



CW-CA-001-004

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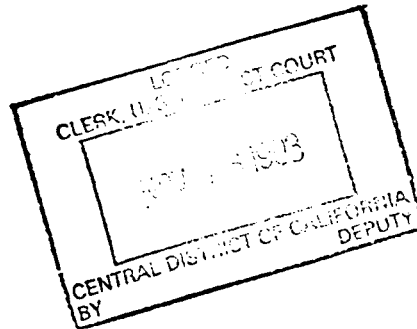
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,

Plaintiffs,

-vs-

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

Defendants.

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

Notice of Motion and Motion to
Enforce Consent Decree

Hearing: March 7, 1994
Time: 10:00 a.m.

To defendants and their attorney of record:

Please take notice that on March 7, 1994, at 10:00 a.m. or as soon thereafter as counsel may be heard, plaintiffs will and do hereby move the court for an order requiring defendants to comply with the Memorandum of Understanding Re: Compromise of Class

1 Action: Conditions of Confinement, filed and approved in this case on November 30, 1987.

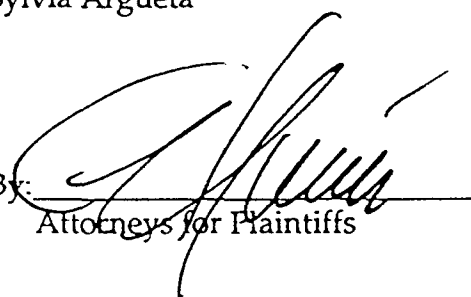
2 This motion is based upon the annexed memorandum of points and authorities and
3 upon all other matters of record herein.

4 Dated: November 15, 1993.

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MEMORANDUM OF POINTS AND AUTHORITIES

I INTRODUCTION

This is a class action on behalf of juveniles who have been, are, or will be detained by the Immigration and Naturalization Service (INS) within the INS's western region and who have been or will be subjected to certain release conditions and sub-standard conditions of confinement. Order re: Class Certification (August 11, 1986).

On November 30, 1987, this court gave final approval to a "consent decree" whereby the Immigration and Naturalization Service ("INS") pledged to greatly improve the "deplorable conditions" it previously afforded minors in its custody. Memorandum of Understanding Re: Compromise of Class Action: Conditions of Confinement (November 30, 1987) (hereafter "MOU"); *see also* Brief for Petitioners at 32 n.31, *Reno v. Flores*, __ U.S. __, 113 S.Ct. 1439 (1993), Plaintiffs' Exhibit 170 (characterizing MOU as "consent decree" prohibiting "deplorable conditions" previously existing in INS detention facilities). The INS promised that thenceforth plaintiff children would be placed in "special child-care facilities," *id.* at 2: *i.e.*, with "'community based shelter care programs' that will 'provide a safe and appropriate environment' ... 'through either residential, foster or group care programs' [meeting] 'state licensing requirements for the provisions of shelter care, foster care, group care and related services to dependent children.'" *Id.* at 11.

The fundamental guarantee of that agreement is that minors arrested solely for civil immigration proceedings would not be housed in facilities designed for and primarily occupied by youthful offenders or delinquents, but would rather be housed in facilities appropriate for *dependent*, or non-delinquent minors.¹ The settlement agreement and the

¹ The MOU requires, *inter alia*, that the INS house all juveniles detained for more than 72 hours in a facility that is state-licensed, or can expeditiously obtain a state license, to care for *dependent* or non-delinquent minors. Unlike juvenile halls and other institutional settings in which youthful offenders or delinquents are confined, dependent children may be placed only in non-secure facilities meeting state standards specifically tailored for them. Acceptable facilities must also satisfy the various standards set out in the Notice of Funding

1 INS's presumed compliance with it were critical elements underlying the United States
2 Supreme Court decision upholding the INS's restrictive release policy. In essence, the
3 Supreme Court found that the INS's release regulation did not violate the Constitution, at
4 least on its face, because the INS held children in appropriate conditions of confinement.
5 "There is, in short, no constitutional need for a hearing to determine whether private
6 placement would be better, so long as institutional custody is (as we readily find it to be,
7 *assuming compliance with the requirements of the consent decree*) good enough." 113 S.Ct. at
8 1449 [emphasis added]. The MOU is important not only because it affects class members'
9 constitutional interests, but also because it was designed to protect children who, as the INS
has recognized, are exceedingly vulnerable.²

10 Despite this binding agreement, voluminous evidence before the court establishes
11 that the INS is again housing plaintiff class members in prison-like conditions. Scores of
12 plaintiff class members have recently spent months in juvenile halls throughout the western
13 region. As will be seen, the prison-like treatment and conditions children are experiencing
14 in these lock-ups is a far cry from the "open type of setting" mandated by the consent
15 decree. MOU at 14.

16 Disturbingly, the INS appears poised to go on violating the settlement agreement.
17 Except for one small facility in San Diego (capacity: approximately 15 minors), the INS has
18 no facility anywhere in the Western Region that meets licensing requirements for the care of

19
20 Programs, 52 Fed. Reg. 15569-15573 (April 29, 1987) (hereafter "Notice") and in the
21 document, "Alien Minors Shelter Care Program - Description and Requirements (April 27,
22 1987) (hereafter "Program Description"), which are expressly incorporated into the MOU.
MOU at ¶¶ 2, 4.

23 ² The INS stated to the Supreme Court that class members experience "frequent traumatic
24 circumstances" prior to their INS custody and cited research showing that "'at least 50% of
25 the children' have 'clinically significant levels' of Post-Traumatic Stress Disorder." Brief of
26 Petitioners, Exhibit 170, at 12, n. 16. Based on the children's condition, the INS noted that "it
27 is particularly important that the [detention] program provide comprehensive and
professional care." *Id.*

1 dependent children or, *a fortiori*, the requirements of the consent decree. What the agency
2 does have is a recently completed formal agreement with, for example, the Los Angeles
3 County Probation Department under which the federal government is to pay \$100.15 per
4 day per minor to hold non-delinquent children in high security lock-ups designed for and
5 primarily occupied by youthful offenders. Indeed, there is no county facility in which
6 minors are subject to any higher security than that now being experienced by plaintiff class
7 members.

8 Even were the settlement generally to permit placing non-delinquent minors in
9 unlicensed facilities, actual conditions in high security lock-ups would clearly violate
10 specific standards of the consent decree.

- 11 • At Central, Pinal, and San Fernando juvenile halls, education consists of little
12 more than random memorization of English vocabulary. Children have
13 neither textbooks nor other substantial reading materials in any language.
- 14 • Suitable outdoor recreation is sorely lacking at several facilities: In Los
15 Angeles, for example, minors are permitted outdoors two or three hours per
16 week.
- 17 • Children are spending months in the INS's "protective" custody without the
18 most rudimentary understanding of the proceedings against them, with little
19 or no realistic chance to obtain the assistance of counsel, and without any
20 notion of how to go about regaining their freedom.
- 21 • Non-delinquent plaintiff class members endure prison-like treatment and
22 restraints on their liberty. They are handcuffed during midnight trips to
23 administrative hearings, made to wear prison garb, and are prohibited from
24 having such commonplace items as writing materials, extra towels, and
25 similar personal grooming items. Class members must eat, sleep, attend class,
26 bathe, and recreate in large barracks-like lock-ups.
- 27 • Non-delinquent class members are subjected to disciplinary practices and

1 physical restraints wholly inappropriate for dependent children. These
2 include the use of leather restraints, handcuffing, and placement in solitary
3 confinement.

