APPENDIX IN SUPPORT OF PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR MOTIONS FOR PRELIMINARY INJUNCTIONS, FILED MARCH 29, 2007

Exhibit DD: Declaration of Vanita Gupta, Esq., March 29, 2007

Attachment 1: Declaration of Griselda Ponce, Esq., March 28, 2007

Attachment 2: Declaration of Rasa Bunikiene, March 29, 2007

Attachment 3: Declaration of Carlos Holguín, Esq., March 19, 2007

Exhibit EE: March 23, 2007 Letter to Office of Immigration Litigation, Victor Lawrence

Exhibit FF: Plaintiffs' Proposed Scheduling Order for Expedited Discovery and Trial

Exhibit DD

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

DECLARATION OF VANITA GUPTA

Vanita Gupta, pursuant to 28 U.S.C. § 1746, makes the following declaration under penalty of perjury:

1. I am an attorney with the Racial Justice Program of the American Civil Liberties Union Foundation, which represents Wesleyann Emptage; Egle Baubonyte; Saule Bunikyte; and Sherona Verdieu. I make this Declaration regarding plaintiffs' attempt to informally resolve this matter prior to filing suit pursuant to this Court's Order, entered on March 22, 2007.

2. On February 21, 2007, I sent by fax a letter to Johnny K. Sutton, U.S. Attorney for the Western District of Texas. A true and correct copy of this letter is attached, and has already been entered into this Court's record as Attachment 2 to Exhibit C of the Appendix Filed in Support of Plaintiff's Motion for a Temporary Restraining Order and Plaintiff's Motion for a Preliminary Injunction, Both Filed March 6, 2007. In the letter, I explained that the American Civil Liberties Union ("ACLU") represents several immigrant families that are detained at the T. Don Hutto Family Residential Center ("Hutto"). I wrote that the placement of our clients in Hutto violates the Stipulated Settlement Agreement in the case of *Flores v. Meese*, No. 85-4544 (C.D. Cal.) ("*Flores* Settlement") in numerous respects, as do the conditions at the facility. The letter explicitly stated that "[p]ursuant to ¶ 24.E of the Stipulated Settlement Agreement, I [Vanita Gupta] am writing to you now in an effort to informally resolve this matter

without the need of federal court intervention." The letter also provided notice of the names of our clients and the resolution we are seeking.

3. Paragraph 24(E) of the Stipulated Settlement Agreement states that prior to bringing an action to challenge Immigration and Customs Enforcement's ("ICE") non-compliance with the *Flores* Settlement, "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." Pursuant to this provision, I faxed the February 21 letter to the United States Attorney's office in the Western District of Texas.

4. At noon on February 22, co-counsel Judy Rabinovitz and I attempted to reach Mr. Sutton by telephone. His voicemail system answered. We left a message notifying Mr. Sutton of our faxed letter the day before, and explained that we are representing several children detained at Hutto, that we believe that their detention violates the *Flores* Settlement, that we are reaching out to him pursuant to a requirement in the Settlement to see if we can resolve this matter without the need for federal court intervention. Neither Judy Rabinovitz nor I received a call back from Mr. Sutton in response to our letter or to our phone call.

5. Instead, on February 22, 2007, John F. Paniszczyn, Assistant U.S. Attorney for the Western District of Texas, San Antonio Division, sent a letter by fax that is time stamped 12:24pm. A true and correct copy of this letter is attached as Attachment 1. This letter stated that my letter dated February 21, 2007 had been forwarded to Victor Lawrence of the Department of Justice, Office of Immigration Litigation ("OIL") in

Washington, D.C., and that that office "will be directly handling any issues addressed in your correspondence." It further stated that "[a]ccordingly, we have referred your letter and attachment to the attention of Victor Lawrence, an attorney with that office. . . Please direct your inquiries related to the above referenced matter to Mr. Lawrence's attention." Though our letter had been forwarded to Mr. Lawrence, and the fact and substance of our voicemail message had been communicated to him, neither I nor co-counsel received any communication from OIL in response to either.

