

1 BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General  
2 Civil Division

3 LEON FRESCO  
Deputy Assistant Attorney General  
4 Civil Division

5 WILLIAM C. PEACHEY  
Director, District Court Section  
6 Office of Immigration Litigation

7 WILLIAM C. SILVIS  
Assistant Director, District Court Section  
8 Office of Immigration Litigation

9 SARAH B. FABIAN  
Senior Litigation Counsel, District Court Section  
10 Office of Immigration Litigation

11 P.O. Box 868, Ben Franklin Station  
Washington, D.C. 20044  
12 Tel: (202) 532-4824  
13 Fax: (202) 305-7000  
Email: sarah.b.fabian@usdoj.gov

14 Attorneys for Defendants

15  
16 **UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 JENNY LISETTE FLORES; *et al.*, ) Case No. CV 85-4544  
18 )  
19 Plaintiffs, ) **DEFENDANTS' RESPONSE IN**  
20 v. ) **OPPOSITION TO PLAINTIFFS'**  
21 ) **MOTION TO ENFORCE SETTLEMENT**  
22 ) **AND APPOINT A SPECIAL MONITOR**  
LORETTA E. LYNCH, Attorney )  
23 General of the United States; *et al.*, ) Hearing Date: June 24, 2016  
24 Defendants. ) Time: 11:00am  
) Dept: Courtroom 7, Los Angeles - Spring  
) Street Courthouse  
)

25

26

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

I. INTRODUCTION ..... 1

II. BACKGROUND..... 3

    A. CBP Has Implemented Standards and Procedures That Ensure Compliance With The Agreement, Complies With Those Standards and Procedures, And Adequately Monitors Compliance With Those Standards And Procedures ..... 3

        1. CBP Has Standards And Procedures In Place That Ensure Compliance With The Agreement ..... 6

        2. CBP Monitors Compliance With The Agreement At Its Facilities ..... 8

        3. CBP Facilities Comply With The Agreement And With Applicable Standards And Policies ..... 11

            a. CBP Provides Minors In Its Facilities With Appropriate And Adequate Access To Food..... 11

            b. Minors in CBP Facilities Have Access To Potable Water At All Times..... 13

            c. CBP Facilities Are Kept In A Safe And Sanitary Condition And Detainees Have Access To Hygiene Products ..... 14

            d. The Temperature At CBP Facilities Is Carefully Regulated And Monitored To Ensure That It Is Kept At Safe And Comfortable Level..... 18

            e. While CBP Facilities Are Designed For Short-Term Custody, And Are Not Designed For Sleeping, Juveniles Generally Are Provided With Some Form Of Bedding And Are Processed As Quickly As Possible ..... 20

            f. All Minors In CBP Custody Are Given An I-770 Notice Of Rights ..... 23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

B. ICE Family Residential Centers Are Operating In A Manner That Is Fully Consistent With The Agreement And With This Court’s July And August Orders.....23

III. ARGUMENT.....28

A. The Court Should Not Allow Plaintiffs To Re-Litigate The Issue of CBP’s Compliance With The Agreement, And If It Does, Should Do So Only After Discovery And An Evidentiary Hearing.....28

B. Defendants Advise Juveniles Of Their Rights.....32

C. Defendants Make And Record Ongoing Efforts To Release All Family Units Eligible For Release, And The Agreement Permits The Continued Detention Of Family Units Who Are Detained Pending Removal, Subject To Mandatory Detention, Or Where The Parent Has Been Determined To Be A Flight Risk.....33

D. Defendants Make And Record Ongoing Efforts To Release All Family Units Eligible For Release, And The Agreement Permits The Continued Detention Of Family Units Who Are Detained Pending Removal, Subject To Mandatory Detention, Or Where The Parent Has Been Determined To Be A Flight Risk .....36

E. Accompanied Minors Are Detained With Their Parents At ICE Family Residential Centers .....37

F. Defendants Do Not Interfere With Any Minor’s Right To Counsel .....39

IV. CONCLUSION.....40

**TABLE OF AUTHORITIES**

**CASES**

1

2

3 *Avendano–Ramirez v. Ashcroft,*

4 365 F.3d 813 (9th Cir. 2004) ..... 27

5 *Callie v. Near,*

6 829 F.2d 888 (9th Cir. 1987) ..... 30

7 *Diaz–Rodriguez v. Holder,*

8 No. 14-31103, 2014 WL 10965184 (5th Cir. 2014)..... 27

9 *In re City Equities Anaheim, Ltd.,*

10 22 F.3d 954 (9th Cir. 1994) ..... 30

11 *Li v. Eddy,*

12 259 F.3d 1132 (9th Cir. 2001) ..... 27

13 *Meng LI v. Robert C. Eddy,*

14 324 F.3d 1109 (9th Cir. 2003) ..... 27

15 *Nken v. Holder,*

16 556 U.S. 418 (2009) ..... 27

17 *Castro v. DHS, Case No. 15-6153,*

18 2016 WL 614862 (E.D. Pa. 2016)..... 27

19 *Pena v. Lynch,*

20 815 F.3d 452 (9th Cir. 2015) ..... 27

21 *Reno v. American-Arab Anti-Discrimination Committee,*

22 525 U.S. 471 (1999) ..... 37

23

24

25

26

**STATUTES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

8 U.S.C. § 1221-1231 ..... 37  
8 U.S.C. § 1225 ..... 38  
8 U.S.C. § 1225(b)..... 37  
8 U.S.C. § 1225(b)(1) ..... 27  
8 U.S.C. § 1231 ..... 35, 37  
8 U.S.C. § 1252 ..... 38  
8 U.S.C. § 1252(f)(1)..... 36, 37

1           **I. INTRODUCTION**

2           The Court’s August 21, 2015 Order Re Response to Order to Show Cause (ECF  
3 No. 189) (“August Order”), required the Government to implement six remedies prior to  
4 October 23, 2015. Although the Government appealed this Order, it did not seek to stay  
5 these remedies. On the contrary, the Government deployed significant personnel,  
6 funding, and infrastructure to quickly ensure its compliance with the Court’s directives.  
7

8           Simply put, not only has the Government complied with this Court’s August Order  
9 since October 2015, it has carefully monitored and documented its compliance. The  
10 Government can conclusively dispute a number of the allegations made by the Plaintiffs  
11 in their May 19, 2016, Motion to Enforce Settlement and Appoint a Special Monitor  
12 (ECF No. 201) (“Motion”). Indeed, further litigation could have been avoided had  
13 Plaintiffs discussed their factual allegations with the Government prior to filing as  
14 required by the Local Rules and the *Flores* Settlement Agreement (“Agreement”) so that  
15 their mistaken impressions could be clarified, or if there were any legitimate concerns,  
16 those could be addressed. But Plaintiffs chose not to do that here.  
17

18           In fact, when looked at more closely, Plaintiffs’ Motion appears to take issue not  
19 with the Government’s conduct, but with the Court’s August Order. But a motion to  
20 enforce is not a tool to lodge a an untimely motion for reconsideration. Each of Plaintiffs’  
21 claims seeks an end-run around the Court’s August Order, and should be denied.  
22

23           For instance, Plaintiffs cannot use this motion as a means to re-litigate the issue of  
24 whether a special monitor should be appointed to oversee the conditions at U.S. Customs  
25 and Border Protection (“CBP”) facilities. The Court already considered this issue in  
26

1 Plaintiffs’ last enforcement action, and concluded that even to the extent that CBP  
2 facilities were in breach of the Agreement, the appropriate remedy was to require CBP to  
3 “monitor compliance with their acknowledged standards and procedures” for complying  
4 with the Agreement (or to use a special monitor for those purposes, but only if both  
5 parties agreed to that appointment). August Order at 14-15. As shown below, CBP has  
6 taken extensive steps to monitor its compliance with the Agreement.  
7

8 Plaintiffs have filed a number of unreliable hearsay (and hearsay within hearsay)  
9 declarations in support of their contention that CBP still is not in compliance with the  
10 Agreement such that oversight by a special monitor is required. But as CBP demonstrates  
11 below, CBP complies with the Agreement and monitors that compliance as ordered by  
12 the Court. Based on CBP’s evidence, the Court should conclude that Plaintiffs have  
13 provided no basis for the Court to reconsider the August Order, and should deny  
14 Plaintiffs’ Motion with regard to CBP. In any event, the Court should not reconsider its  
15 August Order and order the supplemental relief that Plaintiffs are seeking unless and until  
16 the clearly disputed factual issue of CBP’s compliance with the Agreement is fully and  
17 fairly explored and resolved at an evidentiary hearing.  
18

19 Additionally, Plaintiffs’ claims regarding U.S. Immigration and Customs  
20 Enforcement (“ICE”) family residential centers are an attempt to re-litigate issues already  
21 resolved by the Court’s August Order, and appear to take issue with the fact that the  
22 August Order allowed those facilities to continue to operate at all.  
23

24 Plaintiffs’ claims challenge the system of expeditious processing and release for  
25 the vast majority of family units that the Court found entirely permissible in its August  
26

1 Order. Their claims further challenge the continued detention of a small number of family  
2 units who are being detained in order to remove them from the United States, including  
3 families subject to expedited removal orders who have failed to establish eligibility for  
4 the relief or protection sought and are subject to mandatory detention, and families  
5 subject to final orders of removal whose head of household has been determined to be a  
6 flight risk. Plaintiffs' challenges ignore the fact that the Court's July and August Orders  
7 specifically found that in such instances it is permissible to continue to detain these  
8 family units, and that keeping the child with the parent is both permissible and preferable.  
9  
10

11 Further, Plaintiffs make claims that are inaccurate, misleading, or an attempt to  
12 improperly substitute their judgment regarding the operations of ICE family residential  
13 centers in place of the judgment of those authorized by Congress to administer these  
14 facilities. Plaintiffs have provided no basis to find that ICE family residential centers are  
15 operated in a manner that is inconsistent with the Court's August Order and the  
16 Agreement as it has been interpreted by the Court. Therefore, Plaintiffs' Motion with  
17 regard to ICE family residential centers also should be denied.  
18

19 **II. BACKGROUND**

20 **A. CBP Has Implemented Standards And Procedures That Ensure**  
21 **Compliance With The Agreement, Complies With Those Standards**  
22 **And Procedures, And Adequately Monitors Compliance With**  
23 **Those Standards And Procedures.**

24 CBP's hundreds of short-term detention and processing facilities are located  
25 throughout the United States, both at and between U.S. ports of entry. *See* Declaration of  
26 Ronald D. Vitiello ("Vitiello Decl."), ¶ 1, attached hereto as Exh. 1; Declaration of Todd  
C. Owen ("Owen Decl."), ¶ 2, attached hereto as Exh. 2 These facilities are operated by



1 Border Patrol (between ports of entry), and the Office of Field Operations (“OFO”) (at  
2 ports of entry throughout the United States). *See* Vitiello Decl. ¶ 1; Owen Decl. ¶ 2.  
3 Juveniles in CBP custody following apprehension or encounter may be held at any of  
4 these facilities depending on the manner and location of their apprehension. Because  
5 these facilities operate throughout the United States in areas with different visitor and  
6 immigrant flows and populations, and different security and operational concerns, there  
7 can be no one-size-fits-all manner in which the Agreement is applied at CBP facilities.  
8