- 4 • Children in INS custody receive palpably inadequate assessment, counseling,
5 and client service planning, if they receive such services at all.

6 Through this motion plaintiffs seek the court's aid in ensuring that defendants
7 comply with the settlement agreement approved by this court.

8 II STATEMENT OF FACTS

9 The evidence before the court establishes that the INS is now routinely using juvenile
10 halls and like facilities to house class members for several days, weeks and months longer
11 than the seventy-two hours following arrest permitted by the settlement agreement. These
12 facilities are not licensed to care for non-delinquent minors and otherwise fail to meet
13 minimum state standards for the care of dependent children. The INS has recently
14 subjected class members to the following conditions and treatment:³

15 A Non-delinquent children endure prison-like treatment and restraints on 16 their liberty.

17 To plaintiffs' knowledge, in the greater Los Angeles area the INS detains all children
18 in violation of the MOU; the agency uses no facilities that are licensed or appropriate to care
19 for non-delinquent children. Declaration of Carlos Holguin, Exhibit 180 at 1. Indeed, the

20 ³ INS detention practices impacting plaintiff class members has been exceedingly fluid. The
21 agency's use and disuse of particular facilities is erratic, and facilities have been closed
22 without the slightest notice to attorneys and advocates for detained minors. Declaration of
23 Carlos Holguin, Exhibit 180 at 1. It is therefore impossible to predict whether the INS will
24 still be using any specific facility described in the text at the time this motion is heard.

25 Nevertheless, the evidence establishes a pattern and practice of placing class members in
26 facilities designed for and primarily occupied by youthful offenders and that otherwise fail
27 to meet state standards for the care of dependent children and the specific standards
incorporated into the MOU. The INS's wholesale violation of a binding settlement decree
some six years after its execution is at the heart of plaintiffs' request for an appropriate order
by which transitory INS practices can be effectively monitored.

1 only placements the INS now has in Los Angeles are pursuant to a contract with the Los
2 Angeles County Probation Department, which operates high security juvenile halls for
3 youthful offenders.⁴ Pursuant to that contract, some 160 minors from the People's Republic
4 of China, Honduras, El Salvador, and Nicaragua have spent up to five months in three
5 county detention facilities: Central Juvenile near downtown Los Angeles, Los Padrinos
6 Juvenile Hall in Downey, and San Fernando Juvenile Hall in Sylmar. *Id.*; Exhibit 157.

7 Minor INS prisoners in these facilities are isolated from the general population;
8 however, they are subject to standard security measures designed for youthful offenders.
9 These are among the highest security county facilities in existence— they routinely hold
10 juveniles accused and convicted of rape, robbery, drug trafficking, and murder. Although
11 plaintiff class members are accused of neither crime nor delinquency, institutional
12 “detention policies and procedures” are applied equally to youths “detained for delinquent
13 behavior” and INS placements. Exhibit 162 at 2; *accord* Exhibit 158 at 3, Exhibit 157 at 1 (INS
14 placements receive “no special handling” in county juvenile halls). Clearly, life in these
institutions is nothing short of imprisonment:

15 In all three [county] facilities, the alien youths are being detained in a trailer type
16 modular, which is roughly 20 feet by 40 feet. The trailers are separated from the
17 rest of the juvenile hall population and are located in a back area, with cement
18 surrounding the trailers. There are high fences and with barbed wires around
19 the tops to prevent anyone from climbing over. The trailers are locked from both
20 the inside and outside, and to gain access at anytime to one of the trailers, a staff
21 person had to open the door for me with a key. ... Each modular has 2 heavy
22 steel doors along the wall where the staff desk is located. The alien minors wear
23 white juvenile hall T-shirts and jail-like paints [sic], all the same color. The

24 ⁴ In contrast, the Los Angeles County Department of Children's Services, with which the
25 INS has no contract, has jurisdiction over placements in group and foster homes licensed to
26 care for dependent children: that is, placements that *would* comply with the MOU.
27

1 clothes are stamped with the juvenile hall's name. The children follow a set
2 regime of eating, sleeping, and a few other activities, daily, and must follow rules
3 and regulations.

4 Exhibit 158 at 2-3.

5 "Upon admission to juvenile hall, all minors' personal property is taken and placed
6 in the Property Room." Exhibit 161 at 3. Class members are permitted only collect
7 telephone calls. *Id.* They may not keep purses, handbags or food. Exhibit 164. They may
8 not have glass or metal religious items, nor are they permitted to have any more than five
9 photographs. *Id.* Signs posted on dormitory walls admonish class members, "NO
10 TALKING, NO WALKING AROUND, NO FIGHTING." Exhibit 158 at 4. If a child wishes
11 to leave his seat, he must ask permission. *Id.* at 4-5. Class members are permitted little, if
12 any, privacy: "I am locked in a big room with 14 other Chinese girls. There is no privacy.
13 Everything is open. We want privacy. We can't see outside. There are small windows, but
14 they are covered with cloth." Exhibit 141 at 3. Class members are searched "on a regular,
15 random, and routine basis." Exhibit 176. Class members' personal possessions are
16 routinely search for "pens , pencils, etc." E.g., Exhibit 174 at 464.

17 Federal agents frequently awaken class members held in these institutions at 1:00 or
18 2:00 in the morning, purportedly to take them to court. Exhibits 141 at 1, 158 at 3, 162 at ¶ 4,
19 Exhibit 174 at 437 (2:00 a.m.), 438 (2:00 a.m.), 447 (3:30 a.m.), 450 (3:00 a.m.), 451 (1:30 a.m.),
20 452 (2:00 a.m.), 462 (2:00 a.m.), 457 (2:00 a.m.), 463 (12:30 a.m.). Although the INS pledged to
21 end the practice, Exhibit 175 at 6, detention facility logs show that defendants continued to
22 roust plaintiff children out of bed as early as 3:00 a.m. *after* having promised in writing that
23 the practice had ended. Exhibit 174 at 468. INS guards handcuff class members upon
24 leaving the juvenile halls and do not remove the restraints until the children are placed in a
25 holding cell at court. Exhibits 143 at 1, 144 at 1, 146 at 1. After court, the children are again
26 handcuffed during the trip back to the juvenile halls. *Id.*

27 Outside of California, class members have been incarcerated at Pinal County Juvenile

1 Detention Center, Florence, Arizona, Exhibits 142 at 1 and 159 at 4, and at Yuma Juvenile
2 Hall, Yuma, Arizona, Exhibit 159, and at 2. These, too, are facilities designed for and
3 primarily occupied youthful offenders. Unlike the Los Angeles County juvenile halls, INS
4 placements at these facilities are not separated from the general prison population. Once
5 again, class members experience palpably prison-like treatment. One child states:

6 At the juvenile hall, they took away all my belongings and clothes. They gave
7 me a uniform—an orange shirt and dark green pants. The clothes were too big
8 on me. ... They made us spend most of the day sitting at a table. We were
9 watched constantly by a guard who was in an office, looking at us from behind
10 glass. If one of us stood up to stretch, the guard would scold him and tell him to
11 sit down. We could only play cards or read a book. There was only one book in
12 Spanish...

