BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division
WILLIAM C. PEACHEY
Director, District Court Section
Office of Immigration Litigation
WILLIAM C. SILVIS
Assistant Director
FIZZA BATOOL
JOSHUA C. MCCROSKEY
Trial Attorneys
District Court Section
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: (202) 616-4863
Fax: (202) 305-7000
Email: fizza.batool2@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

MERRICK B. GARLAND, Attorney General of the United States, *et al.*,

Defendants.

Case No. 2:85-cv-04544-DMG

DEFENDANTS' MOTION TO TERMINATE THE FLORES SETTLEMENT AGREEMENT AS TO THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Hearing Date: June 7, 2024
Time: 9:30 a.m.
Hon. Dolly M. Gee
[Proposed] Order Filed Concurrently

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN that the U.S. Department of Justice and the U.S. Department of Health and Human Services ("HHS"), by and through undersigned counsel, will bring this motion for hearing on June 7, 2024, at 9:30 a.m. or as soon thereafter as counsel may be heard, before United States Chief District Judge Dolly M. Gee, in Courtroom 8C, 8th Floor, at the Los Angeles – 1st Street courthouse located within the Central District of California.

COMPLIANCE WITH LOCAL RULE 7-3

This motion is made following a telephonic meeting of counsel pursuant to L.R. 7-3, and paragraph 37 of the *Flores* Settlement Agreement ("FSA"), which took place on May 2, 2024.

MOTION TO TERMINATE SETTLEMENT AGREEMENT AS TO HHS

HHS hereby moves to terminate the FSA as to HHS under paragraph 40 of the FSA and Federal Rule of Civil Procedure 60(b)(5). In light of the publication of regulations implementing the FSA and the significant unforeseen changes in circumstances since the FSA was signed, the continuation of the FSA as to HHS is no longer equitable. In the alternative, if the Court does not entirely terminate the FSA as to HHS, HHS moves to partially terminate the FSA with respect to any provisions implemented by consistent regulations.

This motion is based upon the above Notice, the accompanying Memorandum of Points and Authorities, all pleadings and papers on file in this action, and such other matters as may be presented to the Court at the time of the hearing.

Dated: May 10, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

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

/s/ Fizza Batool
FIZZA BATOOL
JOSHUA C. MCCROSKEY
Trial Attorneys
U.S. Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: (202) 616-4863
Email: fizza.batool2@usdoj.gov

Attorneys for Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO TERMINATE THE *FLORES* SETTLEMENT AGREEMENT AS TO THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. INTRODUCTION

For 27 years, the *Flores* Settlement Agreement ("FSA" or "Agreement") has governed substantial aspects of the care and custody of unaccompanied children in federal custody—through Congress's transfer of the functions of the Immigration and Naturalization Service ("INS") to the U.S. Department of Health and Human Services ("HHS") and the U.S. Department of Homeland Security ("DHS"), the passage of two major statutes governing the care and custody of unaccompanied children, and a significant increase in the number of unaccompanied children referred to the care of the Office of Refugee Resettlement ("ORR"). By its own terms the FSA was meant to be temporary. The parties initially agreed that the FSA would terminate no later than five years after final court approval and then later agreed that the FSA would terminate 45 days after the INS published final regulations implementing the FSA. FSA ¶ 40 (as modified by Stipulation, Dec. 7, 2001).

On April 30, 2024, HHS's Administration for Children and Families published the Unaccompanied Children Program Foundational Rule ("Foundational Rule"), 89 Fed. Reg. 34,384 (Apr. 30, 2024) (to be codified at 45 C.F.R. pt. 410), which governs ORR's Unaccompanied Children Program ("UC Program"). The Rule faithfully implements the FSA requirements applicable to HHS; in a number of respects exceeds FSA requirements; and in some instances, necessarily takes a modified approach in light of substantially changed circumstances since 1997. The Rule is expansive and responsive to the changing needs of ORR's UC Program. ORR anticipates it will guide its operations and provide needed protections to unaccompanied children for years to come.

The Rule not only implements the FSA requirements but also provides many important additional protections for unaccompanied children, including, *inter alia*, provisions that codify the requirements of the preliminary injunction in *Lucas R. v. Becerra*, No. 18-cv-05741 (C.D. Cal.), expand post-release services and access to legal services, require care provider facilities to use evidenced-based, trauma-informed, and culturally sensitive behavior management strategies, and create an independent Ombuds Office to receive and respond to complaints.

The Rule also responds to unforeseen changed circumstances since 1997. Most notably, since 2021, two states—Texas and Florida—have refused to license child-care programs that serve unaccompanied children in federal custody, and South Carolina has announced its intention to do so. The FSA requires unaccompanied children to be placed in state licensed programs with some exceptions, but the actions of these states have made that requirement impossible to meet in those states. Accordingly, ORR has developed a response that aims to ensure the safety and well-being of unaccompanied children without causing extraordinary disruption to ORR's UC Program. As provided in the Foundational Rule, ORR will continue to require all programs to be state-licensed or, if state licensing is not available because the state refuses to license programs serving unaccompanied children, to adhere to the state's licensing requirements. Further, the Rule provides for enhanced monitoring of standard programs in states that do not allow state licensing of programs providing care and services to unaccompanied children. Moreover, ORR requires all programs to be accredited by an independent nationally recognized accrediting organization or be in the process of seeking such accreditation. The safeguards that ORR has put in place in response to several states' de-licensing efforts reflect ORR's best judgment about how to protect the safety and well-being of children, based on twenty years of experience administering the UC Program.

"If a durable remedy has been implemented, continued enforcement of [a consent decree] is not only unnecessary, but improper." *Horne v. Flores*, 557 U.S. 433, 450 (2009). The Foundational Rule is a durable remedy that significantly enhances the protections for unaccompanied children in many areas and provides a "suitably tailored response" to the substantially changed circumstances since 1997. *See Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383 (1992). Even after termination of the FSA as to HHS, the requirements incorporated in the Foundational Rule will remain judicially enforceable. *See Marshall v. Lansing*, 839 F.2d 933, 943 (3rd Cir. 1988) (stating that agency regulations "have the force of law"); *see also Webster v. Doe*, 486 U.S. 592, 602 n.7 (1988) ("the Agency's failure to follow its *own regulations* can be challenged under the APA" (emphasis in original)). The FSA's goals have been achieved. The Court should terminate the FSA as to HHS.

II. BACKGROUND[1]

A. The Statutory Framework Has Changed Since 1985.

This case was instituted on July 11, 1985. Compl., ECF No. 1. At the time, the legacy INS had responsibility for the care and custody of unaccompanied children. *See D.B. v. Cardall*, 826 F.3d 721, 731-32 (4th Cir. 2016). In 1985, unaccompanied children in INS custody filed a class action challenging the policies regarding their detention. *Id.*; *see also Reno v. Flores*, 507 U.S. 292 (1993). In 1997, after 12 years of litigation, the parties settled the claims and entered the FSA. The FSA "established a 'nationwide policy for the detention, release, and treatment of minors in the custody of the INS'" including "a general policy favoring less restrictive placements" of unaccompanied children and "release" of unaccompanied children "rather than detention." *D.B.*, 826 F.3d at 732; *see also* FSA ¶ 9.

[1] Given the history of the *Flores* litigation and this Court's familiarity with this case, Defendants provide a summary tailored to the issues presented by this motion.

In 2002, Congress enacted the Homeland Security Act ("HSA"), which abolished the INS and transferred the majority of its functions to DHS; however, the HSA "carved out" "[a]ll functions with respect to the care and custody of [unaccompanied children]," which were instead transferred to HHS. *D.B.*, 826 F.3d at 732 (quoting 6 U.S.C. § 279(a)). HHS was given responsibility for the care and custody of unaccompanied children and making all placement decisions for unaccompanied children and was prohibited from releasing unaccompanied children on their own recognizance. *See* 6 U.S.C. § 279(a), (b).

In 2008, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA"), which further addressed issues relating to unaccompanied children and provided additional protections to unaccompanied children in federal custody. 8 U.S.C. § 1232. As the Ninth Circuit explained, the "TVPRA partially codified the [FSA] by creating statutory standards for the treatment of unaccompanied minors." *Flores v. Lynch ("Flores I")*, 828 F.3d 898, 904 (9th Cir. 2016). The TVPRA affirmed that "the care and custody of all unaccompanied children, including responsibility for their detention, where appropriate, shall be the responsibility of" HHS. 8 U.S.C. § 1232(b)(1).

Through these statutory changes, the FSA has remained in effect and continues to govern various aspects of ORR's UC Program along with initial apprehension and transfer of unaccompanied children to HHS by DHS and other federal agencies.

B. Prior Regulatory Efforts Have Not Taken Effect.

By its own terms, the FSA was intended to be temporary. Paragraph 40 of the FSA addresses termination of the Agreement. As originally agreed in 1997, it specified that "[a]ll terms of this Agreement shall terminate the earlier of five years after the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with this Agreement." FSA ¶ 40. On December 7, 2001, when the original termination date was nearing, the

parties amended paragraph 40 to provide that the Agreement "shall terminate 45 days following defendants' publication of final regulations implementing this Agreement." FSA ¶ 40 (as amended). The Agreement also specified that notwithstanding termination, "INS shall continue to house the general population of minors in INS custody in facilities that are licensed for the care of dependent minors." *Id.*

Several regulatory efforts have taken place since 1997. *See, e.g.*, 63 Fed. Reg. 39,759 (1998); 67 Fed. Reg. 1670 (2002). On August 23, 2019, HHS published a joint rule with DHS intended to implement the FSA and thus enable the Court to terminate the Agreement. *See* Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44,392–535 (Aug. 23, 2019) ("2019 Rule"). The 2019 Rule comprised two sets of regulations: one issued by DHS and the other by HHS. The HHS regulations addressed the care and custody of unaccompanied children, and the DHS regulations addressed other provisions of the FSA that pertained to DHS. *Id*. at 44,526.

After DHS and HHS issued their proposed regulations and before the 2019 Rule was published, Plaintiffs moved to enforce the FSA and enjoin the 2019 Rule. ECF Nos. 516, 634. Following extensive litigation, the Ninth Circuit found HHS's 2019 Rule to be "largely consistent" with the FSA. *Flores v. Rosen ("Flores II")*, 984 F.3d 720, 736 (9th Cir. 2020). The Ninth Circuit held all the HHS regulations could take effect except for two regulations: one related to placement of an unaccompanied child in a secure facility if the child is "otherwise a danger to self or others" and one that required a child in a secure or staff-secure facility to request a bond hearing rather than "opt out" of one. *Id.* at 732, 735-36. Although the Ninth Circuit held the majority of the HHS regulations could take effect, it also found that the district court did not abuse its discretion in declining to terminate the portions of the FSA covered by those regulations, noting that the Government moved to "terminate the Agreement in full, not to modify or terminate it in part." *Id.* at 737.

Consistent with its findings, the Ninth Circuit held the FSA "therefore remains in effect," and the Government could move to terminate those portions of the FSA covered by the valid portions of the HHS regulations.[2] *Id.*

Separately, a group of states sought to enjoin the Government from implementing the 2019 Rule based on other grounds including the Administrative Procedure Act ("APA"). *California v. Mayorkas*, No. 2:19-cv-07390 (C.D. Cal. filed Aug. 26, 2019). After the Ninth Circuit's decision in *Flores II*, Plaintiff-States in *California v. Mayorkas* filed supplemental briefing requesting a narrowed preliminary injunction, alleging several of the HHS portions of the 2019 Rule violated the APA. Subsequently, the parties entered settlement discussions. On December 10, 2021, the Government informed the Court that HHS did not plan to seek termination of the FSA or to ask the Court to lift its injunction as to the HHS regulations. *See id.*, Status Report, ECF No. 150 (C.D. Cal. Dec. 10, 2021). Instead, HHS would consider a future rulemaking that would more broadly address issues related to the custody and care of unaccompanied children by HHS and would replace the 2019 Rule. *Id.* Based on this agreement, the Court placed the *California v. Mayorkas* litigation in abeyance while HHS engaged in new rulemaking to replace and supersede the HHS regulations in the 2019 Rule. *See id.*, Stipulation re Request to Hold Plaintiffs' Claims as to HHS Under Abeyance, ECF No. 159 (C.D. Cal. Apr. 12, 2022); *see also* Order Approving Stipulation, ECF No. 160. Consequently, the 2019 Rule was not implemented.

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[2] With respect to the DHS portions of the 2019 Final Rule, the Ninth Circuit held some of the DHS regulations regarding initial apprehension and detention were consistent with the FSA and could take effect, but the remaining DHS regulations were inconsistent with the FSA and the district court properly enjoined them. *See id.* at 744.

C. The Factual and Legal Landscape Has Evolved Over the Last 27 Years.

Since the FSA was signed in 1997, and particularly in the last decade, the number of unaccompanied children arriving in the United States has greatly increased. In 1993, the Supreme Court recognized that a one-year surge of "more than 8,500 . . . [minors] – as many as 70% of them unaccompanied" – represented a "problem" that is "serious." *Flores*, 507 U.S. at 295. The INS reported that the number of unaccompanied minors arriving in the United States had been 2,375 in fiscal year ("FY") 1997. Dep't of Justice, Immigr. & Naturalization Serv., *Fact Sheet– INS' Office of Juvenile Affairs*, (Aug. 1, 2002), https://webharvest.gov/peth04/20041108084954/http://uscis.gov/graphics/publicaffairs/factsheets/OJA.pdf. In FY 2014, the number of referrals grew to 57,496 and in FY 2019 there were 69,488 referrals to ORR. *See* ORR Fact Sheet, *Referrals*, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data (last visited May 10, 2024). After a sharp dip in 2020, largely due to the pandemic and the policy under Title 42 that resulted in the expulsion of migrants at the border, including unaccompanied children, the number of referred unaccompanied children to ORR in FY 2021 climbed to 122,731. *See id*. Since 2021, referrals have remained high at 128,904 referrals in FY 2022 and 118,938 referrals in FY 2023. *See id*.

While the increased number of referrals in the last three years has made it essential to expand licensed placements to reduce reliance on emergency and influx facilities, the actions of three states have created significant new challenges for ORR's efforts to place unaccompanied children in state-licensed programs. *See* Defs.' Ex. A, Declaration of Toby Biswas ("Biswas Decl.") ¶ 11. On April 12, 2021, the Governor of South Carolina issued an Executive Order that "prevent[s] placements of unaccompanied migrant children . . . into residential group care facilities or foster care facilities located in, and licensed by, the State of South Carolina." E.O. No. 2021-19 (Apr. 12, 2021). The purpose of the Executive Order was to address the "large cohort of [unaccompanied] children suddenly occupying

foster care placements otherwise available to children who enter the care of the State" and to address the "emergency related to the 2019 Novel Coronavirus ('COVID-19')." *Id.* at 1. South Carolina's action has had little impact on the UC Program because only a small number of children were placed in South Carolina programs before the Governor's action. Biswas Decl. ¶ 12. Today, ORR funds only three transitional foster care programs in South Carolina that are licensed by the State. *Id*.

