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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 JENNY LISETTE FLORES., *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case No. CV 85-4544-DMG-AGR_x

PLAINTIFFS' RESPONSE TO ICE
AND CBP JUVENILE
COORDINATORS' REPORTS

[Doc. ## 1192-1, 1192-3]

[HON. DOLLY M. GEE]

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1 **1. ICE JUVENILE COORDINATOR’S REPORT**

2 The Immigration and Customs Enforcement (ICE) Juvenile Coordinator
3 October 2021 Report (Doc. #1192-1) (“ICE Report”) states in part that as of
4 February 26, 2021, all families had been released from Berks and there have been
5 no families housed there since. ICE Report at 1. Plaintiffs welcome this
6 development and the fact that Berks has not been recommissioned for family
7 detention.

8 The South Texas Family Staging Center and Karnes County Family Staging
9 Center are being used as “short-term” residential/staging centers for family units,
10 with the goal of “releasing families within 72 hours.” *Id.* at 2. Plaintiffs welcome
11 this development and in particular ICE’s goal of releasing family units within 72
12 hours. Plaintiffs understand that release within the 72-hour window may be
13 contingent upon ICE securing timely sponsor and travel arrangements, and that
14 families who test positive for COVID-19 are generally held for a 10-day
15 quarantine period.

16 ICE also reports that due to an unprecedented increase in irregular migrant
17 flows to the southwest border, including greater numbers of family units, existing
18 infrastructure “cannot hold this number of individuals in a way that fully complies
19 with the FSA and other requirements” and ICE therefore continues to secure the
20 use of hotels to temporarily house and process family units for release. *Id.* at 4.

21 Plaintiffs remain concerned with the use of hotels unless Class Members
22 detained in such facilities are promptly released and are provided with the services
23 and care required by the FSA. Plaintiffs plan to conduct monitoring and Class
24 Member interviews at several hotels to assess whether conditions and length of
25 detention are in compliance with the Settlement and prior Court Orders.

26 ICE reports that as of October 22, 2021, there were 126 Class Members at
27 the ICE FSCs, 198 in hotels, and one in secure juvenile detention, for a total of
28 325 Class Members in ICE custody, down from the 562 detained as of the
 Juvenile Coordinator’s last report. *Id.*

1 ICE further reports that as of October 22, 2021, Class Members at Karnes
2 were detained an average of four (4) days, Class Members at the South Texas
3 Facility were detained an average of 4 days, and Class Members in hotels were
4 detained an average of three (3) days.

5 Overall, these numbers are far less than the numbers of Class Members
6 previously detained by ICE and the length of their detention has been significantly
7 reduced. Plaintiffs welcome the fact that it appears that the speed with which
8 Class Members and their accompanying parent(s) or legal guardian(s) are being
9 processed and released from ICE custody has increased significantly.

10 ICE reports that the FSCs and hotels that house Class Members continue to
11 follow the COVID-19 mitigation practices set forth in the ERO PRR for social
12 distancing, shift staggering, sick leave policies, vaccination access, and other
13 measures to ensure continuity of operations. Subject to further monitoring, at
14 present Plaintiffs have no further recommendations with regards measures to
15 prevent and slow the spread of COVID-19 within ICE facilities.

16 Finally, ICE reports that between August 24, 2021, and October 18, 2021, it
17 did not house any Class Members pending expulsion under Title 42 processes at
18 an ICE facility or hotel. *Id.* at 9.

19 **2. CBP JUVENILE COORDINATOR'S REPORT**

20 The CBP Juvenile Coordinator's October 29, 2021 Report ("CBP Report")
21 (Doc. # 1192-3) indicates that family unit (FMU) encounters, including both
22 adults and children, decreased by 25.7%, and unaccompanied children (UCs)
23 encounters decreased by 23.7% across the SWB. *Id.* at 2. On average, in
24 September 2021, there were 772 UCs in CBP custody per day, compared to
25 August 2021 when there were an average of 1,435 UCs in custody per day. *Id.*

26 The Report indicates that as of October 14, 2021, there were 575 UC's in
27 custody in the Southwest Border and 290 in the RGV Sector. At the same time,
28 there were 1.210 FMU minors in custody in the Southwest Border, and 771 in the

1 RGV Sector.

2 Plaintiffs are pleased to see that the average time in CBP custody has
3 decreased somewhat for both FMU minors and UCs. In the Southwest Border, for
4 example, average length of detention for UCs in August was 44 hours, in
5 September 29.40 hours, and on October 14, 2021, was 22.63 hours. In the RGV
6 Sector average length of detention for UCs in August was 45 hours, in September
7 30.51 hours, and on October 14, 2021, was reduced to 19.70 hours.