13 Exhibit 159 at 2-3.

14 Conditions at Pinal County Juvenile Hall are similar:

15 I have spent almost two months here at the Florence detention center. It is miserable
16 living here. When I first got here, a guard made me take off all my clothes and he
17 inspected my body to see if I was hiding anything. They do that every time I come
18 back from immigration court. It bothers me. I spend most of my day locked in my
19 room. The door is always locked. There is nothing in the room except beds and a
20 toilet. The ventilation is bad, and in the mornings, I wake up all sweaty. ... Every
21 time I leave my room a guard frisks me.

22 Exhibit 142 at 1-2.

23 **B Plaintiff class members are subject to inappropriate disciplinary practices
24 and unofficial physical abuse**

25 Class members have also reported enduring harsh rules and disciplinary practices
26 wholly inappropriate for non-delinquent minors:

27 On June 27, a girl was talking too loud the staff thought, so they staff took away

1 her sheets and mattress and pillow. She hit her head against the wall because
2 she was so upset. She had to sleep the whole night on the metal bed frame on
3 the top bunk. She hit here head again against the bed post, which is metal, and
4 then she passed out. A half hour later, the nurse came to look at her.

5 Exhibit 141 at 4; *see also id.* at 4 ("staff members threaten to handcuff us if we speak too
6 loud").⁵

7 Although such practices are proscribed at facilities licensed to care for dependent
8 minors, class members are routinely subjected to solitary confinement, handcuffing, threats
9 and other forms of discipline and restraint geared toward delinquent minors. Exhibit 174 at
10 429 ("two minors in lock-up still"); *id.* at 431 ("Three minors sent to L.H. for confinement");
11 *id.* at 469.2 (minor in lock-up, staff admonishes him that if he makes loud noise "he be
12 staying there for ever"); *id.* at 455 (officers "structured two minors and threatened to put
13 them with the other minors in the institution"); Exhibit 177 (class members handcuffed,
14 placed in leather restraints, and placed in solitary confinement).⁶

15
16 ⁵ It has also been the case that class members have been subjected to "unofficial"
17 disciplinary techniques not necessarily condoned by the INS, but that are part and parcel of
institutions that habitually deal with delinquents:

18 One June 28, 1993, one girl here was taking a shower at 6 p.m. The showers are open,
19 like the toilets. The girl need to go to the bathroom and the staff person hit here on
20 her arm with a stick for playing the game pool. The girl tried to go to the bathroom
still, but 2 other staff people came over and held her down. They hit her with the
stick. Later, a nurse came to check the girl, Wang Sue Yuang.

21 Exhibit 141 at 3.

22 ⁶ Detention facility logs reveal much about the effects of prolonged confinement on
23 youngsters' physical and emotional well-being. The marked degeneration in the behavior
24 of minors who have never been accused of crime or delinquency is striking. A daily log for
25 May 22nd, for example, reports an "excellent day!" and "tone quiet." Exhibit 174 at 422. By
26 June 12th, however, the log describes these same minors as "totally unstructured," *id.* at 423,
27 and jail personnel complain of being "totally drained after leaving unit..." *Id.* By June 18th,
staff are wearily noting, "Another frustrating day!" *Id.* at 424. By June 29th, detention
personnel report a

1 Class members also report being physically assaulted by youthful offenders: "Some
2 of the other kids can be mean," a class member reports. "One day during lunch, a male
3 detainee came up and hit me in the eye. Apparently, this kid hit me because another
4 detainee had paid him with food to do it. A guard had to pull the kid off of me." Exhibit
5 142 at 10; *see also* Exhibit 159 at 2-3 ("There were other kids at the juvenile hall. ... They were
6 there for drugs or other problems with the law. I saw one spit on [another] kid's head when
7 [he] was lying down. He did it just to do it, I guess").

8 C There is no adequate education or reading materials for plaintiff children
9 Minors in INS detention are again receiving wholly inadequate education. During a
10 typical week, INS juvenile hall placements spend a few hours memorizing random English
11 vocabulary. Exhibit 141 at 1-2 (Los Padrinos Juvenile Hall: "We don't have regular
12 education program. Only once a week, or twice sometimes, a person comes to show us
13 pictures in English and we memorize what the picture is called in English"); Exhibit 146 at 1
14 (same); Exhibit 148 at 2 (Central Juvenile Hall: "The only education I get here is English
15 lessons"); Exhibit 160 at 1 ("Since I arrived here I have received no educational instruction
16 in Spanish. We do not study any subjects except English vocabulary"). Detention facility

17 Hyper-bad day! Chinese against the Hispanics, and vice-versa. There's too much
18 tension between the two groups. A key lost and found... Group attack against the
19 Hispanic kids... *The unit is not too safe, be careful and watch your back.* A lot of tension,
a lot of tension.

20 *Id.* at 425 (emphasis added). By August 6th, jail personnel are reporting, "their [sic] was
21 almost a riot with all the minors yelling and surrounding staff"). *Id.* at 436.

22 Much of the deterioration in behavior and staff morale is likely due to the inability of
23 detention officers to communicate with class members. Although the MOU requires the
24 INS to provide shelter services "in a manner which is sensitive to culture, native language
25 and the complex needs" of class members, MOU at 7, detention personnel have been
26 frequently reduced to "structuring" class members by waving hands, pointing, and like
27 gesturing. *E.g.*, Exhibit 177 at 494, 498. *See also* Exhibit 178 at 507 ("I do not speak Chinese.
I can only show or point or tell them in English what I am talking about. ... *I was not trained*
to work with these minors and there was a lack of understanding and communication").

1 officials have admitted in writing that its "school program has been deficient in meeting the
2 Educational code requirements..." Exhibit 162 at ¶ 6.

3 Reading materials are also sorely lacking. Exhibit 150 at 2 ("The only reading
4 material I saw being made available to the children was a book of English-Spanish
5 vocabulary. There were no books in Mandarin available for the [Chinese-speaking] children
6 ..."); Exhibit 158 at 3 ("The girls had no educational reading materials or books"); Exhibit
7 141 at 3 ("We don't have any educational books"); Exhibit 142 at 1 ("The only things they
8 have to read here are in English, and I only speak Spanish"); Exhibit 160 at 1 ("I have been
9 given nothing to read here: No textbooks, no magazines, no newspaper").