Then, on May 31, 2021, the Governor of Texas issued a proclamation directing the Texas Health and Human Service Commission ("HHSC") to amend its regulations to "discontinue state licensing of any child-care facility in this state that shelters or detains [unaccompanied children] under a contract with the Federal government." *See* Proclamation by the Governor of the State of Texas (May 31, 2021), https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf. The stated reason for the proclamation was to respond to the "ongoing surge of individuals unlawfully crossing the Texas-Mexico border[.]" *Id.* Subsequently, Texas HHSC "exempted" ORR care provider facilities from the State's licensing requirements. *See* 26 Tex. Admin. Code 745.115. Texas' action had a much larger effect on the UC Program because, historically, a majority of ORR's operational standard bed capacity has been located in Texas. Biswas Decl. ¶ 12. As of April 22, 2024, ORR's data collection system showed that its operational standard bed capacity was 13,093 beds, of which 7,317 beds were in Texas. *See* Defs.' Ex. C, Declaration of Joel Nelson ("Nelson Decl.") ¶ 4. The State's action has made it impossible for Texas providers, many of whom have operated shelters for unaccompanied children for ten or more years and have developed extensive experience in this area, to maintain state licensing. Biswas Decl. ¶ 14.

Four months later, the Governor of Florida issued an Executive Order that directed the Florida Department of Children and Families ("DCF") to de-license ORR care provider facilities. Fla. Executive Order No. 21–223 (Sept. 28, 2021),

www.flgov.com/wp-content/uploads/orders/2021/EO_21-223.pdf. The Executive Order sought to address the "mass illegal entry" of immigrants along the "Southwest Border." *Id.* Accordingly, Florida DCF then de-licensed ORR's care provider facilities. As of this filing, Texas and Florida continue to refuse to license ORR-funded child-care facilities solely because they serve unaccompanied children. While Florida has not had as large a presence in the UC Program as Texas, the combination of delicensed facilities in Texas and Florida has been substantial. As of April 22, 2024, ORR's data collection system showed that its operational standard bed capacity in Florida was 480 beds. Nelson Decl. ¶ 4. Therefore, about 60% of ORR's operational standard bed capacity is in Texas and Florida.

Licensure has been important to the UC Program because an active license demonstrates compliance with generally accepted minimum standards of residential child-care facilities to ensure the health, safety, and well-being of children served by the residential care provider. Biswas Decl. ¶ 10. For most of the years in which the UC Program has operated since the program came to ORR in 2003, there had been no tension between the FSA requirements to place children in licensed programs and the FSA requirement to place children in "those geographic areas where the majority of minors are apprehended, such as California, southeast Texas, southern Florida and the northeast corridor." FSA ¶ 6. In fact, ORR has built a large share of its care provider facility network in Texas and Florida, consistent with the FSA requirement that unaccompanied children be placed in areas where the majority of children are apprehended. *See* Nelson Decl. ¶ 4.

The fact that state licensure ceased to be available in Texas and Florida, which accounts for a majority of ORR's standard beds, necessitated a response that would ensure good quality conditions in ORR-funded programs and continuity of the UC Program, as reflected in the Foundational Rule.

D. The Foundational Rule Adds Many Additional Protections and Safeguards for Unaccompanied Children.

On October 4, 2023, HHS issued a Notice of Proposed Rulemaking. *See* Unaccompanied Children Program Foundational Rule, 88 Fed. Reg. 68,908 (Oct. 4, 2023). HHS received and considered over 73,000 comments to the proposed rule, including comments from Plaintiffs' counsel. *See ORR Foundational Rule*, Regulations.gov, www.regulations.gov/docket/ACF-2023-0009. HHS published the Final Rule on April 30, 2024, and it will become effective on July 1, 2024. *See* Foundational Rule, 89 Fed. Reg. 34,384. The purpose of the new and more comprehensive rule is to "codify a uniform set of standards and procedures that will help to ensure the safety and well-being of unaccompanied children in ORR care, implement the substantive terms of the FSA, and enhance public transparency as to the policies governing the operation of the [UC Program]." 89 Fed. Reg. at 34,384 (Executive Summary).

A comparison of the FSA with the Foundational Rule reveals that HHS carefully tracked the requirements of the FSA applicable to HHS. *See* Appendix A, ("App. A") Comparison of FSA to Foundational Rule. As an initial matter, the Foundational Rule issues mandatory regulations and adopts the FSA's commitment to treat all children in HHS custody with "dignity, respect, and special concern for their particular vulnerability as minors." 45 C.F.R. § 410.1003(a); *see* FSA ¶ 11. Among other things, the Rule incorporates all the FSA Exhibit 1 minimum standards to standard programs and secure facilities, *see* §§ 410.1302, 1303, 1304, 1307, and applies many of those standards to emergency and influx facilities even though this is not required by the FSA, *see* 45 C.F.R., pt. 410, Subpart I. The Rule further requires ORR to place "each unaccompanied child in the least restrictive setting that is in the best interests of the child," *see* § 410.1003(f), FSA ¶ 11; further, it requires that ORR have "clear and convincing evidence documented in the child's case file" of its reasoning for placement in a secure facility, *see* § 410.1105(a)(1), FSA ¶ 21,

and limits when a child can be placed in a secure placement, *see* § 410.1105(a)(2), FSA ¶ 23. The Rule also adopts the FSA's "order of preference" for release to a sponsor, *see* § 410.1201(a), FSA ¶ 14, and requires ORR to "make and record the prompt and continuous efforts on its part towards family unification and the release of the unaccompanied child," *see* § 410.1203(a), FSA ¶ 18. In the event of an emergency or influx, the Rule requires ORR to place each child as "expeditiously as possible" in a standard program, *see* §§ 410.1104(b), 410.1800(b), FSA ¶ 12.A., and requires ORR to develop a plan for addressing emergencies and influxes, *see* § 410.1800(a), (c)(1); FSA ¶ 12.C. The Foundational Rule also incorporates the FSA requirement "to make reasonable efforts to provide licensed placements in the geographical areas where DHS encounters the majority of unaccompanied children," *see* § 410.1103(e), FSA ¶ 6. And the Foundational Rule maintains the FSA's requirement that children placed in restrictive placements must receive a bond hearing (renamed "risk determination hearing") unless the child opts out, § 410.1903, FSA ¶ 24.A.

Several provisions in the Foundational Rule both implement and exceed FSA requirements. For example, the Foundational Rule codifies the sponsor assessment requirements in the FSA, but also incorporates the requirements of the TVPRA and ORR policies, including home studies in instances beyond those required by the TVPRA, *see, e.g.*, §§ 410.1202(b), (c); 410.1204. Similarly, beyond the requirements at FSA paragraph 13, Subpart H of the Foundational Rule requires the use of multiple forms of evidence when performing age determination procedures, consistent with the TVPRA, and establishes a minimum threshold for medical age assessments. Subpart H also establishes that ambiguous or debatable medical age assessments are resolved in favor of finding the individual is a child. In addition, the Foundational Rule implements FSA paragraph 18's requirement to record prompt and continuous efforts toward family reunification, *see* § 410.1203(a), but in addition requires care providers to continuously assess whether unaccompanied

children in their care are appropriately placed. *See* § 410.1601(a) (codified based on the requirement in the TVPRA that unaccompanied children be placed in the least restrictive setting that is in their best interests, subject to various considerations, 8 U.S.C. § 1232(c)(2)(A)).

In a number of instances, HHS incorporated new safeguards and protections for unaccompanied children that go beyond FSA requirements. For example, the Foundational Rule codifies the requirements of the preliminary injunction and agreed-upon settlement of Plaintiffs' Fourth Claim for Relief (legal representation) in *Lucas R. v. Becerra*, No. 2:18-cv-5741 (C.D. Cal. filed Jun. 29, 2018). These additional requirements provide significant protections to unaccompanied children regarding step-ups to restrictive facilities (Subpart B); release to parents, legal guardians, and close relative sponsors (Subpart C); and the right of unaccompanied children to seek the assistance of a legal representative of their choice at no cost to the federal government with respect to decisions involving their placement, release, custody, and/or the administration of psychotropic medications (Subpart D). The Foundational Rule also, among other things: includes strong language access requirements, such as offering unaccompanied children, at all care provider facilities and to the greatest extent practicable, the option of interpretation and translation services in the child's native or preferred language and in a way the child understands, and making placement decisions informed by language access considerations (§ 410.1306); expands post-release services for unaccompanied children to assist in their transition to the community and access to critical services like education, legal services, and healthcare (§ 410.1210); requires secure facilities to implement the same minimum standards that are required at standard facilities (§ 410.1302); requires that care provider facilities use evidenced-based, trauma-informed, and culturally sensitive behavior management strategies (§ 410.1304); expands the role of and clarifies the responsibilities of child advocates (§ 410.1308); expands access to *pro bono* legal services and funding of legal services in

immigration-related proceedings or matters, as well as for broader purposes that relate to protecting unaccompanied children from mistreatment, exploitation, and trafficking (§ 410.1309); and provides minimum standards for emergency and influx facilities to ensure that all unaccompanied children receive appropriate support and treatment while in ORR's custody even during emergencies and influxes (Subpart I).

The Rule further establishes a newly created Ombuds Office within HHS (Subpart K). The Ombuds Office will provide a mechanism for unaccompanied children and stakeholders to raise concerns about ORR policies and practices to an independent body. The ombudsperson will be an independent, impartial, and confidential public official with authority and responsibility to receive, investigate, and formally address complaints about government actions; make findings and recommendations; and publish reports as appropriate. Specifically, the ombudsperson may review individual cases, conduct site visits, issue public reports, and follow-up on grievances. They will also be able to refer concerns to the HHS Office of the Inspector General and other federal agencies such as the U.S. Department of Justice. The Ombuds Office will provide an important independent mechanism to identify and report concerns about the care of unaccompanied children and to investigate those concerns.

E. The Foundational Rule Accounts for Unforeseen Changed Circumstances Since 1997.

Given the increased number of referrals since 1997 and Florida, South Carolina, and Texas's recent refusal to license facilities that serve unaccompanied children, the Rule also reflects several modifications from the FSA that are intended to address the substantially changed circumstances.

The Rule makes important changes reflecting the reality that referrals are now much higher than in 1997 and that, not infrequently, there are sudden and large increases in referral numbers. The FSA defined an "influx" as "more than 130

minors eligible for placement in a licensed program." FSA ¶ 12.B. For well over a decade, ORR has been in an "influx," rendering the 130 number in the FSA inadequate. To account for the significantly increased referrals since 1997, the Foundational Rule adopts a more meaningful definition of "influx" in light of ORR's experience that has shown that expanding bed capacity rapidly becomes crucial when 85 percent (or more) of its standard program beds are already occupied. Preamble, 89 Fed. Reg. 34,552. Accordingly, the Rule defines influx as "for purposes of HHS operations, a situation in which the net bed capacity of ORR's standard programs that is occupied or held for placement by unaccompanied children meets or exceeds 85 percent for a period of seven consecutive days." 45 C.F.R. § 410.1001. And, because emergency and influx facilities are sometimes needed, the Rule establishes strong minimum standards for the operation of these facilities that are largely consistent with the FSA Exhibit 1 minimum standards. *See* Subpart I. These standards will provide enhanced protections to children who arrive during a period of influx.

Subject to some defined exceptions, the FSA requires children to be placed in a "licensed program," meaning a program that is licensed by "an appropriate State agency to provide residential, group, or foster care services for dependent children[.]" FSA ¶¶ 6, 19. The Foundational Rule provides for two types of "standard programs." One type is "licensed by an appropriate State agency to provide residential, group, or transitional or long-term home care services for dependent children, including a program operating family or group homes, or facilities for unaccompanied children with specific individualized needs . . . ." 45 C.F.R. § 1001. This language tracks the definition of "licensed program" in FSA paragraph 6.[3] In light of the actions by Texas, Florida, and South Carolina and the possibility that

[3] FSA ¶ 6 refers to "special needs minors," but the Foundational Rule uses the more modern phrase "unaccompanied children with specific individualized needs."

other states could de-license ORR programs in the future, the definition of "standard program" also includes a program which "meets the requirements of State licensing that would otherwise be applicable if [the program] is in a State that does not allow State licensing of programs providing care and services to unaccompanied children." *Id.*; *see also* App. A (comparison of FSA ¶ 6 to § 410.1001).

In sum, the factual and legal landscape has evolved over the last 27 years. The Foundational Rule adds many additional protections and safeguards for unaccompanied children, and it accounts for unforeseen changed circumstances since 1997.

III. ARGUMENT

The Foundational Rule faithfully implements the FSA requirements applicable to HHS; in a number of respects exceeds FSA requirements; and in some instances, necessarily takes a modified approach in light of substantially changed circumstances. The Rule is consistent with the FSA's goal of "set[ting] out nationwide policy for detention, release, and treatment of minors in the custody of [HHS]" and to "treat, all minors in [HHS] custody with dignity, respect and special concern for their particular vulnerability as minors." FSA ¶¶ 9, 11. The Rule provides numerous protections to unaccompanied children and provides a suitably tailored response to changed conditions that were never contemplated by the parties in 1997. Twenty-seven years later, there is ample reason to believe that the FSA's goals have been achieved. The Court should terminate the FSA as to HHS.

A. Courts Must Be Flexible in Releasing Governmental Operations from Long-Term Institutional Consent Decrees.

The Foundational Rule either meets or exceeds the requirements of the FSA or provides a suitably tailored response to unforeseen changed circumstances since 1997. In considering the appropriateness of terminating the FSA, the relevant standards to apply are those specified under Federal Rule of Civil Procedure 60(b)(5). This rule provides that a court may relieve a party from "a final judgment,

order, or proceeding [if] the judgment has been satisfied . . . or applying it prospectively is no longer equitable." In applying Rule 60(b)(5), district courts are to apply a "flexible standard." *Rufo*, 502 U.S. at 380.

