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16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20 JENNY LISETTE FLORES, *et al.*,

21  
22 Plaintiffs,

23 v.

24  
25 MERRICK B. GARLAND, Attorney  
26 General of the United States, *et al.*,

27 Defendants.  
28

Case No. 2:85-cv-04544-DMG-AGR<sub>x</sub>

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS'  
MOTION TO MODIFY 2022 CBP  
SETTLEMENT**

Hearing Date: January 24, 2025  
Time: 9:30 a.m.  
Hon. Dolly M. Gee

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1 **I. INTRODUCTION**

2 The parties agreed that the 2022 U.S. Customs and Border Protection (“CBP”)  
3 Settlement Agreement applicable to the Rio Grande Valley (“RGV”) and El Paso  
4 U.S. Border Patrol Sectors (“Settlement”) “shall terminate two and one half years  
5 from its Effective Date, or upon the termination of the *Flores* Settlement Agreement  
6 [(“FSA”)], whichever is sooner.” ECF No. 1254-1, § II.8. Under this unambiguous  
7 term, the Settlement will terminate on January 29, 2025—two-and-one-half years  
8 from its Effective Date. The parties have not agreed to an extension of the  
9 termination date, nor have they conferred upon this Court any authority to extend  
10 the Settlement.

11 Plaintiffs ask the Court to extend the Settlement under Rule 60(b) of the  
12 Federal Rules of Civil Procedure based on an alleged lack of substantial compliance.  
13 *See* Plaintiffs’ Motion to Modify 2022 CBP Settlement, ECF No. 1526. But the  
14 Settlement is not a court order or judgment subject to a Rule 60(b) modification—it  
15 may only be extended with consent of the parties.

16 Even if Rule 60(b) applied and the Settlement could somehow be extended  
17 beyond the period agreed to by the parties, it would require an extraordinary showing  
18 to do so, and, as described below, Plaintiffs have failed to make such a showing on  
19 the four factors for altering a consent decree under Rule 60(b). *See Rufo v. Inmates*  
20 *of Suffolk Cnty. Jail*, 502 U.S. 367, 383–93 (1992).

21 As the parties agreed, the Settlement should terminate on or before January  
22 29, 2025. While the extension sought by Plaintiffs is unsupported and should be  
23 denied, Defendants are willing to engage with Plaintiffs on a reasonable path  
24 forward to address the concerns raised by the Juvenile Care Monitor (“JCM”) in her  
25 most recent report to ensure ongoing compliance with the FSA.

26 **II. BACKGROUND**

27 On June 26, 2019, Plaintiffs filed an Ex Parte Application for a Temporary  
28 Restraining Order, asserting that CBP was violating the 1997 FSA. *See* ECF No.

572 (“2019 TRO Motion”). On May 21, 2022, the parties jointly filed a notice of settlement to resolve the 2019 TRO Motion. *See* ECF No. 1254. In the Settlement, the parties intended to “clarify[ ] the Parties’ understanding of the meaning of [Paragraphs 11 and 12A] of the [FSA],” as they apply to conditions in the RGV and El Paso Border Patrol Sectors. ECF No. 1254-1, at 3.<sup>1</sup> The parties agreed to specific requirements relating to conditions for minors in CBP custody in those Sectors. *See id.* §§ VII–XII. In the Settlement, the parties also agreed to a sixteen-month appointment of the JCM “to monitor compliance in the RGV and El Paso Sectors with the [FSA] as detailed in this [Settlement].” *Id.* §§ IX.1, IX.10; *see also* ECF No. 1280 (order appointing JCM). The Settlement allows the parties to agree to extend the JCM’s term, but “[i]f no agreement is reached, Plaintiffs may petition the Court for a single extension of the Monitor’s term.” ECF No. 1254-1, § IX.10. Finally, the parties agreed, without a provision for extension, that the Settlement “shall terminate two and one half years from its Effective Date, or upon the termination of the Flores Settlement Agreement, whichever is sooner.” *Id.* § II.8. Two-and-one-half years from the Effective Date is January 29, 2025. The Settlement does not include any provision for an extension of the termination date.

Because this case is a class action, the parties moved for final approval of the Settlement under Federal Rule of Civil Procedure 23, *see* ECF No. 1266, at 5–6, which the Court granted on July 29, 2022, ECF No. 1278. Accordingly, the Court denied the 2019 TRO Motion. *Id.* at 3. Separately, the Court issued an order appointing a JCM and specifying the JCM’s duties. ECF No. 1280. After the parties agreed to three extensions of the JCM’s term, the JCM’s term expired on December 27, 2024. *See* ECF Nos. 1381, 1426, 1470, at 1–2. As described in more detail below, since July 2022, CBP has substantially implemented the terms of the

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<sup>1</sup> For docket items, page numbers in this memorandum refer to the ECF-stamped page numbers on the top right of the document.