9  
10 The Agreement requires that “[f]ollowing arrest, the INS shall hold minors in  
11 facilities that are safe and sanitary and that are consistent with the INS’s concern for the  
12 particular vulnerability of minors.” Agreement ¶ 12.A. More specifically, the  
13 Agreement requires CBP to “provide access to toilets and sinks, drinking water and food  
14 as appropriate, medical assistance if the minor is in need of emergency services, adequate  
15 temperature control and ventilation, adequate supervision to protect minors from others,  
16 and contact with family members who were arrested with the minor.” *Id.*  
17

18 In its July 24, 2015 Order (“July Order”) in this case, this Court reviewed  
19 documentary evidence presented by Plaintiffs regarding conditions allegedly experienced  
20 by a juveniles at CBP facilities in the Rio Grande Valley area of Texas over a very short  
21 period of time during or immediately following the 2014 immigration surge. Based only  
22 on this limited evidence, the Court concluded that “Defendants have wholly failed to  
23 meet even [the] minimal standard [set forth in the Agreement].” July Order at 18. In its  
24 August Order, the Court then clarified that it was not finding that all CBP facilities were  
25 in breach of the Agreement, but was holding that “to the extent any Border Patrol station  
26

1 is out of compliance with the Agreement, those stations must comply with the Agreement  
2 and Defendants' own acknowledged standards and procedures." August Order at 13. The  
3 Court further ordered that CBP should "monitor compliance with their acknowledged  
4 standards and procedures" for complying with the Agreement, or in the alternative should  
5 agree to the appointment of a special monitor for that purpose. *Id.* at 14-15.  
6

7 As discussed more fully below, CBP complies with the Agreement, and complies  
8 with the Court's order to monitor that compliance. Following the Court's August Order,  
9 CBP took nationwide action to ensure that it had implemented systems that could  
10 effectively monitor compliance with the requirements of the Agreement at all Border  
11 Patrol and OFO facilities. *See generally* Declaration of Justin Bristow ("Bristow Decl."),  
12 attached hereto as Exh. 3; Declaration of Todd Hoffman ("Hoffman Decl."), attached  
13 hereto as Exh. 4. CBP headquarters also communicated with leadership at all Border  
14 Patrol and OFO facilities regarding the importance of monitoring, and ensured that all  
15 agents were trained with regard to any new monitoring requirements. *See* Vitiello Decl.  
16 ¶¶ 29-31; Owen Decl. ¶¶ 18-35. In October 2015, CBP put into place new nationwide  
17 standards that comprehensively govern detention at all CBP facilities, including those  
18 aspects of detention covered by the Agreement. *See* U.S. Customs and Border Protection,  
19 National Standards on Transport, Escort, Detention, and Search ("TEDS"), October 2015,  
20 available at: [https://www.cbp.gov/sites/default/files/documents/cbp-teds-policy-](https://www.cbp.gov/sites/default/files/documents/cbp-teds-policy-20151005_1.pdf)  
21 [20151005\\_1.pdf](https://www.cbp.gov/sites/default/files/documents/cbp-teds-policy-20151005_1.pdf). Finally, CBP put into place an additional, comprehensive system of  
22 inspection that will review the conditions at Border Patrol and OFO facilities nationwide.  
23 *See generally* Declaration of Sean Mildrew ("Mildrew Decl."), attached hereto as Exh. 5.  
24  
25  
26

1           These changes, combined with the already existing processes and procedures used  
2 by CBP to ensure compliance with the Agreement, ensure that CBP is at all times  
3 “hold[ing] minors in facilities that are safe and sanitary and that are consistent with the  
4 INS’s concern for the particular vulnerability of minors.” Agreement ¶ 12.A.

5  
6                     1. CBP Has Standards and Procedures In Place That Ensure  
7                     Compliance With The Agreement.

8           In the August Order, the Court found that CBP had put forth evidence of  
9 “Defendants’ own acknowledged standards and procedures[,]” and therefore ordered  
10 CBP to “monitor compliance with their acknowledged standards and procedures” for  
11 complying with the Agreement. August Order at 13, 14-15; *see also* Defendants’  
12 Response in Opposition to Plaintiffs’ Motion to Enforce Settlement of Class Action, Feb.  
13 27, 2015, ECF No. 121, at 20-25, and supporting exhibits. Plaintiffs do not contend  
14 anywhere in their motion that CBP does not have such standards in place. Therefore,  
15 there is no dispute that CBP has standards and procedures in place that require  
16 compliance with the Agreement. Border Patrol and OFO policies have long emphasized  
17 the importance of treating juveniles in accordance with the terms of the Agreement. *See*  
18 Owen Decl. ¶¶ 13-15; Vitiello Decl. ¶¶ 8-10.

19  
20           Moreover, in October 2015, TEDS was put into place. TEDS provides  
21 comprehensive nationwide standards that govern all aspects of detention at CBP  
22 facilities, including those standards required by the Agreement. Specifically, TEDS  
23 requires that at-risk populations, including juveniles, should be treated “with dignity,  
24 respect and special concern for their particular vulnerability.” TEDS § 5.1. Juveniles  
25 should be placed in the “least restrictive setting appropriate to their age and special needs,  
26

1 provided that such setting is consistent with the need to ensure the safety and security of  
2 the detainee and that of others[,]” and efforts should be made to minimize time in custody  
3 by expediting processing time. TEDS § 5.6.  
4

5 Where possible, family units should not be separated, or when they must be  
6 separated, the reasons for that separation should be documented in the applicable system  
7 of record. *Id.* Unaccompanied Alien Children (“UACs”) must be held separately from  
8 unrelated adult detainees. *Id.* Every effort should be made to transfer those UACs not  
9 permitted to withdraw their application for admission to the custody of the U.S.

10 Department of Health and Human Services as quickly as possible, and any delay in  
11 transfer over 72 hours must be logged and a reason provided in the appropriate system of  
12 record. *Id.*  
13

14 Juveniles are provided access to basic hygiene items, clean bedding, and clean  
15 clothes where available. *Id.* Juveniles are offered a snack upon arrival, and a meal at least  
16 every six hours thereafter, at regularly scheduled meal times, with at least two of those  
17 meals being hot meals. *Id.* Juveniles also must have regular access to snacks, milk, and  
18 juice. *Id.* Age appropriate food such as formula or baby food also must be made  
19 available. *Id.* Reasonable efforts should be made to provide juveniles with a shower if  
20 they approach 48 hours in CBP custody. *Id.*  
21

22 TEDS specifically provides that hold rooms for juveniles must provide: toilets and  
23 sinks; professional cleaning and sanitizing at least once per day; drinking fountains or  
24 clean drinking water along with clean drinking cups; adequate temperature control and  
25 ventilation; and clean bedding. *Id.* Hold rooms where juveniles are held should be  
26

1 regularly checked, and those checks should be recorded in the applicable system of  
2 record. TEDS § 5.1. If any injury or illness is observed by a CBP agent or officer, it  
3 should be reported to a supervisor, and appropriate medical care should be provided or  
4 sought. TEDS § 5.6. Emergency services also are called immediately in the event of a  
5 medical emergency. *Id.*

7 TEDS further restricts the number of individuals who may be held in a CBP hold  
8 room to less than the capacity of that room, and requires regular hold room checks to be  
9 conducted and recorded “to ensure proper occupancy levels, safety, hygiene, and the  
10 availability of drinking water.” TEDS § 4.7. “All facilities or hold rooms used to hold  
11 detainees must be regularly and professionally cleaned and sanitized.” *Id.* Finally, TEDS  
12 requires that the temperature at CBP facilities should be maintained “within a reasonable  
13 and comfortable range for both detainees and officers/agents[,]” and that “[u]nder no  
14 circumstances will officers/agents use temperature controls in a punitive manner.” *Id.*

17 2. *CBP Monitors Compliance With The Agreement At Its Facilities.*

18 Border Patrol records its custodial actions using a system called e3DM. *See*  
19 Bristow Decl. ¶¶ 2, 5-12. OFO tracks custodial actions for individuals in custody at ports-  
20 of-entry using a system called SIGMA. Hoffman Decl. ¶¶ 3-11.<sup>1</sup> To ensure and monitor  
21 compliance with the Court’s August Order, Border Patrol and OFO instituted system-  
22 wide changes to both e3DM and SIGMA to provide even more comprehensive tracking  
23 related to juveniles, so that CBP could more effectively monitor compliance with all  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Border Patrol and OFO also maintain paper forms that can be used to record the  
necessary information in the event that e3DM or SIGMA become inoperable; that  
information is entered into the applicable system once it returns to operation. Bristow  
Decl. ¶ 14; Hoffman Decl. ¶ 13.

1 aspects the Agreement. Bristow Decl. ¶¶ 13, 15; Hoffman Decl. ¶¶ 12, 14; Vitiello Decl.  
2 ¶¶ 28-31; Owen Decl. ¶¶ 20-35.

3 CBP systems are used to monitor compliance with the Agreement as follows:

- 4
- 5 • Documenting family units: These systems are used to track whether a juvenile is  
6 accompanied by a claimed family member or legal guardian, or is unaccompanied.
- 7 • Separation of juveniles from family members: If a juvenile is separated from a  
8 family member the reason (for example: it was operationally infeasible to keep  
9 them together, there was a security or medical concern, or the family relationship  
10 was in question), must be noted. If separation occurs, the system also provides for  
11 documenting whether contact is allowed. If contact is not allowed, the reason will  
12 be noted.
- 13 • Conditions: Both e3DM and SIGMA track the following conditions in all cells in  
14 which juveniles are placed: whether water is available; whether the fixtures (such  
15 as toilets and sinks) are functioning; whether the cell is clean and sanitary; and  
16 whether the temperature of the cell is between 66 and 80 degrees. If the conditions  
17 of a cell are not compliant, the officer or agent must note the reasons for the  
18 anomaly and any steps being taken to fix the problem.
- 19 • Food: Every time food is offered to a juvenile, it must be documented. If the food  
20 is refused, that must be documented as well.
- 21 • Medical assistance: All medical care provided to each juvenile must be recorded,  
22 including whether that medical care was provided by CBP employees or by third  
23 party medical providers.
- 24 • Welfare checks: Welfare checks are regular checks of hold rooms to ensure the  
25 safety and well-being of those in the room. Welfare checks include a visual check  
26 of the area to ensure that the hold room continues to be safe and sanitary, that the  
juvenile has access to drinking water and a functional toilet, and that the  
ventilation system for the area is operational. Every time a welfare check is  
conducted it is noted in the applicable systems.

24 Bristow Decl. ¶¶ 13, 15-16; Hoffman Decl. ¶¶ 12, 14-16. Agents and officers at CBP  
25 facilities nationwide are aware of the requirement that they document these actions, have  
26 been instructed by their leadership on the importance of this requirement, and regularly  
do so. Declaration of Paul A. Beeson (“Beeson Decl.”), ¶¶ 63-76, attached hereto as Exh.