Long-running institutional reform litigation, like this case, implicates the "equitable" clause in Rule 60(b)(5) due to "the passage of time [and] . . . changed circumstances." *Horne*, 557 U.S. at 448. "The party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once a party carries this burden, a court abuses its discretion 'when it refuses to modify an injunction or consent decree in light of such changes.'" *Id.* at 447; *accord Flores v. Rosen*, 984 F.3d 720, 741 (9th Cir. 2020). The party seeking modification must show "either a significant change in factual conditions or in law" such as (1) "changed factual conditions make compliance with the decree substantially more onerous;" (2) "a decree proves to be unworkable because of unforeseen obstacles;" or (3) "enforcement of the decree without modification would be detrimental to the public interest." *Rufo*, 502 U.S. at 384; *see also In re Pearson,* 990 F.2d 653, 658 (1st Cir. 1993) (court "not doomed to some Sisyphean fate, bound forever to enforce and interpret a preexisting decree without occasionally pausing to question whether changing circumstances have rendered the decree unnecessary, outmoded, or even harmful to the public interest"). Any resulting modification must be "suitably tailored" to resolve the problems created by the changed factual or legal conditions. *Rufo*, 502 U.S. at 383; *see also Hook v. State of Ariz.*, 120 F.3d 921, 924 (9th Cir. 1997).

In *Horne*, in the context of institutional litigation that involved enforcement of a nine-year-old order, the Supreme Court criticized the lower courts for failing to consider "whether, as a result of important changes during the intervening years, the State was fulfilling its obligations under the [law] by other means." 557 U.S. at 439. The Court went on to observe that a "flexible approach" to modifying consent decrees allows courts to "ensure that responsibility for discharging the State's

obligations is returned promptly to the State and its officials when the circumstances warrant." *Id*. at 450 (internal quotations and citations omitted). Indeed, "[i]f a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper," *id*. at 450, and the "longer an injunction or consent decree stays in place, the greater the risk that it will improperly interfere with a State's democratic process," *id*. at 453; *see also United States v. Washington*, 573 F.3d 701, 710 (9th Cir. 2009) ("The [Supreme] Court has repeatedly reminded us that institutional reform injunctions were meant to be temporary solutions, not permanent interventions, and could be kept in place only so long as the violation continued.").

The Supreme Court has stressed that "the public interest and considerations based on the allocation of powers within our federal system require that the district court defer to [government officials] who have the primary responsibility for elucidating, assessing, and solving the problems of institutional reform, to resolve the intricacies of implementing a decree modification." *Rufo*, 502 U.S. at 392. These concerns are paramount in cases involving immigration, where judicial management represents "a substantial intrusion" into the workings of the political branches entrusted to manage policies towards migrants. *Arlington Heights v. Metro. Hous. Dev. Corp*., 429 U.S. 252, 268, n.18 (1977). One of the underpinnings for this long-recognized proposition is that immigration policy involves "changing political and economic circumstances" that are appropriate for the Legislature or Executive to determine, not the Judiciary. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976); *Flores*, 507 U.S. at 305–06; *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101, n.21 (1976) (recognizing "power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has explained, "[f]or reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our [noncitizen] visitors has been committed to the political

branches of the Federal Government." *Flores*, 507 U.S. at 305 (quoting *Mathews*, 426 U.S. at 81).

1. Significant Changed Factual Conditions Warrant Modification of the FSA Licensed Placement Requirement.

The UC Program today is different in important ways from the one operated by the INS when the parties entered the FSA. While the Foundational Rule carefully tracks the requirements of the FSA applicable to HHS, *see* App. A, it also codifies a basic structure for the UC Program to provide transparency and accountability and reflects changes to the Program that have taken place over the last 27 years. The provisions of the Foundational Rule that implement the FSA requirements as to HHS either are identical to the 2019 Rule or, if not identical, have been crafted to improve safeguards and protections for unaccompanied children, including addressing the two areas of concern for the Ninth Circuit, or to address specifically a changed circumstance since 1997.

The unavailability of state licensing in Texas, Florida, and South Carolina is a "significant change in factual conditions" that the parties to the FSA did not anticipate. *See Rufo*, 502 U.S. at 384. In fact, the FSA requires "licensed placements in those geographical areas where the majority of minors are apprehended, such as . . . southeast Texas [and] southern Florida[.]" FSA ¶ 6. Consequently, ORR largely developed its care provider network in those states and has relied on those states for decades. While the great majority of Foundational Rule requirements meet or exceed FSA requirements, the approach taken to standard programs reflects the reality that the FSA requirements for placing children in state licensed programs have become "unworkable," "substantially more onerous," and "detrimental to the public interest" in light of the actions taken by a set of states. *Rufo*, 502 U.S. at 384.

As stated above, a majority of ORR's operational bed capacity is in Texas and Florida. Nelson Decl. ¶ 4. ORR cannot afford to lose the bed capacity it has developed in those states over several decades, particularly in light of recent historic

referrals numbers: ORR received 128,904 referrals in FY 2022 and 118,938 referrals in FY 2023. ORR Fact Sheet, *Referrals*, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data (last visited May 10, 2024). It is not possible for ORR to stop placing children in facilities in Texas and Florida without resulting in a catastrophic loss of already limited bedspace, which likely would result in children being placed for extended periods of time in emergency and influx facilities or being held in U.S. Customs and Border Protection custody for periods of time far in excess of the 72-hour period in which custody should be transferred to ORR absent exceptional circumstances under the TVPRA, 8 U.S.C. § 1232(b)(3). Biswas Decl. ¶ 13.

Besides requiring extensive reliance on emergency and influx facilities, shuttering standard facilities in Texas and Florida would have many other significant downsides that are not in the best interests of unaccompanied children or the public interest. To start, significant expertise has been developed over decades in many care provider programs in Texas and Florida. In fact, many programs in Texas and Florida have been operating ORR-funded facilities for a decade or more. *Id.* ¶ 15. New facilities likely would not have staff that have worked with this population of children, and new facilities may not have the same cultural competency that longstanding facilities in Texas and Florida offer. *Id.*

Additionally, most unaccompanied children are apprehended at the Southwest border, usually along the Texas-Mexico border. *Id.* ¶ 16. Shuttering facilities in Texas, in particular, would likely lead to longer wait times for unaccompanied children during which time they would remain in DHS custody because of the logistical challenges in transporting children over much longer distances. *Id*. Today, many children are transported by bus from the border to ORR-funded facilities in Texas, in particular. When facilities are available in Texas, children can quickly and relatively easily leave DHS custody and be transported to those facilities. *Id*. When ORR must rely on facilities in other parts of the country, the process of arranging

and implementing transportation is lengthier, costlier, and more complex, and may extend the period of time that children must remain in DHS custody. *Id*.

Moreover, many unaccompanied children are released to sponsors in Texas and Florida—nearly one-quarter of all releases in 2023.[4] Ceasing to operate programs in those states would disrupt efforts to promptly place children with their parents and other appropriate sponsors. Further, moving them from the Texas-Mexico border to another state and then back to Texas is not only inefficient and costly but also disruptive for the child and would likely add to the time that children spend in federal custody, rather than with their sponsors.

Finally, if ORR was forced to close facilities in a state that refused to license ORR-funded facilities, this would effectively signal to other states that by refusing to license ORR facilities, they could force the federal government to cease operating the UC Program in their states. In addition to being contrary to the best interests of children, this would place increasing burdens and pressures on states willing to license ORR-funded facilities. If ORR had to exit from any state that opted against licensing ORR-funded facilities and multiple states took this approach, it could potentially threaten ORR's very ability to operate the UC Program.

Given the unexpected actions by Texas, Florida, and South Carolina to de-license ORR funded programs, it is now "substantially more onerous," "unworkable," and "detrimental to the public interest" to close ORR funded programs in those states for the reasons stated above. Therefore, modification of the licensed placement requirement of the FSA is warranted here.[5]

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[4] Calculations based on data available at ORR, *Unaccompanied Children Released to Sponsors by State*, https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state (last visited May 9, 2024).

[5] Neither the HSA nor TVPRA incorporate the licensed program requirement that is in the FSA. The TVPRA requires placement "in the least restrictive setting that is in the best interest of the child," but does not require placement in a state licensed program. *See* 8 U.S.C. § 1232(c)(2)(A).

2. ORR's Response to De-Licensing by States Reflects Its Professional Judgment and Is a Suitably Tailored Response.

Where the Foundational Rule departs from the FSA by permitting children's placements in "standard programs" in states that refuse to license ORR-funded programs solely because they serve unaccompanied children, the Rule provides a "suitably tailored response," *id.* at 391, to unforeseen changed circumstances. In other words, the approach to standard programs in the Foundational Rule "is tailored to resolve the problems created by the change in circumstances." *Jackson v. Los Lunas Comm. Prog.*, 880 F.3d 1176, 1194 (10th Cir. 2018). "The party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once a party carries this burden, a court abuses its discretion when it refuses to modify [the decree] in light of such changes." *Horne*, 557 U.S. at 447.

The FSA does not address situations where states discontinue or refuse to license ORR care providers. Because ORR continues to need Texas and Florida programs and does not want to encourage similar actions by other states, ORR has adopted policies and now regulations that best approximate what would be in place if these states were willing to license programs caring for unaccompanied children. In particular, the Foundational Rule achieves the objectives of the FSA licensed program requirement by ensuring that children are placed in child-care facilities that meet the licensing standards of their state in those states that refuse to license them and by providing for enhanced monitoring of these programs. *See* § 410.1303(e). Enhanced monitoring will include more frequent on-site visits and regular desk monitoring to ensure that programs are complying with the state's licensing requirements and ORR's policies and regulations. Biswas Decl. ¶ 20.

In addition, under the terms and conditions of their federal grants, standard programs agree to obtain accreditation by a nationally recognized accreditation organization. *See* Defs.' Ex. B, Declaration of Allison Blake ("Blake Decl.") ¶ 17. The purpose of accreditation is to ensure that programs meet predetermined,

evidence-informed standards for quality service provision and organizational governance by an independent entity. *Id.* ¶ 9. While state licensing standards are viewed by human services organizations as "minimum basic standards," accreditation is a seal of excellence that indicates an organization is committed to implementing and sustaining the best practices in their field. *Id.* ¶ 10. As an explicit requirement under standard programs' grants, ORR will monitor for compliance with this requirement pursuant to the Foundational Rule, *see* 45 C.F.R. § 410.1303; further, failure to maintain accreditation may subject standard programs to enforcement actions, including remedies for noncompliance as described at 45 C.F.R. § 75.371. Accreditation ensures that standard programs are meeting the highest level of care for unaccompanied children in ORR's custody. It also ensures that there is an organization, completely independent of ORR, that is providing monitoring and evaluation of ORR's standard programs. Blake Decl. ¶ 17.

The approach taken in the Foundational Rule is a suitably tailored response to the changed and unforeseen facts. The Ninth Circuit has found that "a modification of a court order is 'suitably tailored to the changed circumstance' when it 'would return both parties as nearly as possible to where they would have been absent' the changed circumstances." *Kelly v. Wengler*, 822 F.3d 1085, 1098 (9th Cir. 2016) (quoting *Pigford v. Veneman*, 292 F.3d 918, 927 (D.C. Cir. 2002)). The Foundational Rule reflects ORR's reasoned approach to placements in Texas and Florida (and to a much smaller extent South Carolina), by implementing all the elements of the FSA's licensed placement requirement that ORR could implement without the willingness of these states to license facilities serving unaccompanied children. Certainly, changed circumstances warrant relief here and "a district court should exercise flexibility in considering requests for modification [or vacatur] of an institutional reform consent decree." *Rufo*, 502 U.S. at 383. ORR's response to those changed circumstances in the Foundational Rule is reasonable, protects unaccompanied children, and reflects its experience operating the UC Program for

decades. "[P]rinciples of federalism require that federal courts give 'significant weight to the views of government officials,' and that '[government] officials with front-line responsibility for administering [a government program] be given latitude and substantial discretion.'" *Jackson*, 880 F.3d at 1192 (citing *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441-42 (2004)). Due to their role as public servants, government officials are generally assumed to possess a significant level of expertise in carrying out their responsibilities. *See e.g.*, *Frew*, 540 U.S. at 442 ("As public servants, the officials of the [government] must be presumed to have a high degree of competence in deciding how best to discharge their governmental responsibilities."). The same deference to HHS should be accorded here.

B. Standard Programs Are Different from DHS's Proposed Unlicensed Family Residential Centers.

HHS's standard programs do not raise the same concerns as the proposed U.S. Immigration and Customs Enforcement ("ICE") Family Residential Centers in DHS's portion of the 2019 Rule that were found to be inconsistent with the FSA. In the 2019 Rule, DHS proposed creating Family Residential Centers where families could remain in custody together in facilities that adhered to "family residential standards established by ICE." 84 Fed. Reg. at 44,526 (codified at 8 C.F.R. § 236.3(b)(9)). As ICE acknowledged, "most States do not offer a licensing program for family unit detention." *Id.* at 44,394, 44,419. Therefore, the import of the regulation was that it would "greatly expand[] DHS's ability to detain minors with their accompanying adults." *Flores II*, 984 F.3d at 739. The Ninth Circuit found that DHS's intent was "to 'detain' [families] together for 'enforcement' purposes" and therefore the regulations were "inconsistent with the [FSA]." *Id.* at 740 (internal citations omitted).

Here, unlike the DHS proposal in 2019, the modification to the licensed placement requirements in the FSA does not create a wholly new type of facility for the purpose of detaining families or otherwise with a different purpose than the FSA.

Rather, the Foundational Rule ensures that ORR has needed bed capacity while maintaining important protections for children by, among other things, requiring all programs to adhere to state licensing standards and ensuring enhanced monitoring of those facilities. Although the Ninth Circuit found DHS's 2019 regulations inconsistent with the FSA, it noted that the analysis might be different if the Government was simply licensing shelters and group homes for children: "We might conclude that the regulations regarding licensed facilities were consistent with the [FSA] if they simply allowed for the licensing of shelters or group homes, similar to those contemplated by the Agreement. . . ." *Flores II*, 984 F.3d at 740. Unlike DHS's proposal, ORR's standard programs will remain unchanged—they will continue to be shelters, group homes, and other residential child-care facilities where children are housed until they can be safely released to a sponsor.

C. Consistent with the Ninth Circuit's Approach, the Court Should Terminate the FSA as to HHS Even Though HHS Is Only One Successor of the Legacy INS.

When the parties entered the FSA in 1997, the legacy INS was responsible for overseeing the care and custody of unaccompanied children. In the HSA, Congress divided the INS's responsibilities and transferred some of them to HHS; the vast majority were assigned to DHS. Because HHS has implemented the FSA by enacting the comprehensive Foundational Rule, the Court should terminate the FSA as to HHS. Termination here is consistent with the flexible approach that Rule 60 requires and ensures that responsibility is returned to the political branches where appropriate. *See Horne*, 557 U.S. at 450. Further, when discussing the 2019 Rule, the Ninth Circuit stated that terminating the FSA as to HHS was entirely permissible, despite affirming the district court enjoining significant portions of the DHS Rule. *See Flores II*, 984 F.3d at 737 ("If the government wishes to move to terminate those portions of the Agreement covered by the valid portions of the HHS regulations, it

may do so."). Thus, the Court should grant the Government's motion since the Rule has implemented HHS's responsibilities under the FSA.

