

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Peter A. Schey (Cal. Bar No. 58232)
Carlos Holguín (Cal. Bar No. 90754)
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693
Facsimile: (213) 386-9484
Email: pschey@centerforhumanrights.org
crholguin@centerforhumanrights.org

ORRICK, HERRINGTON & SUTCLIFFE LLP
Elena Garcia (Cal. Bar No. 299680)
egarcia@orrick.com
777 South Figueroa Street, Suite 3200
Los Angeles, CA 90017
Telephone: (213) 629-2020

Attorneys for plaintiffs (listing continues on following page)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JENNY LISETTE FLORES, <i>et al.</i> ,	)	Case No. CV 85-4544 DMG (AGRx)
	)	
Plaintiffs,	)	PLAINTIFFS' MEMORANDUM RE
- vs -	)	MANDATORY DETENTION AND FINAL
	)	ORDERS OF DEPORTATION
DANA J. BOENTE, ACTING ATTORNEY	)	Hearing: January 30, 2017 9:30 AM
GENERAL, <i>ET AL.</i> ,	)	
	)	
Defendants.	)	
_____	)	

Plaintiffs' counsel, continued next page:

1 LA RAZA CENTRO LEGAL, INC.
2 Michael S. Sorgen (Cal. Bar No. 43107)
3 474 Valencia Street, #295
4 San Francisco, CA 94103
Telephone: (415) 575-3500

5 THE LAW FOUNDATION OF SILICON VALLEY
6 LEGAL ADVOCATES FOR CHILDREN AND YOUTH
PUBLIC INTEREST LAW FIRM
7 Jennifer Kelleher Cloyd (Cal. Bar No. 197348)
8 Katherine H. Manning (Cal. Bar No. 229233)
Kyra Kazantzis (Cal. Bar No. 154612)
9 152 North Third Street, 3rd floor
10 San Jose, CA 95112
Telephone: (408) 280-2437
11 Facsimile: (408) 288-8850
12 Email: jenniferk@lawfoundation.org
kate.manning@lawfoundation.org
13 kyrak@lawfoundation.org

14 *Of counsel:*

15
16 YOUTH LAW CENTER
17 Virginia Corrigan (Cal. Bar No. 292035)
18 200 Pine Street, Suite 300
19 San Francisco, CA 94104
20 Telephone: (415) 543-3379
21
22
23
24
25
26
27
28

1. DEFENDANTS ARE NOT REQUIRED TO PLACE CLASS MEMBERS IN EXPEDITED REMOVAL PROCEEDINGS OR TO SUBJECT CLASS MEMBERS TO “MANDATORY DETENTION”

The Court of Appeals didn’t think much of Defendants’ argument concerning the enactment of expedited removal and what Defendants call “mandatory detention” in 1996: “The government ... argues that the law has changed substantially ... It cites Congress’ authorization of expedited removal—but that occurred in 1996, before the Settlement was approved.” *Flores v. Lynch*, ___ F.2d ____ WL 3670046 at 22 (9th Cir. July 6, 2016) (citation omitted).¹

A. Defendants are not required to place class members in expedited removal.

Defendants’ Board of Immigration Appeals (“BIA”) has agreed with Defendants that “[ICE] is *not* required to process aliens described in section 235(b)(1)(A)(i) of the Act in ... expedited removal proceedings and that it has the discretion to place these aliens directly into section 240 removal proceedings.” *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 521 (BIA 2011).² The BIA agreed with DHS that “the word ‘shall’ in section 235(b)(1)(A)(i) of the Act is properly interpreted to mean ‘may.’” *Id.* at 521.³

¹ The IIRIRA provides: “Any alien subject to the procedures under this clause [INA § 235.1] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” INA § 235.1(b)(1)(B)(iii)(IV). INA § 212(D)(5)(A) provides: “The Attorney General may ... parole into the United States temporarily ... on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States ...” 8 U.S.C. § 1182(D)(5)(A).

