No. 17-55208

IN THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, *et al.*,
Appellees,

v.

JEFFERSON B. SESSIONS III, *et al.*,
Appellants.

PLAINTIFFS'/APPELLEES' OPPOSITION TO EMERGENCY MOTION TO STAY ORDER ENFORCING SETTLEMENT OF CLASS ACTION

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I INTRODUCTION

On January 28, 1997, the court below approved a class-wide settlement of this action. Exhibits in Support of Motion to Enforce Settlement, February 3, 2015 (D.Ct. Dkt. 101), Exhibit 1, *reproduced at* Appendix 1 ("Settlement"). The Settlement sets minimum standards for the detention, housing and release of non-citizen juveniles detained on charges of being in the U.S. without authorization.

The Settlement binds the successor agencies to the former Immigration and Naturalization Service ("INS"), including appellant/defendant Department of Health and Human Services' Office of Refugee Resettlement ("Defendant" or "ORR").[1] For some 19 years[2] the Settlement has guaranteed class members the

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[1] The Settlement protects "all minors who are detained in the legal custody of the INS," and binds the INS and Department of Justice, as well as "their agents, employees, contractors, and/or successors in office." Settlement ¶ 1.

In 2002, the Homeland Security Act, Pub. L. 107-296 (H.R. 5005) ("HSA"), dissolved the INS and transferred most of its functions to the Department of Homeland Security ("DHS"). 6 U.S.C § 279. Congress directed, however, that the ORR should have authority over unaccompanied minors detained pursuant to the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq*. ("INA"). *Id*.

The HSA included savings provisions that continue the Settlement in effect as to the INS's successor agencies. HSA §§ 462(f)(2), 1512(a)(1). HHS has recognized that the Settlement continues to protect juveniles in its custody. *E.g.,* www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied-section-2 and www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.1 (last checked December 4, 2015).

[2] Although the Settlement contains a five-year sunset clause, in 2001 the parties stipulated that it shall remain binding until "45 days following defendants'

right to a hearing, known as a "bond redetermination," *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d) (2015), as a procedural check against needless confinement: "A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing." Settlement ¶ 24A.[3] Paragraph 24A encourages the Government to comply with its "general policy favoring release" of juveniles and ensures that minors may be heard on whether continued detention is "required either to secure [their] timely appearance ... or to ensure the minor's safety or that of others..." Settlement ¶ 14.

On November 23, 2015, however, HHS announced that it no longer considered itself bound by ¶ 24A and would not present detained children for hearings as ¶ 24A requires. Email from Office of Immigration Litigation, Nov. 23, 2015 (D.Ct. Dkt. 239-2), Exhibit 1-ORR.

On January 20, 2017, the district court ordered ORR to resume complying with ¶ 24A. Order re Plaintiffs' Motion to Enforce (D.Ct. Dkt. 318) ("Enforcement Order"). On February 17, 2017, Defendant appealed and filed an emergency

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publication of final regulations implementing this Agreement." D.Ct. Dkt. 101. The Government has never published such regulations.

[3] Effective April 1, 1997, administrative proceedings to determine a non-citizen's right to be or remain in the United States have generally been re-designated as "removal," rather than "deportation" proceedings. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, Div C, § 309(a), 110 Stat. 3009 (1996).

motion pursuant to Ninth Circuit Rule Rule 27-3(a) to stay the district court's order. Plaintiffs oppose defendant's motion on the following grounds:

First, defendant's contention that they would suffer irreparable injury were the order to remain in effect is legally and factually specious. Apart from the cost and inconvenience of providing a hearing, it is virtually self-evident that ORR could experience *no* appreciable detriment—much less irreparable injury—simply by giving a child an opportunity to be heard on the cause for detaining him or her. It is well established that neither cost nor inconvenience amount to irreparable injury warranting a stay.[4]

Second, the district court's order merely requires ORR to do what the Government agreed it would do when it entered into the Settlement. If the Government wished to relieve ORR from having to give children a hearing on the

[4] The record indicates that Defendant is likely ignoring the district court's order regardless. Declaration of Helen Lawrence, Jan. 30, 2017, Exhibit 21-ORR (D.Ct. Dkt. 331-1, *reproduced at* Appendix 2, at ¶ 5 ("Lawrence II") (class member Edwin Aguayo detained since May 8, 2015; as of Jan. 30, 2017, "... ORR still hasn't presented Edwin for a bond redetermination hearing .., nor has it advised [counsel] when it will ..."). Nor, by recent accounts, is ORR following the district court's order even now. Declaration of Helen Lawrence, Feb. 20, 2017, Exhibit A, at ¶ 2 (no detained client has yet received a bond hearing); Declaration of Cecilia Candia, Feb. 20, 2017 Exhibit B (same).

reasons for their confinement, it had only to promulgate regulations and thereby sunset the Settlement entirely. It has failed to do so.[5]

Fourth, Defendant's legal position—that the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 110 Pub. L. 457, 122 Stat. 5044, *codified in pertinent part at* 8 U.S.C. § 1232 ("TVPRA"), abrogates Settlement ¶ 24A—is meritless. Congress's aim in enacting the TVPRA was to confer greater protections on detained children, not strip them of their right to be heard on the Government's reasons for confining them. The district court's order furthers Congress's goal of minimizing the detention of children.

On the other hand, staying the district court's order would result in certain and irreparable injury to detained children. The uncontroverted evidence of record establishes the following:

- Needlessly detaining children—especially in prison-like facilities[6]—is profoundly injurious, doing them long-lasting psychological, developmental, and physical damage.

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[5] Alternatively, the Government could have moved the district court to modify the Settlement to accord with changed circumstances, as this Court has previously admonished. *Flores v. Lynch*, 828 F.3d 898, 910 (9th Cir. 2016).

[6] *See, e.g.*, Declaration of Hector Boteo, March 1, 2016, Plaintiffs' Exhibits [ORR-Pt.2] (D.Ct. Dkt. 292-3) Exhibit 12-ORR, *reproduced at* Appendix 3, at ¶¶ 13, 15 ("Boteo") ("In Yolo, we live in a real prison. The food, the program, the life, the routine: everything is a penitentiary. They treat us badly, like delinquents. The entire time, we live locked up. ... They lock us up in the cells every night, to sleep on benches made out of cement with mattresses.").

- ORR detains children indefinitely without disclosing its reasons for doing so or affording them any opportunity to examine, explain, or rebut whatever evidence ORR believes justifies their detention. Often, the agency simply refuses to decide whether a child should be released, leaving him or her to wonder when or if it will decide to continue keeping him or her in custody and why.
- ORR fails to submit its detention decisions—if and when it eventually makes one—for review by a judge or other neutral adjudicator.
- ORR refuses to recognize that detained *children* have an independent right to be heard on whether they will be detained. Rather, the agency concerns itself *exclusively* with *proposed custodians*' right to receive a detained child, and then begrudgingly affords *only* parents a perfunctory administrative review of decisions to keep their children confined.
- ORR's procedures for deciding to detain a child are woefully ad hoc. According to the Staff Report of U.S. Senate Permanent Subcommittee on Investigations,

> ORR's policies are kept and revised in an ad hoc manner. ... Under its current practice, ORR can make major changes to its placement procedures without notice ... Setting governmental policy on the fly—without basic public notice or even a clear record of revisions to that policy—is inconsistent with the accountability and transparency that should be expected of every administrative agency."

Staff Report, U.S. Senate Permanent Subcommittee on Investigations, *Protecting Unaccompanied Alien Children from Trafficking and Other*

Abuses, Jan. 2016, at 26, *available at* www.hsgac.senate.gov/download/majority-and-minority-staff-report_-protecting-unaccompanied-alien-children-from-trafficking-and-other-abuses-the-role-of-the-office-of-refugee-resettlement (last visited Aug. 9, 2016) ("Senate Staff Report").

The results of ORR's autocratic approach are predictable. ORR needlessly detained Hector Boteo, for example, for 489 days without explanation, presumably, though it never said so, because he was dangerous. Boteo at ¶ ; Lawrence II at ¶ 3. Hector's attorney remarked the deterioration in her client's mental health as months of confinement dragged on. Declaration of Helen Lawrence, Sept. 2, 2016, Plaintiffs' Exhibits (D.Ct. Dkt. 253], *reproduced at* Appendix 4 ("Lawrence I"), at ¶ 4 ("His aspect has transformed from one of optimism and hope to depression and hopelessness... He reports suffering from fatigue, despair, and insomnia. ..."). Shortly before last Christmas ORR released Hector to the same caregiver who had sought his custody all along: his mother. Lawrence II at ¶ 3. ORR could not have been injured, and certainly not irreparably, had it afforded Hector an opportunity to be heard.

In 2014 ORR spent on average of $248 per day to hold a child in a "basic shelter." Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521 (July 2015), at 67, *available at* www.gao.gov/assets/680/671393.pdf

(last visited Jan. 27, 2017) ("GAO Cost Report"). ORR accordingly spent *at leas*t $121,000[7] needlessly detaining Hector. If anything, the district court's order should save Defendant from its own profligacy. That is hardly an abuse of discretion.

II DEFENDANT SATISFIES NONE OF THE REQUIREMENTS FOR ISSUANCE OF STAY.