6. I did not receive Mr. Paniszczyn's faxed letter until the evening of February 28, 2007 because it was mistakenly placed in another ACLU attorney's office and that attorney was out of town until February 28, 2007. During this time, I thought that the U.S. Attorney's Office of the Western District of Texas was still the office that I should be contacting to seek to informally resolve this matter without the need for litigation. As a result, I placed another call with Mr. Sutton on February 27, and left a second voicemail message saying that I had not yet heard back as to my letter dated February 21. I did not get a return call from either Mr. Sutton or Mr. Lawrence. The very next day after I received Mr. Paniszczyn's fax, I sent a letter directed to Mr. Lawrence that copied Mr. Sutton. A true and correct copy of this letter is attached as Attachment 3 to Exhibit C of the Appendix Filed in Support of Plaintiff's Motion for a Temporary Restraining Order and Plaintiff's Motion for a Preliminary Injunction, Both Filed March 6, 2007. This letter restated the substance of our first letter but added the names of several new clients and requested a written assurance from ICE that its officials would not retaliate against our clients. The purpose of the March 1 letter was to ensure that ICE had an accurate and comprehensive list of the clients on whose behalf we are

seeking a resolution Neither I nor co-counsel received a response from either the U.S Attorney's Office or Mr Lawrence.

7 On March 2, 2007, the ACLU and co-counsel emailed to several reporters a media advisory that was embargoed until Tuesday, March 6, at 9am, the date and time that we intended to file complaints on behalf of our clients if we did not hear back from opposing counsel. The media advisory alerted the media that on Tuesday, March 6, the ACLU and co-counsel would hold a press conference to announce the filing of lawsuits on behalf of several children detained at Hutto At any point between the email distribution of this advisory on March 2 until we filed the morning of March 6, plaintiffs' counsel could have and would have cancelled or postponed the filing pursuant to a return call or communication from opposing counsel indicating a willingness to confer to try to resolve this matter informally without the need for federal court intervention It is for this very reason that the media advisory was embargoed until March 6.

8. Opposing counsel's assertion that he did not learn of our February 21, 22, and 27th attempts at conferring with the U.S Attorney until March 1, 2007 is inconsistent with the facts of the case Mr. Paniszczyn's letter clearly stated that our February 21 letter had been forwarded to Mr Lawrence, and that he therefore knew that we were attempting to confer with opposing counsel to attempt to resolve this matter informally without the need for federal court intervention. Furthermore, at the hearing on March 20, 2007, Mr. Lawrence admitted that he knew of our February 21 letter and our February 22 call (See Tr Hrg March 20, 2007, at 33-34) Since Mr. Lawrence had our February 21 letter in his possession, there was no point in my sending him a second one – Mr. Lawrence was well-aware by our February 21 letter and our February 22 phone call that

we were attempting to confer with the U.S. Attorney's Office and by extension, pursuant to Mr. Paniszczyn's letter, the Office of Immigration Litigation, in this matter.

9. The letter that we sent on February 21, followed by the messages we left on Mr. Sutton's voicemail on February 22 and on February 27, were both explicit in their mention of our interest in informally resolving the matter without the need of federal court intervention. The March 1 letter that we sent provided an update of the client list as well as sought a written assurance from ICE that its officials would not retaliate against our clients, but did restate that we were interested in resolving the matter without the need of federal court intervention. The only communication we received from opposing counsel between February 21 and March 6, the date that we filed the complaints and other motions on behalf of our clients, was the letter from Mr. Paniszczyn on February 22 that did not respond to the substance of our February 21 letter but only informed us of OIL's involvement.

10. There is no question based on the record developed so far that Mr. Lawrence knew of our attempts to comply with Paragraph 24(E) of the *Flores* Settlement as of February 22, 2007 and that Mr. Sutton had received our initial letter seeking to confer on February 21. Mr. Lawrence chose not to respond to our multiple requests in writing and by phone. Between our initial February 21 letter seeking to confer and the date of our filing, two weeks passed during which we did not get any communication from the U.S. Attorney's Office or OIL regarding the substantive content of our two letters and two phone calls. Even if Mr. Lawrence wishes to claim that our media advisory cast our filing in stone, which it did not, he still had nine days during which he did not respond to the substantive content of our initial letter and our phone call, both of

which explicitly stated that we were seeking to confer to avoid federal court litigation. We did not hear back, and, therefore, we filed on March 6, having exhausted the available alternative remedy provided in Paragraph 24(E) of the *Flores* Settlement.

