No. 25-6308

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, *et al.*,
Plaintiffs-Appellees,
v.
TODD BLANCHE, ATTORNEY GENERAL, *et al.*,
Defendants-Appellants

PLAINTIFFS-APPELLEES' REPLY IN SUPPORT OF SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE

On appeal from the
United States District Court for the Central District of California
Case No. 2:85-cv-04544-DMG-AGR

CARLOS R. HOLGUÍN
BARDIS VAKILI
SARAH E. KAHN
Center for Human Rights
& Constitutional Law
1505 E. 17th St., Ste. 117.
Santa Ana, California 92705
Tel: (213) 388-8693

MISHAN WROE
DIANE DE GRAMONT
REBECCA RUTH WOLOZIN
National Center for Youth Law
428 13th Street, Floor 5
Oakland, California 94612
Tel: (510) 835-8098

LEECIA WELCH
Children's Rights
2021 Fillmore Street
San Francisco, CA 94115
Tel: (415) 602-5202

Attorneys for Plaintiffs-Appellees

I. Introduction

The Government does not contest that the district court's August 17, 2026, opinion and order appointing a special master and independent monitor are properly subject to judicial notice. The Court should grant judicial notice of the existence of these orders and relevant facts "not subject to reasonable dispute," such as the Government's time in custody data. Fed. R. Evid. 201(b)(2).

In its response to Plaintiffs' supplemental motion for judicial notice, the Government inaccurately characterizes the district court's appointment order as inequitable and issued *sua sponte*. *See* Defendants-Appellants' Response to Plaintiffs-Appellees' Supplemental Motion for Judicial Notice at 2-3, ECF 72.1 ("Response").[1] This characterization is contrary to the record, which demonstrates that the district court acted only in response to Plaintiffs' evidence of ongoing serious violations of the Settlement, and only after diligent efforts over a full year to secure the Government's compliance with the Settlement through other means.

II. Argument

A. Plaintiffs Seek Judicial Notice Only of Relevant Undisputed Facts

As with their original motion for judicial notice, Plaintiffs do not seek blanket judicial notice of all the information contained in the district court's orders. Plaintiffs

[1] All page citations are to the page number in the document, not the page generated by the ECF system.

seek judicial notice only of facts not subject to reasonable dispute, such as the status of the parties' factual disputes and the Government's data regarding children's lengths of detention. *See* Supplemental Motion for Judicial Notice at 3-4, ECF 71.1. In its response, the Government does not dispute the accuracy or reliability of the Government's time in custody data cited in the district court's opinion. *See* Fed. R. Evid. 201(b)(2).

As Plaintiffs have explained in prior briefing, this time in custody information is relevant to Plaintiffs' arguments on appeal that internal Customs and Border Protection ("CBP") and Immigration and Customs Enforcement ("ICE") policies do not constitute a "durable remedy" under *Horne v. Flores*, 557 U.S. 433, 450 (2009), and the prolonged detention of children in inherently inappropriate and unsafe conditions violates minimum constitutional standards. *See* Plaintiffs-Appellees' Answering Br. at 25-33 & n.7, ECF 17.1 (Answering Br.).

B. The District Court's Appointment Order Reflects Judicial Restraint, Not Overreach

The Government's contention that "[t]he district court continues to depart from the traditional role of courts and to entangle itself *on its own initiative* in" immigration enforcement policy is unfounded. Response at 3 (emphasis added). Over the past year, Plaintiffs presented substantial evidence of significant and persistent violations of both the Settlement and the district court's prior remedial orders (issued between 2015 and 2025), that endanger children's safety and well-

being. The district court initially deferred consideration of whether to appoint an independent monitor as requested in Plaintiffs' June 2025 Motion to Enforce and instead provided the Government numerous opportunities to comply with the Settlement and its prior orders. Over the past year, the Government's internal monitors filed numerous reports with the district court, Plaintiffs filed numerous responses to those reports, and the district court held numerous status conferences.[2]

After concluding that an independent monitor was likely necessary to monitor compliance with its prior orders, the district court issued an order to show cause, provided both parties the opportunity to respond in writing and in a status conference, made multiple modifications in response to the Government's objections, and narrowly tailored its monitoring order to those issues and locations

