policy mandated. These are certain populations that 21 we have learned are at greater risk and so although it's not a 22 23 TVPRA required home study, this includes, for example, UAC who are going to what we call a category three sponsor -- that's an 24 unrelated adult or distant relative -- if that sponsor has ever 25

attempted to sponsor another UAC, because that's a potential trafficking flag.

And, third, in some cases we do discretionary home studies where the case manager and others working on the case determine that there are just some concerning elements that would require a home study.

- Q. And how often does it -- what is the time frame for completing a home study?
- A. It varies, but it's generally in the weeks. It really depends, in part, on the backlog awaiting home study based on how many referrals we have received, but a period of weeks is normal.
- Q. And once a home study is complete, what is the next steps in the reunification process evaluation?
  - A. So when we have the completed FRA, which is the application submitted by the sponsor, have completed a home study, if required, have vetted the sponsors through the appropriate background checks, that would involve a CAN check -- so a check with the states where the sponsor has resided to see if they have any reports of child abuse and neglect -- a public records based background check, and for all by a few sponsors a fingerprint background check. We conduct an FBI fingerprint background check on every sponsor, except parents, if there are no other red flags. So all non-parent sponsors and any parent where there is any other red flag, we

would be required to do an FBI fingerprint background check.

When those processes are completed, if we have all of that information that's required to make that determination, the case manager, that is an employee of the sheltering facility where the child is housed, that would make an initial recommendation of that reunification. That then goes to a case coordinator. That's an employee of a third-party contract that we have that reviews those.

If it is approved at that level, it then goes to the federal field specialist. And I can probably go quickly through that because I know all about the role of federal field specialist from Jim De La Cruz. For those who have not been in secure or staff secure that then is the last hurdle.

Under our policy that went in effect on June 12th of this year, for those who have secure and staff secure as part of their history, they then go from that level to me. It's reviewed at my level and typically we often find at that point that additional information may be required.

When I have had a chance to review it, I then brief our Director on it. And release -- a final approval of a release for a UAC from secure or staff secure requires Director level approval.

Q. So I'd like to turn to the decision in front of you -
THE COURT: Before we get to that, can I have some
follow-up questions?

Debra L. Pas, CSR, RPR, RMR, CRR Official Reporter - U.S. District Court - San Francisco (415) 431-1477 THE WITNESS: Yes, sir.

THE COURT: You made reference to re-referrals and you said that -- you identified a few reasons why a re-referral might occur, some change in -- a variety of different potential changes in circumstances.

First of all, re-referral, is that a term that you all regularly use in doing your jobs or is that just your way of describing this?

THE WITNESS: Yes, your Honor. That's a term of art that we use. It's not in policy, but we talk about it informally in the workplace. We generally talk about re-referrals or second referrals.

THE COURT: Okay. And can you give me a sense of how common it is for there to be re-referrals?

THE WITNESS: So I don't have statistics on it. I would describe it as not uncommon.

Certainly, it's a minority case, but it's not uncommon and it is generally the result of some family systems problem. It most commonly occurs when either the UAC runs away from the sponsors and -- or the sponsors themselves either have domestic legal sort of criminal justice involvements or may -- or may have removal issues, or it happens because through the child welfare system of the state, for example, a sponsor has been involved in abuse of the child. The child is harmed in some other way. And then if that child then gets back sort of on

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DHS's federal radar, then they can be returned to our care. THE COURT: Okay. So I'm going to ask this question generally and it may be not amenable to a general answer, so please don't hesitate to tell me that. How do these -- how does the potential need for a -- how does the -- how does the re-referral generally come to your attention, or how does the potential need to revisit the sponsorship or the placement typically come to your attention? THE WITNESS: So ORR -- we don't go out and take reunified -- kids that we've reunified back into our care, for example. In that way we are -- in that way the parallelism for the state child welfare system isn't there. Here is how this would happen. Intakes, when they received a referral and entered them in would be flagged and say: Hey, this kid -- looks like this kid has been with us before. And that would be -- it would be an initial designation, that we would identify it that way through our own administrative process. THE COURT: So the only time that you will be revisiting the placement is if somehow somebody delivers the child to you again? THE WITNESS: Yes, sir. That's right. And that would have to be a federal agency and it is almost always either Customs and Border Protection or ICE. Okay. And so -- so it sounds like from THE COURT:

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what you're saying -- please correct me if I'm wrong, but putting together what you've said so far, it sounds like what you're saying is that these federal agencies might bring you these kids based on allegations of criminal conduct or gang affiliation or allegations that they have been abused or that they have run away and that the -- and the feds have taken custody of them again, or you mentioned changed circumstances from -- with the -- the adult in the household. Like, how would that come to ORR's attention? **THE WITNESS:** So, just so I'm clearer. Those are the reasons that we -- once those UAC are referred back to us, it's why we go through our whole process again. I understand that that seems, like, counterintuitive. Why would you do that? You've already looked at this once. We have to look at it again because these -- we have to look at it again because the facts may have changed. Plenty of times it -- we re-reunify someone with the same sponsor, but we go back. We have to go back and do the -- and check on them. It cannot simply be that we go: Oh, we know who the sponsor is because it's the same one. It's the same one as in 2014. That was how I understood that question. THE COURT: No, that's helpful. But in each case it's because the child has been delivered to you again. THE WITNESS: That's right, sir. We don't get to -we really don't have a say in which kids come to us.

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I'm giving sort of the five sentence version of what we do, I say are two -- the two requirements we have that regards -that regard intakes in our program is, first, we have to take all the UAC who are referred to us and we must accept them into care within 72 hours of referral and place them in a setting consistent with their needs. So, yes, they come -- they would come to us as a consequence of some other federal agency apprehending them aqain. What -- the cases sort of in the class that the -- the UAC in the class that are talked about in this case, though, are not the whole universe or even the majority of the universe of re-referrals. Most re-referrals come to us because ICE may have apprehended a parent or something else may have happened or the UAC has run away and then gets re-apprehended that way. So this Operation Matador environment, that's not in any way sort of the whole universe of re-referrals. THE COURT: What -- does it ever happen that ORR comes to learn that there may be some problem in the household? So it's not -- not in a situation where the child is delivered to ORR's custody, but just, you know, you've placed a child somewhere and then you later learn that there is a problem in the household that may require the child to be removed from it. I mean, does that ever happen? THE WITNESS: Yes, sir. That happens often. And if

I can sort of explain that process, it may be helpful to you.

THE COURT: Yes.

THE WITNESS: So because we have a National Call

Center that every UAC and every sponsor -- every UAC formally
in our care and every sponsor has access to and because -- and
because some UAC also receive post-release services, we do
sometimes have what we call notification of concern. And this
is we learn after we've reunified a child with a sponsor, that
something dangerous to the child is going on.

Depending on the nature of that danger, we then would notify either the Child Protective Services authority that has competent authority for the state where the child lives or ICE, HSI. So, for example, if we learn that the child is in a trafficking situation, we would notify HSI. If we learn that the child may be being abused by a parent and more sort of traditional family abuse, physical or sexual family abuse, then we would notify CPS.

THE COURT: And then to the extent you know -- I mean, I assume when you notify a local CPS, they go through whatever normal process they have to evaluate whether there is something that requires removal of the child from the household.

What about when you notify HSI of something that may be happening, an allegation of trafficking or, you know, there's, you know, a report that the -- the adult sponsor is engaged in

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criminal activity or something like that. What do you know about what HSI does then in response to that? I don't know a great deal about it THE WITNESS: because we're not a law enforcement agency, but from some cases where they do report back to us, you know, they would investigate that consistent with, you know, any report that they would get from other sources. THE COURT: And so in a situation like that, you will never reinitiate the assessment of the propriety of the placement? In other words, you only do that when a minor is delivered to your custody, but you -- you won't do a re-initiation of the assessment of the propriety of the placement merely upon being informed -- merely upon receiving a notification of concern? THE WITNESS: We don't have the legal authority to take UAC back into care unilaterally. And that's something --THE COURT: Are you saying that you don't have the authority to reinitiate on your own the, you know, home assessment or the -- revisit the determination that you made previously to place an unaccompanied minor in a particular household based simply on receiving a notification of concern? That's right, sir. Once -- once we've THE WITNESS: reunified the child with a sponsor and it is -- this is something that HHS has opined -- had to opine to Congress about often, I will say. So the position that HHS has always taken

is it is our understanding that we do not have the legal 1 authority to go out and take a child into custody ourselves. 2 We do have the authority and the mandated reporter 3 responsibility to advise other entities, state and federal, if 4 5 we learn of anything that is dangerous to a child we've 6 reunified. And I take that responsibility very seriously. 7 we do not have the authority to take kids back into care on our own and we don't. 8 THE COURT: And so when you get these notifications 9 of concern, do you ever investigate them or do you kind of pass 10 11 them on to CPS or HSI? THE WITNESS: It really depends on the circumstances. 12 13 There are some circumstances where we might investigate them because they might affect the safety of other UAC in care. 14 But we're not an investigative authority. We're not a law 15 16 enforcement agency. So we might investigate, for example, 17 if -- if we believe that in some way someone had, for example, used fraudulent documents in our system. We would want to look 18 into that in partnership with OIG and FBI and others to 19 understand are there vulnerabilities in our system? 20 21 someone make a mistake somewhere? THE COURT: But I'm trying to see -- I understand the 22 23 idea that you may not have the authority to go out and take a child after you've placed the child, but what would stop you 24

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from -- you know, we're talking about these -- I want to make

sure I get my terminology right -- home studies. 1 THE WITNESS: 2 Sure. THE COURT: So it sounds like sometimes you will 3 place a child with a sponsor without conducting a home study. 4 5 THE WITNESS: The majority of cases it's without a 6 home study. 7 So let's say, you know, you get this --THE COURT: you get a notification of concern regarding what might be 8 happening in the home of a child that you've placed. 9 what would stop you from -- I understand you can't go out --10 11 maybe you can't go out and seize the child, but what would stop you from conducting a home study at that point, if you've 12 been -- if you have cause for concern that it may no longer be 13 appropriate for the child to be in that home? Anything that 14 15 would stop you from doing that? 16 THE WITNESS: It's something that we don't do because 17 once we have reunified the child, that is the state child welfare authority's -- that's their space to operate. And if 18 we -- if we -- no, we don't do that. 19 And if someone sort of on my team, for example, were to 20 suggest that as a great idea, I would be very opposed to that 21 22 idea because I would worry that we would compromise the ability 23 of child welfare authorities in communities, to keep kids safe in the communities. And that's -- that's their piece of the 24 25 puzzle.

1 THE COURT: Thank you. Yes, sir. 2 THE WITNESS: BY MS. MURLEY 3 So back to the decision. Prior to this decision -- one 4 5 second. Let me get my thoughts. (Brief pause.) 6 What was your role in this decision? 7 Q. So my role in any secure or staff secure release review is 8 that I take a -- the information that is provided to me by the 9 federal field supervisor and signed off on by the federal field 10 11 supervisor's -- excuse me, that's prepared by the federal field specialist and signed off on by the federal field supervisor. 12 I review all of those documents and look to 13 That comes to me. make recommendation to the Director. 14 15 Now, in this case, partly following the experience that we 16 had in the prior A.H. case, this F.E. case came during a period 17 of time where we had begun expanding, being more robust in how much we were willing to look into and behind information that 18 19 we received. So when this case came to me, I determined that we really 20 21 did not have enough closer-to-the-ground information; that we needed to know more from the community where he had been 22 23 So I directed -living. **THE COURT:** Could I interrupt real quick? 24 25 talking about A.H. now?

Now I'm talking about F.E. 1 THE WITNESS: 2 THE COURT: Okay. Sorry. I think for -- agency-wise A.H. was for us, among others 3 4 things, an understanding that -- that we probably needed to 5 intensify our efforts to dig into information having to do with gang affiliation as best we could, given that we're not a law 6 enforcement entity. 7 So I tasked members of my team with ensuring that we had 8 information from SCPD and from the schools to begin to look 9 behind sort of DHS information, to get closer to the ground on 10 that information. 11 I obtained that information and participated in the 12 process of review, including a discussion, a multi-disciplinary 13 discussion by members of our team. And then I prepared a set 14 15 of recommendations for the Director and that went up then for 16 his review. That, in turn, led to his decision, which is 17 represented in this letter. 18 And the final decision was the denial of family 0. reunification? 19 20 That's correct. It was a denial, that's right. 21 denial based on -- based on two factors. 22 The first is that we determined that there was potential 23 danger to the community based on indication of current voluntary gang affiliation, which -- which in our policy is 24

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danger by itself.

Second, we also determined that at this time the sponsor that he had had before, which was his mother, that she was not a suitable sponsor at this time because there was considerable evidence that despite being informed by school authorities and police authorities, she had been unable to prevent him from associating with gang members.

So those two bases inform the decision, first of all, to deny release on the basis of dangerousness; and, second, that at this time this sponsor is not a suitable sponsor.

- Q. What level of care is F.E. currently in?
- 11 A. He's currently in our shelter level care, which is our

  12 most common level of care and which we do not consider a -- it

  13 is not in our spectrum considered a restrictive level of care.
- 14 Q. So F.E. is in a shelter level care?
- 15 **A.** Yes.

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- 16 **Q.** But the finding is that he -- there is a dangerousness finding in this letter.
- 18 A. That's right. And that may sound counterintuitive, but
  19 let me explain it.

So level of care is based on our standard, our requirement that it is -- we must serve the best interest of the child by -- for every child we have in care, that child has to be in the least restrictive setting consistent with his or her needs, the safety of staff, the safety of other UAC and the safety of the public.

And as you know, as we have already discussed, and that's something for those who are in a restrictive level of care, like secure or staff secure, we must re-review essentially monthly. That is a separate standard from the standard for danger for release.

So it is our determination that F.E., on the basis of his behavior, should not be kept at a secure or staff secure level of care because his behavior does not warrant it. He's not dangerous to -- he has given us no reason to think he's dangerous to staff or to other UAC at those levels of care.

However, the evidence does support that at this time in the sponsor household there is -- that is not restrictive enough a setting to prevent him from having involvements with criminal justice authorities and association with gang members.

So, yes, he is -- he poses a danger in the community, at least in this setting, but he does not require secure level care. And I think it would be inappropriate, from a child welfare point of view, to have him at a secure and staff secure level of care given that his behavior is managed effectively at the lower level of care.

- Q. And this denial letter contains a second finding with regard to suitability?
- 23 A. Correct.

Q. And how is that finding separate from the dangerousness finding?

A. So it's separate. So the -- the danger finding is based on -- we have a policy determination that current voluntary gang affiliation is dangerous and that there were sufficient indications of current voluntary gang affiliation.

Separate from that is the issue of whether a given sponsor can meet the set of needs under our sense of what's required from a sponsor. And one of those is a sufficiently effective supervisory and disciplinary environment for a child to prevent the child from being involved with gangs, to keep the child in school and attending class, to prevent the child from engaging in unlawful conduct, including unlawful employment without legal status.

And in this case at this time his mother has not demonstrated or provided us with a plan for how she would do that. School authorities specifically counseled her on the danger to this child of his maintaining social relationships with gang members and subsequent to that there were multiple law enforcement interactions with him in the presence of gang members.

She, I think understandably, sought from the records we have, to engage with police authorities, to ask them to cease speaking to him as if he were a gang member; but subsequent to that she still could not still prevent his association with gang members.

So there are concerns about her supervisory and

disciplinary capacity to keep him safe from gang recruitment 1 and illegal involvement. That is something that -- as I think 2 we tried to make plain here in the letter, if subsequently she 3 can identify to us a coherent plan for how she would prevent 4 5 him from being involved with gangs, that is something which could lead to a different determination on our part. 6 7 We don't view her as inherently or permanently unable to perform the duties as sponsor. She just has thus far not 8 demonstrated her plan sufficiently to protect him from gang 9 involvement. 10 11 When you talk about gang involvement, you relied largely on the document from the Suffolk County? 12 13 Rely on the school report regarding his disciplinary behavior and the documents provided from Suffolk County. 14 15 MS. MURLEY: One second, your Honor. 16 (Discussion held off the record between defense 17 counsel.) MS. MURLEY: Just a few more questions. 18 BY MS. MURLEY 19 This letter serves as the final agency decision. 20 Is there a review process of this determination? 21 There are two remedies that he, as the UAC, and There is. 22 Α. 23 his mother, as the parent who would wish to serve as his 24 sponsor, have. First of all, they have the bond hearing process to 25

challenge our determination that he dangerous in front of a 1 third-party reviewer. 2 Within HHS she also has the opportunity -- the two of them 3 have the opportunity to appeal the Director's decision to the 4 5 Assistant Secretary of ACF, review both danger and suitability. So she has two -- two different remedies that she could 6 7 pursue. And if after a bond hearing an immigration judge were to 8 find that F.E. was not a danger to the community, what impact 9 would that have on HHS's findings? 10 11 At that point the issue then would become the ability either of the family to identify another sponsor or of the 12 mother to provide us with -- to provide us with evidence or a 13 plan to support that she is able to address the deficiencies in 14 15 supervision and discipline that result in his gang involvement. 16 And it is not at all uncommon in our system for 17 parentals -- for parent sponsors, what we call category one 18 sponsors, who may be found unsuitable at one point to 19 subsequently be found suitable, particularly if they can 20 address deficiencies that underlie that decision. 21 MS. MURLEY: No further questions, your Honor. THE COURT: Thank you. 22 Looks like we have about 15 minutes before the fire drill. 23 I think we should use those 15 minutes. 24

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## 1 CROSS EXAMINATION BY MS. MASS 2 Good afternoon, Mr. White. My name is Julia Mass. 3 I'm Q. going to be asking you some questions. 4 5 Let me just start out by finding out, did you have any direct communications with F.E.'s mother yourself? 6 I have not. 7 Α. And have you had any direct communications with 8 Okay. F.E.? 9 I have not. 10 Α. And in terms of your understanding of the school incidents 11 that informed the decision to deny reunification and, also, the 12 police interactions, were you present for any of those 13 incidents or interactions? 14 15 Oh, no. Definitely not. Α. 16 So your understanding of those is based on documents? 17 Yes. Α. 18 0. Okay. And so I would just like to lodge an 19 MS. MASS: 20 objection to any characterizations of those incidents or at the 21 school or with the police and the mother's response as outside the witness's personal knowledge and as relying on hearsay. 22 23 BY MS. MASS Okay. Let me ask you a little bit more about your 24 background. Your a licensed clinical social worker? 25

1 **A.** I am.

- Q. Before working with the federal government, did you ever work in a county children's services or child welfare agency?
- 4 A. No.
- 5 Q. Or any other kind of child welfare agencies outside of the
- 6 federal government?
- 7 **A.** No.
- 8 Q. Do you consider ORR a child welfare agency? You mentioned
- 9 it's not a law enforcement agency, but what do you think? How
- 10 do you characterize it?
- 11 A. It's a bizarre thing. It's very difficult to actually say
- 12 | what the UAC program is with -- except with reference to
- 13 itself.
- I will say, however, that we use -- we use the body of
- 15 social work practice and understanding that comes out primarily
- 16 of a child welfare system's point of view to implement the
- 17 requirement to pursue the best interests of the child.
- 18 Q. Okay. And the authority of ORR, is that based in the
- 19 TVPRA, the trafficking victims reauthorization?
- 20 **A.** Our authority is based on the Homeland Security Act,
- 21 | TVPRA. You're quizzing my knowledge of law. I'm also not an
- 22 attorney.
- But, yes, primarily our role is defined by TVPRA, by the
- 24 Homeland Security Act and, of course, by the terms of the
- 25 Flores Settlement Agreement.