IV. CONCLUSION

The Court should terminate the FSA as to HHS. HHS enacted regulations that are consistent with or exceed the requirements of the FSA or reflect the agency's reasoned judgment on how to respond to unforeseen changed circumstances after decades of experience operating the UC Program. Most notably, the agency has developed a reasoned approach to providing placements in states that refuse to license programs funded by ORR, recognizing that prospective application of the FSA's licensed program requirements is onerous, unworkable, and not in the public interest. Termination of the FSA as to HHS is warranted.

In the alternative, if the Court is unwilling to terminate the FSA as to HHS in its entirety, the Court should terminate the FSA as to all permissible portions of the Foundational Rule. The Ninth Circuit reached a similar conclusion as to the 2019 Rule, when it held that there was "no legal justification for enjoining" the entirety of the regulations. *Flores II*, 984 F.3d at 736; *cf. Freeman v. Pitts*, 503 U.S. 467, 490–91 (1992) ("[T]he court in appropriate cases may return control to the [government] in those areas where compliance has been achieved . . . ."). For all the reasons described in this memorandum, however, the FSA should be terminated in its entirety as to HHS so that ORR can operate the UC Program consistent with the requirements established by Congress, in the best interests of children, and in a manner that is responsive to the substantially changed and unforeseen circumstances since 1997.

Dated: May 10, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division
WILLIAM C. PEACHEY
Director, District Court Section
Office of Immigration Litigation
WILLIAM C. SILVIS
Assistant Director, District Court Section
Office of Immigration Litigation

/s/ Fizza Batool
FIZZA BATOOL
JOSHUA C. MCCROSKEY
Trial Attorneys
U.S. Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: (202) 616-4863
Email: fizza.batool2@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on May 10, 2024, I served a copy of the foregoing pleading and attachments on all counsel of record by means of the District Court's CM/ECF electronic filing system.

/s/ Fizza Batool
FIZZA BATOOL
Trial Attorney
U.S. Department of Justice

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division
WILLIAM C. PEACHEY
Director, District Court Section
Office of Immigration Litigation
WILLIAM C. SILVIS
Assistant Director
FIZZA BATOOL
JOSHUA C. MCCROSKEY
Trial Attorneys
District Court Section
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: (202) 616-4863
Fax: (202) 305-7000
Email: fizza.batool2@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

MERRICK B. GARLAND, Attorney General of the United States, *et al.*,

Defendants.

Case No. 2:85-cv-04544-DMG

[Proposed] **ORDER GRANTING DEFENDANTS' MOTION TO TERMINATE THE *FLORES* SETTLEMENT AGREEMENT AS TO THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

[Hon. Dolly M. Gee]

THIS CAUSE comes before the Court upon Defendants' Motion to Terminate the *Flores* Settlement Agreement ("FSA") as to the U.S. Department of Health and Human Services ("HHS").

UPON CONSIDERATION of the motion and for the reasons set forth therein, Defendants' Motion to Terminate the FSA as to HHS is **GRANTED**. The Court hereby **ORDERS** as follows:

1. All obligations of the FSA are terminated as to HHS.
2. HHS is terminated as a defendant in this case.

IT IS SO ORDERED.

DATED: _____, 2024

_____
THE HONORABLE DOLLY M. GEE
UNITED STATES CHIEF DISTRICT JUDGE

EXHIBIT

A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*, Plaintiffs, v. MERRICK B. GARLAND, Attorney General of the United States, *et al.*, Defendants.	Case No. 2:85-cv-04544-DMG Chief District Judge Dolly M. Gee

DECLARATION OF TOBY BISWAS

I, **Toby Biswas**, pursuant to 28 U.S.C. § 1746, and based on my personal knowledge and information made known to me from official records and reasonably relied upon in the course of my employment, relating to the above-captioned matter, hereby declare as follows:

1. I have worked for the Office of Refugee Resettlement (ORR) since May 2012. I currently serve as the Director of UC Policy in the ORR, Unaccompanied Children (UC) Policy Unit, an office within the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). I have been the Director of UC Policy for the past year but have served in a managing capacity for the UC Policy Unit since January 2015. I am submitting this declaration in support of Defendants' Motion to Terminate the *Flores* Settlement Agreement as to HHS.

2. As the Director of UC Policy, I am the senior leader that manages (a) the UC Policy's policy coordination team, which includes: drafting, editing, modifying and amending the ORR UC Program Policy Guide, UC Manual of Procedures, ORR Field Guidance, information collections, researching and developing program

policy, procedures, interpretative guidance, and standard operating procedures; (b) the UC Policy's Legal Affairs team, which is responsible for supporting the U.S. Department of Justice and HHS Office of the General Counsel on litigation related matters, including settlement compliance, managing ORR's administrative hearing processes (including bond hearings and placement review panels), and supervising administrative processes related to specific consent requests and parent and legal guardian and close relative sponsor denial decisions made by the ORR Director; (c) ORR's Intergovernmental Affairs and Oversight team, which is responsible for intaking and responding to controlled correspondence from key stakeholders, including members of Congress, state officials, and private citizens, overseeing compliance, coordination and responses to oversight matters and audits from Congressional committees, the Government Accountability Office, and the HHS Office of the Inspector General, preparing ORR witnesses for Congressional hearings and assisting with responses to congressional inquiries, assisting with FOIA compliance, drafting intergovernmental agreements with executive branch Federal and state agencies; (d) the UC Policy Regulatory Affairs team, which is responsible for drafting, editing, modifying and amending Unaccompanied Children Program regulations; reviewing other Executive branch regulations for which the Unaccompanied Children Program has equities; and providing technical advice on proposed legislation.

3. Additionally, I track daily metrics pertaining to the numbers of unaccompanied children in ORR's care, including information on referrals of children, placement of children in ORR care, and release or discharge of children from ORR custody. I also review metrics and reports related to various settlements that are submitted to plaintiffs' counsel, as well as reports to Congress.

4. I am very familiar with the terms of the *Flores* Settlement Agreement (FSA) because I am responsible for providing expert advice to ORR, ACF and HHS senior leadership on ORR's compliance with the settlement agreement. Additionally, I

ensure ORR program policy, procedures, field guidance, and other guidance is consistent with the terms of the FSA. Further, I directly supervise staff responsible for implementing the substantive terms of the agreement, ensuring program compliance with court orders following motions to enforce, and advising program staff on the requirements of the settlement on a daily basis.

ORR's Foundational Rule Expands Protections for Unaccompanied Children

5. On April 30, 2024, ORR published the Unaccompanied Children Program Foundational Rule. The Foundational Rule provides a regulatory structure for the Program and codifies the obligations of the FSA. The publication of the final rule represents the commitment my team, the UC Program, and ORR at large has with enshrining the substantive terms of the FSA for the protection of unaccompanied children in ORR care and custody. This was a major accomplishment reflecting the culmination of years of work to develop a federal regulatory framework for the UC Program. During the 60-day comment period we received over 73,000 comments to the Notice of Proposed Rulemaking. My team worked tirelessly to thoroughly consider and respond to those comments between December 2023 and publication of the Final Rule.

6. The Foundational Rule establishes a comprehensive framework setting clear standards for the care and treatment of unaccompanied children in ORR's custody. The rule reflects extensive discussions with stakeholders, including Members of Congress and their offices, legal and social service providers, and advocacy organizations. The Rule also reflects the many comments received on the Notice of Proposed Rulemaking.

7. The rule goes well beyond the four corners of the FSA by providing additional procedural protections for unaccompanied children and their families; providing independent oversight of the UC Program by an Ombuds office; and, codifying additional service provisions related to language access, legal services, post-release services, and child advocate services for unaccompanied children. The rule

represents the value that ORR places on serving and protecting unaccompanied children from traffickers and others that wish to exploit an inherently vulnerable and traumatized population.

8. Further, the Foundational Rule represents a codification of the FSA minimum standards and other legal requirements governing the Unaccompanied Children Program. I believe that Federal programs operate best under well-structured program rules as Congress intended, and the Unaccompanied Children Program should *not* be an exception. We are proud of the work and commitment ORR has made to improving the lives of unaccompanied children by providing a child-centered regulatory framework for our program to operate under, that truly represents ORR and Congress' intent for the program to operate as a child welfare agency as opposed to a juvenile immigration detention office. The rule provides numerous protections for unaccompanied children as well as independent accountability, in addition to the many oversight bodies that already provide independent oversight of the UC Program.

Texas, Florida, and South Carolina De-Licensing Efforts

9. For many years, the UC Program has been a source of political controversy and has faced multiple criticisms by a range of elected officials and other concerned persons, but since 2021, we have faced new challenges because several states—South Carolina, Texas, and Florida—determined that they would refuse to continue licensing ORR-funded programs because they provide services to unaccompanied children.

10. Licensure has been important to the UC Program because an active license demonstrates compliance with generally accepted minimum standards of residential child-care facilities to ensure the health, safety, and well-being of children served by the residential care provider.

11. The de-licensing actions of Texas, Florida, and South Carolina happened at a time when ORR was facing an unprecedented number of referrals.[1] While the increased number of referrals in the last three years has made it essential to expand operational standard bed capacity to reduce reliance on emergency and influx facilities, the actions of Texas and Florida, and, to a much lesser extent, South Carolina have created significant new challenges for our efforts to place children in state licensed programs.

12. South Carolina's action has had little impact on the UC Program because only a small number of children were placed in South Carolina programs before the Governor's action. Today, ORR funds only three transitional foster care programs in South Carolina that are licensed by the State. Texas' action had a much larger effect on the UC Program because, historically, a majority of our operational standard bed capacity has been in Texas. While Florida has not had as large a presence in the UC Program as Texas, the combination of delicensed facilities in Texas and Florida has been very substantial.

13. It is not possible for ORR to stop placing children in standard programs in Texas and Florida without resulting in a catastrophic loss of already limited bedspace, which would likely result in children being placed for extended periods of time in emergency facilities or being kept in U.S. Customs and Border Protection (CBP) custody for periods of time far in excess of the 72-hour period in which custody should be transferred to ORR absent exceptional circumstances under the TVPRA, 8 U.S.C. § 1232(b)(3).

14. In addition to the fact that the FSA referenced the need for facilities in Texas and Florida, it is my understanding that these facilities have been essential to program operations for decades because of their proximity to where large numbers

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[1] *See* ORR Fact Sheet, Referrals, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data.

of children are initially apprehended; large Spanish speaking and Mexican/Central American/Cuban immigrant communities which are valuable employment pools to work with children in our custody, the vast majority of whom speak or communicate in Spanish; the lower cost of living in many areas of Texas and Florida which allows ORR to maximize taxpayer dollars for funding staff, facilities and services; extensive decades-long ties the UC Program has with stakeholders and communities that serve unaccompanied children and their families in these states; the large number of grantee and contractor applicant care providers that apply to ORR grants and contracts for care and services from these locations.

15. Establishing new facilities in other states with the same level of expertise and capacity as some of the programs in Texas and Florida is unrealistic. Significant expertise has been developed over decades in many care provider facilities in Texas and Florida. In fact, many programs in Texas and Florida have been operating ORR-funded facilities for a decade or more. New facilities likely would not have staff that have worked with this population of children and new facilities may not have the same cultural competency that longstanding facilities in Texas and Florida offer.

16. Additionally, it is my understanding that the majority of unaccompanied children are apprehended at the Southwest border, usually along the Texas-Mexico border. Shuttering facilities in Texas, in particular, would likely lead to longer wait times for unaccompanied children during which time they would remain in U.S. Department of Homeland Security (DHS) custody because of the logistical challenges in transporting children over much longer distances. Today, many children are transported by bus from the border to ORR facilities in Texas, in particular. When facilities are available in Texas, children can quickly and relatively easily leave DHS custody and be transported to those facilities. When ORR must rely on facilities in other parts of the country, the process of arranging and implementing transportation is lengthier, costlier, and more complex, and may extend the period of time that children must remain in DHS custody.

17. Moving programs away from Texas would mean that many children would need to be transported using either commercial or charter airplane flights, which would not only be costly but also would likely require holding children in CBP custody until a flight is full (or near full). Alternatively, this could require extremely lengthy and costly bussing from the border to facilities out of state which would mean having children traveling on buses for many hours. For instance, the drive from the Rio Grande Valley to Tucson is over 16 hours. These delays in transport times may impact the health of children and the time in which they receive necessary services in a child appropriate environment. It also goes against the intent of Congress which is to transfer children to HHS custody as quickly as feasible absent exceptional circumstances.

ORR's Response to De-Licensing Efforts

18. In response to Texas, Florida, and South Carolina's de-licensing efforts, we have taken a number of actions to ensure good quality conditions at our programs in those states.

19. Since programs were delicensed, we have required that programs in Texas and Florida continue to adhere to the state's licensing standards.[2] This requirement is intended to ensure that programs in Texas and Florida maintain the standards that would apply if their states were licensing them, even though their states refuse to do so. We believe this provides important protections for children in those states by ensuring minimum basic standards such as staffing ratios, staff level of experience, health and safety measures, and reporting requirements. Because our grant competitions are competitive, this also ensures that programs in those states do not have an advantage over programs in other states that are required to maintain licensing.

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[2] South Carolina continues to license ORR's three transitional foster care programs, so I am not including South Carolina in this discussion.

20. We are also providing enhanced monitoring of programs in those states. What that means is, ORR's Monitoring Team for the UC Program is assessing more frequently whether programs in Texas and Florida are in compliance with the FSA Exhibit 1 minimum standards and ORR's policies. This monitoring includes more frequent on-site visits and regular desk monitoring. Once the Foundational Rule is effective, we will ensure that standard programs in states that refuse to license ORR's standard programs are not only complying with ORR's policies and regulations but also the state's licensing standards.

21. Also, ORR's Monitoring Team has been ensuring that de-licensed programs remain up to date on their fire, life safety, food safety, and building code inspections. To date, the team has told me that they have found that the inspections are current in those programs. We will continue monitoring for these requirements as well.

22. We have included these same requirements in the Foundational Rule in order to ensure that they remain part of our standard operating procedures.

23. Also, to ensure that our programs meet more than just the minimum state licensing standards, the cooperative agreements with ORR's care providers require that as a condition of their federal grants they obtain accreditation by a nationally recognized accreditation organization like the Council on Accreditation or the Commission on Accreditation of Rehabilitation Facilities.

24. We are ensuring that programs in states that refuse to license programs funded by ORR maintain good quality care for children and continue to adhere to state licensing standards, are subject to enhanced monitoring by ORR, and are accredited (or seeking accreditation) by a nationally recognized accreditation organization. Closing those programs would be a devastating loss to the UC Program without any measurable benefit.

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

Executed on this 10th day of May, 2024.

