

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

MOHAMMED IBRAHIM, by and through )  
his next friend and mother, Dekka Warsame, )  
 )  
Plaintiff )

v. )

MICHAEL CHERTOFF, Secretary of )  
U.S. Department of Homeland Security )  
(DHS); JULIE L. MYERS, Assistant )  
Secretary, U.S. Immigration and Customs )  
Enforcement (ICE); JOHN P. TORRES, )  
Director, Office of Detention and Removal )  
Operations, ICE; MARC MOORE, )  
ICE Field Office Director; GARY MEAD, )  
Assistant Director of Detention and Removal )  
Operations at ICE, SIMONA COLON, ICE )  
Officer in Charge; JOHN POGASH, ICE )  
National Juvenile Coordinator, )  
 )  
Defendants. )

Civil Action  
No.:

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action on behalf of a seven-year-old child, Mohammed Ibrahim, who has been unlawfully imprisoned by U.S. Immigration and Customs Enforcement (“ICE”), part of the U.S. Department of Homeland Security (“DHS”), for the past 97 days. Mohammed is being held at a converted medium-security prison, the T. Don Hutto Family Residential Center (“Hutto”) in Taylor, Texas, in violation of the Settlement Agreement in *Flores v. Meese*, No. 85-cv-4544 (C.D. Cal.) (“*Flores* Settlement” or “Settlement”). The United States Department of Justice entered into the *Flores* Settlement on January 1997 and ICE remains bound by the Settlement today. This action seeks to enforce the *Flores* Settlement on Mohammed’s behalf, to

secure his release, and to ensure that he is not separated from his mother, Dekka Warsame, and his sisters.

2. The *Flores* Settlement established minimum standards and conditions for the housing and release of all minors in federal immigration custody. Recognizing the particular vulnerability of children in detention, the Settlement regulates ICE's release and treatment of minors in three fundamental areas: First, it contemplates that children will generally be released promptly to their parents or designated family members, or, if necessary, to shelters and unrelated custodians. Second, those class members who remain in ICE's custody must be placed in the least restrictive setting possible, generally a facility or home licensed for the care of dependent, non-delinquent minors. Third, regardless of where they are housed, detained minors are guaranteed a range of basic educational, health, social, and other benefits and rights.

3. Notwithstanding the Settlement, and despite wide recognition that for juveniles "even the most minimal experience of incarceration [can be] extremely injurious," *Lanes v. State*, 767 S.W.2d 789, 796 (Tex. Crim. App. 1989), defendants have been imprisoning minor children at Hutto in clear violation of the Settlement. ICE fails to consider these children for release to their parents under reasonable conditions of supervision, fails to place them in the least restrictive custodial setting, and fails to detain them in conditions that meet *Flores* standards. As a result of defendants' refusal to comply with the dictates of *Flores*, the children detained at Hutto suffer prolonged imprisonment, needless frustration, acute anxiety, fear and depression.

4. Defendants' use of the Hutto facility to detain children and families also directly contravenes the expressed intent of Congress. In 2005 and 2006, Congress directed DHS to keep immigrant families together, and either to release such families altogether or to use alternatives to detention. Congress noted that if detention is necessary, immigrant families should be housed

in non-penal, homelike environments. In 2005, the House Committee on Appropriations, when making appropriations to DHS, directed, “The Committee expects DHS to release families or use alternatives to detention such as the Intensive Supervision Appearance Program whenever possible.” Department of Homeland Security Appropriations Bill, H.R. 79, 109th Cong. (2005). The following year, the House Committee on Appropriations, when making appropriations to DHS, reiterated its position that, where possible, family units should be released under conditions of supervision, and “if detention is necessary, [ICE should] house these families together in non-penal, homelike environments until the conclusion of their immigration proceedings.” Department of Homeland Security Appropriations Bill, H.R. 476, 109th Cong. (2006). In 2007, Congress again reaffirmed this position. Department of Homeland Security Appropriations Bill, 2007, H.R. 476, 109th Cong., 2d Session (2007).

5. ICE has stated that it opened Hutto in May 2006 to keep families together, pursuant to Congress’s recommendation. However, while ICE calls Hutto a “Family Residential Center,” the facility itself used to be a medium-security prison and, until recently, razor wire surrounded much of its perimeter. Indeed, far from providing a “non-penal homelike environment[,]” Hutto is structurally and functionally a prison. Children are required to wear prison garb. Until two weeks ago, they received only one hour of recreation a day, Monday through Friday, and were rarely allowed outdoors in the fresh air. Despite recent changes, they still do not receive the amount of recreation that thriving children require. They are detained in small cells for about 11 or 12 hours each day, prohibited from keeping food and toys in their cells, and hardly have any privacy. Moreover, despite their urgent needs, they lack access to adequate medical, dental, and mental health treatment, and are denied adequate educational opportunities. Guards frequently discipline children by threatening to separate them permanently

from their parents, and children are prohibited from having contact visits with non-detained family members.

