

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

**FILED**  
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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

MARCO ANTONIO TORUNO-  
ALTAMIRANO, by and through his next  
friend and father, Marco Antonio Toruno-  
Gutierrez,

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. DEPUTY

**A07CA384 SS**

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action on behalf of a seventeen-year-old child, Marco Antonio Toruno-Altamirano, 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 85 days. Marco 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 in January 1997, and ICE remains bound by the Settlement today. This action seeks to enforce the *Flores* Settlement on Marco's behalf, to secure his release, and to ensure that he is not separated from his father, Marcos Antonio Toruno-Gutierrez.

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*, and due to the Hutto facility's pervasive non-compliance with the Settlement, 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. For months and as recently as two weeks ago, children were required to wear prison garb and did not have access to non-institutional clothing. For months, they received only one hour of recreation a day, Monday through Friday, and were rarely allowed outdoors in the fresh air. They are prohibited from

keeping food, writing implements, and toys in their cells, and hardly have any privacy. Moreover, despite their urgent needs, they lack access to adequate medical and mental health treatment, and are denied adequate educational opportunities. Guards discipline children by threatening to separate them permanently from their parents. To the extent defendants have voluntarily changed policies at Hutto due to pending litigation, defendants are not precluded from reinstating the former policies.

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*, Marco 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 plaintiff's claims occurred, and continues to occur, in this district.

### PARTIES

#### **A. Plaintiff**

12. Marco appears by and through his next friend and father, Marcos. Marcos is currently detained at Hutto with Marco.

13. Marco was born on February 16, 1990 in Nicaragua. Marco and his father faced persecution in Nicaragua, and were left with no choice but to flee. Before fleeing, Marco was enrolled in the tenth grade.

14. ICE officers took Marco and his father into custody on February 17, 2007. After being detained in Brownsville for two days, they were sent to the Hutto Detention Center on February 19, 2007.

15. On or about February 22, 2007, Marco's father was found by a trained asylum officer to have a credible fear of persecution.

16. Marco and his father have applied for asylum. Their asylum application is currently pending before the Immigration Court.

17. There has never been any suggestion that Marco or his father poses any danger that would require their detention.

18. Marco has been detained at Hutto from February 19, 2007 to the present. He is in custody of the 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.

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

#### **B. Defendants**

20. 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 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”).

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. All defendants are sued in their official capacities.

28. 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**

29. 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>1</sup> Ex. A, at ¶ 9.<sup>2</sup> The Settlement remains in effect today.

30. 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

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<sup>1</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 . . .”).

<sup>2</sup> While plaintiff’s complaint is an individual action, plaintiff incorporates by reference the set of exhibits (currently Exhibits A - JJ) already filed by plaintiffs in *In re Hutto Family Detention Center*, Case No. A-07-CA-164-SS, because this case is related to that litigation and such incorporation will minimize the amount of paper in this filing.

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).

31. 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).

32. 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.

33. 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. Marco is a member of the *Flores* Class and is entitled to all the protections derived from the Settlement.

34. 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.”

35. Paragraph 24(C) of the *Flores* Settlement requires ICE to provide Marco 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.

36. Marco has complied with the conferral and exhaustion provisions of paragraph 24(E) of the *Flores* Settlement.

### **FACTUAL ALLEGATIONS**

37. Since May 1, 2006, ICE has detained over two thousand people at Hutto, over half 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 by a trained asylum officer to possess a credible fear of persecution and have pending asylum applications. Marco 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 few weeks to over 200 days and counting.

38. Marco is being detained at Hutto in violation of virtually every provision of the *Flores* Settlement. The Hutto detention center is pervasively non-compliant with the *Flores* Settlement. As a result, Marco brings this suit to enforce his rights pursuant to the *Flores* Settlement, to seek his release from Hutto, and to ensure that he is not separated his father.

**A. The ICE-CCA Partnership**

39. 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).

40. 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**

41. 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.