11 Attached hereto as Pl. Ex. DD, Attachment 1 is a true and correct copy of the Declaration of Griselda Ponce detailing what proceedings regarding bond or parole, if any, have been held with regard to her clients Sherona Verdieu and her mother, Delourdes Verdieu, and Wesleyann Emptage and her mother, Pamela Puran.

12 Attached hereto as Pl. Ex. DD, Attachment 2 is a true and correct copy of the Declaration of Rasa Bunikiene detailing what proceedings regarding bond or parole, if any, have been held with regard to her and her children Egle Baubonyte and Saule Bunikyte.

13 Attached hereto as Pl. Ex. DD, Attachment 3 is a true and correct copy of the Declaration of Carlos Holguín describing the intent of original *Flores* counsel in drafting the Settlement as well as the INS's pre-*Flores* practice of family detention.

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

EXECUTED on March 29, 2007

Vanita Gupta, Esq.

Attachment 1
to
Exhibit DD

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

DECLARATION OF GRISELDA PONCE

I, Griselda Ponce, pursuant to 28 U.S.C. § 1746, make the following declaration under penalty of perjury:

1. I am an attorney with a solo practice, Law Office of Griselda Ponce, with mailing address as 11900 Metric Boulevard, Suite J-167, Austin, Texas, 78758.

2. I represent Delourdes Verdieu and her thirteen-year-old daughter, Sherona Verdieu, in their immigration proceedings. I also represent Raouitee Pamela Puran and her four-year old daughter, Wesleyann Emptage, in their immigration proceedings. I understand that Wesleyann and Sherona are plaintiffs in lawsuits in the Western District of Texas where they are attempting to enforce their rights under the *Flores* Agreement. I make this Declaration pursuant to this Court's Order, entered on March 22, 2007, in those cases.

Sherona Verdieu's Immigration Proceedings

3. Sherona and her mother fled persecution in Haiti. Because Ms. Verdieu feared for her own safety and her daughter's safety, they traveled to the United States to reunite with their family members. Ms. Verdieu and Sherona arrived at the Miami airport and presented their own expired passports. At that time, both Ms. Verdieu and Sherona told the immigration officials that they feared persecution in Haiti. The two were taken into ICE custody, and were transported to Hutto on September 12, 2006. They have been detained at Hutto ever since, for over six-and-a-half months.

4. On September 18, 2007, a trained asylum officer found that Ms. Verdieu and Sherona had a credible fear of persecution if returned to Haiti and recommended that their cases

be referred to the immigration court for a full hearing on their asylum claims. On September 26, 2006, Notices to Appear were issued to Sherona and her mother commencing regular removal proceedings against them. Issuance of these Notices meant that Sherona and her mother were no longer subject to expedited removal and that they were allowed to pursue asylum claims before the immigration court.

5. A hearing on Ms. Verdieu's and Sherona's asylum applications is scheduled before the immigration court on April 25, 2007.

6. Sherona and her mother are not eligible for a bond hearing before an immigration judge, because they were detained upon arrival at the Fort Lauderdale airport and are therefore classified as "arriving aliens." Under pertinent immigration regulations, immigration judges are without jurisdiction to review ICE's custody determinations for "arriving aliens." 8 C.F.R.§ 1003.19(h)(2)(i)(B).

7. Sherona and her mother, however, are eligible for release on parole. 8 U.S.C. 1182(d)(5) (authorizing parole of any applicant for admission "for urgent humanitarian reasons or significant public benefit"); 8 C.F.R. 212.5 (delegating parole authority to various ICE officials including field office directors). Indeed, ICE guidelines favor release on parole for asylum applicants who have passed the credible fear screen, can establish identity, and have a place to live and means of support. Sherona's mother, Ms. Verdieu, has a U.S. citizen sister – Melonne Clervil Verdieu – who has offered to care for and support both Sherona and her mother in her home in Miami, Florida, and to ensure that they will comply with all laws governing their immigration proceedings.