Toby R. Biswas -S

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Date: 2024.05.10 08:43:33 -04'00'

Toby Biswas
Director UC Policy, ORR

EXHIBIT

B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*, Plaintiffs, v. MERRICK B. GARLAND, Attorney General of the United States, *et al.*, Defendants.	Case No. 2:85-cv-04544-DMG Chief District Judge Dolly M. Gee

DECLARATION OF ALLISON BLA E

I, **Allison Bla e**, pursuant to 28 U.S.C. § 1746, and based on my personal knowledge and information made known to me from official records and reasonably relied upon in the course of my employment, relating to the above-captioned matter, hereby declare as follows:

1. I currently serve as the Director of the Unaccompanied Children (UC) Program in the Office of Refugee Resettlement (ORR), an office within the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). I have been the Director of the UC Program since July 31, 2023. I am submitting this declaration in support of Defendants' Motion to Terminate the *Flores* Settlement Agreement as to HHS.

2. As the Director of the UC Program, I am the senior leader that provides overall management and oversight to the UC Program operations in ORR. This includes serving as a member of the ORR Executive Leadership Team (ELT). As a member of the ELT, I am responsible for ORR policies and practices including

establishing Human Resources priorities, Budget and Contracting priorities, and assuring the implementation and tracking of the ORR strategic plan. In my role, I also interact on a regular basis with the ORR Integrity and Accountability Team. My primary responsibilities regarding the UC Program are to provide leadership for the federal staff who are accountable for the safety, well-being, and permanency of children in ORR custody. On any given day that is typically somewhere between 7,000 and 12,000 children, based on a daily referral rate ranging between 200 to 450 children. When ORR is not utilizing emergency and influx facilities, children are receiving care from over 249 programs funded by ORR. I am responsible for the direct supervision of two deputy directors who provide daily supervision to UC Program Field Operations, and several other divisions and offices comprising all operational components of the UC Program (i.e., Field Operations, Grants Management, Planning and Logistics, Training and Technical Assistance, Child Services, Medical and Behavioral Health services, and the National Call Center. Additionally, I directly supervise the UC Policy division, and the UC Office of Program uality, which is the UC Program's continuous quality improvement arm. Beginning in June 2024, the new ORR Division of Child Protection Investigations will also report directly to me.

3. As part of my duties, I provide guidance to the teams working with our grantees and contractors to assure they are providing quality care and services to our children in accordance with our policies, and the Cooperative Agreements. These multi-disciplinary teams within the UC Program include the Project Officer Team, the Federal Field Specialist Teams, and the Program uality Team which monitors compliance with UC Policy and also conducts Prevention of Child Abuse reviews to assure children's safety while in our care. As the director of the UC Program, I serve as a liaison to the Office of Trafficking in Persons in ACF and also work closely with other ACF Offices to assure the provision of appropriate and quality services for the children in our care. Some examples include collaborating with the ACF

Office of Runaway and Homeless Youth, the ACF Children's Bureau, and HHS Office of the Assistant Secretary for Planning and Evaluation.

4. Previously, I worked as the CEO of the Child and Family Agency of Southeastern Connecticut. CFA is a community-based nonprofit organization providing behavioral healthcare and child welfare services to children, youth, and families, in five counties in eastern Connecticut. I served in this role from 2019 to 2023. Prior to that I served as a Senior Fellow for the Annie E. Casey Foundation where I worked with the states to help them implement the new federal Family First Prevention Services Act of 2018. This new Federal law required the state child welfare agencies to fund an array of evidence-based child abuse prevention programs, and to assure that when residential treatment was the service provided to the children under the state's supervision, that it was from a qualified Residential Treatment Center (RTC) which was accredited and offered a treatment plan that addressed the individual needs of the child.

5. From 2010 through 2018, I served as the Commissioner of the New Jersey Department of Children and Families (NJDCF). The NJDCF is the state agency responsible for all direct services to support at risk children, youth, women, and families. The agency's divisions reported directly to me as commissioner and included the division of Child Protection and Permanency, the division of Children's System of Care (e.g., the children's behavioral health system in New Jersey which also provides substance use treatment services for youth and services for children and youth with intellectual and developmental disabilities), the division of Family and Community Partnerships, the division on Women, and the Office of Adolescent Services. Also reporting directly to me as commissioner was the Office of Performance Management and Accountability. New Jersey's public child welfare system is regarded as one of the best in the country. In addition to achieving a system transformation that saw sustained improvement in child welfare outcomes for children and families, the agency's approach to contracting was redesigned during

my tenure in accordance with a blueprint for evidence-based practices proven to be effective in helping children and families achieve desired outcomes. Prior to this, I was a faculty member and Founding Director of the Institute for Families at the Rutgers University School of Social Work. The Institute served as a hub for the school's externally funded programs, including several state training contracts for the child welfare workforce, the state child support workforce, and the judicial system's family violence initiatives. The Institute partnered with the state child welfare agency and its nonprofit partners to promote child welfare best practices, support program evaluation at the community level, and provide continuing education opportunities to professionals working throughout human services.

6. In 2004, I joined the Council on Accreditation as the director of Government Relations and Public Accreditation. During this time, I worked with the states to achieve recognition of accreditation through licensing relief or enhanced reimbursement rates. The states provided this recognition as further support for the role of accreditation as establishing best practice standards to measure an organization. Shortly thereafter I was promoted to Vice President of Accreditation Operations. I served in that role until 2007 when I accepted the position at Rutgers University.

7. The Council on Accreditation is an international accrediting body that sets best practice standards for community-based social service and behavioral health organizations, as well as public child welfare and public behavioral health organizations for children and adults. As Vice President, my job entailed oversight of the accreditation evaluation and decision-making process and collaborating with the standards research team to assure the standards for accreditation were continuously updated and relevant to current practice areas of the organizations we were accrediting. A particular focus was on assuring alignment with best practice standards in the various fields (i.e., child welfare, child abuse prevention, community services, behavioral healthcare). I also oversaw the accreditation site visit process

and the accreditation commission, the entity that reviews all documentation and site visit assessments and determines whether an organization should be accredited or re-accredited. The site visit process includes the assignment of peer reviewers from other accredited nonprofit organizations who have subject matter expertise in the related standards under review at the site visit.

8. From my job at the Council on Accreditation and subsequent work experiences, I have become very familiar with the accreditation process, particularly for non-profit and child welfare organizations.

BAC ROUND ON ACCREDITATION

9. The purpose of accreditation is to ensure that organizations meet predetermined, evidence-informed standards for quality service provision and organizational governance. Accreditation provides a benchmark for quality, encourages ongoing improvement, and promotes public trust and confidence in the institution or program accredited. By achieving accreditation, an institution or program demonstrates its commitment to providing a certain high-level of service, and a commitment to ethical and transparent governance.

10. As compared to state licensing standards, which are generally viewed by human services organizations as "minimum basic standards," accreditation is a seal of excellence that indicates an organization is committed to implementing and sustaining the best practices in their field, whether child welfare, mental health, residential treatment, ambulatory care, etc. If an organization is accredited, relief from state licensing visits and federal or state oversight is often granted due to the recognition that licensing standards are viewed as minimum basic standards whereas accreditation is viewed as a sign of excellence and adherence to best practices. This relief from licensing monitoring visits, is granted as it is understood that the preparation for re-accreditation and the related site visit involves an extensive internal review of an organization's own practices and policies, and the site visits themselves take place over multiple days and are conducted by a team of experienced

professionals. A licensing visit on the heels of that would be duplicative and take time away from the organization's daily operations.

11. Some accrediting organizations include the Council on Accreditation, the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, and the American Correctional Association. Each of these organizations provides accreditation to different types of programs and institutions like non-profit social service and child welfare agencies, behavioral health facilities, hospitals, or detention facilities.

12. Generally, accrediting bodies require programs and institutions to regularly demonstrate that they adhere to established best practice standards for all levels of organizational operations. Each accrediting organization has its own standards, which are usually proprietary. In general, those standards have some basis in evidence and are developed from best practices in the area in which they relate (e.g., behavioral health), are subject to peer-review, and are regularly reviewed and updated as the evidence for best practices grows and shifts. Each accrediting body works with an advisory panel of subject matter experts who inform on current research, and implementation of best practices.

13. The standards typically involve factors such as financial operations, risk management, governance and management, performance and quality improvement, and policy. The standards often look at staffing associated with the service (e.g., staffing ratios for group homes), caseload size, training, and supervisory ratios. The standards typically apply to all facets of the program or institution and how it is operated.[1]

14. The accreditation process is rigorous. It is not a one-time evaluation. It involves a self-study/assessment attesting to the organization's implementation and

[1] By way of example, the COA standards are available here: https://www.social-current.org/impact-areas/coa-accreditation/private-organization-standards/.

compliance with accreditation standards, and then an on-site review or survey visit usually carried out by current or former senior staff from other accredited organizations or the accrediting body itself, which can help programs identify areas for improvement. It usually involves a least one on-site visit (often a weeklong) by peer reviewers to evaluate implementation of the accreditation standards. The overall accreditation process can take anywhere from six to eighteen months depending on the size of the organization and the number of programs/sites being accredited.

15. Maintaining accreditation requires ongoing adherence to the standards and continuous improvement efforts. This fosters a culture of continuous quality improvement and demonstrates for staff and stakeholders that the organization is striving for excellence across its programs and sites. For each renewal cycle, the program updates its self-assessment, assuring any updates to best practice standards are incorporated into their operations, and again undergoes a lengthy peer review site visit.

16. Accrediting organizations pride themselves on independence. In my experience, accrediting bodies strive to strike a balance between helping an organization implement their best practice standards to assure quality services for consumers, while also making difficult decisions about whether an organization is ready to both pursue accreditation and maintain it. They understand the value assigned to an organization that attains accreditation and do not take that responsibility lightly. The accrediting bodies do not agree to accredit service lines where they have limited or no experience. If they do not have best practice standards established, they will decline the application for accreditation.

ORR RE UIRES ITS STANDARD PRO RA S TO BE ACCREDITED

17. Under the terms and conditions of our federal grants, standard programs agree to obtain accreditation by a nationally recognized accreditation organization. As detailed above, the accreditation ensures that standard programs are meeting the

highest levels of care for unaccompanied children in ORR's custody. It also ensures that there is an organization, completely independent of ORR, that is providing monitoring and evaluation of ORR's standard programs.

18. As an explicit requirement under standard programs' grants, ORR will monitor for compliance with this requirement pursuant to the Foundational Rule (45 C.F.R. § 410.1303); further, failure to maintain accreditation may subject standard programs to enforcement actions, including remedies for noncompliance as described at 45 C.F.R. § 75.371.

19. As of the date of this declaration, of the 72 standard programs in Texas and Florida, 54 have accreditation, and 18 are in the process of obtaining accreditation. The programs have been accredited by the Council on Accreditation, the Commission on Accreditation of Rehabilitation Facilities, and Praesidium. These organizations have a specific emphasis on child welfare and residential settings for children.

CONCLUSION

20. Based on my extensive experience working for and with accrediting organizations, it is my belief that accreditation provides an important oversight mechanism for our standard programs, particularly those in Texas and Florida, given that the states are refusing to license those programs. Accreditation will ensure that there is a neutral third-party organization with extensive knowledge and experience making sure that our standard programs meet the highest level of care.

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

Executed on this 10th day of May, 2024.

Allison M. Blake -S

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Date: 2024.05.10 08:30:59 -04'00'

Allison Blake
Director UC Program, ORR

EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*, Plaintiffs, v. MERRICK B. GARLAND, Attorney General of the United States, *et al.*, Defendants.	Case No. 2:85-cv-04544-DMG Chief District Judge Dolly M. Gee

DECLARATION OF OEL NELSON

I, Captain Joel Nelson, pursuant to 28 U.S.C. § 1746, and based on my personal knowledge and information made known to me from official records and reasonably relied upon in the course of my employment, relating to the above-captioned matter, hereby declare as follows:

1. I am a Captain in the U.S. Public Health Service and am currently the Director of Data Analytics Information Management within the Office of Refugee Resettlement (ORR). I have been an ORR employee since August 2021.

2. As the Director of Data Analytics Information Management, I am the senior leader responsible for advising the ORR Director, Chief Operating Officer, and the Unaccompanied Children Program Director on programmatic data and other information to support ORR policy and operational decisions. My team analyzes programmatic data, develops dashboards and other decision support tools, and generates official reporting products to maintain real-time situational awareness and enable data-driven decision-making and planning.

3. ORR maintains in the regular course of its operations data and information that has been reported by grantees, contractors, and project officers on its operational bed capacity.

4. ORR's data collection system shows that on April 22, 2024, the operational standard[1] bed capacity was 13,093 beds. Of those, it showed 7,317 beds were in Texas, and 480 beds were in Florida.

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

Executed on this 9th day of May, 2024.

Joel A. Nelson -S14

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Date: 2024.05.09 07:12:28 -04'00'

CAPT Joel Nelson, U.S. Public Health Service
Director of Data Analytics Information Management
Office of Refugee Resettlement

[1] My understanding is that consistent with the Foundational Rule, standard beds include shelter, long-term foster care, transitional foster care, group home, therapeutic group home, and staff-secure beds.

APPENDIX

A

FLORES CROSS-WALK
FLORES SETTLEMENT AGREEMENT COMPARISON TO FINAL RULE

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
¶1	The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶2	The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶3	The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶4	The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.	§ 410.1001	*Unaccompanied child/children* means a child who: (1) Has no lawful immigration status in the United States; (2) Has not attained 18 years of age; and (3) With respect to whom: (i) There is no parent or legal guardian in the United States; or (ii) No parent or legal guardian in the United States is available to provide care and physical custody.

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
¶5	The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.	N/A	None. This paragraph is not relevant to ORR's Unaccompanied Children Program.
¶6	The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, e.g., cases in which a minor has drug or alcohol problems or is mentally ill.	§ 410.1001	*Standard program* means any program, agency, or organization that is licensed by an appropriate State agency to provide residential, group, or transitional or long-term home care services for dependent children, including a program operating family or group homes, or facilities for unaccompanied children with specific individualized needs; or that meets the requirements of State licensing that would otherwise be applicable if it is in a State that does not allow state licensing of programs providing care and services to unaccompanied children. A standard program must meet the standards set forth in § 410.1302. All homes and facilities operated by a standard program, including facilities for unaccompanied children with specific individualized needs, shall be non-secure as required under State law. However, a facility for unaccompanied children with specific individualized needs may maintain that level of security permitted under State law which is necessary for the protection of an unaccompanied child or others in appropriate circumstances.
¶6	The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.	§ 410.1103(e)	(e) ORR shall make reasonable efforts to provide licensed placements in those geographical areas where DHS encounters the majority of unaccompanied children.
¶7	The term "special needs minor" shall refer to a minor whose mental and/or physical condition	N/A	None. "Special needs minor" is considered a dysphemism that ORR declines to include in the

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
	requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse.		rule. Requirements for addressing the needs of unaccompanied children with individualized needs are addressed in the final rule.
¶7	The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.	§ 410.1106	ORR shall assess each unaccompanied child in its care to determine whether the unaccompanied child requires particular services and treatment by staff to address their individualized needs while in the care and custody of the UC Program. An unaccompanied child's assessed needs may require particular services, equipment, and treatment by staff for various reasons, including, but not limited to disability, alcohol or substance use, a history of serious neglect or abuse, tender age, pregnancy, or parenting. If ORR determines that an unaccompanied child's individualized needs require particular services and treatment by staff or particular equipment, ORR shall place the unaccompanied child, whenever possible, in a standard program in which the unaccompanied child with individualized needs can interact with children without those individualized needs to the fullest extent possible, but which provides services and treatment or equipment for such individualized needs.

