



CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

256 SOUTH OCCIDENTAL BOULEVARD

LOS ANGELES, CA 90057

Telephone: (213) 388-8693

Facsimile: (213) 386-9484

www.centerforhumanrights.org

May 26, 2015

Via email only

Leon Fresco, Esq.

United States Department of Justice

Deputy Assistant Attorney General—Office of Immigration Litigation

Re: *Jenny Lisette Flores v. Jeh Johnson, Secretary, U.S. Department of Homeland Security, et al.*, Cv. No. Case No. CV 85-4544-DMG

Dear Leon,

Attached is plaintiffs' proposed stipulation. The stipulation takes into account the District Court's lengthy tentative ruling as well as the growing consensus among a broad range of stakeholders, including members of Congress, numerous non-profit and civil rights organizations, child welfare experts and the faith community, that family detention should be significantly curtailed. The consensus recognizes that widespread detention of families is unnecessary, is unacceptably harmful to children and represents an unwise use of DHS's limited resources. Given those considerations, this proposal best represents a fair compromise to ensure that the Administration's immigration enforcement goals are met while protecting the welfare and rights of children who arrive at our borders with their mothers.

The stipulation does not retreat from the Administration's commitment to border enforcement. It strengthens compliance with the immigration laws enacted by Congress:

1. Orderly admission over dangerous irregular border crossing: By providing for orderly, fair and humane processing of children (Flores class members) accompanied by parents, the stipulation will encourage parents to present themselves and their children to the authorities rather than opting for dangerous crossings in highly remote areas with potentially violent encounters, victimization, and the obvious diversion of CBP resources.

2. Encouraging migrant families to comply with the legal system: By providing for the release of family units in appropriate circumstances, following the same procedures in place until the temporary surge in families entering the U.S. without inspection in early 2014,

the stipulation returns to a policy and practice that for many years successfully released family units where no criminal charges were involved, and applied normal assessment and removal procedures under existing laws enacted by Congress.

3. Fair and prompt removal procedures: This settlement creates procedures and mechanisms for the rapid removal of apprehended family units when they possess no equities or legal means to obtain lawful status under existing laws enacted by Congress.

4. Balancing of border enforcement and the unique situation of children: This settlement balances DHS's responsibility to both fully enforce the laws along all borders and at all ports of entry, while insuring protection of the special rights children and family units possess under existing laws and regulations including the right to apply for asylum, withholding of deportation, Trafficking Act visas, crime victim U visas, family-based visas and Special Immigrant Juvenile status.

The stipulation helps immigrant children and their accompanying parents in several ways:

1. Permits release from often highly oppressive detention conditions: The corporations involved may submit glowing reports about conditions at the facilities they operated, but there is overwhelming evidence, which the judge fully recognized, of highly oppressive and extremely harsh conditions that migrants not suspected of criminal conduct should not have to endure, especially when with children. These are civil hearings and families do not stand accused of crimes or threatening the national security. The settlement will help migrant families by getting them out of secure, lock-down, guarded detention centers, with almost no access to representation (as compared to in the communities at their destination), almost no contact with relatives and close friends, expensive phone rates and extreme isolation for children class members. Whether by stipulation or court Order, this illegal detention is going to end.

2. Second, the settlement will encourage families after release to utilize and be part of the system established by Congress to assess eligibility for lawful status, rather than absconding the system entirely or remaining in custody for no legitimate reason. The system to assess removability must be fair, impartial, and efficient, and if released families are made aware of this, the vast majority of them will remain fully engaged in the proceedings (also a primary goal of DHS).

3. Third, the settlement would help families by informing them up front of their rights and obligations, making access to legal advice or services much easier, and providing them with the time and help needed to prepare whatever applications they may be eligible to submit and more importantly to gather the evidence routinely required to support such applications. Logically, significant evidence is needed to support almost any type of application, and these are matters even lawyers generally take weeks to prepare. It is widely

Leon Fresco, Esq.
United States Department of Justice
Re: *Flores v. Johnson*, CV 85-4544-DMG
May 26, 2015
Page 3

understood that migrants entering without inspection do not typically (if ever) carry a full set of documentary evidence ready to present in support of an application for asylum or other lawful status. So, at bottom, the settlement provides class members and their parents the circumstances needed, with their families and in their homes and hopefully with case management and attorneys or paralegals, to prepare and present whatever legitimate claims they may possess to lawful status in this country.