42. Defendants have failed and continue to fail to consider Marco for release under reasonable conditions of supervision. Marco has a relative in Miami who is a U.S. citizen and would be willing to care for Marco, but 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**

43. 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.

44. Defendants have failed and are continuing to fail to place Marco 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 he could be detained. The Hutto facility is a prison managed and operated by CCA employees trained to run adult correctional facilities. At Hutto, Marco’s freedom of movement and daily activities are largely circumscribed. For example, he is permitted limited outdoor and recreation time, and must eat meals at prescribed times, or risk going hungry. All of his movements are controlled by the guards, and his father is stripped of his ability to properly parent Marco. It is the guards who make all the decisions, not Marco or his father. Being in prison and being treated like a criminal is traumatizing Marco. He regularly cries, feels sad or angry, and is frustrated by his detention at Hutto. Marco’s personality has changed at Hutto. He has become more anxious and is suffering from depression, which is undiagnosed and untreated.

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

45. 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) mental health care, counseling, acculturation and adaptation services; (j) appropriate educational services; (k) adequate recreation and leisure; (l) right to privacy; and (m) 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 . . .”). The Hutto detention center is pervasively non-compliant with the *Flores* Settlement and the Minimum Standards for Licensed Programs. As a result, Marco’s detention at Hutto eviscerates virtually all of the protections and benefits of the *Flores* Settlement and has denied him essential rights and services. To the extent defendants have voluntarily changed policies at Hutto due to pending litigation, defendants are not precluded from reinstating the former policies.

(a) Placement in Licensed Facility

46. The *Flores* Settlement requires defendants to place Marco in a licensed facility. 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).

47. Defendants have failed and continue to fail to place Marco in a licensed facility. Defendants have failed to provide a notice of reasons for housing Marco in a detention or medium security facility.

(b) Individualized Needs Assessment

48. The *Flores* Settlement requires defendants to conduct an individualized needs assessment for Marco. Ex. 1 to Ex. A, ¶ 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.”).

49. Defendants have failed and are continuing to fail to conduct an individualized needs assessment for Marco.

(c) Special Needs Assessment

50. The *Flores* Settlement requires defendants to conduct a special needs assessment for Marco. 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).

51. Defendants have failed and are continuing to fail to conduct a special needs assessment for Marco.

(d) Comprehensive Orientation



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

53. Defendants have failed and are continuing to fail to provide Marco with a comprehensive orientation. The orientation that he received upon arriving at Hutto lasted for less than 20 minutes, most of which was spent watching a video. Marco also received a manual of the facility’s rules and a short explanation of the possibility and mechanics of deportation.

(e) Suitable Living Conditions

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

55. Defendants have failed and are continuing to fail to provide Marco with suitable living accommodations. He is forced to live in a small cell with a bunk bed, a toilet, and a sink. He must share this small space with his father. Because there is no divider separating the sleeping area from the toilet area, Marco is not afforded privacy when using the toilet. Marco has a narrow, hard mattress, a hard pillow and old, scratchy blankets. The mattress on the bed is exceedingly thin, and the blankets provided are not sufficient to insulate Marco in his cell, which is often extremely cold. The light in Marco’s cell is controlled by Hutto guards and is turned off from 9 p.m. until 5:30 a.m. During the night, officers often shine flashlights in Marco’s face or make loud noises while watching television, which makes it difficult for Marco to sleep. Occasionally, “counts” are done in the middle of the night when Marco is trying to sleep, which disturbs him. Everyone must get up at 5:30 a.m., which is too early to rouse children, making it difficult for Marco to wake up.

56. For months, and as of two weeks ago, there were two to three counts per day in Marco's pod, each of which lasts about half an hour. During these counts and again throughout the night after "lights out," Marco and his father were functionally confined to their cell. 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.

(f) Suitable Food

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

58. Defendants have failed and are continuing to fail to provide Marco with suitable food. The food is often inedible and consists of unrecognizable substances, and milk, juice and canned goods are sometimes served past their expiration dates. The food often has too much pepper, is tasteless or is swimming in oil. Children are made to eat the same food as adults.

