



October 30, 2017

SENT VIA EMAIL

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AMERICAN CIVIL LIBERTIES
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RE: Demand Letter Regarding Rosa Maria Hernandez

To All Concerned:

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

We write as counsel for Rosa Maria Hernandez and her mother. Since her arrest last week, Rosa Maria has been held in the custody of the Office of Refugee Resettlement (“ORR”) in violation of her statutory and constitutional rights. We demand that the government immediately release Rosa Maria from its custody and return her to parents. **If you do not comply with this demand by 2:00pm CST on Tuesday, October 31, 2017, we will take immediate legal action and pursue all available remedies under the law to secure Rosa Maria’s release.**

I. Rosa Maria’s Arrest, Transfer, and Detention to ORR Custody and Separation from Her Family

Rosa Maria is a 10-year old girl who has lived in the United States since she was three months old, in her parents’ care and custody. Rosa Maria has cerebral palsy and the cognitive development of a six year old child. She requires specialized care and consistent home therapy, which her parents have provided since she was born.

On October 24, 2017, Rosa Maria was being transported by ambulance from Laredo, Texas, where she lives, to a children’s hospital in Corpus Christi, Texas for gallbladder surgery. Her 34-year-old U.S. citizen cousin, Aurora Cantu, accompanied her on the trip at her parents’ request.

U.S. Border Patrol agents stopped the ambulance at the Freer Checkpoint. There, Rosa Maria and Ms. Cantu were asked for their “papers.” Although Ms. Cantu explained that they were on their way to a surgical appointment, provided documentation to that effect, and explained that Rosa Maria (as a 10 year old child) did not carry identification documents, the Border Patrol agents had the ambulance pull over and detained Rosa Maria and Ms. Cantu for half an hour. The agents allowed them to continue on, but stated that they would follow them to the hospital and that once the surgery was over, Rosa Maria would be processed for deportation.

Throughout the time that Rosa Maria was in the hospital, male Border Patrol

agents followed her every move, sitting next to her in the waiting room, remaining in a nurse's screening room while her vitals were taken, and even peeking into the operation area while she was awaiting surgery. The agents stayed in the hospital over the objections of hospital staff. When Ms. Cantu asked what would happen, the agents told Ms. Cantu that she herself should not worry and was free to leave, but that Rosa Maria would be deported. They told Ms. Cantu that there were two options: Rosa Maria's mother could agree to Rosa Maria's immediate return to Mexico through "voluntary departure," or Rosa Maria would be arrested and held in a detention center.

Following surgery, Rosa Maria was experiencing pain and needed to stay in a recovery room overnight. Agents followed her to the recovery room and stood guard at her door until she was discharged. They physically took her into custody, directly from her hospital bed, on October 25, 2017. The agents did not obtain a warrant before taking Rosa Maria into custody.

Rather than release Rosa Maria to her family, the agents then transferred her to the custody of ORR, which detained her as an "unaccompanied child." Since that time, Rosa Maria has been in ORR custody at the Baptist Children's Home Ministries facility for child migrants in San Antonio, Texas and separated from her family.

Rosa Maria has never been separated from her parents before. Her medical condition requires constant attention, and she is completely dependent on her mother. At home, Rosa Maria attends elementary school five days a week, where she receives special-education classes, frequent therapy sessions, and other services. Most importantly, at home Rosa Maria receives the care of her mother, who has ensured that she has the support and home-based therapy she needs to thrive. Every night, Rosa Maria plays outside with her sisters, and her mother creates games to help improve her strength, using play-based therapy techniques that therapists have taught her since Rosa Maria was first diagnosed. Rosa Maria needs this care, stability, routine, and support. Without her mother and supportive community of services, her developmental progress will suffer.

Equally important, forcibly separating Rosa Maria from her family inflicts serious psychological and emotional injury on her and on her entire family—as would the sudden and forcible removal of any young child from a stable and loving family environment. The toll on her family has been severe. Since her arrest last Tuesday, her mother has not been able provide her with care, feed her, or hold her. She stays up each night, nervous and distraught about her daughter's future. Rosa Maria's sisters are also suffering. One of her sisters calls out for her in the middle of the night while she sleeps. Rosa Maria's arrest, transfer, and detention have been a nightmare for her family.

II. Rosa Maria's Ongoing Detention is Unlawful

The arrest, transfer, and ongoing detention of Rosa Maria violate controlling statutes and regulations, binding agency guidance, the *Flores* Consent Decree,¹ and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

Governing statutes authorize ORR to maintain custody *only* of an “unaccompanied alien child.”² CBP and ORR cannot render Rosa Maria an “unaccompanied child” merely by virtue of the fact CBP arrested her while she was temporarily apart from her parents (but not her family) for a necessary medical procedure. CBP and ORR’s respective arrest, transfer, and detention of Rosa Maria also violate their obligations under *Flores* to place a child in the “least restrictive setting appropriate to the minor’s age and special needs” and to “release a minor from [their] custody without unnecessary delay” where her detention is not necessary to prevent flight or danger to herself or others.³

Moreover, at no point has the government even suggested that Rosa Maria’s parents are unfit to provide for her care and custody (and any such suggestion would be unsustainable.) Separating Rosa Maria from her family violates her parents’ rights to care for her, which is “perhaps the oldest of the fundamental liberty interests” recognized under the U.S. Constitution, *Troxel v. Granville*, 530 U.S. 57, 65, (2000) (plurality opinion), and Rosa Maria’s reciprocal process right to her parents’ care. Every second that Rosa Maria is apart from her parents is a violation of her and her parents’ legal and constitutional rights.

Because the government lacks any legal authority to maintain Rosa Maria in ORR custody, and her continued detention and separation from her family violates the U.S. Constitution, we demand you immediately release Rosa Maria to her cousin, Aurora Cantu, on behalf of parents and family that has loved, cared, and provided for her since she was born. We also demand that you desist from pursuing removal proceedings against Rosa Maria or any other effort to deport her from the United States. **If you do not comply with this demand by 2:00pm CST on Tuesday, October 31, 2017, we will take immediate legal action and pursue all available remedies under the law to secure Rosa Maria’s release.**

Thank you in advance for your prompt response to this letter. Please contact

¹ See *Flores v. Reno*, Case No. 85-cv-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (consent decree).

² See Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232(b)(3).

³ See *Flores* Consent Decree ¶¶11, 14.

Michael Tan at 347-714-0740 / mtan@aclu.org should you wish to discuss this letter further.

Sincerely,



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