DHS's interests (and plaintiffs' interests) are better served by a stipulation than a nationwide Order issued by a federal judge

The Secretary must weigh whether the agency is better served by settlement versus a ruling by a federal court along the lines of the lengthy tentative ruling. A court ruling will be highly publicized and send a public message that DHS has not treated *Flores* class members (immigrant children), or their parents, lawfully, and in fact has detained them illegally under pretty deplorable conditions. This will undermine migrant families' view of both DHS and the entire system, and likely encourage circumvention of the system entirely. The more the DHS is viewed as an agency acting outside the law, the more migrant families will avoid contact or apprehension at all costs, and engage in far more dangerous journeys to enter the country undetected.

Second, generally federal agencies are better served by adopting appropriate and recommended changes in policy and practice (within parameters set by Congress) through agreed upon procedures all parties embrace and commit to implement, than having conditions imposed unilaterally by a court (usually in the form as proposed by plaintiffs' class counsel). In addition, the Court could well issue an Order with terms far less flexible than those proposed in the attached stipulation. Obviously DHS could appeal, but DHS is highly unlikely to win a stay pending appeal in this case. In addition, DHS's likelihood of success in any appeal to the Ninth Circuit is low, and the Supreme Court is unlikely to get involved. There's no dispute among the Circuit Courts on these issues. I would also think that DHS has enough litigation of significance going on relating to its defense of DAPA/DACA, without a protracted battle addressing the detention of children.

While not addressed in the attached stipulation, good reasons exist to consider transferring responsibility for family detention from ICE to ORR.

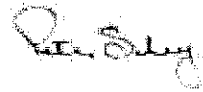
In conclusion, the proposed settlement addresses a range of issues that *Flores* class members, their parents, their advocates, faith-based leaders, members of Congress and the media have clearly expressed need attention and prompt change. In most of these areas, DHS officers and even contractors would equally benefit from clearer, more consistent, and fair policies uniformly applied with appropriate monitoring and reporting. The Supreme Court in *Flores* noted that release of both the child and accompanying parent is the best solution in these circumstances. See *Flores v. Reno*, 507 US 292, 295 (1993) ("Service must assure itself

Leon Fresco, Esq.
United States Department of Justice
Re: *Flores v. Johnson*, CV 85-4544-DMG
May 26, 2015
Page 4

that someone will care for those minors pending resolution of their deportation proceedings. That is easily done when the juvenile's parents have also been detained and the family can be released together")

Look forward to trying to resolve this within the agreed upon time frame approved by the Court.

Best regards,



Peter A. Schey
Flores Class Counsel

ccs: Carlos R. Holguin, Esq. *Flores* Class Counsel
David Shahouljian, Esq. DHS

///

Draft Flores settlement 5-22-15 (Class Counsel CHRCL) Confidential

This Stipulation and Proposed Order is submitted by the plaintiffs and defendants through their undersigned counsel in response to the Court's Order of ___, Dkt. # ___ addressing plaintiffs' motion for an order requiring defendants to comply with the stipulated settlement agreement filed herein on January 17, 1997, and approved by this Court on January 28, 1997 ("Flores Settlement"), Dkt # ___, and defendants' motion to modify the Settlement. Dkt. # ___. The Court has jurisdiction over the parties' motions pursuant to ¶ 37 of the Settlement and the Court's order of January 28, 1997, approving the Settlement pursuant to Rule 23(e), Fed.R.Civ.Proc.

This Stipulation sets out nationwide policy for the detention, release and treatment of class members in the custody of agencies identified in Paragraph 1 below.

The plaintiffs and defendants are jointly hereafter referred to as the "parties."

1. The Flores Settlement binds the INS and Department of Justice, and "their agents, employees, contractors, and/or successors in office," Settlement ¶ 1, including the Department of Homeland Security (DHS) and its component agencies and departments the Immigration and Customs Enforcement (ICE), Citizenship and Immigration Service (CIS), Customs and Border Protection (CPB), the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS) and any other past, present, or future agency of the U.S. Government to the extent they exercise or purport to exercise legal or physical custody over class members.