6. There is no question that family unity is of paramount concern. However, ICE's use of this objective to justify imprisoning immigrant children wholly perverts congressional intent. As clearly recognized by Congress in its directive to DHS, the choice is not between enforcement of the immigration laws and humane treatment of immigrant families. Rather, ICE has alternatives to detention that would satisfy both these objectives and be more cost-effective as well. These include the Intensive Supervision Assistance Program ("ISAP"), a program that utilizes electronic monitoring as a way to supervise immigrants released into the community, and for which Congress *specifically allocated funding*. Moreover, in the event that greater supervision is deemed necessary, there are "non-penal homelike environments" where such families can be held. For example, the U.S. Marshals Service in San Diego has a contract with a 24-hour care facility run by Catholic Charities, Casa San Juan. A similar facility, Casa Marianella, houses refugee families in Austin, Texas. Either of these options could bring DHS into compliance with the *Flores* Settlement.

7. There is simply no justification for imprisoning children, many of whom are seeking asylum and have been found by a trained asylum officer to possess a credible fear of persecution, in a converted medium-security prison that does not provide proper services or comport with existing federal standards on the detention of immigrant children. Because defendants have failed to comply with their clear obligations under *Flores*, Mohammed seeks declaratory and injunctive relief to remedy the serious and ongoing violations of his rights.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346(a)(2).

9. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

10. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C. § 702, and Rule 65 of the Federal Rules of Civil Procedure.

11. Venue properly lies in the Western District of Texas pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(2) because a substantial part of the events and omissions giving rise to Mohammed's claims occurred, and continues to occur, in this district.

## **PARTIES**

### **A. Plaintiff**

12. Mohammed Ibrahim appears by and through his next friend and mother, Deka Warsamee. Deka Warsame is currently detained at Hutto with Mohammed. Mohammed's sisters, Bahja Ibrahim, age nine, and Aisha Ibrahim, age eleven, are also detained at Hutto.

13. Mohammed was born on December 16, 1999 in Kenya, after his family fled an intra-clan war in Somalia that killed many members of his family and destroyed their home. In February, 2004, his mother obtained visas to the United States for herself, Mohammed, and his two sisters. Mohammed and his family lived in Tennessee and then Ohio, where his grandmother, who was admitted as a refugee, and his aunt, who was granted asylum, reside. Until recently, he attended the first grade at East Linden Elementary School in Columbus, Ohio.

14. After coming to the United States, Mohammed's mother applied for asylum on the grounds that she and her children would face persecution if returned to Somalia. This application was denied by an immigration judge.

15. Thereafter, in November, 1996, Mohammed's mother attempted to enter Canada with Mohammed and his two sisters in order to apply for asylum there. However, because she had previously filed an asylum application in the United States, the Canadian authorities returned her to the United States pursuant to the Canada-U.S. "Safe Third Country Agreement."<sup>1</sup> As a result, Mohammed and his family were taken into ICE custody and transported to the Hutto detention center, where they have been detained since. Mohammed's mother is currently in the process of obtaining new counsel to bring a motion to reopen her asylum case based on ineffective assistance by her prior counsel and deteriorating and increasingly dangerous conditions in Somalia.

16. There has never been any suggestion that Mohammed, his mother, or either of his sisters pose any danger that would require their detention.

17. Mohammed has been detained at Hutto from November 30, 2006 to the present. He is in the custody of defendant officials at DHS, under the direction of the Secretary of DHS, Michael Chertoff, and ICE, under the direction of Julie L. Myers, the Assistant Secretary of Homeland Security for ICE.

18. Since arriving at Hutto, Mohammed has suffered and continues to suffer actual injury because defendants have failed to consider him for release, to place him in the least restrictive setting, or to provide him with essential rights and services.

## **B. Defendants**

19. Defendant Michael Chertoff is the Secretary of DHS, the agency charged with enforcement of the nation's immigration laws. As such, Chertoff has ultimate authority over the administration and operation of all U.S. immigration laws, including the care and treatment of

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<sup>1</sup> This agreement provides that individuals who have been denied asylum by one of the two countries cannot thereafter apply for asylum in the other.

persons detained pursuant to those laws. Chertoff has ultimate control and oversight over all DHS employees, and is responsible for setting policy and establishing regulations for DHS. Chertoff is specifically authorized to allocate funds to provide necessary clothing, medical care, housing, and security for immigration detainees, and to enter into agreements necessary to establish acceptable conditions of confinement and detention services. *See inter alia* 8 U.S.C. § 1103; 6 U.S.C. §§ 112, 251 and 557. Chertoff is legally required to enforce and comply with all provisions of the *Flores* Settlement, a true and correct copy of which is attached as Exhibit A (“Ex. A”).

20. Defendant Julie L. Myers is Assistant Secretary for ICE, the arm of DHS charged with detaining and removing non-citizens pursuant to federal immigration law. As the top official at ICE, Myers sets detention and removal priorities and has ultimate responsibility for the safety and well-being of children detained in ICE custody. The Office of Detention and Removal Operations (“DRO”), a division of ICE, manages the daily detention of immigration detainees. Myers supervises the official conduct of all DRO officials and may appoint and remove subordinate defendants named herein. As Assistant Secretary (under Secretary Chertoff) in charge of immigration detention, Myers controls the allocation of monies in the DHS-ICE budget for detention and removal operations and, specifically, the care and treatment of ICE detainees. Myers is legally required to enforce and comply with all provisions of the *Flores* Settlement.