² In *Matter of E-R-M- & L-R-M-*, an Immigration Judge (“IJ”) terminated the removal proceedings “concluding that arriving aliens who are inadmissible *must* be placed in expedited removal proceedings pursuant to section 235(b)(1)(A)(i) of the [INA], 8 U.S.C. § 1225(b)(1)(A)(i) (2006).” *E-R-M-* at 520 (emphasis added). Taking the

Defendants have no basis for now arguing that when the Agreement was executed and approved by the Court, or for that matter to this day, they are *required* to place class members in expedited removal proceedings.⁴

B. Defendants may release class members consistent with the Agreement even if they are placed in expedited removal proceedings

Despite their arguments in this case, Defendants in fact interpret INA § 235 to permit release in many circumstances.⁵ At bottom, Defendants admit that when

opposite position they take in this case, Defendants appealed from that decision, and won. *Id.* See also Plaintiffs' Response to Order to Show Cause [Doc. #186] at 18; Plaintiffs' Combined Reply in Support of Motion to Enforce ("Pltf.'s Combined Reply in Supp. of MTE") [Dkt. #262] at 14.

³ See also *Villa-Anguiano v. Holder*, 727 F.3d 873, 878 (9th Cir. 2013) (Circuit agrees with decision in *Matter of ER-M- & L-R-M-*, holding that reinstatement of a prior removal order is neither "automatic" nor "obligatory ..."; nothing "deprives the agency of discretion to afford an alien a new plenary removal hearing" (internal quotation marks omitted). See also Pltf.'s Combined Reply in Supp. of MTE [Dkt. #262] at 15; Plaintiffs' Response to Order to Show Cause [Doc. #186] at n. 24.

⁴ See also Order of July 24, 2015 [Doc. #177] at 9 ("Prior to June 2014, ICE generally released children and parents upon determining that they were neither a significant flight risk nor a danger to safety."); David J. Venturella, *Memorandum re: Family Detention and Intake Guidance* (Aug. 14, 2009) [Dkt. #261-1 at 33] at 2 ("DHS has broad authority to decide whether to remove aliens through expedited removal... [D]iscretion is to be exercised broadly in charging family unit cases so that they are placed in removal proceedings pursuant to Section 240 of the INA"); U.S. Customs and Border Patrol Inspector's Field Manual, Part VI (2-10-06) available at <http://www.aila.org/File/Related/11120959F.pdf> ("Officers may, but need not, charge more than one ground of inadmissibility... If additional charges are lodged, the alien must be referred for a section 240 [proceedings] ..."); Dec. of Carol Anne Donohoe, [Dkt # 187-6], Ex. 93, ¶17 (ICE issued Notices to Appear, rather than going through the expedited removal process for certain families detained at Berks); Dec. of Manoj Govindaiah [Dkt # 187-9], Ex. 107, ¶14 (ICE has bypassed expedited removal process and issued Notices to Appear and paroled families into the United States); Dec. of Miranda A. Guerrero [Dkt # 187-9], Ex. 108, ¶¶ 6-8, (ICE has during various periods placed families into removal proceedings through the issuance of a Notice to Appear); Dec. of Stephen W. Manning [Dkt # 187-10], Ex. 112, ¶14, (ICE has often paroled mothers in expedited removal or with reinstated removal orders and released the families on reasonable bonds); Dec. of Aseem Mehta [Dkt # 187-6], Ex. 91, ¶6 (same).

1 exercising discretion whether to release an immigrant in expedited removal
 2 proceedings, “[w]e try to review everything and take all factors into consideration.”
 3
 4 Dep. of Joshua Reid [Doc. # 287-2] Ex. 8, at 110:6-7.