1 6; Declaration of Mario Martinez (“Martinez Decl.”), ¶¶ 56-67, attached hereto as Exh. 7;  
2 Declaration of Brian S. Hastings (“Hastings Decl.”), ¶¶ 59-75, attached hereto as Exh. 8;  
3 Declaration of Rodney S. Scott (“Scott Decl.”), ¶¶ 53-68, attached hereto as Exh. 9;  
4 Declaration of Manuel Padilla, Jr. (“Padilla Decl.”), ¶¶ 24-39, attached hereto as Exh. 10;  
5 Declaration of Pete Flores Romero (“Romero Decl.”), ¶¶ 48-50, attached hereto as Exh.  
6 11; Declaration of Robert E. Perez (“Perez Decl.”), ¶¶ 42-47, attached hereto as Exh. 12;  
7 Declaration of William Brooks (“Brooks Decl.”), ¶¶ 58-69, attached hereto as Exh. 13;  
8 Declaration of Michele M. James (“James Decl.”), ¶¶ 49-61, attached hereto as Exh. 14.  
9  
10

11 In addition to systems monitoring, following the Court’s August Order CBP’s  
12 Management and Inspection Division (“MID”), a separate component of CBP that is not  
13 a part of either Border Patrol or OFO, was charged with implementing an inspection  
14 program to monitor CBP’s overall compliance with the Agreement. *See* Mildrew Decl. ¶  
15 8. This inspection process includes the physical inspection of CBP facilities as well as  
16 review of the compliance information that is being electronically recorded. *Id.* ¶¶ 9-13.  
17 The overall inspection process consists of three phases, and is intended to be ongoing  
18 through at least 2018. *Id.* ¶¶ 14-24.<sup>2</sup> These MID inspections already have had a positive  
19 effect in ensuring that CBP facilities are complying with the requirements of the  
20 Agreement and the Court’s August Order. *See* Martinez Decl. ¶¶ 39, 69; Beeson Decl. ¶  
21 84.  
22  
23

24 \_\_\_\_\_  
25 <sup>2</sup> Oversight is further provided by the Office of Professional Responsibility (“OPR”)  
26 within CBP. *See* Declaration of Carla Provost (“Provost Decl.”), ¶¶ 1, 4, attached hereto  
as Exh. 15. OPR is responsible for investigating any allegations of misconduct by CBP  
personnel, including allegations by detainees relating to abuse or excessive uses of force.  
*Id.* ¶¶ 4, 5, 16. Signs posted at CBP facilities advise detainees that they may report any  
such incidents, and provides information on how they may do so. *Id.* ¶ 17.

1 Detainees also are regularly provided the opportunity to meet with their consular  
2 representatives. This provides a system through which detainees may register questions,  
3 complaints and concerns, and the consular staff will frequently share those with CBP  
4 employees who then may provide answers to detainees' questions or solutions to any  
5 complaints or concerns. *See* Brooks Decl. ¶ 53; Hastings Decl. ¶ 51; Romero Decl. ¶ 44;  
6 James Decl. ¶ 9; Perez Decl. ¶ 10; Beeson Decl. ¶ 19; Scott Decl. ¶ 52; Martinez Decl. ¶¶  
7 11, 23-24; Padilla Decl. ¶ 93; Provost Decl. ¶ 21.  
8

9  
10 3. *CBP Facilities Comply With The Agreement And With Applicable*  
11 *Standards And Policies.*<sup>3</sup>

12 a. *CBP Provides Minors In Its Facilities With Appropriate and*  
13 *Adequate Access To Food.*

14 Plaintiffs allege that the food provided in CBP facilities is “inadequate” for *Flores*  
15 class members. Their assertion relies on the declarations of multiple individuals who  
16 recall receiving limited meals while in custody at a small number of CBP facilities within  
17 the Rio Grande Valley area of operation. Motion at 5-6.

18 Available records show that many of these statements are inaccurate or  
19 misleading. *See* Plaintiffs' Exh. 45 and Declaration of David W. Strange (“Strange  
20 Decl.”), Exh. A, attached hereto as Exh. 16 (individual claims that he was provided only  
21 2 cookies and 1 ham sandwich during his first day in CBP custody, but Border Patrol  
22 records indicate that he was provided ten meals in the just over 48 hours he was in  
23

24 <sup>3</sup> Given the two week response time for Defendants' opposition brief, Defendants are not  
25 providing declaratory evidence regarding every CBP facility throughout the United  
26 States. However, the declarations provided reflect a nationwide sample including  
declarations from CBP headquarters (Hoffman, Bristow, Vitiello, Owen, Provost,  
Mildrew), Border Patrol facilities (Padilla, Beeson, Scott, Hastings, Martinez), and OFO  
facilities including both land ports of entry and airports (James, Perez, Romero, Brooks).



1 custody); Plaintiffs’ Exh. 23 and Strange Decl. Exh. K (individual claims she was only  
2 given frozen ham sandwiches at Ursula, but Border Patrol records show she was served  
3 five meals at Ursula, including “hot meal” served noted four times); Plaintiffs’ Exh. 19,  
4 Dec. M and Strange Decl. Exh. F (individual states that she and her three children were  
5 provided cold sandwiches and juice three times a day; Border Patrol records show the  
6 children accepting five meals on 10/22/15); Plaintiffs’ Exh. 19, Dec. R and Strange Decl.  
7 Exh. H (individual states she and her two sons were not given a meal when they arrived  
8 at the Border Patrol station, however Border Patrol records show them being  
9 apprehended at 9:52 pm and accepting a meal at 12:20am; she also states that, for the  
10 entire day on 11/1/15, they ate only two ham sandwiches, and the children had juice,  
11 however Border Patrol records show that they accepted three meals, at 5:47 am, 12:27  
12 pm, and 6:10 pm, and two more meals at 12:52 am and 2:17 am).

13  
14  
15  
16 CBP facilities nationwide ensure that juveniles are provided meals at regularly  
17 scheduled meal times, with at least two of those meals being hot meals, along with  
18 regular access to snacks, milk, and juice. Beeson Decl. ¶¶ 27-32; Martinez Decl. ¶¶ 21,  
19 25-28; Hastings Decl. ¶¶ 21-25; Scott Decl. ¶¶ 20-24; Padilla Decl. ¶¶ 45-54; Romero  
20 Decl. ¶¶ 19-21; Perez Decl. ¶¶ 22, 30; Brooks Decl. ¶¶ 21-25; James Decl. ¶¶ 22-24;  
21 Mildrew Decl. ¶ 19 (noting that MID inspections found hot meals, snacks, milk and juice  
22 available for juveniles at all locations that were inspected). This regular provision of  
23 meals and snacks provides appropriate and adequate food to juveniles at CBP facilities.<sup>4</sup>  
24  
25

26 <sup>4</sup> Notably, in a class action currently pending in the District of Arizona concerning the conditions in Tucson Sector Border Patrol stations, *Doe, et al. v. Johnson, et al.* Case No. CV-15-0250 (D. Ariz.), experts reviewed the provision of meals to detainees at those

1 *b. Minors in CBP Facilities Have Access To Potable Water At*  
2 *All Times.*

3 In support of their allegation that CBP is failing to comply with the Agreement's  
4 requirement to provide access to drinking water, Plaintiffs submit declaratory evidence  
5 that they did not drink the water at a limited number of CBP facilities in Texas because it  
6 was "dirty" or tasted strongly of chlorine. Motion at 6-7. Some Plaintiffs also allege that  
7 they could not drink water because they did not have access to cups. *Id.* Again, available  
8 CBP records show that some of the declarations on which Plaintiffs rely are inaccurate or  
9 misleading. *See* Plaintiffs' Exh. 19, Dec. H and Strange Decl. Exh. E (individual states  
10 she and her son only had access to tap water, but Border Patrol amenity reports show that  
11 her son had access to bottled or jug water); Plaintiffs' Exh. 19, Dec. R and Strange Decl.  
12 Exh. H (individual alleges she and her two sons drank water from a sink with their hands;  
13 amenity reports from both children show that they had access to bottled or jug water).

14 CBP facilities provide all detainees with access to drinking water at all times. In  
15 Border Patrol stations in the Rio Grande Valley, access to water is provided by water  
16 fountain fixtures in the hold rooms. *See* Padilla Decl. ¶ 55; *see also* Martinez Decl. ¶ 29  
17 (same setup); Beeson Decl. ¶ 33 (same setup); Scott Decl. ¶ 25 (same setup); Romero  
18 Decl. ¶ 22 (same setup); Brooks Decl. ¶ 26 (same setup); Hastings Decl ¶ 26 (same  
19  
20  
21  
22  
23

24 stations – which is consistent with the provision of meals at other CBP facilities – and  
25 concluded that the meals provided are nutritionally safe and adequate for individuals who  
26 are held in short-term detention in Border Patrol stations, and that detainees were not  
being deprived of access to food. *See* Declaration of Diane Skipworth ("Skipworth  
Decl."), ¶¶ 122-25, attached hereto as Exh. 17; Declaration of Richard Bryce ("Bryce  
Decl."), ¶¶ 61-72, attached hereto as Exh. 18; Declaration of Philip Harber ("Harber  
Decl."), ¶ 59, attached hereto as Exh. 19.

1 setup).<sup>5</sup> Water may also be provided through the use of plastic water coolers with  
2 disposable cups, which are regularly filled and kept clean<sup>6</sup> by the cleaning staff. Padilla  
3 Decl. ¶ 55; Martinez Decl. ¶ 29; Beeson Decl. ¶ 33; Scott Decl. ¶ 25; Brooks Decl. ¶ 26.  
4  
5 The water available to detainees is local water, and is the same water available to agents  
6 at the station. *See* Padilla Decl. ¶ 55; Scott Decl. ¶ 25 (water coolers filled from city  
7 water supply); Beeson Decl. ¶ 33 (water coolers filled from tap water processed by local  
8 municipality). Some facilities may also provide bottled water or other water sources as  
9 appropriate. *See* Perez Decl. ¶ 22 (water available from sink and kept in refrigerator);  
10 Romero Decl. ¶ 22 (bottled water provided for children); Brooks Decl. ¶ 26 (bottled  
11 water available); Hastings Decl ¶ 26 (bottled water provided); Scott Decl. ¶ 24 (bottled  
12 water available); Beeson Decl. ¶ 33 (one gallon plastic water jugs provided to individuals  
13 upon apprehension in the desert and sometimes retained when brought to CBP facilities).  
14  
15

16 *c. CBP Facilities Are Kept In A Safe And Sanitary Condition*  
17 *And Detainees Have Access To Hygiene Products.*

18 CBP keeps its facilities in a safe and sanitary condition. The majority of facilities  
19 have cleaning contracts that provide for the regular cleaning of all hold rooms where  
20 detainees are kept. Padilla Decl. ¶ 60; James Decl. ¶ 32; Romero Decl. ¶ 31; Brooks Decl.  
21 ¶ 33; Perez Decl. ¶ 31; Martinez Decl. ¶¶ 35-36; Hastings Decl ¶¶ 31-32; Scott Decl. ¶¶  
22 31-33; Beeson Decl. ¶¶ 42-44. These cleaning contracts also provide for the restocking of  
23

---

24 <sup>5</sup> The Governments' experts in *Doe* noted that the stainless steel drinking fountains  
25 provided in Tucson Sector Border Patrol hold rooms – which are similar to those found in  
26 other CBP facilities – are of the same type that are frequently found in holding cells, jails,  
and prisons, and provide access to sanitary and potable water. *See* Skipworth Decl. ¶¶  
127-28, 131; Bryce Decl. ¶¶ 74-75.

<sup>6</sup> Bleach is not used to clean these water coolers in the Rio Grande Valley. *See* Padilla  
Decl. ¶ 56.

