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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

12 CROSBY WILFREDO ORANTES-
13 HERNANDEZ, et al.

14 Plaintiff,

15 v.

16 DEPARTMENT OF HOMELAND
17 SECURITY,

18 Defendant.

) Case No.: CV 82-01107 MMM (VBKx)

) **DECLARATION OF WOODY A. LEE**
) **IN SUPPORT OF DEFENDANT’S**
) **REPLY IN OPPOSITION TO**
) **PLAINTIFF’S MOTION FOR A**
) **TEMPORARY RESTRAINING**
) **ORDER**

DECLARATION OF WOODY A. LEE

1
2 1) I am the Deputy Chief, Operations Division for U.S. Customs and Border Protection,
3 Office of Border Patrol. I have been the Deputy Chief, Operations Division since October 2013.
4 In this capacity, I am the official responsible for overseeing all U.S. Border Patrol law enforcement
5 operations throughout the United States. I have been employed by the U.S. Border Patrol since
6 September 1988.

7 2) I make this declaration on the basis of personal knowledge and knowledge acquired by me
8 in the course of my official duties.

9 3) In my capacity as the Deputy Chief, Operations Division, I am familiar with the
10 requirements of the William Wilberforce Trafficking Victims Protection Reauthorization Act
11 (TVPRA) (codified at 8 U.S.C. 1232).

12 4) I am also familiar with the Orantes injunction.

13 5) On or about May 12, 2014, the Secretary of Homeland Security determined that what is
14 known as a Level IV condition of readiness was appropriate to address the current influx of
15 families and unaccompanied alien children being apprehended on the southern border of the United
16 States. Based on the internal processes and procedures of the Department, this condition of
17 readiness is the highest level of readiness.

18 6) I understand that on June 2, 2014, President Obama directed the Secretary of Homeland
19 Security to establish a Unified Coordination Group to bring to bear the assets of the entire Federal
20 Government on the situation. A copy of the President's order is attached at Exhibit A.

21 7) On May 12, 2014, I assumed the role of the Deputy Federal Coordinator for DHS. In this
22 role I am responsible for coordinating interagency efforts with the Department of Homeland
23 Security. I oversee and ensure the Department is using all available resources to ensure
24 requirements are being met and the children are being cared for. Under the Presidents direction for
25 the establishment of a Government wide Unified Command Group, I continue to serve as the
26 Deputy Federal Coordinator for the Department of Homeland Security and coordinated inter-
27 department efforts in conjunction with supporting the Federal Coordinating Officer and Unified
28 Command Group.

- 1 8) On May 31, 2014, the Border Patrol brought back into service a facility that is known as
2 the Nogales Processing Center (NPC).
- 3 9) The purpose of the NPC is to provide a short term staging facility for those UACs who will
4 be transitioned to a facility operated by the Department of Health and Human Services (HHS),
5 Office of Refugee Resettlement. UACs from non-contiguous countries are being transferred to the
6 custody of HHS.
- 7 10) The NPC is intended to house UAC for the shortest period of time possible prior to being
8 placed at an HHS facility. Currently, on average, a UAC spends about 9 days at the NPC prior to
9 being transferred to HHS custody.
- 10 11) Border Patrol policy requires its agents to screen any child who is a UAC to determine
11 whether or not they have been a victim of a severe form of trafficking in persons or if there is
12 credible evidence that the UAC is at risk of being trafficked upon return to his or her country of
13 nationality or last habitual residence.
- 14 12) Moreover, consistent with 8 C.F.R. § 236.3, Border Patrol requires that every minor must
15 be provided a Form I-770, a Notice of Rights and Request for Disposition. A true and accurate
16 copy of this form is attached as Exhibit B. Where a minor is under the age of 14 or unable to
17 understand the Form I-770, the Border Patrol Agent is required to read and explain the documents
18 in a language that the child can understand.
- 19 13) Border Patrol policy also requires that each Salvadoran, including all UAC Salvadorans,
20 be provided with their rights under the Orantes injunction on a form known as a I-848.
- 21 14) A list of free legal services must also be provided to each UAC under Border Patrol policy.
- 22 15) It is Border Patrol's goal to transfer any UAC out of its custody as soon as space is
23 available for placement within HHS facilities.
- 24 16) Border Patrol facilities were designed to optimize law enforcement operations and are not
25 equipped with secure rooms for privileged discussions between attorneys and clients. As such,
26 border patrol stations do not normally provide for access to counsel. Moreover, in order to
27 maintain a safe and secure environment for CBP employees and those in CBP custody, access to
28 detainees by the general public is prohibited.