21. Defendant John P. Torres is the Director of DRO for ICE and is responsible for the safe, secure, and humane housing of immigration detainees in ICE custody. The primary responsibility of DRO is to provide adequate and appropriate custody management of immigration detainees until a decision is rendered regarding their removal. ICE-DRO headquarters staff conduct annual inspections of each facility used to house immigration

detainees, and assess them for compliance with ICE Detention Standards. Torres oversees the DRO workforce, including ICE field officers, deportation officials, compliance review officers, and officers assigned to detention facilities. Torres is responsible for setting DRO policy with respect to the detention of foreign nationals, and for the administration and operation of DRO. Torres is legally required to enforce and comply with all provisions of the *Flores* Settlement.

22. Defendant Gary Mead is the Assistant Director of DRO for ICE. As such, he assists Torres in overseeing the DRO workforce, including ICE field officers, deportation officials, compliance review officers, and officers assigned to detention facilities. Mead also assists in setting and enforcing DRO policy with respect to the detention of foreign nationals, and for the administration and operation of DRO. Mead is legally required to enforce and comply with all provisions of the *Flores* Settlement.

23. Defendant Marc Moore is the Director of the ICE San Antonio Field Office, which has jurisdiction over Hutto and official control over detention and removal operations at the facility. Moore oversees transfers of immigration detainees into and out of Hutto and formally approves all placements of detainees at Hutto. Moore supervises and oversees all ICE staff at the San Antonio Field Office. Moore is legally required to enforce and comply with all provisions of the *Flores* Settlement.

24. Defendant Simona Colon is the ICE Officer-in-Charge at Hutto. As the Officer-in-Charge at the facility, Colon is the immediate legal custodian of the ICE detainees at Hutto and is directly responsible for their care and treatment while in detention there. Colon has authority to transfer detainees into and out of the facility and supervises all ICE employees at Hutto. On information and belief, Colon also has significant oversight over the actions of Corrections Corporation of America, Inc. (“CCA”) employees at Hutto, including the Warden,



pursuant to the DHS-ICE contractual agreement with CCA to house immigration detainees at the facility. Colon is legally required to enforce and comply with all provisions of the *Flores* Settlement.

25. Defendant John Pogash is the National Juvenile Coordinator for ICE. As the National Juvenile Coordinator, Pogash has direct authority over DHS field personnel in decisions relating to the proper handling of juveniles, including the placement of juveniles in DHS-funded facilities, the transfer of juveniles to other facilities, or their release from DHS custody. Pogash is legally required to enforce and comply with all provisions of the *Flores* Settlement and has numerous specific obligations under the Settlement, including the obligation to “monitor compliance with the terms of the Agreement” and the obligation to “collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.” Ex. A, at ¶ 28(A).

26. All defendants are sued in their official capacities.

27. At all relevant times, all defendants were acting under color of federal law, pursuant to their authority as officials, agents, contractors, or employees of U.S. governmental agencies or entities.

### **THE FLORES SETTLEMENT**

28. On January 28, 1997, the United States District Court for the Central District of California approved the Stipulated Settlement Agreement in *Flores v. Meese*, which established a “nationwide policy for the detention, release, and treatment of minors” in ICE’s custody.<sup>2</sup> Ex. A, at ¶ 9. The Settlement remains in effect today.

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<sup>2</sup> Created in March 2003, ICE combines the law enforcement arms of the former INS and the former U.S. Customs Service. The *Flores* Settlement binds ICE, since ICE is the successor of the INS. Ex. A, at ¶ 1 (“The term ‘party’ or ‘parties’ shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their . . . successors . . .”).

29. The *Flores* Settlement was the result of years of litigation initiated by the Center for Human Rights & Constitutional Law, the National Center for Youth Law, and the law firm of Latham & Watkins, LLP. The *Flores* certified class action began in 1985. On November 30, 1987, the federal district court for the Central District of California approved a settlement in which the Immigration and Naturalization Service (“INS”) pledged to remedy the “deplorable conditions” affecting minors in its custody in the Western Region. See Memorandum of Understanding Re: Compromise of Class Action: Conditions of Confinement (Nov. 30, 1987) (“MOU”). Although the MOU nominally resolved the majority of plaintiffs’ complaints over the treatment of minors in its custody, the INS refused to discontinue its practice of strip-searching minors when they were admitted or re-admitted to detention facilities or after visiting with relatives or counsel. In 1988, the Central District of California entered summary judgment in plaintiffs’ favor specifically prohibiting defendants from strip-searching minors absent a reasonable suspicion that strip-searching a particular juvenile could yield weapons or contraband. *Flores v. Meese*, 681 F. Supp. 665, 669 (C.D. Cal. 1988).

30. As for defendants’ release policy, in 1993 the U.S. Supreme Court reversed the *en banc* opinion of the Ninth Circuit Court of Appeals which had affirmed the Central District of California’s order requiring the INS to determine whether individual minors should be released to reputable caregivers in addition to their parents and guardians. The Supreme Court held that the INS had discretion to adopt a blanket policy against releasing minors to unrelated caregivers *if* the treatment and conditions children experienced in defendants’ custody measured up to the requirements of the MOU. *Reno v. Flores*, 507 U.S. 292, 305 (1993).