1 bathroom supplies such as toilet paper and soap, and the emptying of any trash bins that  
2 are kept in the hold rooms. Padilla Decl. ¶ 60-61; Romero Decl. ¶ 31; Perez Decl. ¶ 31;  
3 Martinez Decl. ¶ 36; Hastings Decl. ¶¶ 32, 40; Scott Decl. ¶¶ 32, 36; Beeson Decl. ¶¶ 43-  
4 44, 47; *see also* Skipworth Decl. ¶ 45 (assessing statements of work for Tucson Sector  
5 Border Patrol cleaning contracts and concluding that they “are consistent with the current  
6 TEDS standard and other industry standards, and contain cleaning provisions sufficient to  
7 ensure a hygienic and safe environment for detainees”).  
8

9  
10 Sinks and soap or hand sanitizer in the hold rooms provide detainees the  
11 opportunity to wash their hands after using the toilet. Padilla Decl. ¶¶ 85, 86; Romero  
12 Decl. ¶ 29; Brooks Decl. ¶ 36; Perez Decl. ¶ 22; Hastings Decl. ¶ 40; Scott Decl. ¶ 36;  
13 Beeson Decl. ¶¶ 42, 47. Some CBP facilities provide paper towels, while others use an air  
14 dry method for hand drying. Padilla Decl. ¶¶ 85, 86; Hastings Decl. ¶ 41; Scott Decl. ¶ 37;  
15 Beeson Decl. ¶¶ 47, 48. Using an “air-drying method” for handwashing has been  
16 recognized by the Centers for Disease Control as an effective hand drying method, and  
17 may be necessary because detainees sometimes throw the paper towels on the floor or put  
18 them into the toilet. *See* Skipworth Decl. ¶¶ 83-84.  
19

20  
21 Regular checks of all hold rooms where juveniles are held are conducted to ensure  
22 that water is available, the toilets and sinks are in working order, and the room is sanitary.  
23 Padilla Decl. ¶ 28, 34; James Decl. ¶ 57; Romero Decl. ¶ 28; Brooks Decl. ¶ 37; Perez  
24 Decl. ¶ 26; Martinez Decl. ¶ 62; Hastings Decl. ¶ 69; Scott Decl. ¶ 27, 62; Beeson Decl.  
25 ¶¶ 35, 66, 71. The results of these checks are recorded in e3DM or SIGMA, and any  
26 problems are reported to a supervisor and resolved as quickly as possible. Padilla Decl.

1 ¶¶ 29-32; James Decl. ¶ 57; Romero Decl. ¶ 32; Perez Decl. ¶ 45; Martinez Decl. ¶¶ 57-  
2 60; Hastings Decl ¶¶ 65-66, 69; Scott Decl. ¶¶ 58-60, 62; Beeson Decl. ¶ 36 (noting  
3 report of inoperable toilet in unaccompanied juvenile cell; other cells were used to hold  
4 juveniles until the problem could be fixed), 66-69.

5  
6 Not all CBP facilities have showers or access to showers. Padilla Decl. ¶ 68;  
7 Brooks Decl. ¶ 34; Martinez Decl. ¶ 37; Scott Decl. ¶ 35; Beeson Decl. ¶ 46. In the Rio  
8 Grande Valley, the vast majority of juveniles are transferred to the CPC-Ursula facility as  
9 soon as possible after their processing is complete, and at that facility they are provided  
10 an opportunity to shower, have their clothes laundered, and receive a change of clothes.  
11 Padilla Decl. ¶¶ 68-74; *see also* Romero Decl. ¶ 24 (noting the availability of changes of  
12 clothes for juveniles in the San Diego area facilities that are distributed as needed).  
13 Juveniles at CPC-Ursula are also provided a towel, toothbrush, toothpaste, mouthwash,  
14 soap, and shampoo. Padilla Decl. ¶ 75; *see also* Romero Decl. ¶ 25 (similar items  
15 provided in San Diego area facilities). In other areas, reasonable efforts are made to  
16 provide showers to juveniles who must remain in CBP custody longer than 48 hours.  
17 James Decl. ¶ 33; Romero Decl. ¶ 26; Brooks Decl. ¶¶ 34-35; Hastings Decl. ¶ 39; Scott  
18 Decl. ¶ 35. Thus, to the extent Plaintiffs' evidence suggests that showers are not made  
19 available to juveniles in CBP custody, that evidence is inaccurate or misleading. *See*  
20 Plaintiffs' Exh. 19, Dec. M and Strange Decl. Exh. F (individual states her three children  
21 were not able to bathe while in CBP custody, but Border Patrol records show all three  
22 children receiving a shower on 10/22/15 at 6:36 pm at CPC Ursula); Plaintiffs' Exh. 37  
23 and Strange Decl., Exh. B (individual states that she was not provided a shower, but  
24  
25  
26

1 Border Patrol records indicate that she was provided a shower at 7:13 am on February 2,  
2 2016).

3 CBP facilities also stock other personal and hygiene products which are provided  
4 to detainees upon request, including diapers and wipes, feminine hygiene products,  
5 toothbrushes, toothpaste, and soap. Padilla Decl. ¶¶ 73, 75, 77-78; James Decl. ¶ 26;  
6 Romero Decl. ¶¶ 24-26; Brooks Decl. ¶ 36; Perez Decl. ¶ 22; Scott Decl. ¶ 24; Skipworth  
7 Decl. ¶¶ 78-91 (describing items provided to detainees by Tucson Sector Border Patrol,  
8 and specifically noting that Border Patrol “takes special care regarding families”).<sup>7</sup>  
9  
10

11 Plaintiffs complain that there is a lack of privacy in CBP facilities, particularly  
12 with regard to the toilets. Motion at 7-9. Some lack of privacy is to be expected given the  
13 nature of CBP hold rooms. Padilla Decl. ¶ 84; James Decl. ¶ 25; Martinez Decl. ¶ 30;  
14 Hastings Decl ¶ 27; Scott Decl. ¶ 26; Beeson Decl. ¶ 34. The screen walls used by the  
15 toilet area in the hold rooms allow for an environment where the individual using the  
16 toilet has some privacy while using the facilities, but can still be monitored and protected  
17  
18

---

19 <sup>7</sup> Plaintiffs raise no specific claims regarding the availability of medical care in CBP  
20 facilities. However they generally allege that the conditions at these facilities are  
21 unhealthy, and create a risk to the health of minors. *See* Motion at 4-11. Medical care for  
22 any emergent issue is readily available to all individuals held at a CBP facility both from  
23 trained CBP employees, and off-site local medical professionals. Padilla Decl. ¶¶ 80-83;  
24 James Decl. ¶¶ 36-37; Romero Decl. ¶¶ 34-40; Brooks Decl. ¶¶ 41-43; Perez Decl. ¶¶ 27-  
25 28; Martinez Decl. ¶¶ 42-44; Hastings Decl ¶¶ 42-43; Scott Decl. ¶¶ 42-44; Beeson Decl.  
26 ¶¶ 8, 14, 54-56. In *Doe*, the Government’s medical expert assessed the system by which  
the Tucson Sector Border Patrol facilities provided access to medical care – the same  
system used at the majority of CBP facilities nationwide – and concluded that the system  
in place “provides detainees medical care and treatment, including emergency treatment  
and prescription medication, when needed.” Harber Decl. ¶¶ 22-23, 26-37, 50-56. He  
further concluded that the conditions at the Tucson Sector Border patrol facilities, which  
are comparable to those at other CBP facilities nationwide, did not “indicate . . . any  
serious medical or health risk to detainees.” *Id.* ¶¶ 24, 57-73.

1 for the safety of all detainees and CBP employees. Padilla Decl. ¶ 84; James Decl. ¶ 25;  
2 Romero Decl. ¶ 27; Martinez Decl. ¶ 30, Exhibit C; Hastings Decl ¶ 27; Scott Decl. ¶ 26,  
3 Exhibit B; Beeson Decl. ¶ 34. Private toilets are available for detainees in some facilities,  
4 including CPC-Ursula, where the majority of juveniles apprehended in the Rio Grande  
5 Valley are housed. Padilla Decl. ¶ 85; Brooks Decl. ¶ 28; Perez Decl. ¶¶ 23, 24 . Cameras  
6 in CBP facilities do not provide sight lines to the toilets, or they blur out any view of the  
7 toilet areas. Padilla Decl. ¶ 86; James Decl. ¶ 26; Romero Decl. ¶ 28; Martinez Decl. ¶  
8 31; Hastings Decl ¶ 28; Scott Decl. ¶ 27; Beeson Decl. ¶ 35.

11 *d. The Temperature At CBP Facilities Is Carefully Regulated*  
12 *And Monitored To Ensure That It Is Kept At Safe And*  
13 *Comfortable Level.*

14 Plaintiffs allege that they were forced to endure “extremely cold” temperatures  
15 while in custody at CBP facilities. CBP records indicate, however, that the temperatures  
16 at the time some of these allegations were made were being maintained at comfortable  
17 and appropriate levels. *See* Plaintiffs’ Exh. 44 and Hoffman Decl Exh. A (individual  
18 indicates that it was “very cold,” but the temperature while she was in custody was  
19 recorded as being between 69.4-72.2 degrees; also claims it was too cold to sleep, but  
20 OFO records note “sleeping” at various times on January 24, 25, and 26, 2016);  
21 Plaintiffs’ Exh. 19, Dec. M and Strange Decl. Exh. F (individual states that it was very  
22 cold, but Border Patrol recorded the temperature at four different welfare checks on  
23 10/23/15 as 77, 73, 72, and 73 degrees, and the amenity log also shows compliant  
24 temperatures); Plaintiffs’ Exh. 26 and Strange Decl. Exh. M (individual claims it was  
25 “extremely cold” and neither she nor her daughter could sleep, but Border Patrol records  
26

1 show the temperature was between 69-71); Plaintiffs’ Exh. 27 and Strange Decl. Exh. M  
2 (individual claims McAllen Station was “freezing cold,” but Amenity Check shows  
3 temperature was within acceptable range); Plaintiffs’ Exh. 28 and Strange Decl. Exh. O  
4 (individual claims McAllen Station was “freezing,” but Amenity Check shows  
5 temperature was within acceptable range).  
6

7         The temperature at CBP facilities is regulated, and is maintained at a level that is  
8 safe and comfortable for both detainees and officers. Padilla Decl. ¶ 62; James Decl. ¶  
9 28; Brooks Decl. ¶ 31; Martinez Decl. ¶ 33; Hastings Decl ¶ 36; Scott Decl. ¶ 28; Beeson  
10 Decl. ¶ 37; *see also* Skipworth Decl. ¶ 133 (“Temperatures in detention facilities should  
11 normally be kept within a range of 68.5 to 80.5 degrees Fahrenheit for comfort,  
12 depending on the season.”); Bryce Decl. ¶ 82 (“According to agents I interviewed,  
13 Tucson Sector Border Patrol hold room temperatures are maintained at 68 to 80 degree  
14 Fahrenheit, which is standard in detention centers.”). In response to the Court’s August  
15 Order, CBP facilities purchased thermometers and regularly monitor the temperatures in  
16 all hold rooms in which juveniles are being detained, and agents record any issues with  
17 those temperatures being outside the acceptable range. Padilla Decl. ¶ 66; James Decl. ¶¶  
18 29, 58; Romero Decl. ¶ 30; Brooks Decl. ¶ 31; Perez Decl. ¶ 23; Martinez Decl. ¶ 63;  
19 Hastings Decl ¶ 70; Scott Decl. ¶ 63; Beeson Decl. ¶ 72. If the temperature in any hold  
20 room in which a juvenile is being held is found to be outside the acceptable range of 66-  
21 80 degrees Fahrenheit, it must be recorded in SIGMA or e3DM, immediate steps must be  
22 taken to bring the temperature to an acceptable level, and alternate accommodations may  
23 be made for holding the affected individuals until the situation is remedied. Padilla Decl.  
24  
25  
26



1 ¶ 65-66; James Decl. ¶¶ 30-31; Brooks Decl. ¶¶ 31-32; Perez Decl. ¶ 42; Martinez Decl.  
2 ¶¶ 34, 63; Hastings Decl ¶¶ 37, 70; Scott Decl. ¶ 30, 63; Beeson Decl. ¶¶ 39-40, 72.

