IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

MARUSIA RAZMIAS, by and through her mother and next friend, MARUSIA NICULESCU, 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.: A07CA383SS **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This is an action on behalf of a three-year-old child, Marusia, 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 222 days. Marusia 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 Marusia's behalf, to secure her

release, and to ensure that she is not separated from her parents, Sumnacai and Marusia Niculescu.

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 reinstituting 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*, Marusia seeks declaratory and injunctive relief to remedy the serious and ongoing violations of her 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. Marusia appears by and through her next friend and mother, Marusia Niculescu. Marusia is currently detained at Hutto with her mother and her father, Sumnacai Niculescu.

13. Marusia was born on January 2, 2004 in Romania. Marusia and her parents faced persecution in Romania, and were left with no choice but to flee.

14. ICE officers took Marusia and her parents into custody on October 2, 2006. After being detained in three separate prisons over the course of several days, Marusia and her parents were sent to the Hutto Detention Center on October 5, 2006.

15. On October 11, 2006, Marusia's parents were found by a trained asylum officer to have a credible fear of persecution.

16. Marusia and her parents have applied for asylum. A hearing on their asylum application is scheduled for June 15, 2007 before the Immigration Court.

17. There has never been any suggestion that Marusia or her parents pose any danger that would require their detention.

18. Marusia has been detained at Hutto from October 5, 2006 to the present. She 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, Marusia has suffered and continues to suffer actual injury because defendants have failed to consider her for release, place her in the least restrictive setting, or provide her 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.[1] Ex. A, at ¶ 9.[2] 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 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

[1] 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 . . . .").

[2] 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.

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. Marusia 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 Marusia 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 her.

36. Marusia 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. Marusia 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. Marusia 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, Marusia brings this suit to enforce her rights pursuant to the *Flores* Settlement, to seek her release from Hutto, and to ensure that she is not separated from her parents.

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 Marusia for release to and with her parents 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

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 Marusia in the least restrictive setting appropriate to her age and needs. She has committed no delinquent acts, is not a danger to herself or others, and has not been shown to be an escape risk. Indeed, Hutto is among the *most* restrictive settings in which she could be detained. The Hutto facility is a prison managed and operated by CCA employees trained to run adult correctional facilities. At Hutto, Marusia's freedom of movement and daily activities are largely circumscribed. For example, she is permitted limited outdoor and recreation time, and must eat meals at prescribed times, or risk going hungry. All of her movements are controlled by the guards, and her parents are stripped of their ability to properly parent Marusia. It is the guards who make all the decisions, not Marusia or her parents. Being in prison and being treated like a criminal is traumatizing Marusia. She regularly cries, feels sad or angry, and is frustrated by her detention at Hutto. Marusia's personality has changed at Hutto. She has become more nervous 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, Marusia's detention at Hutto eviscerates virtually all of the protections and benefits of the *Flores* Settlement and has denied her essential rights and services. To the extent defendants have voluntarily changed policies at Hutto due to pending litigation, defendants are not precluded from reinstituting the former policies.

(a) Placement in Licensed Facility

46. The *Flores* Settlement requires defendants to place Marusia 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 Marusia in a licensed facility. Defendants have failed to provide a notice of reasons for housing Marusia in a detention or medium security facility.

(b) Individualized Needs Assessment

48. The *Flores* Settlement requires defendants to conduct an individualized needs assessment for Marusia. 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 Marusia.

(c) Special Needs Assessment

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

(d) Comprehensive Orientation

52. The *Flores* Settlement requires defendants to provide Marusia 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 Marusia with a comprehensive orientation. The orientation that she received upon arriving at Hutto lasted for less than thirty minutes, much of which was spent watching a video. While Marusia and her parents received a manual of the facility's rules, a short explanation of the possibility and mechanics of deportation and limited information about the availability of legal assistance, no information was provided in their native language. As a result, what little Marusia and her parents might have learned from the orientation was incomprehensible to them.

