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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 2:85-cv-04544-DMG-AGR

AMICUS BRIEF

COURTROOM: 8C
JUDGE: Hon. Dolly Gee

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I. Introduction

RAICES Family Detention Services Program, Proyecto Dilley (formerly known as the "CARA Pro Bono Project" and "Dilley Pro Bono Project"), and Aldea - the People's Justice Center ("Aldea") (collectively as "*Amici*") file this brief as *amici curiae* in support of Plaintiffs' Emergency *Ex Parte* Application for Temporary Restraining Order [Doc. # 733], which this court subsequently construed as a Motion to Enforce [Doc. #784] (the "Motion to Enforce"). *Amici* sought leave to file this brief in a preceding application, which contains statements of interest for each organization. *Amici* coordinate and provide direct legal services for families who are detained at the Karnes County Residential Center ("Karnes"), the South Texas Family Residential Center ("STFRC" or "Dilley"), and the Berks County Residential Center ("Berks").

Amici are well-positioned to provide the Court with information regarding Immigration and Customs Enforcement's ("ICE") continued violations of the *Flores* Settlement Agreement ("FSA") and disregard for orders issued by this Court. In its April 24, 2020 and May 22, 2020 Orders, this Court cited evidence provided by *Amici* through class counsel to find that ICE was not in compliance with Paragraph 18 of the FSA, which requires Defendants to "make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor." *Flores* Agreement, at ¶ 18 [Doc. # 101]; *see* April 24, 2020 Order at 17 (citing Cambria Decl. [Doc. # 774-24]; Fluharty Decl. [Doc. # 774-30]) [Doc #784]. In its May 22, 2020 Order, this Court remained concerned with the implementation of public health guidelines at the Family Residential Centers (FRCs) given *Amici* declarations presented through class counsel concerning facility conditions that place detained children—including children with pre-existing medical conditions—at risk during the coronavirus ("COVID-19") public health crisis, despite reduced populations at each FRC. *See, e.g.*, Cambria Decl. [Doc. # 796-1]; Fluharty Decl. [Doc. # 796-2]; Meza Decl. [Doc. # 796-3]. Finding the May 15, 2020 report filed by ICE deficient

for these reasons, the Court ordered the ICE Juvenile Coordinator to file updated reports and allowed Plaintiffs to respond to those.

The Juvenile Coordinators filed a new interim report on June 10, 2020 ("JC Report"). Plaintiffs' counsel provided the Court with a response on June 17, 2020, but without the information and perspective of *Amici*.

Amici seek to assist the Court by providing critical information regarding ICE's prolonged detention of Class Members in unsafe and unsanitary conditions in violation of this Court's orders and the FSA. *Amici* have unique perspectives and relevant facts that remain unknown to the Court. *Amici's* identification of material inaccuracies in the JC Report that are used to justify the indefinite detention of Class Members has public interest implications. *Amici's* unique information and perspectives were not provided to the Court by either party. *Amici* cannot provide their perspectives and relevant facts through class counsel because doing so may raise conflicts to our representation of the families at the three FRCs.

II. Summary of Argument

On April 24, 2020, the Court ordered the ICE Juvenile Coordinator to submit interim written reports during the COVID-19 pandemic. [Doc. # 784] In addition to reporting on compliance with guidelines from the Centers for Disease Control and Prevention ("CDC") for detention facilities, the Court order also directed the Juvenile Coordinator to report on the measures taken to expedite the release of Class Members to suitable custodians during the COVID-19 health emergency, whether ICE is making and recording individualized release determinations and redeterminations for each Class Member held in the FRCs; and the specific reasons children at FRCs remain detained for more than 20 days. April 24, 2020 Order, at 20–21 [Doc # 784].

The Court explicitly authorized the Independent Monitor to request "such further information regarding safe and sanitary conditions and/or Defendants' continuous efforts at release as she deems appropriate" from ICE, in order to fulfill her reporting mandate. *Id.* at 19.

On May 15, 2020 the ICE Juvenile Coordinator filed a cursory and vague interim report with the Court. [Doc. # 788]. In response, the Court again ordered the Juvenile Coordinator to "provide specific explanations for the continued detention of each minor detained at an FRC beyond 20 days." May 22, 2020 Order [Doc. # 799].

On June 10, 2020, without exercising her broad power to affirmatively solicit, review, and analyze data from ICE, the Juvenile Coordinator filed the JC Report solely based upon a "paper audit." [Doc. # 813]. *Amici*—the direct service providers to *Flores* Class Members detained by ICE at the FRCs—have closely reviewed the Juvenile Coordinator's Report.

The Juvenile Coordinator's submission is non-responsive to the Court's April 24, 2020 [Doc. # 784] and May 22, 2020 [Doc. # 799] Orders. As detailed below, the report is internally inconsistent, factually inaccurate, and incomplete in material ways. Critically, rather than providing FSA-compliant reasons to justify the prolonged detention of Class Members, the Juvenile Coordinator's Report blames ICE's failure to release Class Members primarily on Class Member's participation in federal litigation to defend their legal rights, Class Member's immigration case status, or their parent's decision not to be separated from their child.

ICE continues to show lack of compliance with Paragraph 18 of the FSA, which requires Defendants to "make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor." *Flores* Agreement, at ¶ 18 [Doc. # 101]. Indeed, the arbitrariness of ICE's custody determinations for Class Members is highlighted by the attached sworn statements of Bridget Cambria, Shalyn Fluharty, and Andrea Meza.

ICE's continued failure to comply with the FSA, especially while ICE continues to hold *Flores* Class Members in congregate settings in the midst of a global pandemic, is egregious and requires this Court's intervention. ICE's proven determination to detain Class Members without cause in the face of ongoing litigation, and subsequent to clear court orders requiring the opposite, proves the

futility of negotiations between the parties and additional reporting deadlines.

III. Argument

ICE has yet to provide an adequate explanation, as required by Paragraph 14 of the FSA, for each individual Class Members' continued detention. This Court is reliant upon the information provided by ICE in assessing its compliance with the FSA. However, *Amici's* review of the JC Report reveals factual inaccuracies, internal inconsistencies, and material failures to include facts that are critical to release assessments for Class Members.

A. The ICE Juvenile Coordinator's June 10, 2020 Report is Unresponsive to Section IV(4)(a)(i) of the Court's April 24, 2020 Order Because it is Internally Inconsistent, Factually Inaccurate, and Incomplete.

The JC Report presents the Court with false information regarding facts such as length of detention for Class Members, imminency of removal, and procedural posture.[1] Furthermore, information in the JC Report is not consistent with information that ICE provided to RAICES in written custody determinations subsequent to this Court's recent orders. *See* Meza Decl. ¶ 30.

1. The JC Report is inconsistent and factually inaccurate as to conditions of custody, removal, legal case status, and date of final order of removal of Class Members.

The Court is reliant upon information provided by the ICE Juvenile Coordinator to adjudicate the issues before the Court. The data reported, however, is repeatedly wrong and inconsistent. First, ICE records a Class Member's final date of removal differently across cases in the JC Report. In some cases, ICE lists the date an order of expedited removal was issued to a Class Member at the border. In other

[1] In addition, the declarations attached herein also identify the multitude of internal inconsistencies in the JC Report. The JC Report is so littered with these inconsistencies that, in addition to the factual inaccuracies and incomplete records noted *infra*, the JC Report is unreliable.

cases, ICE records the date an immigration judge affirmed the Class Member's negative credible fear determination in court. In other cases still, ICE records a date that is neither the date an order of expedited removal was initially issued, nor the date the order of expedited removal was affirmed by the immigration judge.

Second, the JC Report states that the "typical" population housed at FRCs are "booked in-and-out of custody within approximately 20 days." [Doc. # 813]. This is a falsehood ICE has presented to the Court. As of June 17, 2020, Proyecto Dilley had determined that the average length of detention for Class Members detained at Dilley was 217.7 days. *See* Fluharty Decl. ¶ 14. The average length of detention for Class Members at Karnes since January 2020 is 53 days. The average length of detention for Class Members in Berks is 109 days.

Third, ICE repeatedly states or implies in the JC Report that Class Members' removal is imminent. [Doc. # 813]. This is incorrect. *See* Fluharty Decl. ¶¶ 16–17. All Class Members who are plaintiffs in *D.A.M. v. Barr*, and additional Class Members who are plaintiffs in *A.B.B. v. Wolf* and *M.M.V. v. Barr*, have administrative stays of removal issued by a federal court. ICE does not and cannot know when these administrative stays will be lifted. Yet despite removal not being imminent for these Class Members, ICE nonetheless cites imminency of removal in support of keeping families detained. *See* Fluharty Decl. ¶¶ 16-17. ICE states within each of its parole determinations that *Flores* Class members will be removed on the "*next flight*," or that the Class Member is a flight risk because of the "very short time period for manifesting the flight," when in actuality the Class Member has an indefinite stay of removal and they legally cannot be removed.

ICE also reports false information regarding the timing of removal flights. All Class Members who are plaintiffs in *D.A.M. v. Barr* have administrative stays of removal issued by a federal court. *See* Fluharty Decl. ¶ 26. ICE, without knowing when those administrative stays will be lifted, nonetheless makes statements such as,

"Expected Date of Removal: Next Flight Available" for many Class Members. *Id.* To say that a Class Member's "order is final and she is ready for removal to Guatemala immediately upon resolution of the administrative stay of removal in *M.M.V. v. Barr*" ignores the reality that the Class Member may not be removable for many months, if ever. *Id.* To state that a Class Member "is subject to a final order of removal and will be scheduled for the *next removal flight*" (emphasis added) is highly improbable, and definitely unprovable, at this time.

Fourth, the information contained in many *Flores* Release Summaries is inaccurate and inconsistent with the government's chart in Exhibit B of the JC Report. For example, ICE misstates a child's initial entry date, and the date and manner in which she and her parents were forcibly kidnapped and brought into the United States. *See* Cambria Decl. ¶ 42. Exhibit B of the ICE JC Report conflicts directly, and repeatedly, with the individual "*Flores* Release Summaries" provided to the Court. The inconsistencies include discrepancies in how ICE records and reports relevant information, and the information reported for a Class Member. An analysis of the data reported for particular children highlights the conflict in how the data is entered. *See* Fluharty Decl. ¶ 20.

Fifth, ICE falsely reports that certain Class Members are plaintiffs in federal litigation when, in fact, they are not plaintiffs in said litigation. *See* Fluharty Decl. ¶ 23 .ICE appears to have arbitrarily weighed a Class Member's participation in federal litigation differently when assessing the release of individualized Class Members. *See* Fluharty Decl. ¶ 22. ICE therefore wrongly attributes its decision to deny release to Class Members based upon their participation in litigation that they are not even a part of. *Id.*

Sixth, ICE also falsely reports the status of Class Members' immigration case. For example, in the case of D.E.R., ICE's *Flores* Release Summary states, "ER or 240 hearing: ER," "IJ Review: affirm," and that "Parole was denied because the minor was in the credible fear interview process and detention was required to

complete the process." However, D.E.R. was placed in removal proceedings and returned to Mexico pursuant to the Migrant Protection Protocols and never placed in expedited removal proceedings. This is one of many examples of misstatements in the Juvenile Coordinator's June 10, 2020 Report regarding the procedural posture of a Class Member's case.

Seventh, ICE's custody determinations claim *Flores* Class Members did not establish that they were "alien juveniles." *See* Meza Decl. ¶19. However, this information is omitted from the JC report. Additionally, ICE uniformly lists "ID Provided? N/A" in each child's *Flores* Release Summary. However, ICE is in possession of almost every minor's identification documents. *See* Fluharty Decl. ¶ 29.

2. The JC Report is factually inaccurate as it failed to include information about its review of sponsor information.

The JC report erroneously states that families failed to provide ICE with information for individuals who are able and willing to receive them. This material inaccuracy indicates that ICE has not recorded information that has been repeatedly provided by Class Members or purposely misleads the Court. Class Members and their parents have repeatedly provided ICE with the name, phone number, address, and relationship of the adult who is ready and willing to receive the family. Fluharty Decl. ¶ 28. As counsel, Proyecto Dilley has also provided sponsor information directly to ICE on behalf of Class Members on March 31, 2020, April 2, 2020, April 18, 2020, April 30, 2020, May 7, 2020, and May 13, 2020. *See* Fluharty Decl. ¶ 5. Similarly, RAICES provided information for Class Members' sponsors through requests for release after ICE's failure to provide written custody determinations. *See* Meza Decl. ¶¶ 4, 33, 39, 46. Aldea has previously confirmed that parents detained at Berks have confirmed the contact information for their sponsors. *See* Cambria Decl. ¶ 12 [Doc. # 796-1]. Therefore, the Report's assertions that Class Members have not provided this information to ICE is simply false.

ICE's explanations for detention of some Class Members at the FRCs focused on a Class Member's immigration case status with cursory mention attached to each that release was also denied "because the parent had not designated a caregiver to whom ICE could consider releasing the minor." Importantly, there is no evidence that ICE actually considered the existence of a "caregiver," rather than *only* considering the immigration case status of Class Members when it denied parole. Based on *Amici*'s records of having provided sponsor information to ICE, and the experiences of its clients and staff in which ICE primarily focused on immigration case status in custody review, it appears that ICE may have added the statement, "because the parent had not designated a caregiver to whom ICE could consider releasing the minor," to their explanations of continued custody of Class Members before the filing of the JC Report to this Court but subsequent to ICE's actual denial of parole based on impermissible considerations of immigration case status. *See* Meza Decl. ¶¶ 2, 13, 30-41, 46.

3. ICE erroneously relies upon the parents' failure to separate from their child as a reason for detention.

This Court previously held "that ICE did not seek or obtain formal waivers from detained parents of their children's *Flores* rights during ICE officers' conversations with detained parents on or about May 15, 2020, those conversations caused confusion and unnecessary emotional upheaval and did not appear to serve the agency's legitimate purpose of making continuous individualized inquiries regarding efforts to release minors." May 22, 2020 Order [Doc. # 799]. Indeed, none of the parents represented by *Amici* chose to waive their children's *Flores* rights to be released, nor did they waive their right to not be separated from their children. Parents represented by *Amici* did not choose either option, nor were they under any legal obligation to make that choice. Each of these Class Members is detained with a parent, with whom they could be released pursuant to 8 C.F.R. § 1236.3.

4. The JC report demonstrates that ICE conducted arbitrary custody reviews, but also omits certain details of its haphazard process.

The JC Report indicates that parole assessments conducted by ICE for detained families were conducted in accordance with INA § 212(d)(5), 8 C.F.R. § 212.5(b), and paragraph 14 of the FSA. The JC Report fails to indicate why ICE's custody review process has not incorporated the provisions detailed at 8 C.F.R. § 236.3 and 8 C.F.R. § 1236.3. The information provided to the Court fails to sufficiently document ICE's efforts to assess the release of children to their detained parent, as required by 8 C.F.R. § 236.3 and 8 C.F.R. § 1236.3, which ICE is required to do when no other custodian for the child is available. *See* Fluharty Decl. ¶ 6.

Furthermore, the JC report does not include information about ICE's arbitrary and inconsistent scheduling of custody determination interviews to purportedly review custody of Class Members at Karnes in response to affirmatively filed parole requests following this Court's recent orders. In these interviews, ICE provided *Flores* class members minimal meaningful opportunity to access counsel, little to no consideration of individual circumstances related to Class Member children, and cursory - at times flippant - participation from ICE. *See* Meza Decl. ¶10.

Moreover, ICE did not focus on the detention of the Class Member when conducting parole interviews. *See* Meza Decl. ¶13. In those interviews, ICE appeared to dismiss the relevant facts and documentation that reflect *Flores* criteria for release of minors from ICE custody. *See* Meza Decl. ¶12. Some Class Members also had serious medical conditions such that continued detention would not be appropriate, but ICE disregarded those concerns. *See* Meza Decl. ¶20**.**

B. ICE does not make and record continuous efforts at release of Class Members.

ICE is required to make "prompt and continuous," documented efforts towards the release of Class Members pursuant to paragraph 18 of the FSA. The JC Report

confirms that ICE has failed to make "continuous efforts" towards the release of Class Members at each of the three FRCs. The Flores Release Summaries in the JC Report indicate that ICE reviewed the custody status for most Class Members on two occasions. Two custody (re)determinations, when Class Members at the three FRCs have been detained for upwards of 100 days, cannot be considered "prompt and continuous." This is consistent with *Amici's* experience, wherein ICE does not regularly make and record efforts to release Class Members, despite repeated instruction by this Court to do so. See May 22, 2020 Order [Doc. # 799]; April 24, 2020 Order [Doc. # 784]; April 10, 2020 Order [Doc. # 768]; March 28, 2020 Order [Doc. # 740]; June 27, 2017 Order [Doc. # 363]; July 24, 2015 Order [Doc. # 177].

The JC Report indicates that ICE reviewed the case of most Class Members on May 14, 2020. See Fluharty Decl. ¶ 11. As this Court is aware, ICE had a submission deadline on this matter on May 15, 2020. This suggests ICE conducted parole determinations for Class Members in a cursory manner simply because of a filing deadline before this Court, and not because it has systematically integrated an ongoing parole review process for Class Members, as is required by the FSA. Id. Furthermore, to date, ICE has not provided written responses to the pending parole requests for Class Members and parents detained at Berks. *See* Cambria Decl. ¶ 46.

The JC Report also fails to include other dates during which Amici know custody reviews have—or should have—occurred. For example, because ICE continues to detain RAICES Class Member clients without communication to RAICES about their efforts to seek release of its clients on April 24, 2020, RAICES began filing requests for release on parole on behalf of *Flores* Class Members detained at Karnes. *See* Meza Decl. ¶ 3. For every parole request submitted on behalf of a Flores class member, RAICES had previously sent ICE at least one email notifying them that the class member's prolonged detention was potentially in violation of the FSA. *See* Meza Decl. ¶¶ 3–4. There is no indication that ICE considered the information provided in these affirmative requests for release in the

JC's submission, and ICE's responses to these requests do not match information provided to this Court in the JC report. *See* Meza Decl. ¶ 7. Similarly, Proyecto Dilley has repeatedly submitted requests for release for Class Members, providing evidence that documents a Class Member's medical condition. Records of these requests are also absent from the JC's Report. And even though families were notified and interviewed in order to assess their potential release pursuant to Section 241 of the INA, these dates are also not indicated.

C. Determining that Class Members who Participate in Federal Litigation are not Entitled to Expedient Release Under the FSA Violates Class Members' Constitutional Rights

As detailed in the Juvenile Coordinator's Report, many Class Members and their non-class member parents are plaintiffs in separate litigation that challenges the fairness and legality of the procedures applied to them in the expedited removal process.

Contrary to the FSA and this Court's orders, ICE erroneously asserts that a Class Member's status as a plaintiff in a federal action provides justification for indefinite detention. The FSA requires the government "release a minor from its custody without unnecessary delay" absent a finding the minor is a flight risk or danger. *Flores* Agreement ¶¶ 14, 18. The Court has previously ruled that participation in separate litigation does not impact a Class Member's right to release. April 24, 2020 Order [Doc. # 784].

ICE's determination that Class Members who assert their rights in federal court are not entitled to release under the FSA infringes upon Class Members' rights under the First and Fifth Amendments to the U.S. Constitution.

Class Members' participation in in litigation is a form of protected speech under the First Amendment. *See Smith v. Arkansas State Highway Employees, Local 1315*, 441 US 463, 464 (1979) ("The First Amendment protects the right of an individual to speak freely, to advocate ideas, to associate with others, and to petition

his government for redress of grievances."). ICE's decision to indefinitely detain Class Members *because* they have asserted their legal rights violates their First Amendment rights and significantly restricts access to the courts. ICE's policy of suspending the presumption of release embedded in the FSA for Class Members who participate in federal litigation has already coerced numerous Class Members and their parents to abandon their constitutionally-protected right to pursue their grievances through litigation; after enduring the psychologically-damaging effects of detention, many Class Members who were previously plaintiffs in *M.M.V v. Barr* withdrew from the litigation in order to be released from detention through removal.

Similarly the indefinite detention of Class Members who pursue their legal claims through federal litigation raises serious due process concerns in violation of the Fifth Amendment. A Class Member's decision to vindicate their legal rights cannot justify punishment in the form of prolonged detention in conflict with the FSA. Conditions of confinement violate an individual's right to due process when they amount to "punishment.". *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."). Prolonged detention causes life-long injury to children[2] and amounts to a punitive consequence. ICE's decision to impose this consequence on Class Members because of their choice to pursue their legal rights is evident in the Juvenile Coordinator's report, which repeatedly cites to a Class Member's status as a plaintiff as the sole reason for their detention.

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[2] *See* Report of the ICE Advisory Committee on Family Residential Centers (October 7, 2016), bit.ly/39BTHLg. *See also* Physicians for Human Rights, *The Impact of Immigration Detention on Migrant Mental Health*, PHR Issue Brief (October 2018), https://go.aws/2SbHh74. *See also* Physicians for Human Rights, Letter to Sec. Kirstjen Nielsen Regarding the Detention of Infants (Feb. 28, 2019), https://phr.org/wp-content/uploads/2019/03/022819_PHR-Letter_Infant-Detention-1.pdf; American Academy of Pediatrics, Recommendations for Preventive Pediatric Health Care (March 2019), https://www.aap.org/en-us/Documents/periodicity_schedule.pdf.

ICE has repeatedly advised Class Members who are Plaintiffs in *M.M.V. v. Barr* that they will not be released from detention *because* of their participation in the lawsuit, and that should they wish to be released from detention, they should dismiss themselves from the litigation and request removal from the United States. This context clarifies that ICE has leveraged detention to punish Class Members who have pursued their right to bring civil claims before the courts. Moreover, the government has no legitimate objective in detaining Class Members indefinitely during a global pandemic. The documented harms of indefinite detention on children, paired with the government's lack of legitimate purpose for detaining Class Members, and documented decision to detain Class Members *because* they are litigants, supports a finding that Class Members are subjected to "punishment."

The refusal to release Class Members who pursue litigation chills access to courts for potential future litigants in FRCs, who will be reluctant to pursue legally-meritorious legal claims if they believe doing so will result in the indefinite detention of their children. Indeed, ICE has repeatedly informed families who are detained at Dilley that the reason they may not be released from detention is because they chose to participate in federal litigation.

ICE, as detailed in the June 10, 2020 Juvenile Coordinator Report, has denied Class Members release from detention in conflict with the FSA, an adverse action that has already deterred individuals from exercising their right to participate in civil litigation. ICE's decision to deny release to Class Members was motivated, at least in part, because of Class Members participation in civil litigation.

D. COVID-19 continues to pose a grave health concern at the FRCs, and ICE continues to fail in the proper implementation of CDC guidelines.

A COVID-19 outbreak is inching ever closer in all three FRCs. As of June 25, 2020, eleven detained adults and children tested positive for COVID-19 at Karnes. Two CoreCivic employees and one ICE official who work at Dilley have also tested

positive for COVID-19, and numerous families have been moved to quarantine. *See generally* Nomaan Merchant, *Isolated and Afraid, Detained Migrant Kids Worry about Virus*, Border Report (June 23, 2020, 10:26 AM), *https://www.borderreport.com/hot-topics/migrant-centers/detained-in-isolation-migrant-families-fear-catching-virus*. Berks County is a hotbed of COVID-19. *See* Cambria Decl. ¶ 24. Thirty-five people have died of COVID-19 at Berks Heim, a county-owned and operated nursing home across the street from the detention center. *Id*. According to testing done by the PA National Guard and Department of Health, as of two weeks ago about 97 residents as well as 31 Berks County employees were currently or formerly positive for COVID-19. *Id*. Berks County employees also work in the detention center. *Id*.