3  
4 *e. While CBP Facilities Are Designed For Short-Term Custody,  
5 And Are Not Designed For Sleeping, Juveniles Generally Are  
6 Provided With Some Form Of Bedding And Are Processed As  
7 Quickly As Possible.*

8 CBP facilities in which detention occurs are 24/7 facilities designed for short-term  
9 custody during immigration processing. Padilla Decl. ¶ 78; Romero Decl. ¶ 43; Hastings  
10 Decl ¶ 50; Scott Decl. ¶ 9. CBP makes every effort to process juveniles as quickly as  
11 possible and either release them, or transfer them to more long-term facilities. Padilla  
12 Decl. ¶ 41, 96; James Decl. ¶ 17 (noting detainees are generally held for less than 8  
13 hours); Romero Decl. ¶ 11 (noting that juveniles receive priority attention); Romero Decl.  
14 ¶ 43; Perez Decl. ¶ 15 (noting family units generally are not held longer than 24 hours);  
15 Martinez Decl. ¶¶ 51, 53; Hastings Decl ¶¶ 50, 54; Scott Decl. ¶ 6 (noting that  
16 unaccompanied minors spend an average of 42 hours in custody, while family groups  
17 spend an average of 46 hours in custody), 9; Beeson Decl. ¶ 13 (noting that juveniles  
18 receive priority processing), 60, 62. Because individuals are coming and going in the  
19 majority of CBP facilities at all hours of the day and night, the lights at CBP facilities  
20 remain on at all times for the safety and security of both detainees and CBP employees.  
21 Padilla Decl. ¶ 78; James Decl. ¶ 34; Romero Decl. ¶ 33; Brooks Decl. ¶ 38; Perez Decl.  
22 ¶ 25; Martinez Decl. ¶ 40; Hastings Decl ¶ 30; Scott Decl. ¶ 39; Beeson Decl. ¶¶ 9, 50.

23  
24 Unaccompanied juveniles generally are kept in hold rooms, or in a specific area of  
25 the particular facility, divided by age and gender, and separated from unrelated adults.  
26 Padilla Decl. ¶ 18; James Decl. ¶ 21 (noting juveniles are not always placed in hold

1 rooms, but are placed in the least restrictive setting possible in that facility); Romero  
2 Decl. ¶¶ 13-14; Brooks Decl. ¶ 18; Perez Decl. ¶¶ 12, 14; Martinez Decl. ¶¶ 15, 16  
3 (noting that if a hold room is not available to keep an unaccompanied juvenile separated  
4 from unrelated adults, the juvenile will be placed in another area of the station where he  
5 or she can be monitored by agents); Hastings Decl. ¶¶ 16-17; Scott Decl. ¶ 12; Beeson  
6 Decl. ¶ 21. Families are kept together to the greatest extent possible in order to maintain  
7 family unity, and may be kept in hold rooms or other areas of the facility with other  
8 family units. Padilla Decl. ¶ 18; James Decl. ¶ 16; Romero Decl. ¶ 16 (noting that the San  
9 Ysidro facility has designated additional space for families if needed); Brooks Decl. ¶ 18;  
10 Martinez Decl. ¶ 16; Hastings Decl. ¶ 17; Scott Decl. ¶ 13; Beeson Decl. ¶ 21.<sup>8</sup> The  
11 numbers of individuals in a hold room will fluctuate based on the numbers of  
12 apprehensions in any given day, but when overcrowding occurs, agents will take all  
13 possible steps to alleviate it, including moving individuals between hold rooms and even  
14 between different stations in a given operating area. Padilla Decl. ¶ 21; James Decl.  
15 (noting no problem with overcrowding); Romero Decl. ¶ 17 (noting the availability of  
16 other facilities used to house single adults to ensure adequate space for family units and  
17  
18  
19  
20

---

21 <sup>8</sup> Plaintiffs raise no specific legal claim that minors are not provided access to family  
22 members. To the extent they suggest this is the case through their declarations, however,  
23 they are mistaken. CBP facilities make every effort to maintain family unity. Padilla  
24 Decl. ¶ 37; James Decl. ¶ 60; Brooks Decl. ¶ 66; Perez Decl. ¶ 46; Martinez Decl. ¶ 65;  
25 Hastings Decl. ¶ 72; Scott Decl. ¶ 65; Beeson Decl. ¶ 74. If a family group is separated,  
26 that separation and the reason for the separation are documented. Padilla Decl. ¶ 37;  
James Decl. ¶ 60; Brooks Decl. ¶ 66; Perez Decl. ¶ 46; Martinez Decl. ¶¶ 65; Hastings  
Decl. ¶ 72; Scott Decl. ¶ 66; Beeson Decl. ¶ 74. If separation occurs contact is facilitated,  
and if it is not the reason for the lack of contact also is documented. Padilla Decl. ¶¶ 37-  
28; James Decl. ¶¶ 60-61; Brooks Decl. ¶ 66-67; Perez Decl. ¶ 46; Martinez Decl. ¶¶ 65-  
66; Hastings Decl. ¶¶ 72-73; Scott Decl. ¶ 66-67; Beeson Decl. ¶¶ 74-75.

1 unaccompanied children); Brooks Decl. ¶ 19 (noting agents remain mindful of capacity  
2 issues to ensure sufficient space); Martinez Decl. ¶ 19; Hastings Decl ¶ 20 (noting no  
3 issue with overcrowding); Scott Decl. ¶ 6 (noting a relatively low number of  
4 unaccompanied juveniles and family groups in custody at any one time), 16; *see also*  
5 Plaintiffs’ Exh. 22, Padilla Decl. ¶ 17 and Strange Decl. Exh. J (individual states that  
6 there were 15-20 people in his cell; no hold cell in McAllen Station has a capacity of less  
7 than 22 adult individuals).  
8

9  
10 In the majority of CBP facilities, Mylar or other disposable blankets are provided  
11 to detainees to be used for bedding, and for additional warmth if needed. Padilla Decl. ¶  
12 88; James Decl. ¶ 35; Brooks Decl. ¶ 39; Perez Decl. ¶ 29; Martinez Decl. ¶ 41; Hastings  
13 Decl ¶ 41; Scott Decl. ¶¶ 28, 40; Beeson Decl. ¶ 51. Mylar blankets limit the spread of  
14 disease, and eliminate the problems that many facilities previously experienced of being  
15 unable to keep up with the laundry required to provide cloth blankets. Brooks Decl. ¶ 39;  
16 Perez Decl. ¶ 29; Beeson Decl. ¶ 51; Scott Decl ¶ 40; Martinez Decl. ¶ 41; Padilla Decl. ¶  
17 88.<sup>9</sup> Many facilities also may provide mattresses or mattress pads to juveniles where  
18 space and supplies are available and it is operationally feasible. Padilla Decl. ¶¶ 88, 89;  
19 Romero Decl. ¶ 25 (folding mats, foam sleeping mats, and blankets provided); Brooks  
20 Decl. ¶ 40 (“EZ Bunk,” mats, or cots may be provided); Scott Decl. ¶ 41 (bedroll  
21 provided); Beeson Decl. ¶ 53 (mattress pads provided).  
22  
23  
24  
25

26 <sup>9</sup> Where feasible, some facilities do provide access to cloth blankets that can be regularly  
laundered. Romero Decl. ¶ 25; Perez Decl. ¶ 23 (noting the availability of cloth blankets  
and pillows in family rooms).

1 *f. All Minors In CBP Custody Are Given An I-770 Notice Of*  
2 *Rights.*

3 CBP has not historically provided an I-770 to accompanied juveniles, but current  
4 CBP policy requires that all CBP officers and agents provide a Form I-770 to all  
5 juveniles, whether accompanied or unaccompanied. Bristow Decl. ¶ 19; Hoffman Decl. ¶  
6 18. This policy is implemented by offices and agents at CBP stations and ports-of-entry  
7 around the country. Padilla Decl. ¶ 91; James Decl. ¶ 41; Romero Decl. ¶¶ 41-42; Brooks  
8 Decl. ¶ 50; Perez Decl. ¶ 34; Martinez Decl. ¶ 48; Hastings Decl ¶ 47. CBP officers and  
9 agents also provide a list of free legal services to juveniles CBP processes for removal.  
10 Hastings Decl ¶ 48; Scott Decl. ¶ 50; Beeson Decl. ¶ 57; Brooks Decl. ¶ 51; James Decl.  
11 ¶ 42; Perez Decl. ¶ 45; Martinez Decl. ¶ 49; Padilla Decl. ¶ 92.

14 **B. ICE Family Residential Centers Are Operating In a Manner That**  
15 **Is Fully Consistent With The Agreement And With This Court’s**  
16 **July and August Orders.**

17 In the August Order, the district court indicated that the Government’s target of a  
18 20-day average detention time “may fall within the parameters of Paragraph 12A of the  
19 Agreement . . . .” August Order at 10. The Court also explained that in periods of influx –  
20 as defined in the Agreement – family units may be housed at residential centers for the  
21 limited period necessary to conduct asylum and other protection-related screenings, so  
22 long as the length of detention is “as fast as Defendants, in good faith and in the exercise  
23 of due diligence, can possibly go in screening family members for reasonable or credible  
24 fear . . . especially if the brief extension of time will permit the DHS to keep the family  
25 unit together.” August Order at 10. Notably, in the July Order the Court also recognized  
26 that in a “situation where the mother . . . has been deemed a flight or safety risk . . . ,

1 Defendants would be justified in detaining both mother and child in that case . . . .” July  
2 Order at 9 n.5.

3  
4 Karnes County Residential Center (“Karnes”), South Texas Family Residential  
5 Center (“Dilley”), and Berks County Family Residential Center (“Berks”), are being  
6 operated in a manner that is fully consistent with the July and August Orders of this  
7 Court. As the Government has previously described to this Court (ECF No. 184 at 11-  
8 18), ICE family residential centers operate primarily as short-term intake and processing  
9 facilities. *See* Declaration of Juanita Hester (“Hester Decl.”), ¶¶ 3-4, attached hereto as  
10 Exh. 20; Declaration of Valentin de la Garza (“de la Garza Decl.”), ¶¶ 3-4, attached  
11 hereto as Exh. 21. Since 2015, ICE has implemented several improvements at its family  
12 residential centers including increased staff, additional residential resources, improved  
13 legal access, and increased oversight of operations. Declaration of John Gurule (“Gurule  
14 Decl.”), ¶¶ 5-12, attached hereto as Exh. 22.<sup>10</sup> ICE also continues to evaluate and  
15  
16

---

17  
18 <sup>10</sup> Plaintiffs do not specifically raise any claims challenging the conditions at ICE family  
19 residential centers, but they submit multiple declarations that raise allegations regarding  
20 those conditions. To the extent the Court determines that these allegations should be  
21 considered in evaluating Plaintiffs’ claims, Defendants submit significant evidence  
22 challenging the reliability of these allegations, and disputing that the conditions in these  
23 facilities are as Plaintiffs describe. *See* Hester Decl. ¶¶ 5-8; de la Garza Decl. ¶¶ 5-8; Reid  
24 Decl. ¶¶ 3-5, 9-28; Gurule Decl. ¶¶ 6-12, 17; Declaration of Philip T. Farabaugh, Exh.  
25 23; Declaration of Gustavo I. Cadavid, Exh. 24; Declaration of Todd M. Tovarek, Exh.  
26 25 (Exhs. 23-25 are not attached to this brief in order to protect to the greatest extent  
possible the medical privacy of the individuals discussed in those declarations; however,  
Defendants are willing and able to provide them to the Court upon request if necessary to  
assist in adjudication of any of Plaintiffs’ claims); Dilley Video, available at:  
[https://www.dvidshub.net/video/402665/ice-media-b-roll-south-texas-family-residential-  
center](https://www.dvidshub.net/video/402665/ice-media-b-roll-south-texas-family-residential-center) (South Texas FRC Apr. 29, 2015) (last visited May 31, 2016); Dilley Video,  
available at: [https://www.dvidshub.net/video/381829/south-texas-family-residential-  
center](https://www.dvidshub.net/video/381829/south-texas-family-residential-center) (last visited May 31, 2016); Karnes Video, available at:  
<https://www.dvidshub.net/video/400168/karnes-county-residential-center> (Karnes County

1 improve its processes to ensure that families in its custody are evaluated expeditiously  
2 and, if eligible, released on appropriate conditions. *Id.* ¶ 15.