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
¶8	The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities.	410.1001	*Heightened supervision facility* means a facility that is operated by a program, agency or organization licensed by an appropriate State agency, or that meets the requirements of State licensing that would otherwise be applicable if it is in a State that does not allow state licensing of programs providing care and services to unaccompanied children, and that meets the standards for standard programs set forth in § 410.1302, and that is designed for an unaccompanied child who requires close supervision but does not need placement in a secure facility, including a residential treatment center (RTC). It provides 24-hour supervision, custody, care, and treatment. It maintains stricter security measures than a shelter, such as intensive staff supervision, in order to provide supports, manage problem behavior, and prevent children from running away. A heightened supervision facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with juvenile detention centers or correctional facilities.
¶9	This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below	N/A	None. This paragraph only relates to the scope of the FSA and does not impose obligations on ORR that would continue after termination of the FSA.

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
	are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this		

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
	Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of the Agreement attached hereto as Exhibit 2.		
¶10	The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶11	The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors.	§ 410.1003(a)	(a) Within all placements, unaccompanied children shall be treated with dignity, respect, and special concern for their particular vulnerability.
¶11	The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others.	§ 410.1003(f)	(f) In making placement determinations, ORR shall place each unaccompanied child in the least restrictive setting that is in the best interests of the child, giving consideration to the child's danger to self, danger to others, and runaway risk.
¶11	Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.	§ 410.1203(e)	(e) ORR shall not be required to release an unaccompanied child to any person or agency it has reason to believe may harm or neglect the unaccompanied child or fail to present the unaccompanied child before DHS or the immigration courts when requested to do so.
¶12A	Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable.	§ 410.1109(a)(2) § 410.1309(a)(2)(i), (ii) § 410.1903(a), (b)	§ 410.1109(a)(2): (a) ORR shall promptly provide each unaccompanied child in its custody, in a language and manner the unaccompanied child understands, with: . . .

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
			(2) The following explanation of the right of potential review: "ORR usually houses persons under the age of 18 in the least restrictive setting that is in an unaccompanied child's best interest, and generally not in restrictive placements (which means secure facilities, heightened supervision facilities, or residential treatment centers). If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance and get advice about your rights to challenge this action. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form;" . . . . § 410.1309(a)(2)(i), (ii): (a) *Unaccompanied children's access to immigration legal services*-- . . . (2) *Orientation*. An unaccompanied child in ORR's legal custody shall receive: (i) An in-person, telephonic, or video presentation concerning the rights and responsibilities of undocumented children in the immigration system, presented in the native or preferred language of the unaccompanied child and in an age-appropriate manner. . . (ii) Information regarding the availability of free legal assistance and that they may be represented by counsel at no expense to the Government. When an unaccompanied child requests legal counsel, ORR shall ensure that the child is provided with a list and contact information for pro bono counsel, and reasonable assistance to ensure that the child is able

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
			to successfully engage an attorney at no cost to the Government. § 410.1903(a), (b): (a) All unaccompanied children in restrictive placements based on a finding of dangerousness shall be afforded a hearing before an independent HHS hearing officer, to determine, through a written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released, unless the unaccompanied child indicates in writing that they refuse such a hearing. Unaccompanied children placed in restrictive placements shall receive a written notice of the procedures under this section and may use a form provided to them to decline a hearing under this section. Unaccompanied children in restrictive placements may decline the hearing at any time, including after consultation with counsel. (b) All other unaccompanied children in ORR custody may request a hearing under this section to determine, through a written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released. Requests under this section must be made in writing by the unaccompanied child, their attorney of record, or their parent or legal guardian by submitting a form provided by ORR to the care provider facility or by making a separate written request that contains the information requested in ORR's form.
¶12A	Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are	§ 410.1003(b) § 410.1302(c)(1), (8), (10)	§ 410.1003(b):

FSA Paragraph No.	FSA Language	Final Rule Section No.	Final Rule Language
	consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor.	§ 410.1307(a) § 410.1801(a), (c)	ORR shall hold unaccompanied children in facilities that are safe and sanitary and that are consistent with ORR's concern for the particular vulnerability of unaccompanied children. § 410.1302(c)(1), (8), (10): Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (1) Proper physical care and maintenance, including suitable living accommodations, food that is of adequate variety, quality, and in sufficient quantity to supply the nutrients needed for proper growth and development, which can be accomplished by following the USDA Dietary Guidelines for Americans, and appropriate for the child and activity level, drinking water that is always available to each unaccompanied child, appropriate clothing, personal grooming and hygiene items such as soap, toothpaste and toothbrushes, floss, towels, feminine care items, and other similar items, access to toilets, showers, and sinks, adequate temperature control and ventilation, maintenance of safe and sanitary conditions that are consistent with ORR's concern for the particular vulnerability of children, and adequate supervision to protect unaccompanied children from others; . . . (8) An admissions process, including: . . . (iv) Assistance with contacting family members, following the ORR Guide and the care provider facility's internal safety procedures; . . .

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			(10) Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation, including at least 15 minutes of phone or video contact three times a week with parents and legal guardians, family members, and caregivers located in the United States and abroad, in a private space that ensures confidentiality and at no cost to the unaccompanied child, parent, legal guardian, family member, or caregiver. The staff shall respect the unaccompanied child's privacy while reasonably preventing the unauthorized release of the unaccompanied child; . . . . § 410.1307(a): (a) ORR shall ensure that all unaccompanied children in ORR custody will be provided with routine medical and dental care; access to medical services requiring heightened ORR involvement, consistent with paragraph (c) of this section; family planning services; and emergency healthcare services. § 410.1801(a), (c): (a) In addition to the "standard program" and "restrictive placements" defined in this part, ORR provides standards in this section for all emergency or influx facilities (EIFs). . . . (c) EIFs shall do the following when providing services to unaccompanied children:

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			(1) Maintain safe and sanitary conditions that are consistent with ORR's concern for the particular vulnerability of children; (2) Provide access to toilets, showers and sinks, as well as personal hygiene items such as soap, toothpaste and toothbrushes, floss, towels, feminine care items, and other similar items; (3) Provide drinking water and food; (4) Provide medical assistance if the unaccompanied child is in need of emergency services and provide a modified medical examination; (5) Maintain adequate temperature control and ventilation; (6) Provide adequate supervision to protect unaccompanied children; (7) Separate from other unaccompanied children those unaccompanied children who are subsequently found to have past criminal or juvenile detention histories or have perpetrated sexual abuse that present a danger to themselves or others; (8) Provide contact with family members who were apprehended with the unaccompanied child; and (9) Provide access to legal services described in § 410.1309(a).
¶12A	The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.	N/A	None. This paragraph does not apply to ORR's Unaccompanied Children Program.
¶12A	If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no	N/A § 410.1102	None. This paragraph does not apply to ORR's Unaccompanied Children Program.

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	appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff.		ORR included a requirement in its regulation, however, that states: § 410.1102: ORR may place unaccompanied children in care provider facilities as defined at § 410.1001, including but not limited to shelters, group homes, individual family homes, heightened supervision facilities, or secure facilities, including RTCs. ORR may place unaccompanied children in out-of-network (OON) placements, subject to § 410.1103, if ORR determines that a child has a specific need that cannot be met within the ORR network of facilities, if no in-network care provider equipped to meet the child's needs has the capacity to accept a new placement, or if transfer to a less restrictive facility is warranted and ORR is unable to place the child in a less restrictive in-network facility. Unaccompanied children shall be separated from delinquent offenders in OON placements (except those unaccompanied children who meet the requirements for a secure placement pursuant to § 410.1105). In times of influx or emergency, as further discussed in subpart I of this part, ORR may place unaccompanied children in care provider facilities that may not meet the standards of a standard program, but rather meet the standards in subpart I.
¶12A	The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19, (i) within three (3) days, if the minor was apprehended in an INS district in which	N/A § 410.1800(b)	None. This paragraph does not apply to ORR's Unaccompanied Children Program.

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	a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except: 1. as otherwise provided under Paragraph 13 or Paragraph 21; 2. as otherwise required by any court decree or court-approved settlement; 3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or 4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.		ORR included a requirement in its regulation, however, a provision related to #3 that states: § 410.1800(b): (b) In the event of an emergency or influx that prevents the prompt placement of unaccompanied children in standard programs, ORR shall place each unaccompanied child in a standard program as expeditiously as possible.
¶12B	For purposes of this paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors).	§ 410.1001	*Emergency* means an act or event (including, but not limited to, a natural disaster, facility fire, civil disturbance, or medical or public health concerns at one or more facilities) that prevents timely transport or placement of unaccompanied children, or impacts other conditions provided by this part.
¶12B	The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.	§ 410.1001	*Influx* means, for purposes of HHS operations, a situation in which the net bed capacity of ORR's standard programs that is occupied or held for placement by unaccompanied children meets or exceeds 85 percent for a period of seven consecutive days.

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¶12C	In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.	Subpart I § 410.1800	Subpart I [Not copied in full] § 410.1800: (a) ORR shall regularly reevaluate the number of standard program placements needed for unaccompanied children to determine whether the number of shelters, heightened supervision facilities, and ORR transitional home care beds should be adjusted to accommodate an increased or decreased number of unaccompanied children eligible for placement in care in ORR care provider facilities. (b) In the event of an emergency or influx that prevents the prompt placement of unaccompanied children in standard programs, ORR shall place each unaccompanied child in a standard program as expeditiously as possible. (c) ORR activities during an influx or emergency include the following: (1) ORR shall implement its contingency plan on emergencies and influxes, which may include opening facilities to house unaccompanied children and prioritization of placement at such facilities of certain unaccompanied children; (2) ORR shall continually develop standard programs that are available to accept emergency or influx placements; and (3) ORR shall maintain a list of unaccompanied children affected by the emergency or influx including each unaccompanied child's:

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			(i) Name; (ii) Date and country of birth; (iii) Date of placement in ORR's custody; and (iv) Place and date of current placement.
¶13	If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.	Subpart H	Subpart H [Not copied in full] § 410.1702: Procedures for determining the age of an individual must take into account the totality of the circumstances and evidence, including the non-exclusive use of radiographs, to determine the age of the individual. ORR may require an individual in ORR custody to submit to a medical or dental examination, including X-rays, conducted by a medical professional or to submit to other appropriate procedures to verify their age. If ORR subsequently determines that such an individual is an unaccompanied child, the individual will be treated in accordance with ORR's UC Program regulations in this part for all purposes. § 410.1704: If the procedures in this subpart would result in ORR reasonably concluding that an individual is an adult, despite the individual's claim to be under the age of 18, ORR shall treat such person as an adult for all purposes.
¶14	Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety	§ 410.1201(a)	(a) Subject to an assessment of sponsor suitability, when ORR determines that the detention of the unaccompanied child is not required either to secure the child's timely appearance before DHS or the

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	or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to: A. a parent; B. a legal guardian; C. an adult relative (brother, sister, aunt, uncle, or grandparent); D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship; E. a licensed program willing to accept legal custody; or F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.		immigration court, or to ensure the minor's safety or that of others, ORR shall release a minor from its custody without unnecessary delay, in the following order of preference, to: (1) A parent; (2) A legal guardian; (3) An adult relative; (4) An adult individual or entity designated by the parent or legal guardian as capable and willing to care for the unaccompanied child's well-being in: (i) A declaration signed under penalty of perjury before an immigration or consular officer; or (ii) Such other document that establishes to the satisfaction of ORR, in its discretion, the affiant's parental relationship or guardianship; (5) A licensed program willing to accept legal custody; or (6) An adult individual or entity seeking custody, in the discretion of ORR, when it appears that there is no other likely alternative to long term custody, and family unification does not appear to be a reasonable possibility.
¶15	Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form 1-134) and an agreement to: A. provide for the minor's physical, mental, and financial well-being; B. ensure the minor's presence at all future proceedings before the INS and the immigration	§ 410.1203(c)	(c) Pursuant to the requirements of § 410.1202, the potential sponsor shall complete an application for release of the unaccompanied child, which includes supporting information and documentation regarding the sponsor's identity; the sponsor's relationship to the child; background information on the potential sponsor and the potential sponsor's household members; the sponsor's ability to provide care for the unaccompanied child; and the sponsor's

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	court; C. notify the INS of any change of address within five (5) days following a move; D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director; E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of such proceedings and the dependency court of any immigration proceedings pending against the minor. In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian, in writing, seeks written permission for a transfer, the District Director shall promptly respond to the request.		commitment to fulfill the sponsor's obligations in the Sponsor Care Agreement, which requires the sponsor to: (1) Provide for the unaccompanied child's physical and mental well-being; (2) Ensure the unaccompanied child's compliance with DHS and immigration courts' requirements; (3) Adhere to existing Federal and applicable state child labor and truancy laws; (4) Notify DHS, the Executive Office for Immigration Review (EOIR) at the Department of Justice, and other relevant parties of changes of address; (5) Provide notice of initiation of any dependency proceedings or any risk to the unaccompanied child as described in the Sponsor Care Agreement; and (6) In the case of sponsors other than parents or legal guardians, notify ORR of a child moving to another location with another individual or change of address. Also, in the event of an emergency (e.g., serious illness or destruction of the home), a sponsor may transfer temporary physical custody of the unaccompanied child to another person who will comply with the Sponsor Care Agreement, but the sponsor must notify ORR as soon as possible and no later than 72 hours after the transfer.
¶16	The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement	N/A	None. This paragraph is not relevant to ORR's Unaccompanied Children Program.