10 **D Class members are denied any adequate recreation**

11 Both indoor and outdoor recreation during INS detention falls well short of accepted
12 child welfare standards. At the Los Padrinos detention facility, girls as young as thirteen
13 years were permitted outside for one-half hour twice a day, Exhibit 141 at 2, and then there
14 was no structured recreational activity. *Id.* At Central, outdoor recreation "is very limited.
15 Some days, I go outside to play basketball. We are permitted to stay outside for about one
16 hour in total. In sixteen days I think I have been outside four or five times. When we are
17 permitted outdoors, we receive no structured recreational instruction." Exhibit 160 at 2.
18 Other class members report being allowed outside only about a half hour each day. Exhibit
19 149 at 1. Once outside, "there is mostly cement and high walls with wires. There is no
20 grass." *Id.* At Pinal County Juvenile Hall, recreation consists of one-half hour per day
21 watching television, playing games, or going outside. Exhibit 142 at 2.

22 Indoor recreation, while more frequent, largely consists of passive activities wholly
23 superfluous to a youngsters long-term physical and emotional development. Exhibit 174 at
24 433 (1st recreation period: "minors played cards & put puzzles together"; second recreation
25 period, "minors watched a video"); *id.* at 435 ("inside rec[reation] was the usual TV and
26 video").
27

1 E The INS does nothing to assist children understand the legal proceedings
2 against them.

3 Conditions during in INS custody make it next to impossible for class members to
4 defend themselves against deportation or exclusion. Children uniformly report having little
5 if any understanding of their legal cases; few if any have any inkling about how to defend
6 themselves against deportation:

7 I have been given some papers relating to my immigration case, but the [sic] all
8 appear to be in English, a language that I cannot read or understand. Neither the
9 INS nor anyone who works at the Juvenile Hall here has given me any help in
10 reading the papers, nor have they helped me find a lawyer, contact my family, or
11 fill out an application for political asylum. I do not know the amount of my bail
12 or even if the Immigration agents will release me on bail. I am a student, and I
13 have never before been arrested for anything or ever charged with any crime."

14 Exhibit 152 at 1 (15-year old boy from People's Republic of China after 22 days in INS
15 detention). See also Exhibit 144 at 1 (15-year-old boy after 28 days in INS detention: "I do not
16 know what my bail money is and I don't know anything about my case. I don't know what
17 will happen to me:); Exhibit 146 at 1 (15-year-old girl after 15 days: "I have been to
18 Immigration Court one time. The only thing that the judge asked me was my age. Nothing
19 was said about my bail or my bond. I asked the judge for an attorney, but there was no
20 response. I was not given any papers of any kind, nor any list of attorneys"); Exhibit 148 at
21 1 (12-year-old boy after approximately 24 days: "I don't know anything about my case or
22 what is going to happen to me. I don't know anything about my bail money and no one has
23 helped me contact an attorney. I have no one to call and no one has come to tell me what is
24 happening or why I am here"); Exhibit 151 at 2 (13-year-old boy after 18 days: "Although I
25 have been given what I understand to be a list of free legal services, the document is only
26 written in English, which I do not understand. I was not given any help translating the list,
27 nor was I given any help contacting an attorney"); Exhibit 154 at 1-2 (9-year-old boy:

1 "When I first arrived here, I was not permitted to use the telephone to call my relatives for
2 help. Three or four days ago they started letting me use the telephone. I do not think I have
3 been given a list of free legal services or any other papers about my immigration case. I do
4 not know the amount of my bail. I have not been given any help in locating my relatives or
5 contacting a lawyer").

6 III THE MEMORANDUM OF UNDERSTANDING IS A BINDING AGREEMENT BETWEEN THE
7 DEFENDANTS AND THE PLAINTIFF CLASS WHICH MUST BE INTERPRETED AND ENFORCED
8 IN ACCORDANCE WITH ACCEPTED PRINCIPLES OF CONTRACT LAW.

9 On November 30, 1987 this court approved the parties' Memorandum of
10 Understanding Re: Compromise of Class Action: Conditions of Confinement (November 30,
11 1987). The MOU settled all class claims concerning conditions of confinement with the
12 exception of INS policies and practices concerning strip searches, which were litigated
separately.⁷

13 Because it is a settlement agreement, the MOU is interpreted as a contract and its
14 enforceability is governed by principles of contract law. *Miller v. Fairchild Indus.*, 797 F.2d
15 727, 733 (9th Cir. 1986); *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). Settlements are
16 also construed in accordance with principles of local law that apply to interpretation of
17 contracts generally. *Air Line Stewards v. Trans World Airlines*, 713 F.2d 319, 321 (7th Cir.
18 1983). In interpreting a settlement, "the entire agreement must be viewed as a whole." *Jeff*
19 *D. v. Andrus*, 899 F.2d 753, 760 (9th Cir. 1989) (emphasis added); see also Rest.2d, Contracts §
20 202(2). "The overriding purpose ... is to give effect to the mutual intent of the parties *at the*
21 *time the contract was made.*" *Id.* (emphasis added); Rest.2d, Contracts § 202(1).⁸

22
23 ⁷ On March 7, 1988, the court granted plaintiffs' motion for partial summary judgment and
24 held that the INS strip search policy violated the Fourth Amendment. *Flores v. Meese*, 681 F.
Supp. 665 (C. D. Calif. 1988).

25 ⁸ The principles of contract law discussed in this brief are the same under both California
26 law and federal common law. *Ferguson v. Flying Tiger Line, Inc.*, 688 F.2d 1320, 1322 n.2 (9th
27

1 In the MOU itself, the parties declared that it would thenceforth be an enforceable
2 agreement. MOU ¶ 1.⁹ Since entering into the settlement the INS has repeatedly
3 acknowledged its obligation to comply with the MOU, which it has variously characterized
4 as a "consent decree," Brief for Petitioners, Exhibit 170 at 32 n.31, Reply Brief for Petitioners,
5 Exhibit 171 at 2; a "binding and enforceable" settlement agreement, Transcript of
6 Proceedings, Exhibit 172 at 5; and a "binding judicial decree," Reply Brief for Petitioners,
7 Exhibit 171 at 1. The agency has itself conceded before the United States Supreme Court
8 that "[i]f the district court concludes that INS has violated the decree, it is fully empowered
9 to require INS to comply with it." Reply Brief for Petitioners, Exhibit 171 at 2. In sum, there
10 can be no doubt but that the "settlement agreement entitles [plaintiffs] to enforce
11 compliance with [its] requirements in the District Court..." 113 S.Ct. at 1439.

12 IV THE INS'S USE OF UNLICENSED JUVENILE HALLS AND OTHER SECURE DETENTION
13 FACILITIES VIOLATES THE FUNDAMENTAL LICENSING REQUIREMENT OF THE CONSENT
14 DECREE.

