

GRASSROOTS LEADERSHIP, INC.,	§	IN THE DISTRICT COURT OF
E.G.S, A.E.S.G., F.D.G., and N.R.C.D.	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS DEPARTMENT OF FAMILY	§	
AND PROTECTIVE SERVICES (DFPS),	§	
HENRY WHITMAN. in his official capacity	§	
as DFPS Commissioner, TEXAS	§	
HEALTH AND HUMAN SERVICES	§	
COMMISSION (HHSC), and	§	
CHRIS TRAYLOR, in his official capacity	§	
as HHSC Executive Commissioner,	§	353rd JUDICIAL DISTRICT
	§	(but all proceedings ordered to be conducted
<i>Defendants.</i>	§	by the 250th Judicial District Court)

**SECOND AMENDED PETITION SEEKING
A TEMPORARY RESTRAINING ORDER, TEMPORARY AND PERMANENT
INJUNCTION, AND DECLARATORY RELIEF**

Texas’s Legislature has decreed that a child “who has been taken into custody and is being held solely for deportation out of the United States, may not be detained for any period of time in a secure detention facility or secure correctional facility, regardless of whether the facility is publicly or privately operated.” TEX. FAM. CODE § 54.011(f). Yet the Texas Department of Family and Protective Services (DFPS) now seeks to provide child-care licenses to two secure immigration detention facilities that are jointly operated by the federal government, local governments, and private prison companies. The stated purpose of these facilities is to detain children with their mothers while they await immigration proceedings including deportation. The facilities have room for some 3,000 detainees. DFPS admits that its regulation facilitates the licensure of children under secure conditions. No state agency anywhere in the

United States has ever attempted to regulate such a facility as a child-care center. DFPS originally issued its licensing rule using emergency rulemaking procedures, but on November 20, 2015 this Court enjoined use of emergency procedures. In compliance with this Court's injunction, DFPS then received public comment on its proposed licensing rule. Commenters emphasized that DFPS presently lacks statutory authority to license federal immigration detention facilities that hold families. They emphasized that further consideration by the Legislature and child-welfare experts was needed before a decision of this gravity and novelty was made. Yet on March 1, 2016, DFPS overruled these objections and issued a final rule providing standards for licensing the facilities. 40 TEX. ADMIN. CODE § 748.7. Hence this second amended petition challenging DFPS's statutory authority to implement § 748.7.

DISCOVERY LEVEL

1. Plaintiffs intend to conduct discovery pursuant to TEX. R. CIV. P. 190.3 Level Two.

PARTIES

2. Plaintiff Grassroots Leadership, Inc. is a non-profit corporation that is exempt from taxation under Internal Revenue Code § 501(c)(3), and licensed to operate in Texas.
3. Plaintiffs E.G.S, A.E.S.G., F.D.G., and N.R.C.D. are individuals who are presently detained in one of two facilities that DFPS identified as the only candidates for licensure under the regulation challenged in this lawsuit.
4. Defendant Texas Department of Family and Protective Services (DFPS) is the state agency charged with administering the Texas Human Resources Code Chapters 40, 42, and 261.
5. Defendant Henry Whitman is DFPS's Commissioner, who is sued in his official capacity only.
6. Defendant Texas Health and Human Services Commission (HHSC) is the state agency charged with overseeing DFPS.

7. Defendant Chris Traylor is HHSC's Executive Commissioner, who is sued in his official capacity only.

JURISDICTION AND VENUE

8. This Court's jurisdiction to enter declaratory relief in this lawsuit is established by TEX. GOV'T CODE § 2001.038 and TEX. CIV. PRAC. & REM. CODE § 37.001, *et seq.*

9. This Court's jurisdiction to enter injunctive relief in this lawsuit is established by TEX. GOV'T CODE § 2001.038 and TEX. CIV. PRAC. & REM. CODE § 65.001, *et seq.*

10. Venue in Travis County is mandatory for this lawsuit pursuant to TEX. GOV'T CODE § 2001.038(b).

11. Plaintiffs do not seek relief under any federal law, and no federal law is at issue in any part of this lawsuit, which exclusively concerns whether a Texas agency has respected Texas statutes in adopting a Texas regulation.

FACTS

12. For the past sixty years, DFPS and its predecessor agencies have understood the Texas Legislature to intend that child-care licenses are only required from and issued to facilities whose "primary function is child care." Op. Tex. Att'y Gen. No. H-104 at 3, 4, 10, 15 (1973), Exhibit 1 (all cited Exhibits are attached to this petition and incorporated by reference).

13. For the past ten years, DFPS has known that the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) has operated immigrant family detention centers in Texas that hold children with their parents while they face immigration proceedings including deportation, and done so in conjunction with local governments and private prison companies. Exhibits 2, 3, 5.

14. Texas statutes *require* DFPS to license and regulate "child care facilities," subject to a long list of exceptions for certain kinds of facilities. TEX. HUM. RES. CODE § 42.041.

15. No statute explicitly authorizes DFPS to issue child-care licenses to secure detention facilities, to facilities that hold immigrant children awaiting deportation, to facilities that detain children together with their mothers, or to facilities that are operated by a consortium of the federal government, local governments in Texas, and private prison companies.
16. Over the course of the past ten years, DFPS has consistently maintained that it lacks statutory authority under § 42.041 to issue child-care licenses to immigration detention facilities operated by ICE in Texas. Exhibits 2, 3, and 5.
17. On September 2, 2015, DFPS suddenly announced that lack of child-care licenses for ICE detention facilities is an imminent peril that justifies emergency rulemaking due to a federal court's order issued in California, but DFPS did not write anything about any change in its statutory authority to issue these licenses, or any change in its historical understanding of its statutory authority. 40 TEX. REG. 6229; Exhibit 6 at 2.
18. On September 30, 2015, Grassroots Leadership originally brought this suit against the agency for improperly using its emergency rulemaking powers.
19. After hearing evidence in this litigation on November 12, 2015, this Court entered an order that temporarily enjoined DFPS from using emergency rulemaking procedures, but did not prevent DFPS from developing a regulation pursuant to regular rulemaking procedures. The Court stated that the "Emergency Rule demonstrates that Defendants utilized the emergency rule power for administrative purposes rather than to address a true emergency. The Emergency Rule allows for significantly less oversight of [Family Residential Centers] than DFPS's own Minimum Standards for General Residential Operations. The Emergency Rule does not address an actual emergency or provide for 'regular and comprehensive oversight' of the FRCs." Temporary Injunction at 6.
20. On November 13, 2015, DFPS followed regular rulemaking procedures to propose a new

rule covering immigrant family detention facilities, and solicited public comment. One of the comments was that DFPS lacks statutory authority to require child-care licenses from secure immigration detention facilities. Hundreds of individuals and dozens of groups submitted comments in opposition to DFPS's proposed rule.¹

21. Regular rulemaking procedures require DFPS to consider public comments on its proposed rules and issue an order containing a reasoned justification for why it believes that it has statutory authority for any rule it proposes. TEX. GOV'T CODE § 2001.033.

22. On February 10, 2016, DFPS wrote its order and reasoned justification for its final rule to appear at 40 TEX. ADMIN. CODE § 748.7, and to be effective March 1, 2016. 41 TEX. REG. 1493 (Feb. 26, 2016), Exhibit 8.

23. The order and reasoned justification were issued by the Texas Health and Human Services Commission (HHSC) on behalf of DFPS. *Id.* at 1493. Consequently both agencies and their executive officials are made Defendants pursuant to Tex. Gov't Code § 2001.038(c).

24. DFPS's new immigration regulation defines a "Family Residential Center" (FRC) as:

- 1) the center is operated by or under a contract with ICE;
- 2) the center is operated to enforce federal immigration laws;
- 3) each child at the center is detained with a parent or other adult family member

¹ The groups include: Daughters of Charity; Texas Unitarian Universalist Justice Ministry; Texas Affiliate of the National Alliance on Mental Illness; Hospitality House; Presbyterian Church USA; Children's Defense Fund of Texas; Education Austin; Workers Defense Project; Texas Association Against Sexual Assault; American Gateways; Texas Indigenous Council; the Interfaith Welcome Coalition; the Texas School of Law Immigration Clinic; Methodist Healthcare Ministries of South Texas; the Texas Catholic Conference; the Benedictine Sisters; CARA Family Detention Pro Bono Project (comprised of the Catholic Legal Immigration Network, Inc.; the American Immigration Council; the Refugee and Immigrant Center for Education and Legal Services; and the American Immigration Lawyers Association); Heartland Alliance's National Immigrant Justice Center; Texas Pediatric Society; Rio Grande Equal Voice Network; Representative Trey Martinez Fischer, Chairman, Texas Mexican American Legislative Caucus; Texas Senators Judith Zaffirini, José Rodríguez, José Menéndez, Sylvia R. Garcia, Rodney Ellis, Juan "Chuy" Hinojosa, John Whitmire, and Kirk Watson; the De Anda Law Firm; CASA Latina; Mexican American Legal Defense and Education Fund; Grassroots Leadership; Unitarian Universalist Service Committee; Texas Impact; Women's Refugee Commission; American Civil Liberties Union of Texas; Unitarian Universalist Association; National Association of Social Workers, Texas Chapter (NASW); and Catholic Charities of the Rio Grande Valley.

who remains with the child at the center; and

- 4) a parent or family member with a child provides the direct care for the child except for specific circumstances.

40 TEX. ADMIN. CODE § 748.7(a), Exhibit 9.

25. DFPS's rule purports to classify a FRC as a "general residential operation" (GRO).

748.7(b). But the rule also eliminates specific minimum standards that normally apply to GROs and changes these standards only for FRC's "in recognition of the unique character of the FRCs." The eliminated standards relate to the number of occupants per room, whether a child can share a bedroom with an adult, and the limitation on children of the opposite sex sharing a room. § 748.7(c), Exhibit 9.

26. DFPS explains how it shoe-horned immigrant family detention facilities into its current regulatory structure as follows:

The essence of the new rule is the application of Child-Care Licensing's (CCL's) regulations related to GROs to FRCs, as defined in the rule. That definition, found in subsection (a), applies regulations for GROs to FRCs that are operated by or under contract with ICE to enforce federal immigration laws and that detain children who remain with parents or other adult family members, who provide direct care for the child except in specific circumstances. The definition currently would apply only to the South Texas Family Residential Center (STFRC) operated by the Corrections Corporation of America in Dilley, Texas, and the Karnes County Residential Center operated by the GEO Group, Inc. in Karnes City, Texas.

41 TEX. REG. at 1494, Exhibit 8.

27. DFPS issued its permanent rule in direct contravention of the Legislature's prohibition on confining a child in a secure immigration detention facility, "regardless of whether the facility is publicly or privately operated." TEX. FAM CODE § 54.011(f). DFPS's order asserts that § 54.011(f) does not deprive it of authority to issue § 748.7 because DFPS believes that this statute applies only to facilities operated by juvenile justice agencies and not to "federal facilities."

DFPS provides no authority or explanation to support this position, nor does anything in the term “publicly or privately operated” exclude a detention facility operated by a private corporation under contract with ICE. 41 TEX. REG. at 1500-01, Exhibit 8.

28. DFPS’s order makes no attempt at all to explain what change in law or facts, if any, could justify DFPS’s current view that a child-care license is required of immigration detention facilities under TEX. HUM. RES. CODE § 42.041, when for ten years DFPS had repeatedly asserted that it lacked statutory authority to license these facilities. 41 Tex. Reg. at *passim*, Exhibit 8.

29. DFPS’s order recognizes but fails to address serious concerns of how child-care regulation can be consistent with not only parental custody, but also with serious mental health needs at the facilities covered by § 748.7. *See, e.g.*, 41 TEX. REG. at 1501, Exhibit 8 (no response to comment about deficient access to psychiatrists and psychologists); *id.* at 1498-99 (mental harm may be inevitable consequence of immigration detention); *id.* at 1500 (DFPS itself claims that it “lacks authority to appoint an independent medical and psychological team to investigate reports of abuse, neglect and exploitation”).

30. DFPS’s order admits that § 748.7 attempts an entirely new branch of child-care licensing in Texas. 41 TEX. REG. at 1497, Exhibit 8 (“From the outset, DFPS recognized that the character of the FRCs is without an identical counterpart in the current regulatory structure.”).

31. DFPS’s order admits that § 748.7 is crafted to facilitate licensure of two specific immigration detention facilities. 41 TEX. REG. at 1494, Exhibit 8.

32. The first is the Karnes County Residential Center, a secure detention facility with room for at least 532 detainees located near Karnes City, Texas. It is operated by ICE (the federal government), the political subdivision Karnes County, Texas, and The GEO Group, a private prison contractor. *Id.*; Exhibit 4.

33. The second is the South Texas Family Residential Center, a secure detention facility with

room for at least 2,400 detainees located near Dilley, Texas. It is operated by ICE, the political subdivision of Florence County, Arizona, and the Corrections Corporation of America, another for-profit corporation. *Id.*

34. DFPS has rarely, if ever, licensed facilities capable of holding thousands of children, as would be true of Dilley and Karnes.

35. DFPS has rarely, if ever, licensed facilities that house such a high proportion of adults and children suffering from severe mental health issues, including recent trauma, PTSD, and sexual assault, as would be true of Dilley and Karnes.

36. DFPS has never before attempted to define a “general residential operation” as a facility that provided anything less than 24-hour care for children, and has never defined as a “general residential operation” any facility where parents remain present on-site with their children and retain parental rights, and are primarily responsible for the care of their children, as would be true at Dilley and Karnes.

37. DFPS has never before licensed facilities that do not allow parents access to all parts of each facility at any time during operating hours. *See* TEX. HUM. RES. CODE § 42.0427.

38. DFPS has never before provided child-care licenses to facilities that hold all children referred by the U.S. Department of Homeland Security without providing the statutorily required “admissions assessment” to determine appropriateness of placement as a condition of admission into the facility. *See* TEX. HUM. RES. CODE § 42.042(f); 40 TEX. ADMIN. CODE § 748.4231(a).

39. All child-care facilities require DFPS licenses. TEX. HUM. RES. CODE §§ 42.001; 42.041(a).

40. A child-care facility means “a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all

or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.” TEX. HUM. RES. CODE § 42.002(3).

41. Many kinds of facilities are statutorily exempt from DFPS licensure. *Id.* at § 42.041(b).

Among the facilities that are statutorily exempt from DFPS licensure are those that provide short periods of child care while parents are on premises, *id.* at 42.041(b)(3), those operated by another state agency, *id.* at 42.041(b)(6), and certain detention facilities, *id.* at § 42.041(b)(13).

42. A general residential operation (GRO) means “a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.” TEX. HUM. RES. CODE § 42.002(4).

43. The Legislature has decreed that a child “who has been taken into custody and is being held solely for deportation out of the United States, may not be detained for any period of time in a secure detention facility or secure correctional facility, regardless of whether the facility is publicly or privately operated.” TEX. FAM. CODE § 54.011(f).

44. Plaintiffs E.G.S, A.E.S.G., F.D.G., and N.R.C.D. attach the declarations in Exhibit 11 in support of this petition and incorporate them by reference. The declarations of E.G.S. and F.D.G. expose the details and impacts of their detention on themselves and their children.

CAUSES OF ACTION

45. The facts stated in paragraphs 1 to 44 above are not subject to any genuine dispute, and they are incorporated by reference.

46. The regulation that Defendants published at 40 TEX. ADMIN.CODE § 748.7 (Exhibit 9) is invalid because it exceeds DFPS’s statutory authority by:

- a. assisting in the placement of immigrant children awaiting deportation in “secure detention facilities” when TEX. FAM.CODE § 54.011(f) prohibits anyone from assisting in

such placement;

b. providing licenses to secure family detention facilities when DFPS and its predecessors have not done so before in some 75 years of child-care licensing, child care is not the primary purpose of the facilities, and no specific legislative authorization or historical need for or capacity to conduct child-care licensing of these facilities has been alleged or shown;

c. altering the statutory definition of “general residential operation” that appears in TEX. HUM. RES. CODE § 42.002(4) by classifying immigrant detention facilities as “general residential operations” even when they do not provide 24-hour care for children.

47. The regulation that Defendants published at 40 TEX. ADMIN. CODE § 748.7 (Exhibit 9) is invalid because the reasoned justification for it that DFPS published in 41 TEX. REG. 1493 (Feb. 26, 2016) fails to comply with TEX. GOV’T CODE § 2001.033.

48. Because the regulation that Defendants published at 40 TEX. ADMIN. CODE § 748.7 (effective March 1, 2016) exceeds DFPS’s statutory authority and is not supported by the reasoned justification required by TEX. GOV’T CODE § 2001.033, the Court should issue judgment declaring the regulation to be invalid pursuant Section 2001.038 of the Texas Government Code, and Chapter 37 of the Texas Civil Practice and Remedies Code.

PRAYER

WHEREFORE, Plaintiffs seek the following relief:

a. a temporary restraining order prohibiting any implementation of the rule published as 40 TEX. ADMIN. CODE § 748.7 (effective March 1, 2016);

b. upon hearing, a temporary and permanent injunction prohibiting any implementation of the rule published as 40 TEX. ADMIN. CODE § 748.7 (effective March 1, 2016) until this litigation is concluded;

- c. a declaratory judgment that the rule published as 40 TEX. ADMIN. CODE § 748.7 (effective March 1, 2016) is invalid;
- d. costs of suit and attorney fees as provided by TEX. CIV. PRAC. & REM. CODE § 37.009; and
- e. all other relief, at law or in equity, to which Plaintiffs are justly entitled.

Respectfully submitted,

TEXAS RIOGRANDE LEGAL AID, INC.

May 3, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I sent a true and correct copy of the foregoing document to counsel for Defendants by electronic transmission the same day that I submitted this document for filing in this Court.

/s/Robert Doggett
Robert Doggett

EXHIBIT LIST AND CERTIFICATION

I, Jerome Wesevich, counsel for Plaintiffs whose contact information appears above, declare under penalty of perjury that the exhibits that are cited above and attached next are true and correct copies of the originals.

/s/ Jerome Wesevich

Jerome Wesevich

Exhibit #	Date	Author	Title
1	Sept. 1973	Texas Attorney Gen.	Opinion on Scope of Child-Care Licensing Authority Originally Conferred by the Legislature
2	June 2006	Texas DFPS	DFPS letter stating that T. Don Hutto Residential Center is exempt from DFPS licensure
3	August 2014	Texas DFPS	Email confirming that DFPS does not license federal immigrant family detention facilities
4	February 2015	ICE Declaration	Declaration describing operation of Dilley and Karnes City facilities
5	May 2015	Texas DFPS	Letter denying statutory authority to license immigration detention facilities as General Residential Operations
6	Sept. 2015	Texas DFPS	DFPS Emergency Rule and Preamble Filed With Texas Secretary of State Describing Need for Emergency Rulemaking
7	Novemb. 2015	Houston Press	Infant's "ICE Resident" Card and Article Entitled <i>Texas May Call Them Childcare Centers, Critics Say They're Prisons</i>
8	February 2016	Texas DFPS & HHSC	Order and Reasoned Justification for Adopting 40 Tex. Admin Code § 748.7, Published in 41 TEX. REG. 1493 (Feb. 26, 2016)
9	March 2016	Texas DFPS	DFPS's Challenged Regulation Published as 40 TEX. ADMIN. CODE § 748.7
10	May 2016	Texas Legislature	Amendment History for HUM. RES. CODE § 42.041
11	May 2016	E.G.S., F.D.G.	Declarations of detainees



THE ATTORNEY GENERAL OF TEXAS

JOHN L. HILL
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

Case
No. D-1-GN-15-4336
Second Amended
Petition

Exhibit
1

September 14, 1973

Honorable Raymond W. Vowell
Commissioner
State Department of Public Welfare
John H. Reagan Building
Austin, Texas 78701

Opinion No. H- 104

Re: The scope of the Dept.
of Public Welfare's
licensing authority
under Article 695c,
§ 8(a), Vernon's Texas
Civil Statutes

Dear Commissioner Vowell:

You have written this office advising that "Recent events have prompted a complete review by the Department of Public Welfare of its policies and procedures related to the licensing of child-caring institutions" and making several inquiries concerning your licensing authority and policies under Article 695c, § 8(a), V. T. C. S.

In your inquiry, you state:

"Further, Article 695c, § 8(a) 1 defines six different types of child-caring facilities (in addition to child-placing facilities), including (a) Child-Caring Institution, (b) Commercial Child-Caring Institution, (c) Day Care Center, (d) Commercial Day Care Center, (e) Commercial Boarding Home and (h) Convalescent Children's Boarding Home. Although there are differences among these facilities, they are generally described as places which 'care for' children."

Your various questions can be categorized as follows:

(1) Whether bona fide educational facilities are exempt from licensing, and if so, what criterion you can reasonably follow to distinguish between bona fide educational facilities and child-caring facilities that would be subject to your licensing authority;

(2) The scope of the exemption of state institutions set forth in Article 695c, § 8(a)(10);

(3) The right of municipalities to license child-caring institutions and the effect of such municipal licenses upon your authority;

(4) Questions concerning the licensing of residential treatment facilities for emotionally disturbed children and what criteria you can reasonably follow to distinguish these facilities from child care facilities subject to your licensing authority;

(5) Various questions as to the age limitations of children within your licensing jurisdiction;

(6) Questions concerning organizations or businesses which are not operated primarily as child caring institutions but which offer and provide some child care to patrons as a service incident to their primary function.