[2] *See* September 8, 2025 CBP and ICE Juvenile Coordinator Supplemental Reports, ECF 1648-1, 1648-4; Plaintiffs' Response to Supplemental Juvenile Coordinator Reports and Data, ECF 1656; December 1, 2025 CBP and ICE Juvenile Coordinator Supplemental Reports, ECF 1692-1, 1692-4; Plaintiffs' Response to December 1, 2025 Supplemental Juvenile Coordinator CBP and ICE Reports and Data, ECF 1706, 1707; March 13, 2026 CBP and ICE Juvenile Coordinator Suppl. Reports, ECF 1735-1, 1736-1; Plaintiffs' Reponses to March 13, 2026 CBP and ICE Juvenile Coordinator Supplemental Reports, ECF 1747, 1748; May 4, 2026 CBP and ICE Juvenile Coordinator Supplemental Reports, ECF 1767-1, 1768-1; Plaintiffs' Reponses to May 4, 2026, CBP and ICE Juvenile Coordinator Supplemental Reports, ECF 1779, 1780; July 1, 2026 CBP and ICE Juvenile Coordinator Annual Reports, ECF 1801-1, 1802-1; Plaintiffs' Responses to July 1, 2026, ICE and CBP Juvenile Coordinator Annual Reports, ECF 1811, 1814; *see also* Status Conference Orders, ECF 1613, 1614 (July 25, 2025); ECF 1671, 1672 (Sept. 22, 2025); ECF 1713, 1714 (Dec. 15, 2025); ECF 1754, 1755 (March 30, 2026); ECF 1789, 1794 (June 1, 2026); ECF 1825 (August 4, 2026).

with the most significant evidence of violations. *See* Ex. 1 to Plaintiffs-Appellants Supplemental Motion for Judicial Notice at 1, 7 n.5, 9, 16-18, ECF 71.2 ("Opinion Appointing SM and IM").

1. Customs and Border Protection

Plaintiffs filed a motion to enforce the Settlement against CBP in June 2025 and requested appointment of an independent monitor. Opinion Appointing SM and IM at 2; *see also* 1-SER-7. In its August 2025 order on Plaintiffs' motion to enforce, the district court found violations of the Settlement but denied Plaintiffs' request for an independent monitor without prejudice, instead giving the Government yet another opportunity to improve its compliance through internal monitoring. Opinion Appointing SM and IM at 2; *see also* 1-SER-8-9, 13-16.

Specifically, in its August 2025 order, the district court concluded that Plaintiffs' evidence of extended detention in CBP custody—including young children detained in holding cells for weeks at a time—"likely violates the FSA." 1-SER-8. But the district court noted recent declines in time in custody and gave the Government the benefit of the doubt that this "indicates that CBP is aware of the issue and is working to resolve it." 1-SER-8-9. The district court requested further reports from the CBP Juvenile Coordinator "to assess whether further enforcement of the Agreement is warranted." 1-SER-8-9.

By August 2026, the district court had clear evidence that CBP had not resolved the problem of prolonged detention in temporary holding cells. The district court noted—based on the Government's own reports—that *average* time in custody for children in family units in U.S. Border Patrol facilities on the Southwest border exceeded 145 hours in March 2026, or more than six days. Opinion Appointing SM and IM at 5. Plaintiffs provided evidence that children were detained in CBP holding cells for over a week—and in some cases multiple weeks—in 2026. *Id.* at 6. Citing the Government's own declarations, the district court emphasized that "[t]he parties have long acknowledged that 72 hours is a reasonable benchmark given that CBP facilities are intended only for short-term use and are not suitable for minors for longer periods of time." *Id* at 6; *see also* 1-SER-14 ("CBP facilities, by design, are not suitable for minors for long periods of time."); Answering Br. at 1-2, 26-28, 32 n.9 (describing conditions in CBP custody).

Given these findings, the district court determined independent monitoring of time in custody was necessary. Opinion Appointing SM and IM at 7. Even then, the district court limited its monitoring order to the specific CBP sectors where it had previously identified violations in its August 2025 order, notwithstanding Plaintiffs' evidence that children were also regularly detained for over 72 hours in other sectors. *Id.* at 7 n.5.

The district court similarly limited its monitoring order related to conditions in CBP custody to the specific sectors where it first identified violations in its August 2025 order and where Plaintiffs' evidence and Defendants' reports demonstrated continued noncompliance, including with regard to freezing temperatures, constant lighting interrupting sleep, and lack of access to soap. *Id.* at 7-9. In its August 2025 order, the district court had credited the Government's representations "that the lack of soap issue is actively being resolved." 1-SER-10 n.5. But recent evidence, including from the CBP Juvenile Coordinator's own report, indicates that the San Diego CBP sector *still* fails to provide children with soap. Opinion Appointing SM and IM at 8-9; *see also* Answering Br. at 6, 27, 28 n.7, 30-31 (describing persistent failures to provide children in CBP custody with soap despite prior court orders). The district court thus reasonably included soap within the scope of monitoring.