In the JC report, ICE fails to acknowledge the lack of ability for Class Members and parents to socially distance at all three FRCs. *See* Cambria Decl. ¶ 19. ICE statements in the report fail to account for the fact that FRCs are *communal* facilities where unrelated adults, families and children commingle each day. *Id*. Although there may be enough physical space for families to socially distance, families are only permitted in certain parts of the facility or outdoors during certain times of the day, and their access to spaces are governed by detention staff. *See* Cambria Decl. ¶ 20. The communal areas do not permit adequate social distancing and the Facility Handbook themselves states that families will live in close proximity with other families. *Id*.

The ICE response also fails to account for the fact that many detained Class Members are infants and young children who thus cannot practice social distancing and cannot legally wear masks. *See* Cambria Decl. ¶ 23. Illnesses, viruses, and contagious diseases or infections therefore can spread quickly affecting all children and parents. *Id*.

The provision of disposable masks at every FRC remains insufficient. For example, at BCRC ICE provides one disposable mask every eight days. *See* Cambria

Decl. ¶ 26. The facility only provides adult-sized masks. *Id.* ICE correctly states that children under two are not supposed to wear masks of any kind due to the risk of suffocation. *Id. at* ¶ 27. This leaves these young children at risk of exposure to COVID-19 and places every other parent, Class Member, and employee in the facility equally at risk of contracting COVID-19. *Id*.

There is an apparent disconnect between ICE and facility staff regarding facility policies and/or a lack of instruction to detained parents concerning COVID-19. *See* Cambria Decl. ¶ 29. For example, ICE states that detained individuals can simply request another mask or additional cleaning supplies. Detained families are not aware that this is the case. *Id*. The same disconnect applies to the availability of gloves. *See* Cambria Decl. ¶ 30.

The circumstances at Berks provide one example of the risk Class Members face while detained in facilities that prevent social distancing. An outbreak of viral stomatitis, a highly contagious disease, causing bleeding from the mouth, sores on children's lips, mouths, and throats, and trouble eating and breathing, spread among *many* children at Berks. *See* Cambria Decl. ¶ 31. ICE's admission to the spread of this disease confirms that children cannot safely be detained during the COVID-19 pandemic. JC Report [Doc. # 813].

E. ICE's Continued Detention of Class Members Harms Children

The ever-expanding reach of the deadly COVID-19 pandemic and ICE's failure to comply with the FSA and continued detention of Class Members creates dangerous and harmful situations. ICE continues to detain Class Members in violation of the FSA at the secure and unlicensed congregate FRCs. Especially during a global pandemic, ICE's continued detention of children puts Class Members at great risk. Release of Class Members does not preclude release of their accompanying parents—in fact, release of children with parent is acknowledged and encouraged by the regulations at 8 C.F.R. § 1236.3, and release of completely family

units has been ICE's pattern and practice since 2014.[3] RAICES, Proyecto Dilley, and ALDEA are ready to continue their practice of working closely with parents of Class Members and with ICE to facilitate release. *See* Cambria Decl. ¶ 50; Fluharty Decl. ¶34; Meza Decl. ¶4**.**

IV. Conclusion

ICE continues to violate the FSA and prolong the detention of *Flores* Class Members, despite its obligations under the FSA and this Court's prior orders. Absent this Court's intervention, there is nothing to indicate ICE won't continue to violate the FSA with impunity.

Dated June 25, 2020

Respectfully Submitted,

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[3] Indeed, simultaneous release would allow ICE to also comply with the the Court's injunction in *Ms. L*, which prohibits "[ICE] from separating migrant parents and their minor children in the future absent a determination that the parent was unfit or presented a danger to his or her child or had a criminal history or communicable disease." *Ms. L. v. U.S. Immigration & Customs Enf't*, 415 F. Supp. 3d 980, 983 (S.D. Cal. 2020). As this Court pointed out during the April 24, 2020 hearing, the issue of simultaneous release "is complicated only because of the government's policy of holding adults." [Tr. 27:2-3]. Notwithstanding, how ICE complies with the FSA and other court orders and settlement agreements is beyond the scope of what is at issue here, namely *whether* ICE is complying with the FSA and how this Court should remedy ICE's noncompliance in light of the ongoing and growing pandemic.

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DECLARATION OF BRIDGET CAMBRIA, ESQ.

I, Bridget Cambria, declare and say as follows:

1. My name is Bridget Cambria, Esq. and I am an attorney with, and the Executive Director of, Aldea – The People's Justice Center ("Aldea"), a non-profit located in Reading, Pennsylvania in the County of Berks. Our organization, Aldea, offers universal representation to families detained at the Berks County Residential Center in Leesport, Pennsylvania. In the last five years, we have represented more than one thousand parents and children who have been detained in family detention in the Berks County Residential Center ("BCRC").

2. I previously filed declarations in the *Flores* with respect to compliance with the Flores Settlement Agreement, and more recently with regards to enforcement of *Flores* during the COVID-19 pandemic. I am now providing this supplementary declaration to update the court concerning the detention of families in the BCRC during the COVID-19 pandemic and to respond to the ICE Juvenile Coordinator Report which was filed by the Defendants on June 10, 2020. I have reviewed the report and certain documents concerning the clients we represent for immigration and detention matters before Immigration and Customs Enforcement.

3. Aldea continues to represent every family who remains detained in the BCRC during COVID-19, consisting of four asylum seeking immigrant families with matters pending in federal courts, the immigration court, and before the United States Citizenship and Immigration Services for humanitarian applications for relief and protection.

4. At this moment, all families continue to be detained in the BCRC in excess of 20 days. All families remain in detention since March of 2020. Two families have been detained for 106 days and two families have been detained for 97 days.

5. Each of the four remaining detained families cannot be removed from the United States at this time as they are subject to stays of removal issued by either a Federal Court or an Immigration Court. One family was granted a reconsideration of a negative credible fear finding by the USCIS Asylum Office and are scheduled for a re-interview on June 19, 2020. As such, this family is in active credible fear proceedings.

6. Additionally, one family has a pending application for T-Nonimmigrant Status before USCIS as the family was subjected to severe trafficking into the United States, including the forced imprisonment and kidnapping of this family for ransom – including such violence being directed at the child.

7. Conditions have remained unchanged since this Honorable Court's finding that the BCRC is not safe or sanitary in light of the COVID-19 pandemic. There remains an ongoing lack of education for detainees concerning the pandemic and, more strikingly, a lack of concern by authorities of the importance or risk COVID-19 poses on families in congregate care with regard to their determinations on custody.

ICE's position that being a Plaintiff in a Federal Action asserting their individual asylum rights and also their Constitutional rights pursuant to the 5th Amendment to ensure the safety and physical integrity of parents and children during the COVID-19 pandemic is justification for indefinite detention is in error:

8. The Flores Court has repeatedly maintained that children's rights under the settlement bear no correlation to their immigration case nor the immigration case of class members parents. In fact, ICE in their submission to this Court on June 10 reassert this fact.

9. However, despite writing that they understand that the immigration case bears no relation to Flores protections afforded to minors – such as safe and sanitary conditions of detention or continuous efforts at placement out of detention – ICE thereafter immediately finds that certain class members who are asserting their rights in both their asylum proceedings and removal processes are to assume the blame for the extremely long detention lengths in the FRCs.

10. This assertion is without merit for several reasons:

    a. The length of detention for class members who are not Plaintiffs in federal actions and are simply in the asylum process pursuant to credible or reasonable fear proceedings or standard 240 proceedings are still detained in unsafe and unsanitary conditions, are still held in secure and unlicensed facilities, are still not subject to ongoing and continuous efforts at placement outside of detention, are still detained at lengths of time not permitted pursuant to the Flores Settlement.

    b. Similarly, regardless of whether a detained family pursues judicial review of their asylum or removal process before a Federal Court, the rights of Flores class members is unchanged. Otherwise children would have to choose whether to abandon Flores rights or to abandon their Constitutional and statutory rights pursuant to the Immigration and Nationality Act or regulations governing their process. There is not a requirement that children choose one right over another. Class members maintain rights under the Settlement and the Constitution and the INA and governing regulations – and cannot unduly be stripped of those rights arbitrarily.

    c. Therefore, the class members who are seeking judicial review in Federal Court are also being detained in violation of the Settlement in that are they are still detained in unsafe and unsanitary conditions – especially in light of COVID-19, are still held in secure and unlicensed facilities, are still not subject to ongoing and continuous efforts at placement outside of detention, are still detained at lengths of time not permitted pursuant to the Flores Settlement.

11. Those families who are Plaintiffs in Federal Actions asserting their Constitutional and statutory rights under the laws and regulations governing asylum have received, not only consideration of their claims by appropriate Federal Courts, but also have received stays of removal from Federal Judges who deem their claims have merit and also where they have found that each plaintiff will suffer irreparable harm if their claims are not heard.

12. Importantly, the overarching issue in each case cited by ICE in their report is not whether the families will suffer harm – judges have determined that the families will suffer harm both in writing and by granting stays of removal – but rather whether the government can skirt the deprivation of the rights of Plaintiff families through various jurisdiction stripping provisions in the INA, thereby stripping Federal Courts of all judicial review of their claims.

13. The Plaintiffs in *M.M.V. v. Barr* contest various challenged asylum directives[1] which were ordered by the DHS to alter the credible fear process at the Family Residential Centers to force a substantial number of negative fear findings within family detention. At present, this matter is before the Court of Appears for the D.C. Circuit to determine whether the Court has jurisdiction to review the substantial changes to the asylum fear process. In the underlying District Court case, a stay of removal was issued for about a six-month period. The Judge ultimately determined that she had jurisdiction over some Plaintiffs and not others. In all cases, the Judge determined that the families would be irreparably harmed by removal. The matter is now on appeal subject to an expedited briefing schedule.

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a. [1] Defendants have failed to inform Plaintiffs of the standards and process by which Plaintiffs' claims would be judged. Plaintiffs have a right to a legal orientation in advance of their credible fear interviews and to be oriented to any changes in legal standards when they occur. E.g., 8 C.F.R. §§ 235.3(b)(4), 208.30(d)(2).

b. Variation of the changing policies, standards, and practices has been implemented inconsistently and haphazardly to the detriment of each Plaintiff. For example, interviewers did not receive appropriate, required training, including training to assess whether aliens fall under exceptions to the newly promulgated Asylum Bar; use of CBP law-enforcement officers to conduct credible fear interviews, despite the fact that, on information and belief, these CBP officers lack the training that, under the INA and related regulations, constitutes a necessary prerequisite to acting as an Asylum Officer (e.g. 8 U.S.C. § 1225(e); 8 C.F.R. § 208.1).

c. Defendants summarily announce negative asylum determinations, often directly to the applicant in the middle of the interview. Previously, such decisions were provided later after all testimony was solicited in support of the asylum-seeker's claim in a non-adversarial interview designed "to elicit all relevant and useful information bearing on whether the applicant has a credible fear" as required by law, and only after review and concurrence by a supervisory asylum officer. E.g., 8 C.F.R. § 208.30(d).

d. Interviewers now improperly limit questioning, so they fail to elicit testimony necessary to develop all facts relevant or supportive of an asylum-seeker's eligibility for asylum, withholding of removal, and CAT protection under the "significant possibility" standard required for credible fear proceedings. E.g., 8 C.F.R. § 208.30(d).

e. Many Plaintiffs were interviewed not once, but three or more times on three or more separate dates, over a timespan of several weeks or more, often by multiple officers including CBP officers. These law enforcement-type interrogation tactics and consequent delay in final adjudication of Plaintiffs' claims intimidate Plaintiffs, as well as prejudice their ability to recall the exact specifics of what was discussed at each prior interview. See 8 C.F.R. § 208.30(d).

f. Defendants now schedule interviews on unnecessarily truncated scheduling without sufficient advance written notice to facilitate Plaintiffs' ability to meaningfully consult with counsel or an advisor, abrogating Plaintiffs' rights. See, e.g., 8 U.S.C. § 1225(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4).

g. Plaintiffs were initially placed in credible fear proceedings under INA 235, 8 U.S.C. § 1225 and received summary determinations of asylum ineligibility, interviewers immediately subjected Plaintiffs to RFI-type evaluation and determination, continuing the initial interview but applying the higher RFI standard without notice, orientation or access to counsel.

h. Specifically, Defendants' interviewers are now rejecting the most favorable case law in credible fear proceedings, when assessing an asylum seeker's eligibility for withholding of removal, and in assessing relief under the Convention Against Torture.

i. A policy requiring each positive fear finding by the interviewer and positive fear concurrence by the supervisory asylum officer, to then be further reviewed by USCIS's Fraud Detection and National Security Directorate. Members of the Fraud Detection unit lack experience or training relevant to the adjudication of asylum applications as required by law (e.g., 8 U.S.C. § 1225(e)).

j. Interviewers now withhold critical information relied upon when issuing a negative fear determination, which among other harms, prejudices and impairs Plaintiffs rights of review by an administrative immigration judge (as Plaintiffs are never fully told of the basis of their denial). 8 CFR 208.30(e)(1).

k. Officers have abandoned Child-Sensitive Treatment in Credible Fear Proceedings by requiring telephonic interviews for families and children, depriving Plaintiffs of necessary accommodations, using adversarial techniques and using CBP officers as asylum officers 8 C.F.R. § 208.30(d).

14. The Plaintiffs in *D.A.M. v. Barr* contest other issues related to COVID-19, specifically that the removal procedures of ICE during COVID-19 are not sufficient to ensure the safety of deportees, that no COVID-19 procedures have actually been adopted to protect detainees, and that a removal process that places deportees at substantial risk for contracting COVID-19 are unlawful pursuant to the 5th Amendment.

15. These dangers have been evidenced by the ever increasing numbers of positive COVID-19 detainees in ICE detention, comingling of deportees from different detention centers, including those who have tested positive for COVID-19, for the purpose of removal, the transfers of persons in between detention centers spreading COVID-19, the removal of persons and families who have tested positive upon removal from the United States, and the foreign government's response to receiving families from the US during the pandemic especially for those who test positive. The government, again, is asserting that the parents and their children are foreclosed judicial review.

16. Many children remain detained in violation of Flores simply because they are a Plaintiff in a federal case or are challenging their order of removal in any other manner which has justified a stay of removal. The failure to provide Flores rights to these children violate the Settlement.

17. At this moment, many detained children have stays of removal that are indefinite in time and scope. Insomuch as their removal is not foreseeable, it is not appropriate to base their detention on the simple fact that they are seeking judicial review in a federal court. That is their legal right. It is also a false statement within each of ICE's parole determinations that Flores class members will be removed on the "*next flight*," where that child has an indefinite stay of removal. Obviously, the child will not be removed on the next flight, as they legally cannot be removed. Prior to removal, the child must fail in their claim, a stay would have to be lifted, as well as any injunctive rights on appeal. Only then could removal arrangements be made.

18. Children asserting valid legal rights in Federal Courts, where Judges have considered and thereafter granted stays of removal based on the facts and law at issue do not deprive Flores class members their Settlement rights, nor does it serve a basis to deny any and all Plaintiffs in federal actions parole categorically without specific individualized determinations.

Response to Issues Concerning the Lack of Ability to Socially Distance in the BCRC, a congregate care facility:

19. ICE states in their report that the BCRC offers a *communal* area with "ample space for movement around the facility, while allowing for social distancing," and "outdoor space available to residents." These statements fail to account for the fact that the BCRC is a *communal* facility where unrelated adults, families and children commingle each day and throughout the day. Families are only permitted in certain parts of the facility at certain times of the day. They are also only allowed outside during certain parts of the day. At all times their movements are supervised by onsite staff, and their

movements are authorized by the permission of the staff within the facility.

20. Access to indoor areas and outdoor spaces are governed by the rules of the facility. A family is not allowed outside any time they wish, they are simply allowed outside when permission is allowed. Families are not permitted in all areas of the facility at all times, just in their rooms and communal areas as the detained schedule permits, and at all times are physically monitored by detention staff.

21. The BCRC is a congregate care facility consisting of a single building with two floors, with sleeping quarters and communal spaces like a communal day room, a communal chapel, a communal playroom and communal showers and restrooms. Each of these areas do not permit adequate social distancing. They share chairs, desks, phones, computers, toys, showers, restrooms, and all eat during the same meal periods – in fact the only time they are not in a communal space is when they are in bed.

22. The Berks Handbook addresses the lack of social distancing available at the BCRC and states, [a]t the Center, you will be living in close proximity with other families," "outside of free movement hours, residents are expected to remain on the bedroom floor," "[d]ue to the communal nature of the Center, residents are expected to change their clothes in the shower rooms or their bathroom," "[d]ue to the communal nature of the Center, where children from different families may room together and non-related adults room together," "[r]esidents are expected to share common equipment such as telephones, televisions, tables, recreation games and other equipment."

23. Additionally, the ICE response fails to account for the fact that the class members in this facility are mainly infants and young children who cannot, themselves, practice social distancing. In fact, several of the children are too young to even legally wear a mask to prevent infection and spread of COVID-19. The ages of the class members currently in the BCRC are age 11, 5, 3, 2, and 1. Children often want to play with each other, share toys, are not physically restrained nor competent to adhere to social distancing. As such, illnesses, viruses and other contagious diseases or infections normally quickly spread throughout the family detention center affecting all children and parents in the BCRC.

24. Families continue to express fear for themselves and their children in light of COVID-19. They express great fear as a result of many outside people who come and go from the facility which include Berks staff, medical staff, and the attached ICE Field Office. Berks County continues to be a hotbed of COVID-19. In the building across the street from the BCRC, the Berks Heim, a county owned and run nursing home, about 35 people have died from COVID-19. The PA National Guard and Department of Health ordered testing of all residents in the Heim, and it demonstrated that as of two weeks ago about 97 residents were currently or formerly positive as well as 31 Berks County staff[2]. Importantly, Berks County employees also work in the BCRC. Therefore, the parents' concerns for themselves and their families remain valid.

25. Since my last update with this Honorable Court no other family has been released from custody and no family has received a written response to their pending parole

[2] https://www.pottsmerc.com/news/coronavirus/mass-testing-at-berks-heim-finds-34-more-coronavirus-positives-county-says/article_c3d01da7-068f-5d83-81c6-3c7fe6875ce8.html

requests. Currently in the BCRC is a family from Ecuador with a five-year-old child, a Haitian family with a one-year-old infant, a Haitian family with an 11-year-old child and a three-year-old toddler, and a Haitian family with a two-year-old infant. Their custody status remains unchanged since my last declaration. All families continue to be in the credible fear process, in removal proceedings, and/or are subject to court ordered stays of removal which are indefinite and as a result removal is not foreseeable at this time.

BCRC policy of one disposable mask every eight days is not sufficient to protect parents and their children from COVID-19 exposure:

26. The policy remains at the BCRC that detained parents and children are provided one disposable mask every eight days. Any other mask that was provided to the families was either provided by our organization or from a community donation. Additionally, the disposable masks provided cannot protect the children in the facility, as they are adult size masks.

27. ICE correctly states that children under 2 are not supposed to wear masks of any kind due to the risk of suffocation. This not only underscores – but emphasizes – that young small children cannot be safely detained during COVID-19. Not only are they not safe, but their open exposure to COVID-19 places every other parent, child and employee in the facility at risk of contracting COVID-19.

28. If ICE cannot protect the young minor children from COVID-19 spread because of physical limitations, then they should not be detained in the first place during the COVID-19 pandemic where alternatives to detention exist. They are risking the lives of the infants in their care, as well as all detainees and employees present in spaces where infants are detained.

29. Finally, ICE states that detainees may simply request another mask if they want one. Not a single-family reports being instructed that they can receive a replacement mask when they want one. Each family, however, knows that they receive a new disposable mask every 8 days. This demonstrates a lack of instruction concerning COVID-19 with detained parents and/or a disconnect between ICE and facility staff or policies.

30. The disconnect remains concerning glove availability within the facility. ICE correctly states that gloves are provided to detained parents when they clean their rooms and the rest of the BCRC pursuant to a work program where the parents are paid $1 per day. The families state that at no other time are gloves readily available to them.

Viral Stomatitis outbreaks among children in the BCRC are demonstrative of the lack of ability to socially distance and the lack of safe and sanitary conditions for children during the COVID-19 pandemic

31. For several months, children from various families have complained about bumps and sores on their children's lips, in their children's mouths and in the throats of the children causing pain, discomfort, trouble eating and breathing, bad breath and

bleeding. Parents report waking to their children's sheets being covered in blood from the mouths of their infants and young children. It has affected children currently detained and other children who have since been released from the facility.

32. Following some children being sent to a hospital as a result, a diagnosis of viral stomatitis has emerged. And in fact, families indicate that the medical providers within the BCRC described their issues as being caused by a virus spreading throughout the facility.

33. I have had an opportunity to review the medical records for each of the children currently detained and can confirm that viral stomatitis is the conclusion from hospital providers. I am unclear why ICE placed the word virus in quotes – when in fact, stomatitis is caused by an underlying viral infection[3].

34. In any event, the fact that a highly contagious disease has already spread throughout the BCRC is easily demonstrative as to how COVID-19 could similarly spread. In fact, the spread of this virus occurred both before COVID-19 lockdowns began and post COVID-19 lockdowns as instituted in the State of Pennsylvania. At least one child experienced a reemergence of the stomatitis. The children who remain in detention post-symptoms now possess scars on their lips from the sores resulting from the stomatitis infection.

35. ICE attributes the viral spread of stomatitis in the BCRC to parents "sharing sippy cups" without proper cleaning. No family reported that they were told by doctors that the sharing of sippy cups was the reason for their infections. In fact, most of the families posit that their belief is that children share toys, and often put those toys in their mouths resulting in the spread of the virus.

36. However, this justification by ICE is simply another demonstration as to why children cannot safely be detained during the COVID-19 pandemic, given its highly contagious nature. Children cannot adhere to social distancing requirements and are not physically restrained. Children will commingle, play with toys, touch things, cough and sneeze and more, and often will not keep a mask on 24/7 – certainly not the children who the CDC doesn't even recommend wearing masks due to the suffocation risk.

ICE's Flores Summaries are insufficient, incorrect, and not individualized

37. The parole worksheets provided to this Honorable Court continue to fail to provide an

[3] *See* U.S. National Library of Medicine. https://medlineplus.gov/ency/article/001383.htm

"Herpetic stomatitis - Herpetic stomatitis is a viral infection of the mouth that causes sores and ulcers. These mouth ulcers are not the same as canker sores, which are not caused by a virus…Causes: Herpetic stomatitis is an infection caused by the herpes simplex virus (HSV), or oral herpes. Young children commonly get it when they are first exposed to HSV. The first outbreak is usually the most severe. HSV can easily be spread from one child to another…Symptoms may include: Blisters in the mouth, often on the tongue, cheeks, roof of the mouth, gums, and on the border between the inside of the lip and the skin next to it; After blisters pop, they form ulcers in the mouth, often on the tongue or cheeks; Difficulty swallowing; Drooling; Fever, often as high as 104°F (40°C), which may occur 1 to 2 days before blisters and ulcers appear; Irritability; Mouth pain; Swollen gums; Symptoms may be so uncomfortable that your child doesn't want to eat or drink; Bad breath and a coated tongue are common side effects…Outlook (Prognosis)…Your child should recover completely within 10 days without treatment…Your child will have the herpes virus for life. In most people, the virus stays inactive in their body. If the virus wakes up again, it most often causes a cold sore on the mouth. Sometimes, it can affect the inside of the mouth, but it won't be as severe as the first episode."

individualized determination for each family at the BCRC as to why they remain detained during the COVID-19 pandemic. They also contain factually inaccurate information.