By a supplemental letter, you have added the following inquiries:

(7) The extent of your licensing authority over "summer camps" and the effect of House Bill 115, Acts of the 63rd Legislature, Regular Session, 1973, upon such authority, if any; and

(8) The effect of Article 695c, § 8(a)(2)(a) upon your authority to change licensing standards or policies.

We will attempt to answer these questions in the same numerical order as indicated above.

(1) Whether bona fide educational facilities are exempt from licensing, and if so, what criterion you can reasonably follow to distinguish between bona fide educational facilities and child-caring facilities that would be subject to your licensing authority.

In your inquiry you state that your department has long distinguished the facilities described in Article 695c, § 8(a) (1) from bona fide educational facilities, as indicated in Attorney General Opinion No. V-327 (1947).

The summary of the holding of Attorney General Opinion No. V-327 is as follows:

"Private kindergartens established for the purpose of pre-school education of young children, at which such children attend only a few hours of each day, are not required to be licensed as places 'for the care or custody of children under fifteen years of age' within the meaning of Article 4442a, Vernon's Civil Statutes [requiring the licensing of day nurseries by the State Board of Health].

"The purpose and functions of each institution must be individually considered, regardless of its being called a 'kindergarten' in order to determine whether or not a license is required."

That opinion construed an earlier but similar statute and was confined to a consideration of kindergartens. However, we believe it is based upon sound reasoning and would apply to the broader subject matter of your inquiries.

Moreover, your letter indicates that following this opinion your department has consistently adhered to an administrative policy of exempting bona fide educational facilities from your licensing authority. This long-standing departmental construction is entitled to great weight in resolving any ambiguities in the statute. State v. Houston & T. C. Ry. Co. .68 S. W. 777 (Tex. 1902).

Therefore, you are advised that bona fide educational institutions do not require licensing by your department even if some child care is incidental to their operation. This would apply to boarding schools, kindergartens, private day schools, and other similar institutions whose primary function

is education. On the other hand, as pointed out in Opinion V-327, the fact that education is an incident to the operation of an institution whose primary function is child care would not exempt that institution from licensing. The determination is a question of fact and the decision is one which will have to be made by your department in connection with each individual institution where the problem may exist.

You will also undoubtedly find some institutions whose primary purpose is both education and child care, for instance, kindergartens whose function in the morning is education but for the remainder of the day is purely child care. Such institutions would require licensing by your department.

You have asked us to suggest legal criteria for your determination. The basic criterion is whether the facility's main purpose is education, in which event it requires no licensing, or child care, which circumstance would require a license. Many variations undoubtedly will be found. This office could not possibly anticipate all of them and cannot furnish specific criteria, a function of the expertise of your office.

Article 695c, § 8(a)(9) authorizes your department "to promulgate reasonable rules and regulations governing the granting of licenses to the institutions and facilities coming within the purview of this act", calling upon you to exercise the expertise of your office to establish criteria that will reasonably distinguish child-caring institutions, which are subject to your licensing authority, from other institutions.

You have also asked us specifically about "halfway houses" and "summer camps". We understand "halfway houses" to be intermediate institutions, usually residential type facilities, designed to rehabilitate children between correctional institutions or mental (often drug-abuse) hospitals and the free social community. Again, we can only say that if your investigation results in a finding that a primary purpose of the institution is child care, a license would be required; whereas, if the primary purpose is therapeutic or rehabilitative, no license would be required even if child care is an incidental activity of the institution.

The question of summer camps is involved in Question 7 below and will be discussed at that point of this opinion.

In your letter you also inquire:

"What are the criteria for determining whether an institution is caring for 'children in danger of becoming delinquent' or 'other children in need of group care' as defined in Article 695c, § 8(a)(1)(a)?"

This inquiry is undoubtedly derived from the statutory definition of "Child-Caring Institution" (and the similar definition of "Commercial Child-Caring Institution") appearing in Article 695c, § 8(a)(1)(a) as follows:

"Child-Caring Institution. A child-caring institution is defined as any children's home, orphanage, institution or other place maintained or conducted, without profit, by any person, public or private association, or corporation, engaged in receiving and caring for dependent, neglected, handicapped, or delinquent children, or children in danger of becoming delinquent, or other children in need of group care, and which gives twenty-four (24) hours a day care to more than six (6) children."

These criteria are factual matters to be taken into consideration in your rule-making process. We think that inclusion of "children in danger of becoming delinquent" and "other children in need of group care" were not intended by the Legislature to broaden the limited objective of your licensing authority to institutions whose main purpose is caring for children.

(2) The scope of the exemption of state institutions set forth in Article 695c § 8

Article 695c, § 8(a)(10) provides:

"Child-caring and child-placing institutions and agencies, which are owned and operated by the State of Texas, are exempt from the licensing and regulatory provisions of this Act;"

Your question is whether this provision would exempt child-caring facilities operated by counties, independent school districts, local mental health-mental retardation units and other political subdivisions of the state. Ordinarily reference to the "State of Texas" is a reference to a state agency, department or board which has jurisdiction coextensive with the boundaries of the State and which is an element of one of the three constituent branches of the state government. 52 Tex. Jur. 2d 728, State of Texas, § 14. On the other hand, this is not an exclusive or mandatory concept and the reference to the State of Texas might include political subdivisions of the State of Texas. It is probable that the Legislature was thinking in terms of the infeasibility of one governmental unit licensing another rather than in strictly geographical and political terms.

You have indicated a long-standing departmental construction to the effect that strictly state institutions as well as institutions operated by political subdivisions of the state, such as counties and independent school districts, are exempt from licensing under Subsection 10. We believe your departmental construction correctly resolves this issue and therefore you are advised that child-caring institutions or facilities owned and operated by counties, independent school districts, local mental health-mental retardation units or similar political subdivisions of the state are exempt from your licensing authority under Article 695c, § 8 (a) (10). State v. Houston & T. C. Ry. Co., 68 S. W. 777 (Tex. 1902).

A comparison of the wording of Article 5547-88, V. T. C. S., to that in Article 695c § 8 (a) (2) is also persuasive of the legislative intent. Article 5547-88 states that "No person or political subdivision may operate a mental hospital unless licensed to do so by the Department." Article 695c § 8(a) (2) merely requires that "every person, association, institution, or corporation, . . . shall obtain a license. . . ."

(3) The right of municipalities to license child-caring institutions and the effect of such municipal licenses upon your authority.

In your letter you inquire as follows:

"Is Attorney General's Opinion No. O-6508 still in effect insofar as it allows a municipality to issue licenses for the operation of child-caring facilities? If so, what are the relative responsibilities of the municipality and the State Department of Public Welfare in this regard? "

Attorney General Opinion O-6508 (1945) stated that a municipality, as an exercise of its police power to safeguard the health, comfort and general welfare of its citizens, may license child-caring facilities. That opinion did not state a municipal license would exempt the facility from the requirement that it obtain a license from the State Department of Public Welfare. We reaffirm this opinion and further advise that it does not change the mandatory requirements of Article 695c, § 8(a).

The responsibilities of a municipality are determined by its local ordinances. The responsibilities of the Department are the same with respect to all such facilities, and a municipal license has no effect upon the Department's responsibilities.

(4) Questions concerning the licensing of residential treatment facilities for emotionally disturbed children and what criteria you can reasonably follow to distinguish these facilities from child care facilities subject to your licensing authority.

The statutory definition of a Convalescent Children's Boarding Home is:

"A convalescent children's boarding home is any place under public or private auspices which gives twenty-four (24) hour-a-day care to six (6) or less children who are physically handicapped, under medical and/or social supervision, away from their own homes, and not within a hospital." Article 695c § 8(a) (1) (h)

A "Convalescent Children's Foster Group Home" is similarly defined except that it applies to "more than six (6) children". Article 695c § 8(a) (2) (i).

Article 5547-88 of the Mental Health Code provides that, "No person or political subdivision may operate a mental hospital unless licensed to do so by the Department [of Mental Health and Mental Retardation]".

Your question concerns the licensing of "residential treatment facilities for emotionally disturbed or handicapped children". In our opinion a Convalescent Children's Boarding Home is one whose concern is confined to "physically handicapped" children. An institution which is treating emotionally disturbed children or "those with drug problems" would not be subject to licensing by your department.

As in other instances, the establishment of criteria is primarily a question of fact and expertise. There will be institutions that care both for children who are physically handicapped and for children who are mentally handicapped, or both. Your basic guide should be the primary purpose of the institution. If the institution has dual primary purposes, and one of them is the care of "physically handicapped" children, then it should be licensed by your department. The determination is one of fact as to each institution and your basic criterion is whether the care for physically handicapped children is a primary purpose of the institution.

(5) Various questions as to the age limitations of children within your licensing jurisdiction.

Your first inquiry concerning the problems of age limits is whether Senate Bill 123, Acts of the 63rd Legislature (1973) effectively changes the definition of "child" from persons under the age of 21 years to persons under the age of 18 years.

Our answer to that is that it does. See Attorney General Opinion H-82 (1973).

You also inquire as to whether licenses are required for institutions that care only for children between 16 and 18 years of age. You point out that Article 695a § 9 indicates that no charter shall be issued by the Secretary of State to any organization having to do with " . . . the care or custody of children under 16 years of age" without an investigation first having been

made by your department and further that the definition of a "commercial boarding home" in Article 695c, § 8(a)(1)(e) refers to "children under 16 years of age". On the other hand the definitions of child-caring institution, commercial child-caring institution, day care center, commercial day care center, convalescent children's boarding home and convalescent children's foster group home contained in Article 695c, § 8(a) refer only to "children", which, as we have indicated above, implies an age limit of 18 years.

As a result of a long-standing departmental construction of the statute, your department has never attempted to license institutions which are caring only for children of age 16 or older.

We agree that the statute as a whole is anomalous and that your departmental construction creates a practical solution. However, we do not believe that there is any basic ambiguity in the definitions of child-caring institution, commercial child-caring institution, day care center, commercial day care center, convalescent children's boarding home or convalescent children's foster group home, and, accordingly, we hold that your licensing authority as to these specific institutions extends to those who care for children up to the age of 18. Your long-standing departmental construction, limiting your authority to institutions caring for children under age 16, cannot change the clear terms of the statute, which speaks only of children and which provides that:

"Every person, association, institution, or corporation, whether operating for profit or without profit, who shall conduct or manage a child-caring institution, agency, or facility coming within the purview of this act shall obtain a license to operate from the State Department of Public Welfare. . . ."
Article 695c § 8 (a)(2)(a)

See McCallum v. Associated Retail Credit Men of Austin, 41 S. W. 2d 45 (Tex. Comm., 1931).

Therefore we believe that any child-caring institution, commercial child-caring institution, day care center, commercial day care center, convalescent children's boarding home or convalescent children's foster group home that cares for children under 18 years of age, and is not otherwise exempt, should be licensed by your department, even though it has not previously been licensed due to your departmental construction of the statute.

(6) Questions concerning organizations or businesses which are not operated primarily as child-caring institutions but which offer and provide some child care to patrons as a service incident to their primary function.

You have made inquiry "concerning organizations or businesses which are not operated primarily as child-caring institutions but which offer and provide some child care to patrons as a service incident to their primary function. Examples of this include nurseries operated by churches for children whose parents are attending services, 'Mother's Day Out' nurseries operated by churches and other groups, bowling alleys and shopping centers which operate nurseries for patrons, etc."

Because of the many varieties of these types of facilities, no strict rule can be established and again you will probably want to adopt rules and regulations establishing criteria such as whether the parents remain on the premises while the child is cared for, and the length of time of leaving the child and other matters you deem reasonable in determining whether a particular facility is in fact being operated only as a casual service incidental to its primary function, so as to bring such service outside the ambit of a "child-caring" institution as defined by the statute.

(7) Your licensing authority over "summer camps" and the effect of House Bill 115, Acts of the 63rd Legislature, Regular Session, 1973, upon such authority, if any.

Your next inquiry concerns camps, particularly summer camps, and the effect of The Texas Youth Camp Safety and Health Act (Acts 1973, 63rd Legislature, Regular Session, ch. 142, p. 316) enacted as House Bill 115 and to be codified as Article 4447e, V. T. C. S.

We are of the opinion that House Bill 115 places total jurisdiction for supervision and licensing of all youth camps in the State Board of Health.

Section 1.03 (6) of the Act defines "youth camp" as follows:

"[Y]outh camp means any property or facilities having the general characteristics of a day camp, resident camp or travel camp, as these terms are generally understood, used primarily or in part for recreational, athletic, religious and/or educational activities and accommodating five (5) or more children under eighteen (18) years of age who attend or temporarily reside at the youth camp for a period of, or portions of, four (4) days or more."

Section 2.01 of the Act provides that, "[T]he State Department of Health is the principal authority in the state on matters relating to the condition of safety and health at youth camps in Texas." And § 2.02 provides in part as follows:

"Sec. 2.02. (a) The department [of Health] shall have authority to make and promulgate rules and regulations consistent with the policy and purpose of this Act and to amend any rule or regulation it makes. In developing such rules and regulations, the department shall consult with appropriate public and private officials and organizations, and parents and camp operators. It shall be the duty of the department to advise all existing youth camps in this state of this Act and any rules and regulations promulgated under this Act.

"(b) The department shall promulgate rules and regulations which establish standards for youth camp safety and health. Such safety and health standards may include consideration of adequate and proper supervision at all times wherever camp

activities are conducted; sufficient and properly qualified directors, supervisors and staff; proper safeguards for sanitation and public health; adequate medical services for personal health and first aid; proper procedures for food preparation, handling and mass feeding; healthful and sufficient water supply; proper waste disposal; proper water safety procedures for swimming pools, lakes and waterways, and safe boating equipment; proper maintenance and safe use of motor vehicles; safe buildings and physical facilities; proper fire precautions; safe and proper recreational and other equipment; and proper regard for density and use of premises."

Section 2.04 of the Act provides:

"Every person operating a youth camp in Texas on the effective date of this Act shall apply for and obtain a license for each youth camp. Such application shall be on a form provided by the department and shall be submitted in full not later than May 1, 1974. After submission such persons may continue operating until and unless the application is rejected by the department."

These provisions form the basis for our opinion. The provisions of § 2.02(b) are so broad and all-encompassing that no area is left for your department's concern which would not involve a duplication of the efforts of the State Department of Health.

It is true that § 2 of House Bill 115 provides:

"This Act is cumulative of all other laws and the requirements and responsibilities contained herein shall not affect requirements and responsibilities of other state agencies and political subdivisions in accord with existing statutes."

However, we do not interpret this provision as establishing licensing jurisdiction over youth camps in your department. Summer camps are primarily recreational and would not be subject to your jurisdiction in any event. Other youth camps mentioned in House Bill 115 are also primarily recreational or educational or have primary functions other than child caring. Accordingly, even in the absence of House Bill 115, your jurisdiction over youth camps would arise only in isolated situations and we believe the Legislature has clearly manifested an intention to place the entire responsibility for the care of children in youth camps in the State Department of Health.

Our opinion renders moot your inquiry concerning the criteria you would follow in determining the extent of your licensing authority in connection with summer or youth camps.

(8) The effect of Article 695c, § 8(a)(2)(a) upon your authority to change licensing standards or policies.

Your next inquiry is as follows:

" . . . when this Department changes licensing standards or policies, does Article 695c, § 8(a)2(a) require that an old license remain in full force and effect even after appropriate notice of the changes has been provided to the facility in accordance with Article 695c, § 8(a)9? "

Article 695c, § 8(a)(2)(a) provides that, once issued, a "license shall be in full force and effect until suspended or rescinded by the Department of Public Welfare as hereinafter provided. "

Section 8(a)(7)(b) authorizes your department "to suspend or revoke any license if it ascertains failure to comply with the law or with the reasonable rules and regulations provided for herein," providing that certain procedures for notice and hearing are followed.

Section 8(a) (9) of the act gives your department "the right and the authority to promulgate reasonable rules and regulations governing the granting of licenses to the institutions and facilities coming within the purview of this Act, and for the suspension or revocation of such license for the operation of such institutions and facilities named in this Act. . . ."

We construe these provision to mean that you have the authority to require periodic reports from licensees and to make other reasonable rules and regulations necessary to the effectiveness of your supervision. The failure of any licensee to comply with your reasonable rules and regulations can result in the revocation, rescission or suspension of such license.

SUMMARY

1. Bona fide educational facilities are exempt from licensing by the State Department of Public Welfare under Article 695c, Vernon's Texas Civil Statutes. The criteria which distinguish whether such an institution should be licensed may be set out in whatever reasonable rules and regulations the State Department of Public Welfare may promulgate to determine whether the primary purpose of a particular institution is educational or child-caring, or both.

2. The exemption of institutions owned and operated by the State of Texas, provided in Article 695c, § 8(a)(10), applies to child-caring facilities operated by counties, independent school districts, local mental health retardation units and other political subdivisions of the State of Texas.

3. Municipalities have the power to license child-caring institutions, but the respective powers and responsibilities of municipalities and the State Department of Public Welfare are independent of one another.

4. The licensing responsibilities of the State Department of Public Welfare concerning Convalescent Children's Boarding Homes and Convalescent Children's Foster Group Homes are confined to those facilities whose primary purpose is the treatment and care of physically handicapped children and do not include facilities whose primary purpose is the treatment of emotionally disturbed or mentally ill children.

5. All references to "child" in Article 695c refer to persons under the age of 18 years by virtue of Senate Bill 123, Acts of the 63rd Legislature (1973), and wherever the definition of a facility refers simply to "children" without specifying an age, such facilities caring for children under 18 years of age are subject to licensing by the State Department of Public Welfare.

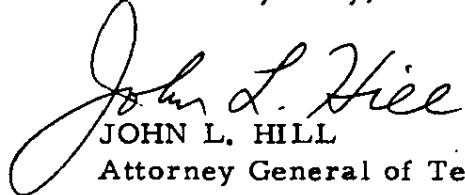
6. Institutions which are not operated primarily for child-caring purposes but which offer and provide some child care to patrons or customers as a service incident to the primary function of the business are not normally subject to licensing unless the primary purpose of the division involved is child care as determined by reasonable criteria established by rules and regulations promulgated by the State Department of Public Welfare.

7. The licensing of "summer camps" or "youth camps" is totally the concern of the State Board of Health by virtue of the provisions of House Bill 115, Acts of the 63rd Legislature, 1973.

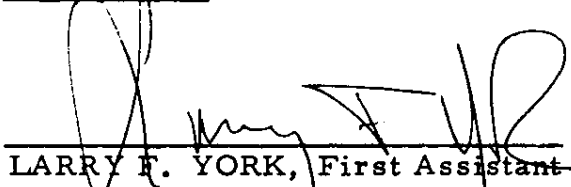
8. A license once granted by the Department of Public Welfare remains in force and effect until suspended or rescinded by the Department but is subject

to reasonable rules and regulations promulgated
by the Department including requirements, if any,
to make periodic reports concerning the status of
the licensee.

Yours very truly,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Case
No. D-1-GN-15-4336
Second Amended
Petition

Exhibit
2

Wesleyann Emptage, by and through her
next friend and mother, Raouitee Pamela Puran;
et al.

Plaintiffs

v.

MICHAEL CHERTOFF, Secretary of
U.S. Department of Homeland Security
(DHS); JULIE L. MYERS, Assistant
Secretary, U.S. Immigration and Customs
Enforcement (ICE); JOHN P. TORRES,
Director, Office of Detention and Removal
Operations, ICE; MARC MOORE,
ICE Field Office Director; GARY MEAD
Assistant Director of Detention and Removal
Operations at ICE; SIMONA COLON, ICE
Officer in Charge; JOHN POGASH, ICE
National Juvenile Coordinator,

Defendants.

) Civil Action
) No.: A-07-CA-158-SS

) DECLARATION OF MARC
) J. MOORE

DECLARATION OF MARC J. MOORE

In accordance with 28 U.S.C. § 1746, I, Marc J. Moore, make the following declaration under penalty of perjury, pertinent to the above numbered style and cause:

1. I am the Field Office Director ("FOD") for the San Antonio Field Office, Office of Detention and Removal Operations ("DRO"), U.S. Customs and Immigration Enforcement ("ICE"), Department of Homeland Security ("DHS"). I have served in this capacity since January 2004.

2. As the FOD, I am responsible for the daily management of the activities performed within the ICE's San Antonio DRO Field Office. My office includes the following sites: the Port Isabel Detention Center, the Laredo Detention Center, the South Texas Detention Center in Pearsall, the Willacy Detention Center in Raymondville, and the T. Don Hutto Family Residential Center in Taylor, Texas (hereinafter referred to as "Hutto") as well as additional offices in San Antonio, Laredo, Austin and Harlingen. My

office is responsible for the management of all DRO functions, operations, and detainees within the 54 counties in central and southwest Texas encompassed by the San Antonio Field Office.

3. I make the following statements based upon my personal knowledge and access to official ICE and INS records and files.

4. Effective March 21, 2007, attorney visitation hours at the T. Don Hutto Residential Facility were increased to 12 hours per day, Monday through Friday, to 8 a.m. to 8 p.m., from the former hours of 8 a.m. to 5 p.m.

5. Effective March 21, 2007, attorney visitation hours at the T. Don Hutto Residential Facility were increased to 9 hours per day, weekends and holidays, to 8 a.m. to 5 p.m., from the former hours of 8 a.m. to 12 p.m.

6. The number of clients an attorney may visit during attorney visitation hours is not restricted by Hutto policy.

7. ICE provides Hutto with an official list of Pro Bono legal organizations. The list is posted and updated accordingly in the resident housing units and law library. This policy has been effect since the opening of Hutto.