The requirements Defendant must satisfy to receive a stay are well established:

> [T]he factors regulating the issuance of a stay are …: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987). Defendant bears the burden of establishing each of these requirements. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

This Court reviews the district court's denial of a motion for stay for an abuse of discretion. *United States v. Peninsula Communs., Inc.*, 287 F.3d 832, 838 (9th Cir. 2002). ORR falls far short of establishing that the district court abused its discretion in declining to stay the order on appeal.

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[7] The cost of housing a youth in secure facilities substantially exceeds that of non-secure placements. GAO Cost Report at 66 n103 ("According to ORR officials, the average cost per bed for secure and therapeutic shelters is generally higher than for basic shelters.").

A There is scant likelihood Defendant will prevail on appeal.

Defendant must demonstrate "'either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in its favor.'" *Tribal Village of Akutan v. Hodel*, 859 F.2d 662, 663 (9th Cir. 1988).

If Defendant succeeds only in raising a "serious legal question," however, it must demonstrate that the balance of equities tips *sharply* in its favor. *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983) (emphasis added).

The district court's order enforcing ¶ 24A cogently demonstrates that Defendant has little chance of succeeding on the merits of their instant appeal: indeed, it demonstrates that Defendant's appeal fails to raise even a serious legal question of law:

- The TVPRA and HSA savings provisions expressly maintain the Settlement in effect. Enforcement Order at 5.
- Neither the TVPRA nor the HSA bars ORR from affording detained children a bond hearing, but is silent with respect thereto. *Id*. "The Court will not presume Congress intended to silently abrogate the *Flores* Agreement's bond hearing provision..." *Id*. at 6.
- "[N]othing in the text of the TVPRA suggests it is intended to cover the whole immigration scheme for unaccompanied minors. In fact, the TVPRA specifically states that the care and custody of unaccompanied children must

be consistent with the Homeland Security Act." *Id*. at 7.

- "[M]inors have been languishing in secured, unlicensed detention facilities for over a year without a bond hearing and with no requirement that ORR/HHS justify the detainment. *Id*. Construing the TVPRA to strip children of their right to a hearing "could run afoul of the Constitution. That is, Defendants want this Court to construe the TVPRA in a way that could result in the indefinite detention of unaccompanied children without the due process protection offered to adult detainees through a bond hearing." *Id*.

In seeking a stay from this Court Defendant offers nothing new in the way of legal argument not considered and rejected by the court below. Yet even assuming, *arguendo*, Defendant were to present a serious question of law on appeal, its bid for a emergency stay would collapse under the elevated burden it must carry of proving that the equities tip *strongly* in ORR's favor.

B ORR's resuming compliance with a long-standing agreement does not constitute irreparable injury.

In evaluating a party's showing of irreparable injury, three factors control: (1) the substantiality of the injury alleged; (2) the likelihood of its occurrence; and (3) the adequacy of the proof provided. *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991).

Among these factors, "'the key word ... is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.'" *Sampson v. Murray*, 415 U.S. 61, 90

(1974) (emphasis in original). "'Merely serious or substantial' harm is not irreparable harm." *Elias v. Connett*, 908 F.2d 521, 526 (9th Cir. 1990).

Defendant must provide *evidence* that irreparable harm has occurred in the past and is likely to occur again. *Id.*; *see also*, *Washington v. Trump*, No. 17-35105, _ F.3d __; 2017 U.S. App. LEXIS 2369, at *21 (9th Cir. Feb. 9, 2017) (declining to stay injunction where "Government has pointed to no evidence that any alien from any of the countries named in the Order has perpetrated a terrorist attack in the United States."). Such evidence must also establish that the allegedly irreparable harm is both certain and immediate, rather than speculative. *Wisconsin Gas Co. v. Federal Energy Regul. Comm'n*, 758 F.2d 669, 674 (D.C. Cir. 1985).

Defendant offers two factual ways[8] in which the district court's order would injure it irreparably: First, ORR would have to figure out "how requests for such bond hearings can be submitted through HHS to the immigration courts, who represents the Government in such bond hearings, what the appropriate standard of review would be, and how HHS can incorporate the results of any such hearing into its reunification decisions under the TVPRA." Emergency Motion to Stay District Court Order, Feb. 17, 2017 (Dkt. No. 2-1), at 19 ("Stay Motion"). Second,

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[8] Defendant's remaining claims regarding irreparable injury boil down to a reiteration of their legal claims, and that is not irreparable injury. *Washington v. Trump, supra,* 2017 U.S. App. LEXIS 2369, at *32 ("...Government claims that it has suffered an institutional injury by erosion of the separation of powers ... is not 'irreparable.' It may yet pursue and vindicate its interests in the full course of this litigation.").

Defendant asserts that its affording detained children a hearing would "improperly burden[] ... immigration judges with responsibilities that are not authorized under any statute or regulation ...." *Id*. These assertions fall far short of irreparable injury.

To begin, Defendant is clearly required to support its claims with *evidence*. *Washington v. Trump*, *supra*. Yet apart from statements in its moving papers, Defendant submitted *no* evidence to the district court to show that its order would cause ORR any injury at all, much less irreparable injury. Unsupported statements of counsel, of course, are not evidence, *British Airways v. Boeing Co*., 585 F.2d 946, 952 (9th Cir. 1978), *cert. denied*, 440 U.S. 981 (1979), yet Defendant gave the court below nothing more.

For the first time here, Defendant offers two declarations to support its claims of irreparable injury. Neither of those declarations offers *any* material fact that was not available to Defendant when it asked the district court to stay its order. Having withheld this evidence from the district court, Defendant is hardly in a position to complain that the district court abused its discretion in refusing it a stay. *Ruiz v. Estelle*, 650 F.2d 555, 567 (5th Cir. 1981) (denying stay where evidence "presented to this court ... [that was] not presented to the district judge ..."); *Chemical Weapons Working Group v. Department of the Army*, 101 F.3d 1360, 1362 (10th Cir. 1996) ("[F]undamentally different roles of appellate and trial courts mandate consideration of the new evidence by the district court under Fed. R. Civ. P. 62(c) before Rule 8 proceedings in this court."); *cf. Thompson v.*

Calderon, 122 F.3d 28, 29 (9th Cir. 1997) (denying emergency motion to stay execution where *newly discovered* evidence has "never been considered by the district court...").[9]

Second, even assuming, *arguendo*, Defendant were entitled to a stay based on evidence it withheld from the court below, its giving detained youth hearings would at most be inconvenient or entail extra cost, and it is apodictic that expense or inconvenience is *not* irreparable injury. *Sampson*, *supra*, 415 U.S. at 90.

Third, Defendant's having to tease out "the appropriate standard of review" and similar logistics is trivial. Determining a standard of review requires little more than a bit of legal research, surely a small matter for the Government's

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[9] Defendant likewise raises arguments in support of a stay it never brought before the district court, even while it seemingly abandons others it did raise below. This is what it argued before the trial court:

> The Order ... irreparably harms the Government by: (1) interfering with the comprehensive statutory framework and corresponding policies and procedures governing HHS's care and custody of UACs; (2) creating uncertainty over the contours of these newly-mandated bond hearings that will be burden-intensive for the government to resolve, such as how to transport UACs to immigration court, who represents the Government in such bond hearings, and what the appropriate standard of review would be; and (3) improperly burdening immigration judges with responsibilities that are not authorized under statute or regulation ...

Memorandum in Support of Ex Parte Application for Stay (D.Ct. Dkt. 322-1), at 7-8.

This Court should not countenance Defendant's sporting approach to appellate practice: it should disregard theories of irreparable injury Defendant failed to raise before the district court.

multitudinous lawyers.

Fourth, ORR's suggesting it would be hard to find counsel to represent it in bond hearings is fatuous. Defendant has previously managed to find lawyers to oppose detained children's release, as well as determine the apposite standard of review and reconcile immigration judges' orders with the TVPRA. *E.g., In Re: Rodriguez-Lopez*, 2004 WL 1398660 (BIA 2004); *Matter of A--*, 2005 Immig. Rptr. LEXIS 54924 (BIA 2005), Exhibit 7-ORR. Defendant offers no reason to believe it could not do so again.[10]

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[10] HHS and DHS are required to cooperate respecting release of unaccompanied minors, 6 U.S.C. § 279(b)(2), 8 U.S.C. § 1232(c)(2)(A); both HHS and DHS are represented by the Department of Justice before this Court. Defendant offers no reason DHS or the DOJ could not represent it in bond hearings, even in the event that HHS's own legal resources were to prove lacking.

Of course, unaccompanied children are regularly unrepresented in removal proceedings. *J. E. F.M. v. Lynch*, 837 F.3d 1026, 1038 (9th Cir. 2016) ("We also recognize that there are limited—and already more than stretched—pro bono resources available to help unaccompanied minors navigate the removal process.").

The uncontroverted evidence also establishes that ORR has hobbled legal aid lawyers from challenging its release decisions. Affidavit of Lorilei Williams, Aug. 5, 2016, Exhibit 10-ORR (D.Ct. Dkt. 239-2), at ¶ 16 (legal aid lawyer "told explicitly that we could not take legal action against ORR because our Vera Institute funding to help detained children would be at risk"); Declaration of Megan Stuart, July 29, 2016, Exhibit 11-ORR, *id*., ¶¶ 22-24 (same).

One suspects ORR will end up finding plenty of lawyers to represent it in bond hearings. If it does not, it should hardly complain that it must contend on a relatively level playing field against an unrepresented, unaccompanied child.