- 1 Q. And anything that's in the Flores Settlement Agreement, to
- 2 | your understanding, would that also help to define your
- 3 obligations and what you're authorized to do?
- 4 A. Absolutely.
- 5 Q. Okay. So, and under the TVPRA, I think you mentioned that
- 6 | there are follow-up services sometimes when ORR provides
- 7 | release, is that right?
- 8 **A.** Yes.
- 9 **Q.** And so -- and is it also true that there is a statutory
- 10 process to reunify undocumented immigrants with their --
- 11 | children with their parents?
- 12 A. Absolutely.
- 13 Q. Okay. And you mentioned when a child comes into ORR
- 14 custody after being referred by one of the DHS components, ORR
- 15 | conducts a review of that custody after the initial
- 16 determination of where to place the person is made. I'm
- 17 | thinking about the step-down process.
- 18 **A.** Oh, sure.
- 19 **Q.** Okay.
- 20 **A.** Yes.
- 21 Q. And who conducts that review? What staff were involved?
- 22 | A. That is conducted by staff of the sheltering program that
- 23 receives the child, as well as federal staff, including the
- 24 | federal field specialist.
- 25 And typically it may also involve the federal field

- 1 | supervisor, the senior federal field supervisor, and in some
- 2 cases other members of the team, potentially the senior advisor
- 3 | for child well-being and safety. It would depend, in part, on
- 4 | the specific circumstances of that UAC's care.
- 5 Q. Okay. But, certainly, it would include contracted
- 6 | facilities like the Yolo facility and BFCS in Fairfield?
- 7 **A.** It would include employees of those grantees, yes.
  - Q. Okay. And I just want to back up for a second.
- 9 I understand there was a policy change that added gang
- 10 affiliation as one of the considerations for placing a child in
- 11 | secure custody in June of this year, is that correct?
- 12 **A.** Gang affiliation had already been a factor. I would say
- 13 | that the June 12th policy change changed the -- the primary
- 14 change was that it made that gang affiliation led to a required
- 15 | placement at secure as the initial designation.
- 16 | Q. Okay. And so part of the review that the facilities would
- 17 | engage in in order to determine the step-down process would
- 18 also be to look into gang affiliation and those allegations to
- 19 | see if they are correct, is that right?
- 20 **A.** Yes. To the extent they were able, that's right.
- 21 Q. Okay. And what standards does ORR use to determine gang
- 22 | affiliation?

- 23 **A.** So the -- the sort of domains that would be involved
- 24 | would, first of all, be disclosures by the child.
- 25 Second, there would be expressions by the child, which

WHITE - CROSS EXAMASTION / MASS could include also art or other things that they produce. 1 The -- then it would include available documents and 2 records from other agencies. 3 But I'm -- I quess what I mean is what are the criteria 4 5 that you would -- what are the indicia of gang membership, other than just admission of being a gang member, that would 6 7 deem a person a gang member in your eyes or in the eyes of ORR? Is it the same -- for example, I think Mr. Pisciotta 8 testified about the criteria that DHS uses. They include 9 things like clothing and association. 10 11 Are those the same criteria or does ORR have separate criteria or different criteria? 12 I think we're looking at sort of the totality of what we 13 know about -- about the child and that would primarily include 14 15 sort of what they say about themselves, what they express, with 16 whom they associate. 17 Okay. So I think we were looking at Exhibit 7 from the Q. defendants. If we could turn to a page here -- it's a large 18

Q. Okay. So I think we were looking at Exhibit 7 from the defendants. If we could turn to a page here -- it's a large packet, but about five or so pages in there is a letter dated June 14, 2017 with the seal of the U.S. Department of Homeland Security. Maybe it's more like 10 pages in.

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- 22 A. I found the one. This is -- it says "Memorandum for Alien 23 File Regarding Gang Affiliation."
  - Q. That's right. And we'll just be careful not to use any names, but are you familiar with this letter?

A. I am familiar with the letter, although in making my recommendation up to the Director, I actually did not include this letter in my decision-making process.

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This letter, however, I think was the -- this letter really, which represents DHS's determination that the child is a gang member, was very important for the initial designation to secure. However, this letter did not inform my recommendation to the Director.

- Q. So did DHS's belief that this youth was a gang member influence your belief that he's a gang member in any way?
- A. It informed the -- certainly informed the initial designation, but I -- I did not find this letter sufficient by itself to persuade me one way or another. It didn't seem like sufficiently actionable.

For me, what was much more informative was the information from the school and from SCPD.

- Q. Okay. Do you know what date ORR received this letter?
- 18 **A.** I don't know the date that we received it.
- Q. Do you have a sense over the last four months whether it
  was towards the early part of when he was brought into custody
  versus towards the end or more recently?
- 22 **A.** It must have been in hand prior to the -- it must have been in the earlier portion of his time in our care.
- Q. And then looking at the very last page of the packet that is Exhibit 7, this is a letter dated September 27th to James

De La Cruz from Inspector Michael Romagnoli from the -- looks 1 like Suffolk County Police Department. 2 Are you familiar with this letter? 3 This one I know. Yes. 4 Α. 5 Did you rely on this letter to make your decision? Q. 6 This letter did partially inform my decision, yes. Α. 7 Okay. And do you --Q. Sorry. I'm having trouble finding it. 8 THE COURT: You said the very last page of this packet? 9 Yes. Of the Exhibit 7 packet. 10 MS. MASS: 11 THE COURT: Not the last page of my packet that was handed up to me. 12 13 (Whereupon document was tendered to the Court.) That looks like it. I'll just take a 14 THE COURT: 15 look at this and then give it back to you. 16 Okay. Go ahead. Sorry. 17 MS. MASS: Thank you. BY MS. MASS 18 Tell us how this influenced your decision or what -- what 19 you relied on here? 20 So this represented -- would have been in contrast to 21 Α. anything we had seen before that. This actually provided 22 And this -- I felt that this helped to establish that 23 details. there had been association with gang members at moments when 24 25 the UAC interacted with police.

There is a report in here of subject self-admission, but I thought what was most relevant was simply the number of distinct encounters with law enforcement in the presence of qang members.

- Q. And did you ask for any of the underlying documentation to support the conclusions in this letter?
- 7 **A.** We asked for everything that we could get and this is the 8 most that we could get.
- 9 **Q.** Okay.

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10 A. In part, because we are not a law enforcement agency and
11 law enforcement agencies, federal, local and state, will often
12 not share with us information because we are not sworn law
13 enforcement officials.

We are trying to look into things as deeply as we can and deeper than historically we -- we have attempted to, and this is as deep as we can get.

- Q. Did you ever provide a copy of this letter to F.E. or to his mother so that they could respond to the allegations, the conclusions that are made here?
- 20 A. Yes. That's the packet that you're looking at.
- Q. Ahh. Before reaching the decision to deny reunification, did you give them an opportunity to respond to this
- 23 information?
- 24 A. No. I did not.
- 25 **Q.** Did anyone that you're aware of?

- A. I'm not aware that ORR staff provided them with this
   letter. I do not think anyone did.
- Q. Do you know if ORR staff spoke to F.E. or his mother about the concerns that you had that were the basis for denying the reunification request?
- A. I think we had a fair amount of contact through the case
  management process with the family that included discussions of
  the gang concern and the -- and the legal counsel for the
  family made contact with all of us to advocate for his client.
- Q. Which staff, in particular, spoke to F.E. or his mother
  about the -- about the gang allegations that were relevant to
  your decision?
- 13 A. I don't know.

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- Q. But you did mention that facility staff sometimes played the role of helping to look into the -- those underlying gang allegations, is that correct?
  - A. The primary role that facility staff have is looking at the expressions and behaviors and disclosures of the child client while he or she is in our care.

It is less their role to look into underlying documents, although there may be some cases where that happens also, particularly in secure settings, which have -- which have greater access to that kind of information.

THE COURT: Let me ask, do you have a rough estimate of how long, how much longer you have?

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Oh, maybe 20 minutes.
 1
               MS. MASS:
               THE COURT: Okay. I think now is a good time to
 2
     maybe take a break and get ready for the fire alarm.
 3
                                                            I will
                       If it is louder --
 4
     head back there.
 5
          (Interruption in the proceedings.)
                           I will go back there. If it's a lot
               THE COURT:
 6
     louder in here, I'll come get you all and bring you back there,
 7
     okay?
 8
          (Brief recess held in the proceedings.)
 9
               THE COURT: Go ahead.
10
11
               MS. MASS: All right.
     BY MS. MASS
12
          Turn back to the last page of Exhibit 7 we were looking
13
     at, the September 27th letter from the Suffolk County Police
14
15
     Department.
16
          Do you know why this letter was being solicited at the end
17
     of September after -- after F.E. had already been in custody
     for three and a half months?
18
                First of all, that wasn't when it was solicited.
19
     That's the date it was received.
20
21
     Q.
          Okay.
          We had been seeking additional information for some time.
22
     Α.
23
          For how long?
     Ο.
          Essentially from his -- from his apprehension.
24
     Α.
          So for three and a half months you were waiting for the
25
     Q.
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- 1 | Suffolk County Police Department to provide you the evidence to
- 2 | support the gang allegations which were the basis for you
- 3 having him in custody, is that right?
- 4 A. We initially requested additional information from DHS.
- 5 We then requested additional information from the school and
- 6 from SCPD.
- 7 This level of information was not, however, necessary for
- 8 the decision about his initial designation --
- 9 (Interruption in the proceedings.)
- 10 **A.** As I mentioned earlier, the issue was the information that
- 11 | we needed to determine whether he posed a danger by virtue of
- 12 having current gang membership. That's a release decision. We
- 13 did seek that information from a variety of sources.
- 14 The information we received from DHS was not sufficient.
- 15 It was not specific enough for us to use.
- 16 Q. To continue to keep him in custody?
- 17 A. No. It wasn't specific enough for us to evaluate either
- 18 | way.
- 19 Q. All right.
- 20 A. We couldn't just take and -- this is the document we
- 21 referred to earlier. This is the earlier letter. That was not
- 22 | sufficiently detailed for us to make conclusions from.
- 23 Therefore, we needed more information.
- 24 We were following the process established following A.H.;
- 25 | that we not simply rely on what DHS says, but that we attempt

to get at the underlying information from local authorities, 1 which we did. 2 Looking at the second bullet point here that has --3 it says: 4 5 "June 2017, subject self-admitted MS-13 association." 6 7 Are you aware -- there is no day there. Are you aware that this statement, that F.E. was a self-admitted gang member, 8 had never been disclosed before to Department of Homeland 9 Security or HHS? 10 11 No, I'm not aware that. Are you aware of any records prior to the date of this 12 letter that include that information? 13 If we had those records, they would have been in the 14 Α. 15 packet that was sent to the sponsor and, therefore, they would 16 be in this exhibit. So, no. 17 THE COURT: Could I ask a clarification question on the dialogue you were just having with Ms. Mass? 18 When you said the information you received or the 19 documentation you received from DHS was insufficient to make a 20 21 determination, which determination are you talking about or which determinations are you talking about? 22 23 THE WITNESS: It didn't contain any real detail. was clear that it referred to things that were known to local 24 authorities. 25

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Consistent with what we learned from the A.H. experience, we sought to find out what local authorities knew given that DHS was characterizing what they learned from local So we reached out to the school and the court and authorities. the police department. THE COURT: Okay. And so -- but when you say that it was not sufficient for you to make a determination, were you referring to a determination about what level of care, what level of custody, or determination about whether he should be reunified with his mother or both? THE WITNESS: Both. THE COURT: Okay. Thank you. BY MS. MASS So just so I'm perfectly clear. In terms of this letter, I believe it's your testimony so far that you relied on these conclusions without seeing or verifying -- seeing any records to support it or verifying by speaking to any of the Suffolk County police personnel, is that correct? We relied upon this information. THE COURT: Could I ask you another follow-up question? THE WITNESS: Yes, sir. **THE COURT:** This is a follow-up to the answer you just gave to me a second ago. THE WITNESS: Yes, sir.

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You said that based on our experience THE COURT: with A.H., where DHS had been characterizing the information they received from local law enforcement, we determined that we needed to reach out directly to local law enforcement and others to get further detail. Did I -- did I restate your testimony accurately? THE WITNESS: I think so. Prior to the A.H. case, we really would have, I think, generally viewed that what came from law enforcement officials at DHS was sufficient for our decisions. We learned from the A.H. experience that -- that that wasn't sufficient; that there was an expectation that we look behind that. THE COURT: And can you tell me more about -- when you say, "We learned from the A.H. experience that that wasn't sufficient, " can you tell me more about that? What you mean by that? THE WITNESS: We were directed in that case to look behind what DHS said and to seek additional information from local authorities. That's challenging for us because we're not a law enforcement authority ourselves. This is the -- this reflects what it looks like when we look behind those statements. **THE COURT:** So -- sorry to interrupt, but so you're not saying, well, we concluded independently that we found something wrong with the information we received from DHS about

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You're saying we learned that we were required to do
 1
     A.H.
 2
     more.
          Is that -- is that your -- do I understand you correctly?
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                            That's correct, sir.
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               THE WITNESS:
 5
               THE COURT: Okay. Presumably in response to my
 6
     ruling.
 7
               THE WITNESS:
                             That's exactly right, sir.
               THE COURT: All right. I just want to make sure I
 8
     understood that.
 9
     BY MS. MASS
10
11
          Okay.
                 And now I have marked as an exhibit an email dated
12
     August 4th, 2017.
          (Plaintiff's Exhibit D marked for identification.)
13
          This is Exhibit D. It's an email from Jose Esquivel.
14
     Q.
                                                                   Are
15
     you familiar with Mr. Esquivel? Do you know who he is?
16
     Α.
          I do.
17
          Have you ever seen this before, this email?
     Q.
          If you'll give me just a moment to read it?
18
     Α.
19
          Sure.
     Q.
          (Brief pause.)
20
          I can't recall whether I've seen this email or some of the
21
     Α.
     subsequent products that it informed.
22
23
          Were you aware that Mr. Esquivel had stated that F.E. had
     denied any gang affiliation and that his statements were
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     congruent with the facility's experience of having had him in
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- 1 | their care for -- for I can't remember how long, but some weeks
- 2 | at least?
- 3 **A.** Yes. I was aware that that had been part of the
- 4 | clinician's analysis.
- 5 Q. Okay. And we have another document, which would be
- 6 Exhibit E.
- 7 (Plaintiff's Exhibit E marked for identification)
- 8 Q. This is a memo dated September 12, 2017. It's addressed
- 9 to you. Have you seen this memo before?
- 10 A. Sure, yes. This one I know well.
- 11 Q. Okay. And this is a memo that is from an FFS supervisor
- 12 and an FFS. Is that a federal field specialist and a federal
- 13 | field specialist supervisor?
- 14 A. That's right.
- 15 **Q.** And are those the ORR officials that were -- have the most
- 16 | kind of authority over this particular child, F.E.?
- 17 | A. Yes. What you are seeing here, this memorandum is our
- 18 | internal memorandum that comes up to me in the release review
- 19 process for secure and staff secure UAC that I discussed
- 20 earlier. And this is the one including their recommendation
- 21 for release.
- 22 **Q.** Yes. Is there anything you disagree with, other than the
- 23 recommendation for release, that's in this memo?
- 24 **A.** In terms of disagreement --
- 25 **Q.** Disagreement with the facts presented?

- 1 A. I have to -- I have to review it quickly to identify specific pieces.
  - Q. All right.

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A. This document came prior to the receipt of the school and SCPD documents. I don't think I'm likely to disagree. I have to review it to see if there is specific facts with which I disagree. I doubt there are.

It is that -- it does not have the full set of facts that were available to us by the time that it came through me to the Director.

- Q. On the second page in the -- at the bottom of the second paragraph it says:
- "A note in his school records indicate that F.E.

  may have been associating with people that, quote, may
  be gang affiliated."
  - Did you get other school records beyond those that you -- came in after September 12th?
- 18 A. Sorry. I'm looking for the passage. Where is it again?
- 19 **Q.** It's at the second paragraph of Page 2, at the end of the paragraph.
- 21 A. I see it now.
- I don't know whether they had the same school records that
  I reviewed. That is in the school records I reviewed. There
  is additional material in the school records that are not
  represented in the memorandum.

- It also important to note that our instruction to FFS is that they are to elevate -- if they think there is any basis for release, they are to elevate to me. In other words, they are to err on the side of recommending. Some of the more difficult decisions about denial happen higher up.
- Q. Okay. If we could just focus on the question I asked,
  which was: Are you in disagreement with any of the facts that
  are presented in the memo?
- 9 A. Let me start from the beginning.

  10 (Brief pause.)
- Q. Mr. White, I appreciate your diligence, but I think in the interests of time, rather than make you read the whole thing --
- 13 A. Steer me to the facts and I'll answer "yes" or "no."
- 14 Q. -- I think I will steer you.
- There was a mention in the memo of some photographs -- oh, shoot.
- 17 A. No. That's also in the second paragraph of Page 2.
- 18 Q. That's right. Do you know what those photos relate to?
- 19 What that reference is?
- 20 A. I do. Those were photographs that I believe were provided
- 21 to the program by DHS, which we were able to determine were not
- 22 him.
- 23 **Q.** Okay.
- 24 A. So those did not inform my decision. We disregarded those photos.

- 1 Q. Do you have any disagreement with the statement that:
- 2 "Since his arrival in ORR custody on June 18th
- and in all subsequent placements, F.E. has maintained
- 4 good behavior."
- 5 A. I have no reason to disagree with that. There are no SIRs
- 6 to suggest otherwise. That's why he's in shelter level care.
- 7 Q. Great. Also, did you read the home study report that was
- 8 prepared and is a part of this packet?
- 9 **A.** Yes. I read the home study.
- 10 Q. Are you aware that the social worker and her supervisor
- 11 also recommended that F.E. be released to his mother?
- 12 A. Yes, absolutely. And, indeed, if they had not, it would
- 13 have been unlikely it would have gotten as far as me.
- 14 Q. Okay. And they concluded that the sponsor could provide
- 15 | for him financially. Yes?
- 16 **A.** Yes.
- 17 | Q. And that the sponsor had attended all of his criminal
- 18 | court and immigration court hearings?
- 19 **A.** Yes.
- 20 | Q. And, also, concluded that F.E. feels safe and loved by the
- 21 | sponsor and his siblings?
- 22 **A.** Yes. I think all the evidence would support that.
- 23 **Q.** Okay.
- 25 | loving relationship.

- 1 Q. So it sounds like on the other side of the balance then we
- 2 | had both the field specialist, federal field specialist,
- 3 | federal field specialist supervisor, the director of one of the
- 4 | facilities where F.E. stayed and also the home study all
- 5 recommending release or generally avowing that F.E. was a good
- 6 kid who didn't have any gang problems, as far as anyone could
- 7 | tell who had actually talked to him.
- 8 On the other side of that was, as I understand it, this
- 9 letter, that's the last page in the packet, and the school
- 10 records, is that correct?
- 11 A. That's correct.
- 12 **Q.** Is there anything else on the other side of it?
- 13 A. No, I don't think so.
- 14 Q. Okay. And so looking at the school records -- oh, first
- 15 of all, you said that the gang allegations, just on their own,
- 16 | are evidence of dangerousness.
- 17 Is that -- is that why -- am I right in understanding
- 18 | that's why you made -- one of the reasons you made a
- 19 determination that F.E. should say in ORR custody?
- 20 **A.** Yes. We have a -- there has been a policy decision made.
- 21 **Q.** Is there any other evidence, other than the conclusions
- 22 | you made about his gang affiliation, that support a finding of
- 23 dangerousness?
- 25 | while that is a factor, it was not as significant to the

1 discussion as the other factors, but it is a factor.

- 2 Q. Okay. And is there any -- when you say a gang
- 3 | affiliation, does ORR distinguish between active gang
- 4 | membership, of the sort that Mr. Pisciotta testified about
- 5 | where a child might be doing work for the gang, versus having
- 6 | merely been on the same street corner or at the same deli and
- 7 | identified as -- in the same vicinity with or hanging out with
- 8 what were considered known gang members?
- 9 A. We recognize that gang affiliation is a spectrum. That's
- 10 true. The key issues for us are voluntary versus coerced and
- 11 present versus past.
- 12 Q. And what was it that led you to believe that F.E. was
- 13 | voluntary as opposed to coerced? If you -- I mean, you came to
- 14 | a conclusion that he is a --
- 15 **A.** There is no evidence that was produced that it was
- 16 coerced. And we have plenty of kids with a history of coerced
- 17 | involvement, especially in home country.
- 18 Q. Did you ask his mother to address the question of whether
- 19 she thought he had ever been coerced to be in a gang or did
- 20 anyone to your knowledge?
- 21 **A.** I don't know if others had. That is generally something
- 22 | that people volunteer on their own.
- 23 My understanding from what we had from her is she
- 24 | maintained he wasn't involved in a gang.
- 25 **Q.** Yeah. That's consistent with my understanding as well.