38. At no point, prior to May 14, 2020, was any parent asked if they wanted to separate from their child, thereby sending their child to a sponsor while the parent remained in detention. This choice was never presented to a family prior to May 14, despite ICE indicating on these forms that each family was provided a parole review initially upon entering the BCRC.

39. It is for that reason that each family called our offices immediately after meeting with ICE, because they were confused, startled, and failed to understand what their refusal to separate from their children would mean. It also startled them, because at no other time had ICE met with to ask questions, other than their initial intake into the facility.

40. The Flores Release Summaries demonstrate ICE has failed in their responsibility to continuously provide efforts to place class members outside of detention. In fact, it appears this, at most, was conducted two times. One, the moment they arrived at the BCRC and second, when instructed by this Court – and even then, ICE's compliance was arbitrary and ministerial.

41. As is stated concerning the other two FRCs, information contained in the Summary reports is at parts inaccurate and not consistent with our efforts as legal service providers as well as the postures of their legal cases is not in every case stated correctly.

42. One minor J.O.E., for example, who has a stay of removal issued by the Immigration Court, a motion to reopen pending and submitted an application for a trafficking visa – ICE maintains that it will remove her despite that application being lodged and pending with USCIS. It further misstates the child's initial entry date (real date 2/3/2020), the date and manner in which she and her parents were forcibly kidnapped and brought back into the United States, subsequent to their MPP placement, and thereafter ransomed, and fails to state that she and her parents are cooperating with law enforcement concerning their trafficking. It maintains that they will remove her and her parents, but in the same summary states that the country to which they will be deported has "closed its borders" due to the COVID-19 pandemic.

43. The remaining three children's summaries for the BCRC are identical in their reliance solely on the parents' immigration case to determine parole for the minor and in fact, they differ only in their biographic information.

44. The Flores Release Summaries provide that removal of the class member will occur on the "next flight." This is not true, as each minor cannot be removed in the foreseeable future as they are each subject to a stay of removal.

45. The Flores Release Summaries do not contain an individualized analysis for each child, but rather are predominantly determined by the parents' immigration case and the parents' failure to separate from their child. Each summary provides much of the same information which was previously provided to this Court.

46. In fact, each family at the BCRC has a home willing to receive them, they have

provided that information to ICE and have offered to accept whatever alternatives to detention are prescribed by ICE. However, as stated before, we, as counsel, have never received a denial of parole in writing and in fact have never received a response to our written request for parole which was filed with our local AFOD and ERO Supervisor.

47. At no point were the medical conditions of parents or their children considered in each summary nor was the prevalence of the COVID-19 pandemic a consideration.

48. At no point were the continued violations of Flores rights for each child considered in each parole summary.

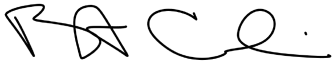
Conclusions:

49. At this moment, the government remains in substantial noncompliance with the settlement. They continue to detain children in secure, unlicensed facilities which are not safe or sanitary. They continue to do so during a pandemic. They have shirked on their responsibilities to comply with countless orders issued by this Court, and have in turn required children to languish in detention during their substantial noncompliance rather than address the issues which have led us to this point: children in indefinite detention with no safe alternative, but for the safe release of children in its custody to be done consistently with how ICE has done so for the last five years, into the custody of their parents to ensure care during the pandemic. This remains a consideration that *must* be made in light of 8 C.F.R. 1236.3.

50. Legal service providers remain ready to provide exact sponsor information, including address, phone, and name and we also remain ready to provide appropriate safe transportation for families from custody to their sponsors in light of COVID-19. We remain ready to assist clients post release to ensure the best compliance with requirements of any alternatives to detention placed on our clients.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct pursuant to 28 U.S.C. ¶ 1746.

Executed this 17th day of June 2020 in Reading, Pennsylvania.



Bridget Cambria, Esq.

JUNE 17, 2020 SUPPLEMENTAL DECLARATION OF SHALYN FLUHARTY

I, Shalyn Fluharty, hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. I have previously submitted multiple declarations in this matter. I provide this supplementary declaration to clarify information detailed in the ICE Juvenile Coordinator's June 10, 2020 Report and to advise the Court of material factual inaccuracies detailed in Exhibit B of the Report. I also write to inform the Court of recent information that indicates the potential presence of COVID-19 at the South Texas Family Residential Center in Dilley, Texas ("STFRC" or "Dilley").

2. The detention of children at Dilley has become indefinite without justification. ICE has failed to make specific, individualized custody determinations for Class Members. Many children have been detained for more than nine months and for nearly three months since the Court's March 28, 2020 Order. The Court should order the immediate release of specific children who remain detained in violation of the *Flores* Settlement Agreement ("FSA" or "Agreement") during the COVID-19 pandemic. This relief is necessary to give meaning to the terms of the Agreement and to ensure that Class Members are not subjected to irreversible harm. *See* generally, Exhibit A, Letter to the Special Monitor from Legal Services Providers submitted on June 13, 2020 (without accompanying Exhibits).

New information indicates possible COVID-19 contagion at STFRC.

3. On June 16, 2020 three mothers and a child represented by Proyecto Dilley—M.J.P., Y.O.T., J.D.C.L., and J.S.P.– advised Proyecto Dilley that individuals present at STFRC have tested positive for COVID-19. Two of the mothers and the child informed Proyecto Dilley staff that one CoreCivic employee tested positive for COVID-19. *See* Exhibit B, Declaration of Y.O.T.; Exhibit C, Declaration of J.S.P.; Exhibit D, Declaration of J.D.C.L. Another mother stated that a medical provider informed her "there is a [positive] case" at STFRC. Exhibit E, Declaration of M.J.P.

4. On June 17, 2020 I emailed Immigration and Customs Enforcement Assistant Field Office Director Richard Hunt to advise him of the above-stated information. I requested confirmation regarding whether there have been any positive COVID-19 tests for individuals who work at STFRC or are detained there. I further requested that ICE test all mothers and children detained at STFRC. As of the signing of this declaration, I have not received a response.

The ICE Juvenile Coordinator's report mischaracterizes the immediacy of removal for Class Members detained at Dilley and implies Class Members have failed to indicate a receiving person, or been deemed a flight risk or danger, when they have not.

5. The ICE Juvenile Coordinator's report is inaccurate because it is based upon a "paper audit." As detailed at length in the following section, the documents reviewed by the ICE Juvenile Coordinator—to the extent they include the information contained in Exhibit B of the ICE Juvenile Coordinator's report—are wrong.

6. The ICE Juvenile Coordinator's report indicates that parole assessments conducted by ICE for detained families were conducted in accordance with INA § 212(d)(5), 8 C.F.R. § 212.5(b), and paragraph 14 of the FSA. The report fails to indicate why ICE's custody review process has not incorporated the provisions detailed at 8 C.F.R. § 236.3 and 8 C.F.R. § 1236.3. The information provided to the Court fails to sufficiently document ICE's efforts to assess the release of children to their detained parent, as required by 8 C.F.R. § 236.3 and 8 C.F.R. § 1236.3, which ICE is required to do when no other custodian for the child is available.

7. The ICE Juvenile Coordinator's report confirms that ICE Deportation Officers were reminded that "parole should not be denied to a minor based solely on the existence of a final order of removal." However, the rest of the ICE Juvenile Coordinator's report, and the report's accompanying exhibits, detail that the sole basis for the ongoing detention of Class Members at Dilley is in fact a final order of removal. Take, for example, the summary narrative of child N.K.M.M., which states, "Minor was found to be a flight risk as she is subject to a final order of removal and will be scheduled for the next removal flight to her country of citizenship." In addition to being an unlawful assessment of flight risk, this statement is also untrue, as we believe a flight to Nicaragua departed on or around June 11, 2020, and N.K.M.M. and her mother were not—and could not be—deported on it.

8. The ICE Juvenile Coordinator's report states that "Class Members who remain at the FRCs have not met . . . standards for release." I am not aware of any facts that justify a determination that a Class Member or parent detained at Dilley is a danger or flight risk, separate and apart from an order of removal. Class Members and their parents have repeatedly provided ICE with the name, phone number, address, and relationship of the adult who is ready and willing to receive the family. I therefore strongly contest the ICE Juvenile Coordinator's assertion that ICE has deemed Class Members "to be flight risks and/or [that] the parent or legal guardian has not designated a caregiver for the Class Member."

9. Three families currently detained in Dilley were issued orders of removal by an immigration judge in proceedings under section 240 of the Immigration and Nationality Act ("INA"). Two of these three families were forced to wait in Mexico during their immigration court proceedings while subjected to the Migration Protection Protocols ("MPP"). Both families were ordered removed *in absentia* when they failed to appear in court. These families did not appear because they were kidnapped by transnational criminal organizations in Mexico and held against their will on the date of their immigration court hearings. These facts form the basis of their pending Motions to Reopen. The third family lost their asylum case and filed a timely appeal of the immigration judge's decision with the Board of Immigration Appeals. This family has never missed court date or ICE check-in.

10. The ICE Juvenile Coordinator's report confirms that ICE has failed to make "continuous efforts" towards the release of Class Members. Exhibit B of the ICE Juvenile Coordinator's report shows ICE has reviewed the custody status of Class Members detained at Dilley, generally, on two separate occasions. First, ICE has made (with two exceptions) a custody determination within the first few days of a Class Member's arrival to Dilley. In my experience, this "parole determination" is meaningless. Customs and Border Patrol ("CBP") decides—prior to a family's transfer to ICE—whether a family should be detained in ICE custody. This decision by CBP, in my experience, is categorical: when CBP issues an order of Expedited Removal to a family, the family is transferred to ICE custody and ongoing detention is presumed. Although in some circumstances ICE discovers that a family was accidentally transferred to Dilley by CBP—for example, when one of the family members has a delicate medical condition that CBP was not aware of or the family was already issued a Notice to Appear—the presumption is that families sent to Dilley are done so because CBP has *already* determined on behalf of the Department of Homeland Security that they should be detained while the family is in credible or reasonable fear proceedings. As a result, in my experience, ICE's intake process when families first arrive to STFRC does not constitute a meaningful "parole" review process for Class Members.

11. The ICE Juvenile Coordinator's report indicates that ICE reviewed the case of most Class Members detained at STFRC on May 14, 2020. ICE had a submission deadline with this Court on May 15, 2020. This timeline is relevant because it confirms that ICE conducted parole determinations for Class Members because of a filing deadline before this Court, and not because it has systemically integrated ongoing parole review for Class Members, as is required by the FSA.

12. I am not surprised by ICE's failure to meaningfully and continuously review the custody status of Class Members. Unlike ICE Class Members who are held in the care and

custody of the Office of Refugee Resettlement, accompanied children do not have the benefit of full-time Case Managers who are dedicated to making and documenting efforts to release children from custody.

13. Although the release of Class Members, regardless of reason, is important proof of compliance with the FSA, the release of *some* Class Members is not evidence that the ongoing detention of *other* Class Members is FSA compliant. The statistics most relevant to an assessing ICE's compliance with the FSA is (1) the number of Class Members in detention, (2) the number of days the Class Member has been detained, and (3) the reasons the Class Member has been deemed a danger or flight risk.

14. The ICE Juvenile Coordinator's report states that the "typical" population housed at FRCs are "booked in-and-out of custody within approximately 20 days." This has not been my experience since July 2019. I have reason to believe the Court's review of the total number of children booked into Dilley since July 2019, and the total number of children released within 20 days would reveal a minuscule percentage of children actually released within the 20-day period. Critically, this statistic would clarify that the "typical" population in Dilley now faces detention far beyond 20 days. In fact, Proyecto Dilley has determined that the current average length of detention for Class Members detained at STFRC is 217.7 days.

15. As detailed in the ICE Juvenile Coordinator's report, many Class Members detained at Dilley are plaintiffs in litigation that challenges the fairness and legality of the procedures applied to them in the expedited removal process. Although Class Members do not challenge their orders of expedited removal directly, they challenge whether or not the process they were provided complies with the expedited removal statute, its implementing regulations, and the United States Constitution. As a remedy, plaintiffs seek the opportunity to have new credible fear interviews that comply with the law. Class Members have a right to challenge the policies applied to them in the expedited removal process pursuant to 8 U.S.C. § 1252(e)(3). A Class Member's decision to vindicate their legal rights cannot justify punishment in the form of prolonged detention in conflict with the FSA.

16. Importantly, removal for Class Members detained in Dilley—with few exceptions—is not imminent. As noted in the ICE Juvenile Coordinator's report, many Class Members were issued a stay of removal on September 25, 2019 that extended for eight months, until May 15, 2020. The stay of removal that was issued in *D.A.M. v. Barr* on May 18, 2020 has no end date and may last until the entire case is resolved. Notably, *D.A.M.* plaintiffs assert the removal process itself during COVID-19 places them in danger of contracting the coronavirus. Unfortunately, COVID-19 infection rates continue to soar

inside ICE detention facilities and within the state of Texas, making the issues raised in *D.A.M. v. Barr* far from moot, and unlikely to resolve in the immediate future.

17. ICE also states that removal in imminent for children who do not have travel documents necessary for travel. For example, E.G.S.V.'s order of expedited removal became final on February 21, 2020 and ICE has not obtained travel documents; K.M.T.M.'s order of removal became final on February 6, 2020 and ICE does not have travel documents; and D.E.R. has been detained for 124 days and does not have travel documents. These examples confirm that removal is not imminent.

Exhibit B of the ICE Juvenile Coordinator's June 10, 2020 Report is factually inaccurate in material ways.

18. Although Proyecto Dilley serves as an attorney of record for all of the children listed in Exhibit B of the ICE Juvenile Coordinator's June 10, 2020 Report, this is the first time that I have been afforded the opportunity to review the un-redacted Class Member-specific information provided by ICE in these proceedings.

19. The Juvenile Coordinator's report is factually inaccurate in material ways. The government must do better.

20. Exhibit B of the report is internally inconsistent. The spreadsheet within the Exhibit conflicts directly, and repeatedly, with the individual "Flores Release Summaries" provided to the Court. The inconsistencies include discrepancies in how ICE records and reports relevant information, and the information reported for a Class Member. For example, in some cases ICE reports the "final order date" as the date the order of Expedited Removal was initially issued at the border, prior to an individual's credible fear interview. In other cases, however, ICE reports the "final order date" as the date the immigration judge affirmed an asylum-seeker's negative credible fear decision. An analysis of the data reported for particular children highlights the conflict in how the data is entered. For example, in the case of child S.R.S., the immigration judge affirmed S.R.S.'s negative credible fear determination on November 21, 2019; however, ICE lists September 30, 2019 as the date of S.R.S.'s Final Order Date on the spreadsheet in Exhibit B of the report. In S.R.S.'s individual Release Summary, however, November 21, 2019 is listed as the Final Order date.

21. An additional example of inconsistency can be seen in the cases of child V.L.O. and D.L.O., two sisters who arrived at the United States, and subsequently to Dilley, together as a family unit with their mother. The spreadsheet in Exhibit B lists a different Final Order Date for D.L.O. and V.L.O., even though all orders and decisions in their credible fear process have occurred simultaneously on the same dates.

22. ICE also seems to have arbitrarily weighed a Class Member's participation in federal litigation differently when assessing the release of individualized Class Members. For

example, the case summary of some children indicates their participation as a plaintiff in *M.M.V. v. Barr* as a reason for denying release. Other children are also plaintiffs in *M.M.V. v. Barr*, but their participation is not referenced at all in their release case summary. Similarly, *D.A.M. v. Barr* is referenced in the case summary of some Class Members who are plaintiffs in *D.A.M. v. Barr*. However, *D.A.M. v. Barr* is not referenced in the case summaries of other Class Members, who are also plaintiffs.

23. Most alarmingly, ICE falsely reports that certain Class Members are plaintiffs in federal litigation when, in fact, they are not plaintiffs in said litigation. Class Members who are plaintiffs in *M.M.V. v. Barr* are not necessarily plaintiffs in *D.A.M. v. Barr*, and severely children are plaintiffs in *M.M.V.* and not *D.A.M.* This is problematic because ICE wrongly attributes its decision to deny release to Class Members based upon their participation in litigation that they are not even a part of. For example, C.F.L.A. and A.A.G.Q. are not, and never were, plaintiffs in *D.A.M. v. Barr*. However, the narrative in their release summary states, "Minor's order is final and he is ready for removal immediately upon resolution of the administrative stay of removal in *D.A.M*."

24. ICE also reports false information regarding the timing of removal flights. From my experience, removal flights to non-Central American countries do not depart with regularity and depart much more infrequently. The case summaries appear to have cut and pasted language regarding the timing of flights, stating "removal flights to [country] occur 2-3 times each week." While this may be true for some Central American countries, it has never been true, in my experience, for families being removed to Ecuador. Nonetheless in the case summary of C.F.L.A., the narrative states "Removal flights to Ecuador occur 2-3 times each week." However, in the summary narrative of another Ecuadoran child, J.A.C.L., ICE states, more realistically, that "Removal flights to Ecuador occur two times per month."

25. ICE's reports regarding removal timelines directly conflict in other ways as well. For example, in the case of N.C.L.—a Class Member who is a plaintiff in both *M.M.V. v. Barr* and *D.A.M. v. Barr*—ICE reports N.C.L.'s expected date of removal as "next available flight." In contrast, in the release summary of S.R.S., a Class Member who is also a plaintiff in both *M.M.V. v. Barr* and *D.A.M. v. Barr*, ICE lists S.R.S.'s expected date of removal as "pending litigation."

26. All children who are plaintiffs in *D.A.M. v. Barr* have administrative stays of removal issued by a federal court. ICE has no way to know when those administrative stays will be lifted, yet nonetheless makes statements such as, "Expected Date of Removal: Next Flight Available" for many Class Members. To say that a Class Member's "order is final and she is ready for removal to Guatemala immediately upon resolution of the administrative stay of removal in *M.M.V. v. Barr*" ignores the reality that the Class Member may not be removable for many months, if ever. To state that a Class Member "is subject to a final order of removal and will be scheduled for the *next removal flight*" (emphasis added) is highly improbable, and definitely unprovable, at this time. ICE's explanation that a Class Member is a flight risk because of the "very short time period for manifesting the flight" is therefore misleading.

27. ICE's explanation in the case of Class Member V.S.S. is equally puzzling. In the child's summary narrative, ICE states, "Removal flights to Cuba have not been scheduled by ICE AIR ops," providing no additional information about how long the child can expect to be detained, and failing to justify the copy-pasted statement that follows: "Due to the frequency of removal flights and the very short time period for manifesting the flight, it is unlikely that the minor would present himself (sic) for removal in a timely manner." These sentences are contradictory and highlight arbitrary decision-making in assessing flight risk and release for Class Members.

28. ICE's *Flores* Release Summaries report that Class Members have not designated a receiving person. As I have stated in previously, this is false. Class Members and their parents have repeatedly provided ICE with the name, phone number, address, and contact information of their receiving person. As counsel, Proyecto Dilley has provided sponsor information directly to ICE on behalf of Class Members on March 31, 2020, April 2, 2020, April 18, 2020, April 30, 2020, May 7, 2020 and May 13, 2020.

29. ICE uniformly lists "ID Provided? N/A" in each child's *Flores* Release Summary. However, ICE is in possession of almost every minor's Identification documents. Proyecto Dilley even provided ICE directly with a copy of the passport for S.E.V.C.

30. ICE also reports incorrect information regarding the status of Class Members' immigration case. The reported information is frequently inconsistently reported for a Class Member. For example, in the case of C.P.C., ICE reports that the case status is "Final order from 240 proceedings" in one location and repeatedly references expedited removal proceedings in another. C.P.C.'s narrative summary furthers the confusion regarding his procedural posture, and states: "The FAMU was processed for expedited removal . . . USCIS found that the minor did not have a credible fear of returning to Ecuador . . . the IJ affirmed USCIS' negative fear finding" and also that "Minor's order is final and he is ready for removal to Ecuador immediately upon resolution of the administrative stay of removal due to Motion to Reopen Case." C.P.C., however, is not in expedited removal proceedings, and instead, was placed in INA 240 proceedings and as a Motion to Reopen pending with the Immigration Judge.

31. The case of J.A.C.L. reveals a similar inaccuracy. J.A.C.L. has never been placed in expedited removal. Rather, J.A.C.L. is in regular removal proceedings under INA 240. However, J.A.C.L.'s summary narrative incorrectly states that: "Parole was denied because the minor was in the credible fear interview process and detention was required to complete the process."

32. Another example of ICE justifying a Class Member's detention with faulty information exists in the case of S.E.V.C. S.E.V.C.'s summary narrative states that "[o]n 12/17/2019, the FAMU was paroled (MMV vs. Barr) through the Brownsville Port of Entry . . . Parole was denied because the minor was in the credible fear interview process and detention was required to complete the process." However, S.E.V.C.'s credible fear interview was

completed on August 30, 2019 and an IJ affirmed the Asylum Officer's decision on September 30, 2019.

COVID-19 continues to present risks of harm to families detained at STFRC.

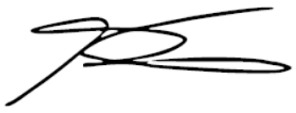
33. The information detailed in my previous declarations regarding conditions at STFRC remains true and accurate to the best of my knowledge. In response to the ICE Juvenile Coordinator's report, to the extent cleaning supplies are available for use by detained families, many families are unaware that cleaning supplies are available and may be requested. Additionally, Proyecto Dilley is tracking a growing number of detained children who are experiencing nosebleeds. We have reason to believe these nosebleeds may be a result of the use of new chemical cleaning supplies being used at STFRC.

Proyecto Dilley is available, capable, and willing to assist in coordinating release efforts for released Class Members.

34. If this court finds it appropriate to order the prompt release of Class Members, Proyecto Dilley is available, capable, and willing to provide assistance to ensure the release process is orderly. Proyecto Dilley can provide transportation from the facility to the bus station or airport, secure local temporary housing for families who await travel, purchase travel tickets for families who do not have tickets purchases and communicate directly with sponsors to coordinate travel logistics.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in San Antonio, Texas on June 17, 2020.



Shalyn Fluharty

EXHIBIT A

RAICES

aldea

PROYECTO DILLEY

June 13, 2020

Andrea Sheridan Ordin
Special Monitor
Flores v. Barr, 2:85-cv-04544-DMG (AGRx)
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RE: Enhanced monitoring of medical care provided in Family Residential Centers

Dear Ms. Ordin and Dr. Wise:

Proyecto Dilley[1], RAICES, and ALDEA - The People's Justice Center, represent Class Members and their parents[2] who are detained at the South Texas Family Residential Center in Dilley, Texas ("Dilley"); the Karnes County Residential Center in Karnes City, Texas ("Karnes"); and the Berks County Residential Center in Leesport, Pennsylvania ("Berks"), respectively (together, the "Family Residential Centers" or "FRCs").

We write *ex parte*[3] to provide information, request investigation, and submit recommendations pursuant to Judge Dolly M. Gee's May 22, 2020 Order, which called on you to

> provide enhanced monitoring of the FRC's care of minors, [with] the ability to (a) request and obtain copies of medical care data and policies; (b) have telephone or videoconference access to persons most knowledgeable at the FRCs with whom they can discuss the baseline of custodian medical care, health care protocols, and COVID-19 prevention practices; (c) consider protocols for identifying minors who have serious medical conditions that may make them more vulnerable to COVID-19; (d) interview minors with serious medical conditions or, as appropriate, their guardians; and (e) make such recommendations for remedial action that they deem appropriate.

[1] Formerly known as the Dilley Pro Bono Project and the CARA Pro Bono Project.
[2] Based upon our records, we collectively represent the overwhelming majority of the families detained at each FRC.
[3] Pursuant to the *Flores* Court's order appointing the Special Monitor. *See Flores v. Sessions*, 2:85-cv-4544 DMG (AGRx), Doc. # 494 (C.D. Cal. Oct. 5, 2018).