31. Upon remand from the Supreme Court, plaintiffs filed voluminous evidence showing that the INS was not, in fact, in compliance with the MOU. Rather than contest

plaintiffs' evidence, defendants agreed to the terms of the Settlement, which was approved by the Central District of California in January 1997. The original termination provision of the 1997 *Flores* Settlement was modified by a December 2001 Stipulation and Order, which states: "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." Defendants have never issued final regulations implementing the terms of the *Flores* Settlement, so the terms of the Settlement remain binding and enforceable.

32. The certified class in *Flores* is defined as: "All minors who are detained in the legal custody of the INS." Ex. A, at ¶ 10. The Settlement defines the term "minor" as "any person under the age of eighteen (18) years who is detained in the legal custody of the INS." *Id.* ¶ 4. Mohammed is a member of the *Flores* Class and is entitled to all the protections derived from the Settlement.

33. Paragraph 24(B) of the *Flores* Settlement permits any minor who disagrees with his or her placement in a particular type of facility, or who asserts that the facility does not comply with the standards set forth in the Settlement to "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 standards set forth in Exhibit 1."

34. Paragraph 24(C) of the *Flores* Settlement requires ICE to provide Mohammed with "a notice of the reasons for housing the minor in a detention or medium security facility." Defendants have never provided such a notice to him.

35. Prior to initiating this action, Mohammed's attorneys sent letters on February 21 and March 1, 2007 providing notice of the violation of his rights at Hutto to the United States Attorney's office in the Western District of Texas in an effort to informally resolve the matter pursuant to paragraph 24(E) of the *Flores* Settlement. Ex. A, at ¶ 24(E). Neither the United States Attorney's office for the Western District of Texas nor the Office of Immigration Litigation, to which the letters were forwarded, has responded to the substance of the faxed letters from Mohammed's attorneys.

### **FACTUAL ALLEGATIONS**

36. As of February 10, 2007, ICE was housing 400 immigration detainees at Hutto, approximately 200 of whom are children. A significant percentage of the families detained at Hutto are seeking asylum in the United States. Most of these families were found to have a credible fear of persecution by a trained asylum officer, and have pending asylum applications. Mohammed is a child of an asylum-seeking parent. The children at Hutto have committed no crimes and are being detained as a result of the actions of one or both of their parents. Some of the children at Hutto will ultimately remain in the United States legally because the government will determine that they have not violated immigration laws or they qualify for asylum. Since the facility opened, families have been detained for periods of time ranging from a couple of weeks to over 200 days and counting.

37. Mohammed is being detained at Hutto in violation of virtually every provision of the *Flores* Settlement. Mohammed brings this suit to enforce his rights pursuant to the *Flores* Settlement, to seek the release of him, his mother, and his sisters from Hutto, and to ensure that he is not separated from his mother and his sisters.

**A. The ICE-CCA Partnership**

38. Hutto is a contract detention facility in Taylor, Texas operated by CCA. CCA is not in the business of running licensed child-care facilities; it is the largest private, for-profit provider of detention and corrections services for adults in the nation. On its website, the CCA's statement of vision reads: "To be the best full service *adult* corrections company in the United States" (emphasis added).

39. ICE pays CCA over \$2.8 million per month to run the Hutto facility for up to 512 detainees and an additional \$79 per day for each detainee over 512. Despite this highly lucrative contract, children at Hutto receive inadequate services that fail to meet the requirements of the *Flores* Settlement.

**B. Defendants' Violation of Policy Favoring Release**

40. The first fundamental obligation of the *Flores* Settlement is that ICE actively and continuously seek to release minors from its custody. Section VI of the Settlement ("General Policy Favoring Release") memorializes ICE's obligation to decrease the frequency and length of detention of minors, whenever possible. Stipulating that detention is generally detrimental to minors, ICE has agreed to release a minor "without unnecessary delay" once it determines that "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 or that of others." Ex. A, at ¶ 14. The agreement also stipulates that detaining minors should be only a temporary solution. Ex. A, at ¶ 19. The Settlement provides that release to a parent is the highest priority preference among release options. Ex. A, at ¶ 14.

41. Defendants have failed and continue to fail to consider Mohammed for release to and with his mother under reasonable conditions of supervision. On information and belief,

defendants have made no meaningful effort to explore or develop release alternatives to family detention.

**C. Defendants' Violation of Requirement to Place Minors in the Least Restrictive Setting**

42. The Settlement's second fundamental obligation is that the limited number of minors who remain in ICE's custody must be placed in "the least restrictive setting appropriate to the minor's age and special needs...." Ex. A, at ¶ 11. The Settlement allows ICE to transfer a minor to a secure lock-down, such as a juvenile hall, only when it can show that the child is charged or chargeable with a delinquent act (except for isolated, non-violent, or petty offenses), has committed or threatened to commit a violent act, has proven to be unacceptably disruptive of a licensed program, is a serious "escape risk," or needs secure confinement for protection from smugglers. Ex. A, at ¶ 21. Before resorting to secure confinement, however, ICE must, if practicable, transfer the minor to another licensed program or to a "medium secure" youth facility. Ex. A, at ¶ 23.