- 1 A. Right. Exactly. Yeah.
- 2 Q. Okay. And then the other -- the other factor, as I
- 3 understand it, was that you were concerned about the mother at
- 4 | this time not having a plan for dealing with what you -- your
- 5 | conclusion that F.E. was gang affiliated, is that right?
- 6 A. We determined that she has not indicated how she would
- 7 | protect him from association with gang members. After the
- 8 | school specifically counseled her that he was at risk because
- 9 of his association with gang members and after her own
- 10 | involvement with the police about it, he subsequently continued
- 11 to have encounters in the presence of gang members.
- 12 Q. I understand. Did you -- did anyone from ORR, to your
- 13 knowledge, ask her whether she spoke to him about -- after the
- 14 | school counseled her?
- 15 **A.** I did not. I don't know what others have.
- 16 Q. So you don't know if -- she might have, for example,
- 17 | spoken to her son, as recommended by the school, and then
- 18 | learned from him that the friend, who in the school record it
- 19 | says may be gang affiliated, she could have heard from her son
- 20 | that, in fact, he doesn't believe that his friend is gang
- 21 affiliated. You have not ruled out that possibility, have you?
- 22 | A. We have not ruled out that possibility. He had three
- 23 | subsequent encounters, all of who were in the presence of gang
- 24 members --
- 25 **Q.** If you could -- we just only have a little amount of time,

so if you could just stick to the question, that would be really helpful.

And you mentioned there is a sponsorship agreement -- or, I guess, it's mentioned in the letter that there is a sponsorship agreement. So just -- if you could play this out with me so I can understand that sponsorship agreement and what the requirements are.

If she had been counseled by the school that her son was associated with someone who may be gang affiliated and she did, in fact, speak to him and he told her that, no, that's my friend who you know and who she knew and didn't think was gang affiliated, is it your contention that the sponsor agreement would then require her to nevertheless contact ORR about that?

She complied with the school's recommendation that she counsel her son and had done so and determined for herself that she didn't believe that that child was gang affiliated. She still had a duty to contact ORR?

- A. A duty on that part of the sponsor agreement would be if, indeed, he had contact with gang members.
- Q. Okay. And so she didn't know anything beyond that the school had told her that one of his friends may be gang related, and she had followed up on that, discovered she didn't think that was true. She wouldn't have a duty under the sponsorship agreement to notify ORR at that point, would she?
- A. She would for each of the subsequent incidents where he

1 was with gang members.

- 2 Q. If she knew or believed that he was with gang members,
- 3 right?
- 4 A. Right.
- 5 **Q.** That's right.
- Okay. And then finally having determined that she's not a suitable sponsor, if F.E. were to seek a -- what's been called a bond hearing, which is kind of a misnomer because there is no bond involved, but under the *Flores* case a hearing in front of an immigration judge and the judge were to rule that he wasn't a danger and didn't pose a flight risk, ORR nevertheless
- 14 A. At that time either a different sponsor could step forward

wouldn't be able to release him because you don't have a

- or she could apply articulating a plan to protect him from gang
- 16 involvement, as we spelled out in our letter.

suitable sponsor, is that correct?

17 **Q.** Okay.

12

13

- 18 A. Or she could also appeal our Director's decision through
- 19 | the due process channel of the Assistant Secretary specifically
- 20 on the suitability question.
- 21 | Q. Yeah. And also -- just to be clear, it's ORR's policy not
- 22 to place anyone who is a gang member with a sponsor no matter
- 23 | how qualified the sponsor may be, is that right?
- 24 | A. It is ORR's policy not to release those who are dangerous,
- 25 and gang affiliation is an indication of danger.

```
Is it like a per se indication at this point for ORR?
 1
     Q.
                                                                   Ιs
     that your policy? That gang affiliation of the sort that's
 2
     listed in this letter from Suffolk County is a per se pretty
 3
     much showing of dangerousness for ORR policy purposes?
 4
 5
          When you say a per se indication of --
 6
          Well, oh, sorry. So what I mean is just -- if a law
     enforcement agency says that we had three occasions in which we
 7
     identified this person as affiliated with gang members or known
 8
     gang members, that would be sufficient for ORR policy to
 9
     conclude that the child is dangerous?
10
11
     Α.
          If that was persuasive to the Director.
                 Is there any reason that you know of that that
12
13
     wouldn't be persuasive? I mean, this letter was persuasive,
     right?
14
15
     Α.
          Yes.
16
     Q.
          Is that a "yes"?
17
     Α.
          Yes.
18
          Okay. All right.
                             I...
          (Brief pause.)
19
20
          And just so we're -- no, I think I've covered it.
21
          Thank you.
               THE COURT: Any redirect?
22
23
               MS. MURLEY: Just briefly, your Honor.
24
25
```

#### REDIRECT EXAMINATION

- 2 BY MS. MURLEY
- 3 Q. I just want to clarify about the DHS information. What
- 4 | information did you receive from DHS for initial placement for
- 5 F.E.?

1

- 6 A. For initial placement we have to actually look at the --
- 7 look at the intakes form that we received. It included, I
- 8 believe, a description of him as a gang member and, I believe,
- 9 a notation of a charge.
- 10 | Q. And did you try to get more information before the initial
- 11 placement?
- 12 **A.** No. We do not get additional information before the
- 13 | initial placement.
- 14 Q. And why is that?
- 15 **A.** Because a process requires us to immediately place.
- 16 **Q.** And did DHS provide information later?
- 17 **A.** It provided additional information later.
- 18 **0.** And what was that?
- 19 A. That included the -- the letter, the memorandum of
- 20 association and there may have been additional documentation.
- 21 | I'm not certain what was provided at what time because we asked
- 22 | them for additional information subsequently.
- 23 | Q. And did DHS give you the Suffolk County Police Department
- 24 records?
- 25 A. No. We had to obtain those.

And would receiving that information faster improve HHS's 1 Q. ability to complete the review process in a shorter time 2 period? 3 It would. 4 Α. 5 MS. MURLEY: That's all. THE COURT: All done? All right. You can step down. 6 7 Thank you. THE WITNESS: These materials, who do I give these 8 to? 9 THE COURT: You can leave them there. The lawyers 10 will deal with them. 11 12 THE WITNESS: Okay. 13 (Witness excused.) THE COURT: Okay. It's 10 minutes to 3:00. I'm 14 15 trying to decide whether argument would be more productive now 16 or at a later time. 17 Does anybody have any thoughts about that? MR. SCHENKER: Your Honor, we would -- plaintiffs 18 19 would very much like to proceed with argument now. 20 If your Honor has more questions down the road after 21 you've reviewed the papers more, we could come back for 22 specific follow-up. 23 But we feel strongly that -- and the record shows your Honor said you're familiar with the declarations. We think 24 25 these children are suffering greatly and the duration of their

# Exhibit 79

No. 18-15114

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

ILSA SARAVIA, et. al.,

Plaintiffs-Appellees,

versus

JEFFERSON B. SESSIONS, III, Attorney General of the United States, et. al.,

Defendants-Appellants.

On Appeal From the United States District Court for the Northern District of California The Honorable Judge Vince Chhabria District Court Case No. 3:17-cv-03615-VC

> EXHIBIT 1 TO APPELLEES' REQUEST FOR JUDICIAL NOTICE

26

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On December 12, 2017, the parties participated in a telephonic status conference with the 1 Court in the above-captioned case. During that conference, the Court requested that Defendants 2 3 provide the Court with information regarding the outcomes of the Saravia hearings for existing 4 class members. To comply with the Court's request, Defendants provide the attached chart. 5 DATED: December 22, 2017 Respectfully submitted, 6 CHAD A. READLER 7 Principal Deputy Assistant Attorney General 8 WILLIAM C. PEACHEY 9 Director 10 WILLIAM C. SILVIS Assistant Director 11 12 By: /s/ Sarah B. Fabian SARAH B. FABIAN 13 Senior Litigation Counsel NICOLE MURLEY 14 Trial Attorney 15 Office of Immigration Litigation Civil Division, U.S. Department of Justice 16 P.O. Box 868, Ben Franklin Station Washington, DC 20044 17 (202) 532-4824 18 (202) 616-8962 (facsimile) sarah.b.fabian@usdoj.gov 19 nicole.murley@usdoj.gov 20 Attorneys for Defendants 21 22 23 24 25 26

**CERTIFICATE OF SERVICE** 

I hereby certify that the foregoing document and attachment filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

DATED: December 22, 2017 /s/ Sarah B. Fabian

Sarah B. Fabian Senior Litigation Counsel Office of Immigration Litigation Civil Division, U.S. Department of Justice

Name of current program	First Name	Last Name	Next Hearing date and time
Released	4	d G	Saravia hearing completed on 12/5. Release ordered.
Released	. Y	G G	Saravia Hearing Completed by NYC Immigration Ct: Ordered Released
Released	WE	d d	Saravia hearing completed on 12/13. Release ordered.
Released	K Es	F C	Saravia hearing completed on 12/20/17. Release ordered.
Released	C Is	H R	Saravia hearing completed 12/13/17. Re-arrest not warranted, release ordered.
Children's Village Staff Secure	c and	<u> </u>	Saravia hearings held on 11/28, 12/6 in VA, and on 12/13 in Newark. R/S at UACs request to 1/2/18.
Aged out on 11/27. Not in ORR custody on date of hearing	F .	V G	Saravia Hearing conducted on 11/28 in San Francisco, on 12/13 in Newark. R/S: At UACS request to 1/4/18.
Released	S	R N	Saravia hearing held on 11/28 at San Francisco Immigration Ct.: Minor Ordered Released
Released	Y D	м	Saravia Hearing completed on 12/20. Minor Ordered Released.
Released	L A	G F	Saravia Hearing Completed on 12/19. Minor ordered released.
Yolo County Juvenile Detention	N E	G F	Saravia Hearing Completed on 12/19. DHS prevailed. Re- arrest was warranted, UAC did not rebut dangerousness. Minor to be detained
BCFS San Antonio Staff Secure	. <u>S</u>	D M	Saravia hearing completed on 12/7. IJ Finds no jurisdiction to order change in custody as outlined in Saravia. Minor to cont to be detained.
Selma Carson Home	. S	М	Saravia hearing on 11/28 continued to 12/12 at Seattle Immigration Ct: Minor has final order but pending MTR, Saravia hearing continued to 1/9/18, unless motion to reopen is granted prior to that date.
Released	A M	N A	Saravia hearing 11/28: Ordered Released
Released	K I	A	Saravia Hearing 11/29: Ordered Released
Released		H	Saravia hearing 11/28: Ordered Released
Released	K	G P	Saravia Hearing 12/7: Ordered Released.

Childrens Village SS	K	d d	Saravia Hearing 12/7. UAC is subject to final order thus rearrest was warranted. MTR remains pending.
Released	A	V	Saravia Hearing held 11/28: Ordered Released
Released	D	В	Saravia Hearing Completed on 12/8. Ordered Released.
Released	d A	ф	Saravia and Flores hearing held 11/21 at NYC Imm Ct: Prevailed on Flores hearing and D.Ct. ordered release.
Released	ı V	F M	Saravia hearing 29, 2017, San Francisco Imm Ct: Ordered Released
Released		V R	Saravia hearing cancelled: D.Ct. order granting release.
Released	E A	Riam S	Saravia hearing cancelled: Released by ORR pursuant to Flores v. Sessions.
Released	C	A S	Saravia hearing cancelled: D.Ct. order granting release.
Released	M	<b>Z</b> 9	Saravia Hearing 11/29: Ordered Released
Children's Village Staff Secure	E A	d <b>a</b> G	Saravia hearing held 11/28 at NYC Immigration Ct: continued to 12/7 and 12/12 at request of minor's counsel: IJ found DHS meet its burden at 12/12 hearing
Ordered Removed. No longer in ORR Custody.	N S	C A	Saravia hearing cancelled
Released		G	Saravia hearing held 11/28 continued to 12/8 at NYC Immigration Court: Ordered Released
Released	A W	H S	DHS prevailed in Saravia hearing 11/28 and 12/5
Released	M	G R	Saravia hearing cancelled: D.Ct. order granting release.
Released	A A	V G	Saravia hearing held 11/28 at Houston Immigration Court: transferred to NYC Imm Ct at request of minor hearing held on 12/11: Ordered Released.
Released	D A	В -Р	Saravia hearing held 11/28: Ordered Released

## Exhibit 80

### UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al, Plaintiffs

٧.

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

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

#### STIPULATED SETTLEMENT AGREEMENT

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

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

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

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

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

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

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

#### **I DEFINITIONS**

As used throughout this Agreement the following definitions shall apply:

- 1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.
- 2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.
- 3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.
- 4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.
- 5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.
- 6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, e.g., cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

- 7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.
- 8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities.

#### II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

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

initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of the Agreement attached hereto as Exhibit 2.

#### **III CLASS DEFINITION**

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

#### IV STATEMENTS OF GENERAL APPLICABILITY

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

#### **V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST**

12. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 (i) within three (3) days, if the minor

was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

- 1. as otherwise provided under Paragraph 13 or Paragraph 21;
- 2. as otherwise required by any court decree or court-approved settlement;
- 3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
- 4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.
- B. For purposes of this Paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.
- C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.
- 13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

#### **VI GENERAL POLICY FAVORING RELEASE**

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;
- B. a legal guardian;
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;
- E. a licensed program willing to accept legal custody; or
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.
- 15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:
  - A. provide for the minor's physical, mental, and financial well-being;
  - B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
  - C. notify the INS of any change of address within five (5) days following a move;
  - D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;
  - E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
  - F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any immigration proceedings pending against the minor.

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

- 16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.
- 17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.
- 18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

#### VII INS CUSTODY

- 19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.
- 20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States

  Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or

the <u>Federal Register</u> a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

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

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

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

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

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

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

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

D. is an escape-risk; or

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

- 22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:
  - A. the minor is currently under a final order of deportation or exclusion;
  - B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;
  - C. the minor has previously absconded or attempted to abscond from INS custody.
- 23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.
- 24A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.
- B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.
- C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

- D. The INS shall promptly provide each minor not released with (a) INS Form I-770; (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services providers compiled pursuant to INS regulation (unless previously given to the minor).
- E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

#### **VIII TRANSPORTATION OF MINORS**

- 25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except
  - A. when being transported from the place of arrest or apprehension to an INS office, or
  - B. where separate transportation would be otherwise impractical.

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

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

#### IX TRANSFER OF MINORS

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

#### X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date

record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1) biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

- B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.
- 29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.
- 30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.
- 31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

#### XI ATTORNEY-CLIENT VISITS

- 32. A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.
- B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.
- C. Agreements for the placement of minor in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.
- D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

#### XII FACILITY VISITS

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

#### XIII TRAINING

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

#### XIV DISMISSAL

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

#### XV RESERVATION OF RIGHTS

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

#### XVI NOTICE AND DISPUTE RESOLUTION

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

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

Carlos Holguín

Peter A. Schey

256 South Occidental Boulevard

Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere

James Morales

114 Sansome Street, Suite 905

San Francisco, CA 94104

and on Defendants addressed to:

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

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

#### **XVII PUBLICITY**

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

#### **XVIII ATTORNEYS FEES AND COSTS**

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

#### XIX TERMINATION

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

#### XX REPRESENTATIONS AND WARRANTY

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

behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

### EXHIBIT 1 Minimum Standards for Licensed Programs

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

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

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

- 5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.
- 6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.
- 7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.
- 8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.
- 9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.
- 10. Whenever possible, access to religious services of the minor's choice.
- 11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.
- 12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

- 13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.
- 14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.
- B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.
- C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.
- D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.
- E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.
- F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

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

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

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

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

- (b) General policy. The INS treates and shall continued to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.
- **(c) Processing.** The INS will expeditiously process minors and will provide them a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

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

If the minor cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

- (d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others. Minors shall be released in the following order of preference, to:
  - (i) a parent;
  - (ii) a legal guardian;
  - (iii) an adult relative (brother, sister, aunt, uncle, or grandparent);
  - (iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;
  - (v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or
  - (vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.
- (e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:
  - (i) provide for the minor's physical, mental, and financial well-being;
  - (ii) ensure the minor's presence at all future proceedings before the INS and the immigration court:
  - (iii) notify the INS of any change of address within five (5) days following a move;
  - (iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;
  - (v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

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

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

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

- **(f) Suitability assessment.** An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.
- (g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue so long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.
- (h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential group, or foster care services for dependent children, including a program operating group homes, foster homes or facilities for special needs minors. Exhibit 1 of the Flores v. Reno Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:
  - (i) the minor is an escape risk or delinquent, as defined in Paragraph (I) below;
  - (ii) a court decree or court-approved settlement requires otherwise;

- (iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or
- (iv) where the minor must be transported from remote areas for processing or speaks an unusual language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.
- (i) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor -
  - (i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is
    - (a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or
    - (b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);
  - (ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;
  - (iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);
  - (iv) is an escape-risk; or
  - (v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

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

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

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

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

- (j) Notice of right to bond redetermination and judicial review of placement. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case in which he either affirmatively requests, or fails to request or refuse, such a hearing on the Notice of Custody Determination. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review in the form attached, and (2) the list of free legal services providers compiled pursuant to 8 C.F.R. § 292a.
- **(k) Transportation and transfer.** Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

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

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

- (I) Periodic reporting. All INS district offices and Border Patrol stations must report to the Juvenile Coordinator statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration status, and (f) hearing dates. The Juvenile Coordinator must also be informed of the reasons for placing a minor in a medium security facility or detention facility as described in paragraph (i).
- (m) Attorney-client visits by Plaintiffs' counsel. The INS will permit lawyers for the *Reno v. Flores* plaintiff class to visit minors even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

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

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

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

#### EXHIBIT 3 Contingency Plan

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

- 1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the list. The Emergency Placement List will include the facility name; the number of beds at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.
- 2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, and (3) date placed in INS custody.
- 3. Within one business day of the emergency or influx the Juvenile Coordinator, or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their

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

- 4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.
- 5. Each year, the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.
- 6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

## EXHIBIT 4 Agreement Concerning Facility Visits Under Paragraph 33

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

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

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

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

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

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

#### Exhibit 5

List of Organizations to Receive Information re: Settlement Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Exhibit 6 Notice of Right to Judicial Review

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

# Exhibit 81

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#### DECLARATION OF JUSTIN MIXON

- I, Justin Mixon, declare and say as follows:
- 1. I execute this declaration in support of plaintiffs' motion for an award of attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(2)(A), at market rates. For the reasons I explain below, I am of the firm opinion that giving aggrieved class members a fair chance of prevailing on their motion to enforce the settlement in *Flores v*. Sessions required counsel with expertise not possessed by most lawyers, nor even members of the immigration bar.
- 2. I am an attorney admitted to practice in the state of Pennsylvania. Further details regarding my professional qualifications appear in my CV attached hereto.
- 3. I am currently a private practitioner in Pennsylvania specializing in immigration law. My immigration practice areas include immigration benefits for immigrant and refugee minors, including asylum and removal defense.
- 4. From April 2014 to June 2017, I served as an attorney with Hebrew Immigrant Aid Society (HIAS) of Pennsylvania. HIAS Pennsylvania is a non-profit, public interest organization that provides legal and supportive services to immigrants, refugees and asylum seekers from all backgrounds in order to assure their fair treatment and full integration into American society. During my tenure, the Vera Institute of Justice funded HIAS Pennsylvania via a master grant from the Office of Refugee Resettlement of the U.S. Department of Health and Human Services to provide free legal services to immigrant and refugee minors in ORR custody. These services consisted primarily of conducting "know your rights" presentations and assisting with applications for affirmative immigration benefits, such as Special Immigrant Juvenile status and asylum.
- 5. As part of my duties with HIAS, I regularly communicated with other lawyers and advocates for detained immigrant and refugee children and subscribed to the major list serves for practitioners who detained immigrant and refugee children. I thereby became aware of advocacy, including litigation, carried out nationwide, and not only in

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27 28 Pennsylvania. Now in private practice, I continue to keep abreast of developments in the law impacting on my representing immigrant and refugee youth.