Flores v. Barr, 2:85-cv-4544 DMG (AGRx), Doc. # 799, 3 (C.D. Cal. May 22, 2020). Your enhanced monitoring and subsequent reporting to the court is urgently needed to protect the 109[4] Class Members currently detained at Dilley, Karnes, and Berks.[5] The situation at the FRCs remains dire, and Class Members are exposed on a daily basis to the risk of detrimental health outcomes both due to the inadequate baseline of medical care and inadequate preventative, testing, and treatment measures that are available to combat the very real threat of COVID-19. These risks are exacerbated by Class Members' prolonged detention in secure, unlicensed congregate care facilities that are not compliant with the terms of the *Flores* Settlement Agreement ("FSA"). *See Flores v. Johnson*, 212 F. Supp. 3d 864, 877 (C.D. Cal. 2015).

It is our hope that the information provided below will assist you in carrying out a much-needed investigation into the provision of medical care at the FRCs. We would also welcome an additional opportunity to speak with you about the issues identified below and offer our further assistance as you conduct your investigation.

I. Baseline medical care provided at the FRCs is dangerously inadequate and does not provide a safe and sanitary environment.

In order to best represent and advocate for our clients, Proyecto Dilley, RAICES, and Aldea regularly request and review medical records, and consult with medical experts when necessary. We also speak—on a daily basis—to clients who express concerns regarding the medical care they have received at the FRCs.

There is an inherent conflict of interest between Immigration and Custom Enforcement's ("ICE") mission to arrest, detain, and deport non-citizens and its duty to ensure the safety and wellbeing of children. We have repeatedly observed ICE safeguard its law enforcement objectives instead of the health and care of children in its custody. When medical care is provided by a third-party contractor—such as the GEO Group or Berks County—the financial bottom-line can dictate the quality of care provided, rather than the health and best interests of the child. As a result, children are deprived of necessary medical treatment and placed at risk of serious harm while detained.

A. History of Negligent Medical Care at the Family Residential Centers

From the beginning, medical care at Dilley, Karnes, and Berks has been substandard at best, and negligent at worst. Medical care at Dilley is provided by ICE Health Service Corps

[4] Proyecto Dilley is aware of 90 children currently detained at Dilley. RAICES is aware of 14 children currently detained at Karnes. Aldea is aware of five children currently detained at Berks.

[5] We believe, and the studies have shown, that detention in and of itself is harmful to children. *See* Letter of Drs. Scott A. Allen and Pamela McPherson to Congress (July 17, 2018), https://www.whistleblower.org/wp-content/uploads/2019/01/Original-Docs-Letter.pdf (noting that "[t]he fundamental flaw of family detention is not just the risk posed by the *conditions* of confinement—it's the incarceration of innocent children itself. In our professional opinion, there is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers.") (hereinafter "July 2018 Letter to Congress"). This report, however, focuses on the required provision of adequate medical care to Class Members detained by ICE.

("IHSC"); at Karnes, by the GEO Group; and at Berks, by Berks County. The history of inadequate medical services provided to children at the FRCs is well documented in complaints filed with the Department of Homeland Security's Office of Civil Rights and Civil Liberties ("CRCL"); the observations and subsequent reports of pediatricians who have studied the FRCs; whistleblower complaints to Congress by the doctors in charge of CRCL's medical review; and the observations of Proyecto Dilley, RAICES, and Aldea.

On July 30, 2015, several organizations jointly filed a CRCL complaint highlighting specific failings in the provision of medical care at the three FRCs. The complaint documented instances of medical professionals at the FRCs providing "insufficient information about medical care to mothers and disregard [for] their concerns, the information they provide and their complaints." *See* CRCL Complaint at 1 (July 30, 2015).[6] The complaint also included descriptions of "[m]edical staff frequently direct[ing] mothers and children to 'drink more water' regardless of the illnesses or injuries presented," reports that families were made to wait between three to fourteen hours for medical care, and instances of inadequate follow-up treatment. *Id.* at 2. The complaint further detailed one incident that took place in Dilley in early July 2015, where over 250 children were vaccinated—without their mothers' consent—with an adult dose of the Hepatitis A vaccine. *Id.*

Dr. Alan Shapiro is a pediatrician who has participated in immigration detention monitoring groups and the *Flores* monitoring team. *See* Exhibit A (Declaration of Dr. Alan Shapiro).[7] Dr. Shapiro's monitoring trips to the FRCs "revealed [a] lack of adequate health staff and inadequate services (medical and mental health), inappropriately trained staff (e.g. no pediatricians, lack of bilingual mental health professionals), delays in receiving care, staff dismissive of detainee medical complaints leading to poor outcomes and under-detection of acute and chronic conditions." *Id.* at ¶ 11. These factors, including "parental reluctance to seek medical attention due to previous experience not being taken seriously by the medical team, and transfer to other medical facilities when in fact a child has been found to need higher level care," he determined, were factors that may have led to the "severe illness or death of children" at the FRCs. *Id.* at ¶ 38.

In 2017, the American Immigration Council and several other organizations filed another complaint with CRCL raising concerns about the conditions of detention and lack of quality medical care that was provided to pregnant women in ICE custody. CRCL Complaint (Nov. 13, 2017).[8] While an August 2016 ICE policy memorandum determined that pregnant women should not be detained at FRCs, Proyecto Dilley, RAICES, and Aldea have continually worked with and advocated for pregnant women detained at the FRCs. *Id.* at 1–2. The complaint highlights the stories of many women detained at Dilley and Karnes, who describe high-risk pregnancies without adequate medical care.

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[6] *Available at* https://www.aila.org/advo-media/press-releases/2015/deplorable-medical-treatment-at-fam-detention-ctrs/public-version-of-complaint-to-crcl.

[7] This declaration was filed in *D.A.M. v. Barr*, 1:20-cv-01321-CRC, Doc. # 21 (D.D.C. May 26, 2020).

[8] Available at https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_increasing_numbers_of_pregnant_women_facing_harm_in_detention.pdf.

On July 17, 2018, two doctors who served as the "medical and psychiatric subject matter experts for" CRCL wrote a damning letter to Congress. Letter from Drs. Allen & Pamela to Congress, at 1 (July 17, 2018).[9] Doctors Scott A. Allen and Pamela McPherson detailed their concerns—which they felt duty-bound to raise despite their work for DHS—about the harm posed to children detained in FRCs. *Id.* at 1. As a result of ten different investigations of the FRCs, which "revealed serious compliance issues resulting in harm to children," Doctors Allen and McPherson determined that the FRCs had "significant deficiencies that violate[d] federal detention center standards . . . despite repeated assurances that cited shortcomings w[ould] be corrected." *Id.* at 4. Doctors Allen and McPherson identified the following areas of concern: (1) the detention of children in inadequate facilities (e.g. Karnes was formerly a medium security adult prison); (2) unqualified medical staff; and (3) the failure to provide adequate care for individuals expressing suicidal ideations. *Id.* at 4–5.

In February 2019, several organizations submitted a CRCL complaint detailing the detention of infants at Dilley—including at least nine who were less than a year old. *See* CRCL Complaint (Feb. 28, 2019).[10] Without the availability of specialized medical care for infants, any period in detention—and in particular lengthy periods of detention—pose a heightened risk. This is especially the case since infants are "especially vulnerable to serious illnesses, pain, disability, and even death from preventable infections and diseases," and frequent well-child visits are recommended. *Id.* at 2. ICE has, historically and currently, been unable to provide the required level of care.

Young children are particularly prone to illness while detained in a congregate care setting and baby-specific treatment and care-related items are regularly unavailable to parents at FRCs. In one case, a fifteen-month-old baby detained in January of 2020 suffered a cold and continuous diarrhea during his four-month detention at Karnes. The baby's father took his child to the medical center and requested access to medication and formula because his son was sick and unable to digest the food provided at the cafeteria. Both requests were denied. By the time the family was deported, the baby had spent almost a quarter of his life in ICE detention. This is one example of many in which particularly young children have experienced ongoing illness, weight loss, and lack of access to medical care in all three FRCs.

As detailed in the August 19, 2019 Second Report of the Special Master/Independent Monitor, several children tragically died in government custody or shortly after release in 2018.[11] Mariee Juarez was a twenty-month-old baby who was detained at Dilley with her mother in early March 2018. *See* Exhibit B (Notice of Claim Pursuant to A.R.S. § 12-821.01). When she arrived at Dilley, Mariee was a healthy child but, within a week, she developed an upper respiratory infection, diarrhea, and vomiting. Despite multiple visits to the medical clinic, and Mariee presenting with 102- and 104-degree fevers, Mariee was medically cleared to travel by a "licensed vocational nurse" who was unqualified to make such a determination and who did not conduct an

[9] Available at https://www.whistleblower.org/wp-content/uploads/2019/01/Original-Docs-Letter.pdf.
[10] Available at https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_urges_immediate_release_of_infants_from_immigration_detention.pdf.
[11] *Flores v. Barr*, No. CV-85-4544-DMG (AGRx), Dkt. No. 625-1 at 43 (C.D. Cal. Aug. 19, 2019).

in-person evaluation, as mandated by ICE policy. Two days after she was released, Mariee was hospitalized. She died on May 20, 2018.

B. Ongoing Instances of Negligent Medical Care at the Family Residential Centers

The standard of medical care for children—and their parents—at the FRCs has not improved over the past five years. Proyecto Dilley, RAICES, and Aldea continue to document, individually and collectively, instances of medical neglect at each facility. We urge you to investigate the quality of care for *all* Class Members detained at the FRCs. However, to best facilitate your investigation, we have highlighted several cases that we believe show the gravity of the problems at the FRCs.

The family residential standards provide that each individual detained at an FRC is entitled to prevention and diagnosis services and "treatment of medical, dental, and mental health conditions." ICE Family Residential Standard, § 4.3(II). Despite this mandate, the cases highlighted below document continued systemic failures to provide adequate medical care at Dilley, Karnes, and Berks, including the failures to:

- medically evaluate Class Members and their parents;
- appropriately screen and test for COVID-19 infection;
- timely identify medical needs that require heightened levels of care;
- provide Class Members and their attorneys of record timely access to their medical file;
- explain medical diagnosis and treatment plans;
- provide medical services in a language detained parents and children can understand;
- provide appropriate medication;
- request and review medical records related to sentinel events and life-threatening diagnoses that occurred prior to detention;
- ensure children with sick parent(s) have appropriate care;
- practice CDC-compliant quarantine procedures[12]; and
- ensure travel by air is medically safe for a parent or child before they are placed on a flight.

ICE continues to detain Class Members and parents with medical conditions that make them categorically vulnerable to death should they contract COVID-19. Although ICE releases families from custody based upon medical conditions, in many instances ICE's decision to release a family occurs *after* a sentinel event that would have been avoided with release and appropriate medical care. ICE's practice of detaining individuals with medical conditions unless the condition becomes critical is inconsistent with ICE's duty to maintain a safe and sanitary environment uniquely tailored to the special vulnerability of children.

1. M.M.R. (Released)

[12] Specifically, the FRCs continue to use cohorting procedures that conflict with CDC guidance and place medically vulnerable individuals in "quarantine" with individuals suspected of COVID-19 infection.

M.M.R. is a five-year-old child who was brought to Dilley in January 2020 after he, his mother, and his infant brother were detained by ICE. One month prior to the family's detention, M.M.R. survived a skull fracture and was placed under the care of a pediatric neurologist. In disregard for the dangers posed by air travel and detention, ICE flew M.M.R. to Texas and detained him at Dilley. While detained, M.M.R.'s condition deteriorated and he developed alarming symptoms of heightened brain injury, including severe headaches, extreme sensitivity to sound, increased aggression, and wild flailing and bed-wetting at night.

Proyecto Dilley alerted ICE to these concerns on February 3, 2020, and included a letter from an independent medical evaluator with clinical recommendations that M.M.R. required time-sensitive specialty care outside of detention. Counsel's request for M.M.R.'s release was denied until a lawsuit was filed on M.M.R.'s behalf.

2. C.O.M. (Released)

C.O.M., then fourteen years old, and her mother were detained at Dilley for approximately seven months between June 2018 and February 2019. While she was detained at Dilley, C.O.M. became severely depressed, experienced night terrors and bed-wetting, and engaged in escalating self-harming behaviors. Although an independent psychological evaluator detailed C.O.M.'s growing suicidal ideation in a report submitted to ICE in September 2018, and mental health professionals who work for IHSC advised ICE that C.O.M. should be considered for release, C.O.M. remain detained. On one occasion, after C.O.M. suffered a panic attack, ICE placed C.O.M. and her mother in a windowless isolation room for a week. On another occasion, subsequent to C.O.M.'s confession to self-harming thoughts, a mental health professional threatened to separate C.O.M. from her mother. ICE finally released C.O.M. after she attempted to hang herself from a shower rod with a bedsheet.

3. M.P.A. (Detained)

M.P.A. is a thirty-two-year-old mother who has been detained at Dilley for 107 days with her one-year-old son, who is breast-feeding. Prior to her flight to the United States, M.P.A. survived repeated incidents of blunt trauma to the head that left her unconscious and many incidents of sexual violence. M.P.A. was kicked in the head, beaten with bats, repeatedly punched, and beaten with iron rods. Medical providers at Dilley have diagnosed M.P.A. with insomnia, anxiety, and adjustment disorder with mixed anxiety and depressed mood. M.P.A.'s medical records reveal additional medical conditions, including high blood pressure, hypertension, high glucose (that remains unevaluated and untreated), gastritis, infectious gastroenteritis and colitis, and ongoing undiagnosed chest pain.

Most critically, M.P.A.'s medical records document an undetermined mass on the base of her skull that has grown from 3 cm in diameter on March 6, 2020 to "approximately 5 inches, width 3 inches, and height 2-3 inches." The medical records state the tumor "will have to be surgically removed" and that the mass is increasingly painful. M.P.A. "experiences persistent, daily headaches and blurry vision at various times throughout the day. She feels like she cannot get any rest, and has difficulty falling asleep at night, along with early morning awakening . . . she is just so tired all of the time. She is also concerned about the mass on the back of her neck getting

larger and causing pain when trying to lay on the bed flat." The mass is causing "peripheral pulses and tingling." M.P.A. is unable to walk straight, feels unsafe carrying her infant son, and regularly feels like she is "drunk".

An independent medical expert who reviewed M.P.A.'s medical records determined that additional testing is urgently needed to determine whether her tumor is cancerous. See Exhibit I, Declaration of Dr. Abhishek Dhar. M.P.A.'s IHSC medical records note that the growing neck mass requires follow-up, but no diagnostic studies have been ordered.

M.P.A.'s one-year-old son is also sick. M.P.A. had numerous complications during her pregnancy with her son and was hospitalized twice before his birth. While detained M.P.A.'s son has developed diarrhea, a fever, and a rash on his body and mouth. He has a history of heart murmur and an elevated heart rate.

4. J.S.P. (Released)

J.S.P is a six-year-old boy who was detained at Dilley with his mother for approximately 128 days. Several days after arriving at Dilley in February 2020, J.S.P. was rushed to the Children's Hospital in San Antonio ("CHOSA") and hospitalized for five days while doctors conducted multiple tests, including a brain MRI and a lumbar puncture. Doctors diagnosed J.S.P. with Guillain-Barre Syndrome, a rare disorder in which the body's immune system attacks the body's nerves, which can cause weakness, tingling, and eventually paralysis. Medical professionals at the hospital advised that J.S.P. required time-sensitive medical intervention, including targeted physical therapy. ICE and IHSC failed to implement the hospital's treatment plan and J.S.P. remained detained for four additional months, until an immigration judge determined that he has a credible fear of persecution or torture if returned to his home country. Dr. Bronwyn Baz, an independent medical expert secured by Proyecto Dilley to review J.S.P.'s medical records, determined that in addition to Guillain-Barre Syndrome, J.S.P. has several other illnesses and symptoms that indicate a compromised immune system, as evidenced by the child's skin lesions, respiratory illnesses, and all-over body rash. *See* Exhibit J, Declaration of Dr. Bronwyn Baz. Despite these conditions—which were known and documented by ICE—J.S.P. remained detained in a large detention center while struggling to walk, suffering frequent falls, and being denied prescribed medical care.

5. M.A.R. (Detained)

M.A.R. and her son have been detained for 260 days. When M.A.R. arrived at Dilley in October 2019, she knew she was pregnant. On the day of her arrival in Dilley, a urine test confirmed her pregnancy. The next day, M.A.R. informed an IHSC doctor that she was experiencing light bleeding. The doctor, who was not an OBGYN, advised M.A.R. to rest, but conducted no examinations or ultrasounds. Over the next three to four weeks, M.A.R. experienced daily bleeding and abdominal pain. She sought medical attention regularly at Dilley, but again, was not provided access to an OBGYN, and was not provided with an ultrasound. Eventually—approximately two weeks after she first informed IHSC that she was experiencing bleeding—M.A.R. was transported to off-site for an ultrasound, however, no interpreter was available and information regarding M.A.R.'s medical condition was communicated to the guards that transported her, not to her directly.

In late October or early November 2019, IHSC medical staff informed M.A.R. that she was actually never pregnant, and instead, that she had started menopause. Distraught, M.A.R. sought clarification from a social worker, who consulted with a doctor, before informing M.A.R. that she had had a miscarriage.

6. *A.C.G.* (*Released)*

A.C.G. is a 54-year-old mother who was detained in Dilley for an estimated 119 days in late 2019. A.C.G. was hospitalized on four separate occasions prior to her release from Dilley. On or around October 30, 2019, A.C.G. was hospitalized with complications related to high blood pressure, including vertigo, head and chest pain, dizziness, fainting, and convulsions. A.C.G. was subsequently hospitalized on November 1, 2019, and again on November 17, 2019, after she fainted. Eventually, on December 7, 2019, A.C.G. was hospitalized for five days after she fainted with a blood pressure of almost 300. Between hospitalizations, A.C.G. repeatedly sought medical care from IHSC for her headache and chest pain. IHSC medical staff instructed A.C.G. "not to exaggerate." Each time A.C.G. was hospitalized, her daughters remained at Dilley, alone. A.C.G. fainted two more times, until she and her daughters were finally released for detention.

7. S.B.B. (Released)

S.B.B. is an eight-year-old boy who was detained for a total of 123 days. S.B.B. had been diagnosed with appendicitis in his home country in May 2019, and doctors there recommended surgery and careful monitoring of his appendix. *See* Exhibit C, Declaration of A.B.B. S.B.B.'s pain resolved until April 2020, when he was in ICE custody. S.B.B. began experiencing fevers and headaches and discovered a cyst on his neck. On April 8, 2020, S.B.B.'s mother took him to the clinic, and reports her son's pain was dismissed without further evaluation. Several days later, S.B.B. developed abdominal pain, diarrhea, vomiting, and a lump in his side. His mother recognized these symptoms as appendicitis and sought medical care for her son. Medical staff at Dilley informed S.B.B.'s mother that he may have an abdominal or thyroid infection, but that they did not have the equipment and expertise to conduct additional testing. Rather than transport S.B.B. off-site for testing, IHSC staff kept S.B.B. in observation for three days without conducting any tests or providing pain medication. At one point, S.B.B.'s mother reports that S.B.B. fainted from the pain. After three days, S.B.B. was released from medical observation at Dilley. Doctors told his mother that his pain was "normal" and that it had been "just gas."

In the middle of the night on May 21, 2020, S.B.B. experienced severe pain on his side. When he and his mother sought medical attention at the clinic, the nurses sent them away because "there are no doctors at night." The next afternoon, S.B.B.'s mother took him again to the clinic. A doctor told S.B.B.'s mother that although it was "nothing serious," they were going to send S.B.B. to the hospital, nonetheless. The Children's Hospital of San Antonio conducted blood tests and an ultrasound, concluded that S.B.B. had an inflamed appendix, and scheduled S.B.B. for surgery.

Two days after surgery, S.B.B. and his mother were transported back to Dilley. S.B.B. was placed in medical observation at Dilley, and then transferred to the quarantine unit,[13] despite S.B.B. having tested negative for coronavirus at the hospital. During this time S.B.B. was not provided pain medication, as prescribed. S.B.B. and his mother were released from detention approximately one week after S.B.B.'s surgery.

8. J.L.P. (Released)

J.L.P. was detained at Dilley for three months with her fifteen-year-old daughter and seven-year-old son. J.L.P. experienced severe uncontrolled high blood pressure during her detention. *See generally* Exhibit D, Declaration of J.L.P. Despite repeatedly seeking medical attention at Dilley, J.L.P.'s blood pressure remained uncontrolled, and she experienced headaches, chest pain, heart palpitations, dizziness, nausea, and blurred vision. On or around March 30, 2020, J.L.P. was sent to the hospital where she underwent testing and was given medication for her high blood pressure. She was also diagnosed with a kidney infection.

Two weeks later, on April 16, 2020, ICE attempted to deport J.L.P. However, J.L.P. lost consciousness during her first flight and was rushed for emergency care during her layover. ICE attempted to remove J.L.P. a second time, on April 29, 2020. However, at the tarmac the airline carrier learned J.L.P. had been denied blood pressure medication all day and was not transported with any medication at all. The flight was cancelled. ICE successfully removed J.L.P. and her children on May 27, 2020.

Upon review of J.L.P.'s medical records, an independent medical expert determined that J.L.P.'s records "reveal[ed] severely uncontrolled hypertension (high blood pressure), tachycardia (rapid heart rate) of uncertain etiology, and worsening stage 2 chronic kidney disease." Exhibit K, Declaration of Dr. Carolyn Payne, at 2. Furthermore, Dr. Payne concluded that the "symptoms of chest pain, fatigue, throbbing headache, vision changes, and now evidence of worsening of kidney function (GFR decreased to 58 on 5/11/2020 vs. normal on 3/31) are all suspicious for end-organ damage resulting from uncontrolled, severe hypertension." *Id.* She noted that further investigation and testing should be given to assess J.L.P.'s hypertension and kidney dysfunction. *Id.* at 2–3. Dr. Payne also noted that one of the medications J.L.P. was prescribed at Dilley for her hypertension "is not considered first-line or even effective in the treatment of hypertension by expert recommendations." *Id.*at 3. Dr. Payne's evaluation, which was submitted to ICE, noted her "strong medical recommendation that [J.L.P.] not travel by airplane for the sake of continued protection against COVID-19 and to avoid another life-threatening episode of Hypertensive Emergency at high altitudes." *Id.*

9. One year old with diarrhea for 20 days (Released)

In February 2019, a RAICES client at Karnes reported that his one-year-old son, who had been healthy before his arrival at Karnes, was ill. His child developed a cold and fever two days after arrival at Karnes and began throwing up the milk provided by the facility. He began to have

[13] As we have previously noted, Proyecto Dilley believes that the "quarantine unit" in Dilley is an area of the facility that is used to cohort new arrivals, individuals who have been transported outside of the facility, and other individuals suspected of having COVID-19.

constant diarrhea. The father took his child to the medical center where he was kept for one day. However, the baby was only provided milk and never received any age-appropriate food accommodations. The father reported that he saw that his child was losing weight by viewing the scale at the medical unit, although GEO staff told him that his child was not losing weight. GEO staff told the father that his baby needed to eat the food provided in the cafeteria. After an extensive public campaign focused on the fact that a one-year-old had suffered diarrhea for twenty days, ICE finally released the family.