59. At many meals, Marco, like many children at Hutto, cannot bear to eat the food. He has had serious stomach pain and has vomited following meals on at least 4 occasions. For months and as recently as two weeks ago, Marco was typically afforded 20 minutes to eat and sometimes only 5 minutes. On the occasions where Marco has attempted to eat the food, guards have sometimes rushed him through meals and pushed him out of the cafeteria without allowing him to finish his food. While he now eats the salads Hutto has recently started offering, these are not sufficient for a growing adolescent. Although Marco becomes hungry at times other than meal times, he is prohibited from taking food or drinks out of the cafeteria.

(g) Clothing

60. The *Flores* Settlement requires defendants to allow Marco 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>

61. Defendants have prohibited and continue to prohibit Marco from wearing non-institutional clothing, and have required and continue to require him to wear inappropriate clothing. Although he arrived at Hutto with his own clothing, Marco wears prison garb. Marco has three sets of these prison clothes, which are worn and tear easily. The clothing sometimes smells bad even after washing, and Marco has gotten a rash on his arm from a garment that was not washed properly. He must wear the same clothing at all times, even while sleeping and during recreation, and because clothing is not laundered frequently enough, Marco must sometimes wear dirty clothing. White garments were used and yellowed when Marco received them, even the underwear, one pair of which was streaked with brown blood or feces when Marco received it.

(h) Medical Care

62. The *Flores* Settlement requires defendants to provide Marco 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 Marco with appropriate routine medical care. Marco's father must fill out a form each time Marco needs to

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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.

see a doctor. Marco has often waited a day or more to be seen by medical personnel. Often, parents are told their children are fine even when they are clearly ill, and treatments do not provide real relief. Many parents report that Hutto officials are indifferent to their children's medical needs and do not take their concerns seriously. For example, Hutto officials did not vaccinate Marco when the chicken pox was spreading, although officials knew about the disease and warned visitors about it.<sup>4</sup> After Marco caught the chicken pox, his father filled out a medical call slip, but a nurse did not come to see them until three days later. She gave Marco Tylenol for his headache, but nothing else. The nurse took Marco's temperature each day for three days, but told Marco that he would not be allowed to see the doctor unless his fever rose one degree because only children with fevers of 101° or higher could see the doctor. In addition to his chicken pox, Marco has sought medical help for bronchial congestion, as he sometimes has difficulty breathing at night, and for an itchy foot fungus caused by dirty socks, for which he received a cream that proved ineffective. He has also seen a doctor for his chronic headaches, and was told that he would be referred for further medical care, but has never received it. On each occasion that Marco has sought medical help, he has had to wait at least 24 hours before medical personnel would examine him.

64. Defendants failed to perform a complete medical examination within 48 hours of Marco's admission at Hutto.

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

65. The *Flores* Settlement requires defendants to provide Marco with "appropriate mental health interventions when necessary." Ex. 1 to Ex. A, at ¶ A(2). It also requires defendants to provide him with "at least one (1) individual counseling session per week,"

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<sup>4</sup> A sign near the entrance of the Hutto facility reads: "Warning: Entrance into the facility at this time may expose you to varicella, the virus that causes chicken pox. If you have never had this disease or are uncertain of your immunity to this disease, it is highly advisable that you not enter the facility."

“[g]roup counseling sessions at least twice a week,” and “[a]cculturation and adaptation services which include information regarding the development of social and inter-personal skills.” Ex. 1 to Ex. A, at ¶¶ A(6), A(7), A(8).

66. Defendants have failed and are continuing to fail to offer Marco 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. However, such treatment is not provided.

67. Marco regularly cries, feels sad and angry, and is frustrated by his detention at Hutto. The constant noise and light bother him, and he suffers from chronic headaches. Marco has become more anxious since entering Hutto, and has difficulty sleeping. Marco wakes up crying from nightmares that he is locked in a cell with other children, being threatened by guards who throw food at him and tell him he is a criminal. He feels like a lesser person as a result of his detention, and he has thoughts of hurting himself and has begun to feel suicidal. He desperately wants to leave, but is despondent and feels that there is little hope for his release.