15 Before both the Ninth Circuit Court of Appeals and the United States Supreme Court
16 the INS repeatedly recognized its obligation under the settlement agreement to place

17 Cir. 1982).

18 ⁹ The parties agreed to meet regarding any failure to comply with the settlement prior to
19 plaintiffs' "refiling or otherwise renewing the claims alleged in their Third, Fourth, Fifth,
20 and/or Sixth Causes of Action." MOU ¶ 6. By its terms this provision would apply were
21 plaintiffs to reopen their original claims to request relief beyond that guaranteed by the
22 settlement and does not appear to require the parties' meeting prior to filing a motion to
23 enforce the settlement itself.

24 Nevertheless, attorneys for the plaintiffs have met twice with attorneys for the INS to
25 discuss their concerns. During these discussions, the INS has insisted that incarcerating
26 plaintiff class members in secure facilities that are not licensed to care for non-delinquent
27 minors is consistent with the consent decree. Exhibits 175 and 180. The INS has also
disputed plaintiffs' evidence that it is in violation of specific standards set out in the MOU.
Exhibit 175. As a result, plaintiffs are now compelled to seek enforcement of the MOU and
additional discovery to determine the scope of the INS's noncompliance and to monitor the
well being of class members.

1 plaintiff class members in "special child-care facilities" and "residential, foster or group care
2 programs" in which "[l]egal custody' rather than 'detention' more accurately describes the
3 reality of the arrangement." 113 S.Ct. at 1445 (citations omitted). See also Petition for a Writ
4 of Certiorari, Exhibit 169 at 6-7 (detained children do "not remain in an institutional facility"
5 but are placed in "'community based shelter care programs'"); *id.* at 21 (children in INS
6 detention enjoy "a detailed program designed to further every significant aspect of the
7 child's welfare"); Brief for Petitioners, Exhibit 170 at 10-13 and n.16 (children in INS custody
8 receive "comprehensive and professional care" and "'individual counseling sessions'"
9 uniquely suited to minors suffering post-traumatic stress syndrome); Reply Brief for the
10 Petitioners, Exhibit 171 at 9 ("the facilities in this case resemble shelter-care facilities much
11 more than they do highly restrictive secure facilities"); Transcript of Proceedings Before the
12 Supreme Court of the United States, October 13, 1992, Exhibit 172 at 7 (INS works with
13 "State-licensed child welfare organizations to place the children in ... homes, pending
14 location of a family member or the appointment of a guardian"; "restrictions on their
15 freedom are truly quite minimal"); *id.* at 10 ("the terms of custody here are really not
16 restrictive of liberty"); *id.* at 54 (children "remain in ... group home[s] ...").

16 The MOU sets out detailed standards for the housing and care of class members.
17 Most importantly, the decree specifically requires that all facilities in which class members
18 are housed

19 are appropriately *licensed* or can expeditiously meet the applicable state licensing
20 requirements for the provision of shelter care, foster care, group care and other
21 related services to *dependent* children.

21 MOU at 6, 15-16 (52 Fed. Reg. 15570; Description, 4-5) (emphasis added).

22 The emphasized terms ensure that the INS's treatment of children will comply with
23 minimally acceptable juvenile justice standards without repeated oversight by this Court.
24 Virtually every state juvenile justice scheme, including those of each of the states relevant
25 here, draws a clear distinction between detention conditions appropriate for minors who
26

1 have come under state custody because they have no one to supervise them—"dependent"
2 or "non-delinquent" children—and conditions appropriate for minors who have committed
3 criminal acts—"juvenile delinquents" or "youthful offenders." See Cal. Welf. & Institution
4 Code §§ 206 & 207; Arizona Revised Statutes § 8-226; Arizona Attorney General Opinion
5 No. I 82-037.¹⁰ See also Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §
6 5633(a)(12)(A) (requiring states to provide that "alien juveniles in custody, or such non-
7 offenders as dependent or neglected children, shall not be placed in secure detention
8 facilities or secure correctional facilities"). The MOU itself specifically embraces the
9 distinction between dependent and delinquent minors, categorizing class members as
10 "*dependent children without significant behavioral or psychological problems.*" MOU at 16
11 (emphasis added). This distinction reflects the sound principle of juvenile justice that
12 children who have not committed crimes should not be treated as delinquents lest they
13 become so.

14 In order to ensure that facilities meet these standards, California law demands that
15 facilities caring for dependent children be *licensed* under the Community Care Facilities Act.
16 Cal. H & S Code §§ 1500, *et seq.* The state has promulgated comprehensive regulations
17 implementing this Act and providing detailed standards for the operation of residential
18 facilities for dependent children. Cal. Admin. Code, title 22, § 80000 *et seq.* Juvenile halls, in
19 contrast, are prohibited from holding a license under this Act. Cal. Welf. & Inst. Code §
20 1505 (c).¹¹ California specifically prohibits the housing of dependent children in juvenile
21 halls and similarly secure facilities. Cal. Welf. & Inst. Code § 206.

22 ¹⁰ Even with respect to youth accused of criminal wrongdoing, California law requires a
23 law enforcement official to place the child in "the alternative which least restricts the
24 minor's freedom of movement, provided that alternative is compatible with the best
25 interests of the minor and the community." Cal. Welf. & Inst. Code § 626.

26 ¹¹ Juvenile halls are certified by the California Youth Authority (CYA) under Welf. & Inst.
27 Code § 210. CYA is a department of the Youth and Adult Correctional Agency, which has
authority over delinquent children. Cal. Welf. & Inst. Code §§ 1710 & 1712.

1 Similarly, under Arizona law the Department of Public Welfare is responsible for the
2 licensing of facilities for dependent children, Arizona Revised Statutes § 546-134-2.¹² Like
3 California law, Arizona expressly excludes detention facilities from the group care licensing
4 standards for foster children. Arizona Department of Economic Security, Group Care
5 Agency Licensing Standards 5-03-04b.

6 In short, it is clear that until very recently the INS heeded the distinction between
7 secure and non-secure facilities, agreeing that it should place plaintiff class members only in
8 facilities appropriate for dependent minors. The INS's early acknowledgment of the
9 consent decree's licensing requirement leaves no doubt but that it, along with plaintiffs,
10 fully understood and intended the settlement decree to bar its housing class members in
11 juvenile halls and like institutional settings. *See Crestview Cemetery Assn. v. Deiden*, 54 Cal.2d
12 744, 754 (1960) (acts of parties subsequent to execution of the contract and before any
controversy has arisen aid in determining contract's meaning).