10. Four-year-old child with severe constipation, hemorrhoids, and multiple additional medical issues (Released)

A four year old detained from March to May of 2020 suffered from extreme constipation, hemorrhoids, and several other medical issues during his detention at Karnes. This child was examined by pediatrician Dr. Matthew Gartland, who is an instructor at Harvard Medical School and the Director with the Massachusetts General Hospital Asylum Clinic. Exhibit E, Declaration of Dr. Matthew Gartland. Dr. Gartland concluded the child suffered from severe constipation and rectal bleeding because of a low-fiber diet not suitable for a toddler. Importantly, Dr. Gartland noted that the lack of physical activity for the child in detention was a contributing factor to his deteriorating health. Dr. Gartland determined the child required therapy for behavioral issues that developed at Karnes and made a referral for therapeutic intervention to the Karnes medical team, which was rejected. The child also suffered from pain urinating, influenza, and a fractured finger. hen he and his family were taken to an off-site medical facility to treat the finger fracture, none of them were provided with masks, putting them at risk of exposure to COVID-19.

11. Seven-year-old child with unaccommodated food allergies and severe psychological distress and regression (Detained)

A seven-year-old child who has been detained at Karnes for two months has not received dietary accommodation for his severe food allergies, and has experienced severe behavioral regression due to PTSD, including meowing like a cat instead of speaking. This child was evaluated by Dr. Fiona Danaher, an Attending Physician in the Department of Pediatrics at Massachusetts General Hospital for Children and an instructor at Harvard Medical School. *See* Exhibit F, Declaration of Dr. Danaher. In her report, Dr. Danaher notes that for the first month of his detention, GEO made no accommodations for the child's multiple, potentially life-threatening food allergies. Since then, the only accommodation that has been made is to remove the food items to which the child is allergic but not replace them with alternative nutritive foods, which has resulted in his weight loss. Dr. Danaher states that a necessary epinephrine auto-injector does not appear to be listed on the ICE formulary.

Additionally, Dr. Danaher reports that the child exhibited symptoms of influenza or a possible COVID-19 infection that began three days after his arrival at Karnes and continued for *seven weeks*. He was not tested for either infection nor was he offered Tylenol or ibuprofen for his pain. Dr. Danaher states that based on his mother's description of the dosing of medication provided, it does not appear that the child was treated with Tamiflu.

Finally, this child suffers from PTSD and has exhibited many signs of trauma. His separation from his father, who he only sees for approximately five-and-a-half hours per day while

detained, has exacerbated his stress. This child now suffers from nightmares, wets the bed, and insists on sleeping with his mother. He wants to sleep during the day so as not to be awakened by the hourly intrusive checks at night. He has regressed in his behavior and instead of speaking, he makes animal noises. He appears to dissociate and fears people in uniform after he and his family were kidnapped. Dr. Danaher states that "successful treatment" of this child "requires mitigating the traumatic stressors in his environment that constantly remind him of his family's kidnapping." She recommends that "to be truly effective, therapeutic intervention must include complete reunification of his nuclear family and release from detention."

12. Five-year-old child denied treatment for dextrocardia and ulcerative colitis (Released)

A five-year-old child detained at Karnes in October of 2019 was diagnosed with dextrocardia and ulcerative colitis in his home country. Both conditions require lifelong treatment, and after his diagnosis in 2017, the child was on a regimented treatment plan requiring daily medication. Though the family brought their medication with them as they fled their home country, they ran out shortly before entering the United States. Upon arrival at Karnes, the child's father provided the GEO medical staff with evidence of his son's diagnosis. No one at Karnes followed up with the family regarding treatment for the child's medical conditions during their nearly two months of detention.

13. Three-year-old child with severe respiratory complications detained during COVID-19 pandemic (Released)

A three-year-old child detained in February of 2020 experienced difficulty breathing prior to his detention at Karnes. When he and his parents were in Mexico, they were able to treat his breathing issues with medication. At Karnes, the child again experienced difficulty breathing. His parents took him to the medical center for treatment, but, unlike in Mexico, the medicine available to him did not help his symptoms. The child could not sleep at night because of his persistent cough. After over twenty days at Karnes, the child's breathing stopped twice. His mother rushed for medical assistance from GEO. Luckily, the child was able to recover his breath, but the response of the doctor at Karnes was to advise that he continue on the same medication that was not improving his symptoms. Through the remainder of his time at Karnes, into late March 2020, when it was clear that the COVID-19 pandemic was a threat to those in detention, this three year old struggled to sleep and coughed through the night.

14. Ongoing inadequate medical care for pregnant women

There is no gynecologist or women's health specialist available for women at Karnes. Under the previous administration, it was general policy that pregnant women were not detained at Karnes. *See* CRCL Complaint (Nov. 13, 2017). Under the current administration, pregnant women are detained though there is little to no infrastructure to provide women with prenatal care. For example, one woman detained at Karnes in March 2020 went to the medical unit to report her pregnancy. The medical staff told the woman that she was not pregnant and said that if she continued to insist that she was, she would "be put in a room with an IV by herself like a 'crazy' person" and that she would "be deported." Of note, this woman is Black and the two GEO nurses who spoke to her were white. During her fear interview with the asylum office, the officer noticed

that the woman was in discomfort. The officer stopped the interview so that she could seek medical care. GEO took the woman to a hospital off-site where it was confirmed that she was indeed pregnant.

Another woman detained at Karnes in March of 2020 was three months pregnant. She reported that she could not eat due to stomach pain. She vomited frequently and could often only drink water. At times, she vomited blood. This mother reported that the water at Karnes made her nauseous because it smelled like chlorine. Additionally, she had a medical history of fainting under stress and panic. She and her family were worried about her health because of the stress she was under at Karnes.

II. The failure to provide timely and appropriate medical care increases the occurrence of sentinel events at the FRCs. As a result, parents are regularly committed to the hospital for emergency care while children remain alone in unlicensed facilities.

Although the adequacy of medical care provided to children at FRCs is the focus of the Monitor and Dr. Wise's investigation, a parent's health directly impacts the safety, care, and wellbeing of Class Members. Incapacitated parents are unable to provide supervision and care for their child. When mothers and fathers are committed to the hospital while in ICE custody, their children are left behind—alone—in a facility that is not licensed to provide childcare. This is of particular concern for the facilities in Texas, where CoreCivic[14] and GEO staff are not certified or trained caregivers for children. In one case, a toddler was cared for by CoreCivic guards over a month while his mother was hospitalized in San Antonio. In another case, a six-month-old infant was supervised by guards while their parent received off-site medical care.

On multiple occasions at Karnes, GEO has kept children in medical isolation when their mothers required medical care, even though their fathers are also detained at Karnes. Nuclear family units are detained separately at Karnes, with children under the care of their mother while fathers are held separately. In one case, the children of a family at Karnes were inexplicably left under the care of GEO medical staff when their mother was taken off-site for medical care, although the children's father was also detained at Karnes. In this case, GEO did not inform the father that his wife was transported off-site for medical services nor that his children were left behind. In another case, a mother was treated within Karnes for her medical symptoms. Though her husband was also detained at Karnes, their child was forced to stay in medical isolation during the night under the watch of GEO guards unlicensed to provide childcare. The child's father was told that because his child was a girl, she could not stay with her father.

Multiple RAICES clients detained at Karnes have refused to allow RAICES to advocate for ICE to ensure that they receive appropriate medical treatment because they fear separation and isolation from their children. For example, one parent exhibited signs of kidney failure. Though this parent complained of severe symptoms, the parent chose to forego medical attention out of fear of separation from their child.

In all of these cases, neither RAICES nor Proyecto Dilley received notice when their client was transferred to an off-site facility for medical care. *See* FSA, ¶ 27 (stating that "[n]o minor

[14] CoreCivic is the private corporation contracted by ICE to run the facility in Dilley.

who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances") (emphasis added). As a result, children are detained for extended periods of time without access to counsel, which eliminates counsel's ability to provide oversight of the situation.

III. The FRCs, which Judge Gee deemed unsafe during COVID-19, lack appropriate precautions and protocols relating to COVID-19 and thereby place Class Members at risk of harm.

In her April 24, 2020 Order to Enforce, Judge Gee determined that the FRCs were not "safe and sanitary." *Flores v. Barr*, No. CV-85-4544-DMG (AGRx), Dkt. No. 784 (C.D. Cal. Apr. 24, 2020). The obligation to provide "safe and sanitary" conditions, she noted, "includes protecting children from developing short- or long-term illnesses as well as protecting them from accidental or intentional injury." *Id.* at 5 (quoting *Flores v. Barr*, 934 F.3d 910, 916 (9th Cir. 2019)).

Despite having months to develop and execute an appropriate response to the COVID-19 pandemic and the vulnerable population in its custody, ICE has failed to implement sufficient mechanisms to protect Class Members and their parents. *See id.* at 6. Across the three FRCs, ICE has failed to utilize adequate testing practices for COVID-19; appropriate screening mechanisms to identify and release individuals who are particularly vulnerable should they contract COVID-19; and proper screening mechanisms to ensure individuals are safe to fly in advance of release from detention (and in advance of removal in particular). ICE's failure on all these counts has already caused severe and long-lasting harm to Class Members and their parents.

In addition, some of the attempts ICE has made to sanitize the detention facilities have *not* been made in consideration of the "particular vulnerability [of] minors." FSA, ¶ 11. For example, Proyecto Dilley has received several reports of children suffering from nosebleeds, headaches, and other symptoms. Proyecto Dilley believes that these symptoms may be the result of the use of new chemical disinfectants that are being used at the facility.[15] One mother who works on the cleaning crew at Dilley reported to Proyecto Dilley staff that the disinfectant that she was required to use changed in April 2020. Since that time, she has been required to put on gloves and goggles to carry out her normal cleaning duties. She reports that each of her children developed nosebleeds shortly after the new disinfectant was put in use.

Overtime, medical professionals have determined that children infected by COVID-19 display different symptoms than adults, and that infection with COVID-19 can place a child at risk of death. Dr. Shapiro explains that studies and data have shown that COVID-19 does in fact have a severe impact on children. Dr. Shapiro notes that "[c]hildren who develop COVID-19 illness have been reported to deteriorate rapidly," which "is unlike the course of other viral illness in children." Ex. A, ¶ 38. Therefore, ready access to hospitals is absolutely necessary to provide the

[15] *See* Canela Lopez, *Report Finds ICE Detention Center is Using a Disinfectant Over 50 Times a Day that Causes Bleeding and Pain*, INSIDER (June 5, 2020), https://www.insider.com/report-detention-centers-use-disinfectant-causing-bleeding-and-pain-2020-6.

required medical intervention that is not available at the FRCs. *See* Letter from Drs. Allen & Rich to Congress (Mar. 19, 2020), at 4.[16]

All three FRCs are located in regions that have experienced outbreaks of COVID-19, and the two Texas FRCs are located in remote areas that are far from hospitals equipped to provide specialized emergency care to children. The Children's Hospital of San Antonio (CHOSA), is the hospital used by both Karnes and Dilley when a child has a severe medical emergency. CHOSA is approximately one hour away from Karnes and an hour and a half away from Dilley. Karnes is 10 minutes away from the Otto Kaiser Memorial Hospital (25-staffed beds) and 40 minutes away from the Christus Spohn Beeville hospital (40-staffed beds). Dilley is located 20 minutes away from the Frio County Hospital, a small community hospital in Pearsall, Texas. Frio County Hospital regularly provides care to individuals who are detained at the South Texas ICE Processing Center, a more than 1,000-bed ICE detention facility. Critically, this ICE facility is experiencing a COVID-19 outbreak; there are currently 22 active cases of COVID-19 at the facility, and 47 individuals have tested positive for COVID-19 overall.[17]

To date, Frio, Karnes, and Berks counties, where Dilley, Karnes, and Berks are located, have reported cases of COVID-19. San Antonio has reported an increase in positive coronavirus cases, reporting 192 new cases on June 12, 2020 and a total of 1,450 active cases.[18] Berks County, Pennsylvania, is experiencing a particularly severe COVID-19 outbreak, and has had an uptick in positive cases this week.[19] The Berks facility is right next door to the Berks Heim nursing home, where 35 individuals have died from COVID-19.[20] This impacts not only Class Members, but their parents and detention center personnel.

It is now known that children with COVID-19 not only suffer symptoms of the viral infection, but they may also experience Multisystem Inflammatory Syndrome in Children (MIS-C) or Pediatric Multisystem Inflammatory Illness (PMIS). As Dr. Shapiro notes, common symptoms of MIS-C/PIMS include shock, severe abdominal pain and diarrhea, acute kidney injury, myocardial involvement, carotid artery inflammation, neurocognitive symptoms, rash and inflammation of mucous membranes, and respiratory symptoms. See Ex. A, ¶ 33. Dr. Shapiro emphasizes that "the majority of children who have contracted MIS-C have been previously healthy without underlying medical conditions." *Id.* at ¶ 35.

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[16] Available at https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf.

[17] ICE Guidance on COVID-19, ICE, https://www.ice.gov/coronavirus (last visited June 13, 2020).

[18] *See* Surveillance, City of San Antonio, https://covid19.sanantonio.gov/About-COVID-19/Dashboards-Data/Surveillance (last visited June 12, 2020).

[19] *See* Keith Mayer, *Coronavirus Cases Tick Up in PA., Berks County*, READING EAGLE *(June 12, 2020), https://www.readingeagle.com/coronavirus/coronavirus-cases-tick-up-in-pa-berks-county/article_ea2fe7c2-acca-11ea-bcd5-4f7d762fa421.html*

[20] *See* Keither Mayer, *Berks County Calling in State and Federal Agencies, National Guard for Advice, Testing at Berks Heim*, READING EAGLE (May 20, 2020), https://www.readingeagle.com/coronavirus/berks-county-calling-in-state-and-federal-agencies-national-guard-for-advice-testing-at-berks/article_28f4d6b6-9aa6-11ea-99bc-a3c170748a1a.html.

There is no doubt that the risk of a COVID-19 outbreak at the FRCs is a public health concern for not only *Flores* class member children, but also their families, detention center staff, and their communities.

A. ICE has failed to institute thorough COVID-19 testing at the FRCs

Testing for COVID-19 remains sporadic across the three FRCs, despite the urgent need to identify cases of COVID-19 among detained children and parents.

In March 2020, Doctors Scott A. Allen and Josiah "Jody" Rich, subject-matter experts for CRCL, wrote to Congress to express their "grave[] concern[] about the need to implement immediate and effective mitigation strategies to slow the spread of the coronavirus and resulting infections of COVID-19" in ICE detention centers. Letter by Drs. Allen & Rich to Congress, at 1–2. Doctors Allen and Rich noted that "proactive approaches" were required to protect detained populations from the coronavirus. *Id.* at 5. First among these approaches was the development of "[p]rocesses for screening, *testing*, isolation and quarantine." *Id.* (emphasis added).

Testing for COVID-19 remains a critical defense against the spread of coronavirus since the virus can be transmitted through "asymptomatic or mildly symptomatic" individuals. Ex. A, ¶ 27. As Dr. Shapiro explained in his sworn statement, "covert cases" may "represent up to 60 percent of all COVID-19 infections." *Id.* Yet, both Class Members and their parents have reported that they have *not* been tested for COVID-19 despite presenting to the medical clinic with COVID-19 symptoms. Our clients report that there is *no* general testing regimen—either upon arrival, when presenting with symptoms, upon release, or prior to deportation (except for families from Guatemala).

In addition, as noted above, it is now known that COVID-19 can cause MIS-C or PMIS in children who contract the coronavirus.[21] *See* Ex. A, ¶ 33. The Centers for Disease Control and Prevention ("CDC") has urged parents to seek medical assistance if a child develops:

- fever;
- abdominal pain;
- vomiting;
- diarrhea;
- neck pain;
- rash;
- bloodshot eyes; or
- lethargy.[22]

The warning signs of MIS-C/PMIS are different than those of COVID-19, and yet neither Proyecto Dilley nor RAICES has observed any screening or additional testing for children who present with

[21] *See also* Pam Belluck, *New Inflammatory Condition in Children Probably Linked to Coronavirus, Study Finds*, N.Y. Times (May 13, 2020), https://nyti.ms/2YZE2Dq.

[22] CDC, *For Parents: Multisystem Inflammatory Syndrome in Children (MIS-C) associated with COVID-19*, https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/children/mis-c.html (last visited June 12, 2020).

any of the above-noted symptoms. In fact, Proyecto Dilley is aware of several children who have presented with fever, rash, and bloodshot eyes, but who have not been tested for COVID-19.

B. ICE has failed to implement adequate screening mechanisms and release procedures for individuals with illnesses and pre-existing conditions that place them at higher risk of COVID-19.

Now, several months into this pandemic and after over 400,000 lives have been lost worldwide from COVID-19,[23] it is well known that certain illnesses and pre-existing conditions "place individuals at increased risk for severe COVID-19 infection." Ex. A, ¶ 56. The CDC has found that individuals of "all ages with underlying medical conditions, *particularly if not well controlled*," are at heightened risk if they have:

- chronic lung disease or moderate to severe asthma;
- serious heart conditions;
- immunocompromised[24];
- severe obesity (body mass index [BMI] of 40 or higher);
- diabetes;
- chronic kidney disease undergoing dialysis; or
- liver disease.[25]

It is critical that ICE identify the Class Members and adults who are at particular risk for more adverse consequences of COVID-19. However, as has been reiterated by Plaintiffs before Judge Gee, ICE's procedures for identifying those who are at heightened risk remain deficient. Many individuals with medical vulnerabilities remain detained, and our efforts to identify children and parents with medical conditions that weigh in favor of release have gone ignored.[26]

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[23] *See* Coronavirus Resource Center, Johns Hopkins University of Medicine, https://coronavirus.jhu.edu/map.html (last visited June 9, 2020).

[24] The CDC notes that "[m]any conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications." *People Who Are at Higher Risk for Severe Illness*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last visited June 10, 2020).

[25] CDC, *People Who Are at Higher Risk for Severe Illness*, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last visited June 10, 2020) (emphasis added).

[26] Proyecto Dilley wrote to ICE on March 24, 2020, April 2, 2020, April 8, 2020, April 15, 2020, April 17, 2020 and April 20, 2020 to request the release of children and mothers with serious medical conditions that make them particularly inappropriate for detention, particularly in the time of COVID-19. In one of those letters, Proyecto Dilley specifically highlighted nine Class Members and mothers with asthma for whom COVID-19 is particularly dangerous. To date, the *only* response Proyecto Dilley has received to its attempts to alert ICE to at-risk individuals in detention was an email sent on April 2, 2020 in which ICE informed Proyecto Dilley that despite identifying individuals with medical concerns, the information provided by Proyecto Dilley would not be relied upon in assessing release.

RAICES wrote to ICE on March 13, 2020, March 30, 2020, April 7, 2020, April 21, 2020, May 6, 2020, June 1, 2020 to alert ICE to Class Member minors and their families with serious medical conditions. RAICES alerted ICE to eleven class members with serious medical conditions and in need of medical care

Dr. Shapiro evaluated a declaration of Melissa B. Harper, who is the Chief of the Juvenile and Family Residential Management Unit Chief at ICE's Enforcement and Removal Operations Unit, filed in *D.A.M. v. Barr*, 1:20-cv-01321-CRC (D.D.C. May 21, 2020), in which she described ICE's efforts to identify those at the FRCs with preexisting conditions. He expressed concern about the "efficacy" of ICE's verbal screening mechanisms. Ex. A, ¶ 55; *see also* Exhibit G, Declaration of Melissa Harper. Verbal screening mechanisms are particularly problematic, he concluded, given that many individuals "don't know their medical histories due to lack of healthcare services in their country of origin and because of inconsistent medical services that currently exist in FRCs, especially for children." Ex. A, at ¶ 56.

For example, Proyecto Dilley staff spoke to one mother who was deported with her gravely ill nine-year-old son subsequent to the family's removal from the United States. *See* Exhibit H, Declaration of M.C.P. M.C.P. reported that her son, G.C.C., had a fever for eleven days prior to their deportation. An X-ray of G.C.C.'s chest while in Dilley revealed that he had liquid in his lungs. *Id*. at ¶ 4. M.C.P. was told this was "normal." Meanwhile, G.C.C.'s symptoms worsened, and he was not tested for COVID-19. *Id.* at ¶¶ 4, 11

When M.C.P. was removed in mid-April, G.C.C. was in critical condition. As soon as they landed in Guatemala, they were rushed to the hospital. *Id.* at ¶ 13. G.C.C. was diagnosed with pneumonia and required emergency surgery to remove part of his lung. *Id.* G.C.C. remained hospitalized for a month after his deportation. *Id.*

C. ICE's failure to release detained families with risk factors for COVID-19 flies in the face of the preliminary injunction order issued in *Fraihat v. ICE*

In addition to its obligations under *Flores*, ICE is required to conduct timely custody redeterminations for all *Fraihat v. ICE* Class Members, including individuals whose custody has already been reviewed. *Fraihat v. ICE*, --- F. Supp. 3d. ---, 2020 WL 1932570, at *29 (C.D. Cal. Apr. 20, 2020). The *Fraihat* court found ICE's response to the COVID-19 pandemic systemically deficient and ICE conduct deliberately indifferent to the spread of COVID-19 in violation of the U.S. Constitution and federal disability law. *Id.* at *23, *25. The court certified a class defined by people with specific "risk factors," and ordered ICE to conduct custody redeterminations for **all** *Fraihat* Class Members in a nationwide preliminary injunction issued on April 20, 2020. *Id.* at *29. Specifically, any individual detained at a FRC with one of the following conditions is a *Fraihat* Class Member whose custody status must be redetermined by ICE and whose medical condition must be identified and tracked:

1. Pregnancy;
2. Over 55 years of age;
3. High blood pressure;
4. Liver disease;
5. Diabetes;

unavailable to them at Karnes. While ICE often acknowledged receipt of RAICES' correspondence, at no time were the medical concerns addressed.

6. Cancer;
7. Kidney disease;
8. Auto-immune diseases;
9. Severe psychiatric illness;
10. History of transplantation;
11. HIV/AIDS;
12. Cardiovascular disease, including: congestive heart failure, history of myocardial infarction, history of cardiac surgery; and
13. Chronic respiratory disease, including: asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases.

Id. at *16, n. 20. Proyecto Dilley is aware of twelve children who are *Fraihat* class members who remain detained at Dilley who suffer from high blood pressure; chronic respiratory disease; and liver disease.

Although ICE's obligation to conduct custody redeterminations for certain vulnerable individuals stems from this separate litigation, the *Fraihat* Court's identification and emphasis on certain vulnerable categories of individuals is directly applicable to Judge Gee's order to evaluate ICE's "protocols for identifying minors who have serious medical conditions that may make them more vulnerable to COVID-19." May 22, 2020 Order at 3. Children and parents with high blood pressure, chronic respiratory disease (including asthma), diabetes, and kidney disease—individuals for whom continued detention means an "unreasonable risk of infection, severe illness, and death"—remain detained in unlicensed, unsafe, and unsanitary detention facilities. *Fraihat*, 2020 WL 1932570, at *19.

IV. Request For Specific Investigative Measures

In accordance with the powers enumerated in Judge Gee's October 5, 2018 Order, specifically Sections A.2 and A.6, and Judge Gee's May 22, 2020 Order charging the Special Monitor and Dr. Wise to "provide enhanced monitoring of the FRCs' care of minors," we request that Dr. Wise take the following investigative steps, in addition to any additional steps you deem appropriate:

1. Request and review the medical file of all children who have received off-site medical treatment at each FRC over the last twelve months. Determine, in your medical opinion, whether: (a) the child was timely and appropriately evaluated at the FRC; (b) referral for outside medical services was timely and appropriate; and (c) detention in a congregate facility increased the propensity of a negative health outcome for the child prior or subsequent to outside referral and treatment;

2. Request and review the medical file for all parents who have required hospitalization for more than 24 hours at each FRC over the last 12 months. Determine, in your medical opinion, whether: (a) the parent was timely and appropriately evaluated at each FRC; (b) referral for outside medical services was timely and appropriate; (c) detention in a congregate facility increased the propensity for a negative health outcome for the parent

prior or subsequent to outside referral and treatment; (d) the parent's medical condition was likely to impact the parent's ability to provide care for their child unassisted—in consideration of their medical condition and their child(ren)'s age(s)—prior to or subsequent to hospitalization; and (e) if returned to the FRC for continued detention subsequent to hospitalization, whether detention in a congregate facility increased the parent's propensity for negative health outcomes.

