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16
17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 JENNY LISETTE FLORES; *et al.*,

20 Plaintiffs,

21
22 v.

23 ERIC H. HOLDER, JR., Attorney
24 General of the United States; *et al.*,

25 Defendants.
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Case No. CV 85-4544-DMG

JOINT STATUS REPORT

1 In accordance with the Court's July 22, 2016 Minute Order, the parties
2 submit the following status report regarding the parties' meet and confer efforts
3 related to discovery. The parties remain at odds in many respects with regard to
4 what discovery is appropriate at this stage of the proceedings.
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6 **Issue One:**

7 **Plaintiffs' Position:**

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9 A further meeting to explore settlement of Plaintiffs' allegations regarding
10 CBP conditions with Judge King is scheduled for Aug 9, 2016. Based on the
11 exchange of positions to date, it is uncertain whether a settlement of CBP
12 conditions will be reached. Plaintiffs therefore wish to proceed with depositions of
13 the following CBP declarants regarding Defendants' claim that "CBP has
14 implemented standards and procedures that ensure compliance with the agreement,
15 complies with those standards and procedures, and adequately monitors
16 compliance with those standards and procedures" (Defs' Opposition at 3-27):
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18 Executive Director of the Office of Field Operations, Todd Hoffman, Ex. 4; Acting
19 Chief, Strategic Planning and Analysis, Justin Bristow, Ex. 3; Chief Accountability
20 Officer, Sean Mildrew, Ex. 5; Deputy Assistant Commissioner, Carla Provost, Ex.
21 15; Chief Patrol Agent, Laredo, Mario Martinez, Ex. 7; Chief Patrol Agent, Rio
22 Grande Valley, Manuel Padilla Jr., Ex. 10; Chief Patrol Agent, Tucson, Paul
23 Beeson, Ex. 6; Tucson OFO, William Brooks, Ex. 13; Director, San Diego OFO,
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1 Pete Flores Romero, Ex. 11; Chief Patrol Agent, El Centro, Rodney Scott, Ex. 9.¹

2 Plaintiffs wish to conduct these depositions after the planned meeting with Judge
3 King on August 9 and will limit deposition questions to issues not resolved through
4 settlement. Plaintiffs will respond to Defendants' proposals prior to a meet and
5 confer scheduled for August 1, 2016.
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8 Defendants' Position:

9 With regard to the issue related to conditions in U.S. Customs and Border
10 Patrol ("CBP") facilities, Defendants believe that so long as settlement talks
11 continue, discovery on this issue should remain stayed as indicated by the Court on
12 July 22, 2016. CBP remains interested in continuing the settlement talks and
13 reaching an agreement. Defendants sent a draft settlement agreement to Plaintiffs
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17 ¹Defendants contend that depositions of CBP declarants based in Arizona and
18 California are unnecessary because Plaintiffs' declarations do not address
19 conditions in these locations. Since Defendants provided declarations from these
20 officials and rely upon them in their opposition to the enforcement motion,
21 Plaintiffs believe they should have the opportunity to depose these declarants.
22 Defendants also argue that Plaintiffs should not be permitted to depose
23 Defendants' declarants who claim that they monitor compliance with the
24 Settlement and this Court's August 2015 remedial Order because the enforcement
25 motion does not challenge Defendants' required monitoring of compliance under
26 Paragraph 28. The enforcement motion argues that "[t]his litigation's history
27 underscores that the mandated rights of vulnerable children will be best protected
28 if the Government's behavior is monitored." Motion at 25. Plaintiffs' motion
explains in detail why appointment of a Special Monitor is needed. *Id.* at 22-25.
Defendants elected to file several declarations claiming that Defendants are
adequately monitoring compliance with the Settlement. Plaintiffs have no way of
determining the accuracy of these declarations without deposing the declarants
who make claims regarding monitoring.