2. This Stipulation is intended to enforce and modify the Flores Settlement and will remain in effect for the same term as the Flores Settlement remains in effect. [cite to where this is set out.]

3. The parties agree that except to the extent amended or modified herein, the Flores Settlement remains in full force and effect and that defendants remain legally bound to implement its terms.

4. The class definition set forth in the Flores Agreement and Order at Paragraph 10 shall remain the same. The class includes all minors who are detained in the legal custody of the DHS or HHS. The class includes both accompanied and unaccompanied minors, including minors apprehended or who present themselves to defendants accompanied by a parent.

5. Within 30 days of court approval of this Stipulation, defendants shall issue written guidelines ("Flores Guidelines") concerning the implementation of Flores and this Stipulation (attached as Exhibit X), to all field offices and suboffices regarding the processing, treatment, custody determinations or placement of class members to fully implement this Stipulation and the Flores Settlement. The Flores Guidelines will be fully consistent with the Flores Settlement and this Stipulation. As long as the Flores Settlement and this Stipulation remain in effect, defendants shall provide Class Counsel with copies of any changes to or interpretations of the Flores Instructions seven days before being issued for comment by Class Counsel. Defendants will provide Class Counsel with copies of any changes to or interpretations of the Flores Instructions prior to being issued

6. Except as modified by this Stipulation, the CBP, ICE and HHS shall release class members

from their custody in accordance with the Flores Settlement to available custodians as ¶ 14 of the Settlement directs.

7. Apprehended class members and any accompanying parents shall be advised of the class member's rights under the Flores Settlement and this stipulation ("Flores Advisals") attached as Exhibit __ [to be drafted] in their native language and shall be asked to sign a form indicating that they have been provided such advisal. They shall also be provided a current list of available free and for profit legal services assisting or representing migrants in detention in the geographical area where detained and in the geographical area of their destination. Defendants shall determine whether the primary native language of the individual class member and their accompanying parent, if applicable, is an indigenous language and whether the individual class member and accompanying parent can read and write in their primary native language. Defendants shall record the language and literacy information in each individual's file. Defendants shall provide translations or translation services to insure that class members and accompanying parents are aware of and understand all required advisals and information obtained from or communicated to class members and their accompanying parents. A copy of the Flores Advisal and the class member's and the accompanying parent's acknowledgement of receipt of the advisal will be recorded in the class member's file. [DHS: please send class counsel the current advisals]

8. Upon taking a class member accompanied by a parent into custody, CBP, ICE and HHS shall make and record prompt and continuous efforts toward release of class members consistent with ¶ 14 of the Flores Settlement, and release of parents apprehended with a class member in order to effectuate the rights of class members consistent with the Flores Settlement. Such efforts will include the matters set forth in Exhibit __ ("Flores Family Release Assessment Form") and the results of such efforts shall be recorded on Exhibit __ [or Ex. X if a sep reporting document]. Defendants shall monitor CBP's and ICE's efforts and recordings in this regard and provide plaintiffs' class counsel with reports as set forth in Paragraph __ below. [Perhaps develop similar form for UAMs?]

9. All apprehended class members apprehended with an accompanying parent, including "arriving aliens" and those subject to expedited removal, except those described in Paragraph 10, shall be issued a Notice to Appear placing them in removal proceedings which shall be filed with the Immigration Court in the geographical area where they will reside. Accompanied class members and their accompanying parents may be processed at immigration processing facilities for a period of 24 hours, after which they will be released on their own recognizance or on parole without being required to post a parole bond, and enrolled in case-management services including a phone or in-person support process that will advise and remind parents of class members of their reporting, interview and hearing dates, of possible sanctions should they fail to appear, and assist them in locating representation and counseling services. If it appears that they present a substantial flight risk [perhaps define below in a separate Paragraph] defendants may impose conditions on the parent's release including in-person reporting, telephonic reporting, or mandatory participation in a case management program. In exceptional and unusual cases in which such reporting would not be reasonably likely to secure the parent's presence, the parent shall be released using RF and GPS technologies. In such cases a minimum of two reporting interviews by phone or in person will be scheduled during the 30 days following release and if the parent reports on both occasions, unless circumstances otherwise indicate, use of the RF or

GPS technology will be replaced with routine reporting and/or entry into a case management program.