3. Request a list of all currently detained children and parents who have been identified as "high risk" by ICE and review the child and parent's medical records to determine whether: (a) the list includes all individuals identified by Aldea, RAICES, and Proyecto Dilley as "high risk", and if not, the reasons why not; (b) the treatment provided to each child and parent while detained is consistent with current medical standards; and (c) whether the ongoing detention of each parent or child increases the risk of negative outcomes.

4. Review all policies and procedures related to the use of "quarantine" or "cohorting" at each FRC.[27]

5. Request a list of all parents and children who have been placed in "quarantine" at each FRC since March 2020 and the following information: (a) whether the parent or child was tested for COVID-19, and if not, why not; (b) the reason the child or parent was placed in quarantine; (c) the dates each parent or child was placed in quarantine; and (d) the date the family was released from the FRC, if released. Based upon this information, determine, in your medical opinion, whether the policies and procedures at each FRC effectively minimize exposure to COVID-19 and safeguard the health of individuals placed in "quarantine."

6. Request a list of medication ordered at each FRC in the last twelve months, and a list of the diagnosis related to the medication prescribed. Determine, in your medical opinion, whether medication ordered and prescribed for parents and children at each FRC is appropriate, with a focus on prescriptions used to treat common medical conditions, including, but not limited to: anxiety, high blood pressure, diabetes, insomnia, and seizure disorders.

7. Request a list of all parents and children who have been discharged from an FRC with medication within the last 12 months, and a list of the diagnosis related to the medication prescribed. Determine, in your medical opinion, whether air travel presented a risk of negative health outcomes for parent or child given their medical condition at the time discharge from the FRC occurred.

8. Request and review the availability of formula, milk, and other dietary items specific to young children that are available at each FRC. Determine, in your medical opinion, whether the formula available to children at each FRC is appropriate for children with

[27] We note that "quarantine" placement at Dilley relates to the specific location an individual is detained. For example, the "blue" neighborhood has been identified as the "quarantine" unit. The blue neighborhood frequently houses some individuals who recently arrived at the facility, individuals who display symptoms reflective of COVID-19, and individuals who have high-risk medical conditions.

unique needs, and whether the procedures used to provide specialized dietary accommodations facilitate the prompt provision of appropriate formula and food.

9. Request and review a list of all children who have presented with any of the following symptoms at each FRC since March 2020: abdominal pain, vomiting, diarrhea, neck pain, rash, bloodshot eyes, or lethargy. Determine whether these children were tested for COVID-19, or should have been.

10. Review any and all written policies and procedures at each FRC for identifying pre-existing medical conditions. In consideration of the fact that intake procedures have changed significantly at each FRC over the past ten months, we ask that your investigation include a review of the policies and procedures used to determine pre-existing medical conditions during intake, and subsequent to intake.

11. Request a list of all medical providers who work at each FRC and the following information for each provider: (a) their qualifications; (b) the hours they are scheduled to work; (c) their language abilities; and (d) clarification regarding when they work on-site or remotely. We are aware of numerous medical providers who provide telephonic care through an on-call system that limits the provider's true availability to families in detention. We ask you to determine, in your medical opinion, whether medical staffing is appropriate at each FRC currently, and when each FRC is at total capacity.

12. Interview Class Members and their parents regarding their experience with the medical care at each FRC. In Dilley, we request you speak with all individuals listed in Exhibit L;

13. Investigate the use of harmful, toxic chemical disinfectants at the FRCs and the appropriateness of their use;

14. Investigate the separation of parents from their children when a parent is transported off-site for medical testing or emergency medical care, and any and all ICE protocols for child-care during that time.

V. Recommendations

The *Flores* Settlement requires ICE to keep its facilities "safe and sanitary . . . consistent with [ICE's] concern for the particular vulnerability of minors." We recommend you prepare and file an Interim Report and Recommendation to Judge Gee at the soonest available time, detailing the findings of your investigation and your recommendations for ensuring the safety and wellbeing of Class Members. In particular, we urge you to consider the following recommendations to the court:

1. The use of FRCs be suspended until: (a) the pandemic ends; (b) the facilities are licensed; and/or (c) each FRC demonstrates an ability to provide appropriate medical care;

2. The immediate release of all children who possess medical conditions that place them at particularly high risk of COVID-19;

3. The creation of a standing process for Aldea, RAICES, Proyecto Dilley, and other attorneys who represent children at FRCs to request external review of the medical care provided to a detained child by Dr. Wise;

4. COVID-19 testing for all individuals detained at FRCs, on an ongoing basis, throughout the pandemic, regardless of symptoms;

5. Advance notification to counsel whenever a parent or child is transferred off-site, including for medical treatment or removal, as is already required by the *Flores* Settlement Agreement, ¶ 27; and

6. Unrestricted telephonic or in-person access to counsel when a parent or child is hospitalized, if approved by hospital staff.

Safe and sanitary conditions require access to appropriate medical care and safety from COVID-19. Judge Gee has determined that FRCs are not "safe and sanitary." We believe this finding is accurate, not only because FRCs are congregate care facilities and we are in the midst of a global pandemic, but also because the baseline medical care provided to detained children and their caretakers is deficient. We thank you for your thoughtful attention to this important matter.

Sincerely,

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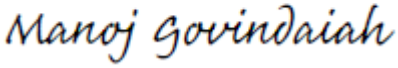

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EXHIBIT B

Declaration of Y.O.T.

1. My name is Y.O.T. I am a Salvadoran national detained at the South Texas Family Residential Center with my two teenage daughters, V.L.O. and D.L.O. We have been detained for 304 days.
2. My daughters and I were recently moved from the red parrot neighborhood to hallway #2 of the green turtle neighborhood. This morning, around 8 or 9 AM, as I was heading out of the complex, I talked to a guard who works in the hallway. I don't know her name yet because I only recently moved to the green neighborhood. She told me to be careful because two officials had tested positive for coronavirus-- one who works in the green gym. She said she thinks the other one works in hallway #1 of the green turtle neighborhood because he hasn't been to work for many days. She told me to tell my daughters not to take off their masks.
3. My daughters went to the gym this morning around 8 AM to knit, and there they were told by the guards who checked them in that they should be sure not to take off their masks, that it was dangerous because there were officials who have stopped coming to work because they have been hospitalized with coronavirus.

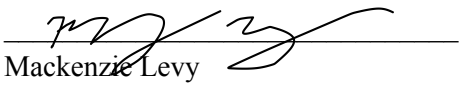
Declaration of Mackenzie Levy

I, Mackenzie Levy, hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. I am a legal assistant and Family Separation Coordinator with the Dilley Pro Bono Project where I have worked since August 2018.
2. I am fluent in the Spanish and English languages.
3. On June 17, 2020, I spoke with Y.O.T. by telephone. Given the COVID-19 pandemic, I was unable to enter the South Texas Family Residential Center to meet with Y.O.T. in-person.
4. During my telephone call Y.O.T., I read the entirety of the "Declaration of Y.O.T." in Spanish.
5. I swear under the penalty of perjury that Y.O.T. confirmed that the information contained in the declaration is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed June 17, 2020 in San Antonio, Texas.



Mackenzie Levy

EXHIBIT C

Declaration of J.S.P.

1. My name is J.S.P. I am a Honduran national detained at the South Texas Family Residential Center with my 11 year-old son, M.A.S. We have been detained for 307 days.

2. My son and I live in the green turtle neighborhood. M.A.S. likes to play with his friends, so we often spend almost the whole day in the green gym. Sometimes the guards in the gym wear masks, specifically when their supervisors come to check in on them; but otherwise, they usually do not wear masks. I have never seen the guards in the gym wear gloves.

3. In addition to the guards who check us in at the desk, there are other guards who will fetch materials for our crafts, and others who watch the kids to make sure they don't hurt themselves or get into fights. We often make contact with their hands when they pass out supplies for knitting, paper for origami, or drawings, crayons, markers, or colored pencils to color with.

4. On June 16, 2020, after lunch, M.A.S. and I went to the gym to do origami. While we were there, one of the captains arrived in the gym and I saw him hand some pieces of paper to the two officers at the desk; both of them received copies of the paper. They talked among themselves but I was too far away to hear what they were saying. The guards who received the paperwork reviewed it and looked worried.

5. The captain left the guards and papers at the desk and left the gym. I got closer to look at them. After being detained for so long, I have learned to read some English and from what I understood, an officer who had been working here on June 9th has not come back to work because he was infected with coronavirus. The piece of paper also said to inform the residents.

6. I asked one of the guards at the desk about this matter. I said, "Tell me the truth, I don't know if I have understood the English; this document, what is it about?" He responded, "what do you think it means?" I said, "that one of your coworkers is infected with coronavirus." "Yes," he said, but didn't confirm that it was just one. He looked scared. He added, "there is no reason for them not to release you now." I wanted to talk to him more, but he told me, "talk to your lawyer."

7. I have not seen anyone inform any of the families detained here in any official manner that there has been a positive case of coronavirus among the staff. We are all very scared that we are surely going to catch coronavirus now, and even more anxious about the fact that new families have continued to arrive.

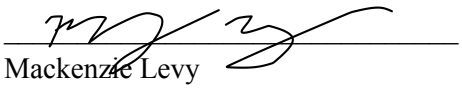
Declaration of Mackenzie Levy

I, Mackenzie Levy, hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. I am a legal assistant and Family Separation Coordinator with the Dilley Pro Bono Project where I have worked since August 2018.
2. I am fluent in the Spanish and English languages.
3. On June 17, 2020, I spoke with J.S.P. by telephone. Given the COVID-19 pandemic, I was unable to enter the South Texas Family Residential Center to meet with J.S.P. in-person.
4. During my telephone call J.S.P., I read the entirety of the "Declaration of J.S.P." in Spanish.
5. I swear under the penalty of perjury that J.S.P. confirmed that the information contained in the declaration is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed June 17, 2020 in San Antonio, Texas.



Mackenzie Levy

EXHIBIT D

Declaration of J. D. C. L.

1. My name is J. D. C. L. I am a 17-year-old Ecuadorian national detained at the South Texas Family Residential Center with my mother, Z. E. L.. We have been detained for 116 days.
2. On June 16, 2020 around 3:15pm, my mom and I went inside the library and asked to use a computer. I was asked by the CoreCivic employees to fill out a paper. As I was writing down my A number, I heard three female CoreCivic employees speaking to each other by the entrance. Even though I don't know their names, I have seen them many times when my mother and I visit the library.
3. The employees were speaking in English. The first employee was a large woman. The second employee was an older woman. The third employee was a young and slim woman. The first employee said, "I didn't know there was a coronavirus case in the center." The third employee said, "Be quiet. The residents don't know about this." The first employee stopped talking.
4. I learned to speak English in Ecuador through a two-year scholarship. From Monday to Friday, I spent two hours a day in intensive classes. This opportunity allowed me to understand what the CoreCivic employees were saying.

Declaration of Brian Elizalde

I, Brian Elizalde, hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. I am a legal assistant with the Dilley Pro Bono Project where I have worked since August 2019.
2. I am fluent in the Spanish and English languages.
3. On June 17, 2020, I spoke with J. D. C. L. by telephone. Given the COVID-19 pandemic, I was unable to enter the South Texas Family Residential Center to meet with J. D. C. L. in-person.
4. During my telephone call J.D.C.L. I read the entirety of the "Declaration of J. D. C. L." in English.
5. I swear under the penalty of perjury that J. D. C. L. confirmed that the information contained in the declaration is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed June 17, 2020 in San Antonio, Texas.

Brian Elizalde

EXHIBIT E

Declaration of M.J.P.

1. My name is M.J.P. I am a Honduran national. I am currently detained at the South Texas Family Residential Center with my two daughters, 17 year old A.M.P., 13 year old A.P.P., and my 9 year old son, C.C.P.

2. I have been walking for my health because I am prediabetic. This morning around 8 AM I set off for my morning walk. I have trouble breathing wearing masks when I walk, so I take them off when I'm by myself or just with my children outside. This morning, I was walking past the green complex when a female guard called over to me and said to put it back on because "there had been a positive case of coronavirus here."

3. Later this morning, I ran into my psychologist, Dr. Ortiz, as I was returning from the store, and she was heading to the clinic. She asked how I was and I said I was concerned about the coronavirus, because I had just heard there was a positive case here. She said "Yes, I heard there was a case here. They already told us that there was a case and we should make sure our masks are on tight."

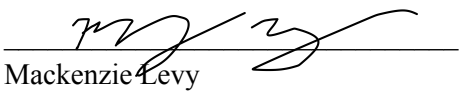
Declaration of Mackenzie Levy

I, Mackenzie Levy, hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. I am a legal assistant and Family Separation Coordinator with the Dilley Pro Bono Project where I have worked since August 2018.
2. I am fluent in the Spanish and English languages.
3. On June 17, 2020, I spoke with M.J.P. by telephone. Given the COVID-19 pandemic, I was unable to enter the South Texas Family Residential Center to meet with M.J.P. in-person.
4. During my telephone call M.J.P., I read the entirety of the "Declaration of M.J.P." in Spanish.
5. I swear under the penalty of perjury that M.J.P. confirmed that the information contained in the declaration is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed June 17, 2020 in San Antonio, Texas.



Mackenzie Levy

SUPPLEMENTAL DECLARATION OF ANDREA MEZA

I, Andrea Meza, swearing under penalties of perjury, make the following declaration:

1. I previously submitted a declaration to the Court in this matter. I now submit this supplemental sworn declaration. The facts set forth below are known personally to me and, if called as a witness, I could and would testify competently thereto under oath.

2. My name is Andrea Meza and I am an attorney and the Director of the Family Detention Services Program at the Refugee and Immigrant Center for Education and Legal Services ("RAICES"). I have been the program Director since March 2019. Prior to my position as Director I served as the Associate Director from October 2018-March 2019. From September 2015 to July 2017 I was an Equal Justice Work Fellow and provided direct legal services to families at Karnes. I have been licensed in the state of Texas since November 6, 2015.

Circumstances of COVID-19 and ICE's failure to meaningfully review custody for Class Members warrant the release of *Flores* Class Members detained at Karnes.

3. ICE continues to detain *Flores* class members for a prolonged time in unsafe and unsanitary congregate conditions at the Karnes County Residential Center ("Karnes"). Especially during a global pandemic, ICE's continued detention of children puts Class Members at great risk. Under these circumstances the court should order release of detained minors whose release does not pose a risk of escape or danger as defined by the *Flores* Settlement Agreement ("FSA"), within 72 hours.

4. RAICES often, and currently, works with ICE to facilitate release of *Flores* Class Members ("Class Members") and their parents from Karnes. RAICES provides ICE with sponsor information, finds sponsors for the few families who do not have sponsors, and purchases tickets for travel for Class Members and their parents to be with their sponsors. If this Court orders ICE to release Class Members within 72 hours, ICE may simultaneously release parents under 8 C.F.R. 1236.3 - as it has done for five years - and RAICES will work closely with parents of Class Members and with ICE to facilitate release. We are prepared to explain terms of the FSA and other pertinent settlement agreements to families.

Indeed, RAICES has either provided sponsor information to ICE weeks ago, or will promptly do so for recently arrived families. For every case where this Court finds that continued detention of a Class Member is an impermissible violation of the FSA, RAICES will work with ICE to facilitate release of the Class Member.

5. Since March 28, 2020, RAICES has represented approximately 229 *Flores* Class Members. RAICES' staff regularly emails ICE to notify them when one of our Class Member clients has been detained for more than 20 days. In our experience, ICE does not regularly make and record efforts to release class members. ICE rarely if ever responds to our emails about prolonged detention of class members, and rarely provides written notice of a custody determination for a Class Member at Karnes. In a previous order, this Court cited RAICES supervising attorney Javier Hidalgo's declaration demonstrating that RAICES consistently emails ICE to request an explanation for the prolonged detention of Class Members in violation of *Flores* standards, and that ICE has consistently failed to respond to these emails.

6. Because ICE continued to detain RAICES Class Member clients without communication to RAICES about their efforts to seek release of our clients on April 24, 2020, RAICES began filing parole requests on behalf of *Flores* Class Members detained at Karnes. For every parole request submitted on behalf of a *Flores* class member, RAICES had previously sent ICE at least one email notifying them that the class member's prolonged detention was potentially in violation of the FSA.

7. Since April 24, 2020, RAICES has filed parole requests on behalf of 20 Flores Class Members and their parents, who have been detained at the Karnes County Residential Center ("Karnes" or "the detention center") for over 20 days. In these parole requests, RAICES attorneys requested the prompt release of the Flores Class Members and outlined that custody decisions for minors must comply with this Court's orders and the FSA standards.

8. The conduct of ICE in review of Class Members' custody and the reasons cited in custody determination decisions have been arbitrary, and are demonstrative that ICE continues to fail in its compliance with this Court's recent orders and the FSA.

9. Furthermore, I have reviewed the "FLORES RELEASE SUMMARY" documentation submitted by the ICE Juvenile Coordinator in her report dated June 12, 2020 for RAICES Class Member clients. The reasoning for continued detention of Class Members provided in this documentation continues to fall short of compliance with the FSA requirements, and is not reflective of evidence made available to ICE in support of release of Class Members. For example, one class member was found to be a flight risk because of a pending motion to reopen despite his and his father's compliance with ICE reporting requirements over their two years in the United States.

ICE's process for review of custody was haphazard and chaotic.

10. Following RAICES' submission of parole requests for our clients detained at Karnes, ICE haphazardly conducted parole interviews with fewer than 10 parents of *Flores* Class Members for the purposes of making parole determinations. ICE conducted parole interviews for approximately 41% of Class Members for whom RAICES filed parole requests during this time period. These inconsistent and varied interviews did not demonstrate compliance with custody considerations agreed to in the FSA nor further instruction provided in subsequent orders by this Court. They were characterized by minimal meaningful opportunity to access counsel, little to no consideration of individual circumstances related to Class Member children, and cursory - at times flippant - participation from ICE.

11. For example, ICE attempted to conduct interviews in the absence of counsel, despite being on notice that RAICES represented the *Flores* Class Members and had filed the parole requests on their behalf. Clients reported feeling like they had no choice but to continue without their attorney, because, for example, the Deportation Officer insisted that they could not reach the attorney despite having called the incorrect phone number. Two interviews were conducted hours before the scheduled time. One parent described to RAICES that he had to explain to a Deportation Officer that the RAICES hotline for detained families was not the appropriate number to call to reach his attorney, especially because it was Memorial Day. The Deportation Officer proceeded without the attorney, saying it was "not his problem." Our clients describe Deportation Officers being rude, intimidating, and dismissive of their concerns for their children. The Deportation Officers

made parents sign their parole denials, despite our clients' protests to doing so in the absence of their attorneys. While ICE later called RAICES attorneys to conduct additional interviews, those additional interviews did not correct the errors of the first ones.

12. Next, ICE appeared to dismiss the relevant facts and documentation that reflect Flores criteria for releasing minors from ICE custody. Parents and attorneys presented facts and concerns that go directly to factors the FSA instructs ICE to consider in making custody determinations, but were met with dismissal. For example, one child has a food allergy that has not been sufficiently accommodated at Karnes, rendering Karnes a facility that does not meet the FSA's requirements for safe and sanitary custody conditions. ICE dismissed this concern, telling the parent during his interview, "What, do you want McDonalds?" and refused to consider a professional medical evaluation in making the parole determination for this Class Member.

13. Further, ICE did not focus on the detention of the Class Member when conducting parole interviews. When ICE did conduct parole interviews and attorneys were present, officers spoke exclusively to the parents of Flores Class Members and to their attorneys, and did not engage in any meaningful questioning. The questions that ICE asked did not appear to go to the criteria relied upon in their final custody determinations. ICE officers did not ask about factors relating to being a flight risk, they did not ask about criminal history or being a danger to the community, and they certainly did not ask those questions with specific regard to the Class Members. According to RAICES attorneys and clients, ICE asked questions about the following subjects when conducting parole interviews at Karnes:

    A. Details about the sponsor's contact information and whether the sponsor can provide for transportation from the detention center
    B. Whether they need more time to submit documents to support their request
    C. Whether they had an Immigration Court hearing
    D. Whether they had been interviewed by the Asylum Office
    E. The results of their hearing with the Immigration Judge
    F. The results of their interview with the Asylum Office

14. As evidenced by the questions asked, ICE officers primarily, if not exclusively, considered information that Judge Gee deemed inappropriate in making custody determinations for minors--namely, they considered immigration case status. Again, ICE should not have even needed the parole requests to communicate to Class Members their efforts at release or their reason for detention, and yet ICE still provided insufficient reasoning when prompted to do so by the parole requests.

ICE's custody decisions for Class Members at Karnes are arbitrary and do not reflect circumstances which favor Class Members' release.

15. Since April 24, 2020, ICE has paroled one Class Member about whom RAICES has communicated--a four-year-old child suffering from hydrocephalus. This child suffers from a severe medical condition, so extreme that it was plainly obvious that Karnes could not meet the *Flores* requirements for providing custody conditions that are "safe and sanitary . . . consistent with [ICE's] concern for the particular vulnerability of minors." FSA, ¶ 12. ICE should have been aware of this child's condition even before RAICES reached out, but it took RAICES's communication to prompt ICE to put forth the effort to promptly release the minor in compliance with Judge Gee's orders. ***Of note, this child was released while he and his family were waiting for "IJ review" (review by an immigration judge of a negative credible or reasonable fear finding) - a reason that ICE often cites for the continued detention of Class Members.***

16. RAICES has only received written custody determinations for Flores Class Members in response to parole requests filed on their behalf; despite emailed requests, ICE has not provided custody determinations outside of a formal parole review process. This means that RAICES has only received written custody determinations for ten *Flores* Class Members, approximately 3.9% of clients who are Class Members detained at Karnes since March 28, 2020. The determinations indicate that ICE made decisions arbitrarily, regardless of the Class Members submission of evidence to demonstrate that their detention is not necessary to secure their appearance before ICE or the Immigration Court and that ICE cannot provide them safe and sanitary conditions given their medical concerns, the duration of their detention, or their ties to the community.

17. All Class Members had been detained for over 80 days at the time of their parole decisions. In some instances, ICE waited until after the Flores Class Members had been deported to provide RAICES counsel with their negative parole determination. ICE failed to respond to the parole requests of eight Class Members before they were deported. Six Class Members were deported without being given a parole determination nor an explanation as to why ICE denied their release.

18. In their written parole decisions, ICE offered explanations to families based on criteria that directly contradict Judge Gee's April 24, 2020 order and May 22, 2020 order. One father described a Deportation Officer telling him, "you have to wait for your court date," and stating that this statement was the final decision on his parole request. That family is still detained, and on June 12, 2020, 92 days after being taken into immigration custody, was scheduled for a court hearing on June 17, 2020, 97 days after initial custody. The hearing on June 17, 2020, was cancelled and it is unclear when it will be rescheduled. Another father reported being told something similar, that he needed to "wait for an answer from the judge." That family is still detained, 99 days after their arrival to Karnes, despite the fact that the Class Member suffers from asthma. There was no specific mention of the Class Member in either instance. These parents described feeling confused and devastated by the Deportation Officer's explanations.