68. Marco’s 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.

(j) Education

69. The *Flores* Settlement requires defendants to provide Marco 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 are continuing to fail to provide adequate educational services appropriate for Marco's level of development. The subjects covered in Marco's class are too elementary for his grade level, and much of his class time is spent doing non-academic activities, such as coloring or watching movies. Children in Marco's class have submitted complaints that the classes are boring and the teachers are aggressive. Marco's teacher has told his class that the children are not in their home countries anymore, and that they do not have the right to talk, have fun or laugh. Children at different grade levels are in the same classroom, making it impossible for the children to be appropriately educated and challenged. The instruction at Hutto falls far short of Texas educational standards.

71. Marco rarely receives homework, and when assignments are given, they are too elementary for his grade level. It takes Marco 10 minutes or less to complete his homework. Marco's father has never been given an opportunity to speak to Marco's teachers about this or any other matter related to Marco's education.

72. There are an insufficient number of books appropriate for Marco's age and language abilities, and these must be shared among the 200 or so children detained in the facility at any given time.

(k) Recreation and Leisure

73. The *Flores* Settlement requires defendants to provide Marco 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 and are continuing to fail to provide Marco with adequate recreation and leisure time. For months and as recently as two weeks ago, he was permitted outside for a limited amount of time each day, and was denied the recreation time a thriving child needs.

75. Marco cannot have pens or pencils in his cell, even when he needs them to complete his infrequent homework assignments. In order to use writing implements, Marco must borrow them from a guard, use them in the common area of the pod, and immediately return them. Marco, like all children in Hutto, is prohibited from keeping or using writing implements in his cell.

(l) Right to Privacy

76. The *Flores* Settlement requires defendants to afford Marco 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).

77. Defendants have intruded and continue to intrude on Marco’s privacy. Although Marco’s headaches are worsened by the constant noise and light in Hutto, guards have banged on his cell door demanding that he leave it open even when other children are screaming and it is

very loud. Marco is forced to shower and dress in front of many other people in a group shower setting that becomes quite chaotic.

78. Defendants have prohibited and continue to prohibit Marco from talking privately on the phone; 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.

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

80. Cameras have recorded and continue to record Marco's behavior 24 hours a day. These cameras have the ability to zoom close enough to allow a viewer to read what a detained child is writing on a piece of paper.

(m) Discipline

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

82. Defendants have subjected and continue to subject Marco to discipline that amounts to mental abuse and that adversely affects his psychological well-being. Guards at Hutto threaten children 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. Parents are likewise told that if their children misbehave, the children will be taken away. A friend of Marco's father's was told that if she did not attend an adult education class offered by Hutto, her daughter would be taken away and sent to an orphanage. Such threats cause Marco some anxiety.

**CLAIMS FOR RELIEF**



83. The Hutto facility is pervasively non-compliant with the *Flores* Settlement. Marco's detention at Hutto eviscerates virtually all of the protections of the Settlement.

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

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

86. As a proximate result of defendants' policies, practices, acts, and omissions, Marco 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 Marco is necessary to prevent continued and further injury. To the extent defendants have voluntarily changed policies at Hutto due to pending litigation, defendants are not precluded from reinstating the former policies.

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

87. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

88. Defendants' failure to consider Marco for release under reasonable conditions of supervision violates paragraph 14 of the *Flores* Settlement. Ex. A, at ¶ 14.

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

89. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

90. Defendants' failure to place Marco 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 him in a detention or medium security facility violates paragraph 24(C) of the *Flores* Settlement. Ex. A, at ¶ 24(C).