13 As the declarations before the court demonstrate, however, the INS has now
14 abandoned that approach. As set out above, the INS has persistently locked class members
15 in secure institutions in which conditions and treatment make a grim mockery of the INS's
16 "specialized child-care facility" and "community-based shelter-care program" euphemisms.
17 Many of these minors have now been held for nearly five months in such unlicensed
18 institutions. *See, e.g.,* Plaintiffs' Eleventh Set of Exhibits, July 9, 1993, at 5 ("I am locked in a
19 big room with 14 other Chinese girls. There is no privacy... We can't see outside"); *id.* at 6
20 ("staff members threaten to handcuff us if we speak too loud"); *id.* at 9 ("I have spent almost
21 two months her at the Florence detention center. It is miserable living here. ... I spend most
22 of my day locked in my room. The door is always locked. There is nothing in the room

23
24 ¹² By contrast, the Arizona Department of Youth Treatment and Rehabilitation establishes
25 standards for secure detention facilities holding youthful offenders. Arizona Revised
26 Statutes § 41 - 2801-2832. Along with the juvenile court, the Department inspects and
27 supervises these facilities. Arizona Revised Statutes § 8-227.

1 except beds and a toilet"); *id.* at 10 ("Every time I leave my room, a guard frisks me"); *id.* at
2 12 ("Here at Los Padrinos, I am locked up most of the day, except when I am allowed
3 outside for exercise. I have been to the Immigration Court four times. every time I go, I am
4 handcuffed during the entire trip to the court and then also on the way back. I feel like a
5 prisoner. I am so unhappy and upset, that my skin has broken out into a rash. I cry almost
6 every night"); *id.* at 15 (In my country I was a junior high school student, and I was always
7 considered a good person. ... [In INS custody] I feel like a bird in a cage. I am depressed
8 and I feel very locked-in. I would like very much to go outside and be free"); *id.* at 17 ("At
9 all the detention center where I have been detained [by the INS], I have had to wear a jail
10 uniform and the center is locked and has wires and fences on the outside. ... I am very sad
here...").

11 The INS's use of unlicensed institutions to jail class members cannot and should not
12 be occurring under a binding settlement that embraces the fundamental precept of juvenile
13 justice: Children who have been neither accused nor convicted of crime or delinquency
14 must not be consigned to lock-ups designed for and primarily occupied by youthful
15 offenders. The settlement's licensing requirement is a clear, objective measure by which to
16 determine whether a given facility is appropriate or not. The INS's recent flaunting of the
17 mandatory licensing requirement is a plain violation of the settlement decree that should
18 stop now.

19 V DETENTION FACILITIES NOW BEING USED BY THE INS TO HOUSE PLAINTIFF CLASS
20 MEMBERS FAIL TO MEET STATE STANDARDS FOR THE CARE OF DEPENDENT CHILDREN
21 AND THE EXPRESS REQUIREMENTS OF THE CONSENT DECREE.

22 Even were the settlement to permit defendants to detain children in unlicensed
23 facilities, the consent decree would still require those facilities to meet state standards for
24 the housing of dependent children. MOU at 7 ("Shelter care services shall be provided in
25 accordance with applicable state child welfare statutes and generally accepted child welfare
26 standards, practices, principles and procedures"); *id.* at 14 (same); *id.* at 18 (same). The
27

1 MOU would also require that such facilities satisfy the various supplementary standards set
2 out in the consent decree itself. *Id.* at 2. The facts before the court show that current
3 conditions in INS detention satisfy neither set of standards.¹³

4 A Prison-like treatment and excessive restraints upon liberty are permissible
5 under neither apposite state laws nor the MOU.

6 The MOU declares that class members may be housed only in facilities maintaining
7 "an open type of setting without a need for extraordinary security measures." MOU at 14.
8 State standards, which the MOU specifically incorporates, eliminate any doubt about the
9 meaning of this provision.

10 In California, dependent children must be placed in a "nonsecure" facility. Cal. Welf.
11 & Inst. Code § 206.¹⁴ The California Community Care Facilities Act provides in its licensing
12 requirements that residents have the right "[n]ot to be locked in any room, building, or
13 facility premises by day or night." Cal. Admin. Code, title 22, § 80072 (a)(7).¹⁵ *See also* Cal.

14
15 ¹³ The failure of the facilities to meet requirements for the care of dependent children is not
16 surprising given that the facilities in which the INS is placing class members are designed
17 for children who have committed delinquent acts. These facilities do not usually have to
18 concern themselves with meeting the standards for the care of dependent children.
19 However, even assuming, *arguendo*, that the consent decree permits the INS to house
20 children in facilities that are not licensed for the care of dependent children, the agency
21 must still ensure that the standards applicable to caring for dependent children are being
22 met.

23 ¹⁴ "The term 'nonsecure facility' means a facility that is not characterized by the use of
24 physically restricting construction, hardware, and procedures and which provides its
25 residents access to the surrounding community with minimal supervision." Cal. Welf. &
26 Inst. Code § 206. In contrast, "secure" means any "facility which is designed and operated
27 so as to ensure that all entrances to, and exits from, the facility are under the exclusive
control of the staff of the facility...or which relies on locked rooms and buildings, fences, or
physical restraints in order to control behavior of residents." *Id.*

¹⁵ The regulation explains that "[t]he licensee shall not be prohibited...from locking exterior
doors and windows or from establishing house rules for the protection of clients *provided the
clients are able to exit the facility.*" Cal. Admin. Code, title 22, § 80072 (7)(A) (emphasis
added).

1 Admin. Code, title 22, § 87072 (a)(6) (same right for children in foster family homes). State
2 licensing requirements also prohibit locking a child in a room even as a means of discipline,
3 Cal. Admin. Code, title 22, § 84072.1, and prohibit the use of "any restraining device." Cal.
4 Admin. Code, title 22, § 80072 (a)(8).

5 Similarly, Arizona law permits physical restraint only when a child becomes
6 dangerous, prohibits solitary confinement, and allows room confinement for no more than
7 24 hours. Arizona Dept. of Economic Security, Group Care Agency Licensing Standards,
8 R6-5-7409.D.5.c.

9 As the declarations before this Court show, the INS detains class members in locked
10 rooms in locked facilities having "high fences with barbed wire..." E.g. Exhibit 158 at 2-3.
11 Like criminal defendants, it places children in handcuffs when they leave the detention
12 facilities for court appearances. E.g. Exhibit 143 at 1; Exhibit at 144 at 1; Exhibit 146 at 1.
13 Such restraints on a child's liberty cannot be squared with the INS's representations before
14 this Nation's highest Court, any apposite state law, or, *a fortiori*, the settlement agreement
15 itself. The INS must not be permitted to continue incarcerating class members in these or
16 similar facilities.

17 But the INS's flaunting of child welfare standards do not stop with the generally
18 excessive restraints on liberty. In addition, children are subjected to a series of rules,
19 regulations, and disciplinary practices entirely inappropriate for non-delinquent children.
20 The include the following:

- 21 **1 Non-delinquent children must not be made to wear prison garb or**
22 **deprived of writing materials and other common personal**
23 **possessions**

24 Under California licensing standards, a non-delinquent child must "be accorded
25 dignity in his/her personal relationships with staff and other persons," Cal. Admin. Code,
26 title 22, § 80072 (a)(1), have the right to "possess and use his/her own personal items," *id.*, §
27 84072 (a)(9), including the right to wear his or her own clothes. *Id.*, § 84072(a)(6). Arizona

1 law likewise requires that dependent children have access to their own clothing and
2 personal items. Arizona Dept. of Economic Security, Group Care Agency Licensing
3 Standards, R6-5-7409.D.6.