19. In the parole denials, ICE also stated that Class Members did not establish that they were "alien juveniles." One ground for denying parole on ICE's form states that, "you have failed to demonstrate that you are: (1) an alien who has a serious medical condition such that continued detention would not be appropriate; (2) an individual who has been medically certified as pregnant; (3) an alien juvenile; (4) an alien who will be a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or (5) an alien whose continued detention is not in the public interest." ICE checked this box for children. Presumably, these children almost certainly did demonstrate to ICE's satisfaction that they are alien juveniles, or they would never have been detained at Karnes, a facility that detains only juvenile children and their parents.

20. Some of those Class Members also had serious medical conditions such that continued detention would not be appropriate, but ICE disregarded those concerns. For example, one

child who had been detained for 105 days at the time of his parole interview had a severe tooth infection that left his tooth rotting and he was in so much pain that he could not eat or sleep because of it. ICE was provided this information both before and during the interview, and should have known about the child's condition because of his visits to the clinic at Karnes. Yet, ICE nevertheless denied parole and in fact specifically indicated, contrary to information known to ICE, that he did not suffer from a serious medical condition. Another child suffers from serious food allergies. At Karnes, he is not given sufficient food to replace the foods that he cannot eat. Even though RAICES provided an independent medical evaluation for this child and ICE was previously made aware of his condition, ICE denied having received this evaluation and appeared to disregard it, denying his parole and making no mention of this information.

21. ICE cited flight risk as the reason for denial of parole for all families that received denials, but in no case did ICE expand upon the basis by which this determination was made in its written documentation of parole denials provided to RAICES. The Class Members cases are in a variety of procedural postures. One was awaiting Immigration Judge Review of their Negative Credible Fear Decision, one was awaiting a decision on their Request for Reconsideration, one has a pending Motion to Reopen, and one has a pending appeal of a Motion to Reopen in the Board of Immigration Appeals, and several had removal orders. Flight risk was marked even for an eight-year-old child with significant community ties including having lived in the United States for two years, attending school and playing sports here, and having his mother and siblings present in the United States outside of detention.

22. ICE did not provide a response to the parole request nor an explanation of the prolonged detention of one Class Member who received a final removal order on March 3, 2020 and was detained until May 26, 2020, 84 days after receiving the final removal order. That Class Member had strong factors mitigating concerns for flight risk, including having a mother that resides in the United States.

The reasons cited for continued detention of Class Members in the Juvenile Coordinator's Report misrepresent information provided to ICE in support of release of Class Members.

23. RAICES has reviewed the "FLORES RELEASE SUMMARY" forms that ICE submitted to the Court for four Class Member clients and found that these records continue to demonstrate ICE's failure to conduct custody determinations in compliance with the *Flores* Settlement Agreement and Judge Gee's subsequent orders. ICE referred to May 13 "parole reviews" for each of these Class Members, apparently referring to conversations ICE officers had with families about waiving their *Flores* rights, which were the subject of review at this Court's last hearing. In the May 22, 2020 order, this Court expounded on those conversations, describing them as having, "caused confusion and unnecessary emotional upheaval and did not appear to serve the agency's legitimate purpose of making continuous and individualized inquiries regarding efforts to release minors."[1]

24. In addition, ICE did not provide information regarding custody determinations for all Class Members currently detained at Karnes. To illustrate, RAICES represents 13 Class Members detained at Karnes, including eight Class Members currently detained for over 20 days, one who will have been detained for over 20 days this week, and one who will be detained for 20 days next week, should they remain detained. ICE provided "FLORES RELEASE SUMMARY" worksheets for only four RAICES clients who are Class members. Of note, ICE filed these worksheets on June 10, 2020, yet it appears that ICE last reviewed Class Member cases for custody determinations a staggering 28 days earlier, on May 13, 2020, despite Judge Gee's order to ICE to, "continue to make every effort to promptly and safely release Class Members."[2] ICE's reasons for detaining these Class Members still appear arbitrary, even if more detailed than the reasons that they provided to RAICES in response to parole requests.

25. Furthermore, ICE's custody determinations do not reflect consideration of evidence available to them to support release of Class Member children. For example, for each of the four Class Members clients for whom RAICES reviewed "FLORES RELEASE SUMMARY" documentation, ICE indicates that the parent has not designated a "caregiver" to whom ICE could release the minor. These determinations are unfounded, considering that each of these Class Members is detained with a parent, with whom they

[1] *Flores v. Barr*, Case No. 2:85-cv-04544-DMG-AGR at 2 (C.D. Cal. May 22, 2020) at 2.
[2] *Flores v. Barr*, No. CV-85-4544-DMG (AGRx), Dkt. No. 784 (C.D. Cal. Apr. 24, 2020) at 18.

could be released pursuant to 8 C.F.R. § 1236.3. Moreover, parents do not recall being asked to identify a caregiver; however, each of these four Class Members *did* provide ICE with the name of a sponsor who could receive them in their requests for parole. Additionally, ICE did not provide an expected date of removal for any of these four Class Members, indicating that they are presently being detained indefinitely.

26. The statements that ICE made regarding detention and flight risk in these four summaries directly contravene this Court's orders by apparently weighing immigration case status more than any other factor in considering parole. The April 24, 2020 order of this court makes it clear that the explanations ICE gave for this child are insufficient reasons for prolonging a Class Member's detention.

A. Class Member HFFM AXXX-XXX-704

27. In the first custody explanation for Class Member HFFM AXXX-XXX-704, p. 98 of the government's June 10, 2020 filing, ICE made errors as to the removability of the child and exhibited a lack of continuous efforts towards his release. The Juvenile Coordinator Report states that:

> Minor, HFFM, and his parent, NFM, were encountered by USBP on 2/9/2020. The FAMU was processed as bag and baggage. On 2/12/2020, the FAMU was booked into KCRC. On 2/12/2020, a Flores parole review was conducted for minor. **Parole was denied because the minor was a final order and detention was required to complete the removal process**. On 2/22/2020 FAMU's attorney filed a Motion to Re-Open which resulted in an automatic stay of removal.
>
> On 05/13/2020, ICE conducted a second parole review for minor. At that time, parole was denied. **Minor was found to be a flight risk as he is pending the outcome of the Motion to Re-Open**. Minor will be scheduled for the next removal flight to his country of citizenship. Removal flights to Honduras occur 2-3 times each week. Due to the frequency of removal flights and the very short time period for manifesting the flight, it is unlikely that minor would present himself for removal in a timely manner. Failure to depart the US timely would cause minor to become a fugitive from ICE, negatively impacting his ability to attain future immigration benefits. Additionally, minor's parent has not designated a caregiver to whom ICE could consider releasing the minor.

28. ICE states that it conducted parole reviews for the Class Member on February 12, 2020 and on May 13, 2020. However it failed to communicate any decision on the Class Member's parole, or respond to RAICES April 2, 2020 parole request until May 31, 2020. On that date, this Class Member's father notified RAICES that he received a parole denial that same morning, dated May 29, 2020, attached as **Exhibit A**. This denial stated that parole for the Class Member minor was denied because "You have not established to ICE's satisfaction that you are not a flight risk" and:

> You have failed to demonstrate that you are: (1) an alien who has a serious medical condition such that continued detention would not be appropriate; (2) an individual who has been medically certified as pregnant; (3) an alien juvenile; (4) an alien who will be a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or (5) an alien whose continued detention is not in the public interest.

29. ICE's purported reasons for denying HFFM's parole in their May 29, 2020 Parole Denial do not appear to be based in fact. First, contrary to ICE's denial worksheet, HFFM *is, indeed* "an alien juvenile." Furthermore, the Parole request submitted on behalf of HFFM on April 2, 2020 included information that HFFM was suffering from digestive issues at Karnes and was unable to eat, and it also listed a sponsor in the United States who could receive HFFM upon release. On May 11, 2020, RAICES submitted additional evidence regarding HFFM's sponsor, a first cousin of HFFM's father who his father grew up with, including proof of the sponsor's employment, address, work authorization, and valid Texas state identification card. There is no indication that ICE considered any of this evidence in either their May 29, 2020 parole denial or the June 10, 2020 Juvenile Coordinator's report.

30. Moreover, HFFM's father reported that when ICE served him the parole denial forms for him and his son, ICE did not mention the Class Member nor specifically explain the reason for the Class Member's parole denial. The parent described the encounter as lasting no more than five minutes.

31. This Class Member has an MPP order of removal as he was kidnapped in Mexico and was consequently unable to attend court, but he now has a pending Motion to Reopen based on these compelling and exceptional circumstances. Nevertheless, ICE states that the Class

Member "will be scheduled for the next removal flight," while simultaneously acknowledging that there is a stay of removal in the child's case. ICE states that it is unlikely the child would present himself for removal in a timely manner. ICE's explanation for this Class Member's prolonged detention fails to take into account that ICE **cannot** execute the removal order, that HFFM's case may be reopened, that if it is not reopened, the Class Member may appeal such a decision and that the remainder of the legal process could take months, during which time ICE would **still** be unable to execute the removal order. ICE explicitly states that they found this Class Member to be a flight risk, "as he is pending the outcome of the Motion to Reopen." As stated above, this reasoning is entirely in violation of this Court's specific instruction that it is inappropriate to deny release of a child simply because he has a removal order, particularly where, as in this case, it is not known when or if ICE will remove him.

B. Class Member EMUA, AXXX-XXX-453

32. In the second custody explanation that ICE provided for a RAICES client Class Member, on p. 113 of the Government's June 10, 2020 submission, ICE provided explanations inconsistent with the information they have provided to RAICES, and inconsistent with this Court's orders and the *Flores* standards. Of note, the form on which ICE denied EMUA's parole on May 28, 2020, attached as **Exhibit B**, varies significantly from that provided for HFFM. The Juvenile Coordinator's report states:

> Minor, EMUA, and his parent, JJUC reported to the San Antonio Resident Office on 3/10/2020. The FAMU was processed for Bag & Baggage since an immigration judge ordered the FAMU removed in-absentia on 8/6/2019. On 3/10/2020, the FAMU was booked into KCRC. On 3/10/2020, a Flores parole review was conducted for minor. **Parole was denied due to the final order of removal** and detention was required to complete the removal process and because the parent had not designated a caregiver to whom ICE could consider releasing the minor. On 3/20/2020, a Motion to Re-Open was filed for this FAMU.
>
> On 5/13/2020, ICE conducted a second parole review for minor. At that time, parole was denied. **Minor's parent has not designated a caregiver to whom ICE could consider releasing the minor.**

33. ICE states that it conducted parole reviews for the minor on March 10, 2020 and May 13, 2020 and denied parole both times, because "detention was required to complete the removal process and because the parent had not designated a caregiver to whom ICE could consider releasing the minor." This determination is simply wrong. In EMUA's parole request submitted May 11, 2020, his *mother, with whom he has resided in San Antonio, Texas for two years*, was listed as the sponsor available to him and his father. Inexplicably, ICE cited "You have not established to ICE's satisfaction that you are not a flight risk" and "You did not establish, to ICE's satisfaction, substantial ties to the community" as their reasons for denial of parole on May 25, 2020. This reasoning is notably absent from the reasoning provided in the Juvenile Coordinator's report to this Court.

34. Not only do EMUA and his family have significant community ties given their two years of residence in the United States, but EMUA and his father - to whom his case is linked - have demonstrated that they are not, in fact, a flight risk. Namely, EMUA and his father presented themselves at a Port of Entry to seek asylum, and they have diligently attended ICE check ins for two years. They did not receive notice of court, and it was at an ICE check in, after their removal order was entered without their notice, that ICE apprehended EMUA and his father. There is no evidence to support ICE's contention that EMUA is a flight risk, and there is significant evidence to rebut ICE's assertion that EMUA does not have community ties.

35. Finally, it is unclear why, if ICE conducted a parole review on May 13, 2020, it gave the Class Member notice of a parole interview on May 18, then conducted a parole interview on May 25, 2020, and provided its parole decision on May 28, 2020. This summary indicates that ICE either did not review the Class Member's parole at the time of the interview, or that ICE did not update the summary before submitting it to the Court.

C. Class Member SLG, AXXX-XXX-533

36. The third Class Member for whom ICE provided a custody explanation similarly demonstrates irregularity in ICE's reasoning for continued detention. The report of the Juvenile Coordinator states:

> Minor, SLG, and her parent, HLL, were encountered by CBP on 03/12/2020.

> The FAMU was processed for expedited removal, at which time the father claimed a fear of returning to Mexico.
>
> On 03/15/2020, the FAMU was booked into KCRC. On 03/15/2020, a Flores parole review was conducted for minor. **Parole was denied because the minor was in the credible fear interview process and detention was required to complete the process** and because the parent had not designated a caregiver to whom ICE could consider releasing the minor. On 03/27/2020, USCIS found that the minor did not have a credible fear of returning to Mexico.
>
> On 5/13/2020, ICE conducted a second parole review for minor. At that time, parole was denied. **Minor was in the credible fear interview process and detention was required to complete the process** and because the parent had not designated a caregiver to whom ICE could consider releasing the minor. **The minor and the FAMU are pending IJ Review.**

37. In this case again, ICE's explanation to this Court in the report of the Juvenile Coordinator is incongruent with ICE's denial of parole provided in writing to SLG through her parent and to RAICES on May 28, 2020. The written notice of denial of parole that ICE provided for SLG, attached as **Exhibit C**, is on the same form as that provided to Class Member HFFM, detailed above, but also differs from that provided to Class Member EMUA. These discrepancies demonstrate ICE's failure to consistently make and record efforts to release minors according to this Court's multiple orders.

38. As with the other Class Member examples, ICE stated that it reviewed this Class Member's case for parole on March 15, 2020 and again on May 13, 2020, failing to mention that it conducted a parole interview on May 25, 2020. It is unclear whether ICE simply failed to mention the parole interview to this Court, or rather did not actually review the minor's case for parole on May 25. Whatever the case may be, the absence of this fact demonstrates that the Class Member's summary is incomplete.

39. Here, ICE marked in its May 28, 2020 parole denial, **Exhibit C**, that parole was denied for SLG because "You have not established to ICE's satisfaction that you are not a flight risk," with no further explanation. There is no indication that ICE considered the fact that a family member sponsor was named for SLG in her May 27, 2020 parole request.

40. In contrast, in its report to this Court, ICE states, "detention was required to complete the [credible fear interview] process." This is not an accurate depiction of the legal reality of the credible fear process, or any necessity of ICE to continue detention of a Class Member. In fact, ICE has the discretion to issue a Notice to Appear to individuals within its custody, and even if they do not, a Class Member may continue the credible fear process from outside of detention. In fact, this scenario often occurs when, for example, the Asylum Office cannot find the proper interpreter to conduct an interview within a timely fashion. In RAICES' experience, these Class Members and their parents are subsequently *released from detention to complete the credible fear process outside of detention.* It has also been RAICES' experience that in some cases, including the case of a child with hydrocephalus mentioned above, ICE will release a Class Member and their parents *even if the Class Member received a negative credible fear determination and therefore may have an executable expedited removal order.*

41. At the time of ICE's filing on June 10, 2020, this Class Member had been waiting for 72 days and still had not been scheduled for the hearing he had been awaiting. In its April 24, 2020 order, this Court stated that ICE responses to parole requests which state the reason for a child's prolonged detention as having to do with waiting for a decision in the credible fear process, fail to meet the requirements of the FSA.[3]

D. Class Member BCMC, AXXX-XXX-538

42. In the fourth release summary that ICE provided for a RAICES client Class Member, it similarly failed to make mention of the parole interview, failed to consider appropriate *Flores* release standards, and inappropriately based its explanation off of the child's immigration case status. The Juvenile Coordinator report states that:

> Minor, BCMC, and his parent, HEMC, were encountered by BP on 03/21/2020. The FAMU was processed for Bag & Baggage since an immigration judge ordered the FAMU removed in-absentia on 09/26/2019. On 03/27/2020, the FAMU was booked into KCRC. On 3/27/2020, a Flores parole review was conducted for minor. **Parole was denied due to the final order of removal and detention was required to complete the removal process** and because the parent had not designated a

[3] *Id.* at 16.

caregiver to whom ICE could consider releasing the minor. On 04/14/2020, a Motion to Re-Open was filed. On 04/27/2020, the IJ denied the Motion to Re-Open. On 5/08/2020, an appeal of the Motion to Re-Open denial was filed with the BIA for this FAMU.

On 5/13/2020, ICE conducted a second parole review for minor. At that time, parole was denied. **Minor was found to be a flight risk as he is subject to a final order of removal and will be scheduled for the next removal flight to his country of citizenship**. Removal flights to Nicaragua occur bi-weekly. Due to the frequency of removal flights and the very short time period for manifesting the flight, it is unlikely that minor would present himself for removal in a timely manner. Failure to depart the US timely would cause minor to become a fugitive from ICE, negatively impacting his ability to attain future immigration benefits.

Additionally, minor's parent has not designated a caregiver to whom ICE could consider releasing the minor. On 05/26/20 an emergency stay request was filed with the BIA.

43. The information provided to this Court in the Juvenile Coordinator's report is either incomplete or misleading. First, ICE stated that this child does not have a stay of removal in place. Actually, BCMC's case should be stayed automatically given the relevant statutory and regulatory provisions; RAICES only filed a stay with the Board of Immigration Appeals in this case out of an abundance of caution.[4] ICE again makes no mention of this Class Member's May 26, 2020 parole interview and subsequent decision, only making reference to a March 27, 2020 and May 13, 2020 parole review. Furthermore, ICE states that the child, "will be scheduled for the next removal flight to his country of citizenship," while they cannot at this time execute his removal order, and cannot know when or if they will be able to do so.

44. Importantly, The parole denial provided to RAICES for BCMC dated May 29, 2020, and attached as **Exhibit D**, stated that parole for the Class Member minor was denied because "You have not established to ICE's satisfaction that you are not a flight risk" and:

[4] "The filing of a motion to reopen under paragraph (b)(4)(iii)(A) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal." 8 C.F.R. § 1003.23(b)(4)(iii)(C).

> You have failed to demonstrate that you are: (1) an alien who has a serious medical condition such that continued detention would not be appropriate; (2) an individual who has been medically certified as pregnant; (3) an alien juvenile; (4) an alien who will be a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or (5) an alien whose continued detention is not in the public interest.

Not only does this denial fail to make note of the fact that BCMC's May 11, 2020 parole request lists a sponsor, but it also is simply wrong as 1) BCMC is, in fact, "an alien juvenile," and 2) has a serious medical condition such that continued detention would not be appropriate.

45. This Class Member child has a severe food allergy, as described in **Exhibit E**, Declaration of Dr. Fiona Danaher, attached, that has not been accommodated at Karnes. RAICES brought this allergy to ICE's attention on May 6, 2020, in BCMC's original parole request dated May 11, 2020, and again in a supplement to the original parole request dated May 26, 2020 which contained **Exhibit E**. Dr. Danaher states in her declaration that BCMC "also has a history of reactive airway disease (i.e., asthma in a young child)" which places him at greater risk if he were infected with COVID-19. Importantly, regarding conditions at Karnes for BCMC, Dr. Danaher notes:

> I am concerned that [BCMC] was repeatedly served tomato-based foods despite a described history of anaphylactic reaction to tomatoes, and that his parents were placed in the position of having to withhold food from their child to protect him. Anaphylaxis is a dangerous allergic reaction that can impair breathing by causing throat swelling and airway constriction. It can also cause distributive shock, meaning that rapid dilation of blood vessels leads to inadequate perfusion to support the body's organs. ***Anaphylaxis can progress rapidly, and if left untreated can prove fatal***.

46. **The conditions described in Dr. Danaher's declaration, submitted to ICE on May 26, 2020, demonstrate that Karnes is not a safe and sanitary location for Class Member BCMC. ICE continues to fail to accommodate BCMC's dietary requirements**. As recently as June 16, 2020, BCMC's mother reported that BCMC was served meat with tomato sauce. Instead of providing him with an alternate source of protein, Karnes staff took the meat and gave BCMC three pieces of bread, telling him "eat it or throw it out."

47. Though the information regarding BCMC's health condition was available to ICE, neither his May 29, 2020 parole denial nor the explanation provided to this Court make any mention that ICE considered the health risks to BCMC with continued detention.

Conclusion

48. ICE repeatedly lists immigration-case-status-related reasons for denial of parole with cursory mention attached to each that parole was also denied "because the parent had not designated a caregiver to whom ICE could consider releasing the minor." There is no indication that ICE reviewed sponsorship information available to the agency in any of the custody determinations. Furthermore, there is no evidence that ICE actually considered the existence of a "caregiver," rather than *only* considering the immigration case status of Class Members when it denied parole. None of the parole denials provided to Class Members or their RAICES representatives indicate that sponsorship information was considered or was deemed insufficient. Based on RAICES records and the experiences of our clients and staff, it appears that ICE may have added on "because the parent had not designated a caregiver to whom ICE could consider releasing the minor" to their explanations of continued custody of Class Members before the filing of the Juvenile Coordinator's report to this Court but subsequent to ICE's actual denial of parole based on impermissible considerations of immigration case status.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 17, 2020

San Antonio, Texas

Andrea Meza

EXHIBIT A

Enforcement and Removal Operations

U.S. Department of Homeland Security
409 FM 1144
Karnes City, Texas 78118

U.S. Immigration and Customs Enforcement

May 29, 2020

HFFM
C/O Karnes County Residential Center
409 FM 1144
Karnes City, TX 78118

In Reference to: A# HFFM 704

INTERIM NOTICE DECLINING PAROLE

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided not to parole you from custody at this time. The decision to authorize parole is discretionary. As part of its parole determination, ICE reviewed immigration records and any supplemental documentation that you provided. After reviewing all available information, ICE has determined that parole is not appropriate in your case at this time based on the following reason(s):

☐ You have not established your identity to the satisfaction of ICE.

☒ You have not established to ICE's satisfaction that you are not a flight risk.

☐ You have not established to ICE's satisfaction that you are not a security risk or a danger to the community.

☒ You have failed to demonstrate that you are: (1) an alien who has a serious medical condition such that continued detention would not be appropriate; (2) an individual who has been medically certified as pregnant; (3) an alien juvenile; (4) an alien who will be a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or (5) an alien whose continued detention is not in the public interest.

☐ Other: _____

_____

Re-Determination

You may request re-determination of this decision in writing, based upon changed circumstances in your case. Such changed circumstances or documentation should relate to the reason(s) indicated above why ICE is not paroling you from custody at this time. If there are multiple grounds checked above, you should try to provide further evidence addressing each of them.

If you request re-determination of this decision, please direct your written request to your designated ERO officer. Such a re-determination request should include a copy of this letter and any other ICE written decision declining to authorize parole, and clearly explain what changed circumstances and relevant documents you would like considered.

☐ ICE previously provided you with a written decision declining to authorize parole, and you have failed to provide additional documentation or to demonstrate any significant changed circumstances which would alter ICE's previous determination.

I certify that I received a copy of this notice.

HFFM
Alien Name

HFFM
Alien Signature

5/29/20
Date

☐ **I WISH TO REQUEST A RE-DETERMINATION OF MY PAROLE DECISION. MY SUPPORTING DOCUMENTATION IS ATTACHED.**

CERTIFICATE OF SERVICE

I certify that on today's date, I served the respondent a copy of this parole notice by the following method (as checked):

☐ In person ☐ Other: _____

Emma Perales
ICE Official Name

ICE Official Signature

5/29/20
Date

EXHIBIT B

Enforcement and Removal Operations

U.S. Department of Homeland Security
409 FM1144
Karnes City, Texas 78118

U.S. Immigration and Customs Enforcement

May 28, 2020

EMUA
C/O Karnes County Residential Center
409 FM 1144
Karnes City, TX 78118

In Reference to: A# EMUA 453

NOTIFICATION DECLINING TO GRANT PAROLE

Dear Mr EMUA:

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided not to parole you from detention at this time. Under ICE policy, arriving aliens determined by an Asylum Officer to have a credible fear of persecution or torture are initially considered for parole. While the decision whether to grant parole is discretionary, ICE policy is generally to grant parole to aliens determined to have a credible fear if they establish their identity and that they pose neither a flight risk nor danger to the community.