5 The one thing Defendants do *not* consider when making release decisions of
 6 class members is the *Flores* Agreement.⁶ As this Court has already noted, “[i]t may be
 7 the case that a minor’s parent is in mandatory detention. In that situation, in order to
 8 effectuate the least restrictive form of detention for the child, Defendants must follow
 9 an order of preference for the minor’s release ... under Paragraph 14 of the
 10 Agreement.” August 21, 2015 Order [Doc. # 189] at 9, n. 5, *citing* Agreement ¶ 14. If
 11 release under ¶ 14 is not possible, then ¶ 19 offers placement in a licensed non-secure
 12 facility. Defendants ignore ¶ 14, frivolously claiming they are *required* to hold class
 13
 14
 15
 16
 17

18 ⁵ See, e.g., 8 C.F.R. § 235.3(b)(4)(ii) (release authorized when “required to meet a
 19 medical emergency or ... necessary for a legitimate law enforcement objective.”); Dep.
 20 of ICE Assistant Field Office Director Joshua Reid, [Doc. # 287-2] Ex. 8, 16:1-22
 21 (pursuant to former Secretary of DHS’s “enforcement priorities,” ICE may release
 22 immigrants in expedited removal in “exceptional or compelling circumstances”); *id.*
 23 19:25-20:4 (release appropriate because of pregnancy); Dep. of Joshua Reid, Ex. 1
 24 (filed herewith), 108:17-19 (release may be based on the fact the immigrant has
 25 relatives living in the United States); *id.* at 113:9-14 (other factors include “manner of
 26 entry, whether they are eligible for -- appear to be eligible for a form of relief;
 27 community ties, families ties, things of that nature.”); Dep. of Valentin de la Garza, Ex.
 28 2 (filed herewith), 104:2-4 and Dep. of Mario Martinez, Ex. 3 (filed herewith), 88:17-
 89:3 (bed space).

⁶ ICE Assistant Field Office Director de la Garza testified that his officers have not
 received training to comply with Paragraph 14 he knows about. *Id.* at 28:19-29:6.
 Asked “have your agents been instructed to take any steps aimed at the release or the
 placement of the minors under the *Flores* Settlement,” Valentin de la Garza, Assistant
 Field Office Director, San Antonio Field Office, responded “No, sir.” Dep. of Valentin
 de la Garza, Ex. 7 [Doc. # 287-2], 26:8-12.

1 members in expedited removal/mandatory detention. Defendants have *no* available
 2 facilities they have identified to place class members under ¶ 19.

3
 4 2. AN EXPEDITED REMOVAL ORDER IS NOT A “CURRENTLY ... FINAL ORDER OF
 5 DEPORTATION OR EXCLUSION.”

6 Virtually all the class members Defendants are detaining in expedited removal
 7 proceedings or their mothers have expressed a fear of persecution and are *not* under a
 8 final order of deportation or exclusion. INA § 235.1(b)(1)(A)(ii) provides: “If an ...
 9 officer determines that an alien ... arriving ... is inadmissible ... and the alien indicates
 10 ... a fear of persecution, the officer *shall* refer the alien for an interview by an asylum
 11 officer under subparagraph (B).” *Id.*⁷ INA § 235.3(b)(1)(B)(iii)(I) provides that only if
 12 an officer “determines that an alien does not have a credible fear of persecution, *the*
 13 *officer shall order the alien removed* from the United States without further hearing or
 14 review.” *Id.* (emphasis added).
 15
 16
 17

18 If ICE finally orders a class member removed based on an asylum officer’s
 19 determination that the minor does not have a credible fear, the order may still not be
 20 “final.” The INA provides for “prompt review by an immigration judge of a
 21
 22
 23
 24

25 ⁷ See also, INA § 235(b)(1)(A)(i) (“[i]f an ... officer determines that an alien ... is
 26 inadmissible ... the officer shall order the alien removed ... *unless the alien indicates*
 27 *... a fear of persecution.*” *Id.* (emphasis added)). 8 C.F.R. § 235.3 (b)(4) provides “[i]f
 28 an alien subject to the expedited removal provisions ... expresses ... a fear of return to
 his or her country, *the inspecting officer shall not proceed further with removal of the*
alien until the alien has been referred for an interview by an asylum officer ...” 8
 C.F.R. § 235.3 (b)(4) (emphasis added).

determination ... that the alien does not have a credible fear of persecution.” INA § 235.1(b)(1)(B)(iii)(III).⁸

Thus, when the Agreement was reached, the law was that the earliest ICE may issue a final order of exclusion was after a credible fear claim was denied and no appeal to an IJ was taken, or if an appeal was taken after the IJ ruled, or if a stay prevented removal after the stay was vacated.⁹ This is still the law today. As this Court knows, Defendants generally followed the law and the Agreement until the summer of 2014.