(e) Suitable Living Conditions

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

55. Defendants have failed and are continuing to fail to provide Marusia with suitable living accommodations. She is forced to live in a small cell with a bunk bed, a toilet, and a sink. She must share this small space with her mother. Because there is no divider separating the sleeping area from the toilet area, Marusia is not afforded privacy when using the toilet. Marusia and her mother share 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 Marusia from the cold. The light in Marusia'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 Marusia's face, which makes it difficult for Marusia to sleep. Her father is detained in a different cell and is usually not permitted to comfort Marusia during the night, even though she often has nightmares and wakes up crying.

56. During the evening count and again throughout the night after "lights out," Marusia and her parents are functionally confined to their cells. 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. Marusia is often frightened during counts.

57. Everyone must get up at 5:30 a.m., which is too early to rouse children, making it difficult to wake them. Because of the early hour, it is sometimes hard to rouse Marusia, and if her mother cannot wake her quickly enough guards scream and bang hard on their cell door.

(f) Suitable Food

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

59. Defendants have failed and are continuing to fail to provide Marusia with suitable food. The food is often inedible and consists of unrecognizable substances, and some families have reported that canned goods are served past their expiration dates. The food often has too much garlic, is tasteless or is swimming in oil. Children are made to eat the same food as adults.

60. At many meals, Marusia, like many children at Hutto, cannot bear to eat the food. She has had serious stomach pain and has vomited following meals on a number of occasions. For months and as recently as two weeks ago, Marusia was typically afforded only 20 minutes to eat. Because she must wake up so early, Marusia is often too tired to eat breakfast. On the occasions where Marusia has attempted to eat the food, guards have sometimes rushed her through meals without allowing her to finish her food. Although Marusia becomes hungry at times other than meal times, she is prohibited from taking food or drinks out of the cafeteria. Once, before Marusia's parents had learned to speak Spanish and before they could understand such rules, they attempted to take food and juice out of the cafeteria for Marusia. Hutto guards

reported them for this infraction and took the food and juice away. On a later occasion, Marusia drank milk from the communal refrigerator in her pod, but the milk was expired and it made her ill. Because the milk and juice in the refrigerator in Marusia's pod are often past their expiration dates, her parents will not give her these beverages. The food is so bad and Marusia eats so little of it that a doctor has prescribed vitamins for her, but these are no substitute for nutritious food, and Marusia has lost weight.

(g) Clothing

61. The *Flores* Settlement requires defendants to allow Marusia to wear "appropriate clothing," including "the right to wear . . . her 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."[3]

62. Defendants have prohibited and continue to prohibit Marusia from wearing non-institutional clothing, and have required and continue to require her to wear inappropriate clothing. Although she arrived at Hutto with her own clothing and Marusia's parents have requested that her clothing be returned to her numerous times, Marusia wears prison garb. Marusia has three sets of prison clothes, which are worn, tear easily and are often returned from the wash wet or dirty. She must wear this same clothing at all times, even while sleeping and during recreation. White garments were used and yellowed when Marusia received them, even the underwear. Marusia's shoes do not fit properly. She was initially given shoes that were too small and hurt her feet, and the pair Hutto issued her in exchange is too large. Marusia was not given a jacket to wear in Hutto, and the sweatshirt she did receive does not provide adequate

[3] 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.

protection against the cold. Marusia's mother was forced to knit her daughter a sweater and hat in an attempt to keep her warm.

(h) Medical Care

63. The *Flores* Settlement requires defendants to provide Marusia 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).

64. Defendants have failed and are continuing to fail to provide Marusia with appropriate routine medical care. Marusia's parents must fill out a form each time Marusia needs to see a doctor. Marusia has often waited a day or more to be seen by medical personnel, even when her parents have indicated "emergency" on the medical call slip. Many parents, including Marusia's, report that Hutto officials are indifferent to their children's medical needs and do not take their concerns seriously. Often, parents are told their children are fine even when they are clearly ill, and treatments do not provide real relief.

65. Marusia has suffered and continues to suffer from a number of ailments during her detention at Hutto, including chicken pox, colds, fevers, itchy rashes, and persistent stomachaches. Particularly during the first six months of Marusia's detention, when there was rarely any hot water in the showers, Marusia had frequent colds and fevers. Once when Marusia had flu-like symptoms and the doctor failed to respond to a medical request, Marusia's parents were told that Hutto doctors sometimes lose the detainees' medical request forms. Although Marusia has fainted and her parents fear she may have a heart condition, the doctors at Hutto

have not helped her. When Marusia's parents mentioned their concern about Marusia's possible heart condition to a doctor, the doctor did not take any steps to investigate and responded only that Marusia's fever was being treated.