8. Sherona and Ms. Verdieu have submitted two parole requests to defendants, asking for their release to Melonne Verdieu. The first parole request was submitted on October 3,

2006 to ICE Field Office Director, Marc J. Moore. Mr. Moore denied the parole request without any reason by letter dated November 7, 2006. Four months later, on March 16, 2007, Sherona and Ms. Verdieu renewed their parole requests in another letter to Mr. Moore. Defendants have yet to respond to their renewed parole requests

9. Sherona and her mother meet all the requirements for parole to their family member, Melonne Verdieu. First, a trained asylum officer has found that Ms. Verdieu has a credible fear of persecution if returned to Haiti. Second, both her and Sherona's identities have been clearly established. Third, they have strong ties to a family relative who is a U.S. citizen and who is able to support them in Miami, Florida. Fourth, Ms Verdieu is not subject to any bars to asylum. And fifth, the continued detention of both Sherona and her mother for over six months at Hutto gives rise to additional, serious humanitarian and public-interest considerations.

10. A troubling humanitarian concern that directly impacts my representation of my young client is that developing the asylum case has required me to communicate traumatic information from the mother through Sherona who acts as translator for her mother. I have attempted numerous times to solicit help of an independent translator but the travel time to the detention center for most translators is 1 ½ hours let alone the time it will take to discuss the actual asylum claim with my clients. If they were released, they could travel to the translator's location and we could communicate with more ease and better prepare their case for final hearing. Time is of the essence in this case because as stated earlier, their final hearing is set for April 25, 2007.

11. Secondly, I visited my client Sherona today and found my client with a readily visible colony of small blisters covering her nose and part of her upper lip. This has caused my

young client much discomfort including fever, a sore throat, severe cough and according to her has been spreading since it began on Saturday, March 24, 2007. The medical center reports being unsure what is causing it.

12. There is no time limit within which ICE must respond to Sherona and Ms. Verdieu's renewed parole requests. I do not know whether ICE will grant their renewed parole requests or when they might do so. In general, however, it has been my experience that the ICE Field Office does not grant release on parole to asylum seekers like Ms. Verdieu who have passed their credible fear screens and are detained at Hutto. Nor can Sherona and her mother seek review of the parole denial by an immigration judge or any other administrative body.

Wesleyann Emptage's Immigration Proceedings

13. Wesleyann and her mother fled persecution in Guyana. Because Ms. Puran feared for her own safety and Wesleyann's safety, they traveled with improper documents to join family members in the United States. Upon landing in the United States, Ms. Puran told officials at the airport that she was afraid to return to Guyana. Her I-213, Record of Deportable Alien, prepared on December 24, 2006 states that she was to be processed for a credible fear interview. Wesleyann and her mother were taken into ICE custody on December 24, 2006 and were transported to Hutto on December 28, 2006.

14. When Wesleyann and her mother arrived at Hutto, they were not given a list of free legal services providers. In fact, they only received such a list on February 13, 2007, after they had already been detained at Hutto for six weeks. Even then, the list of legal service providers given to them was different from the one normally provided by the immigration

courts in San Antonio, Texas, and contained incorrect information. For example, the address listed for the Political Asylum Project of Austin is wrong.

15. On or about December 29, 2006, Ms. Puran requested a credible fear interview. But Ms. Puran was not provided with an interview until February 15, 2007, more than six weeks after her initial request and initial apprehension.

16. At her credible fear interview, a trained asylum officer found that Ms. Puran had a credible fear of persecution if she were returned to Guyana and recommended that she be referred to regular removal proceedings to pursue her application for asylum before an immigration judge.

17. Subsequently, on February 27, 2007, a Notice to Appear was issued to Ms. Puran commencing such proceedings. Issuance of the Notice meant that Ms. Puran was no longer subject to expedited removal proceedings and was allowed to pursue her asylum claim before the immigration court. Wesleyann was not issued a Notice to Appear until March 14, 2007.