**COUNT III: Licensing**

91. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

92. 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**

93. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

94. Defendants' failure to conduct an individualized needs assessment for Marco 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**

95. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

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

**COUNT VI: Orientation**

97. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

98. Defendants' failure to provide Marco 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**

99. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

100. Defendants' failure to provide Marco 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**

101. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

102. Defendants' failure to provide Marco 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).

103. Defendants' failure to provide Marco 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**

104. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

105. Defendants' failure to allow Marco 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**

106. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

107. Defendants' failure to provide Marco 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: Mental Health Treatment and Counseling**

108. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

109. Defendants' failure to offer Marco 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 XII: Acculturation and Adaptation Services**

110. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

111. Defendants' failure to provide Marco 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, ¶ A(8).

**COUNT XIII: Educational Services**

112. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

113. Defendants' failure to provide Marco with adequate educational services appropriate for his 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 XIV: Recreation and Leisure Time**

114. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

115. Defendants' failure to provide Marco 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 XV: Right to Privacy**

116. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

117. Defendants' failure to respect Marco'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 XVI: Discipline**

118. Marco repeats and realleges paragraphs 1-82, as if set forth fully herein.

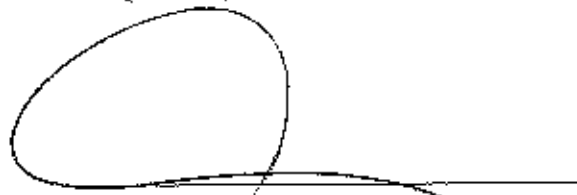
119. Defendants' disciplinary measures have had an adverse effect on Marco's psychological well-being, in violation of paragraphs 19, 6, and 24(B), and Exhibit 1, paragraph 1(C) of the *Flores* Settlement. Ex. A, at ¶¶ 19, 6, 24(B); Ex. 1 to Ex. A, at ¶ 1(C).

**PRAYER FOR RELIEF**

1. WHEREFORE, Marco 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 Marco, including but not limited to releasing him with his father under reasonable conditions of supervision.
- (c) Award Marco reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412, and other applicable law.
- (d) Award such other relief as the Court deems appropriate and just.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing document was served by first class U.S. mail, on Tuesday, May 15, 2007, on the following:

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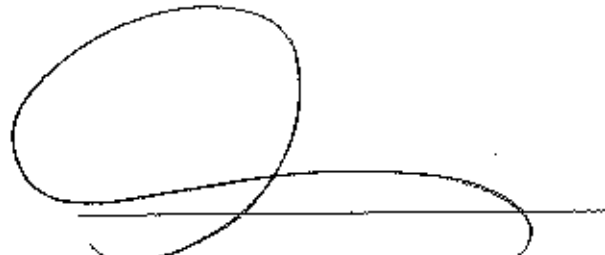
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A handwritten signature in black ink, consisting of a large, loopy initial 'L' followed by a long, sweeping horizontal line that ends in a small hook.

Lisa Graybill  
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the *Flores* Settlement. On April 12, 2007, this Court issued an Order to consolidate the three remaining cases<sup>1</sup>—those of Saule Bunikyte, Egle Baubonyte, and Sherona Verdieu—“[i]n the interest of expediting the trial of these remaining cases, which share common issues of law and fact. . . .” Order, Apr. 13, 2007 (Rec. Doc. 55). The case became styled *In re Hutto Family Detention Center*.<sup>2</sup>

On April 20, 2007, two additional minor plaintiffs, Susana Del Carmen Rodriguez-Blanco and Yarely Maribel Vasquez Sanchez, filed individual complaints in this Court pursuant to the *Flores* Settlement as well as motions to consolidate their cases with *In re Hutto Family Detention Center*. On May 9, 2007, this Court denied defendants’ motions to dismiss these individual complaints and granted plaintiffs’ motions to consolidate. The Court recognized that “the claims of these Plaintiffs rely on the same facts as the claims of the existing *Hutto* Plaintiffs, and consolidation would not require Defendants to address new theories of the case or engage in significantly more burdensome discovery.” Order, May 9, 2007 (Rec. Doc. 30).