3  
4 For the vast majority of individuals who move through these facilities, the length  
5 of time they remain in detention is limited to the amount of time it takes to screen them  
6 for credible or reasonable fear. Hester Decl. ¶ 3; de la Garza Decl. ¶ 3. The Secretary of  
7 Homeland Security’s June 2015 policy announcement directed U.S. Citizenship and  
8 Immigration Services (“USCIS”) to “conduct credible fear and reasonable fear interviews  
9 within a reasonable timeframe.” DHS Press Release, ECF No. 164-1, at 1. For those able  
10 to establish credible or reasonable fear, the goal is that “the detention of families will be  
11 short-term in most cases.” *Id.*

12  
13 Under a class action settlement agreement in the U.S. District Court for the  
14 Northern District of California, USCIS has agreed to achieve a national average of 10  
15 business days for completing reasonable fear determinations for detained individuals,  
16 with no single reasonable fear determination taking more than 20 business days (not  
17 including tolling or delays due to exceptional circumstances). *Alfaro Garcia, et al. v.*  
18 *Johnson, et al.*, No. 14-01775 (N.D. Cal.). As a result, USCIS has implemented changes  
19 to its reasonable fear screening procedures which continue to speed up its review of such  
20 claims. *See* Declaration of John L. Lafferty (“Lafferty Decl.”), ¶¶ 8-12, attached hereto as  
21 Exh. 26. USCIS also took specific steps at ICE family residential centers to increase its  
22 resources and streamline its procedures, thereby further reducing processing times for  
23  
24  
25

26 Residential Center Apr. 17, 2015) (last visited May 31, 2016); Berks Video, available at:  
<https://www.dvidshub.net/video/408791/berks-family-residential-center-may-2015>  
(Berks Family Residential Center May 2015) (last visited May 31, 2016).

1 both credible fear and reasonable fear cases. *Id.* ¶¶ 5-7. Thus, for credible fear and  
2 reasonable fear cases screened in ICE family residential centers, USCIS’s current  
3 processing time is approximately 4-10 calendar days from USCIS’s receipt of a referral  
4 from ICE, to service of a determination on the individual. *See id.* ¶ 4.

6 For those individuals who are not found to have a credible fear or reasonable fear,  
7 and who seek review before an immigration judge, the average processing time at family  
8 residential centers between November 1, 2015 and May 24, 2016 was three days. *See*  
9 Declaration of Brett Endres (“Endres Decl.”), ¶ 3, attached hereto as Exh. 27. Of the  
10 1,070 cases in credible fear review proceedings, the immigration judge vacated USCIS’s  
11 decision and found credible fear 587 times, and for the 114 cases involving reasonable  
12 fear review proceedings, the immigration judge vacated USCIS’s decision and found  
13 reasonable fear 78 times. *Id.* ¶¶ 4-5.

16 As a result, for the 18,706 residents initially booked into ICE family residential  
17 facilities from October 23, 2015, to May 18, 2016, and subsequently released or removed  
18 as of May 16, 2016, the average length of stay was 11.8 days. Gurule Decl. ¶ 13. Of these  
19 18,706 residents, 58% were released or removed in 10 days or less, 96% in 20 days or  
20 less, and 99% in 30 days or less. *Id.* Of those detained as of May 16, 2016, the average  
21 length of stay is 17.7 days. Of those detained as of May 16, 2016, 44% have been  
22 detained 10 days or less; 88%, 20 days or less, and 94%, 30 days or less. *Id.*

24 A small percentage of individuals do remain in ICE family residential centers for  
25 longer periods of time, but this too is consistent with the Agreement and the Court’s  
26 orders. This is because these individuals fall into one of three categories: (1) individuals

1 who are subject to mandatory detention because they have not established a credible fear,  
2 but who have asked USCIS to reconsider their screening determination, and have sought  
3 and received stays of removal; (2) individuals who have received a negative credible fear  
4 determination, are awaiting removal, and are subject to mandatory detention;<sup>11</sup> or (3)  
5 individuals in family units with final orders of removal where the parent has been  
6 determined to constitute a flight risk. *See* Gurule Decl. ¶ 14 and Exh. 9; *see also*  
7 Declaration of Joshua G. Reid (“Reid Decl.”), ¶¶ 18, 28, attached hereto as Exh. 28.  
8

9  
10 <sup>11</sup> The vast majority of aliens who have been detained at family residential facilities for  
11 longer than 20 days are individuals who have been determined to lack credible fear of  
12 persecution or torture upon removal after being interviewed by a USCIS asylum officer,  
13 having that determination reviewed by a supervisory asylum officer, and having his or  
14 her claim of credible fear heard by an Immigration Judge. They are therefore subject to  
15 mandatory detention pending their removal from the United States. *See* 8 U.S.C. §  
16 1225(b)(1)(B)(iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii). Although execution of their expedited  
17 removal orders is required by 8 U.S.C. § 1225(b)(1), these aliens filed constitutional  
18 challenges to the credible fear process and their expedited removal orders in federal  
19 district court starting in November 2015. *See Castro v. DHS*, Case No. 15-6153, 2016  
20 WL 614862 at \*1-2 (E.D. Pa. Feb.16, 2016). Although the Government briefed the issues  
21 in this case in an expedited manner, the District Court stayed these aliens’ removal for  
22 three months only to then dismiss their case, finding that “Petitioners’ contentions have  
23 been rejected by almost every court to address them.” *Id.* This includes the Ninth Circuit  
24 in *Pena v. Lynch*, 815 F.3d 452 (9th Cir. 2015); *Avendano–Ramirez v. Ashcroft*, 365 F.3d  
25 813, 819 (9th Cir. 2004); *Li v. Eddy*, 259 F.3d 1132, 1134–35 (9th Cir. 2001), opinion  
26 vacated as moot on reh’g, 324 F.3d 1109 (9th Cir. 2003), and the Fifth Circuit (where  
Karnes and Dilley are located) in *Diaz–Rodriguez v. Holder*, No. 14-31103, 2014 WL  
10965184 (5th Cir. Dec. 16, 2014). Again, rather than acquiescing in their removal, these  
individuals then sought and successfully obtained a stay from the Third Circuit on  
February 26, 2016 in an order that did not explain the basis for granting the stay as  
required by *Nken v. Holder*, 556 U.S. 418, 425-26 (2009). *See Castro, et al v. DHS*, Case  
No. 16-1339 at Doc. No. 003112218692. This case was argued on May 19, 2016 and a  
decision is expected shortly. The Government submits that this order should – and will  
most likely – accord with the decision of every circuit to consider this matter, including  
the Ninth and Fifth Circuits. Detention of these individuals pending the decision by the  
Third Circuit does not raise a systemic problem of non-compliance with this Court’s  
Order, but rather a discrete instance where a group of aliens whose removal should  
already have been executed have been successful in postponing their removal by making  
arguments that have been rejected by every Circuit Court that has considered them.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1           **III.           ARGUMENT**

2           **A.           The Court Should Not Allow Plaintiffs To Re-Litigate The Issue of**  
3           **CBP's Compliance With The Agreement, And If It Does, Should Do**  
4           **So Only After Discovery And An Evidentiary Hearing.**

5           In 2015 this Court considered Plaintiffs' allegations that CBP facilities were not in  
6 compliance with the Agreement and concluded that even to the extent that CBP facilities  
7 were in breach of the Agreement, the appropriate remedy was to require CBP to "monitor  
8 compliance with their acknowledged standards and procedures" for complying with the  
9 Agreement. August Order at 14-15. As explained extensively above, CBP is doing so.  
10 Therefore, CBP has complied fully with the Court's August Order.  
11

12           Nonetheless, Plaintiffs' latest Motion raises the same allegations as were  
13 previously litigated and resolved by the Court's August Order, only this time Plaintiffs'  
14 contend that oversight by a special monitor is required. However, Plaintiffs have  
15 provided no good reason why the Court should re-litigate this issue or order any  
16 additional remedy against CBP.  
17

18           Plaintiffs base their Motion on declaratory evidence that consists largely of  
19 inadmissible hearsay allegations relating to only a small number of CBP facilities.  
20 Relying on that limited evidence, Plaintiffs ask the Court to conclude that "[t]he evidence  
21 overwhelmingly shows Defendants' CBP facilities are neither safe nor sanitary." Motion  
22 at 19. But this is far from true. Plaintiffs' evidence is unreliable, and in many instances is  
23 countered by CBP's records regarding the declarant. Plaintiffs have not shown that  
24 appointment of a monitor would uncover any additional information than what is already  
25 being maintained by CBP, and it would therefore simply be an unnecessary use of limited  
26

1 taxpayer resources. Therefore the Court should not revisit this already settled issue, and  
2 should deny Plaintiffs' Motion with regard to CBP facilities.