6. I am familiar with the work and reputation of Carlos Holguín, lead attorney for the Flores plaintiffs in their effort to compel ORR to grant juveniles in its custody bond redetermination hearings. In my opinion, Mr. Holguín possesses specialized knowledge regarding the rights of detained immigrant and refugee children, particularly the settlement in *Flores* and the potential for enforcing detained children's rights thereunder via class-wide litigation, that is not generally available. I am of the opinion that Mr. Holguín is among a very few advocates for immigrant children's rights in the country with the knowledge and experience needed to give the *Flores* class a fair chance of prevailing against ORR.

7. In my opinion, successfully enforcing the Flores settlement against ORR required specialized knowledge of poorly understood nooks and crannies of immigration law. The Flores settlement is now some 20 years old, yet it contains many protections for detained immigrant and refugee children found nowhere else. In other aspects, the *Flores* settlement contains provisions that precede and are now parallel to or analogous with other sources of law, particularly the 2002 Homeland Security Act and the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act. Understanding how these disparate sources of law potentially intersect to delimit ORR's authority to detain immigrant and refugee children without hearing is not commonplace amongst lawyers generally, nor even among members of the immigration bar.

8. I know relatively few immigration practitioners who specialize in the rights of immigrant and refugee children. Apart from Vera Institute-funded legal services providers, I know of only a handful of lawyers who are truly versed in the rights of immigrant and refugee minors in ORR custody. In my experience, private practitioners generally lack the resources to pursue federal litigation on behalf of their clients, and they therefore typically limit representation to advocacy before the relevant federal administrative agencies: U.S. Citizenship and Immigration Services, U.S. Customs and Immigration Enforcement, and the 3

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Executive Office for Immigration Review. (Prior to the Ninth Circuit's affirming detained children's rights to bond hearings, practice before ORR consisted almost exclusively of filling out family reunification packets and supplicating informally on behalf of one's client.)

- 9. Lawyers whom the Vera Institute funds had, and continue to have, even less latitude in advocating for detained immigrant and refugee children. Although the TVPRA directs HHS to ensure that such children receive representation in "legal matters" to the greatest extent practicable, during my employment with HIAS Pennsylvania I was instructed that I could not assist detained children challenge ORR's release or placement decisions, no matter how arbitrary or otherwise unlawful ORR's decisions appeared. I know of no Vera-funded legal services provider who has ever represented a minor in federal court against ORR.
- 10. In sum, the members of the bar qualified and available to assist detained immigrant and refugee children seek redress against ORR in federal court are few, and the Vera Institute, at the behest of ORR, blocks the majority of those from representing children aggrieved by ORR's custody and placement decisions in any event. In my opinion, only attorneys with this distinctive mix of knowledge of immigrant and refugee children's rights and the skill and experience to bring federal litigation to enforce those rights could have enforced the Flores settlement against ORR. I must therefore conclude that aggrieved Flores class members would have had great difficulty retaining qualified counsel to seek classwide relief against ORR were it not for Mr. Holguín and his colleagues.
- 11. A fortiori, I also believe that no other qualified lawyers could have been found to represent the plaintiff class against ORR at the inflation-adjusted EAJA rate. To begin, few members of the immigration bar regularly engage in federal court litigation; those who do, typically pursue cases on behalf of individual clients; and only a very small number are willing and able to prosecute class actions, or indeed, any federal litigation in which a favorable outcome is not reasonably assured with a minimal investment of time and money.

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The steep learning curve required to develop adequate expertise in the law impacting Flores class members in this case would make finding qualified counsel at the statutory rate all but impossible. I declare under penalty of perjury that foregoing is true and correct. Executed this 19th day of October, 2017, at Jenkintown, Pennsylvania. **Tustin Mixon** 

#### Justin Mixon, Esq.

453 Johnson Street, Suite 201A Jenkintown, PA 19046 (215) 692-2262 justinmixon@mixonlegal.net

#### **EDUCATION**

University of Minnesota Law School, Minneapolis, MN J.D. – May 2002, Cum Laude 2002 Law School Public Service Award Environmental Moot Court Director National Competition Team Member 2001-2002

**Trinity University**, San Antonio, TX B.A. in Religion (academic studies), May 1994

#### EXPERIENCE

#### **HIAS Pennsylvania**

Immigrant Youth Staff Attorney, 5/2014 - 6/2017

- Represent youth and young adults in child welfare, custody, asylum, Deferred Action, and U Visa cases.
- Manage and provide information and support for cases with pro bono attorneys at local law firms.
- Conduct presentations and CLE legal seminars to synagogues, law schools, lawyers, and other community groups regarding the humanitarian crisis in Central America and how they can assist immigrant families.
- Collaborate with community and advocacy groups to promote the rights of immigrant families detained at the Berks family detention center and federal government youth shelters.

#### Justin Mixon, Esquire, Jenkintown, PA

Solo Practice Attorney 2012 - present

- Represent clients in immigration, family, and housing cases in court and in administrative hearings.
- Provide legal advice and representation to clients through the Montgomery County Bar Association Legal Access Project.
- Complete transactional matters, such as wills, trusts, rental leases, deeds, and contracts.

#### Abington Friends School, Abington, PA

4th Grade Collaborating Teacher, 8/11 – 6/12

- Design and teach math, literacy, and social studies lessons in two 4th grade classrooms.
- Create and direct engaging classroom learning centers in four core subjects.
- Assistant coach for high school chess and ultimate frisbee teams.

#### Educational Advancement Alliance's Learning Lab, Philadelphia, PA

Science Teacher 7/10 – 4/11

- Created and taught fun, hands-on science lessons for 4th, 5th and 6th grade students on a mobile science lab bus visiting Philadelphia School District elementary schools.
- Organized professional development science trainings for teachers, including a new program to provide science materials and lessons to teachers.
- Collaborated with other non-profit organizations and the Philadelphia School District to conduct science fairs, summer programs, and other community events.

#### Philadelphia School District, Philadelphia, PA

Third Grade Teacher 7/08 – 6/10 (Laura Carnell Elementary School) Fifth Grade Teacher 2/08 – 7/08 (William Cramp Elementary School)

- Taught 3rd grade students of diverse backgrounds, using the Literacy, Math, Science, and Social Studies Philadelphia curriculum.
- Designed engaging lessons that require students to learn and demonstrate skills on their own and in groups.

#### Justin Mixon, Esquire - Jenkintown, PA

Solo Practice Attorney 5/06 - 12/07

- Represented clients in employment, contracts, family law, and other cases in court and in administrative hearings.
- Provided free legal advice to dozens of clients through the Montgomery County Bar Association Legal Access Project.

#### Legal Aid Bureau, Inc. - Riverdale, MD

Staff Attorney 7/04 - 5/06

- Represented low-income clients in employment, housing, bankruptcy, and consumer cases in court and in administrative hearings.
- Performed outreach and legal rights presentations for community groups, including Spanish-speaking immigrant communities.

### Equal Justice Works Fellowship - Virginia Justice Center, Falls Church, VA

Attorney / Equal Justice Works Fellow 9/02 - 7/04

- Organized low-wage immigrant workers to advocate for better working conditions in courts and with police, employers and government agencies.
- Conducted monthly clinics teaching workers how to represent themselves in small claims court and file complaints with state agencies to collect unpaid wages.

#### U.S. Peace Corps, Guatemala

Agricultural Diversification / Community Development Volunteer 10/95 - 1/98

• Provided technical assistance and project facilitation to improve crop production, family nutrition, and group organization in 5 villages with over 25 families.

#### Heifer Project International, Perryville, Arkansas

Educator for the International Learning and Livestock Center 9/94 - 8/95

# Exhibit 82

Subject: RE: Correspondence re: legal representation for Flores class members

From: "Fabian, Sarah B (CIV)" <Sarah.B.Fabian@usdoj.gov>

Date: Fri, 23 Mar 2018 22:24:46 +0000

To: "crholguin@centerforhumanrights.org" <crholguin@centerforhumanrights.org>, Paola Midence <pmidence@catholiccharities.org>, "kchapman@catholiccharities.org" <kchapman@catholiccharities.org>, "Alsterberg, Cara E. (CIV)" <Cara.E.Alsterberg@usdoj.gov>, "Silvis, William (CIV)" <William.Silvis@usdoj.gov>, "Murley, Nicole (CIV)" <Nicole.Murley@usdoj.gov>

CC: Leecia Welch <lwelch@youthlaw.org>, Crystal Adams <cadams@youthlaw.org>, Neha Desai <ndesai@youthlaw.org>, Poonam Juneja <pjuneja@youthlaw.org>, "Holly S Cooper"

<hscooper@ucdavis.edu>, Schey Peter <pschey@centerforhumanrights.org>

#### Carlos:

This email responds to your March 12, 2018 letter. Your letter requests that "HHS, through its contractor, the Vera Institute of Justice, and its subcontractor, the St. Frances Cabrini Center for Immigrant Legal Assistance, provide [five UACs] legal representation in the legal matters enumerated above."

As an initial matter, your request appears to be based on your assertions regarding the requirements of the TVPRA. Any alleged compliance or non-compliance by Defendants with the TVPRA, enacted in 2009, is not relevant to the requirements of the *Flores* Settlement Agreement, and thus is outside the scope of your representation of class members in the *Flores* case.

Moreover, Defendants dispute that the provisions of the *Flores* Settlement Agreement and the TVPRA cited by you in your letter require that ORR provide representation in the manner requested in your letter.

Best, Sarah

Sarah B. Fabian
Senior Litigation Counsel
Office of Immigration Litigation – District Court Section
(202) 532-4824

From: Carlos Holguin [mailto:crholguin@centerforhumanrights.org]

Sent: Monday, March 12, 2018 3:28 PM

To: Paola Midence <pmidence@catholiccharities.org>; kchapman@catholiccharities.org; Fabian, Sarah B (CIV) <sfabian@CIV.USDOJ.GOV>; Alsterberg, Cara E. (CIV) <caalster@CIV.USDOJ.GOV>; Silvis, William (CIV) <WSilvis@civ.usdoj.gov>

Cc: Leecia Welch <|welch@youthlaw.org>; Crystal Adams <cadams@youthlaw.org>; Neha Desai <ndesai@youthlaw.org>; Poonam Juneja <pjuneja@youthlaw.org>; Holly S Cooper <hscooper@ucdavis.edu>; Schey Peter <pschey@centerforhumanrights.org>
Subject: Correspondence re: legal representation for Flores class members

Please see attached.

Thank you.

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1 of 2

Carlos Holguín
General Counsel
Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, California 90057
213.388-8693 x.309 (v)
213.386.9484 (fax)
http://www.centerforhumanrights.org

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# Exhibit 83

# REDACTED VERSION OF DOCUMENT FILED UNDER SEAL



April 2, 2018

Via email

Re: Flores, et. al., v. Sessions, et al., No. CV 8504544 DMG (C.D. Cal.)

Dear Flores Counsel:

We have reviewed your letter dated January 16, 2018 regarding the administration of psychotropic medications to unaccompanied alien children (UAC) in the custody of the Office of Refugee Resettlement (ORR) and placed at the Shiloh Residential Treatment Center (Shiloh RTC or Shiloh), including the specific cases that you highlighted (and and by with ORR. This letter responds to the concerns expressed therein.

#### **Shiloh Residential Treatment Center**

Shiloh RTC is a residential treatment center in Manvel, Texas that cares for children, including UAC in ORR's custody, with a very high level of needs, such as significant mental health problems or violent histories, which require specialized treatment and services. The facility has 44 beds in total, of which 32 are designated for UAC in ORR's custody. As of the date of today's letter, 26 UAC placed by ORR are being housed at Shiloh RTC, which has 4 staff members for every child placed there. Shiloh RTC's program is physically organized in a group of cottages and has a central building where a school is located. Notably, Shiloh RTC is not operated by DayStar Treatment Center (DayStar), which is mentioned in your letter. As of February 2011, Daystar is no longer in operation, and even when it was still in business the licensure of Daystar was completely separate from that of Shiloh.

#### Compliance with Texas State Licensing Standards & ORR Monitoring Visits

Shiloh RTC's operations are monitored closely during regular (announced and unannounced) licensing visits and inspections by the State of Texas each year. A licensing visit can cover any topic addressed in the governing Texas Department of Family and Protective Services (TDFPS) Licensing Division's Minimum Standards for General Residential Operations, including most saliently, policy, procedures, and practices concerning the use of psychotropic medication.<sup>1</sup> Shiloh RTC is required to

<sup>&</sup>lt;sup>1</sup> See generally TDFPS' Minimum Standards for General Residential Operations, available at <a href="https://www.dfps.state.tx.us/Child\_Care/documents/Standards">https://www.dfps.state.tx.us/Child\_Care/documents/Standards</a> and Regulations/748 GRO.pdf (last visited

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follow strictly any recommendations for corrective action from Texas' licensure process concerning the care of UAC and other children who reside and receive treatment services there.<sup>2</sup> To ORR's knowledge, Texas state licensing officials have not reported any concerns regarding Shiloh RTC's compliance with state guidelines concerning the administration of psychotropic medications to UAC in ORR's custody.

In addition to complying with mandated state licensing requirements in Texas, Shiloh is also accredited by the Joint Commission on the Accreditation of Hospitals and Organizations (JCAHO), the world recognized leader in the accreditation of health care organizations. Shiloh's JCAHO accreditation was just renewed for another three-year period in January 2018. By adhering to JCAHO's heightened national standards, which address in relevant part the administration and use of psychotropic medication, Shiloh exceeds Texas state minimum licensing standards. Consistent with JCAHO's standard MM.01.01.05, Shiloh RTC developed formal monitoring processes, as well as specific written policies and procedures to monitor the use of psychotropic medications. These policies and procedures address the following issues, among others: guidelines for the prescription of emergency psychotropic medication; the use of multiple psychotropic agents in the same class; the use of high-dose pharmacotherapy; the prevention, identification, and management of side effects from the use of psychotropic medication, including tardive dyskinesia.

Further, it is Shiloh's policy that, in addition to monthly reviews of all their medication orders, on at least a quarterly basis, the board certified child and adolescent psychiatrists who contract with Shiloh to provide psychiatric care for UAC (and other residents) review current prescriptions of psychotropic medications using the best practice guidelines set forth in Texas' *Psychotropic Medication Utilization Parameters for Children and Youth in Foster Care*. Consistent with these guidelines, Shiloh policy requires that psychiatrists treating UAC strive to use no more than four psychotropic medications concurrently, attempt a mono-therapy regimen for identified target symptoms before prescribing a multiple-therapy regimen, and avoid high-dose pharmacotherapy. The justification for any deviation from these standards must be clearly documented. Peer reviews may also be conducted to review a multiple-therapy regimen.

Over and above Shiloh's compliance with Texas State licensing and national JCAHO accreditation requirements, and the facility's own policies and procedures, ORR conducts routine Federal monitoring visits and medical reviews, and regularly participates in various treatment meetings concerning UAC placed at Shiloh. Specifically, biannual Federal monitoring visits are conducted by ORR's Division of Children's Services (DUCS) Monitoring Team, which includes monitoring of

March 8, 2018), at page 161 (use of psychotropic medication). These standards require that Texas state licensed residential facilities comply with Texas Administrative Code Chapter 748, Title 40, Social Services and Assistance, Part 19, Department of Family and Protective Services, Division 7, Use of Psychotropic Medication.

<sup>2</sup> See Minimum Standards for General Residential Operations, at page v (Introduction).

<sup>&</sup>lt;sup>3</sup> See Psychotropic Medication Utilization Parameters for Children and Youth in Foster Care (5<sup>th</sup> Version) (March 2016), available at <a href="https://www.dfps.state.tx.us/Child\_Protection/Medical\_Services/">https://www.dfps.state.tx.us/Child\_Protection/Medical\_Services/</a> documents/reports/2016-03\_Psychotropic\_Medication\_Utilization\_Parameters\_for\_Foster\_Children.pdf. The Medication Tables therein were updated in July 2016. This guidance was developed by the Texas Department of Family and Protective Services and the University of Texas at Austin College of Pharmacy with review and input provided by: the Federation of Texas Psychiatry, Texas Pediatric Society, Texas Academy of Family Physicians, the Texas Medical Association, and Rutgers University-Center for Education and Research on Mental Health Therapeutics.

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Shiloh's procedures for documenting medication use and medical treatment of UAC. ORR's medical team from headquarters has likewise participated in quarterly conference calls regarding residential treatment centers, and has visited Shiloh, in order to monitor the provision of medical care to UAC by reviewing medical procedures and auditing charts. Shiloh also provides a spreadsheet for each UAC placed there which ORR uploads into its patient portal and includes all medications whether prescription, non-prescription or emergency PRN ("as needed"), as well as information about when medications are started or stopped and why, and increases/decreases/adjustments to medications. Additionally, the assigned ORR Federal Field Specialist (FFS), who is trained as a clinical social worker, often participates in weekly treatment team meetings at Shiloh where issues concerning medications such as a child's refusal to take medication may be discussed. During periodic medical reviews, the FFS will participate in clinical discussions with the attending psychiatrist and registered nurse for particularly complex cases. The FFS also conducts monthly meetings with Shiloh staff and local General Dynamics Information and Technology (GDIT) Case Coordinators (contracted case management staff who provide recommendations on transfers and release) to discuss specific UAC cases at Shiloh which may include a discussion of UAC's medical treatment and the prescription of Finally, the FFS also conducts quarterly meetings with stakeholders to include ORR medication. headquarter medical staff and the Senior Advisor for Child Well-being and Safety. Among other topics, these quarterly meetings involve a general review by medical doctors of medical treatment and services provided to UAC, including the prescription of psychotropic medications.<sup>4</sup>

#### **Informed Consent & UAC Assent**

Shiloh RTC follows applicable Texas state law concerning informed consent pertaining to the prescription of psychotropic medications to children in state residential treatment facilities. *See* Texas Administrative Code § 748.2253 (use of psychotropic medication). Under these procedures, if a UAC has a viable sponsor, Shiloh's policy is to inform the sponsor about any changes in medications prescribed for a particular child, including starting a new medication or increasing the dose of a current medication. Shiloh's policy specifies that informed consent must include an explanation of the following: benefits; risks; side effects; medical consequences of refusing the medication or recommendation for the medication; and contact information for the prescribing physician. However, there are emergency situations in which psychiatrists may prescribe psychotropic medications to UAC without such consent or court authorization when their extreme psychiatric symptoms render them a danger to themselves or others. *See* Texas Family Code § 266.009.

Turning to the two individual cases mentioned in your letter -and —we discuss the specific concerns you highlighted with ORR
below. Notably, neither of these cases raised any issues regarding the prescription of psychotropic
medication with the Texas state licensing authorities or the JCAHO accreditation process. Rather,
both UAC, who exhibited serious mental health symptoms while at Shiloh, were prescribed
psychotropic medication in compliance with Texas state law and Shiloh's policies and procedures.