Finally, ORR's arguing that the order on appeal might force it to share children's files with ICE is disingenous: it routinely shares such files of its own accord. Declaration of Helen Lawrence, *supra*, Exhibit A at ¶ 9 (DHS regularly "has had

Fifth, in ¶ 24A Defendant *agreed* that detained children would receive bond hearings, and therefore that the Government would accept the burden of given them such hearings. If the Government now thinks honoring its agreement unduly burdensome, it is free to negotiate modification of ¶ 24A or move the district court to reform the provision.

Sixth, by including savings clauses in both the HSA and TVPRA, Congress, with full knowledge of the Settlement, preserved ¶ 24A. Immigration judges' resuming doing what Congress said they should continue to do cannot possibly injure Defendant irreparably.[11]

Finally, any burden giving detained children hearings will cause will largely be offset by reducing the costs of needlessly confining them. Though it is impossible to predict how many detained children will receive bond hearings and thereafter win release,[12] such hearings will surely reduce children's detention

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access to more of my child client's files that I have and access to th[ose] files before me.").

[11] Plaintiffs have suggested that HHS might itself afford detained children hearings equivalent to bond redeterminations. Exhibit 3-ORR (D.Ct. Dkt. 239-2). On the other hand, ORR's locking up children without a hearing at all is not an option; therein lies the apparent rub.

[12] Defendant's new-found declarant, James de la Cruz, opines that the district court's order may force ORR to produce thousands of children for bond hearings yearly. Declaration of James de la Cruz, Dkt. 2-4.

The short answer to Defendant's speculation is that if the Government can manage to confine children, it can afford to give them an opportunity to be heard.

overall and thereby, the government's costs of detaining them. *E.g.*, Declaration of Bryan Ortiz, Jan. 12, 2016, Exhibit 14-ORR (D.Ct. Dkt. 239-2), ¶¶ 11-15 (ORR detained class member without hearing for months, transferred him to ICE following his 18th birthday, which released him pursuant to immigration judge's order following bond hearing). Such savings could well be far from trivial.

As has been seen, ORR spent at least $121,000 needlessly detaining class member Hector Boteo. ORR likewise squandered at least $76,000 locking away class member Cesar Villalobos for 330 days without hearing, only to release him to his mother. Lawrence II at ¶ 4.

Worse still: ORR has now spent at least an astonishing $157,000 to confine class member Edwin David Aguayo Zavalza for more than a year and eight months without opportunity to be heard. *Id.* at ¶ 5 (Edwin taken into ORR custody May 8, 2015, where, as of January 30, 2017, he remained). ORR has *still* not said when it will release Edwin *or* give him a hearing on the cause for such seemingly interminable detention. *Id.*

In sum, Defendant's claims of irreparable injury (1) fail as a matter of law; (2) are wholly unsupported by timely evidence; and (3) are factually meritless

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In any event, insofar as the number of hearings Defendant would have to arrange is concerned, the *only* pertinent evidence before the district court suggests that even ten days after being ordered to comply with ¶ 24A, ORR had still provided *no* child a hearing. Lawrence II at ¶ 5. Even were ORR to take the district court's order more seriously, there is no saying how many class members will exercise their right to a hearing.

regardless. Defendant has failed to carry its burden of showing that district court abused its discretion in denying a stay.

C Granting a stay would irreparably injure detained children.

A stay is an equitable remedy, *Lopez, supra*, 713 F.2d at 1435, and the Court should therefore deny a stay if granting one would inflict irreparable injury on detained children.

It is virtually self-evident that needlessly detaining children is profoundly, injurious. *E.g.*, Declaration of Luis Zayas, December 10, 2014, Plaintiffs' First Set of Exhibits [Part 8] (D.Ct. Dkt. 101-7), Exhibit 24 at ¶¶ 1-6 ("The medical and psychiatric literature has shown that incarceration of children ... has long-lasting psychological, developmental, and physical effects.").

Class member Boteo's counsel observed the effects ORR detention had on her client:

> [O]ver the course of representing Estiven I observed a marked deterioration in his mental functioning. His aspect has transformed from one of optimism and hope to depression and hopelessness, which he attributes to prolonged detention with no end in sight. He reports suffering from fatigue, despair, and insomnia. He now appears isolated from his peers, and reports a preference for being alone. Estiven said that Yolo is "not a detention center, but an insane asylum" and has worried about his own mental health status after so much time detained.

Lawrence I at ¶ 44; *see also* Williams at ¶ 18 ("... I have noted the deleterious effects ORR's opaque and oft-delayed release and step-down decisions have on detained youth... [D]etained children—already traumatized by horrific experiences in their countries of origin—have expressed to me feeling profound helplessness

and despair...").

Such harm to children is irreparable. *Cf. United Steelworkers of America v. Textron, Inc.*, 836 F.2d 6, 8 (1st Cir. 1987) (irreparable injury shown where "... retired workers [denied health insurance] would likely suffer emotional distress, concern about potential financial disaster, and possibly deprivation of life's necessities (in order to keep up insurance payments)."); *see also Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc) (family separation is irreparable injury).

Further, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *de Jesus Ortega Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). As the district court held, Defendant's position demands it "construe the TVPRA in a way that could run afoul of the Constitution. That is, Defendants want this Court to construe the TVPRA in a way that could result in the indefinite detention of unaccompanied children without the due process protection offered to adult detainees through a bond hearing." Enforcement Order at 7. Denying detained children due process, therefore, itself constitutes irreparable injury regardless of whether a hearing results in release.[13]

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[13] Defendant's sole riposte to the foregoing is familiar: the TVPRA, it contends, charges ORR with vetting class members' proposed custodians, and immigration judges accordingly lack absolute authority to order a child released.

But immigration judges have *always* reviewed dangerousness and flight-risk, and rarely, if ever, a proposed custodian's fitness. *See, e.g.*, *Matter of A--*, *supra*,

There was no abuse of discretion in the district court's so holding. Children would plainly be harmed irreparably were this Court to stay the district court's order; Defendant falls far short of carrying its burden to establish otherwise.

D The public interest is served when detained children receive neutral and detached oversight of the reasons for their confinement.

Defendant next attempts to show that a stay would serve the public interest by asserting that its interest is synonymous with the public's.[14]

Though Defendant would conflate the public interest with its own, the two

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Exhibit 7-ORR. This limitation existed when the Settlement was signed, and ¶ 24A therefore guarantees detained children bond hearings even though release to a particular custodian may not occur. This hardly cancels the very real benefit of giving children an opportunity to be heard.

As the district court held:

> But identifying appropriate custodians and facilities for an unaccompanied child is not the same as answering the threshold question of whether the child should be detained in the first place—that is for an immigration judge at a bond hearing to decide. Assuming an immigration judge reduces a child's bond, or decides he or she presents no flight risk or danger such that he needs to remain in HHS/ORR custody, HHS can still exercise its coordination and placement duties under the TVPRA.

Enforcement Order at 6. "If the initial proposed custodian is unfit to care for the unaccompanied child under the TVPRA, Defendants should follow Paragraph 14 of the Flores Agreement, which outlines an order of preference for the minor's release, in order to effectuate the least restrictive form of detention." *Id*. at 6, n5.

[14] Here again Defendant's argument swerves from what it asserted before the district court, where it argued that the order on appeal undercuts (1) "the Executive's 'sovereign prerogative' of setting immigration policy," Defendant's Memo at 9; and (2) and ORR's "*parens patriae* interest" in exercising autocratic control over detained children. *Id*.

are not the same. Rather, the public interest inquiry "primarily addresses impact on non-parties rather than parties." *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002).

Defendant relies on *Nken v. Holder*, *supra*, to suggest that "harm to the government is harm to the public interest. *See Nken*, 556 U.S. at 420." Emergency Motion at 23. Setting aside that Defendant jump cites to the reporter's syllabus, its reliance is misplaced.

Before the Court in *Nken* was an alien's application for stay of removal pending adjudication of a petition for review. 556 U.S. at 429. The Court held that a "court asked to stay removal cannot simply assume that '[o]rdinarily, the balance of hardships will weigh heavily in the applicant's favor.'" *Id.* at 436, and that it should therefore evaluate the parties' relative hardships in light of their particular circumstances. Though the Court observed that in most cases the Government's interest in removing an alien is congruent with the public's, it quickly cautioned, "Of course there is a public interest in preventing aliens from being wrongfully removed, ..." *Id.*

For its part, the district court held that ¶ 24Ais actually consistent with the TVPRA, which requires Defendant to "promptly place [plaintiff children] in the 'least restrictive setting that is in the best interest of the child,'" Enforcement Order at 3, *quoting* 8 U.S.C. § 1232(c)(2)(A), and avoid confining them in secure facilities "absent a determination that the child poses a danger to self or others ..."

Id. The public clearly has no interest in ORR's flaunting what Congress itself has declared to be in the public interest. *Nken, supra*, 556 U.S. at 436.

In any event, Defendant again ignores that the Government *agreed* that detained children should have bond hearings, the court below approved that agreement pursuant to Rule 23(e), Fed. R. Civ. Proc., and in the HSA and TVPRA savings clauses Congress preserved that agreement. None of this would have happened had giving detained children hearings been contrary to the public interest.[15]

III CONCLUSION

For the foregoing reasons, this Court should find that the district court did not abuse its discretion in denying Defendant a stay. It should accordingly deny Defendant's emergency motion.

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[15] This Court should deny a stay as a matter of equity. A party seeking a stay appeals to equity. "'A stay is not a matter of right, even if irreparable injury might otherwise result.'" *Nken*, *supra*, 556 U.S. at 433. "It is instead 'an exercise of judicial discretion ...'" *Id*.