66. Defendants failed to perform a complete medical examination within 48 hours of Marusia's admission at Hutto. She has received no blood tests or screening for infectious diseases during her detention at Hutto.

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

67. The *Flores* Settlement requires defendants to provide Marusia with "appropriate mental health interventions when necessary." Ex. 1 to Ex. A, at ¶ A(2). It also requires defendants to provide her 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 inter-personal skills." Ex. 1 to Ex. A, at ¶¶ A(6), A(7), A(8).

68. Defendants have failed and are continuing to fail to offer Marusia 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.

69. Marusia regularly cries, feels sad and angry, and is frustrated by her detention at Hutto. Marusia has become very nervous, and often has nightmares. Occasionally, she wakes up crying because she believes that there is someone else in the cell. Marusia cannot understand her detention and is desperate to leave Hutto. Sometimes, she picks up a bag and says goodbye to her friends as though she were leaving, and cries hysterically when her parents tell her she

cannot. At other times, Marusia repetitively sings "Ya me voy!" ("I'm leaving!"), or picks up telephones that she passes and asks, "Lawyer? Lawyer? Are we going?" although there is no one on the line. When taken outside for recreation, Marusia has attempted to climb the fence to escape from Hutto. Marusia's parents are also concerned that their daughter's long detention and the constant and unchanging routine at Hutto have caused Marusia's actions to become automatic.

70. Marusia's depression is undiagnosed and untreated. There are no opportunities for her to receive the individualized and group counseling sessions or the acculturation and adaptation services that she needs to understand and cope with her detention.

(j) Education

71. The *Flores* Settlement requires defendants to provide Marusia 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).

72. Defendants have failed and are continuing to fail to provide adequate educational opportunities for Marusia. Marusia's parents have been told that Marusia is too young to

participate in the limited schooling provided at Hutto, and no educational enrichment opportunities are provided to her.

73. There are an insufficient number of books appropriate for Marusia'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

74. The *Flores* Settlement requires defendants to provide Marusia 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).

75. Defendants have failed and are continuing to fail to provide Marusia with adequate recreation and leisure time. For months and as recently as two weeks ago, she was permitted outside for a limited amount of time each day, and was denied the recreation time a thriving child needs.

76. Defendants have prohibited and continue to prohibit Marusia from having her own toys and games. There are not enough toys at Hutto and Marusia can have none for herself. Like all children in Hutto, Marusia is prohibited from having toys, games or crayons in her cell. In order to use crayons, Marusia must borrow them from a guard, use them in the common area of the pod, and immediately return them.

(l) Right to Privacy

77. The *Flores* Settlement requires defendants to afford Marusia 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).

78. Defendants have intruded and continue to intrude on Marusia's privacy. Although she is given a sheet to cover the window in her cell door at times, guards have banged on her cell door demanding that she remove the window covering even when she is using the toilet. Marusia is forced to shower and dress in front of many other children in a group shower setting that becomes quite chaotic.

79. Several weeks ago, two Hutto officials entered Marusia's cell while she was sleeping, and ordered Marusia and her mother out of the cell. Marusia was very frightened and began to cry as the officials searched her entire cell, looking through Marusia and her mother's personal belongings and in their bed. The officials refused to tell the family what they were looking for and left the cell in a disarray.

80. Defendants have prohibited and continue to prohibit Marusia from talking privately on the phone; her 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.

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

82. Cameras have recorded and continue to record Marusia'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

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

84. Defendants have subjected and continue to subject Marusia to discipline that amounts to mental abuse and that adversely affects her 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. Marusia is fearful of the officers screaming at her and often cries as a result of her fears. The guards have repeatedly threatened that if a child acts inappropriately, she will be separated permanently from her parents. Marusia's parents have been told that if they do not take care of Marusia properly, they will be separated from their daughter. These threats terrify Marusia. They amount to mental abuse and cause her severe anxiety.