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17) While Border Patrol refers claims of fear to USCIS for interview by an asylum officer, Border Patrol does not have a role in determining whether or not a child will be deemed to have a credible fear of return or otherwise be eligible for asylum.

Signed this 14th day of July 2014.

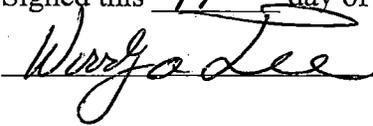


EXHIBIT A

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 2, 2014

June 2, 2014

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Response to the Influx of Unaccompanied Alien
Children Across the Southwest Border

The influx of unaccompanied alien children (UAC) across the southwest border of the United States has resulted in an urgent humanitarian situation requiring a unified and coordinated Federal response. Accordingly, I have directed the Secretary of Homeland Security (Secretary) to establish an interagency Unified Coordination Group to ensure unity of effort across the executive branch in responding to the humanitarian aspects of this situation, consistent with the Homeland Security Act of 2002 and Homeland Security Presidential Directive-5 (Management of Domestic Incidents) (HSPD-5), including coordination with State, local, and other nonfederal entities. The Secretary shall establish and manage this Unified Coordination Group consistent with the authorities in 6 U.S.C. 111(b)(1)(D), 112(a)(3), 112(b)(1), 112(c), and HSPD-5. The Secretary has advised me that he will direct the Administrator of the Federal Emergency Management Agency (Administrator), subject to the oversight, direction, and guidance of the Secretary, to serve as the Federal Coordinating Official who shall lead and coordinate the Unified Coordination Group consistent with the functions of the Administrator pursuant to 6 U.S.C. 313, 314(a)(1) and (10). As the Federal Coordinating Official, the Administrator (or his designee) shall lead and coordinate Federal response efforts to ensure that Federal agency authorities and the resources granted to the departments and agencies under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) are unified in providing humanitarian relief to the affected children, including housing, care, medical treatment, and transportation. The Administrator shall execute these responsibilities consistent with all applicable laws and regulations, including legal requirements governing the appropriate care and custody of UAC.

Nothing in this memorandum alters, or impedes the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under law. All Federal departments and agencies are directed to provide their full and prompt cooperation, resources, and support, as appropriate and consistent with their own responsibilities for addressing this situation, and shall cooperate with the Secretary and the Federal Coordinating Official to ensure a unified Federal response. The Secretary shall lead the coordination of the

Federal response to this urgent humanitarian situation and other departments and agencies supporting this effort shall provide support to address this situation as appropriate and to the extent permitted by law.

This memorandum does not obligate any agency to reimburse another agency for the resources used to address the UAC humanitarian situation nor does it limit the use of the Economy Act (31 U.S.C. 1535), as appropriate.

BARACK OBAMA

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EXHIBIT B

Alien's Name:

A Number (if any)

A

Your Rights.

You have been arrested because Immigration Agents believe that you are illegally in the United States. When you are arrested in the United States you have certain rights. No one can take these rights away from you. This paper explains your rights.

You have the right to use a telephone.

You may call your mother or father or any other adult relative. You may call your adult friend. If you do not know how to use a telephone, the immigration agent will help you.

You have the right to be represented by a lawyer.