43. Defendants have failed and continue to fail to place Mohammed in the least restrictive setting appropriate to his age and needs. He has committed no delinquent acts, is not a danger to himself or others, and has not been shown to be an escape risk. Indeed, Hutto is among the *most* restrictive settings in which Mohammed could be detained. The Hutto facility is a prison and is managed and operated by CCA employees trained to run adult correctional facilities. At Hutto, Mohammed's freedom of movement and daily activities are entirely circumscribed. For example, he is confined to a small cell for 11 to 12 hours a day, is permitted very limited outdoor and recreation time, and must finish eating each meal in 20 minutes or less, or risk going hungry.

**D. Defendants' Failure to Provide the Essential Rights and Services**

44. ICE's third fundamental obligation is to treat children in their custody "with dignity, respect, and special concern for their vulnerability as minors." Ex. A, at ¶ 11. Paragraphs 19, 6 and 24(B), and Exhibit 1 of the *Flores* Settlement, titled "Minimum Standards for Licensed Programs," ("Ex. 1 to Ex. A"), accordingly guarantee children the following benefits and services: (a) placement in a licensed facility; (b) individualized needs assessment; (c) special needs assessment; (d) comprehensive orientation; (e) suitable living conditions; (f) suitable food; (g) right to wear their own clothing; (h) appropriate medical care; (i) appropriate dental care; (j) mental health care, counseling, acculturation and adaptation services; (k) appropriate educational services; (l) adequate recreation and leisure; (m) access to religious services; (n) contact visits with non-detained family members; (o) right to privacy; and (p) disciplinary methods that do not have adverse psychological consequences. Ex. 1 to Ex. A; *see also* Ex. A, at ¶ 6 ("A licensed program must . . . meet those standards for licensed programs set forth in Exhibit 1 . . ."). Defendants have failed to provide Mohammed with these essential rights and services.

(a) Placement in Licensed Facility

45. Hutto is not a licensed program within the meaning of the *Flores* Settlement. Ex. A, at ¶ 6 (defining a licensed program as "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. . . ."). Defendants must provide a notice of reasons for housing a minor in a detention or medium security facility. Ex. A, at ¶ 24(C).

46. Defendants have failed and are continuing to fail to place Mohammed in a licensed facility. Defendants have failed to provide a notice of reasons for housing Mohammed in a detention or medium security facility.

(b) Individualized Needs Assessment

47. The *Flores* Settlement requires defendants to conduct an individualized needs assessment for Mohammed. Ex. 1 to Ex. A, at ¶ A(3) (“An individualized needs assessment . . . 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 minor’s 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.”).

48. Defendants have failed and continue to fail to conduct an individualized needs assessment for Mohammed.

(c) Special Needs Assessment

49. The *Flores* Settlement requires defendants to conduct a special needs assessment for Mohammed. Paragraph 7 of the *Flores* Settlement requires, “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.” Ex. A, at ¶ 7; *see also* Ex. 1 to Ex. A, at ¶ A(3)(c).



50. Defendants have failed and continue to fail to conduct a special needs assessment for Mohammed.

(d) Comprehensive Orientation

51. The *Flores* Settlement requires defendants to provide Mohammed with a comprehensive orientation. Ex. 1 to Ex. A, at ¶ A(9) (“Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.”).

52. Defendants have failed and are continuing to fail to provide Mohammed with a comprehensive orientation. The orientation that he received upon arriving at Hutto lasted for less than ten minutes and consisted of only a short explanation of the possibility and mechanics of deportation. Plaintiff did not receive any information about the services, expectations, or availability of legal assistance at Hutto.

(e) Suitable Living Conditions

53. The *Flores* Settlement requires defendants to provide Mohammed with “suitable living conditions.” Ex. 1 to Ex. A, at ¶ A(1).

54. Defendants have failed and are continuing to fail to provide Mohammed with suitable living accommodations. He is forced to live in a small cell with two bunk beds, a toilet, and a sink. He must share this small space with his mother and two sisters. Because there is no divider separating the sleeping area from the toilet area, he is not afforded any privacy when using the toilet. The bunk bed has a metal frame, and no padding to protect him from getting cut by its sharp edges. The mattress on the bed is exceedingly thin. The cell is often cold and damp with water leakage. The light in the cell never turns off, making it difficult for Mohammed to fall asleep. The showers often have only cold water.

55. Cell doors must remain open except during the “count” periods each day, including after “lights out.” Although the cell doors are not locked during these times, the cell doors are closed. Laser sensors are tripped when a cell door opens more than four inches, which functionally confines Mohammed to the cell for a total of about 11 or 12 hours each day.

(f) Suitable Food

56. The *Flores* Settlement requires defendants to provide Mohammed with “suitable . . . food” and “special diets” if medical circumstances so require. Ex. 1 to Ex. A, at ¶¶ A(1), A(2).