1 on July 19, 2016. Plaintiffs have provided no response to that draft, except that in
2 an email sent on July 28, 2016 they stated for the first time that they do not believe
3 these issues will settle. If this is truly the case then the parties should determine if
4 talks should be terminated (and if the meeting of the parties currently set for
5 August 8, as well as the mediation scheduled before Judge King on August 9,
6 should be cancelled), so as not to waste the time of the parties or the Court.
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9 If settlement talks are terminated and discovery goes forward, Defendants'
10 position is that the disputed issue of fact for the Court to decide will be whether
11 Plaintiffs have established that the conditions at any CBP facilities violate the
12 Agreement.² Defendants intend to seek to depose a number of Plaintiffs'
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16 ² Plaintiffs state that they would like to depose Defendants' witnesses who
17 provide testimony in support of Defendants' assertions that they are monitoring
18 their compliance with the Agreement in accordance with the Court's August order
19 (specifically Executive Director of the Office of Field Operations, Admissibility
20 and Passenger Programs, CBP - Todd Hoffman, Ex. 4; Acting Chief, Strategic
21 Planning and Analysis, Border Patrol, CBP - Justin Bristow, Ex. 3; Chief
22 Accountability Officer, Office of Administration, CBP - Sean Mildrew, Ex. 5; and
23 Deputy Assistant Commissioner, Office of Professional Responsibility, CBP -
24 Carla Provost, Ex. 15). However, Plaintiffs' motion raises no allegation that
25 Defendants are not adequately conducting such monitoring, thus the adequacy of
26 CBP's monitoring is not a disputed issue of fact. In response to Plaintiffs'
27 allegations that conditions in CBP facilities breach the Agreement, Defendants
28 argued that Plaintiffs are re-litigating the issue of the conditions in CBP facilities,
when in fact the Court already resolved that factual issue in favor of Plaintiffs in its
July and August orders, and ordered that as a remedy Defendants should monitor
their own compliance. Defendants' factual assertions about the steps they are
taking to comply with the Court's order by monitoring compliance at all CBP
facilities are not disputed by any of Plaintiffs' evidence, and therefore should not

1 declarants, including class members, parents, and Plaintiffs' counsel Peter Schey,
2 who submitted declarations concerning the conditions at certain CBP facilities. To
3 facilitate these depositions, Defendants have sent to Plaintiffs a list of twenty-one
4 declarants whom they wish to depose. Defendants have asked Plaintiffs to provide
5 information so that Defendants can contact these declarants or to otherwise state
6 when they will make these declarants available for deposition.
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9 Defendants also are willing to facilitate the depositions of those CBP
10 declarants who address – in response – the conditions at those same facilities about
11 which Plaintiffs' declarants have submitted testimony (specifically Chief Patrol
12 Agent, Laredo - Mario Martinez, Ex. 7; Chief Patrol Agent, Rio Grande Valley -
13 Manuel Padilla Jr., Ex. 10). These are the only witnesses who provide testimony
14 regarding disputed issues of fact that the Court must resolve related to the
15 conditions at those facilities.
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19 Plaintiffs nonetheless request to depose several additional individuals who
20 provide testimony regarding CBP facilities about which none of Plaintiffs'
21 declarants has provided any evidence (Chief Patrol Agent, Tucson, CBP - Paul
22 Beeson, Ex. 6; Tucson OFO, CBP - William Brooks, Ex. 13; Director, San Diego
23 OFO - Pete Flores Romero, Ex. 11; Chief Patrol Agent, El Centro, CBP - Rodney
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27 be the subject of further discovery. As the Court noted on July 22, 2016, Plaintiffs
28 should not be allowed to use this discovery period to obtain further evidence in
support of their already-filed motion.

1 Scott, Ex. 9). Unless the Court states an intent to make factual determinations
2 about the conditions at CBP facilities for which Plaintiffs have presented no
3 evidence, Defendants dispute that such depositions are necessary.
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5 **Issue Two:**

6 **Plaintiffs' Position:**

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8 The enforcement motion asserts that Flores class members are routinely not
9 advised of their rights. Defendants' opposition claims that: "Plaintiffs are incorrect
10 that there is no policy or practice in place to ensure that rights advisals are
11 provided to juveniles ... Defendants acknowledge that the precise notice provided
12 in Exhibit 6 to the Agreement is not provided to juveniles in family residential
13 centers. However ... ICE is willing to provide such notice and is working to
14 implement a procedure to provide the notice to accompanied minors at ICE family
15 residential centers. See Hester Decl. ¶ 10; de la Garza Decl. ¶ 10; Reid Decl. ¶ 11."
16
17 To determine the extent to which the required notices have been or are now being
18 provided to class members, plaintiffs seek to depose Ass. Director, Field
19 Operations, ERO, John Gurule; Executive Director of the Office of Field
20 Operations, CBP, Todd Hoffman; Acting Directorate Chief, Strategic Planning and
21 Analysis, Justin Bristow, Chief Accountability Officer, Office of Administration,
22 Sean Mildrew; Deputy Asst. Commissioner, Office of Professional Responsibility,
23 Carla Provost; Philadelphia Field Office, ERO, Berks - Joshua Reid; ERO, Karnes,
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1 Juanita Hester; ERO, Dilley, Valentin de la Garza; Chief Patrol Agent, Laredo,
2 Mario Martinez; Chief Patrol Agent, Rio Grande Valley, Manuel Padilla Jr.; Chief
3 Patrol Agent, Tucson, Paul Beeson; Tucson OFO, William Brooks; Director, San
4 Diego OFO, Pete Flores Romero; Chief Patrol Agent, El Centro, CBP - Rodney
5 Scott. Plaintiffs seek to depose these agents with regards other matters in which
6 factual disputes exist as mentioned below.
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9 Defendants' Position:

10 The Agreement specifically requires Defendants to give three rights
11 advisals: (1) I-770; (2) list of legal counsel; (3) Notice of Right to Judicial Review.
12 The declarations in support of Plaintiffs' motion on this issue broadly state that the
13 declarants did not receive notice of their "rights under *Flores*," but do not clearly
14 identify which specific notices required under the Agreement they allege that
15 Defendants are not providing.
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19 Defendants' declarants state that Defendants provide (1) and (2) to all class
20 members. Defendants acknowledged that at the time of the motion they did not
21 provide (3) to minors at U.S. Immigration and Customs Enforcement ("ICE")
22 family residential centers ("FRCs"), but that they would take steps to do so. All
23 those currently housed at ICE FRCs have been served with this Notice since July
24 27, 2016 (to the extent this is a new factual development, Defendants are willing to
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1 submit to Plaintiffs and the Court a sworn declaration to this effect, along with a
2 copy of the notice that is being provided).

3 Plaintiffs have not explained whether they specifically dispute that
4 Defendants are providing these notices, and if so on what evidence/declarations
5 from their motion they rely for their position. Plaintiffs do not appear to dispute
6 that Plaintiffs are providing the I-770 and the list of legal counsel. Plaintiffs state
7 that they seek to conduct a number of depositions in order to determine if the
8 “Notice of Right to Judicial Review” is, in fact, now being provided as Defendants
9 contend. Defendants are willing to facilitate the depositions of Assistant Field
10 Office Director Joshua Reid (Berks), Assistant Field Office Director Juanita Hester
11 (Karnes), and Assistant Field Office Director Valentin de la Garza (Dilley) on the
12 question of whether Defendants are now providing the Notice of Right to Judicial
13 Review at its ICE FRCs. The other declarants whom Plaintiffs request to depose on
14 this issue have no knowledge with regard to the question of whether this Notice of
15 Right to Judicial Review is being provided to juveniles at ICE FRCs.
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22 **Issue Three:**

23 **Plaintiffs’ Position:**

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25 Defendants do not make and record continuous efforts to release children in
26 accordance with the Flores Settlement, including Paragraphs 14, 18, 19 and 23,
27 either before or after credible fear determinations have been made. To determine
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1 the nature and timing of defendants' efforts to release class members, Plaintiffs
2 seek to depose Defendants' declarants listed under Issue #2 above. At minimum
3 Plaintiffs seek to depose Hester, Garza and Gurule whose declarations Defendants
4 cite in their opposition with regards this claim. Plaintiffs also seek production of
5 those parts of class members' ICE "A" files that show continuous efforts to release
6 class members in accordance with the Flores Settlement, whether before or after
7 Defendants make a credible fear determination. Plaintiffs would limit such a
8 request for records to 20 class members who executed declarations or whose
9 mothers executed declarations stating that they had been detained for more than ten
10 days and to the best of their knowledge no efforts were being made to release or
11 place class members under the Flores Settlement. In the event Defendants clearly
12 stipulate in writing that no efforts are made and recorded to release class members
13 prior to a credible fear determination and that after positive credible fear
14 determinations efforts at release are limited to releasing family units, then
15 resolution of this issue may be largely a matter of law and discovery on this issue
16 possibly unnecessary.³

24 ³ Defendants argue below that "In Defendants' opposition, Defendants do not
25 contend that they question children about other relatives to whom class members
26 could be released, but instead argue that they 'make immediate and continuous
27 efforts to release *family units* once their eligibility for release has been
28 established." Opposition at 35 (emphasis added)." However, Defendants do not
address whether their efforts to determine "eligibility for release" are made as

Defendants' Position:

Plaintiffs' declarants with regard to this issue assert that they were not questioned about other relatives in the United States to whom class member children could be released. Plaintiffs argue that this violates the Agreement. In Defendants' opposition, Defendants do not contend that they question children about other relatives to whom class members could be released, but instead argue that they "make immediate and continuous efforts to release *family units* once their eligibility for release has been established." Opposition at 35 (emphasis added). Plaintiffs have not submitted evidence that disputes this assertion.