Today, on May 15, 2007, new minor plaintiffs filed individual complaints in this Court to vindicate their rights under the *Flores* Settlement and to once again place before this Court the serious and urgent institutional concerns already documented in *In re Hutto Family Detention Center*. The factual allegations and legal claims of the new plaintiffs are substantially similar to those contained in the ten original complaints filed on March 6, 2007 and the two additional complaints filed on April 20, 2007. Despite recent changes at Hutto, the current detention of minors at the Hutto facility continues to violate key provisions in the *Flores* Settlement. While the new plaintiffs are filing separate actions, each complaint alleges that Hutto is not the least

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<sup>1</sup> From the date of filing to the Court’s April 12, 2007 order, several of the children released from Hutto chose to voluntarily dismiss their cases.

<sup>2</sup> After her release from Hutto, Sherona Verdieu voluntarily dismissed her case, but Saule Bunikyte and Egle Baubonyte continue to pursue their cases.

restrictive setting appropriate for minors, and that despite changes, Hutto continues to be pervasively non-compliant with the standards set forth in Exhibit 1. For these reasons, each new plaintiff indicated on the Civil Cover Sheet that his or her case is related to the consolidated action pending before this Court.

The new plaintiffs now respectfully move to have their cases consolidated with the already consolidated matter pending before this Court under the caption *In re Hutto Family Detention Center*. The common issues of law and fact that formed the basis for the Court's April 12 and May 9 consolidation orders apply equally to the new complaints filed by the new plaintiffs pursuant to the *Flores* Settlement.

#### Argument

District courts have authority to consolidate pending cases involving a common question of law or fact. *See* Fed. R. Civ. P. 42(a). This decision is entrusted to the broad discretion of the court, which typically considers whether consolidation would avoid unnecessary costs or delay. *See Mills v. Beech Aircraft Corp., Inc.*, 886 F.2d 758, 761-62 (5th Cir. 1989). Although multiple cases may be consolidated out of convenience, such cases do not lose their separate identity, and each case must nevertheless be resolved through entry of a separate judgment. *See Miller v. U.S. Postal Service*, 729 F.2d 1033, 1036 (5th Cir. 1984).

In deciding whether consolidation is appropriate, courts consider: (a) whether the cases are pending before the same court; (b) whether a common party is involved in the cases; (c) whether common issues of law and/or fact are involved; (d) whether there is a risk of prejudice or confusion if the cases are consolidated; and (e) whether judicial resources will be conserved by consolidating the actions. *See Rodriguez v. Torres*, Nos. Civ. B-04-036, Civ. B-04-037, Civ. B-04-043, 2004 WL 295612, \*1 (S.D. Tex. Nov. 22, 2004) (citing *Frazier v. Garrison I.S.D.*,

980 F.2d 1514, 1531-32 (5th Cir. 1993)). Given the nature of both newly filed actions before this Court, and the basis for the Court's earlier ruling to consolidate the remaining Hutto cases into *In re Hutto Family Detention Center*, it is clear that further consolidation is appropriate.

**A. The New Actions and *In re Hutto Family Detention Center* are All Pending Before the Same Court.**

Plaintiff Marco Antonio Toruno-Altamirano filed this lawsuit with the Court on May 15, 2007. On the same date, counsel for plaintiff filed additional actions on behalf of minor children who, like plaintiff, are civil immigration detainees at the Hutto facility. Counsel indicated on the Civil Cover Sheet (Form JS 44) that the action was related to *In re Hutto Family Detention Center*. All cases are now pending before this Court, pursuant to section IV.A. of the Amended Plan for Random and Direct Assignment of Cases in Multi-Judge Divisions, dated May 28, 2004.

**B. Defendants Are Identical in the New Actions and in *In re Hutto Family Detention Center*.**

Although the new actions are brought on behalf of different plaintiffs, the defendants are identical in these actions. Moreover, those defendants are identical to the defendants in *In re Hutto Family Detention Center*. In each of the newly filed cases, the plaintiff is seeking to assert rights that are owed to him or her pursuant to the terms of a Stipulated Settlement Agreement that arose out of a case entitled *Flores v. Meese*, No. 85-cv-4544 (C.D. Cal.) (*Flores Settlement*). The *Flores Settlement* binds the Immigration and Naturalization Service (INS), which is a party to the settlement, in addition to ICE and defendant ICE officials, who are the successors of the INS.