Defendants shall provide such accompanying parents a notice advising them of any scheduled reporting, interview or hearing date(s) and location(s), or provide a method for them to be informed about reporting, interview or hearing date(s) and location(s) once scheduled, the possible consequences and sanctions should they fail to appear other than for good cause, and their right to consult with a lawyer prior to reporting, interview or hearing dates. Such notices will inform the accompanying parents who they should contact in the event good cause exists preventing them from attending a scheduled reporting date, interview or hearing. A reasonable time before hearing, interview or reporting dates, defendants shall forward such accompanying parents letters reminding them of those dates and locations and informing them of the consequences and sanctions for failing to appear other than for good cause and of their right to consult with a lawyer. Such letters will inform the accompanying parents who they should contact in the event good cause exists preventing them from attending a scheduled interview, reporting date or hearing.

Wherever possible, accompanying parents should be provided a Legal Orientation Program (LOP) presentation regarding their rights and responsibilities before they travel to the geographic area where they will reside during proceedings. However, class members and their accompanying parents shall not remain in custody for the purpose of ensuring that they receive an LOP.

In those exceptional circumstances where class members and their accompanying parents are unable to provide an address where they will reside in the United States, the class members and their accompanying parents addressed in this Paragraph may remain in custody for a period of up to 12 days for the purpose of locating a place for them to reside during the removal proceedings, including non-secure family shelters, but under no circumstances may they be detained at a CBP facility for more than 24 hours.

Accompanying parents who present a danger to themselves, their children or others may remain in custody for a period of up to 7 days for the purpose of determining the nature and extent of the threat. At the end of those 7 days, if the danger is not substantiated, the class member and accompanying parent will be released under the terms of this Paragraph. If the threat is substantiated, the identified threat will be explained in a written decision provided to the class member's parent, the parent will be informed of the right to seek review before an Immigration Judge and provided a list of for profit and non-profit legal services located in the area where the parent is detained, and immediate steps will be taken to ensure release of the child pursuant to the Flores Agreement.

10. Apprehended class members accompanied by a parent subject to reinstatement of a prior removal order may be processed at immigration processing facilities for a period of 24 hours. They will not be detained at CBP facilities for more than 24 hours.

(a) Accompanying parents subject to reinstatement of a prior removal order who do not express fear of return and do not appear to be eligible for other forms of relief including but not limited to T visas, U visas or family-based visas, and whose class member children do not express a fear of return and do not reasonable appear to be eligible for relief, may be detained in custody with their class member child pending removal. Such detention shall not be in a CBP facility for more than 24 hours

following apprehension. Under these circumstances, class members may be detained in custody for an additional 12 days in a Family Facility as defined in Paragraph __ below. If travel documents have not been secured 12 days following apprehension, the class member shall be released as expeditiously as possible in accordance with the Flores Settlement unless release is waived pursuant to Paragraph ____ below.

(b) In cases where accompanying parents subject to reinstatement of a prior removal order or the accompanying class member express fear of return or reasonably appear eligible for other forms of relief including but not limited to T visas, U visas, Special Immigrant Juvenile (SIJ) status, or family-based visas, the class member and accompanying parent must be considered for prompt release. Release may be on their own recognizance, on an order of supervision, or on parole with the possible imposition of conditions, reasonable bond that the parent or a relative is able to post, or use of RF and GPS technologies, depending on a reasonable assessment of the risk of flight.

(c) Parents subject to reinstatement of a prior removal order and accompanying class members who express fear of return or who appear eligible for other forms of relief including but not limited to T visas, U visas, SIJ status or family-based visas, and who are not promptly released pursuant to Paragraph 10 above, may be detained by defendants in a Family Facility for a period not to exceed 12 days. During this period of detention defendants shall (1) assess the parent's and class member's eligibility for benefits under the INA including but not limited to T-visas, U-visas, SIJ status and family-based visas, (2) assess the parent's and class member's reasonable fear of return (if expressed) by conducting a reasonable fear interview (RFI) and rendering a RFI decision, (3) assess the suitability of available placement options for the class member as set forth in Paragraph 14 of the Flores Settlement, and (4) assess the conditions under which the parent and class member may be released at the end of the 12 day period, including a location where the parent and class member could reside pending the outcome of proceedings and the amount of bond the parent could actually afford to post, if any, and the amount of bond an available and willing relative or friend could actually post, if any. If there is no bond amount that the parent or relative or friend can afford to post, and which is deemed sufficient to assure appearance, the parent and class member can then be released under reporting requirements, and in exceptional and unusual circumstances where reporting would not be reasonably likely to secure the parent's presence, the parent shall be released using RF and GPS technologies.