8. Arrangements are available for child care upon request by the resident during consultation with his or her attorney in order to ensure additional privacy and increase attorney-client confidentiality. This option also allows parents to have the discretion of determining whether their children are age-appropriate to attend the attorney-client meeting.

9. Attorney visitation hours are posted throughout the facility. This policy has been effect since the opening of Hutto.

10. There are now units allowing visitation of five attorneys, rather than two attorneys, with their respective client(s) at one time at Hutto, with plans to add three more units if needed.

The facility has a law library in a designated room with sufficient space to facilitate residents' legal research and writing. It has a sufficient number of tables and chairs, is well-lit, and reasonably isolated from noisy areas. Residents have equipment and document copying privileges, and the opportunity to prepare legal documents. This policy has been effect since the opening of Hutto.

11. The law library is open on a flexible schedule allowing all residents regular use. Materials not in the library can be requested. Hutto allows residents to work together in the law library. This policy has been effect since the opening of Hutto.

12. Hutto will permit authorized persons to make presentations to groups of residents for the purpose of informing them of U.S. immigration law and procedures. To date, so such group has volunteered nor requested to make such presentation at Hutto. This policy has been effect since the opening of Hutto.

13. Hutto provides provide residents with free envelopes and stamps for mail related to a legal matter, including correspondence to a legal representative, potential legal representative, or any court. This policy has been effect since the opening of Hutto.

14. Hutto provides assistance to any unrepresented resident who requests a notary public, certified mail, or other such services to pursue a legal matter, and if the resident is unable to meet the need through a family member, friend, or community organization. This policy has been effect since the opening of Hutto.

15. I have attached true and correct copies of correspondence between CCA and the State of Texas concerning the exemption for state licensing of Hutto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 23 day of March 2007.



Marc J. Moore
Department of Homeland Security
Immigration and Customs Enforcement
Office of Detention and Removal Operations

Declaration of Marc J. Moore

Attachment



May 22, 2006

T. Don Hutto Correctional

Ms. Michelle Adams
Program Specialist
Child Care Licensing Division
Department of Family and Protective Services
P.O. Box 149030
Austin, TX 78714

RE: CCA T. DON HUTTO RESIDENTIAL CENTER

Dear Ms. Adams:

Enclosed please find CCA's application for Exemption Determination in regards to our residential program at T. Don Hutto Residential Center in Taylor, Texas. CCA and Williamson County have contracted with the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations for the housing of non-criminal deportable alien families with children in accordance with ICE Secure Border Initiative Family Custody Implementations Plan. The mission of the initiative is to detain the family unit as opposed to separating them into different detention facilities. The CCA Hutto facility will house family units for up to 90 days until their expedited removal from the country. The facility will operate in accordance with ICE Detention Standards and ICE Juvenile Shelter Care Standards.

The facility can hold 512 or more adults and minors. The demographics of the detainees will fluctuate based upon arrest and deportation proceedings. Because no minors will be housed in the facility without a parent or an adult family member, CCA will not be providing child care within the meaning of the Department of Family and Protective Services regulation. To that end, based upon your advise, we are submitting our application for Exemption Determination at this time. I have attached the Intergovernmental Service Agreements for your records and review along with the ICE Juvenile Shelter Care Standards.

I look forward to working with you on this important process. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Liles", is written over a horizontal line.

Mickey Liles
Facility Administrator

Texas Dept of Family
and Protective Services

EXEMPTION DETERMINATION

Form 2821
Dec. 2005
Pg. 1 of 3

SECTION A - IDENTIFYING INFORMATION

Name of Operation T. Don Hutto Residential Center			Telephone No. 512-218-2400	
Address of Operation: Street 1001 Welch Street	City Taylor	State Texas	Zip 76574	County Williamson
Address: Mailing if different Same as Above	City s/a/a	State s/a/a	Zip s/a/a	County s/a/a
Name of Proprietor, Partners, Governing Body or Sponsoring Organization Corrections Corporation of America				
Address (if different) 10 Burton Hills Nashville TN 37215				
Name of Contact Person Mickey Liles			Telephone No. 6152633000	
Address: Street 1001 Welch Street	City Taylor	State Texas	Zip 76574	County Williamson

SECTION B - PROGRAM INFORMATION Complete all questions that apply. If it doesn't apply, put NIA in the space.

1. Describe the purpose of the program(s):
See attached Agreement with Immigration and Customs Enforcement for the
Housing of deportable alien family units.

2. Is the program currently operating? Yes ☐ No ☐

3. Is the program: ☐ Child day care (Less than 24-hours a day) ☐ Residential care (24-hours a day) ☐ Child-Placing Agency

4. Describe the program components. If the program operation varies during the year, include all variations.

Program 1	Program 2	Program 3
Number of children: <u>To Be Determined</u>	Number: _____	Number: _____
Age range of children: _____	Ages: _____	Ages: _____
Hours of operation: _____	Hours: _____	Hours: _____
Days of the week: _____	Days: _____	Days: _____
Months of the year: _____	Months: _____	Months: _____

5. If the program is educational:

a.) What are the regular school hours? 8:30a.m.-11:30a.m. 2:00p.m.-4:30p.m. Monday-Friday

b.) Is child care offered before or after school? Yes ☐ No ☒ If Yes, What hours? N/A

c.) What grades are served? Pre-K through 12th Grade

d.) Is child care offered by the accredited operation or a contracting entity? N/A

e.) Does the educational program also provide residential care? Yes ☐ No ☐ If Yes, do the parents retain primary responsibility for financial support, health problems or serious personal problem of their child in care? _____

6. Identify other organizations or entities that regulate or accredit the program.
Immigration and Customs Enforcement

7. Are the children related to the provider of the program? Yes ☐ No ☒ If yes, how related? _____

8. May children come and go at will to and from the program operation? Yes ☐ No ☐ If no, describe how the program accepts and releases children to and from the parent/guardian.
CCA Staff will escort children to and from the educational areas

9. Are criminal background checks conducted for all employees and volunteers? Yes ☒ No ☐ If yes, describe who and how the checks are conducted.
NCIC checks through Liberty County Sheriff's Department.

Texas Dept of Family
and Protective Services

EXEMPTION DETERMINATION

Form 2821
Dec. 2004
Pg. 2 of 3

10. Is compensation collected for services?

YES (from ICE)

11. Describe how children are transported to and from the program.

OCA staff will escort the children to and from the educational areas.

12. Describe the supervision that the program offers during all activities.

OCA staff (officers, teachers aids, counselors, program facilitators) will supervise residents.

13. Explain the information that is given to the parent/guardian about the program (Attach sample copies of forms and policies).

Facility Handbook is attached

14. Identify any standards for care adopted and used to assess the program. If using standards, include a copy of the standards for care.

Immigration and Customs Enforcement Shelter Care Standards15. Do the parents remain on the operation's premises? Yes ☒ No ☐ If Yes, for what reason or activity, and can the parent be contacted at all times?Family units are detained together in the facility.16. For a skills program, what is the maximum length of time that a child may be in care each day? Programming for 5 1/2 hours per day.Infants remain with parent

17. Describe other programs offered on the operation's premises. (Include whether other programs operate in separate buildings, operate in separate areas of the same building or use the building at different times, and whether the other programs use outdoor areas at the same time. Include whether the other programs have separate caregivers or the same caregivers.)

Consists of basic pre-GED, Life Skills (i.e., Job Search, Parenting) arts & crafts (children), ESL (children & adult, gardening)18. If residential care is provided, is the care offered to each unrelated child or sibling group limited to a set number of continuous days and/or a set number of days per year? Yes ☐ No ☒a) If yes, what is the maximum number of continuous days a child may be in care? N/Ab) If yes, what is the maximum number of days per year a child can be in care? N/Ac) Before providing residential care, did you previously have a relationship with the child's family? Yes ☐ No ☒d) Do you receive compensation from the child's parent to provide residential care for the child? Yes ☐ No ☒

SECTION C - AUTHORIZATION

I am requesting exemption from licensure for the program as it is described above. I certify that the above description of the program is accurate, true, and complete. I understand that I may be required to provide additional information to support my request for exemption. If my program is exempt I understand that any change in the program will require another request for exemption.

Signature - Director, Family Division or Head of Certification Body

FACILITY ADMINISTRATOR

5/23/06
Date

Texas Dept of Family
and Protective Services**EXEMPTION DETERMINATION**Form 2822
Dec. 2005
Pg. 3 of 3

THE FOLLOWING SECTIONS ARE FOR DFPS USE ONLY

SECTION D - EXEMPTION CLAIM

Check the box below to indicate the law or rule that best applies to this request. Consult Human Resources Code, § 42.041 and Texas Administrative Code §745.115, §745.117, §745.119, and §745.129 to complete the citation and evaluate whether the program meets all of the criteria for an exemption. Attach a copy of the law or rule.

1. ☐ Programs Regulated by Governmental Entities §745.115
Program regulated by other governmental entity. _____
Name of Governmental Agency: _____
2. ☐ Program of Limited Duration §745.117
Exemption Type: _____
3. ☐ Educational Programs §745.119
Educational Facility Accredited by TEA, Southern Association of Colleges & Schools (SACS), or accrediting entity approved by TEA or SACS - HRC §42.041(b)(7) and TAC §745.119(1)(2)(3)
Name of Accrediting Agency: _____
4. ☐ Kindergarten or Preschool Educational Program Part of a Public or Private School accredited by TEA - HRC §42.041(b)(9) and TAC §745.119(1)
5. ☐ Educational Facility solely for Educational Purposes - HRC §42.041(b)(8) and TAC §745.119(4)
Name of Other Organization: _____
6. ☐ Educational Facility Either Religious or Not with Limited Custodial Care - HRC §42.041(b)(11) and TAC §745.119(5)
7. ☐ Miscellaneous Programs §745.129
Exemption type: _____

SECTION E - DETERMINATION

Operation Name: _____

Operation Number: _____

Physical inspection of the operation made by licensing? Yes ☐ No ☐ Date of visit: _____

☐ Exemption criteria met based on _____

☐ Exemption criteria not met Subject to regulation* _____

By: _____ Date: _____
Licensing Representative

Provider Notified By: ☐ Form ☐ Letter _____ Date: _____



TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

COMMISSIONER
Carey D. Cokerell

June 14, 2006

Mickey Liles, Administrator
Corrections Corporation of America
P.O. Box 1063
Taylor, Texas 76574

Re: T. Don Hutto Residential Center

Dear Mr. Liles:

I am writing in response to your exemption request, which we received on May 24, 2006. After reviewing the materials included with your request, and my telephone conversation with Danny Coronado, one of your administrators, we have determined CCA T. Don Hutto Residential Center, located at 1001 Welch Street, Taylor, Texas is exempt from Licensing regulation.

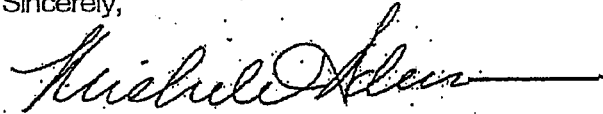
This decision is based on DFPS administrative rule, 40 TAC, Section 745.117 relating to "Which programs of limited duration are exempt from Licensing regulation?" and the following program information confirmed by Mr. Coronado:

- Children 5 years old and older are in care for approximately 5 hours per day, Monday-Friday, while a parent or other family member responsible for the child engages in center activities nearby; Nearby is defined by DFPS as in the same building, across the street from, or in the same city block as the operation.
- A parent or other family member responsible for the child can be contacted at all times.
- Children 4 years old and younger are always accompanied by a parent or other family member responsible for the child.
- No unaccompanied children (children without an adult parent, legal guardian, adult sibling, or grandparent nearby) are served at this center.
- Children are not separated from their parents during sleeping hours.
- A family group will stay at the operation an average of 90 days or less.

Mr. Mickey Liles
June 14, 2006
Page 2

If this program information changes, you should notify us immediately. I recommend you keep this letter on file at the operation for future reference. Please feel free to contact me if you have questions. I can be reached by email at Michele.adams@dfps.state.tx.us or by telephone at (512) 438-3262 or (512) 438-3267.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michele Adams", followed by a horizontal line.

Michele Adams, Policy Specialist

cc: Gerry Williams, DFPS General Counsel
Diana Spiser, Assistant Commissioner, Child Care Licensing
Lou Mar Guerard, Child Care Licensing District Director, Austin

Viewing inline image

Page 1 of 1

Figure: 40 TAC §745.117

Program of Limited Duration	Criteria for Exemption
(1) Parents on the Premises	(A) The program operates in association with a business or religious organization; (B) The parent or person responsible for the child attends or engages in some activity nearby; (C) A child may only be in care when the parent or person responsible for the child attends or engages in the nearby activity; and (D) The parent or person responsible for the child can be contacted at all times.
(2) Skills Program	(A) The program teaches a talent, ability, expertise, or proficiency; (B) It is not a part of a school, child day-care or after-school day care operation; and (C) Each child attends less than two hours a day.
(3) Parents Day Out Program	(A) The program operates no more than two days a week; (B) It operates for less than 24 hours a day; and (C) It is not a part of an operation subject to our regulation.
(4) Short-Term Program	(A) The program operates no more than 11 weeks during the year; (B) It only provides care for children who are at least five years and under 14 years; and (C) It is not a part of an operation subject to our regulation.
(5) Religious Program	(A) It is a program of religious instruction such as Sunday school or weekly catechism; or (B) It is a religious program that lasts two weeks or less.
(6) Respite Care Program	(A) The program provides residential child care on the weekend or for a short term; (B) The care is planned; (C) The care does not exceed 40 days per child per year; and (D) It is not a part of an operation subject to our regulation.
(7) Foreign Exchange/ Sponsorship Program	(A) Unrelated children live in the person's home; (B) The children are in the United States on a time-limited visa; and (C) The children are under the sponsorship of the person with whom they are living or the sponsorship of some organization.
(8) Arrangement Between Friends	(A) It is an arrangement between friends for temporary residential child care for one child or a sibling group; and (B) The care does not exceed 40 continuous days or 150 days in a calendar year.

04/26/2006 09:25 5124581648

PAGE 02

03-20-06 08:58am From: TJPC

512-424-6717

F-48A



TEXAS JUVENILE PROBATION COMMISSION

P.O. Box 13547, Austin, Texas 78711

Telephone (512) 424-6700, TDD (512) 483-4000, FAX (512) 424-6717

EXECUTIVE DIRECTOR

Vicki Spriggs

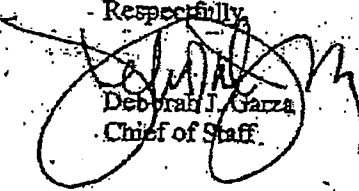
March 17, 2006

Ms. Laurie Shanblum
 Corrections Corporation of America
 8015 Shoal Creek, Ste. 100
 Austin, Texas 78757,

Dear Ms. Shanblum,

After review of the your Secure Border Initiative Family Custody Implementation Plan, it is our opinion that as long as the juveniles in question have not committed an offense and the facility remains non-secure, the Texas Juvenile Probation Commission lacks jurisdiction in the operation of the facility. Please let me know if in the future either of these two factors change. If you have any other questions or concerns, you may reach me at 512-424-6678 or email at Debbie.Garza@tjpc.state.tx.us

Respectfully,


 Deborah J. Garza
 Chief of Staff

4900 North Lamar, Austin, Texas 78751

047 for 2006 09:25 5124246166
83/29/2886 16:08 5124246166

TYC

PAGE 04
PAGE 01/01



TEXAS YOUTH COMMISSION

DWIGHT HARRIS
Executive Director

LINDA S. REYES, Ph.D.
Deputy Executive Director

COMMISSION MEMBERS

THE HONORABLE PETE C. ALFARO
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BILL MANONIER
Dallas

GEOFF DICKSON, Ph.D.
San Antonio

March 22, 2006

Laurie Shanblum
CCA
8015 Shoal Creek, Ste. 100
Austin, Texas 78757
VIA FAX; 458-1648

Jurisdiction over Undocumented Foreign Nationals

Re:

Dear Ms. Shanblum:

Mary Wolfe has asked me to explain the process under which the Texas Youth Commission would have jurisdiction on juveniles who are undocumented foreign nationals.

TYC only acquires jurisdiction over juveniles who are committed to TYC by a court order, generally by a state court but possibly by a federal court. These court orders are generated by adjudications for what would be criminal conduct in the adult system but referred to as "delinquent conduct" in the juvenile system. Without an existing court order TYC has no jurisdiction over a juvenile who is an undocumented foreign national. Thus, the mere status of a juvenile being suspected as an undocumented foreign national does not confer on TYC any jurisdiction.

If I can be of further assistance, please call me at (512) 424-6187.

Respectfully,

Howard A. Hickman
Staff Attorney

4900 N. Lamar
Austin, Texas 78751
P.O. Box 4280
Austin, Texas 78765
(512) 424-6180 (Voice)
1-800-RELAY-TX (TDD)

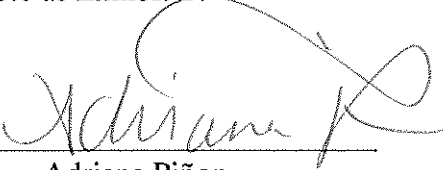
AFFIDAVIT OF ADRIANA PIÑON

STATE OF TEXAS)
 : SS.:
COUNTY OF HARRIS)

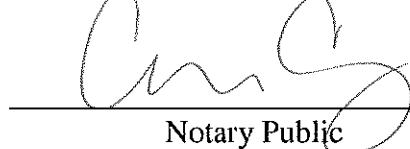


On this day, Adriana Piñon appeared before me and attested as follows:

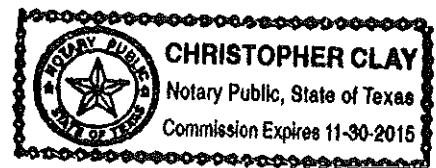
1. My name is Adriana Piñon. I am a senior staff attorney at the American Civil Liberties Union of Texas. The facts stated in this Affidavit are within my personal knowledge and are true and correct.
2. On August 15, 2014, I drafted a Public Information Act Request (Request) to the Department of Family and Protective Services (DFPS) and caused it to be filed with the Open Records Coordinator for DFPS. The Request sought, *inter alia*, information concerning licensing by DFPS for Karnes County Residential Center. A true and correct copy of the Request is attached hereto as Exhibit A.
3. On Friday, August 22, 2014, Mr. Craig Purifoy, Open Records Coordinator at DFPS, emailed our paralegal, Mr. Christopher Clay, a response to our Request. Mr. Clay then forwarded the email response to me. A true and correct copy of the email response is attached hereto as Exhibit B.


Adriana Piñon

Subscribed and sworn to before me on this 3rd day of September, 2014.


Notary Public

My commission expires: 11/30/15





August 15, 2014

Via email and first class mail

Open Records Coordinator
Department of Family and Protective Services
P.O. Box 149030
Austin, TX 78714
OpenRecordsRequests@dfps.state.tx.us

Re: Public Information Request Concerning Karnes County Residential Center and T. Don Hutto Residential Center

Dear Open Records Coordinator:

On behalf of the American Civil Liberties Union of Texas ("ACLU of Texas"), I write to request information¹ pursuant to the Texas Public Information Act, Texas Government Code Chapter 552, concerning Karnes County Residential Center, located at 409 FM 1144, Karnes City, Texas 78118, and T. Don Hutto Residential Center, located at 1001 Welch Street, Taylor, Texas 76574. Specifically, I request the following information:

1. Any license pertaining to the operation of Karnes County Residential Center;
2. All records relating to any licensure application pertaining to the operation of Karnes County Residential Center;
3. Any license pertaining to the operation of T. Don Hutto Residential Center; and,
4. All records relating to any licensure application pertaining to the operation of T. Don Hutto Residential Center.

If your agency does not possess any of the above-requested information, please let me know. To the extent possible, I request that responsive information be emailed to the attention of

¹ The term "information" includes all records or communications in written or electronic form, including but not limited to correspondence, documents, data, videotapes, audio tapes, emails, faxes, telephone messages, logs, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, training manuals, other manuals, or studies.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS

DALLAS OFFICE
P.O. BOX 600169
DALLAS, TX 75360
T/ 214.346.6575

RIO GRANDE VALLEY OFFICE
P.O. BOX 6087
BROWNSVILLE, TX 78523
T/ 956.465.1905

STATE CAPITOL OFFICE
P.O. BOX 12905
AUSTIN, TX 78711
T/ 512.478.7300

STATE HEADQUARTERS
P.O. BOX 8306
HOUSTON, TX 77288
T/ 713.942.8146

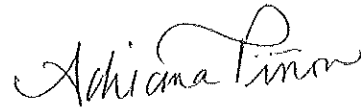
WWW.ACLUTX.ORG

Adriana Piñon at following address: apinon@aclutx.org. Records that are not available electronically can be mailed to: Adriana Piñon, ACLU of Texas, P.O. Box 8306, Houston, TX, 77288.

In addition, I request a waiver of any fees associated with this request. Section 552.267(a) of the Texas Public Information Act allows for a fee waiver where "providing the copy of the information primarily benefits the general public." This request merits a waiver because the ACLU of Texas has no commercial interest in obtaining the requested information. We seek this information to further public understanding of the workings of government. Moreover, as stated in our articles of incorporation filed with the Texas Secretary of State, the ACLU of Texas is a non-profit organization organized exclusively to promote the public interest.² However, if a fee waiver is denied, please notify me of the cost of completing the request.

Thank you in advance for your cooperation. If you have any questions, please do not hesitate to call me at 713-942-8146 x 111.