18. The Notice to Appear served on Ms. Puran did not classify her as an arriving alien, thus making her eligible for bond. However, ICE filed a different notice to appear (NTA) with the court, substituting the signed second page with a different first page which charges Ms. Puran as an arriving alien. This subsequent NTA was never properly served on my client but was filed with the Court. I was not aware that ICE did not properly serve my client with the same notice that they filed with the immigration court until I appeared in court on March 27, 2007. The Court admonished DHS for such a clearly unethical practice on March 27, 2007 and DHS repeatedly refused to acknowledge any wrongdoing even though it was clear from the documentation before the Court.

19. Wesleyann and Ms. Puran's next hearing is April 17, 2007, at which time Ms. Puran will file her application for asylum.

20. Neither Ms. Puran nor Wesleyann is eligible for a bond hearing before the immigration judge because they were detained upon arrival at the Fort Lauderdale airport and are therefore classified as "arriving aliens." At a bond hearing on March 27, 2007, the Immigration Judge signed an order acknowledging the Court lacks jurisdiction to order release on bond in this case. Under pertinent immigration regulations, immigration judges are without jurisdiction to review ICE's custody determinations for "arriving aliens." 8 C.F.R. §1003.19(h)(2)(i)(B).

21. Wesleyann and her mother, however, are eligible for release on parole. 8 U.S.C. 1182(d)(5) (authorizing parole of any applicant for admission "for urgent humanitarian reasons or significant public benefit"); 8 C.F.R. 212.5 (delegating parole authority to various ICE officials including field office directors) Indeed, ICE guidelines favor release on parole for asylum applicants who have passed the credible fear screen, can establish identity, and have a place to live and means of support. The aunt of Wesleyann and the sister of Ms. Puran – Paula Harrypaul, a U.S. citizen – and her husband, Rohan Harrypaul, are eager to care for and support both Wesleyann and Ms. Puran in their home in New York, New York, and to ensure that they will comply with all laws governing their immigration proceedings.

22. On March 16, 2007, Wesleyann and Ms. Puran submitted parole requests to ICE Field Office Director, Mr. Moore, asking for release to their family members. Neither Ms. Puran nor Wesleyann nor I have received any response.

23. Wesleyann and Ms. Puran meet all requirements for parole of asylum seekers: First, a trained asylum officer has found that Ms. Puran has a credible fear of persecution if returned to Guyana. Second, the identities of both Ms. Puran and Wesleyann have been clearly established. Third, they have strong ties to a family relative (Ms. Puran's sister) who is a U.S. citizen and who is able to support both of them in New York, New York. Fourth, Ms. Puran is not subject to any statutory grounds of ineligibility for asylum. Fifth, the continued detention of both Ms. Puran and Wesleyann at Hutto for three months gives rise to additional, serious humanitarian and public-interest considerations.

24. There is no time limit within which ICE must respond to Wesleyann and Ms. Puran's renewed parole requests. I do not know whether ICE will grant their request for release on parole. In general, however, it has been my experience that the ICE Field Office does not grant release on parole to asylum seekers like Ms. Puran and her child Wesleyann who have passed credible fear screens and are detained at Hutto. Nor can Wesleyann and her mother seek review of the parole denial by an immigration judge or any other administrative body.

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

EXECUTED on March 28, 2007

Griselda Ponce, Esq.

Attachment 2
to
Exhibit DD

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

DECLARATION OF RASA BUNIKIENE

I, Rasa Bunikiene, pursuant to 28 U S C. § 1746, make the following declaration under penalty of perjury:

1. I am the mother of Egle Baubonyte and Saule Bunikyte My daughters are plaintiffs in lawsuits in the Western District of Texas where they are attempting to enforce their rights under the *Flores* Agreement I make this Declaration pursuant to this Court's Order, entered on March 22, 2007, in those cases.

2 Egle and Saule arrived in the United States on March 8, 2005 as conditional permanent residents On December 15, 2006, they arrived with me at Immigration Court in Chicago, Illinois in response to Notices to Appear for immigration proceedings. The government has charged that our permanent resident status is not valid. When we appeared at the Immigration Court, ICE officers – without any warning – took Egle, Saule, and me into custody. We were transported to Hutto, and we have been there ever since.