(d) At the conclusion of the 12 day period set forth in Paragraph 10(c) above, or at any earlier time during that period, the class member and accompanying parent shall be released on their own recognizance unless one or both present a danger to themselves or others. Terms of release of the class member shall be assessed under the Flores Settlement. If the parent has passed an RFI, or appears to be eligible for any form of relief under the INA, the class member and parent shall be released on their own recognizance with case management services. If the parent has not yet passed an RFI, the parent and class member may be released on their own recognizance, or will be released on conditions (telephonic reporting or in-person reporting, etc.). In rare cases in which release on conditions is unlikely to secure the parent's future appearance, the parent will be released on a reasonable bond that either the parent is able to post, or that defendants have determined a friend or relative is able and willing to post. In extreme cases of extraordinary flight risk, the parent will be released using RF and GPS technologies. In such cases a minimum of two reporting interviews by phone or in person will be scheduled during the 30 days following release and if the parent successfully reports on both occasions, unless circumstances otherwise indicate, use of the RF or GPS technology will be replaced with routine reporting and/or entry

into a case management program.

(e) Defendants shall provide all accompanying parents released under this Paragraph a notice advising them of any scheduled Reasonable Fear (RFI) interview or reporting dates, and location(s), or provide a method for them to be informed about reporting or interview date(s) and location(s) once scheduled, the possible consequences and sanctions should they fail to appear other than for good cause, and their right to consult with a lawyer prior to the RFI interview. Such notices will inform the accompanying parents who they should contact in the event good cause exists preventing them from attending a scheduled reporting date or RFI interview. A reasonable time before a scheduled RFI interview date, defendants shall forward such accompanying parents a letter reminding them of their interview dates and locations and informing them of the consequences and sanctions for failing to appear other than for good cause and of their right to consult with a lawyer. Such letters if sent will inform the accompanying parents who they should contact in the event good cause exists preventing them from attending a scheduled interview.

11. In unusual cases in which the posting of a bond may be set to secure the appearance of a parent of a class member, in determining whether to set bond and, if so, the amount of bond, ICE officers will promptly inquire into, determine, and adequately record the maximum amount that the class members' parent or family or friends residing in the U.S. (as identified by the class member or the class members' parent) can reasonably afford without having to incur significant debt hardship. ICE shall provide that factor substantial weight in determining an appropriate bond that will not preclude release. Regardless of ability to pay, bonds shall not be disproportionate to the flight risk they are seeking to mitigate.

12. Defendants will take reasonable steps to assist released class members and their accompanying parents safely reach the destination where they will reside, including by providing transportation to a transportation facility the class member and parent will use to travel to the destination where they will reside pending the outcome of proceedings.

13. When making custody determinations for parents of accompanied minors, CBP and ICE will consider the class member's eligibility for release under the Flores Settlement and Order as a positive factor in favor of releasing the class member's detained parent.

14. In making custody determinations defendants will not in any manner consider how a class member's parent's release may or may not encourage other immigrants to enter or attempt to enter the United States without inspection.

15. In making custody determinations, defendants will not in any manner consider the availability of DHS detention bedspace.