<sup>&</sup>lt;sup>4</sup> ORR does not, however, employ child and adolescent psychiatrists who would have the training to scrutinize the specific medications prescribed by Shiloh experts.

was admitted to Shiloh in March 2016 following a psychiatric hospitalization that resulted from his expression of suicidal ideation (jumping from a window of a multi-story building) and threats. He also has a history of severe trauma and has been attacked by gang members, which reportedly put him into a coma for two days and may have resulted in a traumatic brain injury. In the past (2014), says that he actually attempted suicide and shot himself in the head. While placed at Shiloh, he engaged in physically aggressive behavior towards his peers and staff which was unprovoked, and sexually inappropriate behavior with female staff at Shiloh.
was prescribed medication by a board-certified child and adolescent psychiatrist who contracted with Shiloh in order to treat his extreme aggressiveness, as well as posttraumatic stress disorder (PTSD) and terrifying nightmares, paranoia, labile mood, and anxiety/depression. Notably, one of the documented goals of family therapy with and his sponsor/mother, which was scheduled for two 45 minute sessions per month, was to understand mental health diagnose symptoms, and needs. A goal for mother in therapy was to learn about the psychotropic medication that he was prescribed by his assigned psychiatrist at Shiloh. Further, Service Plan at Shiloh RTC specified that the minor was to be provided medication education in order to ensure that he understood what medications he was prescribed and why. Per this plan, during one medication administration daily, was to be asked to name his medications and state why they were prescribed to him.
Following his discharge from Shiloh RTC on 4/12/2016,  NOVA secure facility in order to stabilize his increasingly aggressive and defiant behavior, such as attacking a vulnerable peer and stabbing a staff member with a pencil – incidents which necessitated the administration of PRN psychotropic medication consistent with Texas law in order to calm down. He was not transferred to Yolo secure until more than five months later on 9/25/2016 and spenseveral months (from June to September 2016) in the interim placed at Mercy RTC in New York. Psychiatric records from NOVA (where was placed from April to June 2016), including a neuropsychological evaluation performed on 5/9/2016 by an independent psychiatrist, indicate that, at the time, although he was initially uncomfortable with the idea of taking medication, believed this medication regimen to be working to improve his emotional state and he wanted to keep taking the same medications. Upon his discharge from NOVA on 6/6/2016, psychiatric records from that facility likewise reflect a recommendation that continue to take his prescribed psychotropic medications. When he arrived at Mercy RTC the next day (6/7/2016), the psychiatrist's progress note state that he agreed to continue to take his medications. While at Mercy RTC, experienced suicidal ideation and engaged in self harm, actively hallucinated, as well as disclosed intrusive PTSD related memories from his harrowing trip to the United States, which necessitated an increase in the dosage of certain medications, and switching other medications.
Following his subsequent placement at Yolo secure in late September 2016, medication logs show that assigned psychiatrist gradually added prescriptions to try new psychotropic medications and reduced the dosage for or eliminated others that already been taking. It was not until later in November 2016 at Yolo that expressed that he did not want to take most of his medications (with the exception of medications for nightmares and sleeping) because he no

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longer needed them. During a weekly therapy session at Yolo on 11/10/2016 just two days after stopping certain medications psychotropic medications, however, reported to a mental health clinician that he was experiencing more nightmares, sadness, loneliness, and thoughts of harming himself by cutting. Notably, psychiatric records from Mercy RTC where was readmitted in December 2016 show that was prescribed additional psychotropic medications with his consent in order to better stabilize his mood and prevent psychosis, as well as lessen his exhibition of aggressive behavior.
When he was transferred to Shiloh RTC in June 2016 on an emergency basis, exhibited several severe mental health symptoms such as psychosis, paranoia, and hyper-suspiciousness. came to Shiloh not long after an acute psychiatric hospitalization in late April 2016 and had a history of bizarre catatonic and seizure-like behavior, and depression. While previously hospitalized, had urinated on himself and attempted to shower with his clothes on. He arrived at Shiloh with several psychotropic medications which had been previously prescribed to him at SW Key Mesa, a staff-secure shelter where he had exhibited oppositional and defiant behaviors, aggression, homicidal threats, and runaway behavior. While placed at Shiloh, engaged in physically and verbally aggressive behavior towards staff and peers, self-injurious behaviors/self-mutilation, as well as inappropriate sexualized behavior; in total he obtained 26 Special Incident Reports (SIRS) while at Shiloh for this behavior.
The board-certified psychiatrist who was assigned to diagnoses based on his observations of him at Shiloh, and changed his medication regimen accordingly. As is permitted by Texas law, also sometimes needed emergency PRN psychotropic medications at Shiloh in order to curb his highly aggressive behavior, and protect him and other minors at the facility. On at least one occasion, asked for such medication in order to help control his extremely volatile mood. Each new medication or dosage change was carefully documented and explained to who never refused to take the medication prescribed and was compliant with his regimen at Shiloh, although he did refuse further medical evaluation later after being transferred to Yolo secure. also agreed to allow his therapist at Shiloh to inform his sponsor mother about his diagnoses and the medications that he was prescribed. The therapist spoke to the mother and provided her with psycho-education about mental illness, and she agreed to take the minor to a psychiatrist in the community to continue his medication if he were released to her upon his discharge from Shiloh.
The treating psychiatrist at Shiloh did document side effects that experienced such as weight gain and made further gradual medication changes in order to alleviate such side effects while continuing to treat his serious mental health symptoms effectively. severe psychiatric symptoms such as psychotic behavior improved incrementally throughout his stay at Shiloh and the psychiatrist made different adjustments to his medication regimen up until the time of his discharge to Yolo secure in December 2016. medical records also indicate that he had been successfully treated for pneumonia in the past but that, contrary to your letter, testing did not actually confirm that he had a history of encephalitis. A brain MRI and EEG given to because of prior reports of "seizure-like activity" were also negative.

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Of note is that records from Yolo secure indicate that physical and verbal aggression with peers and staff persisted after his transfer to that facility in December 2016, and he regularly engaged in disruptive and defiant behavior there. He also expressed suicidal ideation and exhibited sexually inappropriate behavior. In fact, although the assigned consulting psychiatrist's progress note from 1/5/17 indicated improvement in how felt with a reduction in his medications and stated he reported that he was calm and cooperative with Yolo staff, a psychological evaluation of March 2017 which details 18 separate SIRS that received since his arrival at Yolo secure which spanned the months of December 2016 through February 2017 seems to suggest otherwise. In that evaluation, the independent licensed clinical psychologist who performed the psychological testing and reviewed various historical medical, psychiatric, and other records concluded that woolence risk would likely decrease if he continued to participate in mental health treatment, including taking prescribed psychotropic medications.

Finally, we note that the cases you cite are older cases from 2016. There is no evidence that the cases are representative of a widespread problem with the medication practices that exist at facilities where ORR places UAC.

Sincerely,

James S. De La Cruz

Senior Federal Field Specialist Supervisor

Office of Office Refugee Resettlement, Division of Children's Services

# Exhibit 84

# REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

#### Individual Service Plan – Residential Treatment

Shiloh Treatment Center, Inc.

Client's Name:

Case #:

DOB: **03** 

Age: 14

Gender: Female

Race: Hispanic

Language: Spanish

Nationality: Honduras

Alien Number:

DOA: **12-05-17** 

Date of Service Plan: 12-26-17

Estimated Length of Stay: 30 days

ISP Review Interval: 28 days

Client Placed at Shiloh by: Office of Refugee Resettlement Department of

**Unaccompanied Children** 

ORR Program Type: Subacute

Completed by: Erika Slater, BCBA; Juana Medina; Josephine Avila, MA, LPA

Allergies:

Drug: Ibuprofen

Food: Spicy food, fish, sour cream

Safety Precautions:

was referred to Shiloh Treatment Center for a 30-day psychiatric

evaluation following: anxiety with panic attacks and fainting spells.

Safety Plan:

Due to her current mental and emotional functioning, the least restrictive environment necessary to care for her needs is in a highly structured residential subacute treatment setting. She should initially have trained staff to provide one-on-one supervision to monitor her as her mood

stabilizes.

Level of Supervision:

Highest: 1:1

Lowest: Close Proximity

Child-care Services:

Woodhouse Assigned Teaching Home Daily

Medication Administration Daily Lena Broussard, Art Portillo and all staff Lena Broussard, Art Portilio and all staff Medication Education Daily

Shiloh School - Reach Campus Educational Services\* Weekdays

George Littleton

Lena Broussard, Art Portillo and all staff Social Skills Training Daily Recreation and Leisure Chesley Sharp, Doug Manning, Alyn Aluotto, Daily

Lena Broussard, Art Portillo and all staff

Community Recreation and Leisure Monthly Doug Manning, Alyn Aluotto, Lena Broussard,

Art Portillo and all staff

Daily Lena Broussard, Art Portillo and all staff Life Skills Training

Revised 11/05/15

Place Original in Individual Service Plan and Copy to Travel Folder and Medical Chart

Service Plan Shiloh Treatment Center, Inc.			Client: Case #: Date: 12-26-17		
Vocational Education Acculturation Services Preparation for Independent Living Sexual Health Education Religious Services Family Communication		Weekdays Weekdays Weekdays Monthly Weekly Bi-weekly	George Littleton George Littleton George Littleton Julie Schultz, LMSW Elisandro Sanabria Juana Medina, Josephine Avila, MA, LPA		
Treatment Services:  Medical/Nursing Services Psychotropic Medication Monit Safety Contract  Behavioral Programming Counseling: Individual Counseling: Family Counseling: Group Case Coordination	toring	Ongoing Monthly As Needed Continuous Weekly (Frequency) Weekly Daily	Tabatha Ketner, RN and Angelina Farella, MD Javier Ruiz, MD Claudia, Josephine Avila, MA, LPA, Juana Medina, Doug Manning, Alyn Aluotto Lena Broussard, Art Portillo and all staff Josephine Avila, MA, LPA Josephine Avila, MA, LPA Ana Grant, LPC-I Juana Medina, Josephine Avila, MA, LPA,		
Discharge Planning		Ongoing	Micaela Vergara, MSW, LCSW, Marjorie Victor, Nidia Murray Juana Medina, Josephine Avila, MA, LPA, Micaela Vergara, MSW, LCSW, Marjorie Victor, Nidia Murray		
Additional Services and Com Prescription Medications General Dental Care Guardianship	munity Service Provide Monthly/As needed 90 days/Bi-Annually As needed Ongoing		ders: First Choice Pharmacy Marvin Rodrigue, DDS  Office of Refugee Resettlement Micaela Vergara, MSW, LCSW Federal Field Specialist 2900 Louisiana Street Houston, TX 77006 (202) 450-8917 NIDIA MURRAY Case Coordinator Nidia Murray Undocumented Cabrini Center In removal proceedings No viable sponsor Spanish		
Third Party Case Monitor  Citizenship Status Legal Representation Immigration Status Sponsor Sponsor Language	Ongoing Ongoing Ongoing Current Ongoing				
Reunification Status	☐ Searce ☐ Spons ☐ FRP i	oonsor Available ching for Viable Sp sor Identified n Process Completed study Requeste	Note: Note: Note:		

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<b>Service Plan</b> Shiloh Treatment Center, Inc.	Client:					
	☐ Home Study in Progress		Note:			
	☐ Home Study Completed		Note:			
	☐ Release Decision Pending		Note:			
	☐ Negative Release Recommendation		Note:			
	☐ Positive Release Recommendation		Note:			
	☐ Post-Release Services Requested		Note:			
	☐ Post-Release Services Provider Accep	ted UC	Note:			
Present Level of Functioning Intellectual Functioning:	When compared to others at her as Lenguaje, Expresion oral, and Lect Escritura skills are very limited (Lev skills are negligible (Level 1).	tura skills	are limite		). Her	
	Overall, when compared to others at her age level, Amplia habilidad en espanol is limited (Level 3). Her Lectura-Escritura skills are limited (Level 3). Her Proficiencia de lenguaje aplicado (the ability to apply listening, speaking, reading, writing, and comprehension abilities in Spanish) is very limited (Level 2). Lenguage oral skills are very limited (Level 2).					
Developmental Functioning:	Unknown, but there is little reason to suspect that there were any developmental delays or other issues with delivery or pregnancy.					
Strengths and Weaknesses						
Major Stressors:	Separation from family. Frustration with lengthy reunificati Experiences panic attacks and fai	•				
Major Strengths:	Has family in the US. Good academic experience. Resilient, insightful, and goal oriented.					
Skills:	Domestic skills. Good academic experience. Good social skills.					
Deficits/Barriers to Treatment:	No viable sponsor Death of her mother Poor coping skills					

### Triggers of Problematic Behaviors:

When she worries due to bad news about her case; when someone is yelling or raising their voices

### **Client's Preferred De-Escalation Methods:**

Deep breathing; coloring; drawing

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Service Plan

Shiloh Treatment Center, Inc.

Client: Case #:

Date: 12-26-17

**Cultural Identity Needs and Acculturation Issues:** 

None identified.

Assessments to be Completed:

30-Day Treatment Summary due 01-04-18 by Douglas Plaeger, MA, LPC.

# Exhibit 85

#### DECLARATION OF LORILEI ALICIA WILLIAMS

- I, Lorilei Alicia Williams, declare and say as follows:
- 1. I am an attorney licensed to practice in the states of Texas and New York.

  I joined Staten Island Legal Services, part of Legal Services NYC, in January 2016 as the Immigration Unit Director.
- 2. From September 2012 until April 2014, I worked as a staff attorney in the unaccompanied minors program of the St. Frances Cabrini Center for Immigration Legal Assistance at Catholic Charities of the Archdiocese of Houston-Galveston. In the course of my practice I regularly represented unaccompanied juveniles detained pursuant to the Immigration and Nationality Act (INA) and housed by the Office of Refugee Resettlement of the Department of Health and Human Services (ORR) at the following detention facilities: Southwest Key Conroe, Shiloh, Southwest Key Casa Houston, Southwest Key Mesa, Baptist Children and Family Services Baytown, Catholic Charities St. Michael's, and the Children's Center in Galveston.
- 3. From May 2014 until January 2016, I worked as a staff attorney in the unaccompanied minors program of Catholic Charities Community Services of the Archdiocese of New York. During this period I regularly represented unaccompanied juveniles detained ORR detained at the following facilities:

  MercyFirst, the Children's Village, Cayuga Centers, Abbott House, Leake and

Watts, New York Foundling, the Children's Home of Poughkeepsie, the Children's Home of Kingston, Lincoln Hall, and Cardinal McClosky, among others.

- 4. My representation included assisting detained juveniles contest removal, seek affirmative immigration benefits such as asylum and special immigrant juvenile status, as well as seeking their release to parents or other custodians and advocating for their placement in the least restrictive setting. I have accordingly had regular occasion to observe, and am intimately familiar with, ORR's policies and practices, as well as those of United States Immigration and Customs Enforcement (ICE), toward the detention, release, and treatment of juveniles. I am also familiar with how those policies and practices have changed over time.
- 5. In the Houston area, Southwest Key Mesa was primarily a shelter-level facility, although it did have staff-secure beds. Shiloh was primarily a residential treatment center, although for some time it also had staff-secure beds. In New York, the Children's Village was primarily a shelter-level facility with two cottages dedicated to staff-secure beds. MercyFirst has both shelter-level beds and residential treatment center beds.
- 6. Children are placed in staff-secure beds if ORR determines that they require a higher level of supervision than the general population of detained immigrant and refugee youth. Staff-secure placement is more restrictive than shelter placement or placement in transitional foster care. In all aforementioned

facilities, I observed that children placed in staff-secure beds oftentimes remained at staff-secure level for several months. In a few cases, ORR released such children to sponsors or transferred them directly to a less secure long-term placement (such as ORR-funded long-term foster care or the Unaccompanied Refugee Minors (URM) program). In most cases, however, ORR required that the child earn the right to be "stepped-down" from staff-secure level to shelter level before it would release the child or transfer him or her to a long-term placement. It was common to see children detained for six months or longer in staff-secure placements.

7. ORR places children at residential treatment centers (RTCs) when it believes they need psychological or medical intervention. Most children I worked with at RTCs suffered from post-traumatic stress disorder. Many had thoughts of self-harm or suicide, or had experienced psychotic episodes. (A few had no extraordinary psychological needs, but had heightened medical conditions such as deafness, muteness, autism, or epilepsy.) Many children suffering from PTSD or other psychological trauma also had alleged criminal history closely associated with such trauma. Similar to staff-secure children, ORR would sometimes release RTC children directly from RTC, but most often would refuse to release them until they had first stepped down to a less secure placement. In both staff-secure and RTC placements, children suffered greater restrictions on their liberties, such as

being denied permission to leave the facility to attend school or recreational activities. In my experience, children in staff-secure or RTC placements also reported shelter abuses more frequently, such as excessive use of force when restraining a child, threatening children with removal, and general hostility towards the children.

8. I am informed and believe that the *Flores* settlement and § 235(c)((2) of the 2008 Trafficking Victims Protection Act (TVPRA) require ORR to place detained juveniles in the least restrictive setting that is in the best interests of the child. I am further informed and believe that the Flores settlement and the TVPRA require ORR to minimize the detention of juveniles by releasing them to their parents and other reputable custodians except where a particular minor is an extraordinary flight-risk or to ensure his or her safety or the safety of others. I am further informed and believe that the Flores settlement guarantees juveniles whom ORR refuses to release notice and a meaningful opportunity to be heard regarding the grounds for continuing to detain them. In my opinion, ORR is clearly in breach of these requirements: ORR is needlessly extending the juveniles' time in detention, placement in staff-secure beds and RTCs, and it affords detained youth little or no opportunity to examine or contest the grounds for continuing to detain them or house them in restrictive settings. The following examples illustrate ORR's policies and practices.

- 9. Alan Yair Cruz Mar, a 16-year-old born in Mexico, A 205 907 243, was detained by Customs and Border Protection (CBP) on August 24, 2015. Alan's father is a U.S. citizen who recognized his paternity over Alan and agreed to provide him with financial support until he turns 18, thereby making Alan a derivative U.S. citizen effective the date of his birth. A derivative citizen does not need to apply for citizenship: he or she is a citizen at birth. Alan did not know that he had this claim to citizenship until I met with him and also spoke with his father.
- 10. On November 6, 2015, I informed ORR and ICE that Alan was a U.S. citizen and therefore not subject to detention under the INA. ICE's Enforcement and Removal Operations (ERO) unit terminated removal proceedings against Alan during the fourth week of November because of his probative claim to U.S. citizenship and, advised ORR regarding his U.S. citizenship claim. ORR nevertheless continued to detain him for months without affording him any meaningful opportunity contest such detention and despite my best efforts to have him released to his father.
- 11. In an effort to have Alan released to his father, I reached out multiple times via telephone and email to David Fink, ORR's Federal Field Specialist (FFS) supervisor, and James "Jim" de la Cruz, also an FFS supervisor, both out of Washington, D.C. On multiple occasions, they simply refused to respond to inquiries regarding why Alan was being detained in lieu of release to his father. A

local FFS, Karla Mansilla, instructed me to bring up the question with ORR's legal counsel, but when I asked for their counsel's contact information, she refused to give it to me. (I considered filing a petition for habeas corpus contesting Alan's continued detention, but as explained below, I was then funded by the Vera Institute pursuant to a contract with ORR; both ORR and Vera Institute informally discourage Vera-funded lawyers from taking any legal action against ORR lest they cut off funds entirely for assisting unaccompanied minors.)

- 12. I successfully had Alan's removal proceedings terminated in immigration court in mid-January 2016, but it took more than a week for ORR to release Alan to his grandmother. At no time did ORR provide Alan, his father, his grandmother, or me any written explanation of its reasons for continuing to detain him. At no time did ORR present Alan for a bond redetermination hearing. At no time did ORR disclose to Alan, his father, his grandmother, or to me the evidence supporting its decision to continue Alan in detention. At no time did ORR grant Alan, his father, or his grandmother a hearing regarding the grounds for continuing to detain Alan. The most ORR could muster was to advise me informally that they did not want release Alan because they were concerned about his father's criminal history.
- 13. Another of my clients who suffered needless detention was William Alberto Alvarez Argaeta, A 205 298 892, from El Salvador. (William recently

passed away at the age of 14 in a fishing accident.) CBP apprehended William on December 26, 2011, when he was nine years old. ORR first detained William at the IES Harlingen Foster Program, and then at the Children's Center in Galveston, Texas. On January 4, 2012, ORR transferred him to Shiloh RTC. William was diagnosed with Attention-Deficit/Hyperactivity Disorder, Combined Type; Posttraumatic Stress Disorder; and, Bipolar I Disorder, with episodes that have been mixed, severe with psychotic features.