Sincerely,

A handwritten signature in cursive script that reads "Adriana Piñon".

Adriana Piñon
ACLU of Texas

² The Internal Revenue Service recognizes the ACLU Foundation of Texas as a non-profit, public interest research organization under Sec. 501(c)(3) of the IRS Code.

Adriana Pinon

From: Christopher Clay
Sent: Friday, August 22, 2014 1:15 PM
To: Adriana Pinon
Subject: FW: PIA Request 08212014LDL

Christopher Clay
American Civil Liberties Union of Texas
P.O. Box 8306, Houston, TX 77288-8306
with offices in Austin, Brownsville, and Dallas
■ o 713.942.8146 x106 ■ CCLay@aclutx.org
www.aclutx.org  



BECAUSE FREEDOM CAN'T PROTECT ITSELF

This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted

From: DFPS Open Records Requests [<mailto:DFPSOpnRec@dfps.state.tx.us>]
Sent: Friday, August 22, 2014 1:05 PM
To: Christopher Clay
Subject: RE: PIA Request 08212014LDL

Good Afternoon Christopher,

I got word back from Child Care Licensing and they have confirmed that both operations are not licensed by DFPS. They are both run by ICE.

Please let me know if you have any questions.

Sincerely,

Craig Purifoy | DFPS Records Management Group | Open Records Coordinator | 512.929.6689

From: Christopher Clay [<mailto:CCLay@aclutx.org>]
Sent: Wednesday, August 20, 2014 3:57 PM

To: DFPS Open Records Requests
Subject: PIA Request 08212014LDL

Please see the attached open records request

Christopher Clay
American Civil Liberties Union of Texas
P.O. Box 8306, Houston, TX 77288-8306
with offices in Austin, Brownsville, and Dallas
■ o 713.942.8146 x106 ■ CCLay@aclutx.org
www.aclutx.org  



BECAUSE FREEDOM CANT PROTECT ITSELF

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DECLARATION OF STEPHEN M. ANTKOWIAK

Pursuant to 28 U.S.C. § 1746, I, Stephen M. Antkowiak, do hereby declare:

1. My name is Stephen M. Antkowiak. Since April 2011, I have served as the Unit Chief of Juvenile and Family Residential Management Unit (JFRMU), Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE) in Washington, D.C. I joined JFRMU in February 2009.

2. I have a Bachelor's Degree in Criminology/Criminal Justice.

3. Prior to joining ICE, from September 2005 until February 2009, I worked for the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Programs working to improve outcomes for at-risk youth and those involved in the juvenile justice and child welfare systems and to integrate substance abuse treatment into the family dependency court and the juvenile justice system.

4. As Chief of JFRMU, I oversee and direct the management of the ICE Family Residential Program for family groups who come into ICE/ERO custody. As part of my management and oversight responsibilities, I periodically travel to the ICE Family Residential Centers (FRC) and am familiar with the features of the FRCs. The statements contained in this declaration are based upon my personal knowledge or upon information provided to me in my official capacity.

I. Karnes Family Residential Center, at Karnes City, Texas

5. Karnes Family Residential Center (KFRC) opened July 31, 2014, and is a 532 bed facility. The two-story housing suites open onto an outdoor recreation area. Attached hereto as Exhibit 1 is a photograph of the exterior of the housing suites and the outdoor recreation area.

6. Upon arrival at KFRC the family groups are oriented in the intake room, which features seating for incoming families and a refrigerator stocked with

Case
No. D-1-GN-15-4336
Second Amended
Petition

Exhibit
4

beverages and snacks. Attached hereto as Exhibit 2 is a photograph of the intake area.

7. Families may select their own non-institutional clothing free of charge to wear at KFRC or wear the clothing they brought with them. Attached hereto as Exhibit 3 is a photograph of the clothing storage room.

8. Each KFRC housing suite contains six beds to accommodate one or more families depending on the size of the family group. Attached hereto as Exhibit 4 is a photograph of the sleeping area of the housing suite.

9. For each two KFRC housing suites, there is an indoor day room, which features a flat-screen television, access to telephones, a refrigerator with snacks and beverages, and playpens and toys for the residents of those two suites. Attached hereto as Exhibit 5 is a photograph of a day room.

10. KFRC outdoor recreation facility features the sports and soccer field and several play areas with jungle gyms and slides for younger children. Attached hereto as Exhibit 6 and 7 are photographs of the soccer field and play areas.

11. KFRC provides education by state-licensed teachers to all school-age children. The classroom ratio is one teacher to 20 students. Attached hereto as Exhibit 8 is a photograph of a KFRC classroom.

12. KFRC features both recreational and law library services to residents. Attached hereto as Exhibit 9 is a photograph of the recreational library with play areas for the children.

13. KFRC has medical, dental and social services available for all residents. Attached hereto as Exhibit 10 and 11 are photographs of the dental examining rooms.

14. KFRC serves three meals per day in its dining room. The menus are approved by a dietician. Healthy snacks and beverages are available 24 hours per

day. Attached hereto as Exhibit 12 and 13 are photographs of the unlimited salad bar and snack refrigerator.

II. The South Texas Family Residential Center, at Dilley, Texas

15. The South Texas Family Residential Center (STFRC), Phase 1, opened on December 18, 2014, and currently has 480 beds.

16. STFRC is designed as an open planned community with freestanding, multiple-family housing units located adjacent to school, library, dining and health facilities. Attached hereto as Exhibits 14 and 15 are photographs of the exterior of the housing units.

17. A typical STFRC housing unit consists of two bedrooms of four family beds each and can accommodate one or more families depending on the size of the family group. For families with infants, a crib and nursing space is substituted for a bunk bed. Attached hereto as Exhibits 16 and 17 are photographs of the bedroom areas of a housing unit.

18. Each housing unit contains its own family room featuring a sitting area, a flat-screen television and a telephone. Each unit contains a kitchenette with a refrigerator of beverages and snacks that is re-stocked twice per day. Attached hereto as Exhibits 18 and 19 are photographs of the family room of a housing unit.

19. STFRC contains open recreational areas for sports and play areas for younger children. Attached hereto as Exhibit 20 is a photograph of the recreational areas.

20. STFRC provides education by state-licensed bilingual teachers to all school-age children. The STFRC School features seven (7) classrooms with a class ratio of one teacher to twenty students. Attached hereto as Exhibits 21, 22, 23, and 24 are photographs of the classrooms of STFRC.

21. STFRC provides short-term monitored care at two locations on site so that parents can attend hearings and appointments as needed. Attached hereto as Exhibits 25 and 26 are photographs of these locations at STFRC.

22. STFRC features both recreational and law libraries for residents. There is a dedicated computer lab/internet café at the library. Attached hereto as Exhibits 27 and 28 are photographs of the library.

23. STFRC serves three meals per day in its dining room. The menus are approved by a dietician. Healthy snacks and beverages are available 24 hours per day. Attached hereto as Exhibit 29, 30 and 31 are photographs of the dining room and food service.

24. STFRC has medical, dental and social services available for all residents. Attached hereto as Exhibit 32 and 33 are photographs of a medical examining/treatment room.

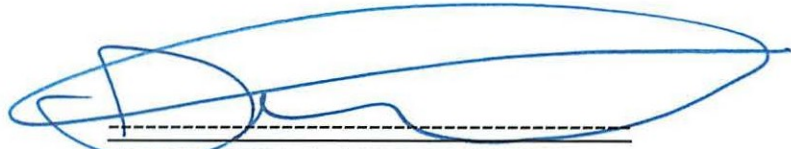
25. Based on my knowledge and experience, an FRC is considered to be at full capacity when all rooms are occupied, even if not every bed is taken.

26. ICE houses family units in a manner that balances its desire to maintain family unity with the paramount concern of providing for the safety and security of all residents. Due to the unique nature of ICE's Family Residential Centers, insufficient resources to detain both adult males with children and adult females with children, and the relatively small number of cases of adult males with children encountered, DHS has elected to focus its limited family detention resources on housing adult females with children. Of note, detaining adult males with children would pose increased operational and facility security concerns, especially in light of the open movement afforded in family residential centers. Adult males pose greater security risks and would generally not be housed in a sleeping room with an *unrelated* child, regardless of the age or sex of that

child. As such, the presence of a large number of adult males within a family residential facility, where residents enjoy open movement, would severely limit the number of available beds within the facility and would likely require a significant increase in resources to appropriately supervise and care for all residents.

I declare, under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: February 27, 2015



STEPHEN M. ANTKOWIAK
Unit Chief
Juvenile and Family Residential
Management Unit
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement



TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

COMMISSIONER
John J. Specia, Jr.

Case
No. D-1-GN-15-4336
Second Amended
Petition

**Exhibit
5**

May 20, 2015

Mr. Bryan S. Johnson, Esq.
Amoachi & Johnson, PLLC
1918 Union Boulevard
Bay Shore, New York 11706

RE: Correspondence Regarding South Texas Family Residential Center

Dear Mr. Johnson:

I write in response to your letter of March 19, 2015, which you addressed to me and Executive Director David Reilly of the Texas Juvenile Justice Department (TJJD). As Commissioner of the Texas Department of Family and Protective Services (DFPS), I can speak only to your letter as it concerns DFPS.

In your letter, you ask TJJD and DFPS to close the South Texas Family Residential Center (STFRC) located at 1925 Highway 85, Dilley, Texas 78017. As you correctly note, children reside at this facility with their parents. It is for this reason that DFPS has neither jurisdiction nor standing to undertake your request.

The Texas Legislature has only authorized DFPS to regulate daycare in temporary shelters where parents reside with their children. *See* Subchapter G, Chapter 42, Texas Human Resources Code (HRC). As provided in HRC §42.201, these shelters include any “supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals and families, including a family violence shelter, a homeless shelter, and an emergency shelter.” To highlight the limits on its regulatory authority at temporary shelters, DFPS does not have jurisdiction to regulate the daycare at a shelter that provides the daycare for less than four hours a day or three days a week. Moreover, compared to its regulation of daycare at other settings, DFPS has limited authority to investigate properly permitted care at these settings. *See* HRC §42.209. Hence, in enacting this subchapter, the Texas Legislature has provided DFPS with narrow jurisdiction over childcare that occurs at these settings.

Mr. Bryan S. Johnson, Esq.
May 20, 2015
Page 2

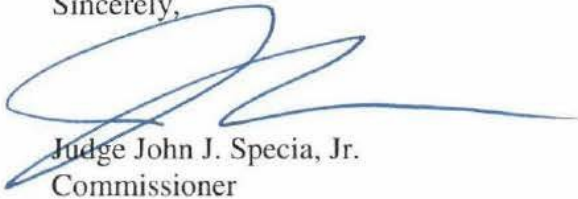
Taking each of your points in turn, you reference Family Code section 51.03. This section concerns children who have engaged in enumerated delinquent conduct; such is not the case here. Second, the particular section you reference includes only children who have been absent from school for specified periods of time, but who are required to attend school under the Texas Education Code. Again, that is not the instant situation.

As for your reference to section 4000 of DFPS policy, such applies to children in DFPS' conservatorship. The children at STFRC are not in the agency's conservatorship; DFPS has no legal authority over where these children reside. Thus, they have not been placed at STFRC by DFPS. Similarly, the federal code you reference, 42 U.S.C. §675, concerns only children who are in a state's child welfare custody and subject to that agency's legal conservatorship. Again, that is not the case here.

DFPS can only regulate a facility in the manner you seek when it provides 24-hour direct care for children. A general residential operation is the type of childcare operation regulated by DFPS that provides 24-hour care to children. As provided in Subchapter K, Chapter 748, 40 Texas Administrative Code, adults and children can reside together in a general residential operation only in narrow circumstances. In the example you provide about Bernice and her four-year-old child, the child was placed in foster care when Bernice had to leave the facility. Regardless of your contention "that CCA and ICE are the primary caregivers for the children in their custody," this establishes that STFRC does not provide 24-hour care to children.

Thank you for bringing your concerns to the attention of DFPS. While we thank you for your correspondence, for the reasons stated in this letter, DFPS does not have the authority or ability to close down the STFRC facility. Please let me know if you have further questions.

Sincerely,



Judge John J. Specia, Jr.
Commissioner

cc: The Honorable Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement
The Honorable Ken Paxton, Texas Attorney General
David Reilly, Executive Director, Texas Juvenile Justice Department
Damon T. Hininger, President and CEO, Corrections Corporation of America
Red McCombs

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

ORDER ADOPTING EMERGENCY RULES

Regarding Minimum Standards for General Residential Operations

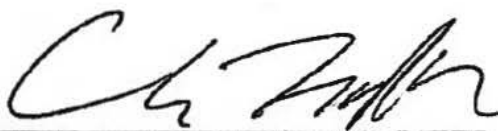
AMENDMENT to 40 TAC § 748.7

As authorized by Government Code, §2001.034, the Executive Commissioner may adopt emergency rules without prior notice or hearing, if the Executive Commissioner finds that an imminent peril to the public health, safety, or welfare requires adoption of the rules on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

The emergency rule and the preamble to the rules, as attached, are incorporated by reference in this Order as though set forth verbatim herein.

IT IS THEREFORE ORDERED BY the Texas Health and Human Services Executive Commissioner that the rules listed above are hereby adopted.

The effective date of the rules is the date the rules are filed with the Texas Register.



CHRIS TRAYLOR, or Designee
Executive Commissioner
Health and Human Services Commission

DATE ISSUED: 9-2-15

September 2, 2015

On behalf of the Department of Family and Protective Services (DFPS), the Health and Human Services Commission adopts, on an emergency basis, new § 748.7 of Title 40, concerning the applicability of Chapter 42, Human Resources Code, and licensing rules and statutes in general to residential family centers operated by contractors of U.S. Immigration and Customs Enforcement (ICE). The new section is adopted on an emergency basis pursuant to § 2001.034, Government Code, which allows emergency rulemaking if a state agency finds an imminent peril to the public health, safety, or welfare.

On July 24, 2015, a federal district court determined that ICE's policy of detaining female-headed families in family residential centers, which are unlicensed and secure, violated the terms of a 1997 settlement agreement requiring, *inter alia*, that minors in custody be released without unnecessary delay and that, while they are detained, they be housed in non-secured, state-licensed facilities. *Flores v. Johnson*, CV 85-4544 DMG (C.D. Cal. July 24, 2015). The court noted that the purpose of the licensing provision in the settlement agreement "is to provide class members the essential protection of regular and comprehensive oversight by an independent child welfare agency."

The court's ruling highlights a gap in the oversight of the children housed in facilities covered by the settlement agreement. There are two such facilities in Texas: the South Texas Family Residential Center in Dilley, Texas and the Karnes County Residential Center in Karnes City, Texas. Both are family residential facilities designed for detention of adults with children. Neither is currently licensed by the Child-Care Licensing Division of DFPS. Because there is no regular and comprehensive oversight of the care of children housed in the facilities by an independent agency, there is an imminent peril to the public's health, safety, or welfare.

Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 748, Minimum Standards for General Residential Operations

Subchapter A, Purpose and Scope

TAC Section Number(s) §748.7

Emergency Action

☒ New

Effective Date:

☒ Other (Specify)

Immediately on Filing

The new section is adopted under § 40.0505, Human Resources Code, and § 531.0055, Government Code, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services. Adoption of this rule as an emergency rule is authorized under § 2001.034, Government Code, which allows emergency rulemaking if a state agency determines that it is necessary to address an imminent peril to the public health, safety, or welfare.

The new section implements § 42.042(a), Human Resources Code.

§ 748.7. How are these regulations applied to family residential centers?

(a) Definition. A family residential center is one that meets all of the following requirements:

(1) The center is operated by or under a contract with United States Immigration and Customs Enforcement;

(2) The center is operated to enforce federal immigration laws;

(3) Each child at the center is detained with a parent or other adult family member, who remains with the child at the center; and

(4) A parent or family member with a child provides the direct care for the child except for specific circumstances when the child is cared for directly by the center or another adult in the custody of the center.

(b) Classification. A family residential center is a general residential operation (GRO) and must comply with all associated requirements for GROs, unless the family residential center is approved for an individual waiver or variance or an exception is provided in this section. The department is responsible for regulating the provision of childcare as authorized by Chapters 40 and 42, Texas Human Resources Code and Chapter 261, Texas Human Resources Code. The department does not oversee requirements that pertain to other law, including whether the facilities are classified as secure or in compliance with any operable settlement agreements or other state or federal restrictions.

(c) Exceptions. A family residential center is not required to comply with all terms of the following Minimum Standards:

(1) the limitation of room occupants to four in § 748.3357 of this title (related to What are the requirements for floor space in a bedroom used by a child?);

(2) the limitation on a child sharing a bedroom with an adult in § 748.3361 of this title (related to May a child in care share a bedroom with an adult?); and

(3) the limitations on children of the opposite gender sharing a room in § 748.3363 of this title (related to May children of opposite genders share a bedroom?)

(d) Limitation of exception. Notwithstanding subsection (c), the department retains the authority for placing conditions on the scope of the exceptions authorized for a family residential center, including conditions related to limiting occupancy in accordance with fire safety standards, limitations related to allowing children and adults of the opposite gender to occupy the same room only if they are part of the same family, and any other limitation determined by the department to be necessary to the health, safety, or welfare of children in care.

(e) Division of responsibility. In addition to the application materials described in 40 TAC § 745.243(6), an applicant for a license under this section must submit the policies, procedures, and any other documentation that the department deems necessary to clarify the division of supervisory and caretaking responsibility between employees of the facility and the parents and other adult family members who are housed with the children. The department must approve the documentation during the application process and any subsequent amendments to the policies and procedures.

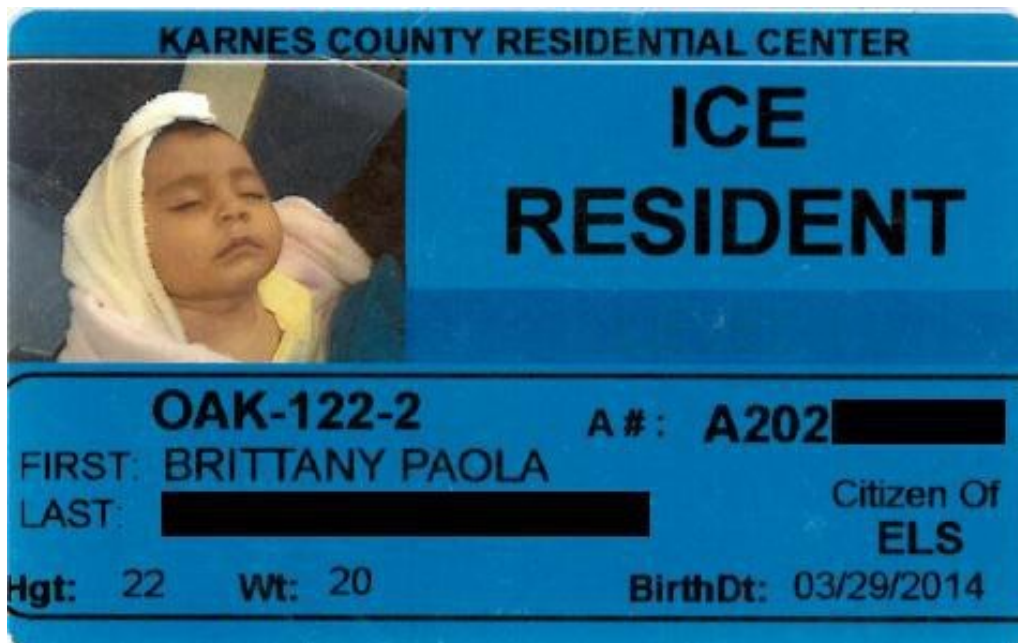
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on _____.

Texas May Call Them Childcare Centers, Critics Say They're Prisons

BY MICHAEL BARAJAS

WEDNESDAY, NOVEMBER 25, 2015 AT 5 A.M.



An ID card for an infant held at GEO's Karnes detention center for immigrant women and children

Last week a Travis County judge ruled that Texas cannot fast-track the process of licensing for-profit immigration lockups for women and children as childcare facilities, opening a window for public comment and scrutiny over a proposal that has made immigrant rights advocates and social workers cringe.

The ruling comes as immigration officials scramble to abide by a federal court order to reform how the government houses and cares for immigrant children. One helpful solution the Texas Department of Family and Protective Services came up with in September was to [quickly create and license a new type of childcare center](#), so-called “family residential centers.” Within two weeks of that “emergency” rule change, the private prison companies that run compounds in the desolate South Texas towns of Karnes and Dilley, where primarily asylum-seeking women and children are detained, applied for childcare licenses.

While state officials tried to fast-track the process, Travis County District Judge Karin Crump last Friday ordered DFPS to slow things down, saying the public has the right to vet and comment on the agency's proposed rule change.

That means people like Luis Zayas [have until December 14](#) to scrutinize DFPS's plan to consider licensing immigrant detention centers as childcare facilities. Zayas, dean of the University of Texas at Austin School of Social Work, was subpoenaed to testify at a hearing earlier this month requesting that a judge halt the state's plan to go forward without public comment. (The Austin-based nonprofit Grassroots Leadership sued to keep DFPS from circumventing the normal rule-making process to avoid public comment.)

Zayas and others have argued that the type of family detention employed by U.S. Immigration and Customs Enforcement and its private prison contractors is inherently flawed and damaging to child development. “Most of these children are fleeing violence, so they don't come from a so-called normal background,” Zayas told the *Houston Press*. “But by putting them in these places, we're truncating their possibility of living as normal of a life as they could.”