However, even when a final order of removal is issued against a class member, ¶ 21A requires an *individualized* determination whether a class member is a flight risk because of the final order of exclusion: “[W]henever the District Director or Chief Patrol Agent *determines* that *the minor*” is a danger or flight risk. *Id.* (emphasis supplied).¹⁰ The Agreement contemplates individualized assessments of the risk of flight taking into account several factors, not an across-the-board rule applied to all minors in custody to prevent their release.

⁸ 8 C.F.R. § 235.3(b)(i) provides that when a detained immigrant expresses a fear of persecution, an ICE officer must provide the immigrant with a disclosure on Form M-444, Information About Credible Fear Interview, describing, “[t]he right to request a review by an immigration judge of the asylum officer's credible fear determination ...”

⁹ Declaration of ICE Assistant Field Office Director, Joshua Reid, Ex. 28, [Doc. # 217-4] ¶¶ 18 (“But for the grant of stays of removal... the families would likely have been removed from the United States pursuant to the lawfully issued expedited removal orders.”)

¹⁰ The factors are not mandatory. Defendants “may” consider further detaining a class member if she or he is the subject of a final order of removal. *Id.* ¶ 21(d).

1 Defendants are wrong that from the moment of apprehension class members are
2 under “final orders of exclusion” and therefore need not be considered for release
3 under the Agreement. They are also wrong following a policy and practice that fails to
4 assess class members individually in terms of their likelihood to abscond if released
5 from custody pursuant to ¶ 14 or placed in a licensed home pursuant to ¶ 19.
6

7
8 Dated: February 6, 2017

Respectfully Submitted,

9
10 CENTER FOR HUMAN RIGHTS &
11 CONSTITUTIONAL LAW
12 Peter A. Schey
13 Carlos Holguín

14 ORRICK, HERRINGTON & SUTCLIFFE LLP
15 Elena García

16 LA RAZA CENTRO LEGAL, INC.
17 Michael Sorgen
18 Amanda Alvarado Ford

19 LAW FOUNDATION OF SILICON VALLEY -
20 LEGAL ADVOCATES FOR CHILDREN &
21 YOUTH
22 Jennifer Kelleher Cloyd
23 Katherine H. Manning
24 Kyra Kazantzis
25 Annette Kirkham

26
27 Of counsel:
28 YOUTH LAW CENTER
Virginia Corrigan

/s/ Peter Schey
Attorneys for Plaintiffs

///

CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On February 6, 2017, I electronically filed the following document(s):
PLAINTIFFS' PLAINTIFFS' MEMORANDUM RE MANDATORY DETENTION AND FINAL
ORDERS OF DEPORTATION
with the United States District Court, Central District of California by using the
CM/ECF system. Participants in the case who are registered CM/ECF users will be
served by the CM/ECF system.

/s/ Peter Schey

Attorney for Plaintiffs

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Peter A. Schey (Cal. Bar No. 58232)
Carlos Holguín (Cal. Bar No. 90754)
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693
Facsimile: (213) 386-9484
Email: pschey@centerforhumanrights.org
crholguin@centerforhumanrights.org

ORRICK, HERRINGTON & SUTCLIFFE LLP
Elena Garcia (Cal. Bar No. 299680)
egarcia@orrick.com
777 South Figueroa Street, Suite 3200
Los Angeles, CA 90017
Telephone: (213) 629-2020

Attorneys for plaintiffs (listing continues on following page)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JENNY LISETTE FLORES, <i>et al.</i> ,	)	Case No. CV 85-4544 DMG (AGRx)
	)	
Plaintiffs,	)	PLAINTIFFS' EXHIBITS 1-3 TO
- vs -	)	PLAINTIFFS' MEMORANDUM RE
	)	MANDATORY DETENTION AND FINAL
DANA J. BOENTE, ACTING ATTORNEY	)	ORDERS OF DEPORTATION
GENERAL OF THE UNITED STATES, <i>et al.</i> ,	)	
	)	Hearing: January 30, 2017
Defendants.	)	
_____	)	