- 14. William's psychological difficulties stemmed from a long and tragic history of sexual abuse in El Salvador. He had been abandoned by extended family with whom his parents had left him, and for at least a year he lived alone, homeless, and defenseless on the streets of El Salvador; he was eight years old and easy prey for sexual predators. William's parents eventually managed to find him and arranged to have him brought to Dallas, Texas, where they lived.
- 15. I began representing William in October 2012. On numerous occasions he was uncooperative and exhibited clear indicia of mental illness. During this initial period of detention, William had no next-friend or child advocate, so I undertook to advocate for release to his parents. Being reunified with his parents was William's only clear wish, and I believed his parents would speak for him during removal proceedings. ORR refused to release William. As was the case with Alan, the agency refused to provide any written explanation of why a child of

such tender age and suffering from such trauma needed to be detained for more than a year when his parents were ready, willing and able to care from him and lived only a few hours away. Again, at no time did ORR present William for a bond redetermination hearing. At no time did ORR disclose to William's parents or to me the evidence supporting its decision to continue William in detention. At no time did ORR grant William or his parents any hearing regarding its reasons for continuing to detain their nine year old child.

16. ORR also appears to have done its best to insulate its decisions to continue children in detention from judicial review. When I discussed William's plight with my supervisors at Catholic Charities Houston, I was told explicitly that we could not take legal action against ORR because our Vera Institute funding to help detained children would be at risk. I determined, then, that my only recourse was to attempt to terminate William's removal proceedings on the basis of his incompetency. In January 2013, I submitted a motion to the immigration court. I also reached out to ORR and asked them if William's psychiatrist and clinician would be able to testify in court as to William's competency. I believe an individual hearing date was either for April or June 2013, but I do not recall the exact date. Some time prior to the competency hearing, ORR suddenly and without explanation released William to his parents; he had by that time spent almost a year and a half needlessly detained.

- 17. As the foregoing cases illustrate, in practice I have never known ORR to provide any written explanation for its decisions against releasing juveniles from staff-secure or RTC detention. In my experience, ORR affords neither detained juveniles nor their parents or other proposed custodians any transparent, meaningful opportunity to be heard on the matter of children's release, no opportunity to see, explain or rebut whatever evidence ORR believes justifies a child's continued secure confinement, or any effective way to appeal ORR's custody decisions administratively. Although ORR publishes on its website that parents may send a letter to the ACF Assistant Secretary appealing the denial, this is not communicated clearly to the parents or children. In sum, in denying juveniles' release to their parents or other caregivers, ORR provides—
  - no notice of the reasons for housing them in a staff-secure or RTC facility;
  - no bond redetermination or other hearing on the reasons for continuing to detain them;
  - no written information regarding when or if it will reach a decision on whether to detain or release a child;
  - no written information regarding when or if it will "step down" a child from a staff-secure or RTC placement to a non-secure licensed placement;

- no explanation of the right of judicial review; and
- 18. Although I am not a mental health professional, I have noted the deleterious effects ORR's opaque and oft-delayed release and step-down decisions have on detained youth. In both Alan's and William's cases, facility staff repeatedly encouraged my clients, their parents, and myself to believe that ORR would release my clients promptly, whereas in truth and fact the agency delayed its decisions for weeks or months, leaving children, their parents, and their lawyer twisting in the wind, awaiting a decision from on high that might or might not be favorable and that would never be explained other than in the barest of conclusory terms. In the face of such extended and faceless uncertainty, detained children already traumatized by horrific experiences in their countries of origin—have expressed to me feeling profound helplessness and despair, to the point where they are prepared to take extreme measures, including opting for voluntary return to countries in which they know their lives and freedom will be in jeopardy, rather than continue to live day after day in ORR's detention facilities never knowing if or when they will be reunited with their families.
- 19. Additionally, although ORR boasts of providing free legal services to detained minors, it hobbles free legal service providers who undertake to represent detained children. While working for both Catholic Charities in Houston and in New York, I was funded by ORR to represent detained unaccompanied minors.

ORR provides such funds pursuant to the TVPRA to the VERA Institute of Justice, which then sub-contracts with nonprofit legal service organizations to provide direct legal services to ORR detainees, among others.

20. In cases where ORR insisted upon detaining children for unusually long periods of time, pursuing relief in federal court was not an option, so my only recourse was to maintain open communication with shelter staff and ORR personnel in the hopes that a positive long-term stakeholder relationship would work to detained children's benefit. On more than one occasion, shelter staff and I strategized together on how to persuade ORR to release a child, but these measures were no substitute for a fair and transparent procedure by which detained children and their parents could understand and test the government's case for refusing release.

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

Executed this 5 day of August, 2016, at Staten Island, NY.

Rachel W W Granfield
Notary Public, State of New York
No. 02GR6333769
Qualified in Richmond County
My Commission Expires 10 50 15

Lopilei Alicia Williams

111 Booke WW Growfield

# Exhibit 86

#### DECLARATION OF MEGAN STUART

- I, Megan Stuart, declare and say as follows:
- I am an attorney licensed to practice in the state of New York. Since
   2011, I have been employed by the Urban Justice Center and work for the Peter Cicchino Youth Project ("PCYP")
- 2. The Peter Cicchino Youth Project provides free civil and immigration legal services to homeless and incarcerated youth under 25 in New York, with a particular focus on LGBTQ youth. PCYP works to interrupt cycles of poverty and criminalization that prevent homeless and street-involved young people in New York City from living their lives to the fullest. We do so by providing holistic, client-centered legal services and case management. PCYP operates legal clinics in drop-in centers and youth programs where homeless youth congregate to access food, showers, laundry, medical care, social services, and community. To meet the needs of undocumented youth, we have partnerships with service providers and community activists who are able to connect homeless immigrant youth with us.
- 3. My immigration practice involves representing clients in a wide array of affirmative immigration applications, including Special Immigrant Juvenile Status, U Visas, Asylum, Green Card replacements, adjustment

- of status and naturalization as well as defensive applications for clients in removal proceedings.
- 4. PCYP clients are a mix of young people who were brought here as children or who fled their home country because of sexual orientation/gender identity-based persecution. Some of these clients have had no contact with immigration, while others are in removal proceedings and homeless.
- 5. In the course of my practice I have represented unaccompanied juveniles detained pursuant to the Immigration and Nationality Act (INA) and housed by the Department of Health and Human Services' Office of Refugee Resettlement (ORR) at Children's Village, Union County Juvenile Detention Center, Shenandoah, NOVA and Sandy Pines.
- 6. My representation of these youth includes both advocacy for release from detention and placement in the least restrictive setting possible as well as immigration representation, including applications for various immigration benefits and defense in removal proceedings.
- 7. Through this work, I have had regular occasion to observe, and am accordingly familiar with, the policies and practices of the ORR and United States Immigration and Customs Enforcement (ICE), toward the detention, release, and treatment of juveniles detained at Children's

- Village and Union County, which I am informed and believe are generally representative of ORR policies and practices nationwide.
- 8. The Union County facility in New Jersey and NOVA in Virginia, are secure detention facilities for adjudicated juvenile delinquents; to my knowledge, these facilities are neither licensed nor suited to house dependent, non-delinquent minors. The facilities are surrounded by a secure perimeter fence, and ingress and egress take place through sally ports. To my knowledge, juveniles detained at Union County and NOVA are never allowed outside the facility. Schooling takes place inside the locked gates of the facility; visitation is rare and tightly regulated.
- 9. In sum, juveniles held at the Union County facility live under palpably prison-like conditions, and those placed there by ORR or ICE are treated little differently from the adjudicated delinquents with whom ORR and ICE detainees are wholly commingled and have regular daily contact.
- 10.I am informed and believe that pursuant to the 2008 Trafficking Victims

  Protection Act (TVPRA) as well as the 1997 settlement in *Flores v*. *Lynch*, No. 85-4544 (C.D. Cal.), neither ORR nor ICE is permitted to place minors in secure juvenile facilities unless no less restrictive alternative is available and appropriate under the circumstances.

- ORR and ICE to minimize the detention of juveniles by releasing them to their parents and other reputable custodians except where a particular minor is an extraordinary flight-risk or to ensure his or her safety or the safety of others. In light of what I have observed in the abovementioned facilities, I believe ORR and ICE are clearly in breach of these requirements.
- ORR of the availability of less restrictive placements, including release to parents, guardians, or other appropriate custodians, yet in my experience ORR generally ignores such alternatives or rejects them without providing detained children, their parents or other proposed custodians, or their counsel a coherent explanation of why it believes release would be inappropriate, nor does ORR provide any meaningful opportunity to examine, much less explain or rebut, any evidence it may have to support having denied children's release. At best, ORR's policies and procedures for determining whether to release a juvenile are ad hoc and adhere neither to accepted standards of due process in immigration proceedings nor to those accepted in the context of child welfare.

- 13.In my experience, ORR never provides a child denied release (i) a written explanation for refusing to release the minor from either Union County or Children's Village facility; a bond redetermination hearing before an immigration judge; a Form I-770; an explanation of the child's right to seek judicial review of ORR's release or placement decisions; or a list of free legal services providers. In effect, ORR affords detained juveniles no meaningful opportunity to be heard on the matter of their release, to see or explain any evidence ORR believes justifies their continued secure confinement, or to appeal ORR's custody or placement decisions administratively.
- 14. Among my clients whose experience is illustrative of the foregoing are E.S., Roberto Montealegre, and Sandra Igihozo.
- 15. Sandra Igihozo is a now 20- year-old native and citizen of Rwanda and a member of the class protected under the *Flores* settlement, who was previously detained at the Children's Village in New York.
- 16. Sandra, who had a stable middle-class childhood, fled Rwanda after she was tortured because of her sexual orientation. During her journey to join her family in Canada, Sandra was sexually assaulted.
- 17. Sandra was taken into custody by CBP in July 2013, and was placed at Children's Village a few days later. She entered ORR care pregnant and

without family in the United States. In July 2013, ORR determined that Sandra would be detained in lieu of release on bond, recognizance, supervision or parole. In October 2013, I requested that the immigration court review ORR's no-release decision and the \$20,000 bond set before her transfer to ORR. In a decision dated October 31, 2013, and affirmed December 19, 2013, the immigration court declined to redetermine bond because she believed that she only had jurisdiction over certain custody determinations made by the Attorney General, and not the Office of Refugee Resettlement. Sandra accordingly remained detained. A true and correct copy of this decision is attached as Exhibit A to this declaration.

18.During the pendency of the Bond redetermination motion, I also made a request on October 2, 2013 for ORR to release Sandra into the custody and care of a licensed youth shelter that had agreed to provide her foster care until her 21<sup>st</sup> birthday. On October 24, 2013, ORR field specialist Elcy Velez denied this request, advising via email that "ORR has no plans to release Sandra at this time." ORR provided no explanation for its decision, nor did it disclose—much less allow Sandra to explain or rebut—any evidence it may have had to support its decision. A true and correct copy of my request and ORR's denial thereof are attached as Exhibit B to this declaration.

- 19.Between October and December 2013, I made several additional requests to ORR for Sandra to be released so that she could enter foster care, all of which were denied without any explanation of the reasons for the decision, the standards employed, or the evidence upon which the decision was based.
- 20. Sandra remained in ORR custody until January 10, 2014, 20 days before her 18<sup>th</sup> birthday. I believe the threat of a habeas petition is what motivated ORR and the Attorney General to release Sandra into URM care, though ORR never offered any explanation for reversing its decision to detain Sandra.
- 21.Despite the stress that months of detention imposed on Sandra and her child, Sandra was eventually able to become a Legal Permanent Resident.
- 22.In my experience, the Vera-funded legal service providers seem reluctant to aggressively advocate or take legal action when ORR refuses to release a minor or places them in an overly restrictive setting.
- 23. Although most Vera-funded providers are personally committed to representing immigrant youth with the utmost vigor, the current funding structure deters many from zealously advocating for unaccompanied minors with respect to ORR's often arbitrary detention decisions.

Case 2:85-cv-04544-DMG-AGR Document 409-5 Filed 04/16/18 Page 173 of 198 Page ID #:15573

24. Though I am uniquely situated in terms of capacity and expertise to represent youth in ORR detention, I have been told that because of my advocacy for my clients, Vera-funded providers are not to refer cases to me, or risk losing their funding.

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

Executed this 1st day of August 2016.

Megan Stuart

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
26 FEDERAL PLZ 12TH FL., RM1237
NEW YORK, NY 10278

URBAN JUSTICE CENTER 123 WILLIAM STREET 16TH FL. NEW YORK, NY 10038

IN THE MATTER OF IGIHOZO, SANDRA

FILE A 205-710-232

DATE: Oct 31, 2013

UNABLE TO FORWARD - NO ADDRESS PROVIDED

ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS

OFFICE OF THE CLERK 5107 Leesburg Pike, Suite 2000 FALLS CHURCH, VA 20530

ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
26 FEDERAL PLZ 12TH FL., RM1237
NEW YORK, NY 10278

OTHER:

COURT CLERK

IMMIGRATION COURT

FF

CC: DISTRICT COUNSEL, NYC DISTRICT 26 FEDERAL PLAZA, ROOM #1130 NEW YORK, NY, 10278



Executive Office for Immigration Review *Immigration Court* 

26 Federal Plaza, 12th Floor Room 1237 New York, New York 10278

File: A205 710 232 - New York

\_\_\_\_\_\_

In the Matter of IGIHOZO, Sandra Respondent.

In Removal Proceedings

On behalf of Respondent: Megan Stuart, Staff Attorney On behalf of DHS: Fen Lu, Assistant Chief Counsel

#### **Decision on Motion for Bond Redetermination**

The respondent is a seventeen year old, female, who is a native and citizen of Rwanda. She is alleged to have entered the United States upon presentation of a false passport in an assumed name on or about July 13, 2013 at Dulles International Airport. On or about July 29, 2013, she was apprehended by U.S. Border Patrol Agents near the Canadian border. She explained to the agents that she was attempting to enter Canada. She was placed in custody and served with a Notice to Appear on that date. On the following day, she was served with Form I-286, informing her that DHS had made a determination that she be released from custody under bond in the amount of \$20,000.

The respondent was previously before Immigration Judge Gabriel C. Videla when, through counsel, she indicated she wished a bond redetermination. Judge Videla instructed counsel to file the motion by October 9, 2013, and the Department to reply by October 17, 2013. The Department did not respond. On October 17, 2013, the matter was assigned to me for consideration. I granted the Department an extension to respond, and they have filed a memorandum in opposition to the respondent's motion. The respondent has replied to that memorandum in opposition.

As more fully described in her pending motion, the respondent was forced to flee Rwanda after she was detained by the police and threatened with death when her sexual orientation

The Record of Proceeding does not include Form I-286. However, respondent has supplied a copy of such document (Exhibit C to Reply to DHS Opposition), and the Form I-213 (Exhibit B to Emergency Motion filed by respondent) confirms that such determination was made at the time of her apprehension. Respondent indicated on Form I-286 that she requested a redetermination of this custody decision by an immigration judge.

(lesbian) was discovered. Her mother made arrangements with a step-cousin to take the respondent to Canada, where she has family. Unfortunately, en route to the United States, she was raped by her step-cousin. In the United States, she sought to escape from him and took a cab to the US-Canadian border where she was apprehended and these proceedings were initiated. <sup>2</sup> The respondent asserts that she is pregnant as a result of the rape by her step-cousin, and is due to deliver a child approximately one month after her 18<sup>th</sup> birthday.

Respondent is currently housed at Children's Village in Dobbs Ferry, New York. She asserts that she is not comfortable in that setting, has no educational opportunities there, and most of the children are much younger than she is. In Rwanda, she had completed most of her high school education and speaks three languages. She has presented documentation to show that she has been accepted into the Safe Horizon's Streetwork Project, and has offered a "detailed release plan" written by that office's social worker. However, the Office of Refugee Resettlement ("ORR"), through its Federal Field Specialist, Elcy Valdez, has declined to allow such placement and informed counsel for respondent, as recently as October 24, 2013, that it has "no plan to release Sandra at this time."

Respondent asserts that the immigration judge has authority to order the release of the respondent. DHS asserts that it does not. I have carefully considered the memoranda and evidence, and arguments made by both sides and have concluded that an immigration judge has authority to review the decision of the DHS with respect to determinations relating to bond, but that it has no authority to interfere with the care and custody of the minor child as determined by ORR.

The respondent has offered an unreported decision of the Board of Immigration Appeals to support her position. That decision is supportive of my conclusion that I continue to have jurisdiction with respect to bond, and could order the \$20,000 bond reduced or that she be released on conditional parole, but I can not require the Office of Refugee Resettlement to make any particular determination regarding the placement of the respondent. The Immigration Judge's authority to determine conditions of custody under 8 C.F.R. 1236.1(d) extends only to certain custody determinations by the Attorney General, not the Office of Refugee Resettlement. I have no authority under the Homeland Security Act of 2002 to order the ORR to provide any particular custody arrangements, or to require them to provide reasons for their custody decisions. The Director of ORR is charged with "coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status." 6 U.S.C. 279(b)(a)(A). The Director has jurisdiction to make placement determinations, but that does not strip jurisdiction from the Immigration Judge to determine if custody is warranted in the first place. Clearly, the overriding consideration in separating the custody decisions made by the Attorney General from those care and custody issues determined

<sup>&</sup>lt;sup>2</sup>The respondent asserts that her baby is due in February (about a month after her 18<sup>th</sup> birthday). The respondent claims that she was raped by her step-cousin, Didier, while in Uganda. The time-frame of these events is not clear, although it would seem that respondent became pregnant in approximately May, 2013, nine months prior to her anticipated delivery in February, 2014.

by ORR highlights the need for the expertise of those charged with the best placement of the child for the best interests of the child. The ORR has social workers and experts in these issues, whereas an immigration judge does not. In a hypothetical situation, I might conclude that a seven-year old child should not be detained in custody or be required to post a bond. However, it would be for ORR to decide where that child should be placed and by whom the child should be cared for. While I may feel quite confident, based on the representations of counsel for respondent, that the suggested placement with Safe Horizons appears suitable, apparently ORR does not, and there is no mechanism for me to override their determination as to this child's care and placement. The care of this very vulnerable child has been determined by ORR to be best served at Children's Village.

Having reached the conclusion that I lack the authority to override that determination, I note that DHS has determined that a \$20,000 bond is necessary to ensure the respondent's appearance at hearings. The immigration judge does have jurisdiction to review that determination. Unless the DHS wishes to re-evaluate whether such bond, or any bond, is necessary, a hearing will be set solely for the purpose of considering that bond so that when it is determined that respondent may be placed in another setting, or she is over 18 and no longer subject to the care of ORR, the redetermination of the bond, to which she is entitled, will have been completed. The issue of the care and custody exercised by ORR will not be part of the hearing and the sole issues will be whether respondent's release would pose a danger to property or persons and whether she is likely to appear at any future proceedings.

ORDER: IT IS ORDERED that the motion for bond redetermination is Granted in part, and Denied in part.

Patricia A. Rohan Immigration Judge

Dated: Oct. 31, 2013

VIA FEDERAL EXPRESS

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#### U.S. Department of Justice

Executive Office for Immigration Review Office of the Immigration Judge

File A 079 238 898

In the Matter of

Iginozo, Sandra

in Removal Proceedings

> Order of the Immigration Judge

Suplemented Decision on Bond Redeterm mation

I hereby incorporate, in its entirety, my decision of October 31.2013. I do not believe I have authority to order the release or placement of the respondent I would wish The respondent - Would Wish at I nod Such authority, but all not The DHS has withdown bond requirement. It is, in my bond requirement for her as soon propriate Placement for her as soon propriate Placement for her as soon propriate a placement for her as soon propriate a placement for her as soon propriate a placement for her as soon propriate and a placement for her as soon propriate and a placement for her as soon and the possible a placement for her as soon and the possible and the possible

2. ALIEN'S COPY

ExA2

Exhibit 86 OIR-23 **Page 632** 

(Immigration Judge)

October 2, 2013

The Childrens Village 1 Echo Hills Road Dobbs Ferry, NY 10522

> Re: Pre 18 Release Plan Sandra Igihozo, A# 205-710-232

Dear Ms. Valdez, Ms. Claudio, and Ms. Roman,

My name is Gretchen Begley and I am a Case Manager at the Peter Cicchino Youth Project ("PCYP") of the Urban Justice Center. PCYP addresses the legal needs of homeless and street involved youth. I work with the Urban Justice Center's legal team as a social service provider to help released children transition into the community and towards independence. In order to facilitate this transition, I create and carry out individualized social service and education plans.