Such concerns are at the heart of an 18-year-old legal settlement in the case *Flores v Meese*, which was intended to keep the government from housing children apprehended at the border in prison-like conditions, says Denise Gilman, who directs the immigration law clinic at UT's law school. *Flores* is the reason the ACLU won a 2009 lawsuit that forced ICE to pull children from Texas's T. Don Hutto detention center, where kids were reportedly put in orange prison jumpsuits, forced to sleep with the lights on, confined to their cells for 12 hours at a time and received up to only one hour of school every day.

Gone are the jumpsuits, but advocates and experts who work inside or have visited Texas's family detention centers say they're still more like prisons than childcare facilities deserving of a state license. Jonathan Ryan runs the San Antonio-based nonprofit Refugee and Immigrant Center for Education and Legal Services, or RAICES, which coordinates pro-bono legal representation for the women and children detainees. “Then, 1 and far and away issue has been medical care,” he told the *Press*.

Ryan says that almost all of the children the organization has seen in detention suffer from various ailments—“Persistent cough, infections—eye infections, skin infections.” Ryan even says that some of the children his organization sees have to go directly to the emergency room once released from detention. He spoke of one eight-year-old hospitalized for pneumonia and a 105 degree fever just an hour after leaving the Karnes

facility. The mother, he says, told the organization she'd begged detention staff for medical attention for days. "They told her to make him drink more water," Ryan said.

And it's not that the children shuffled to ICE detention centers are disease-ridden or sicker than average kids, Ryan insists. "They get sick while they're there in detention," he said. "And for those who do happen to arrive sick, they get worse in detention, not better." Since 2008, RAICES has worked with thousands of unaccompanied minors and refugee children placed by the Office of Refugee Resettlement with state-licensed care providers. Ryan claims there's a "night and day" difference between the type of care those children get and what children in immigrant detention experience. "It's the same kid, the same journey, similar length of stay, but different placement," he said. "And the difference is shocking."

Pablo Paez, spokesman for the GEO Group, which runs the Karnes family detention center, said in a prepared statement to the *Press* that the facility "provides high quality care in a safe, clean, and family friendly environment," and that the company strongly denies any allegations to the contrary. (Paez also pointed to an Office of Inspector General report earlier this year that determined allegations of sex abuse at the hands of guards at Karnes were unfounded.)

When she set an October 23 deadline for immigration officials to change their detention practices, California federal district court judge Dolly Gee also demanded that the U.S Department of Homeland Security, ICE's umbrella agency, process and release children from detention "without unnecessary delay." While attorneys say mothers and children in family detention are being released faster than ever (Gilman says most are now released within 20 to 30 days, whereas families used to spend upwards of a year in detention), that has apparently created even more problems.

Ryan with RAICES insists more families are being deported before they can contest a government finding that they don't qualify for asylum. "They've ramped up the speed and the volume of preliminary interviews, and they're deporting women so quickly, without in many instances allowing for any kind of review of that decision," he told the *Press*. Some mothers, he claims, have been deported without even a preliminary interview with officials.

"This was simply not the case before," Ryan said. The government, he claims, is doing back flips and in many cases "skirting due process and fundamental fairness" in reaction to the federal judge's order. "To be clear," Ryan says, "the result of deportation for many of these people is death—a civil penalty that in many cases carries a death sentence." (ICE

officials did not respond to requests for comment.)

Ryan and others say that Texas would consider licensing such facilities only serves to validate the flawed practice of family detention. Meanwhile social workers like Zayas also fear that state child protection officials are lowering their standards to meet those of ICE.

Zayas says DFPS's new license would allow private prison contractors to flout rules that cap the amount of kids you can house in one room, that keep unrelated boys and girls from being housed together, and requirements that children not share rooms with unrelated adults.

The problems with DFPS's plan run even deeper than that, Zayas says. Except for juvenile detention and psychiatric facilities, state-licensed childcare centers are supposed to provide open spaces where children and families can live lives approaching normal. “Even in shelters for domestic violence,” he says, “mothers are given a chance to be active mothers—they can cook for their own family, have dinner together, enjoy some degree of autonomy.”

Zayas has toured Karnes and says simply granting it “residential family center” status doesn't change the fact that it's an immigration lockup. The idea that such facilities should be licensed as childcare centers flies in the face of what is supposed to be one of DFPS's central goals: that kids in government custody be placed in the most therapeutic setting possible.

“We know that when a mother is incarcerated it damages the child, we know that when a child is incarcerated that that's harmful,” Zayas said. “And these are not felons or convicted criminals, but mothers and children fleeing an awful situation. ... It's just not simply the kind of environment that's therapeutic, which is what [DFPS] is supposed to ensure.”

TEXAS REGISTER

Case
No. D-1-GN-15-4336
Second Amended
Petition

**Exhibit
8**

Volume 41 Number 9

February 26, 2016

Pages 1303 - 1



*Sabrina Vogt
11th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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***Texas Register*, (ISSN 0362-4781, USPS 12-0090)**, is published weekly (52 times per year) for \$259.00 (\$382.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
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The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement portions of HB 1449, which adds Subchapter E, Adoption Evaluations to Chapter 107 of the Texas Family Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2016.

TRD-201600612

Trevor Woodruff

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Department of Family and Protective Services

Effective date: February 29, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-5559



DIVISION 4. POST-PLACEMENT ADOPTIVE SOCIAL STUDY AND REPORT

40 TAC §§745.9091 - 745.9097

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The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2016.

TRD-201600613

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: February 29, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-5559



DIVISION 5. COMPLAINTS

40 TAC §745.9100

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

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The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2016.

TRD-201600614

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: February 29, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-5559



CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §748.7

On behalf of the Department of Family and Protective Services (DFPS), the Health and Human Services Commission adopts new §748.7, concerning the applicability of Chapter 42, Human Resources Code, and licensing rules and statutes in general to family residential centers operated by contractors of U.S. Immigration and Customs Enforcement (ICE), with changes to the proposed text as published in the November 13, 2015, issue of the Texas Register (40 TexReg 8009).

The justification for §748.7 is to define the term "family residential center" (FRC) and to make FRCs subject to regulation as General Residential Operations (GROs). Requiring FRCs to comply with all requirements for GROs will be more protective of children than taking no action regarding the provision of child care without a license.

DFPS first adopted §748.7 on an emergency basis effective September 2, 2015 as published in the September 18, 2015, issue of the Texas Register (40 TexReg 6229). The emergency rule tailored minimum standards for GROs to FRCs so that DFPS could most effectively regulate them. In its publication of the emergency rule, DFPS cited that the July 24, 2015 ruling of Flores v. Johnson, CV 85-4544 DMG (C.D. Cal. July 24,

2015) "highlighted a gap in the oversight of the children" housed in family residential centers. DFPS found that there was an imminent peril to the public's health, safety, or welfare due to the lack of "comprehensive oversight of the care of children housed in the facilities by an independent agency." Id.

Grassroots Leadership, Inc., a non-profit organization, filed suit seeking declaratory and injunctive relief from the emergency rule on September 30, 2015, in the 353rd District Court in Travis County. Judge Karin Crump of the 250th Travis County District Court granted a Temporary Restraining Order halting the adoption and implementation of the emergency rule on September 30, 2015. *Grassroots v. TDFPS*, No. D-1-GN-15-004336 (353rd Dist. Ct., Travis County, Tex. Sept. 30, 2015). On November 20, 2015, Judge Crump issued a Temporary Injunction halting the adoption of the emergency rule until a trial on the merits can be held on May 9, 2016. *Grassroots v. TDFPS*, No. D-1-GN-15-004336 (353rd Dist. Ct., Travis County, Tex. Nov. 20, 2015). The Court specifically held that the Temporary Injunction did not preclude DFPS "from proceeding with traditional rule adoption procedures." Id. at 7. Accordingly, DFPS published §748.7 as a proposed rule in the November 13, 2015, issue of the Texas Register (40 TexReg 8009).

The adoption of the rule ensures the continued protection of children housed in the facilities by making the facilities subject to the regulatory authority of CCL along with its associated requirements, with limited exception.

The section will function by enhancing the quality of care for children housed in FRCs.

The essence of the new rule is the application of Child-Care Licensing's (CCL's) regulations related to GROs to FRCs, as defined in the rule. That definition, found in subsection (a), applies regulations for GROs to FRCs that are operated by or under contract with ICE to enforce federal immigration laws and that detain children who remain with parents or other adult family members, who provide direct care for the child except in specific circumstances. The definition currently would apply only to the South Texas Family Residential Center (STFRC) operated by the Corrections Corporation of America in Dilley, Texas, and the Karnes County Residential Center operated by the GEO Group, Inc. in Karnes City, Texas.

Subsection (b) classifies the FRCs as GROs and requires them to comply with all associated requirements unless CCL issues a waiver or variance, or an exception is granted by the section itself. While the rule applies the standards to the FRCs and does not go into extensive detail regarding those standards, incorporating the standards for GROs by reference means incorporating a broad and comprehensive regulatory scheme designed to protect and enhance the well-being of children in care. As is discussed in additional detail in DFPS' responses to public comments received on the proposed rule, the regulatory overlay in place for GROs involves statutory mandates and direction, rules general applicable to all regulated operations including GROs which are found in Chapter 745 of this title, Licensing, as well as Minimum Standards specific to GROs found in Chapter 748 of this title. Those Minimum Standards include governing requirements across many domains that range from the qualifications for the Child Care Administrator each facility must employ to requirements for food storage to restrictions on the use of emergency behavior intervention.

Subsection (b) further clarifies that DFPS does not oversee requirements that pertain to other law. Of particular

the comments received to the proposed rule, DFPS explicitly clarifies that it has no role in determining whether the FRC is classified as secure.

Subsection (c) lists several exceptions that DFPS determined at the outset were appropriate in recognition of the unique characteristics of the FRCs. First, because children are housed with parents or family members, and there may be sibling groups of more than four children, DFPS recognized that the limitation on four room occupants could be directly at odds with the need to house families together wherever possible and safely achievable. Secondly, because children would be sharing rooms with parents or other family members, DFPS recognized that the FRCs would not be required to comply with all of the requirements related to children sharing a bedroom with an adult. Finally, because siblings may be of the opposite gender, and because there may be circumstances where young children of different families would be housed together, DFPS granted a partial exception to the limitations on children of the opposite gender sharing a room. It should be emphasized that the text of the subsection noted that the facilities would not be required to comply with all of the provisions in the referenced standards, which makes clear that the FRCs may be required to comply with portions of the standards in question. Furthermore, and more significantly, DFPS reiterated in subsection (d) its ultimate discretion to place conditions on any exceptions and described some examples of such conditions by way of illustration. Specifically, DFPS offered a non-exhaustive list of possible conditions on the exceptions to allow flexibility in the agency's exercise of its authority in recognition of its responsibility for overseeing the safety and well-being of children in care, which include:

limits on the number of room occupants to meet fire safety standards, or limitations on allowing children of opposite genders to share a room only if they are in the same family. DFPS then reiterated its discretion to place "any other limitation determined by the department to be necessary to the health, safety, or welfare of children in care."

Finally, in subsection (e) DFPS added a provision again in recognition of the FRCs' unique characteristics, which requires any documentation DFPS deems necessary to clarify the division of caretaking responsibility between FRC staff and the parents or family of a child in care. DFPS must not merely receive the documentation but must also approve it during the application process and at the point of any subsequent amendments to the documentation.

During the public comment period, DFPS sought public feedback regarding the proposed rules through multiple channels. In total, DFPS received 1486 comments in writing. DFPS received 3 responses through the U.S. Postal Service that were not also received either through email or in hard copy at the public meeting on the rule.

In total DFPS received 1460 responses via email. Of those responses, 701, or 48 percent were received from individuals or groups who reside outside the state of Texas. The vast majority of the comments (approximately 1350) were comprised of two standardized emails. The first of the two standardized emails appears to have been issued primarily in response to the emergency rule adopted by DFPS on September 2, 2015, the implementation of which was temporarily enjoined by the 250th District Court in Austin on November 12, 2015. Indeed, 488 of those comments were received prior to the publication of the proposed rule and could not, therefore, have been in response to the publication of the proposed rule. However, because the comments appear to be directed both at the emergency rule adoption as

well as the substance of the rule and because several of the standardized emails were received following publication of the proposed rule, DFPS considered the substance of the standardized email in its discussion of comments and the agency's response. DFPS also considered the substance of the second standardized email, which opposed licensing the FRCs, and incorporated the substance into the summaries of the comments.

In addition, DFPS announced that it would hold a public meeting on the rule proposal on December 9, 2015, in the following ways: (1) in the Texas Register Open Meetings section; (2) through the govdelivery.com service, which allows interested persons to sign up for email or text updates regarding DFPS or other governmental agencies; and (3) on the DFPS website page for items of interest to stakeholders. The meeting was well attended and received media coverage. Forty-five people testified, some in their individual capacities and others on behalf of an organization or group. In addition, 11 speakers handed in individual written testimony. An advocacy group submitted approximately 800 written comments to the panel of DFPS and HHSC representatives present to take testimony. DFPS subsequently determined that all but 12 of those printed comments were identical printouts to emails previously received by DFPS. The entire meeting was transcribed and published on the DFPS public website at http://www.dfps.state.tx.us/About_DFPS/Public_Meetings/Stakeholders/documents/2015-12-09-Licensing_Hearing_transcript_acc.pdf.

The public comments received by the agency included those submitted by interested groups or associations, as well as legislators in their official capacity. Specifically, the groups and officials submitted comments generally in opposition to the adoption of the rule include: the Interfaith Welcome Coalition; the Texas School of Law Immigration Clinic; Methodist Healthcare Ministries of South Texas; the Texas Catholic Conference; the Benedictine Sisters; CARA Family Detention Pro Bono Project (comprised of the Catholic Legal Immigration Network, Inc.; the American Immigration Council; the Refugee and Immigrant Center for Education and Legal Services; and the American Immigration Lawyers Association); Heartland Alliance's National Immigrant Justice Center; Texas Pediatric Society; Rio Grande Equal Voice Network; Representative Trey Martinez Fischer, Chairman, Texas Mexican American Legislative Caucus; Texas Senators: Judith Zaffirini, José Rodríguez, José Menéndez, Sylvia

R. Garcia, Rodney Ellis, Juan "Chuy" Hinojosa, John Whitmire, and Kirk Watson; the De Anda Law Firm; CASA Latina; Mexican American Legal Defense and Education Fund; Grassroots Leadership; Unitarian Universalist Service Committee; Texas Impact; Women's Refugee Commission; American Civil Liberties Union of Texas; Unitarian Universalist Association; National Association of Social Workers, Texas Chapter (NASW); and Catholic Charities of the Rio Grande Valley.

The following groups and officials submitted comments generally supporting the adoption of the rule: Representative James White and a representative of the Karnes County Residential Center.

Finally, while not formal public comment, the rule proposal was covered in various media outlets. Included in the coverage were two editorial pieces regarding the proposed rule. The Fort Worth Star-Telegram on December 10, 2015, noted that the testimony in the public meeting was to the effect that the family residential centers have "a long way to go" to provide

care to children. The Star-Telegram further indicated that it was "a shame" license sure by DFPS had taken so long. In addition, the San Antonio Express News on December 15, 2015, noted that so long as

women and children are being detained in the facilities, the state has some obligation to oversee the care of children who are detained there.

All of the public comments, whether submitted via mail, email or orally in the public meeting, were reviewed and considered by DFPS staff. The feedback generally fell into themes, which are summarized below, along with the agency's response.

(1) Comments Supporting Licensure As a Means to Protect Children and Improve Current Practice:

Comment: Two commenters, including one state representative, supported licensure. The representative noted that the state is statutorily obligated to ensure the safety and wellbeing of all children in Texas, and by providing oversight to the FRCs, DFPS would be able to ensure the children's safety and pass on its institutional knowledge of child safety and wellbeing to the federal government. The commenter further noted that by expanding its regulatory purview, DFPS would be able to play a vital role in identifying and providing services to children and families that are at high risk of human trafficking. Another commenter, who provides representation to one of the FRCs, noted that licensure is not merely an endorsement of the status quo as the FRCs would not only be required to meet the standards of a GRO, but would be required to provide evidence of compliance. The commenter cited to the significant fiscal impact to the FRCs to come into compliance with the proposed requirements, including increasing staff to detainee ratio, recruiting qualified staff to provide necessary services mandated by the rule, meeting the public hearing requirements, ensuring CPR certifications, obtaining background checks for employees, meeting square footage requirements, and submitting materials clarifying the supervisory and caretaking responsibilities of staff and family members. The commenter also noted that the exemptions to minimum stan-

dards, which DFPS has authority to place limits on, were formulated to allow children to continue residing with their mothers and not to continue the status quo.

Response: DFPS agrees with the comments.

(2) Comments Expressing Concern with Licensure and Any Exceptions, Waivers, or Variances Associated with Licensure:

Comment: A significant number of commenters expressed concern that licensing the Karnes County and Dilley Centers with exemptions, as the rule allows, would amount to the mere rubber stamping of the centers as they currently operate without meaningful consideration of their ability to provide adequate child care. Specifically, the commenters argued that the rule would not ameliorate the conditions of the centers, but would rather allow the centers to continue operating as detention centers in a manner that is contrary to the safety and well-being of children. One commenter noted that the Karnes County center has a history of temporarily altering its conditions, such as redecorating, providing extra toys, and improving food quality, in preparation for visitations by external entities; however, it has not made significant and permanent improvements. According to the commenters, licensure would not change the inherent purpose and overall substandard environment of the Karnes County and Dilley centers.

Response: The Texas regulatory scheme in place for GROs is comprehensive, extensive, and rooted in basic tenets of child protection and welfare. By properly designating the FRCs as GROs, DFPS brings to bear not only the single rule adopted here but a host of statutory, regulatory, and policy-based requirements aimed directly at protecting the health, safety, and

well-being of children in care. (See HRC §42.001). First, the Texas legislature has established the basic framework for the licensure of child-care facilities, primarily in CCL's enabling authority in HRC Chapter 42, as well as DFPS' general enabling statutes in HRC Chapter 40. (See in particular HRC §40.002(b)). The legislature has directed CCL, through the Executive Commissioner of HHSC, to adopt rules and standards to accomplish various purposes including: promoting the health, safety, and welfare of children; ensuring adequate supervision of children by capable, qualified, and healthy personnel; and ensuring that facilities follow the directions of health care professionals. (See HRC §42.042(e)). In addition to general direction to promulgate standards, the legislature has mandated certain critical aspects of the licensure process and its underlying requirements. For example, the Texas legislature has enacted laws related to the requirement for submission of an application (see HRC §42.046); requirements related to conducting and abiding by the results of criminal and abuse/neglect history checks (see HRC §42.056); the requirement that each facility hire and maintain a licensed child-care administrator for the facility (see HRC Chapter 43); and the requirement that a potential operation convene a public hearing in counties of a certain population size (see HRC §42.0461).

Based on its general statutory authority and duties, CCL has adopted a broad regulatory framework in Chapter 745 of this title, Licensing, contains rules of general applicability to various operations regulated by the agency. Of particular significance to this rule, Chapter 745 contains requirements and restrictions related to the criminal or abuse/neglect history of a person employed or present at the facility. (See Chapter 745, Subchapter F, Background Checks).

Next, CCL has various rule chapters in place recognizing the different operation types and the services they provide. (See HRC §42.042(f) and (g)). The various subchapters in this chapter related to GROs address a multitude of topics, many of which are discussed in greater detail in this preamble, including requirements related to training for staff, the provision of medical and dental care, the use of emergency behavior intervention. Examples of other topics covered by regulation and not discussed in great detail in this preamble include: requirements related to admission and service planning, the physical site of the operation, and transportation. Should there be any further question regarding the content of DFPS' standards, all are readily available to the public, both through the Secretary of State's website for the Texas Administrative Code (see [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=40&pt=19](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=40&pt=19)) and DFPS' website (see http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/default.asp). Moreover, the entire policy handbook in use by CCL staff is publicly available at any time (see <https://www.dfps.state.tx.us/handbooks/Licensing/default.asp>).

Against this extensive regulatory backdrop, the FRCs would be required to go through the same process as other GROs in the state and to demonstrate compliance with the various requirements of Texas statute and regulation discussed herein. First, they would be required to submit an application. Residential Child Care Licensing (RCCL) has 21 days to accept the application. (See §745.301 of this title (relating to How long does Licensing have to review my application and let me know my application status?)). During that time, RCCL reviews the application for completeness and ensures that policies and procedures that are required at application are included, and that applicable

fees have been paid. At times, RCCL may need to request additional information or clarification from the GRO in order to accept the application or RCCL may return the application.

Once the application is accepted, RCCL has up to two months to complete a Standard by Standard inspection to evaluate compliance with Minimum Standards. (See §745.321 of this title (relating to What will Licensing do after accepting my application?)). Concurrently, in counties with a population of less than 300,000 people, the GRO has one month from the date the application was accepted to hold a public hearing. (See §745.275(2)(C) of this title (relating to What are the specific requirements for a public notice and hearing?)). Notice of the public hearing must be published at least ten days prior to the date of the hearing in a newspaper of general circulation in a community where the services will be provided. (HRC §42.061(b) and §745.275(1) of this title (relating to What are the specific requirements for a public notice and hearing?)).

Once the public hearing occurs, the GRO has ten working days to submit a verbatim record of the hearing and a complete comment summary report to RCCL. (See §745.275(2)(C) of this title (relating to What are the specific requirements for a public notice and hearing?)). RCCL has two months after the date of the complete application being accepted to issue or deny the initial permit unless there is good cause to extend the timeframe, such as reviewing extensive comments of a public hearing. (See §745.321 of this title (relating to What will Licensing do after accepting my application?)).