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	required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.		
¶17	A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.	§ 410.1202(b), (c)	(b) Prior to releasing an unaccompanied child, ORR shall conduct a suitability assessment to determine whether the potential sponsor is capable of providing for the unaccompanied child's physical and mental well-being. At minimum, such assessment shall consist of review of the potential sponsor's application package, including verification of the potential sponsor's identity, physical environment of the sponsor's home, and relationship to the unaccompanied child, if any, and an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the unaccompanied child. ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor identity document presented. (c) ORR's suitability assessment shall include taking all needed steps to determine that the potential sponsor is capable of providing for the unaccompanied child's physical and mental well-being. As part of its suitability assessment, ORR may require such components as an investigation of the living conditions in which the unaccompanied child would be placed and the standard of care the unaccompanied child would receive, verification of the employment, income, or other information

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			provided by the potential sponsor as evidence of the ability to support the child, interviews with members of the household, a home visit or home study as discussed at § 410.1204. In all cases, ORR shall require background and criminal records checks, which at minimum includes an investigation of public records sex offender registry conducted through the U.S. Department of Justice National Sex Offender public website for all sponsors and adult residents of the potential sponsor's household, and may include a public records background check or an FBI National Criminal history check based on fingerprints for some potential sponsors and adult residents of the potential sponsor's household. Any such assessment shall also take into consideration the wishes and concerns of the unaccompanied child.
¶18	Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.	§ 410.1203(a)	(a) ORR or the care provider providing care for the unaccompanied child shall make and record the prompt and continuous efforts on its part towards family unification and the release of the unaccompanied child pursuant to the provisions of this section. These efforts include intakes and admissions assessments and the provision of ongoing case management services to identify potential sponsors.
¶19	In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21 , such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with	§ 410.1004	All unaccompanied children placed by ORR in care provider facilities remain in the legal custody of ORR and may be transferred or released only with ORR approval; provided, however, that in the event of an emergency, a care provider facility may transfer temporary physical custody of an

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	Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.		unaccompanied child prior to securing approval from ORR but shall notify ORR of the transfer as soon as is practicable thereafter, and in all cases within 8 hours.
¶20	Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶21	A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor: A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not	§ 410.1105(a)	(a) *Criteria for placing an unaccompanied child in a secure facility that is not a residential treatment center (RTC).* (1) ORR may place an unaccompanied child in a secure facility (that is not an RTC) either at initial placement or through a transfer to another care provider facility from the initial placement. This determination must be made based on clear and convincing evidence documented in the unaccompanied child's case file. All determinations to place an unaccompanied child in a secure facility (that is not an RTC) will be

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	apply to any minor whose offense(s) fall(s) within either of the following categories: i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.); ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.); As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense; B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer; C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.); D. is an escape-risk; or E. must be held in a secure facility for his or her own safety, such as when the INS has reason to		reviewed and approved by ORR Federal field staff. A finding that a child poses a danger to self shall not be the sole basis for a child's placement in a secure facility (that is not an RTC). (2) ORR shall not place an unaccompanied child in a secure facility (that is not an RTC) if less restrictive alternatives in the best interests of the unaccompanied child are available and appropriate under the circumstances. ORR shall place an unaccompanied child in a heightened supervision facility or other non-secure care provider facility as an alternative, provided that the unaccompanied child does not currently pose a danger to others and does not need placement in an RTC pursuant to the standard set forth at 410.1105(c). (3) ORR may place an unaccompanied child in a secure facility (that is not an RTC) only if the unaccompanied child: (i) Has been charged with or has been convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent, and where ORR deems that those circumstances demonstrate that the unaccompanied child poses a danger to others, not including: (A) An isolated offense that was not within a pattern or practice of criminal activity and did not involve violence against a person or the use or carrying of a weapon; or (B) A petty offense, which is not considered grounds for stricter means of detention in any case; (ii) While in DHS or ORR's custody, or while in the

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	believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.		presence of an immigration officer or ORR official or ORR contracted staff, has committed, or has made credible threats to commit, a violent or malicious act directed at others; or (iii) Has engaged, while in a restrictive placement, in conduct that has proven to be unacceptably disruptive of the normal functioning of the care provider facility, and removal is necessary to ensure the welfare of others, as determined by the staff of the care provider facility (e.g., stealing, fighting, intimidation of others, or sexually predatory behavior), and ORR determines the unaccompanied child poses a danger to others based on such conduct.
¶22	The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether: A. the minor is currently under a final order of deportation or exclusion; B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion; C. the minor has previously absconded or attempted to abscond from INS custody.	§ 410.1001 § 410.1107(a)-(c)	§ 410.1001: Runaway risk means it is highly probable or reasonably certain that an unaccompanied child will attempt to abscond from ORR care. Such determinations must be made in view of a totality of the circumstances and should not be based solely on a past attempt to run away. § 410.1107(a)-(c): When determining whether an unaccompanied child is a runaway risk for purposes of placement decisions, ORR shall consider, among other factors, whether: (a) The unaccompanied child is currently under a final order of removal. (b) The unaccompanied child has previously absconded or attempted to abscond from State or Federal custody.

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			(c) The unaccompanied child has displayed behaviors indicative of flight or has expressed intent to run away.
¶23	The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.	§ 410.1105(a)(1), (2)	(1) ORR may place an unaccompanied child in a secure facility (that is not an RTC) either at initial placement or through a transfer to another care provider facility from the initial placement. This determination must be made based on clear and convincing evidence documented in the unaccompanied child's case file. All determinations to place an unaccompanied child in a secure facility (that is not an RTC) will be reviewed and approved by ORR Federal field staff. A finding that a child poses a danger to self shall not be the sole basis for a child's placement in a secure facility (that is not an RTC). (2) ORR shall not place an unaccompanied child in a secure facility (that is not an RTC) if less restrictive alternatives in the best interests of the unaccompanied child are available and appropriate under the circumstances. ORR shall place an unaccompanied child in a heightened supervision facility or other non-secure care provider facility as an alternative, provided that the unaccompanied child does not currently pose a danger to others and does not need placement in an RTC pursuant to the standard set forth at 410.1105(c).
¶24A	A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor	§ 410.1903(a), (b)	(a) All unaccompanied children in restrictive placements based on a finding of dangerousness shall be afforded a hearing before an independent HHS hearing officer, to determine, through a

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	indicates on the Notice of Custody Determination form that he or she refuses such a hearing.		written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released, unless the unaccompanied child indicates in writing that they refuse such a hearing. Unaccompanied children placed in restrictive placements shall receive a written notice of the procedures under this section and may use a form provided to them to decline a hearing under this section. Unaccompanied children in restrictive placements may decline the hearing at any time, including after consultation with counsel. (b) All other unaccompanied children in ORR custody may request a hearing under this section to determine, through a written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released. Requests under this section must be made in writing by the unaccompanied child, their attorney of record, or their parent or legal guardian by submitting a form provided by ORR to the care provider facility or by making a separate written request that contains the information requested in ORR's form.
¶24B	Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the	§ 410.1109(a)(2)	(a) ORR shall promptly provide each unaccompanied child in its custody, in a language and manner the unaccompanied child understands, with: . . . (2) The following explanation of the right of potential review: "ORR usually houses persons under the age of 18 in the least restrictive setting that is in an unaccompanied child's best interest, and generally not in restrictive placements (which

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	standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.		means secure facilities, heightened supervision facilities, or residential treatment centers). If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance and get advice about your rights to challenge this action. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form;"
¶24C	In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be de novo review.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶24D	The INS shall promptly provide each minor not released with (a) INS Form 1-770, (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services available in the district pursuant to INS regulations (unless previously given to the minor).	N/A § 410.1109(a)	None. This paragraph does not apply to ORR's Unaccompanied Children Program. ORR included a requirement in its regulation, however, that states: (a) ORR shall promptly provide each unaccompanied child in its custody, in a language and manner the unaccompanied child understands, with: (1) A State-by-State list of free legal service

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			providers compiled and annually updated by ORR and that is provided to unaccompanied children as part of a Legal Resource Guide for unaccompanied children; (2) The following explanation of the right of potential review: "ORR usually houses persons under the age of 18 in the least restrictive setting that is in an unaccompanied child's best interest, and generally not in restrictive placements (which means secure facilities, heightened supervision facilities, or residential treatment centers). If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance and get advice about your rights to challenge this action. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form;" and (3) A presentation regarding their legal rights, as provided under § 410.1309(a)(2).
¶24E	Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶25	Unaccompanied minors arrested or taken into custody by the INS should not be transported by	N/A	None. ORR is not responsible for the initial apprehension and transportation of unaccompanied

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	the INS in vehicles with detained adults except: A. when being transported from the place of arrest or apprehension to an INS office, or B. where separate transportation would be otherwise impractical. When transported together pursuant to Clause B, minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.		children. Further, ORR provides care and custody only to unaccompanied children, so whenever it arranges for transportation of such children, they would not be with any detained adults.
¶26	The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.	§ 410.1401(b)	(b) When ORR plans to release an unaccompanied child from its care to a sponsor under the provisions at subpart C of this part, ORR shall assist without undue delay in making transportation arrangements. In its discretion, ORR may require the care provider facility to transport an unaccompanied child. In these circumstances, ORR may, in its discretion, either reimburse the care provider facility or directly pay for the child and/or sponsor's transportation, as appropriate, to facilitate timely release.
¶27	Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as	§ 410.1601(a)	(a) *General requirements for transfers*. The care provider facility shall continuously assess unaccompanied children in their care to review whether the children's placements are appropriate. An unaccompanied child shall be placed in the least restrictive setting that is in the best interests of the child, subject to considerations regarding danger to self or the community and runaway risk. Care provider facilities shall follow ORR guidance, including guidance regarding placement

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	where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.		considerations, when making transfer recommendations. (1) If the care provider facility identifies an alternate placement for the unaccompanied child that would best meet the child's needs, the care provider facility shall make a transfer recommendation to ORR for approval within three business days of identifying the need for a transfer. (2) The care provider facility shall ensure the unaccompanied child is medically cleared for transfer within three business days of ORR identifying the need for a transfer, unless otherwise waived by ORR. For an unaccompanied child with acute or chronic medical conditions, or seeking medical services requiring heightened ORR involvement, the appropriate care provider facility staff and ORR shall meet to review the transfer recommendation. If a child is not medically cleared for transfer within three business days, the care provider facility shall notify ORR, and ORR shall review and determine if the child is fit for travel. If ORR determines the child is not fit for travel, ORR shall notify the care provider facility of the denial and specify a timeframe for the care provider facility to re-evaluate the child for transfer. (3) Within 48 hours prior to the unaccompanied child's physical transfer, the referring care provider facility shall notify all appropriate interested parties of the transfer, including the child's attorney of record or DOJ Accredited Representative, legal service provider, or child advocate, as applicable. However, such advance notice is not required in

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			unusual and compelling circumstances, such as the following in which cases notices shall be provided within 24 hours following transfer: (i) Where the safety of the unaccompanied child or others has been threatened; (ii) Where the unaccompanied child has been determined to be a runaway risk consistent with § 410.1107; or (iii) Where the interested party has waived such notice. (4) The unaccompanied child shall be transferred with the child's possessions and legal papers, including, but not limited to: (i) Personal belongings; (ii) The transfer request and tracking form; (iii) 30-day medication supply, if applicable; (iv) All health records; and (v) Original documents (including birth certificates). (5) If the unaccompanied child's possessions exceed the amount permitted normally by the carrier in use, the care provider shall ship the possessions to a subsequent placement of the unaccompanied child in a timely manner.
¶28A	An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS	§ 410.1303(a) § 410.1500 § 410.1501	§ 410.1303(a): (a) *Monitoring activities*. ORR shall monitor all care provider facilities for compliance with the terms of the regulations in this part and 45 CFR part 411. ORR monitoring activities include: (1) Desk monitoring that is ongoing oversight from ORR headquarters;

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	district offices and Border Patrol stations. Statistical information will include at least the following: (1) biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.		(2) Routine site visits that are day-long visits to facilities to review compliance for policies, procedures, and practices and guidelines; (3) Site visits in response to ORR or other reports that are for a specific purpose or investigation; and (4) Monitoring visits that are part of comprehensive reviews of all care provider facilities. § 410.1500: ORR shall maintain statistical and other data on the unaccompanied children for whom it is responsible. ORR shall be responsible for coordinating with other Departments to obtain some of the statistical data and shall obtain additional data from care provider facilities. This subpart describes information that care provider facilities shall report to ORR such that ORR may compile and maintain statistical information and other data on unaccompanied children. § 410.1501: Care provider facilities are required to report information necessary for ORR to maintain data in accordance with this section. Data shall include: (a) Biographical information, such as an unaccompanied child's name, gender, date of birth, country of birth, whether of indigenous origin, country of habitual residence, and, if voluntarily disclosed, self-identified LGBTQI+ status or identity; (b) The date on which the unaccompanied child came into Federal custody by reason of the child's

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			immigration status, including the date on which the unaccompanied child came into ORR custody; (c) Information relating to the unaccompanied child's placement, removal, or release from each care provider facility in which the unaccompanied child has resided, including the date on which and to whom the child is transferred, removed, or released; (d) In any case in which the unaccompanied child is placed in detention or released, an explanation relating to the detention or release; (e) The disposition of any actions in which the unaccompanied child is the subject; (f) Information gathered from assessments, evaluations, or reports of the child; and, (g) Data necessary to evaluate and improve the care and services for unaccompanied children, including: (1) Data relating to the administration of psychotropic medications. Such information shall include children's diagnoses, the prescribing physician's information, the name and dosage of the medication prescribed, documentation of informed consent, and any emergency administration of medication. Such data shall be compiled in a manner that enables ORR to track how psychotropic medications are administered across the network and in individual facilities. (2) Data relating to the treatment of unaccompanied children with disabilities. Such information shall include whether an unaccompanied child has been identified as having a disability, the unaccompanied child's diagnosis, the unaccompanied child's need

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			for reasonable modifications or other services, and information related to release planning. Such data shall be compiled in a manner that enables ORR ongoing oversight to ensure unaccompanied children with disabilities are receiving appropriate care while in ORR care across the network and in individual facilities.
¶28B	Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶29	On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.

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	Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.		
¶30	On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶31	One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶32	A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on

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	not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility. B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.		ORR that would continue after termination of the FSA.

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	C. Agreements for the placement of minors in non-INS facilities shall permit attorney-client visits, including by class counsel in this case. D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.		
¶33	In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.

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¶34	Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶35	After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶36	Nothing in this Agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶37	This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that a party has violated the terms of this	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.