As has been seen, Defendant has (1) seemingly flaunted the district court's order; (2) offered evidence to this Court it withheld from the district court; and (3) delayed a full two weeks before seeking an "emergency" stay of the order on appeal.

This confluence of factors itself justifies the Court's exercising discretion to deny a stay. *Cf. Parretti v. United States*, 143 F.3d 508, 510 (9th Cir. 1998) ("The fugitive disentitlement doctrine empowers us to dismiss the appeal of a defendant who flees the jurisdiction of the United States after timely appealing. An appellate court's power to disentitle a fugitive from access to the appellate process is grounded in equity.").

Dated: February 20, 2017

Respectfully submitted,[16]

CENTER FOR HUMAN RIGHTS
AND CONSTITUTIONAL LAW
Carlos R. Holguin
Peter A. Schey

HOLLY COOPER
University of California Davis School of Law

YOUTH LAW CENTER
Virginia Corrigan

/s/ Carlos R. Holguín

/s/ Holly Cooper

[16] Plaintiffs' counsel wish to acknowledge the invaluable assistance of U.C. Davis student Fabián Sánchez Coronado in preparing the instant brief under extrardinarily demanding time constraints.

Exhibit A

DECLARATION OF HELEN LAWRENCE

I, Helen Lawrence, declare and say as follows:

1. I submit this declaration in support of plaintiffs' opposition to stay enforcement of ¶ 24A of the *Flores* settlement. My experience and qualifications are set out in an earlier declaration I submitted in this matter. *See* Declaration of Helen Lawrence, September 2, 2016, Plaintiffs' Exhibits [ORR-Pt.3] (Dkt. #253), Exhibit 21-ORR

2. Two of my clients- Edwin David Aguayo Zavalza and Fidel Enrique Peña Flores ("Enrique"), both who have a parent in the United States eagerly participating in the reunification process- remain in secure ORR custody in Yolo. Neither Edwin nor Enrique has ever been offered a bond hearing.

3. Edwin has been in ORR custody since May 8, 2015. Most of that time he has been in secure custody. He has been confined at Yolo longer than any other youth presently housed there. ORR has not disclosed to me why his release to his mother has not been approved. As far as I know, ORR has yet to decide whether Edwin should be released, or whether he should continue to be detained because he is dangerous or a flight-risk, or because it thinks his mother an unfit custodian. To date, ORR has still not presented Edwin for a bond redetermination hearing in accordance with ¶ 24A of the *Flores* settlement, nor has it advised me when it will present him for a bond hearing. I have not waived a bond hearing on my client's behalf.

4. Enrique has been in ORR custody since March 20, 2016, quickly approaching a full year. To date, ORR has still not presented Enrique for a bond redetermination hearing in accordance with ¶ 24A of the *Flores* settlement, nor has it advised me when it will present him for a bond hearing. I have not waived a bond hearing on my client's behalf.

5. I reiterate that I do not believe there are any substantial impediments to ORR's complying with ¶ 24A of the *Flores* settlement. Both Edwin and Enrique will both be transported to San Francisco this week for an individual hearing and an asylum interview, so there should be no additional challenge in transporting these children for bond hearings.

6. In addition to my clients' prolonged, indefinite detention, I am concerned that ORR is sharing children's files with the Department of Homeland Security. In my direct representation of at least six detained children before the asylum office, the asylum officers (who are part of DHS) have had access to my clients' ORR files. Moreover, DHS has had access to more of my child clients' files than I have and access to the files before me.

7. For example, I submitted an ORR file request for Enrique's ORR file on September 20, 2016. I followed up with ORR about this pending file request multiple times. Nonetheless, I did not receive the file before Enrique's asylum interview on December 8, 2016. After his asylum interview, on January 12, 2017, the asylum office requested his ORR file. On February 8, 2017, ORR emailed the asylum officer Enrique's file. On February 15, 2017, after a third inquiry into the status of my ORR file request for Enrique, I received his ORR file. As such, ORR processed DHS's request for Enrique's file prior to mine which had been pending for over four months. I know this timeline because when ORR finally processed by file request it did so by forwarding me the email chain between the asylum office and ORR.

8. In Hector Estiven Boteo Fajardo and Cesar Ismail Villalobos Lima's cases, the asylum officers also had copies of these children's ORR files and referred to prejudicial information contained within them during their asylum adjudications. In both those cases, while I had some version of the ORR file for each child from my file requests, I did not have the same documents that the asylum officers had from ORR. DHS had access to more ORR documents

than were provided to me, the children's' attorney, in my file requests. During the interviews, DHS refused to provide me with the missing documents and even jokingly referred to it as "secret evidence."

9. In my eight years of representing unaccompanied children, ORR files often contain confidential juvenile records in violation of state juvenile confidentiality laws. For example, both Cesar and Enrique's ORR files contain juvenile police reports from cases in which the juvenile charges were completely dismissed. These juvenile police records are confidential and typically require that a party request permission through the state juvenile court along with notice to the child in order to share this sensitive, protected information. That state court process was not adhered to in the sharing of those records with ORR, nor in ORR's sharing of those records with DHS. As such, in my experience in Enrique, Cesar, and other children's cases, ORR illegally shares illegally obtained juvenile records with DHS- often before the child's attorney has access to them or the child's attorney is never provided these documents.

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

Executed this 20th day of February of 2017, in Oakland, California.

Helen Lawrence

HELEN LAWRENCE

Exhibit B

DECLARATION OF CECILIA B. CANDIA

I, Cecilia B. Candia, declare and say as follows:

1. I am a staff attorney employed at Legal Services for Children, located in San Francisco, California

2. Legal Services for Children is the legal service provider serving the three Office of Refugee Resettlement ("ORR") facilities housing detained unaccompanied minors in Northern California. As part of our work, we provide Know-Your-Rights presentations and legal screenings for detained children. We also serve as friend-of-court for the juvenile detained docket in San Francisco and provide legal representation for children who wish to pursue immigration relief and are facing prolonged deportation.

3. I staffed the juvenile detained docket in San Francisco on February 13, 2017. There were four children on the docket, two of whom I represent. One of my clients has been detained in ORR custody since May of 2016 the second client has been detained since November of 2016. The remaining two children who had court on February 13, 2017 were not my clients, but I appeared as friend-of-court.

4. None of the four children on the February 13, 2017 detained juvenile docket were informed by ORR or the Department of Homeland Security that they might be eligible for a Bond Hearing.

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

Executed this 20th day of February of 2017, in Oakland, California.

CBCandia

CECILIA B. CANDIA

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 20, 2017.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system:

Sarah B. Fabian
Vinita B. Andrapalliyal
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044

Dated: February 20, 2017

Carlos Holguín

No. 17-55208

IN THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, *et al.*,
Appellees,

v.

JEFFERSON B. SESSIONS III, *et al.*,
Appellants.

APPENDIX TO PLAINTIFFS'/APPELLEES' OPPOSITION TO EMERGENCY MOTION TO STAY ORDER ENFORCING SETTLEMENT OF CLASS ACTION

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Appendix 1

8/12/96

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Attorneys for Defendants

Additional counsel listed next page

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al.,	)	Case No. CV 85-4544-RJK(Px)
	)	
Plaintiffs,	)	Stipulated Settlement
	)	Agreement
-vs-	)	
	)	
JANET RENO, Attorney General	)	
of the United States, et al.,	)	
	)	
Defendants.	)	

Plaintiffs' Additional Counsel

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/ / /

STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement

(the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.

2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.

3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.

4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.

5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.

6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in

Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with

major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this

Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of this Agreement, attached hereto as Exhibit 2.

III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12.A. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to

protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19, (i) within three (3) days, if the minor was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such

emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that

of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

A. a parent;

B. a legal guardian;

C. an adult relative (brother, sister, aunt, uncle, or grandparent);

D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;

E. a licensed program willing to accept legal custody; or

F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

A. provide for the minor's physical, mental, and financial well-being;

B. ensure the minor's presence at all future proceedings before the INS and the immigration court;

C. notify the INS of any change of address within five (5) days following a move;

D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;

E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian, in writing, seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject

of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);

ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has

reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

A. the minor is currently under a final order of deportation or exclusion;

B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24.A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any

United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770, (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services available in the district pursuant to INS regulations (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except:

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause B, minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1)

biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the

terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

XI ATTORNEY-CLIENT VISITS

32.A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who

may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minors in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

XV RESERVATION OF RIGHTS

36. Nothing in this Agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that a party has violated the terms of this Agreement shall be served on plaintiffs addressed to:

/ / /

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos Holguín
Peter A. Schey
256 South Occidental Boulevard
Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales
114 Sansome Street, Suite 905
San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson
Assistant United States Attorney
300 N. Los Angeles St., Rm. 7516
Los Angeles, CA 90012

Allen Hausman
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

XVIII ATTORNEYS' FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of $374,110.09, in full settlement of all attorneys' fees and costs in this case.

/ / /

XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement, except that the INS shall continue to house the general population of minors in INS custody in facilities that are licensed for the care of dependent minors.

XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

For Defendants: Signed: Doris Meissner Title: Commissioner, INS

Dated: 9/16/96

For Plaintiffs: Signed: per next page Title: _____

Dated: _____

The foregoing stipulated settlement is approved as to form and content:

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
Carlos Holguin
Peter Schey

NATIONAL CENTER FOR YOUTH LAW
Alice Bussiere
James Morales

ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Mark Rosenbaum
Sylvia Argueta

STEICH LANG
Susan G. Boswell
Jeffery Willis

Date: 1/13/97 By _____

Date: 11/13/96 By _____

Exhibit 1

EXHIBIT 1

MINIMUM STANDARDS FOR LICENSED PROGRAMS

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.

2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.

3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be

residing in the United States and may be able to assist in family reunification.

4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.

5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management

is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.

9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

10. Whenever possible, access to religious services of the minor's choice.

11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.

12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or

exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

Exhibit 2

EXHIBIT 2

INSTRUCTIONS TO SERVICE OFFICERS RE:
PROCESSING, TREATMENT, AND PLACEMENT OF MINORS

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

(a) Minors. A minor is a person under the age of eighteen years. However, individuals who have been "emancipated" by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

(b) General policy. The INS treats, and will continue to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

(c) Processing. The INS will expeditiously process minors and will provide a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS's concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the juvenile cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in

INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

(d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others. Minors shall be released, in the following order of preference, to:

(i) a parent;

(ii) a legal guardian;

(iii) an adult relative (brother, sister, aunt, uncle, or grandparent);

(iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;

(v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or

(vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

(e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

(i) provide for the minor's physical, mental, and financial well-being;

(ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;

(iii) notify the INS of any change of address within five (5) days following a move;

(iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;

(v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

(vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

(f) Suitability assessment. An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

(g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue as long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

(h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. Exhibit 1 of the *Flores v. Reno* Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

(i) the minor is an escape risk or delinquent, as defined in Paragraph (i) below;

(ii) a court decree or court-approved settlement requires otherwise;

(iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or

(iv) the minor must be transported from remote areas for processing or speaks an unusual

language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

(i) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor —

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

"Chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

(a) the minor is currently under a final order of deportation or exclusion;

(b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

(c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional Juvenile Coordinator.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review as set out in Exhibit 6 of the *Flores v. Reno* Settlement Agreement, and (2) the list of free legal services providers compiled pursuant to INS regulations (unless previously given to the minor.

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The INS may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. Statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours must be reported to the Juvenile Coordinator by all INS district offices and Border Patrol stations. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration

status, and (f) hearing dates. INS officers should also inform the Juvenile Coordinator of the reasons for placing a minor in a medium-security facility or detention facility as described in paragraph (i).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit the lawyers for the *Flores v. Reno* plaintiff class to visit minors, even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

Exhibit 3

EXHIBIT 3

CONTINGENCY PLAN

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in programs licensed by an appropriate state agency as expeditiously as possible. An "emergency" is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An "influx" is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that the INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the List. The Emergency Placement List will include the facility name; the number of beds potentially available at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.

2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, (3) date placed in INS custody, and (4)

place and date of current placement.

3. Within one business day of the emergency or influx the Juvenile Coordinator or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

Exhibit 4

EXHIBIT 4

AGREEMENT CONCERNING FACILITY VISITS UNDER PARAGRAPH 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

Exhibit 5

EXHIBIT 5

LIST OF ORGANIZATIONS TO RECEIVE INFORMATION RE: SETTLEMENT AGREEMENT

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137

Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W. 4th Floor, Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

Exhibit 6

EXHIBIT 6
NOTICE OF RIGHT TO JUDICIAL REVIEW

"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."

PROOF OF SERVICE BY MAIL

I, Sonia Fuentes, declare and say as follows:

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

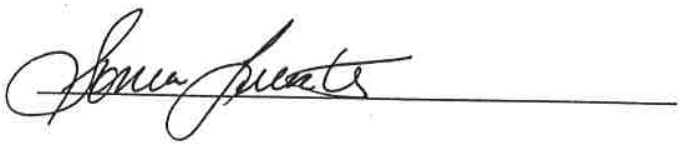
2. On January ___, 1997, I served the attached STIPULATED SETTLEMENT AGREEMENT on defendants in this proceeding by placing a true copy thereof in a sealed envelope addressed to their attorneys of record as follows:

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

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

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

Executed this ___th day of January, 1997, at Los Angeles, California.



/ / /

Appendix 2

DECLARATION OF HELEN LAWRENCE

I, Helen Lawrence, declare and say as follows:

1. I submit this declaration in support of plaintiffs' opposition to stay enforcement of ¶ 24A of the *Flores* settlement. My experience and qualifications are set out in an earlier declaration I submitted in this matter. *See* Declaration of Helen Lawrence, September 2, 2016, Plaintiffs' Exhibits [ORR-Pt.3] (Dkt. #253), Exhibit 21-ORR.

2. In addition to the *Flores* class members described in my earlier declaration, I provide direct representation to Fidel Enrique Peña Flores ("Enrique"), whom I have represented since May of 2016.

3. On December 16, 2016, ORR released my client, Hector Estiven Boteo, to his mother, who was the original proposed sponsor from the start and who had been visiting Estiven every two weeks while in ORR custody in California. Her drive took a minimum of seven hours each way. At no time did ORR explain to me why Estiven's reunification took so long, nor did it ever advise me it had any concerns about his mother's fitness to act as his custodian.

4. ORR released my client Cesar Ismael Villalobos Lima to his mother on December 31, 2016, after having detained him since February 5, 2016. Cesar's mother had been requesting his custody since shortly after ORR assumed his custody. ORR released Cesar solely because the Department of Homeland Security granted him asylum, and not because ORR reunified him. At no time did ORR clearly explain to me why it had refused to release Cesar to his mother prior to his being granted asylum.

5. Edwin David Aguayo Zavalza remains detained in Yolo. He has been in ORR custody since May 8, 2015. Most of that time he has been in secure custody. He has been confined at Yolo longer than any other youth presently housed there. ORR has not disclosed to me why his release to his mother has not been approved. As far as I know, ORR has yet to decide whether Edwin should be released, or whether he should continue to be detained because he is dangerous or a flight-risk, or because it thinks his mother an unfit custodian. Insofar as his mother's fitness is concerned, I think it relevant that more than a year ago ORR released Edwin's

younger brother, who had entered the United States with Edwin, to their mother. To date, ORR has still not presented Edwin for a bond redetermination hearing in accordance with ¶ 24A of the *Flores* settlement, nor has it advised me when it will present him for a bond hearing. I have not waived a bond hearing on my client's behalf.

6. Enrique remains detained in Yolo to date. He has been in ORR custody since March 20, 2016, quickly approaching a full year. As his attorney, I have not been told why his reunification with his father is taking so long. To date, ORR has still not presented Enrique for a bond redetermination hearing in accordance with ¶ 24A of the *Flores* settlement, nor has it advised me when it will present him for a bond hearing. I have not waived a bond hearing on my client's behalf.

7. I do not believe there are any substantial impediments to ORR's complying with ¶ 24A of the *Flores* settlement. As regards transporting detained children to bond hearings, inmy experience providing direct representation to these four children, ORR routinely presents children for master calendar hearings at San Francisco Immigration Court, which hears a detained juvenile docket approximately once a month. For example, ORR transported Estiven and Cesar multiple times over many months for hearings before immigration judges in San Francisco. I am advised that ORR will transport Edwin to San Francisco Immigration Court for a hearing on February 22, 2017. Enrique is scheduled to attend his first master calendar hearing there in February as well.

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

Executed this 30th day of January of 2017, in Oakland, California.

HELEN LAWRENCE

Appendix 3

DECLARATION OF HECTOR ESTIVEN BOTEO FAJARDO

I, Hector Estiven Boteo Fajardo, declare the following:

1. I am from Guatemala City, Guatemala. I am 15 years old. I am currently in Yolo County Juvenile Detention Facility, in Woodland, California, where I have been detained since January 26, 2016.

2. I left Guatemala for the first time in 2002, because my mom, who was in the United States, wanted to bring us—an older sister of mine, who was at the time approximately nine years old, an older brother, who was eight or seven years old, and me—to save us from the abuse we were subjected to by our paternal grandparents, who use to beat us and would leave us on the streets. We came accompanied by an aunt, from my dad's side.

3. Although I was really young, I have some memories of this event. I recall my aunt use to beat us, especially when she was drunk. I remember that after some time, her husband came to Mexico, and that suddenly she sold us to a coyote, so she could go back to Guatemala with him, without us. I recall that the coyote kidnapped us for around three years so he could extort our mom. I remember that the coyote would give us dog food to eat. I remember that he raped my sister and that he would beat us. In fact, the coyote was able to build a house with all the money that my mom gave him.

4. In the end, my mom could not pay him anymore, and the coyote turned us in

to the Mexican immigration. We were detained, and we stayed about a month and a half arrested in the migration station in San Luis Potosi. They never took us to DF.

5. The conditions in the migration station were bad. We shared dormitories with a lot of people: minors and adults, of both sexes, very cramped and everything was very dirty. The food was the same for all three meals: a soup or sandwich and water, or sometimes juice. No one informed us that there were any possibilities of staying in Mexico legally, with a humanitarian visa, asylum, or with other legal status.

6. In 2006, we were deported to Guatemala. We went to live with my grandmother. In the beginning, everything was going well, but with time, she started to abuse us. Since I was older, I decided to abandon the house and live alone, on my own accord.

7. I found a job as a bread maker, but right away the mara found out I was working and they started to extort me. I paid them two times, and soon I refused to pay them more, because I needed money for my rent, for which they tried to kill me.