16. In order to keep families together, and to achieve the Flores Settlement's preference of release of class members to their parent(s), there shall be a presumption that except in rare cases, the accompanying parents of class members will be released or paroled at the same time as their class member child or children. In the absence of prior failures to appear or escapes from custody, if the accompanying parent of a class member provides documentation of community or family ties in the United States and a confirmed address where the class member and

accompanying parent will reside pending the outcome of proceedings, the accompanying parent shall not be designated as a flight risk. In affirming or overcoming this presumption, and determining terms of release, defendants will consider the following factors:

- a. The fact that the class member is detained with the accompanying parent and the interests of the detained class member in being released in the care and custody of his or her parent.
- b. the parent's community and family ties in the United States,
- c. the parent's history of criminal convictions (felonies or misdemeanors), whether those convictions involved violence, and whether the parent failed to appear during the course of criminal proceedings
- d. prior failures to appear or escapes from custody
- e. eligibility to apply for relief from removal (including but not limited to eligibility for any visa or immigration benefit including deferred action status)
- f. place to reside pending the outcome of proceedings
- g. presence of relatives or close friends able to provide for the daily needs of the parent upon release
- h. whether the parent is represented by counsel or is likely to locate counsel in the area where he or she will reside pending the outcome of proceedings.

17. Defendants shall not selectively apply the "influx" provision of ¶ 12C of the Settlement as a justification for detaining class members and their parents.

18. In cases in which class members and/or their accompanying parents are released from custody by CBP or ICE, their NTAs (if issued prior to release) shall set jurisdiction for any proceedings before the immigration court in the geographical area where the class member and/or their accompanying parent, if any, will reside.

19. Upon approval of this Stipulation by the Court, defendants shall prioritize the determination for release of class members and accompanying parents who are already detained, starting with those who have been detained the longest. As expeditiously as possible following the Court's approval of this Stipulation, and in any event in more than 30 days following the Court's approval of this stipulation, all class members and accompanying parents detained shall be evaluated for release and released in accordance with this Stipulation. Within five days of the Court's approval of this Stipulation, all accompanying parents of class members in custody shall be provided a copy of the Flores Notice attached hereto as Exhibit ____.

20. Cases involving abuse of class members shall be processed in accordance with Exhibit ____ attached to this Stipulation. [Plaintiffs in process of drafting ideas and are amenable to suggestions by defendants]

21. Class members apprehended with an accompanying parent shall not be treated by defendants as unaccompanied minors under the TVPRA unless the class member is separated from the accompanying parent for any reason consistent with the Flores Settlement and this Stipulation, pursuant to Paragraph 20 of this Stipulation, or the parent is detained as and separated from their parent or being arbitrarily treated as UAM and released to ORR rather than directly to an available relative as required by the Flores Settlement ¶ 14.

22. On a monthly basis by the last day of the following month defendants will provide to Class Counsel reports for the preceding month on the following:

(a) The number of unaccompanied class members apprehended, dates of apprehension, and location of apprehension; start and end dates of detention and location(s); date on which class member was transferred to custody of ORR (if applicable); with who and location where minor was placed (relative, friend, non-ORR licensed shelter, ORR contracted licensed shelter, etc.); if placed in an ORR facility or ORR contracted licensed shelter, date of entry and date of departure; if placed in an ORR facility or ORR contracted licensed shelter where minor was placed after leaving ORR custody; start and end dates of ORR home study; identify cases in which class member's parent's wishes re placement were rejected by ORR and reasons for rejection.

(b) The number of accompanied class members apprehended, dates of apprehension, and location of apprehension; whether apprehended with a mother or father; start and end dates of detention and location(s); start and end dates of parent's detention and location(s); whether parent and class member were released OR, or on conditions, or with bond (and amounts), or with GPS technology; how parent and class member were released (parole, OR, Order of Supervision, on conditions, bond or with GPS technology, etc.); whether parent was served with a NTA and where jurisdiction was set; whether bond or conditions were amended during the reporting period; if applicable, date on which class member was transferred to custody of ORR (if applicable); if applicable, with who and location where minor was placed (relative, friend, non-ORR licensed shelter, ORR contracted licensed shelter, etc.); if placed in an ORR facility or ORR contracted licensed shelter, date of entry and date of departure; if placed in an ORR facility or ORR contracted licensed shelter where minor was placed after leaving ORR custody; start and end dates of ORR home study; identify cases in which class member's parent's wishes re placement were rejected by ICE or ORR and reasons for rejection.

23. Family Facility as used in this Stipulation refers to the family facility operated by DHS in Berks County, Pa. Should defendants seek to operate a different Family Facility, they will notify Class Counsel 60 days prior to such use, and provide Class Counsel with the name and location of the facility. Any Family Facility will be operated by a county, will be licensed, and conditions will meet the requirements of Paragraph 26 below. The administrators of any Family Facility will be provided copies of and abide by the Flores Settlement and this Stipulation.