4 The declarations demonstrate that class members are routinely required to wear jail-
5 like clothing and are not allowed to keep their personal possessions. E.g., Exhibit 145 at 1
6 ("At all the detention centers where I have been detained, I have had to wear a jail
7 uniform"); Exhibit 161 at 3; Exhibit 164; Exhibit 159 at 2. These restrictions, however
8 suitable they may be for youthful offenders, have no place in "specialized-child care
9 facilities" where "restrictions on their freedom are truly quite minimal." Transcript of
10 Proceedings Before the Supreme Court of the United States, October 13, 1992 (argument of
INS), Exhibit 172 at 10.

11 2 Requiring class members to eat, sleep, attend class, bathe, and
12 recreate in large barracks-like quarters violates the MOU.

13 California law requires that facilities for dependent children place no more than two
14 children in a bedroom and that the facilities not use "room[s] commonly used for other
15 purposes" as bedrooms. Cal. Admin. Code, title 22, § 84087 (b)(1)&(4).

16 Arizona standards similarly suggest that facilities place only a few children in each
17 bedroom. The regulations require that each bedroom shall have 60 square feet of floor space
18 per child and state that "[e]ach child should be able to feel that his bedroom is his own
19 room." Arizona Dept. of Economic Security, Group Care Agency Licensing Standards,
20 R6-5-7409.G.7.b. & d.

21 Despite these standards, the INS routinely places class members in large, locked
22 barracks within secure juvenile halls. E.g. Exhibit 150 at 1 & 2 ("The children are kept
23 within the parameters of one large room. At one side of the room was a visible bathroom
24 area. Metal bunk beds lined two other sides of the room.... Approximately thirty children
25 were being detained in this room on July 1, 1993. These children have no privacy because
26 they are all detained in one room."); Exhibit 152 at 1 ("Here I live in a room with about 25
27

1 others."); Exhibit 141 at 3 ("I am locked in a big room with 14 other Chinese girls."). These
2 living and sleeping arrangements clearly violate state standards governing residential
3 facilities for dependent children and, *a fortiori*, the parties' binding settlement agreement.

4 3 Plaintiff class members should not be subjected to disciplinary
5 practices suited to youthful offenders

6 Under California licensing standards, dependent children have the right "[t]o be free
7 from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule,
8 coercion, threat mental abuse, or other actions of a punitive nature." Cal. Admin. Code, title
9 22, § 80072 (a)(3). Moreover, licensing regulations strictly control any disciplinary action
10 through written standards and procedures. *Id.*, § 840721.

11 Arizona law similarly places limits on disciplinary action. "Corporal punishment, or
12 other cruel punishment, will not be permitted in group care agencies. Punishment which is
13 humiliating or degrading shall not be used." Arizona Dept. of Economic Security, Group
14 Care Agency Licensing Standards, R6-5-7409. D.5.b.

15 Despite these standards, class members have reported enduring harsh rules and
16 disciplinary practices. For example, a declaration states:

17 On June 27, a girl was talking too loud the staff thought, so the staff took away her
18 sheets and mattress and pillow. She hit her head against the wall because she was so
19 upset. She had to sleep the whole night on the metal bed frame on the top bunk. She
20 hit her head again against the bed post, which is metal, and then she passed out. A
21 half hour later, the nurse came to look at her.

22 Exhibit 141 at 4. See also *Id.* ("staff members threaten to handcuff us if we speak too loud").

23 As has been seen, class members are also routinely subjected to solitary confinement,
24 handcuffing, threats and other forms of discipline and restraint geared toward delinquent
25 minors. State rules proscribe such discipline in facilities for dependent minors, where
26 physical restraint is limited to those situations where a child becomes dangerous. Solitary
27 confinement is not permitted, and room confinement cannot exceed 24 hours. *E.g.*, Arizona

Standards, R6-5-7409.D.5. INS disciplinary standards regularly violate all of these restrictions.

C The INS's failure to assist children in its custody understand the legal proceedings against them cannot be squared with the agency's responsibilities under the MOU or its obligations as a custodian purporting to act *parens patriae*.

The settlement decree requires defendants to provide—
all detained minors with specific information regarding the availability of free legal assistance and ... [to advise] each minor of their right to be represented by an attorney, right to a deportation or exclusion hearing, right to apply for political asylum, or right to request voluntary departure... *Recipients shall establish procedures to assist each minor in making confidential contact with attorneys or their authorized representatives.*"

MOU at 21 (emphasis supplied).

Declarations of class members held at various detention facilities establish that the INS does very little to provide children in its custody any meaningful help in locating legal counsel or in understanding the proceedings against them. Non-English-speaking class members are left to their own devices in understanding English-only forms that are provided to them as a mere formality. In effect, children are spending weeks or months in under the INS's "care" without the slightest idea of what is going on in their legal cases or how to go about defending themselves. The settlement clearly requires more of the INS.

D Random memorization of English vocabulary falls well short of the adequate education guaranteed by both the MOU and apposite state laws.

The MOU mandates that class members receive—
an education program in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and *secondarily* on English Language Training (ELT). Basic academic areas should

1 include *Science, Social Studies, Math, Reading, Writing and Physical Education*.

2 Services are to be provided by a teacher certified by the State Department of
3 Education. The teacher shall assess each client in order to determine individual
4 educational competency levels. This assessment may determine the need for
5 bilingual classes. Students are usually separated into groups according to their
6 educational competency level rather than by chronological age.

7 MOU at 20 (emphasis added).

8 California law requires that dependent children in group homes participate in
9 "[e]ducational activities, including attendance at an educational program in accordance
10 with state law, and supervision of afterschool study." Cal. Admin. Code, title 22, § 84079
11 (a)(4). *See also* Cal. Admin. Code, title 22, § 87079 (a)(4) (requiring the licensee to provide
12 "[e]ducation through enrollment in public, private or special schools and assistance with
13 school work"); Arizona Dept. of Economic Security, Group Care Agency Licensing
14 Standards, R6-5-7409.D.2 (a) (requiring "caretakers to see that the child attends school as
15 required by law. If a child is excluded from public school or cannot benefit from regular
16 school attendance, special education or training programs shall be sought and, whenever
17 possible, provided for the child").

18 These standards unequivocally demand that youngsters receive educational
19 instruction in all basic subjects and that such instruction be geared to an individual child's
20 level of competency. The evidence, however, shows that the INS's educational programs
21 consist of little more than group memorization of random English vocabulary. *See e.g.*
22 Exhibit 141 at 1-2 ("We don't have regular education program. Only once a week, or twice
23 sometimes, a person comes to show us pictures in English and we memorize what the
24 picture is called in English"); Exhibit 146 at 1(same); Exhibit 148 at 2 ("The only education I
25 get here is English lessons"); Exhibit 160 at 1 ("Since I arrived here I have received no
26 educational instruction in Spanish. We do not study any subjects except English
27 vocabulary"). INS educational programs ignore "individual competency levels" entirely:

1 there are no "grades" or other grouping of class members who sharing similar levels of
2 educational attainment and instructional needs.