As part of its determination whether to parole you, on May 25, 2020, ICE conducted an initial interview with you. Your immigration files and any supplemental documentation that you provided were reviewed at that time. After reviewing all available information, ICE has determined that parole is not appropriate in your case at this time based on the following reason(s):

☐ You have not established your identity to the satisfaction of ICE.
- ☐ You did not present valid, government-issued documentation of identity, or any documents you submitted did not, to ICE's satisfaction, establish your identity.
- ☐ You did not provide third-party verification of your identity, or any third-party information you provided did not, to ICE's satisfaction, establish your identity.
- ☐ You did not, to ICE's satisfaction, establish your identity through credible statements.

☒ You have not established to ICE's satisfaction that you are not a flight risk.
- ☐ You failed to provide, to ICE's satisfaction, a valid U.S. address where you will reside while your immigration case is pending.
- ☒ You did not establish, to ICE's satisfaction, substantial ties to the community.
- ☐ Imposition of a bond or other conditions of parole would not ensure, to ICE's satisfaction, your appearance at required immigration hearings pending the outcome of your case.

☐ You have not established to ICE's satisfaction that you are not a danger to the community or U.S. security. In making this determination, ICE has taken into account any evidence of past criminal activity, activity contrary to U.S. national security interests, activity giving rise to concerns of public safety or danger to the community, disciplinary infractions or incidents, or other criminal or detention history that shows you have harmed or would likely harm yourself or others.

☐ Additional exceptional, overriding factors (e.g., law enforcement interests or potential foreign policy consequences) in your case militate against parole, as follows:

_____

_____

.

☐ ICE previously provided you with a written decision declining to grant parole, and you have failed to provide additional documentation or to demonstrate any significant changed circumstances which would alter ICE's previous determination.

You may request a redetermination of this decision in writing, based upon changed circumstances in your case or additional documentation you would like ICE to consider. Such changed circumstances or documentation should relate to the reason(s) indicated above why ICE is not paroling you from custody at this time. For example, if you have not established your identity to ICE's satisfaction, you may wish to consider providing previously unfurnished government-issued documents such as passports, birth certificates, or identity cards. Identity can also be established through written statements prepared by individuals whom you know in the United States and whose identity ICE can verify to its satisfaction. These statements should include the address of the person you know in the United States and evidence of his or her identity. Finally, if there are multiple grounds checked above, you should try to provide further evidence addressing each of them.

If you request redetermination of this decision, please direct your written request to the address above, include a copy of this letter and any other prior ICE written decision(s) declining to grant you parole, and clearly explain what changed circumstances or additional documents you would like considered. Failure to provide satisfactory documentation and explanation may result in a denial of your request for redetermination.

Sincerely,

Anthony Hofbauer
Assistant Field Office Director
Karnes County Residential Center

EXHIBIT C

Enforcement and Removal Operations

U.S. Department of Homeland Security
409 FM 1144
Karnes City, Texas 78118

U.S. Immigration and Customs Enforcement

May 28, 2020

SLG [redacted]
C/O Karnes County Residential Center
409 FM 1144
Karnes City, TX 78118

In Reference to: A# SLG [redacted] 633

INTERIM NOTICE DECLINING PAROLE

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided not to parole you from custody at this time. The decision to authorize parole is discretionary. As part of its parole determination, ICE reviewed immigration records and any supplemental documentation that you provided. After reviewing all available information, ICE has determined that parole is not appropriate in your case at this time based on the following reason(s):

☐ You have not established your identity to the satisfaction of ICE.

☒ You have not established to ICE's satisfaction that you are not a flight risk.

☐ You have not established to ICE's satisfaction that you are not a security risk or a danger to the community.

☐ You have failed to demonstrate that you are: (1) an alien who has a serious medical condition such that continued detention would not be appropriate; (2) an individual who has been medically certified as pregnant; (3) an alien juvenile; (4) an alien who will be a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or (5) an alien whose continued detention is not in the public interest.

☐ Other: _____

_____

Re-Determination

You may request re-determination of this decision in writing, based upon changed circumstances in your case. Such changed circumstances or documentation should relate to the reason(s) indicated above why ICE is not paroling you from custody at this time. If there are multiple grounds checked above, you should try to provide further evidence addressing each of them.

If you request re-determination of this decision, please direct your written request to your designated ERO officer. Such a re-determination request should include a copy of this letter and any other ICE written decision declining to authorize parole, and clearly explain what changed circumstances and relevant documents you would like considered.

☐ ICE previously provided you with a written decision declining to authorize parole, and you have failed to provide additional documentation or to demonstrate any significant changed circumstances which would alter ICE's previous determination.

FATHER INDEX

I certify that I received a copy of this notice.

SLG [redacted]

Alien Name

FATHER SIGNED FOR CHILD

Alien Signature

5-28-20

Date

☐ **I WISH TO REQUEST A RE-DETERMINATION OF MY PAROLE DECISION. MY SUPPORTING DOCUMENTATION IS ATTACHED.**

CERTIFICATE OF SERVICE

I certify that on today's date, I served the respondent a copy of this parole notice by the following method (as checked):

☒ In person ☐ Other: _____

F8440 Castillo
Deportation Officer
DHS-ICE

ICE Official Name

ICE Official Signature

5-28-20

Date

EXHIBIT D

Enforcement and Removal Operations

U.S. Department of Homeland Security
409 FM 1144
Karnes City, Texas 78118

U.S. Immigration and Customs Enforcement

05/29/2020

BCMC
C/O Karnes County Residential Center
409 FM 1144
Karnes City, TX 78118

In Reference to: A# BCMC 538

INTERIM NOTICE DECLINING PAROLE

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided not to parole you from custody at this time. The decision to authorize parole is discretionary. As part of its parole determination, ICE reviewed immigration records and any supplemental documentation that you provided. After reviewing all available information, ICE has determined that parole is not appropriate in your case at this time based on the following reason(s):

☐ You have not established your identity to the satisfaction of ICE.

☑ You have not established to ICE's satisfaction that you are not a flight risk.

☐ You have not established to ICE's satisfaction that you are not a security risk or a danger to the community.

☑ You have failed to demonstrate that you are: (1) an alien who has a serious medical condition such that continued detention would not be appropriate; (2) an individual who has been medically certified as pregnant; (3) an alien juvenile; (4) an alien who will be a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or (5) an alien whose continued detention is not in the public interest.

☐ Other: _____

_____

Re-Determination

You may request re-determination of this decision in writing, based upon changed circumstances in your case. Such changed circumstances or documentation should relate to the reason(s) indicated above why ICE is not paroling you from custody at this time. If there are multiple grounds checked above, you should try to provide further evidence addressing each of them.

If you request re-determination of this decision, please direct your written request to your designated ERO officer. Such a re-determination request should include a copy of this letter and any other ICE written decision declining to authorize parole, and clearly explain what changed circumstances and relevant documents you would like considered.

☐ ICE previously provided you with a written decision declining to authorize parole, and you have failed to provide additional documentation or to demonstrate any significant changed circumstances which would alter ICE's previous determination.

I certify that I received a copy of this notice.

BCMC	BCMC	05/29/2020
Alien Name	Alien Signature	Date

☒ **I WISH TO REQUEST A RE-DETERMINATION OF MY PAROLE DECISION. MY SUPPORTING DOCUMENTATION IS ATTACHED.**

CERTIFICATE OF SERVICE

I certify that on today's date, I served the respondent a copy of this parole notice by the following method (as checked):

☑ In person ☐ Other: _____

N Bachelier		05/29/2020
ICE Official Name N BACHELIER Deportation Officer DHS-ICE	ICE Official Signature	Date

EXHIBIT E

DECLARATION OF DR. FIONA DANAHER

I, Dr. Fiona Danaher, hereby declare under penalty of perjury, that the following is true and correct to the best of my knowledge.

1. I am a US trained physician fully licensed to practice medicine in the State of Massachusetts. I am an Attending Physician in the Department of Pediatrics at Massachusetts General Hospital for Children, where I care for patients ranging in age from newborns to young adults. I work as both a primary care and child abuse pediatrician. I am an Instructor at Harvard Medical School in Boston, MA.
2. I am a graduate of Mount Sinai School of Medicine in New York, NY. I completed residency in Pediatrics at Massachusetts General Hospital. My residency training included extensive experience interviewing and conducting physical exams of children, adolescents, and young adults to treat both medical and psychiatric conditions. I have passed all three steps of the United States Medical Licensing Examination Board exams. I am board-certified in Pediatrics.
3. I am a Fellow in the American Academy of Pediatrics and a member of the Council on Immigrant Child and Family Health. I chair the Massachusetts General Hospital Immigrant Health Coalition.
4. I have attended a specific training about the medical evaluation of asylum seekers of all ages entitled, "Introduction to Forensic Evaluation and Documentation of Trauma in Asylum-Seekers," hosted by the Harvard Medical School chapter of Physicians for Human Rights.
5. I am a volunteer for the Massachusetts General Hospital Asylum Clinic, and in this capacity, I conduct medical and psychological evaluations of persons seeking asylum in the United States, including individuals in ICE detention.
6. On Monday, May 25, 2020 at 10am CST, I interviewed [redacted], mother (DOB: [redacted]), and [redacted], child (DOB: [redacted]) via video-conference in a

volunteer capacity. I have reviewed the declaration of [redacted], father (DOB: [redacted]), provided to me by the Refugee and Immigrant Center for Education and Legal Services (RAICES). No medical records were available for review.

SUMMARY OF MEDICAL ISSUES OF [redacted] (A# [redacted])

7. [redacted] and his family arrived at Karnes County Family Residential Center (KCFRC) on 3/26/2020. His mother reports that prior to their arrival, [redacted] had a remote history of reactive airway disease and had been diagnosed with multiple allergies to foods, medication, and bee stings, but he was otherwise a healthy, developmentally normal child. His mother expresses multiple concerns for his health during their time at KCFRC, including persistent exposure to a known food allergen placing [redacted] at risk of a potentially serious allergic reaction; symptoms concerning for possible COVID-19 infection for which he received minimal medical attention, as well as ongoing risk of exposure to COVID-19 infection; and symptoms concerning for post-traumatic stress disorder (PTSD) exacerbated by his continuing detention. I will describe each of these medical issues in greater detail based on my interview with the child's mother and review of the father's declaration.

ALLERGIES

8. [redacted] was diagnosed with a severe allergy to tomatoes around age 2-2.5 years when he developed throat swelling, rash, vomiting, and diarrhea after ingesting several tomatoes. These symptoms are consistent with anaphylaxis, a potentially life-threatening allergic reaction. He was admitted to the hospital for treatment, where he subsequently developed a fever and was administered penicillin out of concern for possible infection. The penicillin worsened his rash, which led to an additional diagnosis of penicillin allergy. He remained hospitalized for 1.5-2 weeks while his symptoms persisted. His mother states he was discharged with a diagnosis of allergic reactions and possible infection, though no source of infection was identified.

9. Around age 5, [redacted] pediatrician diagnosed him with an allergy to pork, as he developed vomiting and diarrhea every time he ate it. He was also diagnosed with a bee sting allergy around age 1.5, after a bee sting on his arm caused him to develop arm swelling and shortness of breath, followed by a seizure and fever while awaiting treatment in the emergency room.

10. [redacted] also has a history of reactive airway disease (i.e., asthma in a young child), for which he was treated with nebulized albuterol. His last exacerbation was 3 years ago.

11. Taken together, [redacted] history of multiple allergies and reactive airway disease suggest he is an atopic child, meaning he has a genetic predisposition to developing allergic diseases. This is borne out by the strong family history of atopic conditions on his mother's side. His maternal grandmother, great-grandmother, and cousin exhibit various serious allergies to seafood, milk, and medications; his mother and aunt have asthma; and his aunt and cousins have eczema.

12. Given the concern for atopy, his pediatrician recommended that he be evaluated by an allergist, but his parents never had the opportunity to take him. They managed his allergies by maintaining strict avoidance of his known allergic triggers. The pediatrician advised his parents to give him cetirizine for any mild allergic reactions, but to take him directly to the hospital if he developed significant symptoms.

13. His mother states the family reported [redacted] allergies upon their intake at KCFRC and the information was added to his file. However, KCFRC continued to serve [redacted] tomato-based foods, forcing his mother to withhold such foods from [redacted] when they were served, out of fear that he could develop another anaphylactic reaction. The facility only adjusted his diet more than a month after his arrival, once the family's attorney intervened. Now his mother reports that when the menu includes foods like spaghetti with tomato sauce, he is simply served spaghetti with nothing on it, or if meat is cooked in a tomato-based sauce, he is given bread instead of meat. These meals are both nutritionally incomplete and unappetizing for [redacted].

14. His mother reports that [redacted] used to eat eagerly before coming to Karnes, but he now has a poor appetite and barely eats some days unless his parents buy him instant soup or crackers from the commissary. His mother expresses concern that he is losing weight, as he used to look a little chubby but now his ribs are becoming visible. His low fiber diet and decreased intake have led to constipation with sometimes painful bowel movements. At one point his mother saw blood when wiping him, suggesting he may be developing hemorrhoids as a result of the constipation.

15. I am concerned that [redacted] was repeatedly served tomato-based foods despite a described history of anaphylactic reaction to tomatoes, and that his parents were placed in the position of having to withhold food from their child to protect him. Anaphylaxis is a dangerous allergic reaction that can impair breathing by causing throat swelling and airway constriction. It can also cause distributive shock, meaning that rapid dilation of blood vessels leads to inadequate perfusion to support the body's organs. Anaphylaxis can progress rapidly, and if left untreated can prove fatal.

16. Safe management of [redacted] allergies requires that he not be exposed to even small quantities of his known allergens. It also requires that a dose of intramuscular epinephrine, such as an epinephrine auto-injector, be kept accessible for emergency treatment in case of accidental exposure. Epinephrine does not appear to be listed on the ICE formulary. [redacted] should undergo evaluation by a pediatric allergist to assess the full extent of his allergies.

17. I am also concerned by [redacted] mother's description of his weight loss. While [redacted] should not eat any foods containing tomatoes or pork, it is still important that he be provided with nutritionally balanced meals to support healthy growth and development. Foods containing tomatoes and pork should be replaced with other foods of similar nutritional value, rather than just removed without substitution. Inclusion of high fiber foods such as whole grains, fruits and vegetables will be important in resolving his constipation.

RISK OF COVID-19 INFECTION

18. [redacted] mother relates that upon the family's arrival to KCFRC, they were placed into 14 day quarantine. [redacted] and his mother were separated from his father for quarantine without warning or explanation; the family found this extremely traumatic, as they had previously been separated by kidnappers in Mexico. [redacted] and his mother were placed into a room together and only permitted to go outside for 30 minutes each day. [redacted] would cry when he saw his father outside the window.

19. [redacted] was reportedly healthy when he entered quarantine, but about 3 days after his arrival he developed sore throat, dry cough, nasal congestion, abdominal pain, diarrhea, and leg pain severe enough that he did not want to walk. He also complained of headache several times. His mother states that he was evaluated by a nurse at the facility who took his vital signs, but no testing was performed. The nurse provided a liquid medication that [redacted] took each night for 6 nights, without improvement. His mother states she was not told the name of the medicine, just that it was for treating colds. She does not recall him being offered Tylenol or ibuprofen for his pain.

20. [redacted] leg pain, abdominal pain, diarrhea, and headaches resolved after several days, but his sore throat, cough, and nasal congestion persisted. His mother reports he again saw the nurse, who switched him to an allergy medication (mother is unsure of name), but his upper respiratory symptoms continued unabated for approximately 7 weeks in total.

21. In [redacted] third week at KCFRC, his mother reports he developed an itchy rash on his arms and back that would come and go. His mother states that around this time was the only occasion when he saw a pediatrician rather than a nurse. He was diagnosed with an environmental allergy and switched to another allergy medication (mother is unsure of name), again without improvement. The family eventually purchased hydrocortisone cream from the commissary, which treated the rash effectively.

22. [redacted] upper respiratory symptoms finally resolved 1 week ago. He is not currently taking any medications.

23. [redacted] mother reports that all newly arrived detainees are placed in 14 day quarantine out of concern for COVID-19 risk. However, she states she has seen some of the facility's staff members coughing, and she reports that the majority of the staff do not wear masks. She states there is no hand sanitizer available, and the only place detainees can wash their hands is in their rooms, as the other bathrooms in the facility are almost always closed.

24. I am concerned that [redacted] exhibited many symptoms concerning for possible COVID-19 infection or influenza, but he was not tested for either infection, and he reportedly received minimal medical monitoring or treatment. According to his mother, he was not offered Tylenol or ibuprofen for his pain. The dosing interval for the nightly medication he was prescribed suggests he was not treated with Tamiflu for potential influenza.

25. It is also highly concerning that staff overseeing detainees in a congregate setting are not wearing masks during the COVID-19 epidemic, and that handwashing facilities are not being made more readily available to detainees. Statistical modeling suggests that COVID-19 spreads extremely easily in such settings.[1] Indeed, to date more than 1,200 ICE detainees have been diagnosed with COVID-19, and 2 have died. Only 2,394 of ICE's more than 26,000 detainees have received testing for COVID-19, and approximately 50% of those results have been positive, suggesting too few detainees are being tested to ensure safe conditions in these facilities.[2]

POST-TRAUMATIC STRESS DISORDER

[1] Irvine M, Coombs D, Skarha J, del Pozo B, Rich J, Taxman F, Green TC. Modeling COVID-19 and Its Impacts on U.S. Immigration and Customs Enforcement (ICE) Detention Facilities, 2020. J Urban Health. 2020 May 15;1-9. doi: 10.1007/s11524-020-00441-x. Online ahead of print.

[2] Montoya-Galvez, C. Second immigrant dies of coronavirus complications while in ICE custody. May 25, 2020. https://www.cbsnews.com/news/second-immigrant-dies-of-coronavirus-complications-while-in-ice-custody/

26. As mentioned previously, [redacted] and his parents were kidnapped in Mexico and separated from each other. This incident was extremely frightening to [redacted], who believed that he or his parents might be killed. He is very close to his father, and he was re-traumatized by the abrupt separation from his father upon his family's placement in quarantine when they arrived at KCFRC. Since men are housed in separate quarters from women and children, he can currently only see his father for about 5.5 hours each day, which he finds very difficult. He has become very clingy toward his mother as a result.

27. [redacted] mother relates that he was a happy, developmentally normal child prior to leaving their country of origin. He was fully potty trained by age 1.5 years. However, since his arrival at KCFRC, he has begun to wet the bed, and he wakes up crying from nightmares. He insists on sleeping with his mother, which is a new behavior. His mother reports that staff enter their room hourly overnight to conduct suicide prevention checks, which disrupts [redacted] sleep. (When they were in quarantine, staff would shine flashlights in detainees' faces during each check; now staff just come in, check the bathroom, and leave again.) He often has trouble falling asleep at night and wants to sleep during the day instead so that his sleep won't be interrupted by the hourly checks. His mother notes that getting him out of bed in the morning has become challenging.

28. [redacted] has regressed developmentally. He used to be a talkative child, but now he does not speak much. When his mother asks him a question, he responds by meowing like a cat. He used to be able to independently resolve conflicts with other children, but now he just reacts to stressful interactions with playmates by making animal noises. He finds it difficult to form new relationships.

29. Since his arrival at KCFRC, [redacted] sometimes seems to dissociate, adopting a blank look and not responding to his mother when she speaks to him. She believes he has blocked some memories of the kidnapping but that other memories still intrude, as she has observed him re-enacting the

event by pretending to abduct other children. He has developed a significant fear of people with guns or uniforms, which makes it difficult for him to interact with some of the KCFRC staff. He startles extremely easily, crying and hiding behind his mother when he hears loud noises. He has grown irritable, and has started to hit himself in the head whenever he feels sad or anxious. He exhibits low mood and energy on most days, and he no longer enjoys activities he used to love. He was a good student in his home country but now has difficulty concentrating on the educational worksheets provided by KCFRC. His appetite has diminished significantly, an issue exacerbated by the incomplete diet offered due to his allergies, as described above.

30. [redacted] mother worries that being locked up and continuously monitored at KCFRC serves as a constant, traumatic reminder of the family's kidnapping. His mother states he has not received any mental health treatment since arriving at KCFRC, and that she has not pursued it as she is not aware that the facility might offer therapy for children his age.

31. [redacted] psychological symptoms meet DSM-5 criteria for a diagnosis of PTSD.[3] He was exposed to a potentially life threatening event when his family was kidnapped, and his family's continued detention reminds him daily of that experience. He is exhibiting multiple intrusion symptoms, including nightmares, re-enactment of the traumatic event in play, marked physiological reaction to loud noises, and distress at exposure to external reminders of the event such as staff members wearing uniforms, whom he deliberately avoids. He exhibits negative alterations in cognition and mood, including difficulty remembering certain details of the traumatic event, a persistent negative emotional state, diminished interest in activities he normally enjoys, and estrangement from his peers. He demonstrates marked alterations in arousal and reactivity, including irritable and self-injurious behavior, an exaggerated startle response, and difficulties with sleep and

[3] Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Exhibit 1.3-4, DSM-5 Diagnostic Criteria for PTSD. Available from: https://www.ncbi.nlm.nih.gov/books/NBK207191/box/part1_ch3.box16/

concentration. His symptoms have been ongoing for more than 1 month and have led to significant functional impairment and developmental regression.

32. [redacted] would benefit from mental health therapy for his PTSD. However, successful treatment requires mitigating the traumatic stressors in his environment that constantly remind him of his family's kidnapping. Therefore, to be truly effective, therapeutic intervention must include complete reunification of his nuclear family and release from detention.

ASSESSMENT

33. Following my evaluation of [redacted], I am concerned about his ongoing physical health and emotional well-being were he to remain in detention. KCFRC's prolonged failure to make appropriate dietary accommodations based upon allergies diagnosed by the child's pediatrician placed him at risk for a serious, potentially life-threatening allergic reaction; yet despite generating this risk, it is unclear based on the published ICE formulary whether the facility has epinephrine on hand to manage an episode of anaphylaxis. He is now being offered a nutritionally inadequate diet that, based on his mother's report, appears to be contributing to weight loss, constipation, and hemorrhoids. The child exhibited symptoms concerning for COVID-19 or influenza infection but received minimal monitoring, evaluation or treatment. He and other detainees remain at significant risk for COVID-19 infection due to inadequate access to hand hygiene facilities and lack of personal protective equipment use by staff. Finally, his psychological presentation is concerning for developmental regression and untreated PTSD which is continuously exacerbated by his ongoing detention.

34. Beyond a discussion of specific health problems experienced by this child, detention of children and families is fundamentally injurious to children's well-being and development, putting them at lifelong risk for physical and mental health consequences. This is the position taken by my

professional organization, the American Academy of Pediatrics, and there is ample evidence in medical research to demonstrate the harm of even short periods of detention.[4]

35. In my professional opinion, this child is at risk for greater harm if he continues to be held in detention. Additionally, I do not believe this harm would be alleviated by the release of the child without one or both of his parents, as family unity is a core aspect of children's health and development. Separation from a parent can cause significant psychological trauma in a child.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this, the 25th day of May, in Winchester, MA.

Fiona Danaher, MD, MPH

[4] Linton JM, Griffin M, Shapiro AJ; Council on Community Pediatrics. Detention of immigrant children. Pediatrics. 2017;139(5):e20170483pmid:28289140