57. Defendants have failed and are continuing to fail to provide Mohammed with suitable food. The food often is inedible and consists of unrecognizable substances, mostly starches. Meat and fresh vegetables are rarely served. At many meals, Mohammed cannot bear to eat the food. He has had serious stomach pain following meals on a number of occasions, once even vomiting. Mohammed is typically afforded 20 minutes to eat and sometimes only 5 minutes. On the occasions where he has attempted to eat the food, the guards have rushed him through meals and pushed him out of the cafeteria without allowing him to finish his food. Although he becomes hungry at times other than meal times, he is prohibited from taking food or drinks out of the cafeteria. Since arriving at Hutto, Mohammed has lost significant weight.

58. Mohammed and his family, in accordance with their religious beliefs, requested halal meat upon their arrival at Hutto. Their request was ignored for three months, and the meat that Mohammed eventually received looked no different from that served to other inmates.

(g) Clothing

59. The *Flores* Settlement requires defendants to allow Mohammed to wear “appropriate clothing,” including “the right to wear his . . . own clothes when available.” Ex. 1 to Ex. A, at ¶¶ A(1), A(12). According to Physicians for Human Rights, detained migrants should

be able to wear their own clothing as a simple yet important way “to identify themselves as individuals and not criminals.”<sup>3</sup>

60. Defendants have prohibited and continue to prohibit Mohammed from wearing his own clothes, and have required and continue to require him to wear inappropriate clothing. Although he arrived at Hutto with his own clothing, he is forced to wear prison garb, which consists of one-colored scrubs, prison-issued underwear, socks, and soft-bottom shoes. Mohammed has three sets of these prison clothes. These three sets are not enough clothing to accommodate the laundry schedule. One day per week, he is forced to wear dirty clothing. He wears this same clothing to sleep and during recreation.

61. When Mohammed received his prison garb, the scrubs were stained, and dirty. After Mohammed complained about being cold for several weeks, he was finally given a thin jacket to wear in late December 2006, but the jacket is inadequate. Mohammed often shivers due to the cold, and has fallen ill multiple times due to his inability to feel sufficiently warm.

(h) Medical Care

62. The *Flores* Settlement requires defendants to provide Mohammed with “appropriate routine medical . . . care, . . . 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; [and the] administration of prescribed medication . . . .” Ex. 1 to Ex. A, at ¶ A(2).

63. Defendants have failed and are continuing to fail to provide Mohammed with appropriate routine medical care. When Mohammed suffered from severe stomachaches on a

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<sup>3</sup> Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention on Asylum Seekers*, (Boston and New York City, June 2003), p. 191.

number of occasions, his mother repeatedly asked for medical treatment for him. These requests were made orally to the guards and in writing via sick call slips. However, Mohammed was not treated appropriately.

64. Defendants failed to perform a complete medical examination within 48 hours of Mohammed's admission at Hutto. He has received no screening for infectious diseases, blood tests, or immunizations during his detention at Hutto.

(i) Dental Care

65. The *Flores* Settlement requires defendants to provide Mohammed with "[a]ppropriate routine . . . dental care . . ." Ex. 1 to Ex. A, at ¶ A(2).

66. Defendants have failed and continue to fail to provide Mohammed with dental care. Mohammed has serious tooth pain. He has been told that he has many cavities but defendants have failed to provide him with treatment.

(j) Mental Health Care, Counseling, Acculturation and Adaptation Services

67. The *Flores* Settlement requires defendants to provide Mohammed with "appropriate mental health interventions when necessary." Ex. 1 to Ex. A, at ¶ A(2). It also requires defendants to provide Mohammed with "at least one (1) individual counseling session per week," "[g]roup counseling sessions at least twice a week," and "[a]cculturation and adaptation services which include information regarding the development of social and interpersonal skills." Ex. 1 to Ex. A, at ¶¶ A(6), A(7), A(8).

68. Defendants have failed and are continuing to fail to offer Mohammed mental health treatment, individualized and group counseling, and acculturation and adaptation services. The mental health coordinator at Hutto has stated that, ideally, detainees at Hutto would be scheduled for weekly counseling visits, as well as group counseling sessions but that such

treatment is not provided. Mohammed often cries, and feels sad, frustrated, and angry by the trauma he has suffered and by his detention at Hutto. His depression is undiagnosed and untreated. There are no opportunities for him to receive the individualized and group counseling sessions or the acculturation and adaptation services that he needs to understand and cope with his detention.

(k) Education

69. The *Flores* Settlement requires defendants to provide Mohammed with adequate educational opportunities. Specifically, the Settlement states: “Educational services [shall be] 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.” Ex. 1 to Ex. A, at ¶ A(4).

70. Defendants have failed and continue to fail to provide adequate educational services appropriate for Mohammed’s level of development. Until mid-December 2006, Mohammed received one hour of instruction each day in a class with approximately 70 students, ages 5 to 11. From mid-December to early January 2007, he received no instruction. Starting in early January, instructional time increased to three to four hours from Monday to Friday. The subjects covered in Mohammed’s class are too elementary for his grade level. He often colors

during class time, sometimes watches movies, and rarely learns anything. His mother has no contact with his instructor. The instruction at Hutto falls far short of Texas educational standards.

71. While infrequent, when Mohammed actually does get some homework, he must ask for a pencil from a guard, complete it in the common area of the pod, and immediately return the pencil back to the guard. Mohammed, like all children at Hutto, is not otherwise permitted writing implements in his pod.