RCCL may deny the application if the operation fails to comply with Minimum Standards, administrative rules, or the law. HRC §42.072(a) and §745.8605 of this title (relating to When can Licensing take remedial action against me?) further authorizes certain remedial actions related to failure to comply with aspects of the application process. Additionally, RCCL may deny the permit if information obtained through the public hearing process indicates licensure is inappropriate. (HRC §42.0461(e), §745.279 of this title (relating to How may the results of a public hearing affect my application for a permit or a request to amend my permit?)), and §745.8605(21) of this title (relating to When can Licensing take remedial action against me?)).

When an initial permit is issued, it is valid for a period of six months. (HRC §42.051 and §745.347 of this title (relating to How long is an initial permit valid?)). During the initial permit period, RCCL will generally conduct a minimum of three unannounced inspections to determine compliance with Minimum Standards, administrative rules, and law. (§745.351 of this title (relating to If I have an initial permit, when will I be eligible for a non-expiring permit?)). If during the first initial permit period, the GRO fails to establish continued compliance and additional time is necessary to determine a pattern of compliance, RCCL may issue a second initial permit to establish ongoing compliance. If the second initial permit is issued, RCCL will again conduct at least three unannounced inspections. If after the first initial permit period or the second initial permit period, the GRO has established continued compliance, RCCL may issue a full permit. When a GRO is issued a full permit, RCCL will conduct at least one unannounced inspection per year, in addition to any other inspections or investigations that may be necessary as a result of reports received. (§745.8407 of this title (relating to When will Licensing inspect and/or investigate an operation?)).

The purpose of this rule is to apply the licensure requirements to

the operations, a necessary byproduct of which is that they will come into compliance with said requirements.

If a current prac-

tice is inconsistent with CCL standards, then the practice would be addressed in the licensure process. To argue that a given practice does not currently comply with regulations for child-care is to misapprehend the purpose of licensure and all that it entails.

Comment: Several commenters opposed the exceptions to Minimum Standards contained in the proposed rule stating that they are overbroad, arbitrary and capricious, set a dangerous precedent for regulating childcare facilities, and essentially allow the FRCs to continue operating under the status quo of a prison. The commenters noted that federal and state law do not provide any basis for lowering the standards for facilities that house accompanied minors as opposed to unaccompanied minors. They further noted that the exemptions effectively create a second-class of children subject to a lower, disparate standard from children under the custody of DFPS or unaccompanied minors. Several commenters expressed concern that the exceptions not only fail to address the problems of abuse and neglect, but increase the risk of physical and sexual abuse and maltreatment by allowing different genders and unrelated family members to be housed together in large numbers. One commenter noted that there have already been numerous allegations of assault and potential sexual abuse because of the lack of age and gender restrictions, and another commenter noted that the exemptions compromise the families' ability to file complaints for poor living conditions and abuse and neglect. While some commenters acknowledged a need for oversight, they contended that DFPS should only adopt rules consistent with those for child care facilities by requiring the FRCs to meet all current minimum standards and ensure appropriate therapeutic and trauma-informed settings as is required for other GROs.

Response: From the outset, DFPS recognized that the character of the FRCs is without an identical counterpart in the current regulatory structure. Children are housed with their mothers or other adult family members, yet by virtue of being divested of some or all of their authority to direct the daily activities, place of residence, and other aspects of their children's lives, the mothers cannot be considered the sole caregivers as they would be outside the setting. Moreover, while the families are generally housed together, there are times in which a mother may be separated from her child, e.g. when capacity is extremely high and some of the children are housed in a common, dormitory-like fashion. To the extent the mothers are not exercising full parental control, and may not be with their children at a given time, the staff in the FRCs are assuming child-care responsibilities, and it is important that this care receives oversight from the cognizant state agency.

However, in recognition of the uniqueness of the setting, DFPS included several exceptions to Minimum Standards in both the emergency rule and the rule now under consideration. The first exception, related to the limitation on the number of room occupants is intended to permit living arrangements that preserve family units. DFPS included in subsection (d) of the rule language to clarify that there may be conditions related to the outer limit on the number of occupants, particularly where such a limit is necessary to comply with fire safety standards. DFPS will require a minimum of sixty square feet per child, and as discussed herein, DFPS applies exceptions, waivers and variances in light of their potential implications to child safety, and would not implement the exception such that it was inconsistent with its child protection obligations.

The second exception in the rule relates to children sharing a bedroom with an adult, and is intended to permit children to sleep

in a room with their mothers. While DFPS' current standards related to adults sharing a bedroom with children relates to adults who are in care at the facility, unlike the mothers at the FRCs who are not in care, DFPS felt it was important to clarify from the outset that the limitation would be flexibly applied. Again, subsection (d) as well as DFPS' overall regulatory authority means that the exception is not unfettered, and DFPS may place conditions on it appropriate to the circumstances.

The third exception, like the others, is intended to permit the preservation of family units and may be tempered by any limitations DFPS deems appropriate. This particular exception relates to children of the opposite gender sharing a room. DFPS understands the concerns of commenters related to potential misconduct. However, DFPS intends to permit children of the opposite gender to share a room only if they are members of the same family or under the age of six. The goal of the exception is to strike a balance between family preservation within the current facility and the paramount concern of child safety.

However, because the rule text initially generated confusion and concern regarding the scope and purpose of the exceptions, DFPS has modified the proposed text to provide further clarification. First, the exception regarding the limitation on room occupants has been modified to make explicit that the number of children permitted in the room will be based on the square footage of the room, with no fewer than sixty square feet per child. Second, the exception related to children sharing a bedroom has been clarified to specify that the exception relates to children remaining with their own family. Third, the exception permitting children of the opposite gender to share a bedroom has been amended so that children from different families who are opposite gender may not share a bedroom unless they are under the age of 6. Finally, DFPS incorporates by reference in subsection (d) its regulation in §745.8313 of this title (relating to Is a waiver or variance unconditional?), which makes it explicit that DFPS retains the discretion to place conditions on any waiver or variance, as well as the exceptions contained in §748.7.

Comment: One commenter suggested that in light of the aim of the regulation to preserve family units, subsection (c) be modified to preface the exceptions with the language "Because the designated facilities house mothers with their children..."

Response: DFPS declines to make the change. By definition which is part of the rule, an FRC is a facility in which a child is detained with the child's mother or other family member, and the adult or other family member provides direct care and supervision. For this reason, DFPS views the change as substantively unnecessary.

Comment: Similarly to previous comments regarding the exceptions contained in the rule text, several commenters raised concerns that because DFPS may grant a waiver or variance to a Minimum Standard, in addition to the exceptions listed in the published rule, child safety could be compromised and there may be a disparate standard for unaccompanied minors compared to those housed with their mothers in the FRCs.

Response: It is true that all GROs, including the FRCs, are potentially eligible for a waiver or variance of a particular standard. However, the issuance of any waiver or variance is guided by published standards and policy and tempered always by the need to protect children.

Waivers and variances are tools to assist child-care

providers to comply with standards within a specified period of time, without compromising the safety of children served by the

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operation. A waiver or variance is not an entitlement. (See §745.8301 of this title (relating to What if I cannot comply with a specific minimum standard?)). Staff must evaluate the risk to children, along with several other specified variables, before granting approval for a waiver or variance. (See §745.8307 of this title (relating to How does Licensing make the decision to grant or deny my waiver or variance request?), and Licensing Policy and Procedures Handbook Section 5110 (available at https://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5000.asp#LPPH_5100)). A waiver or variance may not be granted if child safety would be negatively impacted. All waivers and variances, and any conditions placed on the waivers and variances, are time limited, and may be revoked or amended by CCL at any time if appropriate. (See §745.8317 of this title (relating to Can Licensing amend or revoke a waiver or variance, including its conditions?)). When granting a waiver or variance, conditions must be put into place to ensure that children are not at risk. (See §745.8313 of this title (relating to Is a waiver or variance unconditional?)) Such conditions must be easily observable and measurable by CCL staff as well as the caregivers in the facility. Licensing Policy & Procedure Handbook Section 5120 (available at http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5000.asp#LPPH_5120) Conditions are another way of achieving compliance with minimum standards and reducing risk to children. Conditions must be evaluated during each inspection and during each investigation relevant to the standard and the conditions. Id.

(3) Comments Relating to Problems with Detention in General and in the Individual FRCs:

Comment: Several commenters expressed opposition to the proposed rule on the grounds that the FRCs DFPS is seeking to license are not child care centers but rather detention centers designed to house individuals in the custody of ICE during immigration proceedings. Commenters argued that although the children are housed with their mothers, the mothers are stripped of authority to make decisions for their children's well-being. Commenters stated that the centers are similar to prisons in that they are enclosed within tall walls and barbed wire fences; house a large number of individuals rather than adhere to any specific child-to-provider ratio; require the families to submit to badge checks several times a day and pass through electronically locked doors for access to basic areas; limit and monitor access to telephones and computers which are provided to families at a monetary cost; discipline the families through the use of pepper spray and harsh consequences for children's misbehavior; threaten to remove children from mothers for failure to follow rules or if complaints are made; and house unrelated adults and children of different genders together in small non-private spaces. Many commenters further noted that the centers are operated by private prison corporations and staffed by individuals with backgrounds in law enforcement rather than individuals with experience and training in child care. Commenters also noted that simply hiring more staff with a background in law enforcement rather than child care will not change conditions in the FRCs.

Response: In both the rule and this adoption preamble, DFPS has stressed repeatedly that whether the FRC is operated as a detention or secure FRC is outside its purview. However, precisely because it appears that the mothers in the FRCs are divested of some or even all of their parental authority (when separated from their children, for example),

DFPS has concluded that the FRCs and their staff are providing child care. The purpose of

licensure is to ensure compliance with the standards for the provision of such care. Those standards, as previously discussed, are robust. Of particular relevance to this question, there are many standards that relate to the appropriate use of discipline and punishment found in Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings). There are detailed standards regarding the limited use of Emergency Behavior Intervention (EBI) found in Subchapter N of this chapter (relating to Administrator Licensing).

Next, while it may be true that the FRCs have heretofore hired staff with law enforcement experience, this does not translate inexorably to the same practices continuing in the future, nor does it alter the FRCs' obligation to comply with the child-care related training requirements placed on GROs by Minimum Standards. While the training requirements vary somewhat based on the services provided in a particular GRO, any caregiver at a licensed operation must participate in orientation, pre-service training, and annual training. Orientation gives the caregiver the opportunity to learn about the philosophy, organizational structure, policies, and a description of the services and programs the operation offers, as well as the needs and characteristics of children that the operation serves. Pre-service training focuses on topics relevant to job duties and must include, inter alia, content on appropriate discipline; child development; measures to identify, treat, and report suspected abuse, neglect and exploitation; and safety and emergency procedures. See §748.881 of this title (relating to What curriculum components must be included in the general pre-service training?) Each caregiver would be required to receive a minimum of 16 hours of pre-service training in a course led by a

qualified instructor. (See §748.863 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?) and §748.869 of this title (relating to What are the instructor requirements for providing pre-service training?)). It must be competency based and require participants to demonstrate competency upon completion. Each caregiver must complete a minimum of 20 hours of additional training annually, including specific training on EBI if it is used in the facility. (See §748.931 of this title (relating to What are the annual training requirements for caregivers and employees?)). Overall, the comments imply that licensure as a GRO would not change current practice in the FRC, a contention with which, as discussed above, DFPS disagrees.

Comment: Many commenters expressed concern over the risk of psychological harm for children and families residing in the centers. These commenters stated that the risk is particularly acute for immigrants, who have often fled persecution, abuse, and frequent trauma in their homelands. Commenters also asserted that children are especially at risk of developing short and long-term mental health issues due to being detained in the centers. One commenter specifically noted that infants living in detention centers have problems with brain development and social functioning due to disruptions in emotional attachments to their mothers, and children living in detention centers tend to have greater maladaptive social and emotional development, academic failure, and criminal involvement than children not living in detention centers. One commenter noted that the children know they are in detention centers and feel they are being punished, thereby, normalizing the concept of detention and negatively impacting their moral development and understanding of the criminal justice system. Further, commenters stated that many women and children in the centers are exhibiting symptoms of post-traumatic stress disorder, anxiety, depression, and

other mental illnesses, and are not receiving adequate treatment for these issues.

Response: While DFPS is sympathetic to the concerns raised, the agency has no role in whether a person is placed or detained in one of the FRCs. However, so long as children are housed there, and so long as mothers are not permitted to fully exercise their parental responsibility, DFPS considers the FRCs to be providing child care. It is more protective of the children in the FRCs for DFPS to exercise its oversight than to abdicate its responsibility based on the notion that the centers are harmful.

Comment: A number of commenters expressed concern that the living conditions in the centers fail to meet the basic needs of children and families and pose fundamental threats to their health and safety. Commenters' specific concerns included residents' inadequate access to healthy, regular meals and snacks; cold temperatures in the centers and residents' inadequate access to heating or blankets; close living quarters in the centers with a large number of unrelated individuals; unhygienic living conditions; other poor living conditions and inadequate access to education for minors in the centers.

Response: Living conditions, to the extent they are covered by CCL's Minimum Standards for GROs, would be addressed during the licensure process. To the extent the living conditions relate to the practices of the federal government or its contractors with respect to adults in the FRCs, they are outside DFPS' scope of authority.

Comment: A significant number of commenters expressed concern that residents' health care needs are not being met in the Karnes County and Dilley centers. One commenter noted that the US Commission on Civil Rights found that the Karnes County center failed to comply with federal standards for medical care. Commenters asserted that specific problems at the centers include: failure to administer proper medical protocol; failure of medical staff to obtain informed consent of patients prior to medical treatment; unavailability of doctors when residents are ill; failure to timely treat residents' illnesses; failure to timely refer patients to hospitals when they are critically ill; administration of adult doses of vaccines to children; prescription of solely water or Vick's Vaporub to treat various illnesses, including serious illnesses; lack of follow-up care; unreasonably lengthy waiting times to receive care; and mothers being asked to sign waivers stating they have declined medical care if they leave the medical facility for any reason, despite long waiting times.

Response: DFPS' scope of authority is limited to the provision of medical care to children in the facility, and defers to the expertise of medical professionals in the determination of frequency and mode of treatment. However, Minimum Standards contain requirements specifically geared at ensuring a baseline of adequate medical treatment for children in care.

Generally speaking, an operation must provide medical and dental care to children in the operation. A child in care must receive medical and dental care: (1) initially, upon admission; (2) at as early an age as necessary; (3) as needed for relief of pain and infections (dental) or as needed for injury, illness, and pain (medical); and (4) as needed for ongoing maintenance of dental or medical health. See §748.1501 of this title (relating to What general dental requirements must my operation meet?) and §748.1531 of this title (relating to What general medical requirements must my operation meet?).

A licensed dentist must determine the need and frequency of on-

going maintenance of dental health. (See §748.1503 of this title)

(relating to Who must determine the need and frequency of ongoing maintenance of dental health for a child?). A health-care professional must determine the need and frequency for ongoing maintenance of medical care and treatment for a child. (See §748.1533 of this title (relating to Who determines the need and frequency for ongoing maintenance of medical care and treatment for a child?)). The operation must comply with dentist and health-care professional recommendations for examinations and treatment for each child. (See §748.1501(d) and §748.1531(d) of this title). Subchapter J of this chapter (relating to Child Care) contains additional requirements related to various aspects of health care, including immunizations, communicable diseases, and nutrition and hydration, among others. Additional rights for children in care related to treatment are found in Subchapter H of this chapter (relating to Child Rights).

Comment: Several commenters expressed concerns related to issues with the staff at the centers. One commenter expressed concern about the ethical practices of the management of the Karnes County center after her experience as a social worker there. The commenter reported being repeatedly asked to omit written information about residents' mental health needs from reports, to lie to federal immigration officials, and to withhold information from residents about their rights within the center. Other commenters asserted that staff misconduct regarding abuse and sexual assault has not been adequately addressed. In addition, one commenter stated that the centers are not complying with the Prison Rape Elimination Act (PREA) solitary confinement practices, which require that solitary confinement of minors to keep them or other residents safe only be used as a last resort. A few commenters noted that not only are the centers understaffed, but the employees are not qualified or trained to serve the families.

Response: Some of the concerns are outside DFPS' scope,

such as extent of compliance with PREA. However, CCL will be implementing and enforcing Minimum Standards that would address some of the concerns regarding staff, at least insofar as they are serving in the role as a caregiver to a child. As previously discussed, Minimum Standards contain relatively extensive training requirements for all caregivers. For any facility that utilizes EBI, the training must include current information on EBI, and DFPS regulations generally require de-escalation and other age-appropriate techniques prior to utilization of any more severe measures. DFPS could not monitor staffing as a general proposition, but would monitor the adequacy of staff for the purposes of child-to-caregiver ratios in place in the FRCs. Minimum Standards also require various measures related to personnel and record keeping. In particular a permit holder must ensure the reporting of serious incidents including suspected abuse, neglect and exploitation. (See §748.105 of this title (relating to What are my operational responsibilities as the permit holder?)). Record keeping must ensure accurate and current child records. (See §748.393 of this title (relating to How must I maintain an active child record?)).

Comment: Several commenters advised that DFPS should take heed and not partake in the historical repetition of using family detention centers that inflict harm upon children and families. Commenters described how the T. Don Hutto Family Detention Center, ICE's first detention center in Texas that opened in 2006 and was operated by the for-profit corporation CCA, became a national and international scandal due to its substandard living quarters, inadequate health care, and inhumane treatment of children. Commenters noted that the American Civil Liberties Union of Texas (ACLU) and the University of Texas Immigration

Law Clinic successfully sued ICE to stop the use of the center for the detention of immigrant children and families.

Response: DFPS does not influence whether a family or child is placed in an FRC; rather, DFPS is carrying out its duty "to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program" for those children who are placed in the FRC. (See HRC §42.001).

(4) Comments Relating to DFPS' Authority to Investigate Abuse and Neglect Allegations in the Facilities Without Licensure:

Comment: Several commenters opposed licensure, stating that DFPS has statutory authority to investigate abuse and neglect in non-licensed FRCs, and therefore, can already provide regular and comprehensive oversight of the centers without licensure. The commenters stated that DFPS offers no explanation of how licensing and exempting the FRCs from minimum child-care standards will protect the children from abuse and neglect. Furthermore, the commenters asserted that creating exemptions will weaken DFPS' ability to ensure child safety and well-being. One commenter suggested that rather than licensing the FRCs, DFPS should instead appoint an independent medical and psychological team to investigate reports of abuse, neglect, and exploitation in order to monitor and assure the well-being of the detained children.

Response: DFPS has consistently maintained that CPS could investigate reports of abuse or neglect by a parent or caretaker in the FRCs. Conducting abuse or neglect investigations, however, is only one part of regulation. A child abuse or neglect investigation conducted by childcare licensing should be conducted within the scope of the operation's effort to comply with relevant minimum standards.

Significantly, for the purposes of child protection, licensure offers an ongoing avenue to monitor medical care as well as allegations of abuse and neglect and other deficiencies in FRCs. While the commenters were concerned that the only additional authority in the licensure would be to inspect specific licensing requirements, this is in truth a significant enhancement, as detailed herein, and invokes a comprehensive regulatory and protective scheme. Responding to reports of abuse and neglect is reactive, and it assumes that a vulnerable individual has access to a telephone or the Internet to freely make the report. Licensure is comprehensive, ongoing, and gives DFPS the authority to make both announced and unannounced inspections, in addition to investigating individual reports of abuse or neglect. If a staff member is found to have abused or neglected a child there could be implications to the staff member's ability to work in the operation, which would not occur if the facility were not subject to regulation as a child-care facility, specifically as a GRO.

Finally, DFPS lacks authority to appoint an independent medical and psychological team to investigate reports of abuse, neglect and exploitation. The agency itself has the authority to investigate, but cannot without additional statutory authority and resources abdicate this responsibility and grant it instead to an independent group of medical and psychological professionals.

(5) Comments Relating to the Flores Settlement:

Comment: Many commenters argued that placing children in the

Dilley and Karnes County centers violates the Flores settlement, which provides that children in immigration custody be placed in the least restrictive setting appropriate to their age and special

needs, generally, a non-secure FRC licensed to care for dependent, as opposed to delinquent, minors. Commenters argued that the prison-like environments of the FRCs violate Flores, and licensing the FRCs with various exceptions will not remedy the violation. One commenter was concerned that the potential licensure of the two FRCs would permit ICE and its private partners to attempt to claim compliance with Judge Gee's July 24, 2015, and August 21, 2015, orders. One commenter noted that the U.S. Commission on Civil Rights conducted an extensive investigation into the FRCs and found that the Department of Homeland Security and its contractors are not holding children in the least restrictive settings. Additionally, one commenter asserted detainment is unnecessary because the majority of the families at the FRCs have already demonstrated credible fear to an asylum officer, do not pose a threat to public safety, and have relatives in the United States to house them while they await a hearing.

Response: DFPS has repeatedly emphasized that its role with respect to the two FRCs currently in Texas is to oversee the care of the children who are housed with their mothers or family members there, not to determine whether the facility is secure. DFPS has no control over whether individuals are placed in the FRCs, and any outcome in the litigation is a matter outside the scope of DFPS' purview.