24. In the event the parent of any class member is not released within fourteen days after apprehension, the class member if 14 years or older, or the class member's parent if the class member is under 14 years of age, may decide to have the class member remain with the parent for an additional thirty days. There will be a presumption in favor of granting such requests and they may be made in thirty-day increments. Prior to making such decision, the parent and class member (if 14 years or older) will be provided the form attached as Exhibit __ [to be drafted] explaining the class member's right to be released under the Flores Settlement and the option not to be separated as provided for by this Paragraph. If ICE intends to reject a parent/class member decision to remain together, it shall provide the parent/class member with the reasons for its intended decision in writing, and provide a reasonable opportunity for the parent/class member to respond. A final decision will be provided to the parent and class member if 14 years or older within three days of the parent or class member's request or response

to an intended denial, shall be in writing, shall explain the reasons for the decision, and if the request to remain together is denied, may be reviewed by an Immigration Judge in a bond redetermination hearing. A parent of a class member under age 14, or a class member 14 years or older, may rescind their decision to remain together at any time in which case the class member will be promptly released pursuant to the terms of the Flores Settlement.

25. For purposes of custody determinations, an accompanying parent shall be treated in the same manner under the terms of this stipulation whether his or her class member child remains in custody with the parent or has been released to another custodian or to ORR custody.

26. Within 60 days of the Court's approval of this Stipulation defendants shall adopt and provide to plaintiffs' class counsel for review and comment proposed policies consistent with Exhibit ____ attached. The parties shall then have 30 days to meet and confer regarding defendants' proposed policies and submit to the Court separate or joint memoranda regarding defendants' proposed policies. Final policies will be adopted and implemented within 30 days after the Court's approval of such policies.

///

Flores Stipulation -- Exhibit

Conditions of Confinement at CBP Facilities:

1. Defendants shall develop a separately written detailed standard for each of the following subject areas, as they concern confinement at CBP facilities. Each standard shall be developed in such a manner as to promote and preserve human dignity, child welfare, family unity, and personal liberty to the extent possible. Each standard shall include requirements for written documentation of compliance with the guidelines set forth in each standard. The subject areas include but are not limited to:

Emergency Plans
Environmental Health and Safety
Transportation of Detainees
Admission and Release
Contraband
Key and Lock Control
Facility Security and Control
Funds and Personal Property
Discipline and Behavior Management
Custody Classification System
Tool Control
Population Counts
Searches of Detainees
Sexual Abuse and Assault Prevention and Intervention
Staff-Detainee Communication
Use of Force and Restraints
Food Service
Hunger Strikes
Medical Care
Medical Care for Women
Medical Care for Children
Personal Hygiene
Significant Self-Harm and Suicide Prevention and Intervention
Terminal Illness, Advance Directives, and Death
Mental Health Care for Children
Correspondence and Other Mail
Recreation
Religious Practices
Telephone Access
Visitation
Detainee Handbook
Grievances and Complaints
Transfers of Detainees
Legal Material
Legal Rights Group Presentations