**C. Numerous Questions of Law and Fact Are Common to the New Actions and to *In re Hutto Family Detention Center*.**

There are significant questions of law and fact common to the new actions filed by the children at the Hutto facility. These questions of common law and fact are identical to those that

the Court recognized in its Orders to consolidate on April 12, 2007 and May 9, 2007. Such questions include, but are not limited to: whether defendants have made efforts to develop release alternatives to family detention; whether facilities less restrictive than Hutto exist which would be more appropriate for detention of minor plaintiffs; whether the Hutto facility is licensed by an appropriate state agency to provide residential, group, or foster care services; whether defendants have failed to conduct various individualized assessments of plaintiffs required by the *Flores* Settlement; whether defendants are providing plaintiffs with suitable food, clothing, medical care, dental care, mental health treatment, and counseling as required by the terms of the *Flores* Settlement; and whether defendants are providing plaintiffs with adequate educational services as required by the *Flores* Settlement.

**D. There is No Risk of Prejudice or Confusion if the Actions are Consolidated.**

Because the defendants are identical in these actions, and the claims asserted against the defendants are virtually identical in these actions, there is no risk of confusion or prejudice to any of the defendants should these actions be consolidated. Courts fear that confusion will arise where the actions contain multiple claims and parties that are entirely unrelated to one another, and consolidation at trial would complicate matters for the jury. *See, e.g., In re Enron Corp. Securities, Derivatives & "ERISA" Litigation*, Nos. Civ. H-01-3624, H-04-0038, H-04-0087, H-03-5528, 2007 WL 446051, \*5 (S.D. Tex. Feb. 7, 2007).

Newly filed actions were filed on the same day, and they assert virtually identical claims arising from the *Flores* Settlement against a common set of defendants. Although individual judgments will have to be entered in accordance with the general principles that apply to consolidation under Fed. R. Civ. P. 42(a), there is no reason to fear that confusion or prejudice will arise should the Court consider these actions in a consolidated manner. Moreover, because

consolidation is sought to conserve resources at this very early stage in the litigation, and there is no jury demand in any event, there is no potential for jury confusion.

**E. Consolidating the Pending Actions will Conserve Judicial Resources.**

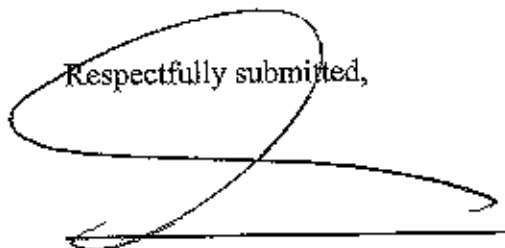
Common questions of law and fact are bound to arise in the litigation of both cases filed by minor children detained by ICE at the Hutto facility. Defendants are likely to respond to each of the Complaints and the pending motions in a similar manner. Enormous judicial resources would be required were the Court to consider each of these cases separately, rather than to consolidate the actions and consider them together. Consolidating the actions will permit the Court to assess the arguments before it in a more organized manner, will relieve the parties from having to file repetitive motions and other papers, thereby conserving valuable judicial resources.

**Conclusion**

For the reasons set forth above, Plaintiff's Motion to Consolidate Related Cases should be granted, and newly filed actions should be consolidated under the caption *In re Hutto Family Detention Center*.

Dated: May 15, 2007.

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

IN RE HUTTO )  
FAMILY DETENTION CENTER )  
 )  
 )  
\_\_\_\_\_ )

Civil Action  
No.:

**A07CA384 SS**

**[PROPOSED] ORDER**

Plaintiff Marco Antonio Toruno-Altamirano's Motion to Consolidate Related Cases is GRANTED; and it is hereby ORDERED that this case shall be consolidated before the Court.

Austin, Texas this \_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
United States District Judge

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing document was served by first class U.S. mail, on Tuesday, May 15, 2007, on the following:

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