3  
4 Moreover, even if the Court does decide that further litigation on this issue is  
5 necessary, the evidence still does not support any immediate finding in Plaintiffs' favor.  
6 Plaintiffs certainly have provided no basis for the Court to find a breach in any facility  
7 which is not clearly and specifically identified in any of their supporting declarations.  
8 And for those facilities for which Plaintiffs did provide evidence of a possible breach,  
9 even in only the short time provided between the time Plaintiffs shared that evidence with  
10 CBP and the filing of this response, CBP was able to provide evidence that in several  
11 instances Plaintiffs' evidence is unreliable or misleading. *See* Defendants' Objections,  
12 attached hereto as Exh. 29.  
13

14  
15 At the same time, as discussed above, CBP has provided significant evidence that  
16 CBP and its facilities as a whole – including both those referenced by Plaintiffs' evidence  
17 and those that are not – comply with the Agreement and with the Court's requirement in  
18 its August Order that CBP monitor that compliance. Thus, if the issue is to be re-litigated  
19 based solely on the evidence submitted by the parties in this briefing, there is good reason  
20 to find that Plaintiffs simply have not established any breach of the Agreement on the  
21 part of CBP.  
22

23 Finally, the incomplete and unreliable nature of the evidence submitted by  
24 Plaintiffs, and the substantial rebuttal evidence submitted by CBP, gives good reason for  
25 the Court, at the least, to decline to rule on Plaintiffs' motion without first holding an  
26 evidentiary hearing to further examine the evidence submitted by both parties. *See Callie*

1 v. *Near*, 829 F.2d 888, 890 (9th Cir. 1987) (“[W]here material facts concerning the  
2 existence or terms of an agreement to settle are in dispute, the parties must be allowed an  
3 evidentiary hearing.”); *see also In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 958-59  
4 (9th Cir. 1994) (holding that “a court has no discretion to enforce a settlement where  
5 material facts are in dispute; an evidentiary hearing must be held to resolve such  
6 issues.”).<sup>12</sup>

8 Moreover, before any evidentiary hearing is held each party should be permitted to  
9 explore the evidence presented by the opposing side. Defendants were not provided any  
10 opportunity to review the evidence submitted with Plaintiffs’ Motion until after the  
11 Motion was filed with the Court. After Plaintiffs served a meet and confer letter on  
12 Defendants on February 20, 2016 (*see* Plaintiffs’ Exhibit 1-C, ECF No. 201-1) that  
13 contained nothing more than a recitation of the provisions of the Agreement Plaintiffs  
14 alleged were being breached, Defendants made repeated efforts to persuade Plaintiffs to  
15 share with Defendants the factual allegations on which they intended to rely in this  
16 Motion so that Defendants could seek to provide a response and thereby avoid the need

19 \_\_\_\_\_  
20 <sup>12</sup> In the August Order, the Court denied Defendants’ request for an evidentiary hearing  
21 on the issue of conditions in CBP facilities because Defendants did not ask for such a  
22 hearing until after the Court had ruled on Plaintiffs’ enforcement motion, finding that  
23 Defendants had not submitted responsive evidence to Plaintiffs’ evidence regarding the  
24 conditions at CBP Facilities, and concluding that “it [was] too late for a second bite at the  
25 apple.” August Order at 13. This time, it is Plaintiffs who are seeking a second bite at the  
26 apple, by asking the Court to re-litigate these same claims regarding CBP conditions that  
were resolved in the Court’s August Order. Moreover, this time around Defendants are  
submitting to the Court exactly what the Court found was lacking the last time around:  
significant evidence that CBP facilities comply with the Agreement. Therefore, if the  
Court determines that this issue should be re-litigated, then Defendants contend that  
resolution can only be had after a full and fair exploration of all of the evidence from  
both parties, and an evidentiary hearing before the Court that is conducted after sufficient  
time is provided to depose any proffered witnesses.

1 for litigation. *See* Declaration of Sarah B. Fabian, ECF No. 204-1, at ¶¶ 4 -5. However,  
2 despite repeated requests by Defendants’ counsel, Plaintiffs’ counsel did not provide any  
3 of these factual allegations to Defendants. *Id.* ¶ 6. Therefore, Defendants have had no  
4 opportunity, prior to the time that the Motion was filed, to respond to those allegations, or  
5 to discuss with Plaintiffs whether any of those factual allegations could be resolved  
6 without the need for litigation. *Id.*; *see also* Local Rule 7-3; Agreement ¶ 37.<sup>13</sup>

8 Plaintiffs thus are asking this Court to find Defendants in breach before  
9 Defendants have been provided a meaningful opportunity to review and respond to the  
10 evidence upon which Plaintiffs ask the Court to rely. This is particularly problematic  
11 where Plaintiffs’ evidence consists in large part of declarations by individuals that  
12 Defendants have shown in many cases are inconsistent with available evidence, and  
13 whose declarants Defendants have had no opportunity to investigate or examine  
14  
15

16 <sup>13</sup> In addition, although Plaintiffs provided unsealed versions of some of the redacted  
17 declarations submitted with their Motion, Plaintiffs did not provide unredacted copies of  
18 several other of the declarations included with their Motion. *See* Plaintiffs’ Exhs. 12, 13,  
19 15, 19. Only after multiple requests from Defendants did Plaintiffs’ counsel send over a  
20 list of some of the names and Alien #s (“A#s”) for the redacted individuals in those  
21 declarations, and for other individuals only the names were provided. As of this writing,  
22 for at least ten other declarations Plaintiffs never provided any names or A#s. The  
23 information that was provided, was provided barely one week before Defendants’  
24 opposition brief was due to the Court. This failure to provide timely information, and to  
25 provide identifying information that allows Defendants to easily locate files on each  
26 individual, has compounded the challenges that Defendants are facing in responding to  
allegations by between fifty and one hundred declarants in only one or two weeks, and in  
some cases without all of the necessary information. At a minimum, if the Court intends  
to rely on these redacted declarations for which late or no identifying information was  
provided to Defendants, the Court should order Plaintiffs to disclose to Defendants the  
names and A#s of all individuals upon whose statements they wish to rely, and provide  
Defendants with an additional opportunity to respond to those statements. In the  
alternative, there is good reason to strike all of those declarations because it would be  
unfair to the Defendants to allow Plaintiffs to rely on those statements without having  
provided Defendants with a meaningful opportunity to respond.

1 regarding these inconsistencies. The Court should decline to make a factual finding that  
2 the Agreement is being breached based only on this evidence. Therefore, if the Court  
3 believes that Plaintiffs' evidence is sufficient to warrant further exploration of the issue  
4 then the Court should order additional fact-finding and an evidentiary hearing.  
5

6 **B. Defendants Advise Juveniles Of Their Rights.**

7 Plaintiffs generally claim that Defendants are violating Paragraph 24D, because  
8 juveniles are not being given any advisals of their rights under the Agreement. Plaintiffs  
9 base their contention on statements by numerous individuals that they had not been  
10 advised of their "rights under *Flores*." See Plaintiffs Exh. 2 at 11-12. The Agreement lists  
11 three specific advisals ((1) the Form I-770; (2) the Notice of Right to Judicial Review;  
12 and (3) a list of legal service providers) that DHS is required to give to juveniles.  
13 Plaintiffs have not identified any additional rights advisals that they contend are required  
14 under the Agreement.  
15  
16

17 In fact, current CBP policy is to provide Form I-770 to all juveniles it processes  
18 for removal, whether accompanied or unaccompanied. Padilla Decl. ¶ 91; James Decl. ¶  
19 41; Romero Decl. ¶¶ 41-42; Brooks Decl. ¶ 50; Perez Decl. ¶ 34; Martinez Decl. ¶ 48;  
20 Hastings Decl ¶ 47.<sup>14</sup> CBP facilities also provide a list of free legal services to those  
21 juveniles it processes for removal. Hastings Decl ¶ 48; Scott Decl. ¶ 50; Beeson Decl. ¶  
22 57; Brooks Decl. ¶ 51; James Decl. ¶ 42; Perez Decl. ¶ 45; Martinez Decl. ¶ 49; Padilla  
23  
24

---

25 <sup>14</sup> Although Form I-770 is provided to accompanied minors in order to comply with the  
26 Court's August Order and its interpretation of the Agreement, it should be noted that the  
Form advises that the minor has a right to a hearing before an immigration judge, and this  
right does not actually apply to accompanied minors who are, with their parent or  
guardian, being placed into expedited removal proceedings.

1 Decl. ¶ 92. ICE also provides information about free legal service providers, as well as a  
2 legal services orientation, and free phone calls to a number of legal service providers and  
3 consular officials. Hester Decl. ¶¶ 6, 14, 15; de la Garza Decl. ¶¶ 14-15; Reid Decl. ¶¶ 9,  
4 10. Therefore, Plaintiffs are incorrect that there is no policy or practice in place to ensure  
5 that rights advisals are provided to juveniles.  
6

7 With regard to the Notice of Right to Judicial Review, Defendants acknowledge  
8 that the precise notice provided in Exhibit 6 to the Agreement is not provided to juveniles  
9 in family residential centers. However, since Plaintiffs have identified this as an area  
10 concern and thereby brought this issue to ICE's attention, ICE is willing to provide such  
11 notice and is working to implement a procedure to provide the notice to accompanied  
12 minors at ICE family residential centers. *See* Hester Decl. ¶ 10; de la Garza Decl. ¶ 10;  
13 Reid Decl. ¶ 11. This oversight, which is easily and gladly remedied once it was brought  
14 to ICE's attention, is not sufficient reason to find Defendants in breach of the Agreement  
15 and order substantial additional remedies such as the appointment of a special master.  
16  
17

18 **D. Defendants Make And Record Ongoing Efforts To Release All**  
19 **Family Units Eligible For Release, And The Agreement Permits The**  
20 **Continued Detention Of Family Units Who Are Detained Pending**  
21 **Removal, Subject To Mandatory Detention, Or Where The Parent**  
22 **Has Been Determined To Be A Flight Risk.**

23 Plaintiffs claim that the current use of ICE family residential centers violates  
24 Paragraphs 14 and 18 of the Agreement. In essence, Plaintiffs are asking the Court to  
25 reconsider its August Order that any use of the facilities is permissible and in accordance  
26 with the Agreement. As discussed above, ICE moves as expeditiously as possible to  
process the credible fear and reasonable fear claims of individuals in its custody. Thus, of

1 the 18,706 residents initially booked into the FRCs from October 23, 2015, to May 18,  
2 2016, and subsequently released or removed as of May 16, 2016, the average length of  
3 stay was 11.8 days. Gurule Decl. ¶ 13. This is entirely consistent with the Agreement  
4 and with the Court’s July and August Orders.  
5

6 Plaintiffs cannot show that ICE fails to make immediate and continuous efforts to  
7 release family units once their eligibility for release has been established. At both Karnes  
8 and Dilley, ERO officers obtain contact information from each family on family  
9 members located in the United States, if available. Hester Decl. ¶¶ 11; de la Garza Decl. ¶  
10 11. Upon a positive credible fear or reasonable fear finding either by USCIS or an  
11 immigration judge, at Karnes and Dilley ICE Enforcement and Removal Operations  
12 (“ERO”) then serves the charging document on the resident and makes a custody  
13 determination. Hester Decl. ¶¶ 4, 11; de la Garza Decl. ¶ 11. For residents who are being  
14 released, ERO then utilizes family information obtained during intake and any additional  
15 information that the resident provides, and processes the resident for release. Hester Decl.  
16 ¶ 11; de la Garza Decl. ¶ 11. Release generally occurs within 24-48 hours at Karnes, and  
17 48-72 hours at Dilley, from the time the charging document is served on the resident.  
18 Hester Decl. ¶ 11; de la Garza Decl. ¶ 11.<sup>15</sup>  
19  
20  
21

22 Moreover, the continued detention of a limited number of family units who are  
23 subject to mandatory detention, or who have a final order of removal and the parent has  
24 been determined to constitute a flight risk, does not violate the Agreement or this Court’s  
25 orders. *See supra* Section II.B. Notably, in previous litigation in this case, Plaintiffs have  
26

---

<sup>15</sup> This time frame is may also be dependent on the resident’s travel arrangement preference and family/sponsor availability. Hester Decl. ¶ 11; de la Garza Decl. ¶ 11.