Interviews and Tours
Staff Training
Definitions

2. Defendants shall provide calorically and nutritionally adequate meals to class members held in CBP facilities. The first such meal will be provided within an hour of the class member's arrival at the CBP facility.
3. Defendants shall provide continuous access to nutritionally adequate snacks to class members and their accompanying parents.
4. Defendants will not separate class members from their accompanying parents during the time that they are held at CBP facilities.
5. Within the first 24 hours of apprehension, Defendant CBP agents, assisted by appropriate NGO personnel, shall consider each apprehended class member for release for humanitarian reasons, including reasons based on medical and mental health, in accordance with written guidelines issued by CBP Office of Chief Counsel.
6. Defendants shall provide class members access to toys, books, and recreational equipment.
7. Defendants shall provide class members -- and their accompanying parents, where applicable -- with access to free or low-cost telephones with the capability to make domestic and international phone calls of reasonable length.
8. Defendants shall provide class members with continuous and on-demand access to potable drinking water.
9. Defendants shall provide class members with adequate and continuous access to medical care sufficient to prevent and treat illness, and to treat emergent medical conditions.
10. Defendants shall provide access to adequate bedding, including but not limited to a mattress, pillows, and blankets.
11. Defendants shall maintain temperatures in the housing areas of CBP facilities within a range of 70 and 74 degrees, and adequate ventilation;
12. Defendants shall provide class members with toilets, sinks, and showers that are clean and with the maximum amount of privacy possible;
13. Defendants shall ensure that waste and biohazards are disposed off in a timely and appropriate manner;
14. Defendants shall provide darkened areas for class members to sleep, to the extent possible, between 9 PM and 7 AM.
15. Defendants shall ensure that class members at all times have access to their accompanying family members, including their accompanying parent;
16. Defendants shall ensure that room and building occupancy limitations are never exceeded;
17. Defendants shall provide class members with access to legal rights group presentations to the extent possible, and to "know your rights" materials;
18. Defendants shall provide class members and their accompanying parents with information regarding Flores, SIJS relief, asylum, and withholding of removal as set forth in Exhibit ____ (Flores Advisals);

Conditions of Confinement at ICE Family Facilities:

1. Defendant ICE shall make available a procedure for each apprehended class member to be considered for release for humanitarian reasons, including reasons based on medical and

- mental health, in accordance with written guidelines issued by DHS.
2. Defendant ICE shall take steps pursuant to DHS regulations, 6 CFR Part 115, to ensure prevention of sexual abuse and appropriate responses to allegations of sexual abuse at the facility.
 3. Defendant ICE shall allow class members and their accompanying parents to use social media and email tools for communication.
 4. Defendants shall not use medical or other isolation rooms for purposes of discipline or behavior management with regard to class members or their accompanying parents.
 5. Defendants shall not use medical isolation rooms for time periods longer than necessary to transport detainees to off-site medical or mental health treatment, and in any case no longer than three hours.
 6. Defendants shall ensure that class members are not separated from their accompanying family members, including their accompanying parent, at nighttime;
 7. Defendants shall provide class members with access to toys, books, and indoor and outdoor recreational equipment.
 8. Defendants shall provide class members and their accompanying parents with continuous access to free or low-cost telephone services, with the capability to make domestic and international telephone calls.
 9. Defendants shall provide class members and their accompanying parents access to toilets, sinks, and showers within their housing areas at all times of day and night;
 10. Defendants shall provide class members and their accompanying parents with access to legal counsel, paralegals, law students and authorized representatives ("counsel") (including medical experts, translators and law students) at Family Facilities, including but not limited to: a) allowing counsel in legal visitation to bring cell phones, laptops, wifi hotposts or other means of internet access, tablets and other electronic equipment as needed; b) not imposing delays in counsel accessing facilities for legal visits and permitting them to depart briefly (for meals, etc.) and reenter without delay, c) providing sufficient working space for counsel to meet with class members and accompanying parents; d) providing access to photocopiers and scanners for counsel; e) allowing detainees to make free telephone calls to their counsel at all times; f) publishing written rules regarding counsel visitation; g) access to child care for class members while their accompanying parents are consulting with counsel; h) pre-screening of counsel shall not delay their access to facilities to interview class members and accompanying parents. Class members and accompanying parents shall, upon request, be provided without delay copies of any identity documents and medical records held by defendants or a contractor, and have no restrictions on sharing these documents with counsel and paralegals.

Additional Conditions for Detention exceeding 14 days at Family Facilities:

1. Defendants shall provide computer classes and literacy classes for class members' accompanying parents.
2. Defendants shall provide licensed child care facilities within the detention center, available at least 12 hours each day, and able to care for 20% of the class members at any given time;
3. Defendants shall provide opportunities for class members and their accompanying parents to leave the facility for supervised off-site excursions on a routine basis not less than weekly;
4. Defendants shall involve accompanying parents in the preparation of meals for the detainees.

5. Defendants shall provide educational programming for children ages two to eighteen.

Defendants shall ensure adequate access to timely and effective medical care and mental health care for class members and their accompanying parents.

If a class member is admitted to any hospital or medical clinic due to physical or mental illness, Defendants shall not return the class member to a family detention center or any environment in which the class member's health will be adversely affected.

///