(6) Comment Concerning DFPS' Overall Authority to License the FRCs:

Comment: One commenter argued that DFPS' regulation of FRCs was unlawful and without authority because the FRCs violate state laws regarding the detention of juveniles. The

commenter argued that the Texas Family Code offers a "robust series of statutes that specifically prohibit, and even criminalize placement of certain children in secure detention facilities." The commenter documented reasons why the FRCs should be considered secure detention facilities, including the use of techniques such as isolation as punishment, the existence of high walls, restrictions on movement, and so forth. The commenter then argued that because they are secure detention facilities where children are held, the FRCs, and any licensure of those FRCs, violates Texas laws regarding juvenile offenders. Specifically, the commenter asserts both that DFPS lacks statutory authority for and that DFPS is explicitly banned from licensure of the FRCs, though for the latter point no particular authority is cited. The rule, per the commenter, is without legal authority because children in the FRCs may be detained beyond statutory time frames and in contravention of other restrictions in Chapter 51 of the Texas Family Code (TFC), and because the children are never adjudicated in front of a Texas juvenile court but are being housed to enforce deportation laws, in contravention of TFC §54.011(f). Further, the commenter suggested that DFPS' licensure effectively aids in the commission of a Class B misdemeanor under the same statutory provision of TFC §54.011. The commenter explained that Texas juvenile detention laws prohibit the secure detention of children under the age of ten. Finally, after arguing that DFPS has no authority to regulate the centers as child-care facilities, the commenter concluded that DFPS was obligated to immediately order the FRCs to cease operation because they have been operating without such a license for more than one year pursuant to CCL's enabling chapter.

Response: The commenter's arguments related to the TFC are misplaced. As noted in materials attached by the commenter, the chapters of the TFC in question relate to facilities operated

by or on behalf of the Texas Juvenile Justice Department or on behalf of a juvenile board in the state of Texas. They do not govern federal facilities, including the FRCs under discussion in this rule promulgation. To the commenter's point that DFPS should immediately order the FRCs to cease operation as unlicensed facilities, DFPS has not previously issued regulatory guidance regarding the FRCs' status and to take enforcement action against the operators of the FRCs would in all likelihood violate the Administrative Procedure Act, Chapter 2001 of the Texas Government Code, in addition to being patently unjust. DFPS declines to take any such action on the basis of a previously nonexistent regulatory pronouncement.

(7) Comments Relating to the Proposed Rule Being Contrary to DFPS' mission:

Comment: A significant number of commenters argued that the proposed rule is at odds with DFPS' mission to protect children and families from abuse, neglect, and exploitation. These commenters expressed concern over the FRCs' ability to provide for the safety and well-being of children when the FRCs were created to detain immigrants under federal immigration law and are managed by privately-owned prison companies under contract with ICE. A few commenters called DFPS' integrity into question, asserting that the decision to license these FRCs is not motivated by concern for the children because licensing would not address or solve the problem of family detention. Specifically, one commenter argued that the rule does not have the best interests of children in mind, but rather exists only because these FRCs were determined to be outside of compliance by the court system. Additionally, many commenters argued that if DFPS truly wanted to hold these FRCs accountable for the well-being of children, DFPS would have responded to the numerous complaints received and investigated the FRCs under current authority.

Response: DFPS has concluded that licensure of the FRCs is mandated and consistent with its mission to protect vulnerable children in care. DFPS views the licensure process as a tool to enhance the FRCs' ability to provide for the children's safety and well-being. DFPS seeks not to solve the problem of family detention, but rather to provide protective oversight for children who find themselves in the FRCs. Finally, based on careful and ongoing review of the issues over the course of time, DFPS' position has evolved and culminated in the regulatory action contained herein.

(8) Comments Relating to the Fiscal Implications of the Proposed Rule:

Comment: A few commenters noted that the Child Care Licensing Division of DFPS already has limited resources so licensing two large facilities would have negative fiscal implications and involve a drain on other crucial agency resources. One commenter expressed concern over DFPS' estimate that the rule will have no fiscal impact upon the agency, questioning how DFPS would provide the essential protection of regular and comprehensive oversight to the centers without a budget. Additionally, the commenter expressed concern for the lack of budget line items for psychiatrists, psychologists, or counselors in the private operators' budget of \$32 million a year for both centers. Additionally, a few commenters noted that there are other established alternatives that could address the government's legitimate interests in managing immigration and ensuring child safety without inflicting further trauma on the families and at a lower financial cost.

Response: DFPS has concluded that it can absorb the workload associated with the rule within current resources, at least during the first five years following the rule's effective date. One of the FRCs submitted commentary that DFPS' fiscal estimates were too low, as discussed herein. DFPS believes its estimates are sound. Ultimately, the FRCs will assess the true costs of compliance to them and engage in the requisite cost-benefit balance analysis to determine how to proceed. Alternatives to the federal government's current immigration practice are outside the scope of this rule and DFPS' authority.

(9) Comments Relating to the Berks County Residential Center in Leesport, Pennsylvania:

Comment: Two commenters noted that the Pennsylvania Department of Human Services has publicly stated that it will refuse to renew the license of Berks County Residential Center, an ICE family detention center in Pennsylvania housing immigrant children and families similar to the Karnes County and Dilley centers, if the practice of using the facility as a secure family detention center continues because such practice is inconsistent with its current license as a child residential facility. The commenters urged DFPS to follow suit and refuse to license the Karnes County and Dilley centers.

Response: DFPS respects Pennsylvania's interpretation of its licensing laws and regulations. For the purposes of Texas law, DFPS has determined that the oversight inherent in licensure better serves the aims of child protection than the lack thereof.

(10) Comments Relating to the City of Dilley's Lack of Infrastructure to Support the Dilley Center:

Comment: One commenter opposed the rule, not due to the rule itself, but because the city of Dilley, with a population of only 3,894 residents, does not possess the infrastructure to support a large detention center. The commenter noted that water has cut out several times for the entire city since the Dilley center opened, and the center has had to call the city's emergency services for other unrelated incidents rather than being able to resolve such issues internally.

Response: DFPS would make basic assessments regarding the physical site as part of the licensure process. An assessment of the city's infrastructure would be beyond DFPS' authority, which would focus on the adequacy of the facility and its utilities vis-à-vis the provision of child care.

(11) Comments of Reasons for Adoption:

Comment: DFPS received two requests for a written, detailed rationale of the reasons for its adoption, or non-adoption, of the rule in question.

Response: While no particular authority was cited, DFPS will err on the side of maximum transparency and construe the requests to be requests for a statement of reasons for or against adoption pursuant to Texas Government Code §2001.030. Again, in the interest of maximum transparency, DFPS will include the statement in this preamble, though such inclusion is not required by the Government Code.

The principal reasons urged against the adoption of the rule may be summarized by reference to themes 2-10 detailed in the comments and response section. DFPS' reasoning for overruling the considerations and adopting the rule is discussed in detail in the summary section as well. It may be summarized by reiterating that the agency has concluded the broad regulatory scheme in

place for GROs will be more protective of children than taking no action regarding the provision of child care without a license.

Section 748.7 is being adopted with change. DFPS staff made modifications to subsection (c), paragraphs (1), (2), (3), and sub-section (d) to clarify the extent of and reasons for the variances.

The new section is adopted under §40.0505, Human Resources Code, and §531.0055, Government Code, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new section implements §42.042(a), Human Resources Code.

§748.7. How are these regulations applied to family residential centers?

(a) Definition. A family residential center is one that meets all of the following requirements:

(1) The center is operated by or under a contract with United States Immigration and Customs Enforcement;

(2) The center is operated to enforce federal immigration laws;

(3) Each child at the center is detained with a parent or other adult family member, who remains with the child at the center; and

(4) A parent or family member with a child provides the direct care for the child except for specific circumstances when the child is cared for directly by the center or another adult in the custody of the center.

(b) Classification. A family residential center is a general residential operation (GRO) and must comply with all associated requirements for GROs, unless the family residential center is approved for an individual waiver or variance or an exception is provided in this section. The department is responsible for regulating the provision of childcare as authorized by Chapters 40 and 42, Texas Human Resources Code and Chapter 261, Texas Human Resources Code. The department does not oversee requirements that pertain to other law, including whether the facilities are classified as secure or in compliance with any operable settlement agreements or other state or federal restrictions.

(c) Exceptions. A family residential center is not required to comply with all terms of the following Minimum Standards:

(1) the limitation of room occupants to four in §748.3357 of this title (relating to What are the requirements for floor space in a bedroom used by a child?), except that nothing in this exception shall be construed to require fewer than 60 square feet per child;

(2) the limitation on a child sharing a bedroom with an adult in §748.3361 of this title (relating to May a child in care share a bedroom with an adult?), if the bedroom is being shared in order to allow a child to remain with the child's parent or other family member; and

(3) the limitations on children of the opposite gender sharing a room in §748.3363 of this title (relating to May children of opposite genders share a bedroom?), except that nothing in this exception shall be construed to permit children from different families who are over the age of six and members of the opposite gender to share a bedroom.

(d) Limitation of exception. Notwithstanding subsection (c) of this section, and as further described in §745.8313 of this title (relating to Is a waiver or variance unconditional?), the department retains the authority for placing conditions on the scope of the exceptions authorized for a family residential center, including conditions related to limiting occupancy in accordance with fire safety standards, limitations related to allowing children and adults of the opposite gender to occupy the same room only if they are part of the same family, and any other limitation determined by the department to be necessary to the health, safety, or welfare of children in care.

(e) Division of responsibility. In addition to the application materials described in §745.243(6) of this title (relating to What does a completed application for a permit include?), an applicant for a license under this section must submit the policies, procedures, and any other documentation that the department deems necessary to clarify the division of supervisory and caretaking responsibility between employees of the facility and the parents and other adult family members who are housed with the children. The department must approve the documentation during the application process and any subsequent amendments to the policies and procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2016.

TRD-201600653

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-3854



NETSCAN

2016 TX REG TEXT 409168 (NS)

Texas Regulation Text - Netscan

40 TAC 748.7

In-Addition

March 04, 2016

Social Services and Assistance

Additional Information Regarding 40 Texas Administrative Code s.748.7

Department of Family and Protective Services (DFPS) adds the following groups and associations to the list of groups and associations who submitted public comment generally in opposition to 40 Texas Administrative Code s.748.7 as proposed in the November 13, 2015, issue of the Texas Register (40 TexReg 8009), and as subsequently adopted in the February 26, 2016, issue of the Texas Register (41 TexReg 1493): Daughters of Charity, Texas Unitarian Universalist Justice Ministry, Texas Affiliate of the National Alliance on Mental Illness, Hospitality House, Presbyterian Church USA, Children's Defense Fund of Texas, Education Austin, Workers Defense Project, Texas Association Against Sexual Assault, American Gateways, and Texas Indigenous Council.

40 TAC 748.7

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Department of Family and Protective Services

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TRD-201600873

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Filed: February 23, 2016

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 19

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 748

MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER A

PURPOSE AND SCOPE

RULE §748.7

How are these regulations applied to family residential centers?

Case
No. D-1-GN-15-4336
Second Amended
Petition

Exhibit
9

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(d) Limitation of exception. Notwithstanding subsection (c) of this section, and as further described in §745.8313 of this title (relating to Is a waiver or variance unconditional?), the department retains the

authority for placing conditions on the scope of the exceptions authorized for a family residential center, including conditions related to limiting occupancy in accordance with fire safety standards, limitations related to allowing children and adults of the opposite gender to occupy the same room only if they are part of the same family, and any other limitation determined by the department to be necessary to the health, safety, or welfare of children in care.

(e) Division of responsibility. In addition to the application materials described in §745.243(6) of this title (relating to What does a completed application for a permit include?), an applicant for a license under this section must submit the policies, procedures, and any other documentation that the department deems necessary to clarify the division of supervisory and caretaking responsibility between employees of the facility and the parents and other adult family members who are housed with the children. The department must approve the documentation during the application process and any subsequent amendments to the policies and procedures.

Source Note: The provisions of this §748.7 adopted to be effective March 1, 2016, 41 TexReg 1493

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[Subchapter C. Regulation of Certain Facilities, Homes, and Agencies](#)

V.T.C.A., Human Resources Code § 42.041

§ 42.041. Required License

Effective: April 2, 2015 [Currentness](#)

(a) No person may operate a child-care facility or child-placing agency without a license issued by the department.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency foster home or agency foster group home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Department of State Health Services;

(6) a facility licensed, operated, certified, or registered by another state agency;

(7) an educational facility that is accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes for prekindergarten and above, a before-school or after-school program operated directly by an accredited educational facility, or a before-school or after-school program operated by another entity under contract with the educational facility, if the Texas

Education Agency, the Southern Association of Colleges and Schools, or the other accreditation body, as applicable, has approved the curriculum content of the before-school or after-school program operated under the contract;

(8) an educational facility that operates solely for educational purposes for prekindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a family home, whether registered or listed;

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers an educational program in one or more of the following: prekindergarten through at least grade three, elementary grades, or secondary grades;

(12) an emergency shelter facility, other than a facility that would otherwise require a license as a child-care facility under this section, that provides shelter or care to a minor and the minor's child or children, if any, under [Section 32.201, Family Code](#), if the facility:

(A) is currently under a contract with a state or federal agency; or

(B) meets the requirements listed under [Section 51.005\(b\)\(3\)](#);

(13) a juvenile detention facility certified under [Section 51.12, Family Code](#), a juvenile correctional facility certified under [Section 51.125, Family Code](#), a juvenile facility providing services solely for the Texas Juvenile Justice Department, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless;

(16) a food distribution program that:

(A) serves an evening meal to children two years of age or older; and

(B) is operated by a nonprofit food bank in a nonprofit, religious, or educational facility for not more than two hours a day on regular business days;

(17) a child-care facility that operates for less than three consecutive weeks and less than 40 days in a period of 12 months;

(18) a program:

(A) in which a child receives direct instruction in a single skill, talent, ability, expertise, or proficiency;

(B) that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;

(C) that does not advertise or otherwise represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) that informs the parent or guardian:

(i) that the program is not licensed by the state; and

(ii) about the physical risks a child may face while participating in the program; and

(E) that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(19) an elementary-age (ages 5-13) recreation program that:

(A) adopts standards of care, including standards relating to staff ratios, staff training, health, and safety;

(B) provides a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children;

(C) does not advertise as or otherwise represent the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) informs parents that the program is not licensed by the state;

(E) is organized as a nonprofit organization or is located on the premises of a participant's residence;

(F) does not accept any remuneration other than a nominal annual membership fee;

(G) does not solicit donations as compensation or payment for any good or service provided as part of the program; and

(H) conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(20) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker:

(A) had a prior relationship with the child or sibling group or other family members of the child or sibling group;

(B) does not care for more than one unrelated child or sibling group;

(C) does not receive compensation or solicit donations for the care of the child or sibling group; and

(D) has a written agreement with the parent to care for the child or sibling group;

(21) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which:

(A) the department is the managing conservator of the child or sibling group;

(B) the department placed the child or sibling group in the caretaker's home; and

(C) the caretaker had a long-standing and significant relationship with the child or sibling group before the child or sibling group was placed with the caretaker;

(22) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization; or

(23) a facility operated by a nonprofit organization that:

(A) does not otherwise operate as a child-care facility that is required to be licensed under this section;

(B) provides emergency shelter and care for not more than 15 days to children 13 years of age or older but younger than 18 years of age who are victims of human trafficking alleged under [Section 20A.02, Penal Code](#);

(C) is located in a municipality with a population of at least 600,000 that is in a county on an international border; and

(D) meets one of the following criteria:

(i) is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or

(ii) meets the eligibility requirements for a contract under [Section 51.005\(b\)\(3\)](#).

(b-1) Repealed by [Acts 2009, 81st Leg., ch. 720, § 19\(1\)](#).

(c) A single license that lists addresses and the appropriate facilities may be issued to a general residential operation that operates noncontiguous facilities that are across the street from, in the same city block as, or on the same property as one another and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

(d) A facility exempt from the provisions of Subsection (a) that desires to receive or participate in federal or state funding shall be required to comply with all other provisions of this chapter and with all regulations promulgated under this chapter.

(e) The exemptions provided by Subsection (b) do not affect the authority of local, regional, or state health department officials, the state fire marshal, or local fire prevention officials to inspect child-care facilities.

(f) Notwithstanding the requirements of Subsection (b)(14), a municipality that operates an elementary-age (ages 5-13) recreation program may, in lieu of an annual public hearing, accept public comment through the municipality's Internet website for at least 30 days before the municipality adopts standards of care by ordinance if the municipality:

(1) has a population of 300,000 or more; and

(2) has held at least two annual public hearings on the standards of care and adopted standards of care by ordinance after those public hearings.

(g) A child-care facility that is exempt under Subsection (b)(3) from the licensing requirement of Subsection (a) may provide care for each child at the child-care facility for not more than 15 hours a week if the child-care facility:

(1) provides the child care so that a person may attend an educational class provided by a nonprofit entity; and

(2) is located in a county with a population of 800,000 or more that is adjacent to an international border.

Credits

Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2812, ch. 759, §§ 2, 3, eff. Aug. 31, 1981; [Acts 1987, 70th Leg., ch. 1052, § 4.03, eff. Sept. 1, 1987](#); [Acts 1987, 70th Leg., ch. 1115, § 2, eff. June 19, 1987](#); [Acts 1995, 74th Leg., ch. 262, § 54, eff. Jan. 1, 1996](#); [Acts 1995, 74th Leg., ch. 847, § 1, eff. Sept. 1, 1995](#); [Acts 1997, 75th Leg., ch. 165, § 7.46, eff. Sept. 1, 1997](#); [Acts 1997, 75th Leg., ch. 664, §§ 3, 4, eff. Sept. 1, 1997](#); [Acts 1997, 75th Leg., ch. 1063, § 7, eff. Sept. 1, 1997](#); [Acts 1997, 75th Leg., ch. 1217, § 2, eff. Sept. 1, 1997](#); [Acts 2001, 77th Leg., ch. 218, § 3, eff. Sept. 1, 2001](#); [Acts 2005, 79th Leg., ch. 268, § 1.93\(a\), eff. Sept. 1, 2005](#); [Acts 2007, 80th Leg., ch. 263, § 25, eff. June 8, 2007](#); [Acts 2007, 80th Leg., ch. 1037, § 1, eff. Sept. 1, 2007](#); [Acts 2007, 80th Leg., ch. 1414, § 1, eff. Sept. 1, 2007](#); [Acts 2009, 81st Leg., ch. 720, §§ 4, 5, 19\(1\), eff. Sept. 1, 2010](#); [Acts 2011, 82nd Leg., ch. 343 \(H.B. 3051\), § 1, eff. Sept. 1, 2011](#); [Acts 2011, 82nd Leg., ch. 1082 \(S.B. 1178\), § 2, eff. Sept. 1, 2011](#); [Acts 2013, 83rd Leg., ch. 161 \(S.B. 1093\), § 22.001\(30\), eff. Sept. 1, 2013](#); [Acts 2013, 83rd Leg., ch. 192 \(S.B. 353\), § 1, eff. May 25, 2013](#); [Acts 2013, 83rd Leg., ch. 746 \(S.B. 427\), § 1, eff. Sept. 1, 2013](#); [Acts 2015, 84th Leg., ch. 1 \(S.B. 219\), § 4.211, eff. April 2, 2015](#).

V. T. C. A., Human Resources Code § 42.041, TX HUM RES § 42.041
Current through the end of the 2015 Regular Session of the 84th Legislature

DECLARATION **E.G.S. (full named redacted)** (E.G.S.)

I, **EGS (full name redacted)**, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. My name is **E.G.S. (full named redacted)**. I was born on **redacted** in El Salvador. I have been detained at the Kames County Residential facility with my 12 year old daughter, **(full named redacted)** (A.E.S.G.), since around March 24, 2016.
2. I fled to the United States for protection and safety. Prior to being placed in this jail, the Mara murdered my brother-in-law in El Salvador. The same four members of the Mara then raped me multiple times and robbed and stalked me. My rapists then stalked my daughter and repeatedly threatened to rape her too. They also threatened to kill my husband if I told anyone what they did to me.
3. In detention in the United States my suffering continues. I do not feel safe or comfortable in this jail because I cannot trust the jailers who want to detain and deport me to look out for my best interests or the best interests of my daughter. I cannot trust the strangers with whom I must cohabitate in jail either because I have experienced great harm at the hands of strangers in the past.
4. My worst nightmare became a reality when my daughter was sexually assaulted in jail by a woman we were forced to share a room with. My daughter's abuser remains in this detention center and we must see her every day. My daughter is afraid to be without me for even a minute. She currently sleeps in my small bottom bunk bed each night out of fear someone will harm her while she is sleeping.
5. My daughter and I would like to be released from jail so that we can access the therapy and help we need. Living in detention under the threat of deportation is traumatizing. It reminds me of my experience being watched, followed and raped in El Salvador. We cannot sleep or eat as usual, are hypervigilant, cry and feel depressed. We want to be well and safe and hope other families do no suffer as much as we are currently suffering.

My Childhood in El Salvador

6. I suffered greatly in El Salvador throughout my childhood. My mother had 12 children and I am the fifth youngest of my siblings. My father was an alcoholic and he was extremely violent with my mother, me and my siblings. He was never sexually abusive to me, but one of my older sisters said that he tried to sexually abuse her. Since my mother had so many children, she couldn't care for all of us. As each of my siblings got older, we began working to help care for the younger siblings. My mother never supported us. I think she was depressed. She never gave us any advice or help growing up.
7. I only went to school for 3 years when I was 7 years old until I was 9 years old. I cannot read or write. I started working as a domestic worker at the age of 10. I worked for many different families and frequently lived within the home of the family I was working for.
8. Although working as a domestic worker was always tough, one job in particular was the

worst. When I was 14 years old I went to live with a family to take care of their children and the house. The family included the mother, father, and two children. My first day on the job, the mother was working her shift as a nurse. The father raped me and told me to leave the house. I went back to my mother's house and told her what had happened, but she did not believe me.