8. One time, they shot at me when I was working in the bakery. They arrived in a black Nissan and shot at me. I threw myself on the floor, and that way I was able to save my life. Another time, I was on a motorcycle, when they surrounded me

and started to shoot. Another time, I was playing in a field, when they surrounded me and started shooting. When they started shooting, I threw myself in a ditch, and was able to survive.

9. In August 2015, I decided to go to the United States. I could no longer stand the violence in Guatemala; I really wanted to reunite with my mom. In Mexico, the federal police took me many times when I was going through the checkpoints.

10. Around August 12 or 13, border patrol arrested me in the United States, when I was crossing the border through San Ysidro, California. They took me to jail there, in San Ysidro. I was detained in the station by the border patrol for two or three days. There, the detainees endured cold and also dealt with being cramped in the cells. There was not enough room for me to sleep and they kept the lights on at all times, so we couldn't tell whether it was night or day. No one could go shower, or brush our teeth.

11. The day after I was arrested, after 12 hours of being detained, they grabbed me to get my information. They asked me why I had left Guatemala, and I told the officer about the gang extortion and their intentions to kill me. I also told him that my mother was living in the United States, and that I had two brothers who were born in the United States. I gave the officer my mom's name and phone number. They didn't tell me anything other than that they would send me to Arizona. I arrived in Phoenix, a program called Southwest Key, where I stayed for two or

three months. In the beginning, they told me I would be detained for 15 days, or maybe a month, before I could leave and live with my mom.

12. But, that is not what happened. I had been advised by an adult in Mexico that if I was arrested in the United States, I should tell the immigration that I had killed someone in Mexico. Even though that sounded weird, I was in the United States for the first time, so I told them that in Southwest Key, even though it was a total lie. I had never killed anybody. After I told them this, I was detained in Southwest Key another half of a month, thinking that the lie would help me, but that is not what happened.

13. One day in November, if I remember correctly, they came to tell me that they were going to send me to Shenandoah, Virginia, for a psychological evaluation and an evaluation of my mom's house. Two days after I arrived in Virginia, I told the officers that it was not true what I told them about killing someone, that I had only said that because of the older man's advice in Mexico, and because I was desperate to be with my mother. In November or December, they informed me that I had passed the psychological evaluation, but that they were going to keep me detained for maybe another month, until they could finish evaluating my mom's house. Currently, it has been one month or one and a half months since they informed me that the evaluation of my mom's house had also

been positive, but I remain detained, and I have no idea when I will leave detention.

14. They have also not given me any explanation why they transferred me to another detention center for delinquents like Yolo, instead of a place like Southwest Key. I never had any problems with the other detainees or with those in charge of Southwest key.

15. In Yolo, we live in a real prison. The food, the program, the life, the routine: everything is a penitentiary. They treat us badly, like delinquents. The entire time, we live locked up. They don't grab us to go to the park, the library, or anywhere normal. They lock us up in the cells every night, to sleep on benches made out of cement with mattresses. They take us out one hour each day to the courtyard. The food is always the same: something bad with oatmeal for breakfast; for lunch, a sandwich, milk and an orange or apple. Dinner varies a bit—out of all three meals it's the one that is so-so.

16. Since I arrived in Yolo, I have never consulted with a lawyer. (Now, a lawyer named Helen is helping me.) I never saw a list of lawyers who help detained minors. No one ever gave me a written explanation of the reason they held me in a high-security prison in Virginia or in Yolo. Up until now, they have not brought me in front of an immigration judge.

17. My case-worker explained to me that I only have two options: If I can put

up with more time in detention, the best possibility is that they will give me a positive response, which is saying that, I can go live with my mom; the second option, I can demand an answer sooner, and it will give me less chances to avoid deportation.

18. Now, I feel desperate. My only wish is to leave detention, live with my mom, and study. I have no future in Guatemala, apart from the mara killing me.

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

Made on February 29, 2016, in Woodland, California.

/s/_____
Hector Estiven Boteo Fajardo

///

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
OF THE ORGANIZATION OF AMERICAN STATES

TRANSLATOR DECLARATION

Jesus Castro, et al.,

v. United States of America and
United Mexican States

I, Ana Luiza R. Sousa, hereby declare that
I am fluent in English and Spanish.

I hereby certify that I have translated the attached document and to the best of my knowledge, the attached document is a true, accurate and complete translation of

Hector Estiven Boteo Fajardo declaration (description of document)

Date: 04/01/2016

Signature of translator

Printed name of translator

Ana Luiza R. Sousa

DECLARACIÓN DE HÉCTOR ESTIVEN BOTEO FAJARDO

Yo, Héctor Estiven Boteo Fajardo, declaro y digo lo siguiente:

1. Soy de la Ciudad de Guatemala, Guatemala. Tengo 15 años de edad. Actualmente estoy en Yolo County Juvenile Detention Facility, en Woodland, California, donde me encuentro detenido desde el 16 de enero, 2016.

2. Salí de Guatemala por primera vez en 2002, porque mi mamá, que estaba en los estados unidos, quería traernos a nosotros—una hermana mayor, en ese entonces de aproximadamente nueve años, un hermano mayor, de unos ocho o siete años, y mi—para rescatarnos del abuso de mis abuelos paternos, que nos golpeaban y nos dejaban en la calle. Veníamos acompañados por una tía, de parte de mi papá.

3. Aunque estaba muy chiquito, si tengo unas memorias de ese entonces. Me acuerdo que mi tía nos pegaba, especialmente cuando andaba tomada. Me acuerdo que después de un tiempo llegó su esposo a México, y que de repente nos vendió ella a un coyote, para que pudiera volver a Guatemala con él y sin nosotros. Me acuerdo que el coyote nos tuvo secuestrados por unos tres años, para que pudiera extorsionarle a nuestra mamá. Me acuerdo que el coyote nos daba de comer comida de perro. Me acuerdo que él violó a mi hermana, y que nos pegaba. De hecho el coyote logró construir una casa con todo el dinero que mi mamá le daba.

4. Al fin, mi mamá no pudo pagarle más, y el coyote nos entregó a la inmigración mexicana. Nos detuvieron, y pasamos como un mes y medio encerrados en la estación migratoria en San Luis Potosí. Nunca nos trasladaron al DIF.

5. Las condiciones en la estación migratoria eran feas. Compartíamos dormitorios con muchos: menores de edad y adultos, de ambos sexos, todos muy apretados, y todo muy sucio. La comida era lo mismo los tres tiempos del día: una sopa o un sándwich, y agua, o a veces un jugo. Nadie nos informó que había cualquier posibilidad de quedarnos en México legalmente, con visa humanitaria, asilo, o con otro estatus legal.

5. En 2006, salimos deportados a Guatemala. Fuimos a vivir con mi abuela materna. Al principio, todo nos fue bien, pero con tiempo, ella empezó a abusarnos. Ya más grande, me decidí abandonar la casa y vivir solo y por mi propia cuenta.

6. Encontré trabajo de panadero, pero pronto la mara se enteró que estaba yo trabajando, y empezaron a extorsionarme. Les pagué dos veces, y luego me rehusé de pagarles más, porque necesitaba el dinero para mi renta, por lo cual luego intentaron matarme.

7. Una vez, me dispararon cuando estaba trabajando en la panadería. Llegaron en un carro negro Nissan, y me dispararon. Yo me tiré en el piso, y así logré salvarme la vida. Otra vez andaba yo en moto, cuando me acercaron a disparar. Otra vez, estaba jugando en un campo, cuando llegaron dos pandilleros. Me empezaron a disparar, pero me tiré en un barranco, y así logré sobrevivir.

8. En agosto de 2015, me decidí ir a los estados unidos. No pude aguantar más la violencia en Guatemala, tenía muchas ganas de unirme con mi mamá. En México, pasando por los retenes, las policías federales me robaron varias veces.

9. Me arrestó la Patrulla Fronteriza de los estados unidos por el 12 o 13 de agosto de 2015, cruzando la frontera por San Ysidro, California. Me llevaron a la hielera allí mismo, en San Ysidro. Me quedé detenido en la estación de la Patrulla por unos dos o tres días. Allí sufrimos nosotros los detenidos mucho frío, y también por estar muy apretados en las celdas. Ni había campo suficiente para acostarse, y la luz la mantenían encendida todo el tiempo, hasta que ni pudimos distinguir día de noche. A nadie sacaron a bañarse, ni pudimos limpiarnos los dientes.

10. El día siguiente de caerme preso, después de unas 12 horas de detenido, me sacaron a tomar mis datos. Me preguntaron porque había salido de Guatemala, y le conté al oficial lo de la extorsión de la mara y de sus intentos de matarme. También le informé que mi mamá vivía en los estados unidos, y que yo tenía a dos hermanos nacidos en los estados unidos. Le di al oficial el nombre y el teléfono de mi mamá. No me dijeron nada, aparte de que me iban a mandar para Arizona. Llegué a Phoenix, a programa que se llama Southwest Key, donde me quedé dos o tres meses. Al principio, me dijeron iba a quedar yo detenido unos 15 días, o tal vez hasta un mes, antes de poder salir y vivir con mi mamá.

11. Pero no sucedió así. Me había aconsejado una persona mayor en México que al caerme preso en los estados unidos, me convendría decirle a la inmigración que había matado a alguien en Guatemala. Aunque me soñó raro, andaba yo en los estados unidos por primera vez; así que, a los del Southwest Key les conté eso, aunque era mentira completa. Nunca he matado a nadie. Después de haberles dicho eso, me quedé detenido en Southwest Key otro medio mes, pensando que la mentira me iba a ayudar, pero no fue así.