Thus, the legal issue for resolution by the Court is whether – as Plaintiffs assert – the Agreement requires Defendants to make and record efforts to release minors from its custody separately from their accompanying parent where the family unit has not established any eligibility for release (i.e.: (1) in situations of an influx where the family unit has not yet established reasonable or credible fear; (2) where the family unit has a final order of removal and the parent has been determined to be a flight risk; (3) where the family unit is in mandatory detention; or (4) where the adult is properly in detention under the Immigration and

expeditiously as possible, nor do they explain whether eligibility for release is determined taking into account the terms of the Flores Settlement, nor do they explain whether the explore placement under Paragraph 19, nor do they explain how they process class members for release if the mother is deemed a flight risk or not amenable to release for any other reason.

1 Nationality Act and the minor is being held with the adult parent for their own
2 safety pursuant to Paragraph 14 of the Agreement). There is not a disputed issue of
3 fact that needs resolution by the Court in order to decide this question, and so no
4 depositions are necessary. Defendants should not need to provide additional
5 stipulations of fact related to factual issues that are not disputed, and that the Court
6 is not being asked to resolve. Defendants also object to Plaintiffs' demand for
7 document discovery of 20 A-files as inconsistent with the Court's statements
8 regarding discovery at the status conference on July 22, 2016.
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12 **Issue Four:**

13 **Plaintiffs' Position:**

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15 Minors at ICE FRC's are housed with unrelated adults. If Defendants
16 stipulate that they are housing accompanied minors with unrelated adults at
17 Karnes, Dilley and Berks, whether this violates the Flores settlement appears to be
18 largely a question of law although plaintiffs would like to depose Hestor, Garza
19 and Reid who are all cited in Defendants' opposition on this issue, and Ass.
20 Director, Field Operations, ERO, John Gurule who likely possesses information
21 regarding why class members are detained with unrelated adults and ICE's policies
22 regarding such commingling of class members with unrelated adults and the
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1 agency's failure to contract with any facilities that could house class members
2 under Paragraph 19 of the Flores Settlement.⁴

3 Defendants' Position:
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5 For this issue, Plaintiffs rely on declarations of minors who allege that they
6 are housed with unrelated adults at ICE FRCs. Defendants do not dispute that they
7 house accompanied minors with their parents at ICE FRCs, and that multiple
8 family units are housed together at the facilities. This is not a violation of the
9 Agreement, because the prohibition in the Agreement that Plaintiffs allege is
10 violated by Defendants actions is clearly stated in the agreement to apply only to
11 unaccompanied minors, and to apprehension initially following arrest (in CBP
12 custody). The question for the Court to decide is what the Agreement requires with
13 regard to housing minors and their parents at ICE FRCs. This is a legal issue that
14 the Court can decide without resolution of any factual matters, and so no
15 depositions are necessary on this issue. Again, Defendants should not need to
16 provide additional stipulations of fact related to factual issues that are not disputed,
17 and that the Court is not being asked to resolve.
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25 ⁴ Below Defendants state that “Defendants do not dispute that they house
26 accompanied minors *with their parents* at ICE FRCs.” (Emphasis added).
27 Defendants could reduce the need for discovery on this issue by simply
28 acknowledging that they house accompanied minors *with unrelated adults* at ICE
FRCs.

1 **Issue Five:**

2 **Plaintiffs' Position:**

3 The sworn declarations of numerous class members or their mothers declare
4 that some class members have been detained for weeks or months in secure and
5 unlicensed facilities that violate the Flores Settlement. To the extent that
6 Defendants stipulate that ICE has detained and continues to detain class members
7 in secure and unlicensed facilities for weeks or sometimes for months either while
8 a credible fear determination is being made or following such determinations if
9 they are negative or for other reasons if the determination is positive, then
10 depositions on this issue may not be necessary as the issue to be resolved would
11 largely be one of law. However, Plaintiffs would like to depose ICE employees
12 Hestor, Garza, Reid and Gurule (also subject to deposition on other issues
13 addressed above) who possesses information regarding why class members are
14 detained for weeks or months and why ICE has not contracted with any facility or
15 facilities to house class members under Paragraph 19 of the Flores Settlement.
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22 **Defendants' Position:**