3. My husband and Egle and Saule's stepfather is Paul H. Velazquez, a U S citizen. Mr. Velazquez is eager to care for and support my daughters and me in his home in Chicago, Illinois, and to ensure that we will comply with all laws governing our immigration proceedings

4 In recent months, we were represented in our immigration proceedings by Rosa Maria D MacNeil of Rosa Maria D. MacNeil & Associates, located at 2035 S. Arlington Heights Road, Suite 115, Arlington Heights, Illinois, 60005 Ms. MacNeil was completely ineffective as counsel. She messed up our legal filings and did not return phone calls. I have been trying to reach her in order to fire her since March 26, 2007, but she has not returned any of my multiple

phone calls. I will fire her as soon as I reach her on the phone. The ACLU attorneys representing my daughters were unable to get in touch with Ms. MacNeil regarding this Court's Order of March 22, 2007, despite repeated attempts. Because I am currently searching for a new immigration attorney, I am submitting this declaration about my immigration proceedings and those of my daughters

5. Ms. MacNeil tried to get Egle, Saule, and me released from Hutto by filing motions for bond. She appeared for bond hearings before Immigration Judge Zuniga in San Antonio, Texas. All three motions for bond were denied because she did not do the paperwork correctly.

6. Subsequently, Ms. MacNeil filed motions with the San Antonio Immigration Court requesting that venue in Egle, Saule, and my cases be transferred back to Chicago, Illinois. Those motions were granted. As a result, the immigration cases of all three are now pending in the Chicago immigration court.

7. On March 26, 2007, Ms. MacNeil appeared before Immigration Judge Katzvilis in Chicago. My daughters and I appeared via teleconferencing. Ms. MacNeil filed motions for redetermination of bond for Egle, Saule, and me asking that we be released to Mr. Velazquez. Judge Katzvilis denied all the motions without hearing them and determined that any custody redetermination should be made by the San Antonio immigration judge who originally heard the bond request. Ms. MacNeil failed to file an appeal and no bond hearing has been held. Judge Katzvalis, however, did order that all three of us be brought back to Chicago prior to their merits hearing on April 26, 2007. My understanding is that this order does not require our immediate release from Hutto, except for the period of time that we are transferred to Chicago for the hearing. When we arrive in Chicago for our hearing, I do not know where ICE intends to detain us or what they

plan to do. Because ICE has no family detention facilities in Chicago, I am concerned that the girls could potentially face separation from me.

8. Ms. MacNeil says she has filed I-751 waivers (Petitions to Remove the Conditions of Residence) on behalf of both Egle and Saule. She also was supposed to file an asylum petition on my behalf, and investigate other forms of relief but has not done so. The approval of any of these forms of relief will allow Egle and Saule to remain in the United States.

9. I understand that Egle and Saule's attorneys at the ACLU have filed additional documents in support of their request that the girls be released from Hutto. In particular, in accordance with paragraph 15 of the *Flores* Agreement, Mr. Velazquez has executed an Affidavit of Support (Form I-134) for both girls. In that affidavit, Mr. Velazquez guarantees that he is "willing and able to receive, maintain and support" Egle and Saule, and that neither of them will "become a public charge during . . . her stay in the United States." Defendants received this Affidavit of Support on March 19, 2007, but have not yet responded to Egle and Saule's requests for release from Hutto.

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

EXECUTED on March 29, 2007

Rasa Bunikiene

Rasa Bunikiene

Attachment 3
to
Exhibit DD

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

DECLARATION OF CARLOS HOLGUIN

Carlos Holguín makes the following declaration under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. My name is Carlos Holguín; I am General Counsel with the Center for Human Rights and Constitutional Law Foundation. I have served in this capacity since 1984. The Center is a non-profit, public interest legal foundation dedicated to furthering and protecting the civil, constitutional and human rights of immigrants, refugees, children and the poor. My practice focuses on legal, legislative and educational work on behalf of immigrants and refugees. I have served as lead and co-counsel in numerous impact cases involving deportation, political asylum, and the rights of juveniles.

2. I am lead counsel for the plaintiffs in *Flores v. Meese*, No. 85-cv-4544 (C.D. Cal.), and am one of the original team of attorneys who investigated, filed, litigated, settled, and then sought to enforce the settlement in the *Flores* class action. I make the following statements based on my personal knowledge of the history of the *Flores* litigation and the intent of the parties in entering into the January 1997 Stipulated Settlement Agreement ("*Flores* Settlement").