3 **E Recreation during INS detention falls short of both state and settlement**
4 **standards.**

5 The MOU requires that a facility's—
6 recreation and leisure time plan shall include at least one hour per day of large
7 muscle activity and one hour of structured leisure time activities (not including
8 television). Activities should be increased to a total of three hours on days school is
9 not in session. The recreation program shall be organized and supervised by a
10 trained staff member.

11 A variety of fixed and movable equipment will be provided for each recreation area.
12 Examples of the variety of equipment that should be available include a basketball,
13 volleyball, softball, tetherball, punching bag and soccer ball.

14 MOU at 20.

15 Arizona law requires residential facilities to plan recreational activities, including
16 opportunities to participate in neighborhood, school, and other community groups and
17 opportunities to invite friends to the facility and to visit in the homes of friends. Arizona
18 Dept. of Economic Security, Group Care Agency Licensing Standards, R6-5-7409.D.2.
19 California law also requires that dependent children in group homes have a variety of
20 indoor and outdoor recreational activities. Cal. Admin. Code, title 22, § § 84079, 87079.

21 The INS provides clearly inadequate indoor and outdoor recreational activities for
22 class members. Permitting class members outside twice a day for only one-half hour during
23 which there is no organized recreational activity, *e.g.*, Exhibit 141 at 2, falls well short of
24 child welfare standards. Indoor recreation, meanwhile, is little more than a euphemism for
25 idleness, consisting watching television or other passive activities wholly superfluous to a
26 child's long-term physical and emotional development. *See, e.g.*, Exhibit 174 at 433 (1st
27 recreation period: "minors played cards & put puzzles together"; second recreation period,

1 “minors watched a video”); *id.* at 435 (“inside rec[reation] was the usual TV and video”).

2 The INS’s failure to provide class members with any regular, structured recreation, indoors
3 or out, falls well short of these mandatory standards. The agency should begin providing
4 children in its custody with appropriate recreation now.

5 **F Children in INS custody receive inadequate assessment, counseling, and**
6 **client service planning, if they receive such services at all.**

7 The MOU mandates a comprehensive assessment of each child within ten working
8 days of admission and a comprehensive and realistic individual client service plan for each
9 child. The plan must meet the needs of the child and identify the staff members responsible
10 for specific activities. MOU at 22-23.

11 Under California law, facilities for dependent children must employ social work staff
12 to develop, and periodically update, an “*individual needs and services plan for the child.*”
13 Cal. Admin. Code, title 22, § 84068.2 (emphasis supplied). Arizona similarly requires
14 facilities to “employ a caseworker, social worker, or counselor at least on a part-time basis”
15 to develop an individualized plan of care and treatment, and to provide appropriate care.
16 Arizona Dept. of Economic Security, Group Care Agency Licensing Standards,
R6-5-7409.A.2.b.ii(1); R6-5-7409.D.1.a; R6-5-7409.D.2.a.

17 The MOU requires that class members receive a program including—
18 at least one (1) individual counseling session per week conducted by trained social
19 work staff with the specific objectives of reviewing client progress, establishing new
20 short term objectives and addressing both the developmental and crisis related needs
21 of each minor. Recipients should anticipate many “emergency” individual
22 counseling sessions. Programs must conduct group counseling sessions at least twice
a week.

23 MOU at 19. Programs must also provide information about acculturation and adaptation
24 which includes information about health and inter-personal skills. MOU at 21.

25 Once again, the evidence shows little correspondence between these mandatory
26
27

standards and the reality of INS detention. Exhibit 160 at 2 ("I have received no form of psychological or other counseling since being arrested by the INS"); *compare* Exhibit 162 at 4 (counseling services provided only upon "request of any individual minor ... or as staff see a need for a psychological referral").

VI CONCLUSION

The INS's agreement to treat class members in accordance with state standards regulating the treatment of dependent children obligates the agency to provide children in its "protective" custody appropriate services, staff, and physical environment. This obligation did not suddenly evaporate when the INS achieved a favorable ruling in the Supreme Court. To the contrary, the Court emphasized that whether the INS's release policy is so much as "facially" constitutional depends the agency's living up to the obligations imposed by the MOU. Hence, those obligations remain in effect as long as the agency detains children. Ensuring the agency's compliance with the MOU requires a court order barring the INS from incarcerating class members in juvenile halls and other facilities that are not licensed for the care of dependent minors. Alternatively, the Court should order the INS to comply from now on with the specific state standards protecting non-delinquent minors as well as those standards expressly set out in the MOU.

/ / /

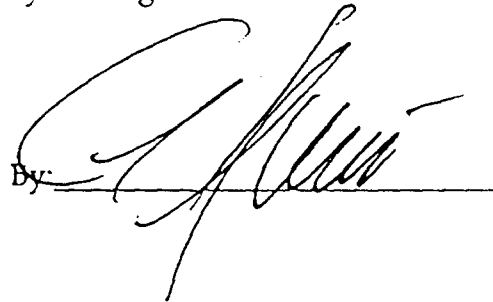
1 For the foregoing reasons, an order in the form proposed by plaintiffs herewith
2 should issue requiring the INS to comply with the MOU and to permit reasonable
3 monitoring of conditions prevailing in facilities housing class members.

4 Dated: November 15, 1993.

CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey

7 NATIONAL CENTER FOR YOUTH LAW
8 James B. Morales
Alice Bussiere

10 ACLU FOUNDATION OF SOUTHERN
11 CALIFORNIA
Paul Hoffman
12 Mark Rosenbaum
Sylvia Argueta

13
14 By: 
15

17 By: _____
18 Attorneys for Plaintiffs

19 ///

PROOF OF SERVICE BY MAIL

I, Geoff McNeely, declare and say as follows:

1. I am over the age of eighteen years and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 South Occidental Boulevard, Los Angeles, California 90057, in said county and state.

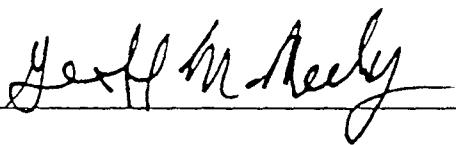
2. On November 15, 1993, I served the within NOTICE OF MOTION AND MOTION TO ENFORCE CONSENT DECREE on defendants in this proceeding by placing a true copy thereof in a sealed envelope addressed to their attorneys of record as follows:

Mr. George Wu
Assistant U.S. Attorney
300 N. Los Angeles St. #7516
Los Angeles, CA 90012

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the mail at Los Angeles, California; that there is regular delivery of mail between the place of mailing and the place so addressed.

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

Executed this 15th day of November, 1993, at Los Angeles, California.



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