72. Defendants have not given Mohammed access to appropriate reading materials for use during his leisure time. He was allowed in the library only during his orientation to the facility. He cannot find enough appropriate books to read for his age and language skills.

(1) Recreation and Leisure

73. The *Flores* Settlement requires defendants to provide Mohammed with adequate recreation and leisure time. That recreation and leisure time “shall 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 (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.” Ex. 1 to Ex. A, at ¶ A(5).

74. Defendants have failed to and continue to fail to provide Mohammed with adequate recreation and leisure time. Until two weeks ago, he had been outside in the fresh air only a handful of times during his detention at Hutto. He was not permitted to go outside even once during the month of December 2006. He continues to be unable to have sufficient recreation time for a thriving child.

75. Recreation is typically one hour each day and takes place indoors. On days when school is not in session, the hour of recreation is not increased to three hours. In the latter half of December, for example, Mohammed did not go outside at all despite school not being in session

76. Defendants have prohibited and continue to prohibit Mohammed from having his own toys. Mohammed cannot have crayons, pens, or pencils in his cell. In order to use them in his pod, he must borrow them and then return them to the guards. He is only permitted this temporary use of a writing implement in his pod if he is in the common area and not in his cell.

(m) Religious Services

77. The *Flores* Settlement requires defendants to provide Mohammed with access to religious services of his choice. Ex. 1 to Ex. A, at ¶ A(10).

78. Defendants have failed and are continuing to fail to provide Mohammed with access to religious services. Although Mohammed would like to talk with an imam, he has been denied the opportunity to do so. Mohammed and his family, in accordance with their religious beliefs, requested halal meat upon their arrival at Hutto. Their request was ignored for three months, and the meat that he eventually received looked no different from that served to other inmates.

(n) Contact Visits With Non-Detained Family Members

79. The *Flores* Settlement requires defendants to allow Mohammed to have contact visits with non-detained family members. Ex. 1 to Ex. A, at ¶ A(11).

80. Defendants have barred and continue to bar Mohammed from having contact visits with non-detained family members. Although Mohammed has relatives who would like to visit him, he and his mother have dissuaded these relatives from visiting Hutto because everyone at Hutto is told that all family visits are non-contact visits. If he were to receive a family visitor,

that visitor would have to sit separated from him by a Plexiglas wall and communicate with him through a telephone handset on the wall. Because detainees and visitors must each speak through a single handset, only one visitor may speak to one detainee at any given time, further limiting communications.

81. The public information officer at Hutto has explained that visits are non-contact to eliminate the need for strip searches following visitation. The district court in *Flores* ruled that routine strip searches of minors may not be conducted and that such searches may only occur if there is “a reasonable suspicion that a strip search of a particular juvenile will yield weapons or contraband.” *Flores v. Meese*, 681 F. Supp. 665, 667069 (C.D. Cal. 1988). Thus, the public information officer’s explanation for why Mohammed is not permitted to have contact visits with his relatives is inadequate.

(o) Right to Privacy

82. The *Flores* Settlement requires defendants to afford Mohammed a “reasonable right to privacy,” which includes the right to “talk privately on the phone” and “receive and send uncensored mail.” Ex. 1 to Ex. A, at ¶ A(12).

83. Defendants have intruded and continue to intrude on Mohammed’s privacy. Although he is given a sheet to cover the window in his cell door at times, guards have banged on his cell door demanding that he remove the window covering even when he is using the toilet. He is forced to shower and dress in front of many other children. He is not given enough time to bathe properly.

84. Defendants have prohibited and continue to prohibit Mohammed from talking privately on the phone; he has learned that his calls are monitored by defendants. There are also



no dividers separating phones in the common areas, thereby assuring a lack of privacy among the detainees.

85. Mohammed does not have access to uncensored mail; all mail must be opened in front of Hutto guards.

86. Cameras have recorded and continue to record his behavior 24 hours a day. These cameras have the ability to zoom close enough to be able to read what a detained child is writing on a piece of paper.

(p) Discipline

87. The *Flores* Settlement prohibits defendants from subjecting Mohammed to “mental abuse,” or any sanctions that “adversely affect . . . psychological well-being . . . .” Ex. 1 to Ex. A, at ¶ C.

88. Defendants have subjected and continue to subject Mohammed to discipline that amounts to mental abuse and that adversely affects his psychological well-being. Guards at Hutto threaten children like Mohammed in a variety of ways for typical child behavior such as running around, making noise, and climbing on furniture. The guards have repeatedly threatened that if a child acts inappropriately, he will be separated permanently from his parents. They have threatened that if a child has three incidents that are written up, the child will be reported to ICE. Guards also have threatened that if a parent behaves inappropriately by, for example, taking food out of the cafeteria to feed her child, the parent will be separated permanently from her child. Mohammed and his sisters have also been threatened directly with separation from their mother by their caseworker. These threats terrify Mohammed. They amount to mental abuse and cause him severe anxiety.

**CLAIMS FOR RELIEF**

89. Defendants' policies, practices, acts, and omissions with respect to the children detained at Hutto deprive Mohammed of his rights under the *Flores* Settlement.

90. Defendants' policies, practices, acts, and omissions show a pattern of officially sanctioned behavior that violates Mohammed's rights, and establish a credible threat of future injury to him.