12. Un día en noviembre, si me acuerdo bien, me llegaron a decir que me iban a mandar a Shenandoah, Virginia, para uno estudio psicológico y un estudio de la casa de mi mamá. Como a dos días después de llegar a Virginia, les informé a los oficiales que lo que había dicho de matar a alguien no era cierto, que lo había dicho solo por el consejo de ese señor en México y por andar desesperado a salir con mi mamá. En noviembre o diciembre, me informaron que me había salido todo positivo del estudio psicológico, pero que me iban a detener tal vez un mes más, hasta que se terminara el estudio de la casa de mi mamá. Actualmente hace como un mes o mes y medio desde que me informaron que el estudio de la casa había salido positivo también, pero sigo detenido, y ni idea tengo cuando vaya a salir de la detención.

13. Tampoco me dijeron ninguna explicación del porque me habían trasladado a otro centro de detención para delincuentes como Yolo, en vez de un lugar como

Southwest Key. Nunca tuve ningún problema con los demás detenidos, ni con los encargados de Southwest Key.

14. En Yolo vivimos de pura cárcel. La comida, el programa, la vida, la rutina: todo de reclusorio. Nos tratan feo, como delincuentes. Vivimos todo el tiempo encerrados. No nos sacan para ir al parque, a la biblioteca, ni a ningún lugar normal. Nos encierran con llave en celdas todas la noches, para dormir sobre bancos de cemento con colchones. Nos sacan una hora por día a la cancha. La comida es siempre lo mismo: una cosa fea como avena para el desayuno; para el lonche, un sandwich, leche, y una naranja o manzana. La cena sí varia un poco— de los tres tiempos es el único que es más o menos.

15. Nunca tuve consulta con abogado hasta que llegué a Yolo. (Ahora me está ayudando la abogada Helen.) Nunca vi una lista de abogados que ayudaran a los menores de edad detenidos. Nunca me dieron explicación escrita de la causa por detenerme en alta seguridad en Virginia o en Yolo. Hasta la fecha, no me han presentado ante un juez de inmigración.

16. Me explicó mi trabajador de caso que solo tengo dos opciones: si aguanto más tiempo detenido, mejores posibilidades habrá de que me den una respuesta positiva, es decir, que puedo salir a vivir con mi mamá; la segunda opción, exijo un respuesta más rápida, y habría menos posibilidades de evitar la deportación.

17. Ahora me siento desesperado. Solamente deseo salir de la detención, vivir con mi mamá, y estudiar. No tengo ningún futuro en Guatemala, aparte de que los mara me maten.

Declaro bajo protesta de ley y castigo de perjurio que lo anterior es cierto y correcto.

Hecho el día 29 de Febrero, del año 2016, en la Woodland, California.

Hector Estiven Boteo Fajardo
HÉCTOR ESTIVEN BOTEO FAJARDO

///

Appendix 4

DECLARATION OF HELEN LAWRENCE

I, Helen Lawrence, declare and say as follows:

1. I submit this declaration in support of plaintiffs' opposition to stay enforcement of ¶ 24A of the *Flores* settlement. My experience and qualifications are set out in an earlier declaration I submitted in this matter. *See* Declaration of Helen Lawrence, September 2, 2016, Plaintiffs' Exhibits [ORR-Pt.3] (Dkt. #253), Exhibit 21-ORR.

2. In addition to the *Flores* class members described in my earlier declaration, I provide direct representation to Fidel Enrique Peña Flores ("Enrique"), whom I have represented since May of 2016.

3. On December 16, 2016, ORR released my client, Hector Estiven Boteo, to his mother, who was the original proposed sponsor from the start and who had been visiting Estiven every two weeks while in ORR custody in California. Her drive took a minimum of seven hours each way. At no time did ORR explain to me why Estiven's reunification took so long, nor did it ever advise me it had any concerns about his mother's fitness to act as his custodian.

4. ORR released my client Cesar Ismael Villalobos Lima to his mother on December 31, 2016, after having detained him since February 5, 2016. Cesar's mother had been requesting his custody since shortly after ORR assumed his custody. ORR released Cesar solely because the Department of Homeland Security granted him asylum, and not because ORR reunified him. At no time did ORR clearly explain to me why it had refused to release Cesar to his mother prior to his being granted asylum.

5. Edwin David Aguayo Zavalza remains detained in Yolo. He has been in ORR custody since May 8, 2015. Most of that time he has been in secure custody. He has been confined at Yolo longer than any other youth presently housed there. ORR has not disclosed to me why his release to his mother has not been approved. As far as I know, ORR has yet to decide whether Edwin should be released, or whether he should continue to be detained because he is dangerous or a flight-risk, or because it thinks his mother an unfit custodian. Insofar as his mother's fitness is concerned, I think it relevant that more than a year ago ORR released Edwin's

younger brother, who had entered the United States with Edwin, to their mother. To date, ORR has still not presented Edwin for a bond redetermination hearing in accordance with ¶ 24A of the *Flores* settlement, nor has it advised me when it will present him for a bond hearing. I have not waived a bond hearing on my client's behalf.

6. Enrique remains detained in Yolo to date. He has been in ORR custody since March 20, 2016, quickly approaching a full year. As his attorney, I have not been told why his reunification with his father is taking so long. To date, ORR has still not presented Enrique for a bond redetermination hearing in accordance with ¶ 24A of the *Flores* settlement, nor has it advised me when it will present him for a bond hearing. I have not waived a bond hearing on my client's behalf.

7. I do not believe there are any substantial impediments to ORR's complying with ¶ 24A of the *Flores* settlement. As regards transporting detained children to bond hearings, inmy experience providing direct representation to these four children, ORR routinely presents children for master calendar hearings at San Francisco Immigration Court, which hears a detained juvenile docket approximately once a month. For example, ORR transported Estiven and Cesar multiple times over many months for hearings before immigration judges in San Francisco. I am advised that ORR will transport Edwin to San Francisco Immigration Court for a hearing on February 22, 2017. Enrique is scheduled to attend his first master calendar hearing there in February as well.

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

Executed this 30th day of January of 2017, in Oakland, California.

HELEN LAWRENCE

Appendix 5

DECLARATION OF LORILEI ALICIA WILLIAMS

I, Lorilei Alicia Williams, declare and say as follows:

1. I am an attorney licensed to practice in the states of Texas and New York. I joined Staten Island Legal Services, part of Legal Services NYC, in January 2016 as the Immigration Unit Director.

2. From September 2012 until April 2014, I worked as a staff attorney in the unaccompanied minors program of the St. Frances Cabrini Center for Immigration Legal Assistance at Catholic Charities of the Archdiocese of Houston-Galveston. In the course of my practice I regularly represented unaccompanied juveniles detained pursuant to the Immigration and Nationality Act (INA) and housed by the Office of Refugee Resettlement of the Department of Health and Human Services (ORR) at the following detention facilities: Southwest Key Conroe, Shiloh, Southwest Key Casa Houston, Southwest Key Mesa, Baptist Children and Family Services Baytown, Catholic Charities St. Michael's, and the Children's Center in Galveston.

3. From May 2014 until January 2016, I worked as a staff attorney in the unaccompanied minors program of Catholic Charities Community Services of the Archdiocese of New York. During this period I regularly represented unaccompanied juveniles detained ORR detained at the following facilities: MercyFirst, the Children's Village, Cayuga Centers, Abbott House, Leake and

Watts, New York Foundling, the Children's Home of Poughkeepsie, the Children's Home of Kingston, Lincoln Hall, and Cardinal McClosky, among others.

4. My representation included assisting detained juveniles contest removal, seek affirmative immigration benefits such as asylum and special immigrant juvenile status, as well as seeking their release to parents or other custodians and advocating for their placement in the least restrictive setting. I have accordingly had regular occasion to observe, and am intimately familiar with, ORR's policies and practices, as well as those of United States Immigration and Customs Enforcement (ICE), toward the detention, release, and treatment of juveniles. I am also familiar with how those policies and practices have changed over time.

5. In the Houston area, Southwest Key Mesa was primarily a shelter-level facility, although it did have staff-secure beds. Shiloh was primarily a residential treatment center, although for some time it also had staff-secure beds. In New York, the Children's Village was primarily a shelter-level facility with two cottages dedicated to staff-secure beds. MercyFirst has both shelter-level beds and residential treatment center beds.

6. Children are placed in staff-secure beds if ORR determines that they require a higher level of supervision than the general population of detained immigrant and refugee youth. Staff-secure placement is more restrictive than shelter placement or placement in transitional foster care. In all aforementioned

facilities, I observed that children placed in staff-secure beds oftentimes remained at staff-secure level for several months. In a few cases, ORR released such children to sponsors or transferred them directly to a less secure long-term placement (such as ORR-funded long-term foster care or the Unaccompanied Refugee Minors (URM) program). In most cases, however, ORR required that the child earn the right to be "stepped-down" from staff-secure level to shelter level before it would release the child or transfer him or her to a long-term placement. It was common to see children detained for six months or longer in staff-secure placements.