Plaintiffs' counsel, continued:

LA RAZA CENTRO LEGAL, INC.
Michael S. Sorgen (Cal. Bar No. 43107)
474 Valencia Street, #295
San Francisco, CA 94103
Telephone: (415) 575-3500

THE LAW FOUNDATION OF SILICON VALLEY
LEGAL ADVOCATES FOR CHILDREN AND YOUTH
PUBLIC INTEREST LAW FIRM
Jennifer Kelleher Cloyd (Cal. Bar No. 197348)
Katherine H. Manning (Cal. Bar No. 229233)
Kyra Kazantzis (Cal. Bar No. 154612)
152 North Third Street, 3rd floor
San Jose, CA 95112
Telephone: (408) 280-2437
Facsimile: (408) 288-8850
Email: jenniferk@lawfoundation.org
kate.manning@lawfoundation.org
kyrak@lawfoundation.org

Of counsel:

YOUTH LAW CENTER
Virginia Corrigan (Cal. Bar No. 292035)
200 Pine Street, Suite 300
San Francisco, CA 94104
Telephone: (415) 543-3379

INDEX OF EXHIBITS

1

2

3

4 1. Deposition of Assistant Field Office Director, Enforcement and Removal Operations, ICE,
Joshua Reid – Transcript Excerpts.....1

5 2. Deposition of Assistant Field Office Director, Enforcement and Removal Operations, ICE,
6 Valentin de la Garza – Transcript Excerpts 6

7 3. Deposition of Chief Patrol Agent, United States Border Patrol, Laredo Sector, CBP, Mario
8 Martinez – Transcript Excerpts13

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,	:	
Plaintiffs	:	Case No. CV 85-4544
vs.	:	
	:	
LORETTA A. LYNCH, Attorney	:	
General for the United	:	
States, et al.,	:	
Defendants	:	

Taken By: Peter Schey, Esquire

Date: Monday, September 12, 2016
1:30 p.m.

Place: York County Prison
3400 Concord Road
York, Pennsylvania

1 APPEARANCES: Center for Human Rights and Constitutional Law

2 PETER SCHEY, ESQUIRE

3 CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
4 256 South Occidental Boulevard
5 Los Angeles, California 90057
6 pschey@centerforhumanrights.org

7 For - The Plaintiffs

8 SARAH B. FABIAN, ESQUIRE
9 Office of Immigration Litigation
10 P.O. Box 868, Ben Franklin Station

11 Washington, D.C. 20044

12 sarah.b.fabian@usdoj.gov

13 For - Defendants

14 ALSO PRESENT:

15 Bridget Cambria, Esquire
16 Jaqueline Kline, Esquire
17 Geraldine K. Richardson, Esquire

18 Ambler Napalitano, Esquire

19 Wendy L. Wallace, ICE Office Principal
20
21
22
23
24
25

1 necessary for legitimate law enforcement objective,
2 would their files indicate that all of these other
3 factors that you just discussed were all considered?
4 Is that what you are now testifying to?

5 A. I'm not saying they are filed, but
6 our response would have some of that in there.

7 Q. Okay. And but you said none of this
8 is in the EARM?

9 A. Well, okay.

10 Q. Your quote. So where would that
11 information be? In the A file?

12 A. Some of the factors I brought up was
13 the manner of entry. That would be in the EARM. As
14 we stated previously, some factors was the length of
15 presence in the United States. That would be in the
16 EARM. So some of that would be.

17 Q. And you mentioned relatives in the
18 U.S., right?

19 A. Correct.

20 Q. So you're saying that if a person --
21 if in the view of ICE, a person is subject to
22 mandatory detention, you may still release them
23 because they have relatives in the U.S. or because
24 of their length of residence, or all of the other
25 things you mentioned? Because you said there was

1 THE WITNESS: As the A file contains the
2 -- usually contains the complete copy of everything
3 associated with the alien's case, yes.