3. From before the *Flores* case was filed, through the signing of the *Flores* Settlement in 1997, families with children were commonly detained in INS custody, although there were no designated "family detention facilities." Before the *Flores* case was filed, unaccompanied minors *and* families that included minors were typically detained by the INS in makeshift detention facilities, such as rented hotels with razor wire thrown up

around them. Whether or not the minors were accompanied by a parent was immaterial to claims raised in *Flores* regarding substandard conditions and treatment minors experienced during INS detention, or to the need for specific standards to protect minors and ensure that the facilities in which they were detained were appropriate to their age and special needs. The *Flores* Settlement was intended to protect *all* minors in ICE custody, whether accompanied or not.

4. The *Flores* plaintiffs filed an enforcement motion on January 26, 2004, supported by voluminous evidence of non-compliance by *Flores* defendants. In litigating this motion over the next 22 months, the plaintiffs obtained still more evidence of serious violations of the *Flores* Settlement. The *Flores* plaintiffs withdrew their enforcement motion on or around November 14, 2005, because the parties had reached certain agreements on a process aimed at improving the treatment and conditions experienced by minors in the custody of ICE and ORR.

5 The withdrawal of the January 26, 2004 enforcement motion ended litigation on that particular motion, but did not terminate the *Flores* Settlement or affect the ongoing enforceability of its provisions.

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

EXECUTED on March 19, 2007.

Carlos Holguin

Exhibit EE

VANITA GUPTA
STAFF ATTORNEY
RACIAL JUSTICE PROGRAM
T/212.549.2607
vgupta@aclu org

By Email and First Class Mail

March 23, 2007

Victor Lawrence
Edward Wiggers
Department of Justice
Office of Immigration Litigation
National Press Building
529 14th St
Washington, D.C. 20045

Re: *Emptage v. Chertoff*, No. 07-cv-158 (W.D. Tex.), and Related Cases

Dear Victor:

Per your request on our telephone call yesterday, which included my co-counsel Judy Rabinovitz and your co-counsel Edward Wiggers, I am writing to memorialize several points raised on that call.

First, Judy and I requested a copy of the licensing letter that you referenced during the March 20, 2007 hearing as soon as possible (before the filing deadline) so that we can respond appropriately in our supplemental briefing on the issue. You stated that you would ask your client to see if that is possible.

Second, Judy and I broached the possibility of streamlining the filings by submitting one brief for all related cases, which could include specific facts for each client as necessary. We could then present this to the Judge's law clerk as a way to cut down on the paper, and if the Court approves of this method of filing, we would file one brief. You stated that you would ask your client to see if that is feasible.

Third, you requested the name of the clerk with whom our colleagues spoke about getting an expedited transcript. Her name is Lily Iva Reznik, and her number is (512)916-5564.

Fourth, Judy and I raised the need for both parties to come up with a date and a scheduling order for expedited discovery and trial. We stated that it would probably be better to settle on a trial date and then to work on a scheduling order for discovery. When Judy raised the possibility of trial in

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NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

May, you stated that you did not think that would be possible and that it was not your impression that the Judge could hear the case so soon because of his booked trial schedule. You stated that you would need to confer with your client before you could speak about this. Both parties decided that we will speak about this scheduling matter on Tuesday, March 27, 2007 at 10am EST.

Fifth, pursuant to the Judge's statements about the need to confer and cooperate with opposing counsel, particularly as regards discovery matters, Judy and I requested several initial sets of documents in preparation for trial. While these requests are certainly not an exhaustive list of what we will be requesting through expedited discovery, they identify documents that we definitely need at this juncture and that are clearly relevant to the issues to be tried. Specifically, we requested the following:

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

1. All correspondence, emails, memoranda and documents related to licensing of the Hutto facility by appropriate state agencies, including but not limited to the Texas Department of Family and Protective Services.

2. The A-files, medical records and educational records for all our clients and parents who are detained at Hutto

3. All correspondence, emails, memoranda and documents related to the applicability of the *Flores* Settlement to family detention and efforts to bring the Hutto facility into compliance with *Flores*.