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	Agreement shall be served on plaintiffs addressed to: [names and contact information for litigating parties]		
¶38	Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶39	Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of $374,110.09, in full settlement of all attorneys' fees and costs in this case.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
¶40	All terms of this Agreement shall terminate 45 days following defendants' publication of final regulations implementing this Agreement. Notwithstanding the foregoing, the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors.	N/A § 410.1104	None. This paragraph is only relevant to the consent decree itself. Notably, ORR has committed to placing all unaccompanied children in standard programs consistent with the following: § 410.1104: ORR shall place all unaccompanied children in standard programs that are not restrictive placements, except in the following circumstances: (a) An unaccompanied child meets the criteria for placement in a restrictive placement set forth in § 410.1105; or

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			(b) In the event of an emergency or influx of unaccompanied children into the United States, in which case ORR shall place the unaccompanied child as expeditiously as possible in accordance with subpart I of this part.
¶41	Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.
EXHIBIT 1 MINIMUM STANDARDS FOR LICENSED PROGRAMS			

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A.	Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes	§ 410.1302(b)	Standard programs and secure facilities shall: . . . (b) Comply with all State child welfare laws and regulations (such as mandatory reporting of abuse) and all State and local building, fire, health, and safety codes.
A.1.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.	§ 410.1302(c)(1)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (1) Proper physical care and maintenance, including suitable living accommodations, food that is of adequate variety, quality, and in sufficient quantity to supply the nutrients needed for proper growth and development, which can be accomplished by following the USDA Dietary Guidelines for Americans, and appropriate for the child and activity level, drinking water that is always available to each unaccompanied child, appropriate clothing, personal grooming and hygiene items such as soap, toothpaste and toothbrushes, floss, towels, feminine care items, and other similar items, access to toilets, showers, and sinks, adequate temperature control and ventilation, maintenance of safe and sanitary conditions that are consistent with ORR's concern for the particular vulnerability of children, and adequate supervision to protect unaccompanied children from others;
A.2.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care:	§ 410.1307(a), (b)(1)-(8)	(a) ORR shall ensure that all unaccompanied children in ORR custody will be provided with routine medical and dental care; access to medical services requiring heightened ORR involvement,

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	Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.		consistent with paragraph (c) of this section; family planning services; and emergency healthcare services. (b) Standard programs and restrictive placements shall be responsible for: (1) Establishment of a network of licensed healthcare providers established by the care provider facility, including specialists, emergency care services, mental health practitioners, and dental providers that will accept ORR's fee-for-service billing system; (2) A complete medical examination (including screening for infectious disease) within 2 business days of admission, excluding weekends and holidays, unless the unaccompanied child was recently examined at another facility and if unaccompanied children are still in ORR custody 60 to 90 days after admission, an initial dental exam, or sooner if directed by State licensing requirements; (3) Appropriate immunizations as recommended by the Advisory Committee on Immunization Practices' Child and Adolescent Immunization Schedule and approved by HHS's Centers for Disease Control and Prevention; (4) An annual physical examination, including hearing and vision screening, and follow-up care for acute and chronic conditions; (5) Administration of prescribed medication and special diets; (6) Appropriate mental health interventions when necessary;

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			(7) Having policies and procedures for identifying, reporting, and controlling communicable diseases that are consistent with applicable State, local, and Federal laws and regulations. (8) Having policies and procedures that enable unaccompanied children, including those with language and literacy barriers, to convey written and oral requests for emergency and non-emergency healthcare services. . . .
A.3.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.	§ 410.1302(c)(2)	Standard programs and secure facilities shall: (c) Provide or arrange for the following services for each unaccompanied child in care: . . . (2) An individualized needs assessment that shall include: (i) Various initial intake forms; (ii) Essential data relating to the identification and history of the unaccompanied child and family; (iii) Identification of the unaccompanied child's individualized needs including any specific problems that appear to require immediate intervention; (iv) An educational assessment and plan; (v) Identification of whether the child is an Indigenous language speaker; (vi) An assessment of family relationships and interaction with adults, peers and authority figures; (vii) A statement of religious preference and practice; (viii) An assessment of the unaccompanied child's personal goals, strengths, and weaknesses; and

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			(iv) Identifying information regarding immediate family members, other relatives, godparents, or friends who may be residing in the United States and may be able to assist in family reunification;
A.4.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor's leisure time.	§ 410.1302(c)(3)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (3) Educational services appropriate to the unaccompanied child's level of development, communication skills, and disability, if applicable, in a structured classroom setting, Monday through Friday, which concentrate on the development of basic academic competencies and on English Language Training (ELT), as well as acculturation and life skills development including: (i) Instruction and educational and other reading materials in such languages as needed; (ii) Instruction in basic academic areas that may include science, social studies, math, reading, writing, and physical education; and (iii) The provision to an unaccompanied child of appropriate reading materials in languages other than English for use during the unaccompanied child's leisure time;
A.5.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Activities according to a recreation and leisure time plan which shall include daily outdoor	§ 410.1302(c)(4)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care:

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	activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.		(4) Activities according to a recreation and leisure time plan that include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities, which do not include time spent watching television. Activities must be increased to at least three hours on days when school is not in session;
A.6.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.	§ 410.1302(c)(5)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (5) At least one individual counseling session per week conducted by certified counseling staff with the specific objectives of reviewing the unaccompanied child's progress, establishing new short and long-term objectives, and addressing both the developmental and crisis-related needs of each unaccompanied child;
A.7.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about	§ 410.1302(c)(6)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (6) Group counseling sessions at least twice a week;

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	recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.		
A.8.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.	§ 410.1302(c)(7)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (7) Acculturation and adaptation services that include information regarding the development of social and inter-personal skills that contribute to those abilities necessary to live independently and responsibly;
A.9.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.	§ 410.1302(c)(8)(iii)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (8) An admissions process, including: (iii) A comprehensive orientation regarding program purpose, services, rules (provided in writing and orally), expectations, their rights in ORR care, and the availability of legal assistance, information about U.S. immigration and employment/labor laws, and services from the Unaccompanied Children Office of the Ombuds (UC Office of the Ombuds) in simple, non-technical terms and in a language and manner that the child understands, if practicable; and . . . .

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A.10.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Whenever possible, access to religious services of the minor's choice.	§ 410.1302(c)(9)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (9) Whenever possible, access to religious services of the unaccompanied child 's choice, celebrating culture-specific events and holidays, being culturally aware in daily activities as well as food menus, choice of clothing, and hygiene routines, and covering various cultures in children's educational services;
A.11.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.	§ 410.1302(c)(10)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (10) Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation, including at least 15 minutes of phone or video contact three times a week with parents and legal guardians, family members, and caregivers located in the United States and abroad, in a private space that ensures confidentiality and at no cost to the unaccompanied child, parent, legal guardian, family member, or caregiver. The staff shall respect the unaccompanied child's privacy while reasonably preventing the unauthorized release of the unaccompanied child;

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A.12.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.	§ 410.1302(c)(14)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (14) Unaccompanied children must have a reasonable right to privacy, which includes the right to wear the child's own clothes when available, retain a private space in the residential facility, group or foster home for the storage of personal belongings, talk privately on the phone and visit privately with guests, as permitted by the house rules and regulations, and receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.
A.13.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.	§ 410.1302(c)(11)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (11) Assistance with family unification services designed to identify and verify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for release of the unaccompanied child;
A.14.	Licensed programs . . . shall provide for arrange for the following services for each minor in its care: Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the	§ 410.1302(c)(12)	Standard programs and secure facilities shall: . . . (c) Provide or arrange for the following services for each unaccompanied child in care: (12) Legal services information regarding the availability of free legal assistance, and that they

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	government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.		may be represented by counsel at no expense to the Government, the right to a removal hearing before an immigration judge; the ability to apply for asylum with U.S. Citizenship and Immigration Services (USCIS) in the first instance, and the ability to request voluntary departure in lieu of removal;
B.	Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.	§ 410.1302(d)	Standard programs and secure facilities shall: . . . (d) Deliver services in a manner that is sensitive to the age, culture, native or preferred language, and the complex needs of each unaccompanied child.
C.	Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.	§ 410.1304(a)	(a) Care provider facilities shall develop behavior management strategies that include evidence-based, trauma-informed, and linguistically responsive program rules and behavior management policies that take into consideration the range of ages and maturity in the program and that are culturally sensitive to the needs of each unaccompanied child. Care provider facilities shall not use any practices that involve negative reinforcement or involve consequences or measures that are not constructive and are not logically related to the behavior being regulated. Care provider facilities shall not: (1) Use or threaten use of corporal punishment, significant incident reports as punishment, unfavorable consequences related to sponsor unification or legal matters (e.g., immigration, asylum); use forced chores or work that serves no purpose except to demean or humiliate the child; forced physical movement, such as push-ups and running, or uncomfortable physical positions as a

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			form of punishment or humiliation; search an unaccompanied child's personal belongings solely for the purpose of behavior management; apply medical interventions that are not prescribed by a medical provider acting within the usual course of professional practice for a medical diagnosis or that increase risk of harm to the unaccompanied child or others; and (2) Use any sanctions employed in relation to an individual unaccompanied child that: (i) Adversely affect an unaccompanied child's health, or physical, emotional, or psychological well-being; or (ii) Deny unaccompanied children meals, hydration, sufficient sleep, routine personal grooming activities, exercise (including daily outdoor activity), medical care, correspondence or communication privileges, religious observation and services, or legal assistance. (3) Use prone physical restraints, chemical restraints, or peer restraints for any reason in any care provider facility setting.
D.	A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.	§ 410.1302(e)	Standard programs and secure facilities shall: . . . (e) Develop a comprehensive and realistic individual service plan for the care of each unaccompanied child in accordance with the unaccompanied child 's needs as determined by the individualized needs assessment. Individual plans must be implemented and closely coordinated through an operative case management system. Service plans should identify individualized, person-centered goals with measurable outcomes

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			and with steps or tasks to achieve the goals, be developed with input from the unaccompanied child, and be reviewed and updated at regular intervals. Unaccompanied children ages 14 and older should be given a copy of the plan, and unaccompanied children under age 14 should be given a copy of the plan when appropriate for that particular child's development. Individual plans shall be in that child's native or preferred language or other mode of auxiliary aid or services and/or use clear, easily understood language, using concise and concrete sentences and/or visual aids and checking for understanding where appropriate.
E.	Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.	§ 410.1303(h)	(h) *Develop, maintain, and safeguard each individual unaccompanied child's case file.* This paragraph (h) applies to all care provider facilities responsible for the care and custody of unaccompanied children. (1) Care provider facilities and PRS providers shall preserve the confidentiality of unaccompanied child case file records and information, and protect the records and information from unauthorized use or disclosure; (2) The records included in an unaccompanied child's case file are ORR's property, regardless of whether they are in ORR's possession or in the possession of a care provider facility or PRS provider. Care providers facilities and PRS providers shall not release those records or information within the records without prior approval from ORR, except for program administration purposes;

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			(3) Care provider facilities and PRS providers shall provide unaccompanied child case file records to ORR immediately upon ORR's request; and (4) Subject to applicable whistleblower protection laws, employees, former employees, or contractors of a care provider facility or PRS provider shall not disclose case file records or information about unaccompanied children, their sponsors, family, or household members to anyone for any purpose, except for purposes of program administration, without first providing advanced notice to ORR to allow ORR to ensure that disclosure of unaccompanied children's information is compatible with program goals and to ensure the safety and privacy of unaccompanied children.
F.	Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.	§ 410.1303(i)	(i) *Records*. Care provider facilities and PRS providers shall maintain adequate records in the unaccompanied child case file and make regular reports as required by ORR that permit ORR to monitor and enforce the regulations in this part and other requirements and standards as ORR may determine are in the interests of the unaccompanied child.
EXHIBIT 2 INSTRUCTIONS TO SERVICE OFFICERS RE: PROCESSING, TREATMENT, AND PLACEMENT OF MINORS			
Exhibit 2	These instructions are to advise Service officers of INS policy regarding the way in	N/A	None. This exhibit is not included in the final rule because it does not impose obligations on ORR that

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	which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors. [Instructions to former INS Service Officers]		would continue after termination of the FSA. Exhibit 2 provides a set of instructions for service officers of the former INS on how to implement the FSA.
EXHIBIT 3 CONTINGENCY PLAN			
Exhibit 3	In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in programs licensed by an appropriate state agency as expeditiously as possible. An "emergency" is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An "influx" is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs. 1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that the INS normally has available, and whenever possible,	§ 410.1001 Subpart I	§ 410.1001 Emergency means an act or event (including, but not limited to, a natural disaster, facility fire, civil disturbance, or medical or public health concerns at one or more facilities) that prevents timely transport or placement of unaccompanied children, or impacts other conditions provided by this part. . . . Influx means, for purposes of HHS operations, a situation in which the net bed capacity of ORR's standard programs that is occupied or held for placement by unaccompanied children meets or exceeds 85 percent for a period of seven consecutive days. Subpart I [Not copied in full] § 410.1800: (a) ORR shall regularly reevaluate the number of standard program placements needed for unaccompanied children to determine whether the number of shelters, heightened supervision facilities, and ORR transitional home care beds

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	would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the List. The Emergency Placement List will include the facility name; the number of beds potentially available at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available. 2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, (3) date placed in INS custody, and (4) place and date of current placement. 3. Within one business day of the emergency or influx the Juvenile Coordinator or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available. 4. In the event that the number of minors needing		should be adjusted to accommodate an increased or decreased number of unaccompanied children eligible for placement in care in ORR care provider facilities. (b) In the event of an emergency or influx that prevents the prompt placement of unaccompanied children in standard programs, ORR shall place each unaccompanied child in a standard program as expeditiously as possible. (c) ORR activities during an influx or emergency include the following: (1) ORR shall implement its contingency plan on emergencies and influxes, which may include opening facilities to house unaccompanied children and prioritization of placement at such facilities of certain unaccompanied children; (2) ORR shall continually develop standard programs that are available to accept emergency or influx placements; and (3) ORR shall maintain a list of unaccompanied children affected by the emergency or influx including each unaccompanied child's: (i) Name; (ii) Date and country of birth; (iii) Date of placement in ORR's custody; and (iv) Place and date of current placement.

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	emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies. 5. Each year the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph. 6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.		
EXHIBIT 4 AGREEMENT CONCERNING FACILITY VISITS UNDER PARAGRAPH 33			
Exhibit 4	The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on ORR that would continue after termination of the FSA.

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	procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit. Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time. All visits with class members shall take place during normal business hours. No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders. The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare. No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.		
EXHIBIT 5 LIST OF ORGANIZATIONS TO RECEIVE INFORMATION RE: SETTLEMENT AGREEMENT			
Exhibit 5	[List of organizations including contact information]	N/A	None. This paragraph is only relevant to the consent decree itself and does not impose obligations on

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			ORR that would continue after termination of the FSA.
EXHIBIT 6 NOTICE OF RIGHT TO JUDICIAL REVIEW			
Exhibit 6	"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."	§ 410.1109(a)(2)	(a) ORR shall promptly provide each unaccompanied child in its custody, in a language and manner the unaccompanied child understands, with: . . . (2) The following explanation of the right of potential review: "ORR usually houses persons under the age of 18 in the least restrictive setting that is in an unaccompanied child's best interest, and generally not in restrictive placements (which means secure facilities, heightened supervision facilities, or residential treatment centers). If you believe that you have not been properly placed or that you have been treated improperly, you may call a lawyer to seek assistance and get advice about your rights to challenge this action. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form;"