4 BY MR. SCHEY:

5 Q. And just tell us again very briefly
6 the factors. Go ahead just bullet point the
7 factors?

8 MS. FABIAN: Object to form.

9 THE WITNESS: As I stated, the law is a
10 main factor. INA. If they're mandatory. But some
11 of the other factors are manner of entry, whether
12 they are eligible for -- appear to be eligible for a
13 form of relief; community ties, families ties,
14 things of that nature.

15 BY MR. SCHEY:

16 Q. And how many -- if somebody who's
17 subject to mandatory detention in the view of the
18 government, if that person seeks release, is that
19 something a supervisor can authorize, or would that
20 kind of case have to come to you for approval?

21 MS. FABIAN: Object to the form.

22 THE WITNESS: It would go through me.
23 It's not necessarily me that would make the
24 decision.

25 BY MR. SCHEY:

Exhibit 2

1 UNITED STATES DISTRICT COURT
2 CENTRAL DIVISION OF CALIFORNIA,
3 WESTERN DIVISION

4 JENNY LISETTE FLORES, et
5 al.,

6 PLAINTIFFS,

7 VS.

8 LORETTA E. LYNCH,
9 ATTORNEY GENERAL OF THE
10 UNITED STATES, et al.,

11 DEFENDANTS.

CIVIL ACTION NO.
CV 85-4554 DMG (AGRx)

* * * * *

12 ORAL AND TELEPHONIC DEPOSITION OF
13 VALENTIN DE LA GARZA

14 SEPTEMBER 9, 2016

* * * * *

15 ORAL AND TELEPHONIC DEPOSITION OF

16 VALENTIN DE LA GARZA,

17 produced as a witness at the instance of the Plaintiff,
18 was taken in the above-styled and numbered cause on the
19 9th day of September, 2016, from 9:16 a.m. to 1:14 p.m.,
20 before Jessica Butts, CSR, in and for the State of Texas,
21 reported by machine shorthand, at The United States
22 Attorney's Office, 601 North West 1604 Loop, Suite 600,
23 San Antonio, Texas 78216, pursuant to the Federal Rules
24 and the provisions stated on the record or attached
25 hereto.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. PETER SCHEY
THE CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
256 South Occidental Boulevard,
Los Angeles, California 90057
Telephone: (213) 388-8693
Fax: (213) 386-9484
E-mail: pschey@centerforhumanrights.org
(Present by telephone)

MR. MANOJ GOVINDAIAH
THE REFUGEE AND IMMIGRANT CENTER FOR EDUCATION AND
LEGAL SERVICES
5121 Crestway Drive, Suite 105,
San Antonio, Texas 78239
Telephone: (210) 226-7722
Fax: (210) 212-4856
E-mail: manoj.govindaiah@raicestexas.org

FOR THE DEFENDANTS:

MS. SARAH B. FABIAN
THE U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION
TRIAL ATTORNEY
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 532-4824
Fax: (202) 616-8962
E-mail: sarah.b.fabian@usdoj.gov

MR. GARY L. ANDERSON
THE U.S. DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY'S OFFICE
ASSISTANT UNITED STATES ATTORNEY
601 North West Loop 410, Suite 600
San Antonio, Texas 78216
Telephone: (210) 384-7365
Fax: (210) 384-7312
E-mail: gary.anderson@usdoj.gov

(APPEARANCES CONTINUED)

MR. NATHAN L. HERBERT
THE U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPUTY CHIEF COUNSEL, OFFICE OF THE CHIEF COUNSEL
300 El Ranchero Way
Dilley, Texas 78017
Telephone: (830) 378-6626
E-mail: nathan.l.herbert@ice.dhs.gov

MR. JUSTIN F. ADAMS
THE U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPUTY CHIEF COUNSEL, OFFICE OF THE CHIEF COUNSEL,
OFFICE OF THE PRINCIPAL LEGAL ADVISOR
8940 Fourwinds Drive
San Antonio, Texas 78239
Telephone: (210) 967-7237
Fax: (210) 967-7118
E-mail: justin.f.adams@ice.dhs.gov