My Life with My Husband and Children in El Salvador

9. When I was 21 years old I married my husband M.M.S.G. Together we had three beautiful children. In addition to A.E.S.G., we also have an 11 year old daughter and a 9 year old son. I love my children greatly.
10. My husband and I lived for two years in Canton Primavera, and then moved to Canton Piedrapacha. We have lived in Piedrapacha with our family in the same house since then. The house belongs to one of my husband's friends in the United States, but he lets us live in the house. My husband has worked in the fields, and I've sold jewelry to try and support our family. We have little money and no assets.

My Nightmare in El Salvador

11. The nightmare that lead to my journey to the United States began in January, 2016. Members of the Mara 18 killed my brother-in-law. He was the husband of my sister. He had previously lived in the United States with my sister and their three sons, two of whom were born in the United States. He was deported back to El Salvador last year. One day when my brother-in-law was leaving his house in the early morning to go to work, he was shot and killed in the street.
12. We had a wake for my brother-in-law at his mother's house. In El Salvador, when we have a wake, it's customary for all of the neighbors to join around the house in the patio and on the street. A wake for us is like a party - there's food and drinks and lots of noise. It's custom for the family of the deceased person to offer coffee to all of the neighbors who join to celebrate the life of the person who passed away.
13. I was handing out coffee to neighbors outside around the house. It was dark, around 1:00 a.m. There were four gang members on the edge of the crowd outside near the gate of the house. Suddenly they grabbed me and took me to an area away from the house by a canal. No one saw what happened or heard since there was a lot of noise. The men were known gang members. I had seen them before and had seen their tattoos. The four of them were always together.
14. The men beat me and threw me around between themselves asking who was going to be the first. After they each raped me, they told me I already knew who they were, meaning that I knew they were gang members. They told me not to tell anyone what they had done. The men said that I had already seen what they could do - they had killed my brother-in-law. They said they would kill my husband and rape my daughter if I told anyone what they did to me. They said that my daughter was pretty and they wanted the same from her.
15. The men finally left me there, and I went back to the wake and went to lay down. No one asked me where I had been or what had happened because they thought I was grieving my brother-in-law.

16. On January 28th, classes started at school. The same four gang members began to harass my daughter A.E.S.G. They would stand outside of her school. They would tell young boys at school during breaks in the school day to tell A.E.S.G. that "those guys over there say hi." She'd turn around and see the four of them standing there looking at her. This happened every day until we left El Salvador.
17. Later in January, at the very end of the month, those four men robbed me. I was on my way to my house after having been out collecting money from jewelry sales I had made that month. I was planning to go home then to go to the jewelry store to pay off what I had owed from the jewelry I had taken to sell during the month of January. I had \$150 dollars with me, which is a large quantity of money in El Salvador. There's an open area near my house, and the four gang members were waiting for me there. They told me to give them the money, and that I already knew what would happen to me if I didn't. I understood that to mean that if I didn't give them the money, they would rape me again.
18. Again, in February, the four men robbed me of my earnings for the month. That time, I had only collected \$50. The men knew that at the end of the month I collected money from my sales. They were waiting for me again in the open area nearby my house. Again, they told me if I didn't give them my money, I knew what would happen.
19. They raped me again around March 2nd. Where we live there are only classes in the morning. I was alone at the house while my children were in school and my husband was out working in the fields. Then suddenly the same four men showed up. They came in and shut the door. They told me I knew what was coming and not to make noise or do anything. Each one of them raped me. They didn't say anything else but they laughed.

My Decision to Come to the United States

20. The next day I made plans to come to the United States. I asked my husband for permission to leave, and he asked why. I told him that it was so that we could have a better future for our children. My husband does not know that I was raped by the mara or that they threatened to kill him. Even though my husband does not know everything that happened, he was willing to support my decision to come to the U.S.
21. I cannot be safe in El Salvador because the police cannot and will not protect me and the Mara will complete their threats if I seek police protection. The Mara kill police officers and retaliate when someone goes to the police for help. For example, around August of 2015, a woman where I live made a report to the police after she was robbed by the Mara. The police detained the man who robbed her for only a few days, then released him. When he was released, the Mara went to the woman's house to kill her. They mixed up the houses though, and went to the neighbor's house with masks and guns. When the woman found out, she fled to save her life. The mother of my brother-in-law also made a police report about his murder. The police did not investigate his death at all.
22. There is nowhere safe for my daughter and I to live in El Salvador. The Maras is well connected and finds people when they relocate within El Salvador. I've been raped numerous times and cannot bear the thought of the same thing happening to my daughter. My daughter and I left El Salvador in search of protection and safety in the United States in March 2016.

My Nightmare in the United States

23. When I crossed over the U.S.-Mexico border I felt relief. I had hope that my daughter and I were going to be ok, that we would finally be safe and protected. When immigration officials first saw us they screamed at us. They treated us like criminals and my daughter and I were very afraid.
24. We were taken to an immigration processing station. Many people call it the “hielera”, or freezer, because it is very cold there. We were placed in a concrete cell. There were lots of women and children in the cell and we barely had enough room to sit down. We were exhausted, but there were no blankets or beds. The floor was concrete and very cold. There was a toilet in the cell, but there was no door or privacy. It is embarrassing to go to the bathroom when other people can see you. There were no showers. We were cold, tired, hungry and scared.
25. When it was my turn to speak with an immigration officer, he asked me why I came to the United States. I told him because of the economy and because I was raped. He told me that he didn't have anything to do with the problems in my country. When he told me that, I didn't continue to try to talk with him about how I had been raped and my family threatened. It is very intimidating to talk to a man in uniform in a non-confidential space about something so private.
26. My daughter and I were in the hielera for a number of days. We were then transferred to another place that most people call the “perrera”, or dog cage. Lastly, we were sent to a jail in Karnes, Texas.
27. Living in Karnes has been very difficult for me and my daughter. We are being held by immigration officials who want to deport us. Although I have never lived in jail before, the feeling I have here – of always being watched, of being controlled, of being forced to do one thing or another – is a feeling I am very familiar with. This is how I felt every day in El Salvador, where I was raped, stalked, robbed and beaten. Life in this place reminds me of the life I fled, the life I am desperate to escape and protect my daughter from.
28. In the beginning of my stay at Karnes my daughter and I were placed in isolation because my daughter was very sick. We were in isolation for four days and could not come out. It was horrible.
29. We were then placed in a room with another family, a mother and a daughter. We were apprehensive to share a room with strangers, but at Karnes, there was no choice. The mother quickly started doing things that made us feel uncomfortable. She told us she liked men and women. She started explaining the sexual things she likes to do to women. She started to touch my daughter on the shoulder and the back, playing with her. Or at least at that time, I thought it was a joke.
30. These jokes continued, and quickly crossed the line. The woman asked me to sleep in her bed. She asked me to pass her my daughter, so she could sleep in her bed. She lifted up her shirt and flashed my daughter. This made us feel so uncomfortable. Neither my daughter nor I could sleep at night. We were afraid the woman's jokes would become reality. My daughter started sleeping in my bed, as she was too afraid to sleep alone.
31. I was fearful something would happen to my daughter. I approached an officer and asked to be

switched to another room. He told me there was nothing he could do. His response was very ugly. It reinforced how unsafe and unprotected I feel in this jail.

32. Wednesday, April 13th, we were all in our room. My daughter said she had to go to the bathroom. While she was in the bathroom, the women opened the bathroom door while she was naked. Scared, my daughter shut the door. The woman opened the door again two times. After, my daughter came back into the room, the woman said vulgarly that my daughter's body had changed and that she had pubic hair. My daughter felt very ashamed.
33. On Saturday, April 16th, my daughter went to our room to shower. Shortly thereafter, the woman also went to our room. I followed a few minutes later. By the time I got to the room, the woman had again opened the bathroom door. My daughter quickly put her clothes on because she was afraid. My daughter told me what had happened. I told our roommate not to open the door again when my daughter was showering. She just smiled.
34. The next day, Sunday April 17th, after the 8PM count of prisoners, we were returning to our room when I saw the woman grab my daughter's private parts. I asked her why she did this. Again, she just smiled. I went directly to report this to an official. I think this would have been prevented, if they had taken my report seriously the first time.
35. My daughter and I were moved to another room. For two nights we were in a room alone. During that time, my daughter slept in her own bed. We were then moved to a room with 8 other people. My daughter started sleeping in my bed again.
36. I helped my daughter fill out a form to report the sexual assault. I have been interviewed in person twice at Karnes by separate officials, and my daughter has been interviewed three times. I am not sure who all these individuals were, but each time my daughter and I explained in detail the incidents, gave information about the woman who hurt my daughter, and answered all of the officials' questions. I also reported the sexual assault by phone to the Department of Family and Protective Services. I have not been contacted again by any of the officials who have interviewed me. I am willing to answer any further questions and help the investigation in any way I can.
37. I hope that at least someone to whom I have reported will take this sexual assault against my daughter seriously, because I don't want this type of abuse to happen again to someone else. Since she was assaulted my daughter has had trouble sleeping and she is not interested in playing ball with the other children here like she used to. She is scared, has lost her appetite, and wants to spend the weekends sleeping. As for me, I also have trouble sleeping and have headaches. But most of all, I am devastated that I brought my daughter to try to escape the sexual abuse that I suffered in El Salvador and with which she was threatened there. Instead, she has suffered what we were fleeing.

My Desire to Fight My Immigration Case and Be Free

38. I was ordered deported without a lawyer and without the opportunity to request asylum on March 21, 2016. Although I was granted the opportunity to speak with an Asylum Officer on April 2, 2016 about my fear to return to El Salvador before my deportation was executed, the Asylum Officer did not believe that I can win asylum in the United States. During my interview I told the Asylum Officer about my brother-in-law's murder, being robbed, and the ongoing harassment my daughter experienced from the Mara. I did not talk about being raped because my daughter does not know what happened to me and she was present in the room throughout my interview because

she is afraid to leave my side in the jail.

39. After my interview with the Asylum Officer, I started working with *pro bono* attorneys from the CARA Family Detention Pro Bono Project. My lawyers believe I qualify for asylum and should have the opportunity to apply. My lawyers submitted a Request for Reconsideration or Re-interview to the Asylum Office on April 19, 2016. It was denied on April 21, 2016. They filed a complaint with the Office of Civil Rights and Civil Liberties on April 22, 2016 and a Request for Precautionary Measures with the Inter-American Commission on Human Rights on April 27, 2016.
40. My daughter and I are not doing well in detention. We are both sad and we both cry. We feel like criminals. We cannot go anywhere without permission. Guards walk through our bedroom at night every 15 to 30 minutes. This wakes us up and makes us feel afraid. We are rounded up and counted three times a day. We feel like prisoners. We are not the only ones who feel this way. There is another woman here who has been here longer than us. She always cries and her child has stopped eating.
41. I am worried about myself and think I need help. I cannot sleep and feel very on edge. I spend all day thinking about my past and being in jail. I feel trapped and hopeless. I think I need to talk with someone but am scared to talk about my past and present with the people who work here. I know they work for the jail that wants to deport me and my daughter. Everything is bottled up inside of me. I wish I was free so that I could go see a psychologist and have mental health support. I feel so desperate for help that approximately three weeks ago I made a request to see a psychologist here in the jail. I still have not seen a psychologist or received a response.
42. I worry the most about my daughter. She is afraid here. She lives in fear that she will be assaulted again within this place. She cannot sleep and never wants to leave my side. She has made some friends, but they keep coming and going. Some are released. Some are deported. My daughter asks me "When will we go?" "How long will we be here?" "Will we be deported?" I don't know what to tell her.
43. I wish I was free so that I had control over the medical care my daughter and I receive. Getting access to medical care is not easy here. In order to receive medical attention, you need to wait for a long period of time. When my daughter and I got here she was very sick. She had a headache, was very weak, and her bones hurt. We went to request medical attention and waited for someone to assist us for 2 hours. After two hours, my daughter was too weak to continue waiting so I took her back to our room to lay down. The next day we went back. This time we were not attended until midnight, after waiting for four hours.
44. Another reason I wish I was free is so that I could control what I eat and when. I have diabetes. The stress of wondering if or when I will be free again and whether or not I will be deported has not been good for my condition. It is hard to monitor and control my blood sugar.
45. The first thing I would do if I was free is call my husband in El Salvador. I have not been able to speak with my husband or two children since entering the United States. I worry about them and wonder if they are ok. I do not know if the Mara has come after them. I need to hear their voices and to tell them I love them. I also think my husband could help me gather evidence for my immigration case.

46. If I was free I would have the chance to be supported by people who know and love my daughter and I. We could be with our family. They could come with us to immigration court and be a moral support. We would be safe and comfortable with them. We could start, little by little, to recover from all we have gone through.

My name is E.G.S. (full named redacted). I was born on redacted I am currently incarcerated at the Karnes County Residential Center which is located at 409 FM 1144, Karnes City, TX 78118.

I declare under penalty of perjury that all information in the attached document titled, Declaration of E.G.S. (full named redacted), is true and correct. This declaration was read to me in Spanish, a language in which I am fluent.

Signed in Karnes County, Texas on May 2, 2016.

x *E.G.S.*

(full named redacted)

DECLARATION OF **F.D.G. (full name redacted)** (F.D.G.)

I, **F.D.G. (full name redacted)**, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. My name is **F.D.G. (full name redacted)** (F.D.G), and I was born on **redacted** in El Salvador. I have been detained in the Karnes County Family Detention Center since on or about April 1, 2016 with my 13-year-old son, **redacted** (N.R.C.D.). I came to the United States after my son and I were threatened with death.
2. In El Salvador I lived in Canton San Jose with N.R.C.D. and my nine year old twins, a daughter and a son. I am separated from my child's father and he has not lived in our family home since N.R.C.D. was three years old.
3. Gang members are all around outside of Canton San Jose, but until January 2016, we did not see any gang members inside the neighborhood. However, because gangs control all the neighborhoods around us, we can't move from one borough to another. Because of this, I did not go out of the house much – I was scared.
4. One day in the second week of January 2016, N.R.C.D. came home from the soccer field. I was home when my son arrived. I became scared because I saw that he was very scared and crying. I asked N.R.C.D. what happened, and he told me that he and his friend had been threatened by two men as they were coming home from the soccer field. My son and his friend were walking home when two men who had been standing at a corner stopped them. N.R.C.D. explained that these men looked like Mara Salvatrucha (MS) gang members because they wore baggy shorts, sleeveless t-shirts, and tattoos. One of the men had the tattoo "MS" on his shoulder. N.R.C.D. told me that when he saw these men, he became very afraid. One of the men asked my son and his friend if they were ready to join their gang and do them "favors." They told them no. My son said that the man told them that they were going to give them a few days to think about it. If they did not accept and join the gang, then the two men would kill them and their mothers.
5. When my son told me what happened to him, I was devastated. My mind began to race about how to help and protect my son. My son told me that he didn't want to join the gang. He also told me what "favors" meant. Favors mean that the *maras* like MS recruit young teenagers like N.R.C.D. to do certain jobs for them. The teenagers are asked to sell or buy drugs, share information about members from the opposition mara, conduct surveillance of police and other mara, and recruit other teenagers to join the gang. After hearing this, I knew that we could not live like this. It also upset me that these men threatened to kill him if he told me what they had done.
6. Out of fear, I kept N.R.C.D. at home until we left El Salvador. I didn't allow him to go to school, which started a week after he was threatened. I knew the men would be looking

for him. N.R.C.D. was saddened that he couldn't start school with his friends. This school year was going to be his first year in middle school and he was looking forward to it.

7. My family had experienced something similar in August of 2015. In that month, a *mara* tried to recruit my nephew. Like my son, my nephew was going home when suddenly men surrounded him and tried to convince him to join their gang. When he didn't accept their offer, they warned him not to come around and said they would kill him if he did. Fearing for his life, my nephew immediately dropped out of high school, and in September, he fled El Salvador and came to the United States. Gangs like MS are serious about fulfilling their threats. I knew it was best to come to the United States.
8. We also never found out what happened to the friend that was threatened with N.R.C.D. when they were walking home. One day, we just noticed that his entire family was gone.
9. We did not go to the police and place a *denuncia* (police report) because the police do not help. I feared that if N.R.C.D. and I went to the police and reported what happened, the MS would find out, find us, and kill us. When people go to the police, the MS usually retaliates.
10. To protect my son, I decided it was best to come to the United States. I do not want to be killed and I do not want N.R.C.D. to be killed. I left my two youngest children with my mother because I think they are too young to make the trip over. I hope to bring them to the United States legally.
11. We left El Salvador around March 2, 2016 and entered the United States on or around March 29, 2016. We were arrested by immigration authorities and brought to numerous different detention centers. Eventually, we were taken to this jail in Karnes.
12. On or around April 6, we attended a credible fear interview. At our interview, my son and I did not share all of the information about what happened to us because we feared retribution from the MS. In our country, it is common for the police and government officials to share information with gangs like the MS. We thought that if we shared these threats with the asylum office, then someone from the government would share it with the MS. I told N.R.C.D. that we should tell the asylum officer about gangs generally, but not tell them the personal details about what happened to us. If we were not personally involved in the story, I thought we would be safer in case the asylum officer divulged the information to MS.
13. Since we did not understand that the information from the credible fear interview would not be shared, we gave the asylum officer an answer of a general fear of gang violence in El Salvador. After speaking with an attorney from RAICES, we now understand that such information would not be shared. Even after they told us that the information in the credible fear interview would not be shared, it is very difficult to get out of a mindset

where you cannot trust the police or any government officials. I am still getting out of it. I'm very scared of dying, or of something happening to my son.

14. I believe the men that threatened my son will hurt or kill my son and me if we are returned to El Salvador. They will hurt me because I live alone, with just my children. It's been very hard for me to take care of my children on my own. Their father left us nine years ago. I don't have anyone to support me or protect us. We would not be able to go anywhere else in El Salvador and be safe because the Mara Salvatrucha will find us. They are organized and connected all over El Salvador. If we go back, we are on their list. On our journey to the United States, we suffered hunger, cold, we had one water bottle to share among three people on the journey, and we traveled for 27 days. I would rather do all that then go back and face MS. When I'm in this detention center, I ask myself why I came here, but I did it to save N.R.C.D.'s life. It was very hard for me to leave my home behind, to leave my other children behind. But every time I think about what happened, I feel death is coming for me and my son, and I know I had to do this to save his life.
15. Being here – in a jail – has in some ways been just as bad and scary as what we went through before getting here. Living in jail is very traumatizing. I feel trapped, hopeless, and depressed. I cry all night most nights. I do not think my tears will not run dry until I get out of here. I can't sleep. I am always thinking about what has happened. I do not have any distractions here.
16. One thing I would like to change about this place is living with strangers. My son and I are currently staying in a room with four bunkbeds, eight beds. Each day new families come and go. We are currently staying with a mother and her son, I think he may be 10 years old. This ongoing change of roommates and housing arrangements keeps us always on our toes. We never know who we will be living with next. This has made it hard for my son and I to adjust and we feel anxious all of the time.
17. I feel very alone here. I am separated from those I love and trust. I cannot call my children or family in El Salvador. I miss them and hope that they are ok. I am afraid to talk about my life with the people who work here and the other people who live here. I am afraid any information I share could be used against me or shared with the MS. Although there are people who work here who are sometimes nice, I know that they are employed by this jail and their goal is to deport me and my son. The staff wear uniforms and control our every move. We feel like criminals. The only people we trust are the lawyers with RAICES. We know they do not work for immigration authorities or the jail, and that they are here for our benefit – not to detain and deport us.
18. My son is not doing well here either. He does not talk much. He is sad and depressed. He can't sleep and does not eat like he used to. On April 9, 2016 my son broke his arm while here at Karnes. He fell while playing soccer during the day. The staff gave my son an ice pack. He was in severe pain. It was not until after 5 pm that night that someone was able

to take a better look at my son's arm. When they finally took an x-ray of his arm, they realized it was broken. We went to the hospital late in the evening and did not return to the jail until after 1 am. At the hospital they put a cast on my son's arm. The cast was on too tight, and son's arm went numb. We were not returned to the hospital until approximately two weeks later. My son is still in great pain and cannot lift his arm up.

19. One of the reasons I would like to be free is because I do not have any control over my access to medical care here. I would very much like to work with a therapist or counselor. I am not doing well. Although I was able to see a psychologist here two times, it is hard to create a trusting relationship with people who work here given their job of detaining and deporting me. I don't think our conversations are confidential. I would also like to see an OBGYN. I have been having a menstruation-related problem for about a month. I asked to see a doctor some time ago, but I am still waiting. This problem has me very worried.
20. My son and I are suffering here. We long to live beyond the walls of a jail without the constant fear of return to a place where we will be killed. We hope for peace and safety.

My name is F.D.G. (full name redaction) I was born on redacted. I am currently incarcerated at the Karnes County Residential Center which is located at 409 FM 1144, Karnes City, TX 78118.

I declare under penalty of perjury that all information in the attached document titled, Declaration of F.D.G. (full name redaction) is true and correct. This declaration was read to me in Spanish, a language in which I am fluent.

Signed in Karnes County, Texas on May 2, 2016.

x 
F.D.G. (full name redaction)