CLAIMS FOR RELIEF

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

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

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

88. As a proximate result of defendants' policies, practices, acts, and omissions, Marusia has suffered and will continue to suffer immediate and irreparable injury, including physical, psychological, and emotional injury. She has no plain, adequate or complete remedy at

law to address the wrongs described herein. The injunctive relief sought by Marusia 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 reinstituting the former policies.

COUNT I: Release

89. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

90. Defendants' failure to consider Maruisa for release with her parents under reasonable conditions of supervision violates paragraph 14 of the *Flores* Settlement. Ex. A, at ¶ 14.

COUNT II: Least Restrictive Setting

91. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

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

COUNT III: Licensing

93. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

94. 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

95. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

96. Defendants' failure to conduct an individualized needs assessment for Marusia 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

97. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

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

COUNT VI: Orientation

99. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

100. Defendants' failure to provide Marusia 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

101. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

102. Defendants' failure to provide Marusia 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

103. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

104. Defendants' failure to provide Marusia 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).

105. Defendants' failure to provide Marusia with "special diets" that account for her 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

106. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

107. Defendants' failure to allow Marusia to wear her 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

108. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

109. Defendants' failure to provide Marusia 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

110. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

111. Defendants' failure to offer Marusia 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

112. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

113. Defendants' failure to provide Marusia 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

114. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

115. Defendants' failure to provide Marusia with adequate educational services appropriate for her 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

116. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

117. Defendants' failure to provide Marusia 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

118. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

119. Defendants' failure to respect Marusia'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

120. Marusia repeats and realleges paragraphs 1-84, as if set forth fully herein.

121. Defendants' disciplinary measures have caused Marusia to suffer mental abuse and have had an adverse effect on her 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, Marusia requests that this Court:

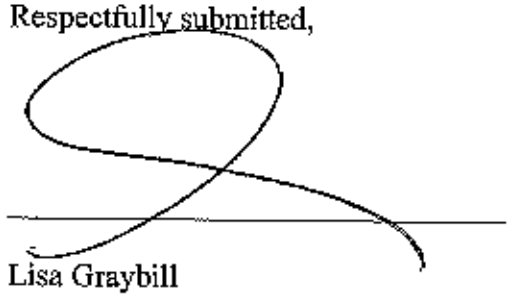
(a) Issue a judgment declaring that the *Flores* Settlement is binding and enforceable and that defendants are violating her rights under the *Flores* Settlement.

(b) Enter a permanent injunction requiring defendants to comply with all provisions of the *Flores* Settlement with regard to Marusia, including but not limited to releasing her with her parents under reasonable conditions of supervision.

(c) Award Marusia 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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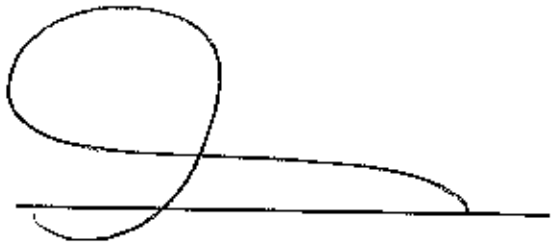

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARUSIA RAZMIAS,
by and through her mother and next friend,
MARUSIA NICULESCU,

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.:

A07CA 383SS

PLAINTIFF'S MOTION TO CONSOLIDATE RELATED CASES

PLAINTIFF'S MOTION TO CONSOLIDATE RELATED CASES

Introduction

On March 6, 2007, ten children housed at the T. Don Hutto Family Residential Center (Hutto) in the custody of the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), filed ten separate complaints with this Court to assert their rights under the *Flores* Settlement. After a hearing on March 20, 2007, this Court on April 9, 2007, issued an Order denying the children preliminary injunctive relief but finding that they were "highly likely to prevail on the merits" of their allegations that their detention violates several key provisions of the *Flores* Settlement. On April 12, 2007, this Court issued an Order to consolidate the three

remaining cases[1]—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*.[2]

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 restrictive setting appropriate for minors, and that despite changes, Hutto continues to be

[1] 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.
[2] After her release from Hutto, Sherona Verdieu voluntarily dismissed her case, but Saule Bunikyte and Egle Baubonyte continue to pursue their cases.

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 Marusia Razmias 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-04-0088, 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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