7. ORR places children at residential treatment centers (RTCs) when it believes they need psychological or medical intervention. Most children I worked with at RTCs suffered from post-traumatic stress disorder. Many had thoughts of self-harm or suicide, or had experienced psychotic episodes. (A few had no extraordinary psychological needs, but had heightened medical conditions such as deafness, muteness, autism, or epilepsy.) Many children suffering from PTSD or other psychological trauma also had alleged criminal history closely associated with such trauma. Similar to staff-secure children, ORR would sometimes release RTC children directly from RTC, but most often would refuse to release them until they had first stepped down to a less secure placement. In both staff-secure and RTC placements, children suffered greater restrictions on their liberties, such as

being denied permission to leave the facility to attend school or recreational activities. In my experience, children in staff-secure or RTC placements also reported shelter abuses more frequently, such as excessive use of force when restraining a child, threatening children with removal, and general hostility towards the children.

8. I am informed and believe that the *Flores* settlement and § 235(c)((2) of the 2008 Trafficking Victims Protection Act (TVPRA) require ORR to place detained juveniles in the least restrictive setting that is in the best interests of the child. I am further informed and believe that the *Flores* settlement and the TVPRA require ORR to minimize the detention of juveniles by releasing them to their parents and other reputable custodians except where a particular minor is an extraordinary flight-risk or to ensure his or her safety or the safety of others. I am further informed and believe that the *Flores* settlement guarantees juveniles whom ORR refuses to release notice and a meaningful opportunity to be heard regarding the grounds for continuing to detain them. In my opinion, ORR is clearly in breach of these requirements: ORR is needlessly extending the juveniles' time in detention, placement in staff-secure beds and RTCs, and it affords detained youth little or no opportunity to examine or contest the grounds for continuing to detain them or house them in restrictive settings. The following examples illustrate ORR's policies and practices.

9. Alan Yair Cruz Mar, a 16-year-old born in Mexico, A 205 907 243, was detained by Customs and Border Protection (CBP) on August 24, 2015. Alan's father is a U.S. citizen who recognized his paternity over Alan and agreed to provide him with financial support until he turns 18, thereby making Alan a derivative U.S. citizen effective the date of his birth. A derivative citizen does not need to apply for citizenship: he or she is a citizen at birth. Alan did not know that he had this claim to citizenship until I met with him and also spoke with his father.

10. On November 6, 2015, I informed ORR and ICE that Alan was a U.S. citizen and therefore not subject to detention under the INA. ICE's Enforcement and Removal Operations (ERO) unit terminated removal proceedings against Alan during the fourth week of November because of his probative claim to U.S. citizenship and, advised ORR regarding his U.S. citizenship claim. ORR nevertheless continued to detain him for months without affording him any meaningful opportunity contest such detention and despite my best efforts to have him released to his father.

11. In an effort to have Alan released to his father, I reached out multiple times via telephone and email to David Fink, ORR's Federal Field Specialist (FFS) supervisor, and James "Jim" de la Cruz, also an FFS supervisor, both out of Washington, D.C. On multiple occasions, they simply refused to respond to inquiries regarding why Alan was being detained in lieu of release to his father. A

local FFS, Karla Mansilla, instructed me to bring up the question with ORR's legal counsel, but when I asked for their counsel's contact information, she refused to give it to me. (I considered filing a petition for habeas corpus contesting Alan's continued detention, but as explained below, I was then funded by the Vera Institute pursuant to a contract with ORR; both ORR and Vera Institute informally discourage Vera-funded lawyers from taking any legal action against ORR lest they cut off funds entirely for assisting unaccompanied minors.)

12. I successfully had Alan's removal proceedings terminated in immigration court in mid-January 2016, but it took more than a week for ORR to release Alan to his grandmother. At no time did ORR provide Alan, his father, his grandmother, or me any written explanation of its reasons for continuing to detain him. At no time did ORR present Alan for a bond redetermination hearing. At no time did ORR disclose to Alan, his father, his grandmother, or to me the evidence supporting its decision to continue Alan in detention. At no time did ORR grant Alan, his father, or his grandmother a hearing regarding the grounds for continuing to detain Alan. The most ORR could muster was to advise me informally that they did not want release Alan because they were concerned about his father's criminal history.

13. Another of my clients who suffered needless detention was William Alberto Alvarez Argaeta, A 205 298 892, from El Salvador. (William recently

passed away at the age of 14 in a fishing accident.) CBP apprehended William on December 26, 2011, when he was nine years old. ORR first detained William at the IES Harlingen Foster Program, and then at the Children's Center in Galveston, Texas. On January 4, 2012, ORR transferred him to Shiloh RTC. William was diagnosed with Attention-Deficit/Hyperactivity Disorder, Combined Type; Posttraumatic Stress Disorder; and, Bipolar I Disorder, with episodes that have been mixed, severe with psychotic features.

14. William's psychological difficulties stemmed from a long and tragic history of sexual abuse in El Salvador. He had been abandoned by extended family with whom his parents had left him, and for at least a year he lived alone, homeless, and defenseless on the streets of El Salvador; he was eight years old and easy prey for sexual predators. William's parents eventually managed to find him and arranged to have him brought to Dallas, Texas, where they lived.

15. I began representing William in October 2012. On numerous occasions he was uncooperative and exhibited clear indicia of mental illness. During this initial period of detention, William had no next-friend or child advocate, so I undertook to advocate for release to his parents. Being reunified with his parents was William's only clear wish, and I believed his parents would speak for him during removal proceedings. ORR refused to release William. As was the case with Alan, the agency refused to provide any written explanation of why a child of

such tender age and suffering from such trauma needed to be detained for more than a year when his parents were ready, willing and able to care from him and lived only a few hours away. Again, at no time did ORR present William for a bond redetermination hearing. At no time did ORR disclose to William's parents or to me the evidence supporting its decision to continue William in detention. At no time did ORR grant William or his parents any hearing regarding its reasons for continuing to detain their nine year old child.

16. ORR also appears to have done its best to insulate its decisions to continue children in detention from judicial review. When I discussed William's plight with my supervisors at Catholic Charities Houston, I was told explicitly that we could not take legal action against ORR because our Vera Institute funding to help detained children would be at risk. I determined, then, that my only recourse was to attempt to terminate William's removal proceedings on the basis of his incompetency. In January 2013, I submitted a motion to the immigration court. I also reached out to ORR and asked them if William's psychiatrist and clinician would be able to testify in court as to William's competency. I believe an individual hearing date was either for April or June 2013, but I do not recall the exact date. Some time prior to the competency hearing, ORR suddenly and without explanation released William to his parents; he had by that time spent almost a year and a half needlessly detained.

17. As the foregoing cases illustrate, in practice I have never known ORR to provide any written explanation for its decisions against releasing juveniles from staff-secure or RTC detention. In my experience, ORR affords neither detained juveniles nor their parents or other proposed custodians any transparent, meaningful opportunity to be heard on the matter of children's release, no opportunity to see, explain or rebut whatever evidence ORR believes justifies a child's continued secure confinement, or any effective way to appeal ORR's custody decisions administratively. Although ORR publishes on its website that parents may send a letter to the ACF Assistant Secretary appealing the denial, this is not communicated clearly to the parents or children. In sum, in denying juveniles' release to their parents or other caregivers, ORR provides—

- no notice of the reasons for housing them in a staff-secure or RTC facility;
- no bond redetermination or other hearing on the reasons for continuing to detain them;
- no written information regarding when or if it will reach a decision on whether to detain or release a child;
- no written information regarding when or if it will "step down" a child from a staff-secure or RTC placement to a non-secure licensed placement;

- no explanation of the right of judicial review; and

18. Although I am not a mental health professional, I have noted the deleterious effects ORR's opaque and oft-delayed release and step-down decisions have on detained youth. In both Alan's and William's cases, facility staff repeatedly encouraged my clients, their parents, and myself to believe that ORR would release my clients promptly, whereas in truth and fact the agency delayed its decisions for weeks or months, leaving children, their parents, and their lawyer twisting in the wind, awaiting a decision from on high that might or might not be favorable and that would never be explained other than in the barest of conclusory terms. In the face of such extended and faceless uncertainty, detained children—already traumatized by horrific experiences in their countries of origin—have expressed to me feeling profound helplessness and despair, to the point where they are prepared to take extreme measures, including opting for voluntary return to countries in which they know their lives and freedom will be in jeopardy, rather than continue to live day after day in ORR's detention facilities never knowing if or when they will be reunited with their families.

19. Additionally, although ORR boasts of providing free legal services to detained minors, it hobbles free legal service providers who undertake to represent detained children. While working for both Catholic Charities in Houston and in New York, I was funded by ORR to represent detained unaccompanied minors.

ORR provides such funds pursuant to the TVPRA to the VERA Institute of Justice, which then sub-contracts with nonprofit legal service organizations to provide direct legal services to ORR detainees, among others.

20. In cases where ORR insisted upon detaining children for unusually long periods of time, pursuing relief in federal court was not an option, so my only recourse was to maintain open communication with shelter staff and ORR personnel in the hopes that a positive long-term stakeholder relationship would work to detained children's benefit. On more than one occasion, shelter staff and I strategized together on how to persuade ORR to release a child, but these measures were no substitute for a fair and transparent procedure by which detained children and their parents could understand and test the government's case for refusing release.

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

Executed this 5 day of August, 2016, at Staten Island, NY.

Rachel W W Granfield
Notary Public, State of New York
No. 02GR6333769
Qualified in Richmond County
My Commission Expires 11-20-19

Lorilei Alicia Williams

/// Rachel W W Granfield

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 20, 2017.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system:

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Dated: February 20, 2017

Carlos Holguín