This plan is submitted in support of Sandra's pre-18 release from Children's Village. As you know, Sandra is pregnant and has no long-term federal care options which means that she is in grave danger of being discharged into homelessness on her 18<sup>th</sup> birthday and in her third-trimester of pregnancy. Our primary concern, which I know you share, is that Sandra and her child have access to the best long-term care available so that they both have a change at a safe and supported life. Given this, the best long-term option for Sandra is for her to get into State Foster Care, which requires her release from Children's Village before her 18<sup>th</sup> birthday. Additionally, given that Sandra's life will undoubtedly get more difficult as her pregnancy advances, a release as soon as possible is in her best interest.

The plan detailed below considers Sandra's: A) future housing, B) education, C) medical care and mental health, D) immigration case, E) need for identification, and F) extracurricular enrichment opportunities. Each component of this plan has been identified based upon my recent conversations with Sandra, her attorney Megan Stuart, and my experience working with numerous unaccompanied youth in New York City. This plan has been discussed with Sandra and he has agreed to participate. I have done my best to incorporate information regarding the programs and social service agencies I have identified for Sandra in order to provide context for the services available to unaccompanied children generally in the New York City area.

My proposed Plan for Sandra is as follows:

ExB

<sup>&</sup>lt;sup>1</sup> Although it is certainly in Sandra's best interest to transition to foster care upon release from the Children's Village, I have been working concurrently on a pre/post18 plan for Sandra, so that, in the event Sandra does not transfer to Foster Care, his transition to the community is as smooth as possible.

#### A. Housing:

Independent housing opportunities for youth like Sandra in New York City, are funded by the New York Department of Youth and Community Development ("DYCD"). Generally, DYCD housing services include three separate elements: 1) Crisis Shelters, 2) Transitional Independent Living, and 3) Borough-Based Drop-in Centers.

1. Crisis Shelters: Crisis Shelters offer emergency shelter for runaway and homeless youth up to the age of 21.<sup>2</sup> The shelters are the **entry-point** for the DYCD's Runaway and Homeless Youth system. These voluntary, short-term residential programs provide emergency shelter and crisis intervention services aimed at reuniting youth with their families or, if family reunification is not possible, arranging appropriate transitional and long-term placements. In other words, in order for a youth to enter a transitional and long-term housing placement in New York, he or she must first begin in a DYCD "Crisis Shelter", who have the ability to make a referral.

There are three Crisis Shelters in New York City that Sandra is eligible for: Streetworks and the Covenant House. Both programs are tasked with ensuring a youth's transition to long-term placement when other reunification options or placements do not exist. In order to ensure children transition to permanency as quickly as possible, DYCD limits the length of stay for a child in a Crisis Shelter to 30 days, with the possibility of a 30 day extension. Both Streetworks and Covenant House accept children on a first-come first serve basis, however, their intake procedures are different as follows:

- a. Streetworks (209 W. 125th. St., New York, NY 10027, Phone: 212.695.2220)
  - i. I have contacted Streetworks about Sandra, and they have agreed to accept her into their crisis shelter. Letter from Streetworks, attached.
  - ii. Generally, youth seeking acceptance into the Streetworks program must complete two intake interviews. The youth must come to the shelter from 10am-12pm on Monday, Tuesday, Thursday, or Friday. Streetworks only takes the first four youth who arrive on any given day for intake. It is best to arrive 15 minutes prior to the opening time. If Streetworks has a bed available once a youth completes the intake process, the youth is placed immediately. If however a bed is not available, youth are placed on the waitlist. A youth placed on the waitlist must call Streetworks daily in order to determine if and when a bed is available.
  - b. Covenant House (460 W 41st St, New York, NY 10026)
    - i. Covenant House will conduct an intake of a youth at any time, day or night. Youth will be placed immediately, if a bed is available. If a bed is not available, youth are referred to adult crisis shelters. Due to Urban

<sup>&</sup>lt;sup>2</sup> Please note that the term "homeless and runaway" youth is broadly defined by the McKinney-Vento Act as a youth who has a primary nighttime residence a publicly or privately operated program, including transitional housing. The definition of homeless, as defined by the federal statute, is so broad that it deems children who are in ORR facilities "homeless" as well as children who are in independent living placements that provide housing to youth for years.

Justice Center's long-standing relationship with the Covenant House, we frequently communicate directly with Covenant House Legal Director Nancy Downing when a client of ours is expected to arrive for intake. <sup>3</sup> We have already communicated with Nancy Downing about Client's case, and she is prepared to coordinate Client's placement at the Covenant House if and when necessary.

- c. Ali Forney Center ("AFC") (321 W 125th St New York, NY)
  - i. AFC offers a scattered-site emergency housing program for LGBTQ youth with sites in Queens and Brooklyn. They offer temporary housing in safe, staff-supervised homelike apartments. LGBTQ youths are able to reside in our emergency housing program for up to six months while we assist them in moving on to more permanent housing. Currently AFC has 4 emergency housing apartments and a total of 49 beds.

Both the Covenant House and Streetworks provide the following services to their residents:

- Crisis Center
- Community Centers
- Street Outreach
- Transitional Housing Program
- Health Services
- Mental Health Services
- Mother & Child Programs
- Regional Training Centers
- Substance Abuse Services
- Vocational Training Institute
- 2. Transitional Independent Living: Transitional Independent Living (TIL) facilities provide homeless youth between the ages of 16 and 21 with support and shelter as they work to establish an independent life. As mentioned above, a young person in need of long-term residential services must first visit a <u>Crisis Shelter</u> and obtain a referral to a Transitional Independent Living facilities. Youth may stay in the Transitional Independent Living facilities for up to 18 months. Services offered at TILs include:
  - Educational programs
  - Vocational training
  - Job placement assistance
  - Counseling
  - Basic life skills training
    - a. There are three long-term programs specifically designed for pregnant and parenting teens, however to be eligible for the program a youth needs to be referred from one of the Crisis Centers.

<sup>&</sup>lt;sup>3</sup>See <a href="http://www.covenanthouse.org/homeless-charity/new-york">http://www.covenanthouse.org/homeless-charity/new-york</a>

- i. Independence Inn mother-child program;
- ii. Covenant House mother-child program
- iii. Inwood house
- 3. Borough-Based Drop-in Centers: Drop-In Centers are located in each of the five boroughs of New York City, one per borough. The Drop-In Centers provide youth up to the age of 24 and their families with essentials like food, clothing and immediate shelter as well as access to counseling, support, and referrals to relevant services. Drop-In Centers are open 6 days a week. Drop-In Centers frequently have close connections to TIL programs, and in limited circumstances, may be able to conduct an intake for possible placement at a partner TIL.

#### **B.** Education:

We would like to enroll Sandra into a traditional high school. We think she would succeed in a traditional educational environment because she is fluent in English and completed all but one month of high school in Rwanda. New York Law guarantees Sandra the right to an education and once she is released, we will take her the local enrollment center so that she can be immediately placed into a high school.

#### C. Medical Care and Mental Health:

Upon release, we will enroll Sandra into Child's Health Plus, New York Sate's low-income insurance plan for youth. Unlike traditional Medicaid, undocumented immigrants are eligible for insurance until they turn 19. We imagine that by the time Sandra is 19, she will have immigration status, thereby becoming eligible for Medicaid.

#### D. Immigration Case:

Sandra and her attorney, Megan Stuart, will continue to work together on her immigration applications. Sandra is eligible for the following forms of relief, which she and Megan will peruse. I will escort Sandra to all immigration court appearances, the next of which is on October 17<sup>th</sup> at 1pm.

- i. Asylum
  - a. Sandra is prima facie eligible for asylum because she was persecuted in Rwanda because of her sexual orientation. Sandra is working with Megan to develop her asylum application, which will be submitted before Sandra turns 18. Because an asylum application requires Sandra to re-live an extremely traumatic period in her life, it requires several meetings between Sandra and Megan.
- ii. SIJS
  - a. Sandra is also prima facie eligible for SIJS. Upon release, Sandra and Megan will petition the appropriate family court for a special findings order that they can then submit to USCIS.
- iii. U-Visa/T-Visa

a. Sadly, Sandra is also eligible for a U and/or T visa based upon the sexual assault from her relative who was entrusted with her care. Sandra and obtain the necessary certifications either by reporting the crime to law enforcement locally, or thu the family court. This process will be started in the next few weeks. Once the requisite certificates are obtained, Sandra and Megan will meet to write a supporting affidavit and then submit the application ASAP.

#### E. <u>Identification:</u>

We want to ensure Sandra has all needed identification. Youth under the age of 18 are able to obtain free picture identification at New York Parks and Recreation. These identifications include membership to all Park and Recreation centers in NYC, and are only free for youth under 18 years of age. Upon release, we will escort Sandra to obtain this ID. We believe the New York Parks and Recreation I.D. qualifies as a government issued I.D. because it is issued by NYC. A Parks and Recreation center is located near our offices at 80 Catherine Street. Sandra need only bring a birth certificate to become a member and obtain an I.D.

#### F. Extracurricular Activities:

In order to ensure Sandra is has access to extracurricular programming and additional supportive services, after her release we will assist Sandra in becoming a member of the Door and Ali Forney Center. The Ali Forney Center is a drop-in space for LGBTQ youth who provides a variety of social services as well as a place for LGBTQQ youth to congregate and socialize. The Door a comprehensive youth empowerment organization. The Door provides a wide range of services to meet the needs of New York City youth aged 12-21, including, but not limited to:

#### College Advisement & Tutoring

The Talent Search program provides the support and guidance you need to make your way to high school graduation, college and beyond.

#### Counseling

Counselors are here to listen and help with a range of issues, including anger management, crisis intervention, gender identity, and much more.

#### Creative Arts

Regularly scheduled, free creative arts classes include a range of performing and visual arts, music and dance.

#### English Language (ESOL)

The Door offers a flexible schedule of classes for young people who would like to learn English.

#### Foster Care

If you are in foster care, The Door can provide the additional support you may need to reach your goals.

<sup>&</sup>lt;sup>4</sup> See http://www.door.org/about-door

#### **GED**

The Door offers a variety of programs to help you get your GED and move on to a career, college or a vocational/training program.

#### Health & Dental Services

The Adolescent Health Center (AHC) offers comprehensive health and dental services to all Door members, regardless of ability to pay.

#### Jobs & Internships

Jobs & Internships programs give you the chance to explore different career paths and gain skills to help you find the right job and keep it.

#### Leadership

The Door offers a range of opportunities to learn key leadership skills that will help you in school, work and everyday life.

#### Legal & Immigration Services

The Legal Services Center provides different kinds of legal counsel, including support for immigrant youth. Services are offered in English, Spanish, Mandarin and French.

#### LGBTQ

The Door provides a range of programs geared towards Lesbian, Gay, Bisexual, Transgender or Questioning (LGBTQ) members.

#### Recreation

Games, workshops, and fitness and performance opportunities are offered on a daily basis.

#### Runaway and Homeless Youth

If you are homeless or have run away from home, The Door can help you find essentials like food, clothing and shelter, as well as help with your specific needs.

#### Sexual Health & Birth Control

The Adolescent Health Center (AHC) offers a comprehensive list of services to meet your sexual health and birth control needs.

#### **Supportive Housing**

In December of 2010, in partnership with <u>Common Ground</u>, The Door opened The Lee, a supportive housing building located on the Lower East Side. The Lee currently houses 55 young people living in their own apartments, often for the first time.

In sum, Sandra is quickly approaching her 18<sup>th</sup> birthday and we would like to do as much as possible to ensure that she is best situated for her transition to independent living in the community should he not have access to foster care. This requires that Sandra attend numerous appointments and we truly appreciate your help in transporting Client so that he can have the best chance possible upon release from the Children's Village.

I look forward to working with you. Thank you for your assistance.

Sincerely,

Gretchen Begley, MSW Case Manager December 18, 2013

Megan Stuart Staff Attorney Peter Cicchino Youth Project Urban Justice Center 123 William Street, 16<sup>th</sup> Floor New York, NY 10038

RE: Sandra Igihozo (DOB: 01/30/1996)

Dear Attorney Stuart,

This will confirm that Covenant House New York will accept Sandra Igihozo into our Crisis Center Program. We are aware that Sandra is a minor and we will provide for her essential needs during her stay at Covenant House. She will be placed in our Mother/Child program located at 427 West 52<sup>nd</sup> Street, New York, NY 10019. Covenant House is a crisis intervention center for homeless and runaway youth, under 21 years of age. We provide shelter, food, clothing, as well as a number of services including medical services, counseling services, employment and education services. Caseworkers and a case manager work with each youth to develop a case plan, and to help each youth meet his/her goals with the longer term goal of becoming a self-sufficient adult. If Sandra is in need of services that we do not offer, we will work with her to obtain services through an outside agency.

Please be advised that because we are a licensed Runaway and Homeless Youth Program (licensed by NYS Office of Children and Family Services), we provide all services and must act in accordance with the New York State Runaway and Homeless Youth Act and the relevant Runaway and Homeless Youth Regulations.

Please feel free to contact me should you need any additional information. We look forward to having Sandra Igihozo in our Crisis Center Program, and assisting her in any way possible. Thank you for your kind assistance in this matter.

Sincerely,

Nancy Downing

Director of Advocacy/Legal Services

ExC



US Department of Health and Human Services

Sponsor's Agreement to Conditions of Release

### OFFICE OF REFUGEE RESETTLEMENT Division of Unaccompanied Children's Services

Minor A #: 205-710-232 Name of Minor: laihozo Aliases (if any): FINS #: Name of Sponsor: Covenant House New York וב זפלת InDate:

Pursuant to Section 462 of the Homeland Security Act, the Office of Refugee Resettlement (ORR) will place the above-named minor into your care and custody, provided that you, as the minor's custodian, agree to:

- Provide for the physical, mental, and financial well-being of the minor.
- Ensure the minor's presence at all future proceedings before the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR).
- Ensure the minor reports for removal from the United States if so ordered.
- Notify DHS/ICE and EOIR within (5) five days of any change of residence.
- Notify DHS/ICE at least (5) five days prior to your own departure from the United States and indicate whether the departure is voluntary, pursuant to a grant of voluntary departure, or an order of removal.
- Notify DHS/ICE if dependency proceedings involving the minor are initiated and also notify the dependency court of any immigration hearings pending against the minor.
- Receive written permission from DHS/ICE if you decide to transfer custody of the minor to another person. Please note that in the case of an emergency (serious illness, destruction of home, etc), you may temporarily transfer physical custody of the minor to another person prior to securing permission from ICE, but you must notify ICE as soon as it becomes practical and no later than (72) seventy-two hours.
- Notify DHS/ICE as it becomes practical and no later than 72 hours of your learning that the minor has disappeared, has been threatened, or has been contacted in any way by an individual or individuals believed to represent an alien smuggling syndicate or organized crime.

I Understand that release of the above-named minor from the Office of Refugee Resettlement to my custody does not grant the minor any legal immigration status and that the minor must present himself/herself for immigration court proceedings.

Check the circle that applies:

O I received a copy of the above-named minor's Notice to Appear, DHS Form I-862 (NTA).

I was not provided a copy of the above-named minor's Notice to Appear, DHS Form I-862 (NTA).

Sponsor's Agreement to Conditions of Release

I hereby acknowledge that I have read/had explained to me in my own language, and agree to these conditions of release of the above named minor into my custody. I further understand that DHS/ICE may refer the minor to ORR, and ORR may resume custody if I do not comply with the conditions of the release agreed to in this form.

Notary Seal:

Signature of Sponsor

We New York / Under Heare.

Subscribed to before me this

18 th day of December 2013.

ALICE OBIDA

Notary Public, State of New York

No. 31-4667734

Director of Advocacy / Legal for Signature of Sponsor / Under 21, Inc.

No. 31-4667734

Qualified in New York County

Commission Expires 8-23-4

Sponsor's Agreement to Conditions of Release, Rev. 3/21/05 ORR R-420

[OMB 0970-0278, valid through 06/30/2008]



U.S. Department of Health and Human Services

Office of Refugee Resettlement Sponsor Care Agreement, Rev. 04/30/2012

#### OFFICE OF REFUGEE RESETTLEMENT Division of Children's Services SPONSOR CARE AGREEMENT

Name of Minor:	Sandra laihozo	Minor A #: 205 - 710 -232		
Aliases (if any):		Α.	Minor DOB: 01	30/1996
Name of Sponsor:	Covenant House	New York Under 21,1	Inc Date: /2/18/	13

You have applied to the Office of Refugee Resettlement (ORR) to sponsor an unaccompanied alien child in the care and custody of the Federal Government pursuant to the <u>Flores v. Reno</u> Stipulated Settlement Agreement, No. 85-4544-RJK (Px) (C.D. Cal., Jan. 17, 1997), Section 462 of the Homeland Security Act of 2002 and Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. If your sponsorship application is approved, you will receive an ORR *Verification of Release* form and will enter into a custodial arrangement with the Federal Government in which you agree to comply with the following provisions while the minor is in your care:

- Provide for the physical and mental well-being of the minor, including but not limited to, food, shelter, clothing, education, medical care and other services as needed.
- If you are not the minor's parent or legal guardian, make best efforts to establish legal guardianship with your local court within a reasonable time.
- Attend a legal orientation program provided under the Department of Justice/Executive Office of Immigration Review (EOIR)'s Legal Orientation Program for Custodians (Sponsors), if available where you reside.
- Depending on where the minor's immigration case is pending, notify the local Immigration Court or the Board of Immigration Appeals within five (5) days of any change of address or phone number of the minor, by using an Alien's Change of Address form (Form EOIR-33). In addition if necessary, file a Change of Venue motion on the minor's behalf. The Change of Venue motion must contain information specified by the Immigration Court. Please note that a Change of Venue motion may require the assistance of an attorney. For guidance on the "motion to change venue," see the Immigration Court Practice Manual at <a href="http://1.usa.gov/e0H9zL">http://1.usa.gov/e0H9zL</a>. For immigration case information please contact EOIR's immigration case information system at 1-800-898-7180. Visit EOIR's website for additional information at: <a href="http://www.justice.gov/coir/formslist.htm">http://www.justice.gov/coir/formslist.htm</a>
- Notify the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services) within ten (10) days of any change of address, by filing an Alien's Change of Address Card (AR-11) or electronically, at <a href="http://l.usa.gov/Ac5MP">http://l.usa.gov/Ac5MP</a>
- Ensure the minor's presence at all future proceedings before the DHS/Immigration and Customs Enforcement (ICE) and the DOJ/EOIR. For immigration case information, contact EOIR's case information system at: 1-800-898-7180.
- Ensure the minor reports to ICE for removal from the United States if an immigration judge issues a removal order or voluntary departure order. The minor is assigned to a Deportation Officer for removal proceedings.
- Notify local law enforcement or your state or local Child Protective Services if the minor has been or is at risk of being subjected to abuse, abandonment, neglect, or maltreatment or if you learn that the minor has been threatened, has been sexually or physically abused or assaulted, or has disappeared. Notice should be given as soon as it becomes practicable or no later than 24 hours after the event or after becoming aware of the risk or threat.

Sponsor Care Agreement, Rev. 04/30/2012 ORR UAC/FRP-4 ORR UAC Program Operations Manual 2012

### Case 2:85-cv-04544-DMG-AGR Document 409-5 Filed 04/16/18 Page 189 of 198 Page ID #:15589

#### U.S. Department of Health and Human Services

Office of Refugee Resettlement Sponsor Care Agreement, Rev. 04/30/2012

- Notify the National Center for Missing and Exploited Children at 1-800-843-5678 if the minor disappears, has been kidnapped, or runs away. Notice should be given as soon as it becomes practicable or no later than 24 hours after learning of the minor's disappearance.
- Notify ICE if the minor is contacted in any way by an individual(s) believed to represent an alien smuggling syndicate, organized crime, or a human trafficking organization. Provide notification as soon as possible or no later than 24 hours after becoming aware of this information. You can contact ICE at 1-866-341-2423.
- In the case of an emergency (serious illness, destruction of home, etc), you may temporarily transfer physical custody of the minor to another person who will comply with the terms of this *Sponsor Care Agreement*.
- If you are not the child's parent or legal guardian, in the event you are no longer able and willing to care for the minor and unable to temporarily transfer physical custody, and the minor meets the definition of an unaccompanied alien child, you should notify ORR at 202-401-5709.
- The release of the above-named minor from the Office of Refugee Resettlement to your care does not grant the minor any legal immigration status and the minor must present himself/herself for immigration court proceedings.