Attached to this paper is a list of lawyers who can talk to you, and help you, for free. A lawyer can fully explain all of your rights to you, and can represent you at a hearing.

You have the right to a hearing before a judge.

The judge will decide whether you must leave or whether you may stay in the United States. If for any reason you do not want to go back to your country, or if you have any fears of returning, you should ask for a hearing before a judge.

If you do not want to have a hearing before a judge, you may choose to go back to your country without a hearing.

Reading this Notice:

- I have read this notice.
- This notice has been read to me.

Right to Use Telephone:

- I have contacted my parent(s) or a legal guardian by telephone.
- I have contacted an adult friend or relative by telephone.
- I do not want to talk to anyone by telephone.

Completion of the following is optional:

The person contacted is: (Relationship)

The person contacted is: (Name)

Right to be Represented by a Lawyer:

- I have spoken with a lawyer.
- I do not want to speak with a lawyer.

Right to a Hearing:

- I understand my right to a hearing before a judge.

- I request a hearing before a judge.

Signature: _____

Date: _____

- I do not want to have a hearing before a judge.

I am in the United States illegally and ask that I be allowed to return to my country, which is named below.

Country : _____

Signature: _____

Date: _____

This advisal is required to be given to all persons who are taken into custody and who appear, are known, or claim to be under the age of eighteen and who are not accompanied by one of their natural or lawful parents. No such person can be offered or permitted to depart voluntarily from the United States except after having been given this notice.

The required procedure distinguishes between two classes of minors.

- 1) The first class are those apprehended in the immediate vicinity of the border and who permanently reside in Canada or Mexico. These persons shall be informed that they have a right to make a telephone call to any of the persons mentioned in this notice. The purpose of this call is so that they can seek advice as to whether they should voluntarily depart or whether they should request a deportation hearing. We are required to make a record of any refusal to accept our offer of a telephone call.
- 2) As to all other minors, *they must not only be given access to a telephone, they must establish communication, telephonic or otherwise, with one of the persons listed in this notice* before they can be offered voluntary departure.

The INS retains the right to decide when to allow telephone calls. The only prohibition is that the minor cannot be asked to voluntarily depart until after telephone access is provided. If the minor is not offered voluntary departure but is put into deportation proceedings by issuance of an Order to Show Cause, this procedure is not necessary. It is our duty to make reasonable efforts to contact the person of the minor's choice, but after unsuccessful efforts to reach that person, we can facilitate contact with another such person. Whenever the minor elects to pursue a process, such as a call to a foreign country, which is operationally unacceptable, we can always proceed to issue an Order to Show Cause.

The minor must tell the type of person that he/she talked to but need not give us that person's name or identifying information. If a minor, of *his/her own volition*, asks to contact a consular officer, this will satisfy the requirements of the notice.

The officer need not read the notice to the minor unless the minor is under 14 years of age, or unable to understand the notice. The officer must ask the minor whether he/she wanted to make a call, whether a communication was made and, if made, to whom. The officer must also verify whether the minor wanted voluntary departure or a hearing, and must sign and date the form to show this was done.

Officers are not to offer any advise to any minor as to what he/she should or should not do.

To be completed by the Officer:

I verify that: _____ A- _____

- 1.a. The subject named was given this notice to read.
- b. I read this notice to the named subject in the following language: _____
- 2.a. I asked this subject whether he/she wanted to make a telephone call, and offered assistance in the use of the telephone.
- 3.a. The subject told me that he/she did not want to make a telephone call, or
- b. The subject told me that he/she established communication and the form was marked to indicate it.;
- c. The subject was unable to establish telephone communication with the desired individual. The following number of attempts were made: _____
- 4.a. The subject requested a hearing.
- b. The subject admitted deportability and requested to return to his/her country voluntarily, without a hearing.
- 5.a. An order to show cause was issued because, the subject was unable to establish contact with any of the individuals specified after making the number of attempts indicated above (Item 3 c), and after assistance to establish contact was given or offered.

Signature of Officer

Date