MR. THOMAS F. ZIMMERMAN
THE U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DISTRICT COURT LITIGATION DIVISION
ASSOCIATE LEGAL ADVISOR
500 12th Street, South West
Washington, D.C. 20256
Telephone: (202) 732-5993
E-mail: thomas.f.zimmerman@ice.dhs.gov

ALSO PRESENT:

MS. JESSICA BUTTS,
TEXAS CERTIFIED SHORTHAND REPORTER

1 MR. SCHEY: Can the court reporter -- court
2 reporter please just read the deponent's response to my
3 question?

4 THE REPORTER: You wanted the previous response?

5 MR. SCHEY: Yeah. Just tell me his response.

6 THE REPORTER: ANSWER: "No, sir. I'm not aware
7 of any. Haven't encountered anything like that in my
8 facility."

9 MR. SCHEY: Okay. Thank you.

10 Q. (By Mr. Schey) Have your officers, or agents,
11 received any training, and if so, by who and when,
12 regarding implementation of paragraph 14 of the settlement
13 if the Asylum officer rejects the -- the fear claim?

14 MS. FABIAN: Object to form.

15 THE WITNESS: Again, I'm not sure what 14 is
16 referring to -- paragraph 14 refers to. I know you just
17 said it, but I don't remember the -- I'm not sure I can
18 answer that question accurately.

19 Q. (By Mr. Schey) Okay. Paragraph 14 basically
20 states that where the ICE determines or where the -- where
21 ICE determines that the detention of a minor is not
22 required to secure a minor's primary appearance before the
23 agency or the immigration court, or to -- it's for the
24 minor's safety or the safety of others, the ICE shall
25 release a minor from its custody without unnecessary delay

1 in a certain order of preference, starting with the
2 parents and then going to a legal guardian, then going to
3 other adult relatives, et cetera. So that's basically
4 paragraph 14.

5 And my question was, To your knowledge, have the
6 ICE agents received any training while you have been in
7 charge, and if so, when, and who provided that training
8 regarding implementation of paragraph 14 if and when
9 U.S. CIS rejects a credible fear claim?

10 MS. FABIAN: I'm going to object to form and
11 foundation, as far as the characterization of paragraph
12 14.

13 Q. (By Mr. Schey) You may answer the question.

14 A. I mean, if your -- your interpretation of the
15 paragraph 14, or your -- your statement of paragraph 14,
16 I'm going to say "no."

17 Q. And have -- Have you yourself re -- received any
18 direction or training on how to implement paragraph 14 if
19 U.S. CIS denies a fear claim, and if so, who provided you
20 that direction or training?

21 MS. FABIAN: I'm going to object to form and
22 foundation.

23 THE WITNESS: It came from my field officer, and
24 it was just -- just the direction of what to -- that we
25 were supposed to be taking.

1 THE WITNESS: We are provided what's available by
2 the contractor, and then we provide it to the -- or
3 through a -- through my field office who, in turn, talks
4 to the Border Patrol and lets them know what's available.

5 Q. (By Mr. Schey) And what are the categories of
6 units that are available?

7 A. Sir -- I don't know that by memory, sir.

8 Q. Well, just approximately. Best that -- the best
9 that you can recall.

10 MS. FABIAN: Object to form.

11 THE WITNESS: Like I said, sir, it -- it's all
12 dependent on the child's ages and then their sexes.

13 Q. (By Mr. Schey) Okay. So they're divided by age
14 and -- and sex, and how many options are there,
15 approximately?

16 A. Depending on what the population --

17 Q. I don't --

18 A. -- is that we have in custody and then what's
19 available with those categories.

20 Q. Right, but I'm -- Right. But you're saying it
21 depends on the age and sex.

22 A. Correct.

23 Q. So are there, like, two different units that are
24 divided, or is it three, or is it four, or is it a
25 hundred? Just approximately.