91. As a proximate result of defendants' policies, practices, acts, and omissions, Mohammed has suffered and will continue to suffer immediate and irreparable injury, including physical, psychological, and emotional injury. He has no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive relief sought by Mohammed is necessary to prevent continued and further injury.

#### **COUNT I: Release**

92. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

93. Defendants' failure to consider him for release with his family under reasonable conditions of supervision violates paragraph 14 of the *Flores* Settlement. Ex. A, at ¶ 14.

#### **COUNT II: Least Restrictive Setting**

94. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

95. Defendants' failure to place Mohammed in the least restrictive setting violates paragraph 11 of the *Flores* Settlement. Ex. A, at ¶ 11. Defendants' failure to provide a notice of reasons for housing Mohammed in a detention or medium security facility violates paragraph 24(C). of the *Flores* Settlement. Ex. A, at ¶ 24(C).

#### **COUNT III: Licensing**

96. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

97. Defendants' failure to require Hutto to meet licensing requirements violates paragraphs 19, 6, and 24(B), and Exhibit 1 of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A.

**COUNT IV: Individualized Needs Assessment**

98. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

99. Defendants' failure to conduct an individualized needs assessment for Mohammed violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(3) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(3).

**COUNT V: Special Needs Assessment**

100. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

101. Defendants' failure to conduct a special needs assessment for Mohammed violates paragraph 7 of the *Flores* Settlement. Ex. A, at ¶ 7.

**COUNT VI: Orientation**

102. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

103. Defendants' failure to provide Mohammed with a comprehensive orientation violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(9) of the *Flores* Settlement. Ex. A at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(9).

**COUNT VII: Suitable Living Accommodations**

104. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

105. Defendants' failure to provide Mohammed with "suitable living accommodations" violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(1) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(1).

### **COUNT VIII: Food and Special Diets**

106. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

107. Defendants' failure to provide Mohammed with suitable food violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(1) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(1).

108. Defendants' failure to provide Mohammed with "special diets" that account for his youth violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(2) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(2).

### **COUNT IX: Clothing**

109. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

110. Defendants' failure to allow Mohammed to wear his own clothes violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(12)(a) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(12)(a).

### **COUNT X: Medical Care**

111. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

112. Defendants' failure to provide Mohammed with appropriate medical care violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(2) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(2).

### **COUNT XI: Dental Care**

113. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

114. Defendants' failure to provide Mohammed with appropriate dental care violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(2) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(2).

**COUNT XII: Mental Health Treatment and Counseling**

115. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

116. Defendants' failure to offer Mohammed mental health treatment and individualized and group counseling violates paragraphs 19, 6, and 24(B), and Ex. 1, paragraphs A(2), A(6) and A(7) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶¶ A(2), A(6), A(7).

**COUNT XIII: Acculturation and Adaptation Services**

117. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

118. Defendants' failure to provide Mohammed with acculturation and adaptation services violates paragraphs 19, 6, and 24(B), and Ex. 1, paragraph A(8) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1, at ¶ A(8).

**COUNT XIV: Educational Services**

119. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

120. Defendants' failure to provide Mohammed with adequate educational services appropriate for Mohammed's level of development violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(4) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(4).

**COUNT XV: Recreation and Leisure Time**

121. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

122. Defendants' failure to provide Mohammed with appropriate recreation and leisure time violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(5) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(5).

**COUNT XVI: Religious Services**

123. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

124. Defendants' failure to provide Mohammed with access to religious services violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(10) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(10).

**COUNT XVII: Contact Visits with Non-Detained Family Members**

125. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

126. Defendants' failure to allow Mohammed to have contact visits with non-detained family members violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(11) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ A(11).

**COUNT XVIII: Right to Privacy**

127. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

128. Defendants' failure to respect Mohammed's reasonable right to privacy violates Defendants' failure to respect Aisha's reasonable right to privacy violates paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph A(12) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1, at ¶ A(12).

**COUNT XIX: Discipline**

129. Mohammed repeats and realleges paragraphs 1-88, as if set forth fully herein.

130. Defendants' have subjected Mohammed to disciplinary measures that have caused Mohammed humiliation and mental abuse, and that have had an adverse effect on Mohammed's psychological well-being, in violation of paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph 1(C) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ 1(C).

**PRAYER FOR RELIEF**

1. WHEREFORE, Mohammed Ibrahim requests that this Court:
  - (a) Issue a judgment declaring that the *Flores* Settlement is binding and enforceable and that defendants are violating his rights under the *Flores* Settlement.
  - (b) Enter a permanent injunction requiring defendants to comply with all provisions of the *Flores* Settlement with regard to Mohammed, including but not limited to releasing him to and with his mother and his sisters under reasonable conditions of supervision.
  - (c) Enter a restraining order prohibiting the government from separating Mohammed from his mother and his sisters.
  - (d) Enter a preliminary injunction directing defendants to release Mohammed, his mother, and his sisters under reasonable conditions of supervision.
  - (e) Award Mohammed reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412, and other applicable law.
  - (f) Award such other relief as the Court deems appropriate and just.

Respectfully submitted,

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