1 acknowledged that the authority to detain individuals for purposes of removal under 8  
2 U.S.C. § 1231 applied to minors, and was not precluded by the Agreement so long as it  
3 did not otherwise violate the statute. *See* ECF No. 19 at 31 (“[N]othing in the settlement  
4 precludes defendants from detaining a child in the course of physically removing him or  
5 her, but neither does it permit months or years of open-ended incarceration.”); *id.* at 32  
6 (acknowledging that detention in secure facilities to effectuate removal is proper if there  
7 is a “reasonable expectation that they will be able to effect removal promptly”).  
8

9  
10 Finally, despite Plaintiffs’ suggestions to the contrary, nothing in the Court’s  
11 orders requires Defendants to separate those minors from their parents to comply with the  
12 Agreement. In fact, the Court’s July Order recognized that continued detention of the  
13 child with his or her parent in those instances is permissible and preferable. *See* July  
14 Order at 9 n.5. Moreover, even if the Court were to order such a result, ICE does not have  
15 the resources or the institutional experience to assess whether an adult seeking custody of  
16 a minor is a suitable custodian who will house the minor in a suitable home environment.  
17 Gurule Decl ¶ 16. The average length of custody of an unaccompanied minor in HHS  
18 custody is 34 days. *See* <http://www.acf.hhs.gov/programs/orr/about/ucs/facts-and-data>.  
19 That is how long it takes HHS on average to reunite unaccompanied minors with suitable  
20 adults in suitable home environments in accordance with the reunification requirements  
21 in the Trafficking Victims Protection Reauthorization Act. ICE should not direct its  
22 resources to engaging in such efforts for only a small number of families, when its overall  
23 goal for the vast majority of families in its custody is to remove the entire family  
24 promptly or to release the entire family together within 20 days. Every resource ICE  
25  
26

1 would spend on a suitability analysis of the proposed custodian and the proposed home  
2 would be a resource that could not be spent processing families out of the facility as  
3 quickly as possible. *See* Gurule Decl. ¶ 16.  
4

5 Defendants have made every effort to conform the use of ICE family residential  
6 centers to the Court’s interpretation of the Agreement, and the requirements laid out in  
7 the Court’s August Order. In order to comply with the Court’s Order, ICE has  
8 implemented many improvements at its family residential centers including increased  
9 staff, improved processes, additional residential resources, improved legal access, and  
10 increased oversight of operations in order to expedite the processing of families through  
11 its centers. *See* Gurule Decl. ¶¶ 9, 15. The fact that Plaintiffs may disagree with the  
12 Court’s order, and the use of ICE family residential centers that it permits, is not good  
13 reason to reopen the prior litigation, or to permit Plaintiffs to seek untimely  
14 reconsideration of the August Order. Therefore, the Court should Deny Plaintiffs’  
15 challenges to Defendants’ permissible use of ICE family residential centers.  
16  
17

18 **E. 8 U.S.C. § 1252(f)(1) Precludes This Court From Entering Class-**  
19 **Wide Injunctive Relief Requiring Release of Those Properly**  
20 **Detained Under the Immigration and Nationality Act.**

21 To the extent Plaintiffs are asking the Court to reconsider its August Order, and to  
22 find that the Agreement requires the release of individuals who are lawfully detained  
23 under the Immigration and Nationality Act (“INA”), such a reading of the Agreement is  
24 prohibited. *See* 8 U.S.C. § 1252(f)(1); *see also Reno v. American-Arab Anti-*  
25 *Discrimination Committee*, 525 U.S. 471, 482 (1999) (“By its plain terms, and even by its  
26 title, [8 U.S.C. § 1252(f)] is nothing more or less than a limit on injunctive

1 relief.”). Specifically, 8 U.S.C. § 1252(f)(1) provides that “no court other than the  
2 Supreme Court shall have jurisdiction or authority to enjoin or restrain the operations of  
3 the provisions of [8 U.S.C. §§ 1221-1231], other than with respect to an individual alien  
4 against whom proceedings under such part have been initiated.”  
5

6 In the August Order, the Court made clear that it did not intend to order that ICE  
7 release individuals who were properly detained under the INA, stating that Defendants’  
8 “fears that the remedial order will contravene the INA are unfounded.” August Order at  
9 9. Yet Plaintiffs now contend that the Government is violating the August Order and the  
10 Agreement by continuing to hold individuals who are subject to mandatory detention  
11 under 8 U.S.C. § 1225(b), or who are being detained pending removal under 8 U.S.C. §  
12 1231, and have been found to constitute a flight risk. If this is true, then the August Order  
13 and the Agreement would constitute impermissible restrictions, on a class-wide basis, on  
14 the operations of these sections of the INA, in violation of 8 U.S.C. § 1252(f)(1). The  
15 Court cannot and should not read the Agreement to impose restrictions or requirements  
16 that are prohibited by the statute, and therefore Plaintiffs’ request that the Court read such  
17 restrictions into the Agreement should be denied.  
18  
19  
20

21 **F. Accompanied Minors Are Detained With Their Parents At ICE**  
22 **Family Residential Centers.**

23 Plaintiffs claim that ICE family residential centers violate the Agreement because  
24 they require that minors be housed with unrelated adults. Motion at 14-15. As an initial  
25 matter, this argument is an attempt to end-run around the fact that the Court’s August  
26 Order left intact some permissible use for ICE family residential centers, by striking at  
their very existence. This should not be allowed.

1           Moreover, the Agreement’s prohibition in 12.A regarding the placement of minors  
2 with unrelated adults clearly states that it is referring to “unaccompanied minors.” *See*  
3 Paragraph 12.A.<sup>16</sup> Therefore, there is good reason to find that this prohibition in the  
4 Agreement is not violated by the system of housing at ICE family residential centers.  
5 Accompanied minors who are housed at ICE family residential centers remain with their  
6 parents, who are responsible for their oversight and care. *See* Hester Decl. ¶ 17; de la  
7 Garza Decl. ¶ 17; Reid Decl. ¶ 3. When children attend school or day-care at the  
8 facilities, they are supervised by licensed education professionals or other staff trained in  
9 childcare. Hester Decl. ¶ 17. In Karnes, all children are assigned to a suite with their  
10 parent, and adults are prohibited from congregating in those suites. Hester Decl. ¶ 17. In  
11 Dilley, adults are prohibited from entering a suite other than the one assigned to them. de  
12 la Garza Decl. ¶ 17.

13  
14  
15  
16           In Berks, family units, including those with a male head of household, may  
17 commingle in the common areas, but all adults are prohibited from commingling in the  
18 bedrooms, and both male and female residents are precluded from entering the bedrooms  
19 occupied by an adult of the opposite sex. Reid Decl. ¶ 17. In addition, anytime an  
20 unrelated child is present in a bedroom, adult residents, regardless of his/her sex, must  
21 have staff supervision while in that bedroom if the child’s parent is not present. *Id.*  
22 Children may enter their parent’s bedroom only in the company of their parents. *Id.*  
23  
24  
25

26  

---

<sup>16</sup> And to be precise, Paragraph 12A refers to the initial custody after apprehension, now conducted by CBP, and not to longer-term detention, then under 8 U.S.C § 1252, and now conducted by ICE under 8 U.S.C. §§ 1225, 1226, and 1231.

1 Because accompanied children at ICE family residential centers remain with their  
2 parents, the Agreement's prohibition on placing unaccompanied minors with unrelated  
3 adults does not apply. Moreover there are additional protections in place even above  
4 those required by the Agreement to ensure the protection of residents at ICE family  
5 residential centers. Therefore, the Court should find that ICE family residential centers do  
6 not violate the Agreement in this regard.  
7

8 **G. Defendants Do Not Interfere With Any Minor's Right To Counsel.**  
9

10 The Agreement does not provide any right to counsel, and Plaintiffs cite to no  
11 provision of the Agreement that they claim is being breached by Defendants in this  
12 regard. As noted above, both CBP and ICE provide family units with lists of legal  
13 services providers. Hastings Decl. ¶ 48; Scott Decl. ¶ 50; Beeson Decl. ¶ 57; Brooks Decl.  
14 ¶ 51; James Decl. ¶ 42; Perez Decl. ¶ 45; Martinez Decl. ¶ 49; Padilla Decl. ¶ 92; Hester  
15 Decl. ¶¶ 14, 15; de la Garza Decl. ¶¶ 14, 15; Reid Decl. ¶¶ 10. At ICE family residential  
16 facilities, residents also receive a legal services orientation, and have the ability to make  
17 free phone calls to a number of legal service providers and consular officials. Hester  
18 Decl. ¶¶ 14, 15; de la Garza Decl. ¶¶ 14, 15; Reid Decl. ¶¶ 10. Attorneys also regularly  
19 visit all of the facilities, and residents are free to meet with them when they are there.  
20 Hester Decl. ¶ 14; de la Garza Decl. ¶ 14; Reid Decl. ¶ 10. Therefore, Plaintiffs cannot  
21 credibly claim that they are being denied access to legal services at ICE family residential  
22 centers.  
23  
24

25 Plaintiffs further claim that Defendants violate the Agreement by transferring  
26 individuals from ICE family residential centers without providing notice to their counsel,

1 in violation of Paragraph 27A of the Agreement. Motion at 17. However, except in  
2 unusual and compelling circumstances, ICE ERO does provide advance notice to counsel  
3 regarding the transfer of a resident if that counsel has entered an appearance as counsel  
4 with ICE. *See* de la Garza Decl. ¶ 20; Hester Decl. ¶ 16; Reid Decl. ¶ 10.  
5

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Government requests that the Court deny Plaintiffs'  
8 Motion.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1 DATED: June 3, 3016

Respectfully submitted,

2  
3 BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General  
4 Civil Division

5 LEON FRESCO  
6 Deputy Assistant Attorney General  
Civil Division

7  
8 WILLIAM C. PEACHEY  
Director, District Court Section  
9 Office of Immigration Litigation

10 WILLIAM C. SILVIS  
11 Assistant Director, District Court Section  
Office of Immigration Litigation

12 /s/ Sarah B. Fabian  
13 SARAH B. FABIAN  
14 Senior Litigation Counsel  
Office of Immigration Litigation  
15 District Court Section  
16 P.O. Box 868, Ben Franklin Station  
Washington, D.C. 20044  
17 Tel: (202) 532-4824  
18 Fax: (202) 305-7000  
Email: sarah.b.fabian@usdoj.gov

19 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2016, I served the foregoing pleading on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Sarah B. Fabian  
SARAH B. FABIAN  
U.S. Department of Justice  
District Court Section  
Office of Immigration Litigation  
  
Attorney for Defendants

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



DEFENDANTS' INDEX OF EXHIBITS

1. Declaration of Ronald D. Vitiello
2. Declaration of Todd C. Owen
3. Declaration of Justin Bristow
4. Declaration of Todd Hoffman
5. Declaration of Sean Mildrew
6. Declaration of Paul A. Beeson
7. Declaration of Mario Martinez
8. Declaration of Brian S. Hastings
9. Declaration of Rodney S. Scott
10. Declaration of Manuel Padilla, Jr.
11. Declaration of Pete Flores Romero
12. Declaration of Robert E. Perez
13. Declaration of William Brooks
14. Declaration of Michele M. James
15. Declaration of Carla Provost
16. Declaration of David W. Strange
17. Declaration of Diane Skipworth, from *Doe, et al. v. Johnson, et al.* Case No. CV-15-0250 (D. Ariz.)
18. Declaration of Richard Bryce, from *Doe, et al. v. Johnson, et al.* Case No. CV-15-0250 (D. Ariz.)
19. Declaration of Philip Harber, from *Doe, et al. v. Johnson, et al.* Case No. CV-15-0250 (D. Ariz.)
20. Declaration of Juanita Hester
21. Declaration of Valentin de la Garza
22. Declaration of John Gurule
23. Declaration of Philip T. Farabaugh (not attached)
24. Declaration of Gustavo I. Cadavid (not attached)
25. Declaration of Todd M. Tovarek (not attached)
26. Declaration of John L. Lafferty
27. Declaration of Brett Endres
28. Declaration of Joshua G. Reid
29. Defendants' Objections