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES,	)	
et al.,	)	
	)	
	)	
Plaintiffs,	)	
VS.	)	Case No. CV 85-4544 DMG
	)	
	)	
LORETTA E. LYNCH,	)	
Attorney General of the	)	
United States, et al.,	)	
	)	
	)	
Defendants.	)	
-----x	)	

ORAL DEPOSITION OF CHIEF MARIO MARTINEZ, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 22nd day of September, 2016, from 9:00 a.m. to 11:30 a.m., via telephone, before MARIA GALLEGOS, CSR in and for the State of Texas, reported by machine shorthand, at the Laredo Sector Headquarters, 207 West Del Mar Blvd., Laredo, Texas 78041, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 46491

A P P E A R A N C E S

FOR THE PLAINTIFF, JENNY LISETTE FLORES:

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
256 South Occidental Boulevard
Los Angeles, California 90057
BY: Peter A. Schey, Esq. (Via telephone)
pschey@centerforhumanrights.org

FOR THE DEFENDANTS LORETTA E. LYNCH, Attorney General of
the United States, et al.:

DISTRICT COURT SECTION
OFFICE OF IMMIGRATION LITIGATION
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
BY: Sarah B. Fabian, Esq., Senior Litigation Counsel
sarah.b.fabian@usdoj.gov

FOR THE CUSTOMS AND BORDER PROTECTION:

CUSTOMS AND BORDER PROTECTION
Office of Chief Counsel
109 Shiloh Drive, Ste. 300
Laredo, Texas 78045
BY: Jesus Ybarra, Esq.
jesus.ybarra@cbp.dhs.gov

1 accept the voluntary return, they would be set up for
2 deportation proceedings and formal deportation
3 proceedings within --

4 Q. Okay. But you would not keep them detained
5 for the several weeks or months that it would take to
6 get that, right? You would release them on OR or some
7 reasonable bond pending those removal proceedings?

8 A. That's correct, sir. We have only temporary
9 facilities in the border patrol. We do not -- we're not
10 in the long term custody business. So that's why I
11 continue to say that as soon as we can possibly move
12 these folks to the proper facilities, we will do so.
13 And so that would be the case in that -- and in your
14 scenario that you paint, that there is no facility
15 available for that process, then we would have to
16 NTA/OR.

17 Q. And at the present time, if ICE for some
18 reason does not have bed space for the configuration of
19 the family that you have in custody, does ICE advise you
20 of that and would you then NTA and OR that family?

21 A. So in our case in Laredo ICRO would do the OR.
22 They would release the family, not us.

23 Q. All right.

24 A. So we move them to them whether they're going
25 to Karnes or Dilley or whether they're going to stay

1 here. And if they make that custody determination here
2 to OR them, then they would OR them or they would
3 release them from...

4 Q. Now, in paragraph 62 of your declaration you
5 discuss welfare checks and you indicate that certain
6 information is noted in the e3DM. And just so I
7 understand you would -- well, one of your agents would
8 record in the e3DM. And you've listed, checked sanitary
9 situation, water, no pests, things -- toilets are
10 functioning. Is there anything else that would be
11 reported in the e3DM as part of that welfare check?

12 MS. FABIAN: Object to form.

13 A. Well, anything that the -- that the agent
14 found to be noteworthy would be reported. I mean, I
15 can't think of anything off the top of my head other
16 than what's required or requested there in the e3 drop
17 down menu for them.

18 Q. (By Mr. Schey) And in that drop down menu is
19 there one option for the agent to sort of put in
20 whatever she or he wants to put in or were they just
21 check choices?

22 A. I'm not familiar if there's a particular area
23 for him to write anything.

24 Q. Okay.

25 A. But during welfare checks they -- they report

CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On February 6, 2017 I electronically filed the following document(s):

- PLAINTIFFS' EXHIBITS 1-3 TO PLAINTIFFS' MEMORANDUM RE MANDATORY DETENTION AND FINAL ORDERS OF DEPORTATION

with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Peter Schey
Attorney for Plaintiffs