4. All correspondence, emails, memoranda and documents related to preparation for media and NGO tours of the Hutto facility, and attorney efforts to visit clients at Hutto.

5. All policy materials related to medical, dental and mental health care, including documents reflecting current health care staffing.

6. All correspondence, emails, memoranda and documents about the Hutto facility and family detention policies in general prepared by or sent to defendants Chertoff, Myers and Torres.

You stated that you would speak with your client and get back to us on these requests and asked us to memorialize the request in writing, which we have done here. You also stated that some of these documents are protected by attorney-client confidentiality. We are requesting those documents which are not. However, we are now also requesting a privilege log for those documents as to which you are asserting privilege.

Lastly, again pursuant to the Judge's statements encouraging both parties to work things out as much as possible, Judy and I stated our interest

in trying to work things out as regards our clients. Judy stated that at least one of the mothers of our clients will likely file a habeas action seeking release, and that others may follow suit. She asked whether you could speak to your client about releasing our clients on parole as they are clearly eligible. You asked for the name of the mother of our clients who plans to file the habeas action, which we gave to you. Judy then explained that all of our clients and their mothers have close family members with legal status with whom they can live during the pendency of their immigration proceedings, whom have agreed to support them and to ensure their timely appearance in court. She further noted that they are prepared to agree to electronic monitoring as well if that is deemed necessary. You indicated that you would speak with your client about this and get back to us.

In the course of this conversation, you also inquired as to what the impact would be on the litigation if ICE were to release the clients. We stated that our concerns about the Hutto facility would not disappear given that there are other detained children at Hutto whose confinement also violates the *Flores* settlement, but that our immediate goal is to work out a remedy that ends the irreparable harm our clients are suffering. We indicated that we would be open to discussing the larger issue of ongoing non-compliance with *Flores* at the Hutto facility, but that our concern at this point is obtaining relief for these plaintiffs. You also added that your client believes that ICE is complying with *Flores* on all of the important provisions. Obviously, this is a matter of dispute. However, as we stated yesterday, part of the reason for our call was to make clear that we are willing to discuss working things out, both in terms of the relief for our clients as well as long-term remedies for family detention in general and the Hutto facility.

We look forward to speaking with you on Tuesday, March 27, 2007 at 10am EST.

Sincerely,

Vanita Gupta, Esq.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Exhibit FF

PLAINTIFFS' PROPOSED SCHEDULING ORDER FOR EXPEDITED DISCOVERY AND TRIAL

Pursuant to Local Court Rule 16(c) of the Western District of Texas, Plaintiffs hereby submit their Proposed Scheduling Order For Expedited Discovery And Trial. Despite conferring with counsel for Defendants on both March 23, 27, and 28, 2007, the parties were unable to reach an agreement with regard to scheduling. Therefore, Plaintiffs hereby request a July 16, 2007 trial date and submit the following proposed scheduling order for the related cases filed March 6, 2007:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by April 20, 2007.

2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by May 1, 2007, and each opposing party shall respond, in writing, by May 10, 2007.

3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by May 15, 2007.

4. All parties asserting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Fed.R.Civ.P. 26(a)(2)(B) by May 15, 2007. Parties resisting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Fed.R.Civ.P. 26(a)(2)(B) by May 31, 2007. All designations of rebuttal experts shall be filed within 15 days of receipt of the report of the opposing expert

5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within 15 days of receipt of the written report of the expert's proposed testimony, or within 15 days of the expert's deposition, if a deposition is taken, whichever is later.

6. The parties shall complete all discovery on or before June 15, 2007. Counsel may by agreement continue discovery beyond the deadline. In light of the compressed trial schedule, the parties shall cooperate whenever possible in responding to written discovery in the shortest practicable time frame and shall not insist on the maximum response period designated in the Federal Rules of Civil Procedure.

7. This case is set for trial [docket call, or jury selection] on July 16, 2007 at 9:00 a.m. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of trial.

SIGNED AND ENTERED this _____ day of _____, 2007.

_____
SAM SPARKS
UNITED STATES DISTRICT JUDGE