Ensuring children have access to soap, have reasonable temperature control, have the ability to sleep, and are not held in windowless holding cells for weeks at a time, is fully consistent with "the traditional role of courts" to protect basic individual rights and in no way interferes with "sensitive, ever-changing, and expert policy determinations about immigration enforcement[.]" Response at 3.

2. Immigration and Customs Enforcement

As with CBP, the district court did not appoint a monitor as to ICE *sua sponte*. In response to filings by Plaintiffs, the district court gave ICE multiple opportunities

to comply with the Settlement over the past year and attempted "to use the least intrusive mechanisms for enforcement in an effort to conserve the parties' and the Court's resources" prior to appointing an independent monitor. Opinion Appointing SM and IM at 9; *see also* Order re September 22, 2025 Status Conference, 1-SER-273 ("[A]s interim remedial measures in response to Plaintiffs' pending motion to enforce and the Court's prior Orders to Enforce, the Court again defers ruling on whether to re-appoint a Special Master and sets the following additional reporting deadlines."); Order re March 30, 2026 Status Conference at 3-4, Ex. B to Plaintiffs' Motion for Judicial Notice, ECF 57.2 at 46-47 (listing prior court orders related to CBP and ICE facilities and advising the parties that "[c]ontinued non-compliance will result in the re-appointment of a Special Master/Independent Monitor."). The Court directed the parties to attempt to resolve their disputes regarding compliance through mediation, but mediation was unsuccessful. *See, e.g.,* Joint Status Report, *Flores v. Blanche*, June 5, 2026, ECF 1792 (C.D. Cal. June 5, 2026).

The district court limited the scope of monitoring to specific issue areas where ICE continues to violate the court's prior remedial orders, including prolonged detention in family detention and in hotel rooms, lack of notice of *Flores* rights, and inadequate medical care. *See* Opinion Appointing SM and IM at 10-16; *see*, *e.g., id.* at 12-13 (finding evidence that multiple children were detained in hotel rooms for over 10 consecutive days in May 2026, despite the district court's April 3, 2026,

order reiterating its September 2020 orders prohibiting extended hotel detention); *id.* at 14-15 (noting that the legal service provider at Dilley family detention center reported "receiv[ing] around 1,480 complaints from detainees regarding medical concerns at Dilley" between May 2025 and May 2026, and finding that independent monitoring is required because "[a]t a minimum, the evidence regarding medical care is conflicting and the reported differences in reality are stark.").

Far from demonstrating that the Settlement is outdated or unjustified, Response at 3, the district court's monitoring order reinforces the continued necessity of the Settlement to ensure children's most basic rights are protected.[3]

III. Conclusion

For the reasons stated above, Plaintiffs-Appellees respectfully request that the Court grant their supplemental motion for judicial notice.

Respectfully submitted,

Dated: September 21, 2026 *<u>/s/ Diane de Gramont</u>*____

DIANE DE GRAMONT
MISHAN WROE

[3] The Government's argument regarding the Department of Health and Human Services ("HHS") is misplaced. Response at 3. The district court's monitoring order is focused exclusively on the Department of Homeland Security and its component agencies, CBP and ICE. HHS's conduct was not at issue in this order and the district court made no findings—positive or negative—regarding HHS's compliance with the Settlement.

REBECCA RUTH WOLOZIN
National Center for Youth Law
428 13th Street, 5th FL
Oakland, California 94612
Tel: (510) 835-8098

CARLOS R. HOLGUÍN
BARDIS VAKILI
SARAH E. KAHN
Center for Human Rights & Constitutional Law
1505 E. 17th St., Ste. 117
Santa Ana, CA 92705
Tel: (213) 388-8693

LEECIA WELCH
Children's Rights
2021 Fillmore Street
San Francisco, CA 94115
Tel: (415) 602-5202

CERTIFICATE OF COMPLIANCE

1. This motion reply complies with Circuit Rule 27-1 and Fed. R. App. P. 27(d)(2) because: this motion is 8 pages long and contains 1,878 words, excluding the parts of the motion exempted by Fed. R. App. P. 27(a)(2)(B) and 32(f).
2. This motion reply complies with the typeface requirements of Fed. R. App. P. 27(d)(1) and the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6) because: this reply has been prepared in a proportionally spaced typeface and Times New Roman size 14 font.

/s/ Diane de Gramont
Diane de Gramont