Sponsor Care Agreement, Rev. 04/30/2012 ORR UAC/FRP-4 ORR UAC Program Operations Manual 2012



U.S. Department of Health and Human Services

Office of Refugee Resettlement Letter of Designation for Care of a Minor, 04/30/2012

## OFFICE OF REFUGEE RESETTLEMENT Division of Children's Services LETTER OF DESIGNATION FOR CARE OF A MINOR

The Office of Refugee Resettlement (ORR) takes custody of unaccompanied alien children ("UAC") referred by a Federal entity pursuant to the Flores v. Reno, Stipulated Settlement Agreement, No. 85-4544-RJK (Px) (C.D. Cal., Jan. 17, 1997), Section 462 of the Homeland Security Act of 2002, and Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. ORR has authority under the law to transfer custody of a UAC to a sponsor. Your child has been classified as a UAC pursuant to the Homeland Security Act of 2002 §462(g)(2). ORR strongly encourages parents and legal guardians to designate a sponsor for their child. In the event that you are unavailable to sponsor your child, ORR asks that you designate a sponsor to care for your child (subject to ORR's approval).

I/We are the parent(s) or legal guardian(s) of,

Sandra Igihozo, born on 01, 30,1996.

(name of child)

I/We designate, Covenant House New York Under 21, Inc., to sponsor our child.

(name of sponsor)

#### I consent that the above named sponsor may:

- Have temporary care-giving authority for my child, until such time as my child is returned to my physical custody; or his/her custody status is altered by a Federal, State, or local agency; or changed by a court of law
- Provide for medical, dental, and mental health care for my child
- · Provide for my child's physical and mental well-being, including but not limited to providing, food, shelter, and clothing
- · Enroll my child in school
- Temporarily transfer physical custody of my child in the event of an emergency (serious illness, destruction of home, etc.) to another person who will comply with the *Sponsor Care Agreement*.

Name of parent(s) or legal guardian(s) signing the form		
	(1)	
	(2)	
If one of the child's biological parents or other legal guardian is unable to	☐ Deceased	Mentally or physically unable to give consent
consent please check why	Abandoned child	☐No longer has legal custody of child
	Child's other parent/legal guardian resides in another location (ORR may send them a separate copy of this form to sign)	Other (ORR may request an explanation)
Address of parent(s) or legal guardian(s) signing the form		
Parent(s) or legal guardian(s) signature*	(1)	(DATE)
	(2)	(DATE)

#### **NOTARY SEAL:**

Letter of Designation for Care of a Minor, 04/30/2012 ORR UAC/FRP-9 ORR UAC Program Operations Manual 2012

<sup>\*</sup> Please note that by signing this form you are NOT terminating your parental or guardianship rights to your child. You maintain legal custody over your child pursuant to relevant Federal and State law. ORR encourages you to stay in close contact with your child and the child's sponsor in order to help make decisions for the child's care and for medical, educational, and other service. Please also note that if you do not designate a sponsor, ORR may transfer custody of your child to a sponsor identified by ORR.



**Urban Justice Center** 

123 William Street, 16th Floor, New York, NY 10038 Tel: (646) 602-5600 • Fax: (212) 533-4598 www.urbanjustice.org

December 9, 2013

Office of Refugee Resettlement
Department of Health and Human Services
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447
Via email to:
Elcy Valdez Elcy.Valdez@acf.hhs.gov
David Fink David.Fink@ACF.hhs.gov

Re: IGIHOZO, Sandra A 205-710-232

Dear Elcy and David:

I am writing today to demand the release of Sandra Igihozo by Friday December 13, 2013.

As you are well aware, a pre-18 release will allow Sandra to access state-foster care, which is the only way for Sandra to receive the care and support she needs to successfully transition into motherhood and adulthood. Foster care will ensure that Sandra receives the supportive services she needs to develop healthy coping skills for the traumatic events she suffered in Rwanda; on her journey to safety in the United States and the continued uncertainty that plagues her detention here in New York.

If Sandra is not released before her 18th birthday, she will face one of two brutal futures while she applies for lawful status. Upon her 18th birthday, Sandra will either be taken into ICE custody and placed in adult detention, or released from ORR and discharged into homeless while in her third trimester of pregnancy. The second possibility forces Sandra to survive without access to food, clothing, shelter and medical care. Both of these futures are bleak for both Sandra and her unborn child and place her health and life in imminent risk of harm.

Accordingly, I write to demand that Sandra be released to Covenant House, Streetworks or the Children's Village Sanctuary Program, all state-licensed programs. As outlined in the pre-18 release plan previously submitted, upon release, our social worker will facilitate Sandra's transition into foster care and will provide all other necessary social services. Failure to release Sandra violates the terms of the *Flores* settlement, which states that "[ORR] shall release a minor from its custody without unnecessary delay..."



In the alternate, I write to demand that you cease the unlawful detention of Sandra by Friday, December 13<sup>th</sup>. In our previous conversations, ORR and ICE have taken the position that Sandra is in the sole legal and physical custody of ORR. If this is true, then ORR has no authority to *detain* (rather than *care for*) Sandra. *See* Homeland Security Act § 462(b)(A)-(L), 6 U.S.C.A. § 279(b)(1)(A–L). According to the act, being in DHS custody is a statutory prerequisite for ORR's detention authority over unaccompanied children.

If you have any questions, please do not hesitate to contact me at 646-602-5643 or via email at mstuart@urbanjustice.org.

Llook forward to your response,

Megan Stuart Attorney for Sandra Igihozo

Cc

Toby Biswas Toby.Biswas@ACF.hhs.gov

# Exhibit 87

#### **DECLARATION OF CARLOS HOLGUIN**

- I, Carlos Holguín, declare and say as follows:
- 1. I am one of two attorneys who currently serve as class counsel for Plaintiffs in *Flores v. Sessions*. I execute this declaration in support of plaintiffs' motion to compel the Office of Refugee Resettlement of the U.S. Department of Health and Human Services to comply with the *Flores* settlement.
- 2. Pursuant to  $\P\P$  28 and 29 of the *Flores* settlement, ORR provides class counsel with monthly statistical reports on class members in its custody.
- 3. ORR's reports indicate that it currently houses class members in three juvenile jails: Yolo County Juvenile Hall in California, and Shenandoah Valley Juvenile Center ("SVJC") and Northern Virginia Juvenile Detention Center ("NoVA") in Virginia.
- 4. The statistical reports identify class members released to custodians from the various facilities in which ORR detains class members. From my review of these reports, it appears that at any given time ORR detains about 40 class members in residential treatment centers ("RTC"), about 50 class members in juvenile halls, and about 115 in staff-secure facilities.

/ / /

5. ORR's data do not include the average length of stay for youth housed in the different types of facilities. However, ORR's statistical report for December 2017, indicates it released one class member to a custodian from Shenandoah Valley Juvenile Center, one to a custodian from Yolo Juvenile Hall, and none to a custodian from Northern Virginia Juvenile Detention Center. According to its December 2017 statistical report, ORR released one class member to a custodian from MercyFirst RTC, and one to a custodian from Shiloh RTC.

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

Executed this 11th day of April, 2018, at Sanfta Clarita, California.

Carlos Holguin

/ / /

# Exhibit 89

1	I, CARTER WHITE, declare as follows:
2	
3	1. This declaration is based on my personal knowledge. If called to testify in this
4	case, I would testify competently about these facts.
5	2. I am the Director of the Civil Rights Clinic at the University of California Davis
6	School of Law.
7	3. On November 20 and 21, 2017, I visited Shiloh Treatment Center as part of a visit
8	to the facility by Flores counsel pursuant to ¶ 32 of the Flores Settlement Agreement.
9	4. Attached to this declaration is a true and correct copy of the Shiloh Treatment
0	Center Consent to Medical Care Form that Shiloh staff gave us during that visit.
1	5. During that visit, we met with several Shiloh staff members. They informed us
2	that, for children in ORR custody, these Shiloh Treatment Center Consent to Medical
3	Care Forms are signed by Shiloh staff members as the "Parent, Guardian, or
4	Conservator," and are not signed by the child's parent, family member, or potential
5	sponsor.
6	6. Under my supervision, UC Davis students have reviewed the files of a significant
7	number of children in ORR custody. To my knowledge, none of the students have ever
8	found a medical consent form in the file of a child in ORR custody that was signed by the
9	child's parent, family member, or potential sponsor.
20	
21	I declare under penalty of perjury that the foregoing is true and correct. Executed on this
22	14 day of April, 2018, at Richmond, California.
23	
24	Cart Cloth
25	CARTER WHITE
26	
27	
28	

Shiloh Treatment Center, Inc. Admission Packet

Office of Refugee Resettlement

### **Affidavit Authorizing**

Consent to Medical Care
Consent to Administer Prescription Medications
Consent to Administer Non-prescription (OTC) Medications

State of TEXAS BEFORE ME, the undersigned authority, on this day personally appeared , who after being duly sworn by me, on his/her oath did say Parent, Guardian, or Conservator Name and I am the lam Relationship to Client Parent, Guardian, or Conservator Name of , who is in the care of Shiloh Treatment Center. Client Name If at any time such child or ward of mine should require medical or related care while in the care of Shiloh Treatment Center (Shiloh), I consent to the administration of necessary medical or related care, including any appropriate medications, and authorize any approved representative of Shiloh to give consent to any doctor, emergency medical service, hospital, or other medical facility to provide medical or related care to such child or ward. I further give my permission for Shiloh to administer such medications that may be prescribed or recommended by medical personnel treating my child or ward. I understand that I will be notified about medical care and the prescription of medication. Signature of Parent, Guardian, or Conservator SWORN TO AN SUBSCRIBED before me, the day of .20 Signature of Notary Public Printed Name of Notary Public Notary Public for:

Rev. 09/10 File in Master Chart I-1

County

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Case-review				
		UAC Bas	ic Information	
First Name:				
Last Name:				
AKA:				
Status:	ADMITTED			
Date of Birth:	/2000		Gender:	M
A No.:			LOS:	68
Age:	17		Current Program:	Shenandoah Valley Juvenile Center
Country of Birth:	Guatemala		Admitted Date:	11/29/2017
	30 day Case F	Review C Discharge C Transfer	Are there any changes?:	C Yes € No
Previous Placement:				
SWK Montezuma 11/20/17 to 11/29/17	7			
Religious Affiliation:	,			
None Coss Managery				
Case Manager:				
Emily Twigg				
Clinician:				
Melissa Cook				
Document any new information re	egarding the UAC	not indicated in the UAC Assessm	nent and/or the previous case su	ummary below
			Medical	
List any allergies:				
UC does not report any allergies.				
Do you feel unwell?				
C Yes © No				
If yes, what are your symptoms?				
N/A  Additional medical information:				
	:a:=1 al:==1 =			and all transports are adjusted about the CANIX AA and an account
Immunizations received on 11/22/17.			raised during this intake. UC receive	ed all necessary medical checks at SWK Montezuma.
Medical History	The testing comple	ica on 11/22/17, results negative.		
Condition	Yes/NO	Date of Diagnosis/Clarification		
Pregnant	C Yes © No	Date of Diagnosis/Clarification		
Tuberculosis		Pacitive TR test LIC will not receive	LTPL treatment since he will ago ou	ut before treatment can be completed.
	© Yes C No	Positive 18 test. OC will not receive	LIBI (leatifieff) since he will age ou	it before treatment can be completed.
Varicella	C Yes © No			
Measles	C Yes € No			
Mumps	C Yes © No			
Rubella	C Yes © No			
Asthma	C Yes    No			
Diabetes	C Yes   • No			
Cancer	C Yes © No			
Cardiac	C Yes € No			
Issues				
Sexually	C Yes   • No			
Transmitted				
Disease	-			
Respiratory/Lung Disorder	C Yes © No			
	C Yes C No			
Physical Disability	C Yes <b>⊙</b> No			
Medication History				
Medication	Dosage	Timeframe	Medical Condition	
			Legal	
Know Your Rights Presentation			<del></del>	
provided?	1C3 € 110			
Date:	12/01/2017			
Legal screening completed?	© Yes ○ No			
Date:	12/01/2017			

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Any possible legal relief

🗅 Yes 何 No

#16779

identified? Specify:

Pending further legal consults to determine legal eligibility

**Mental Health** 

Provide a short summary of the UAC's current functioning:

No SIRs this period.

MENTAL HEALTH UPDATE 12/29/18: Minor has been doing well. He is quiet and observant. He is slowly becoming more relaxed and participates in school and activities with a relish for learning. He recently participated in a school play where he sang songs in English. UC did very well and was proud of his accomplishments but shy for praise. UC stated he has not done anything like this since childhood. Youth continues to present as stable and well balanced. He does not present with any mental health concerns. He gets along well with others and is respectful to his peers and staff.

SIR: UC recanted previous disclosure of gang involvement. UC reported that he was told to say these things to have a better chance at winning a legal case to stay in the United States.

#### Mental Health Update 1/29/18

Minor continues to do well. He has exemplary behavior. Minor is beginning to show signs of stress and anxiety over his age out. He openly processes this with clinician and clings to hope and positivity as best he can. Minor battles cultural and language barriers on a daily basis. He is aware of this and is beginning to ask more questions and clarify when he does not understand something. This is compared to his early days at SVJC when he agreed with everything and nodded his head in agreement when he did not understand things due to language barriers. Minor works hard in school and is an exemplary young man who responds maturely to harassment or being picked on by peers.

Minor was given a psychological evaluation by Dr. Gustavo Rife. There are no concerns and the minor is not considered a risk after a full evaluation was completed.

Clinician highly recommends that the minor be stepped down as his behavior does not merit secure and his psychological evaluation does not consider him a risk to self or community.

Psycho	logical	l Eva	luati	ion
--------	---------	-------	-------	-----

Date of 1/4/2000

**Evaluation:** 

Evaluator: Dr. Gustavo Rife

Axis II:
Axis III:
Axis III:
Axis IV:

Axis V:

Summary of Recommendations:

The following Diagnostic Impression, Summary and Recommendations is taken from the Psychological Evacuation by Dr. Gustavo Rife

#### "DIAGNOSTIC IMPRESSION

The clinical interview did not find indications of any mental health problems at this time. did not exhibit any antisocial or violent traits, instead was cooperative in his interviewer. It is my opinion within a reasonable degree of psychological certainty that the profile of symptoms present does not meet criteria for any DSM-5diagnosis at this time.

CONCLUDING SUMMARY AND RECOMMENDATIONS

is 17-year-old, Hispanic, male, from Guatemala. Came to the U.S. to find work and, possibly, get an education. acknowledged lying to Immigration Officers about past association with gangs and committing crimes in his country, and he appeared sincerely remorseful and truthful about such false statements. is not at risk to harm others or engage in criminal behavior in the community. He is hoping to reunify with his aunt, who lives in the community. Tennessee, before he ages out on 2018.

In terms of his functioning, does not present with significant mental health problems that might be of concern at this time. He may, or may not have, a problem with alcohol; however, his drinking does not appear significant as stated during the clinical interview. scored in the Below Average Range of intelligence on a nonverbal intelligence measure. His IQ of 82 fell in the 12th percentile, indicating that he is performing better than 12% of his same-aged peers. 's scores may be somewhat restricted given his personal background, upbringing, language limitations in Spanish. appears to be functioning pretty well given and there is no reason to suspect that he has any specific mental health problem at this time. Given the results of this psychological evaluation, the following recommendations are made:

Placement and Risk: will benefit from reunification with his aunt in assist with acculturation.

He will need some initially transitional supportive services to help him transition into the U.S. culture and to assist with acculturation.

does not appear to present a risk to himself or the community at this time."

#### **Trafficking**

#### Who planned/organized your journey?

UC planned his own journey.

What were you told about the arrangements before the journey?

His aunt lent him some money.

Did the arrangements change during the journey?

Yes No

If yes, how?

Does your family owe money to anyone for the journey?

C C

If yes, how much?

Whom is the money owed?

Who is expected to pay?

What do you expect to happen if payment is not made?

**Coercion Indicators** 

Did anyone threaten your or your family?

C G Yes No

If yes, who made the threats?

# Exhibit 88

## REDACTED VERSION OF DOCUMENT FILED UNDER SEAL



Office of Refugee Resettlement Authorization for Medical, Dental, and Mental Health Care, Rev. 11/01/2011

## OFFICE OF REFUGEE RESETTLEMENT Division of Children's Services AUTHORIZATION FOR MEDICAL, DENTAL, AND MENTAL HEALTH CARE

The Department of Health and Human Service (HHS), Office of Refugee Resettlement (ORR), Division of Children's Services (DCS) is responsible for coordinating and implementing the care and custody of the following minor pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. \$279):

Minor's Name:		Alien Number:	
Date of Birth:	2000	Nationality:	El Salvador

ORR hereby Authorizes, hereinafter "care provider," to arrange medical, dental, and mental health care for said minor under the following terms and conditions:

care provider : She

Shenandoah Valley Juvenile Center

#### 1. Licensing and Reimbursement

- \*All medical, dental, or mental health services for the minor will be by a State licensed provider.
- \*The licensed medical, dental, or mental health provider must be willing to accept the Medicare reimbursement rate, payment on a fee for service basis, or to provide services for no fee.

#### 2. Authorization and Notification

- The care provider shall secure authorization from ORR before consenting to any non-emergency medical, dental or medical health services; except for initial medical screening.
- \*The care provider shall consent to the provision of emergency treatment recommended by a licensed medical, dental, or mental health provider. The care provider shall notify ORR of the emergency immediately following treatment if possible, or within 24 hours after the initial incident.
- \*Significant surgical or medical procedures require heightened ORR involvement. Please refer to ORR instructions and procedures on medical services requiring heightened ORR involvement in these special cases.
- •Minors have the right to be tested for HIV or other sexually transmitted diseases; the care provider shall ensure the minor receives the test(s) as requested.
- •The care provider is authorized to dispense over-the-counter medications and prescription

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U.S. Department of Health and Human Services

Office of Refugee Resettlement Authorization for Medical, Dental, and Mental Health Care, Rev. 11/01/2011

#### 3. Medical and Dental Exams/Screenings

- \*Minors in care shall receive a medical exam within 48 hours of placement in a care provider program, unless the minor obtained a medical exam within one calendar year and while under the care of another ORR-funded care provider.
- •Minors in care shall also receive an initial dental examination within 90 days of placement, but no sooner than their 30th day in the custody of ORR.
- 4. Immunizations
- •The care provider shall ensure that all minors in care receive necessary immunizations.
- \*Females 10 years or older must undergo a quantitative blood pregnancy test, with the minor's consent, before being administered any immunization.
- 5. Medical, Dental, and Mental Health Records/Confidentiality
- \*Care providers shall (1) obtain copies of all screenings, exams, or testing performed on a minor in care, signed by the licensed health care professional, (2) provide copies to ORR, when requested, and (3) ensure that medical records are maintained in the minor's file.

\*All records maintained by the care provider in reference to the minor's health care are the property of ORR. Care providers may not release health information about the minor to any individual or organization without prior express authorization of ORR, except in the following instances: to the minor's educational program or medical, mental health, dental, and other service providers to the extent that the information is needed for the minor's education, recreation, social development,

Signature Authorized Representative of Care Provider

07/31/2017

(540) 886-0729 x.118

Similar Control of Care House

07/31/2017

202-401-5709

Signature - Official Representative

Date

Date

Telephone Number

Office of Refugee Resettlement

Administration for Children and Families

1. "Immunizations and Pregnancy Testing," April 2, 2008. http://www.acf.hhs.gov/programs/orr/programs/ORRPolicy4208.pdf