8 In the Southwest Border, average length of detention for FMU minors in
9 August was 61.03 hours, in September 61.21 hours, and on October 14, 2021, was
10 48.82 hours. In the RGV Sector average length of detention for FMU minors in
11 August was 53.51 hours, in September 57.63 hours, and on October 14, 2021, was
12 reduced to 50.58 hours.

13 *Plaintiffs are concerned and suggest the Court inquire at the next status*
14 *conference, if the CBP Juvenile Coordinator knows or can determine prior to the*
15 *next status conference –*

16 • *Why as of October 14, 2021, in the RGV Sector where UC’s were detained*
17 *an average 19.70 hours, were minors in FMUs detained an average of 50.58*
18 *hours, two and a half times longer than UCs?*

19 • *Why as of October 14, 2021, in the Southwest Border, where UC’s were*
20 *detained an average 22.63 hours, were minors in FMUs detained an average of*
21 *48.82 hours, more than twice the length of time UCs were detained?*

22 • *What, if any, plans does CBP have in the Southwest Border and in the*
23 *RGV Sector to speed up the release of FMU minors?*

24 • *Similarly, what, if any, steps is CBP taking in the Southwest Border and in*
25 *the RGV Sector to speed up the release of FMU minors?*

26 * * * * *

27 CBP next reports that it conducts health intake interviews, including
28 COVID-19 considerations and temperature checks, on individuals in custody upon
entry into CBP facilities. If Class Members entering CBP custody display

1 COVID-19 symptoms or are suspected of having COVID-19, CBP reports that
2 they are taken from the CBP facility to a local health care facility for medical care,
3 COVID-19 testing (if appropriate), and treatment. *Id.* at 4.

4 *Plaintiffs suggest that the Court inquire and the CBP Juvenile Coordinator*
5 *explain at the next status conference –*

6 • *Does CBP maintain data on the number of class members who are*
7 *suspected of having COVID-19 and taken from a CBP facility to a local health*
8 *care facility for medical care and are tested positive for COVID-19?*

9 • *If the CBP does maintain such data, can it be shared with the Court or*
10 *Class Counsel?*

11 • *If the CBP does not maintain such data, could it start doing so in order to*
12 *better assess how many Class Members it detains actually are infected with*
13 *COVID-19 while in CBP custody?*

14 • *Other than distributing face masks, and encouraging social distancing,*
15 *what steps, if any, is CBP currently taking to avoid the spread of COVID-19*
16 *among detained Class Members?*

17 • *Has CBP taken any steps, and if so, what steps, to permit FMUs and UCs*
18 *to engage in social distancing while detained by CBP in the SW Border or in the*
19 *El Paso and RGV Sectors?*

20 * * * * *

21 While Class Counsel remain concerned with the length of detention of
22 Class Members at CBP facilities and the conditions of detention, Plaintiffs can
23 report that efforts to arrive at a settlement of Plaintiffs' request for a Temporary
24 Restraining Order and Preliminary Injunction (ECF No. 572) seeking to enforce
25 compliance with the Settlement regarding conditions and processing of Class
26 Members at CBP facilities in the Rio Grande Valley and El Paso Sectors have
27 resumed and in Class Counsel's opinion continue to make substantial progress.

28 If finalized and approved by the Court, the new agreement will for the first
time set detailed standards, protocols, and independent medical monitoring at CBP

1 facilities in the Rio Grande Valley and El Paso Border Patrol Sectors aimed at
2 enhancing the safety and well-being of Class Members in CBP custody and
3 ensuring CBP compliance with the *Flores* Settlement and the Court's prior
4 Orders.

5 Dated: November 5, 2021

Respectfully submitted,

6
7 /s/Peter Schey
8 *Class Counsel for Plaintiffs*

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CERTIFICATE OF SERVICE

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I hereby certify that on November 5, 2021, I served the foregoing pleading on all counsel of record by means of the District Clerk’s CM/ECF electronic filing system.

/s/Peter Schey
Counsel for Plaintiffs
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Peter A. Schey