23 In this issue, Plaintiffs rely on the declarations of individuals who allege that
24 they have been held at ICE FRCs for periods of time that may include months of
25 detention. In response, Defendants do not dispute that some family units are held
26 for longer periods of time, but argue that individuals held in ICE FRCs for longer
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1 periods of time are held on legal grounds that do not violate the Agreement or this
2 Court's orders. To determine whether discovery might be necessary on this issue,
3 Defendants asked Plaintiffs' counsel to identify which of Plaintiffs' declarants they
4 allege are being held in violation of the Agreement so that they could determine if
5 there was an issue of fact that needed to be resolved in order to evaluate the
6 legality of that declarants' custody. Plaintiffs did not do so. In any event, Plaintiffs
7 appear to acknowledge that this is a legal and not a factual issue. The issues about
8 which Plaintiffs state they wish to conduct depositions do not need to be resolved
9 by the Court for the Court to decide whether Defendants' use of the facilities
10 complies with the Agreement and the Court's orders. Therefore, no depositions
11 should be conducted on this issue. Again, Defendants should not need to provide
12 additional stipulations of fact related to factual issues that are not disputed, and that
13 the Court is not being asked to resolve.

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19 **Issue Six:**

20 **Plaintiffs' Position:**

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22 Plaintiffs' declarations allege that Defendants routinely interfere with class
23 members' right to counsel and also that Defendants routinely have transferred class
24 members without prior notice to counsel as required by the Settlement. Defendants'
25 Opposition claims there is no interference with the right to counsel citing the
26 declarations of Hastings, Scott, Beeson, Brook, James, Perez, Martinez, Padilla,
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1 Hester, de la Garza and Reid. Of this group, Plaintiffs seek to depose only Reid,
2 Hester; de la Garza, Padilla, Beeson, and Brooks. Plaintiffs seek to depose these
3 agents with regards other matters in which factual disputes exist as mentioned
4 above. Plaintiffs believe the right of detained class members to counsel is based
5 upon various provisions of the Settlement including ¶ 11 (all class members to be
6 treated with respect and concern for their particular vulnerability as minors), ¶ 12A
7 (all detained minors to be provided a notice of their rights - Plaintiffs all detained
8 adults and class members have the right to counsel), ¶ 24 (right to bond
9 redetermination hearing for class members in deportation proceedings and to
10 judicial review when not released or if placed in a facility that does not meet the
11 standards set forth in Ex. 1 to the Settlement), ¶ 27 (notice to counsel before
12 minors are transferred from one placement to another).

13 Defendants' Position:

14 For this issue, Plaintiffs rely on declarations that assert that Defendants
15 routinely interfere with class members' right to counsel, and that Defendants
16 transfer class members without notice to counsel. While Defendants dispute that
17 they interfere with any class members' right to counsel, this issue can be resolved
18 by the Court without resolution of that factual dispute because the Agreement in
19 fact contains no right of access to counsel, and Plaintiffs have identified no basis to
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1 find that such a right is contained in the Agreement.⁵ Plaintiffs have also not
2 responded to Defendants' request to identify specific disputed issues of fact with
3 regard to their allegations concerning the denial of access to counsel.
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5 Defendants also dispute that they transfer minors without notice to their
6 counsel. This is a disputed factual issue that would require resolution by the Court.
7 Defendants are willing to identify those of Plaintiffs' declarants who they would
8 depose on this issue, including Plaintiffs' counsel Peter Schey and other advocates
9 who have submitted declarations on this issue. Defendants are willing to facilitate
10 the depositions of Hester, De La Garza and Reid regarding the question of whether
11 ICE transfers minors without notice to counsel.
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21 ⁵ To the extent it is determined that the parties should conduct discovery on this
22 issue, Defendants will identify those of Plaintiffs declarants who they wish to
23 depose, including a number of advocates who provided declarations in support of
24 Plaintiffs' allegations. Defendants do not dispute Plaintiffs' assertion that they do
25 not provide access to counsel at CBP facilities, but contend that this is not required
26 by the Agreement. Thus whether failing to provide access to counsel at CBP
27 facilities violates the Agreement is a legal, and not factual, issue for the Court to
28 resolve, and the depositions of CBP witnesses that Plaintiffs request are not
necessary on this issue. To the extent Plaintiffs wish to depose Reid, De La Garza,
and Hester, regarding access to counsel at ICE FRCs, Defendants will facilitate
those depositions.

1 DATED: July 29, 2016

/s/ Peter A. Schey (with permission)
PETER A. SCHEY
Center for Human Rights and Constitutional
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Attorney for Plaintiffs

6 DATED: July 29, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2016, I served the foregoing on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Sarah B. Fabian
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