1 Settlement. *See generally* Ex. A, Declaration of Gerardus Caanen (“Caanen Decl.”);  
2 Ex. B, Declaration of Derrick Stamper (“Stamper Decl.”); Ex. C, Declaration of  
3 Greta Campos (“Campos Decl.”).

### 4 **III. ARGUMENT**

#### 5 **A. Rule 60(b) does not permit modification because the Settlement is** 6 **not an order or judgment.**

7 The parties unambiguously agreed that the Settlement “shall terminate” two-  
8 and-one-half years from its effective date and did not agree to any condition or  
9 conditions that, if met, or not met, would extend the termination date, or any  
10 mechanism for seeking a modification of the Settlement. Plaintiffs now ask the  
11 Court to modify the termination provision of the Settlement pursuant to Rule 60(b)  
12 to double the life of the Settlement. ECF No. 1526-1, at 7; ECF No. 1526-2, at 3.  
13 Contrary to Plaintiffs’ contention, Rule 60(b) does not empower the Court to amend  
14 the terms of the Settlement. Rule 60(b) states that “the court may relieve a party or  
15 its legal representative from a final judgment, order, or proceeding” for any one of  
16 several enumerated reasons, including when “applying [the judgment] prospectively  
17 is no longer equitable,” Fed. R. Civ. P. 60(b)(5), or under a catch-all, “any other  
18 reason that justifies relief,” Fed. R. Civ. P. 60(b)(6).<sup>2</sup> But the Settlement is not a  
19 court order, judgment, or proceeding. Thus, Rule 60(b) does not apply here.

20 The Court never entered the Settlement onto the docket as a judgment. Nor  
21 did the Court incorporate the Settlement into an order. Unlike the order appointing  
22 the JCM, the parties never asked the Court to incorporate the Settlement, including  
23 the termination provision, into an order. The Supreme Court has found that a court

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25 <sup>2</sup> Plaintiffs do not articulate the subsection in Rule 60(b) that they believe  
26 justifies modification of the Settlement. ECF No. 1526-1. Indeed, the government  
27 doubts Rule 60(b) would apply given that it governs when a party would be  
28 “relieve[d]” of a judgment, and Plaintiffs seek instead to *impose* the Settlement on  
the government.

1 may make a settlement agreement part of an order of dismissal “either by separate  
2 provision (such as a provision ‘retaining jurisdiction’ over the settlement agreement)  
3 or by incorporating the terms of the settlement agreement in the order.” *Kokkonen*  
4 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380–81 (1994). The Court here did  
5 neither. The Court denied the 2019 TRO as moot “by agreement of the Parties.”  
6 ECF No. 1278, at 3. But that language does not incorporate the Settlement into the  
7 Order. The Ninth Circuit has held that “an order ‘based on’ the settlement  
8 agreement, without more, does not ‘embody the settlement contract.’” *O’Connor v.*  
9 *Colvin*, 70 F.3d 530, 532 (9th Cir. 1995) (per curiam) (quoting *Kokkonen*, 511 U.S.  
10 at 381). That the parties filed the Settlement on the docket also does not make it part  
11 of the Court order.<sup>3</sup> *Id.*

12 Importantly, the parties could have asked the Court to enter the Settlement as  
13 a judgment or to incorporate the Settlement into a Court order. They did not.  
14 Likewise, if Plaintiffs wanted the option to seek an extension of the Settlement based  
15 on an alleged lack of substantial compliance, they could have negotiated for such a  
16 provision. They did not.<sup>4</sup> Instead, Plaintiffs seek to impose Rule 60(b) on a  
17 settlement that is not part of an order. Plaintiffs’ arguments are unavailing.

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20 <sup>3</sup> The courts in *O’Connor* and *Kokkonen* found no jurisdiction to enforce the  
21 settlements there, but the procedural posture here is different because the Settlement  
22 did not result in the dismissal of the entire case. *See Kokkonen*, 511 U.S. at 380–81;  
23 *O’Connor*, 70 F.3d at 532. This precise situation likely is uncommon—a settlement  
24 that resolved a dispute about an underlying consent decree but was not made part of  
25 that consent decree or a separate order.

26 <sup>4</sup> The lack of an extension provision distinguishes this settlement from many  
27 others. *See, e.g., Ashker v. Newsom*, 81 F.4th 863, 873 (9th Cir. 2023) (noting that  
28 the settlement agreement provided that “[t]he Inmates can extend the Settlement  
Agreement for twelve months” if certain conditions are met); *Criswell v. Boudreaux*,  
No. 1:20-CV-01048-DAD-SAB, 2022 WL 3646049, at \*1 (E.D. Cal. Apr. 13, 2022)  
(similar).



1 Plaintiffs note that the Court “approved” the Settlement. ECF No. 1526-1, at  
2 6–7. But approval is not incorporation. A judge’s “mere awareness and approval of  
3 the terms of the settlement agreement do not suffice to make them part of his order.”  
4 *Kokkonen*, 511 U.S. at 380–81. Here, the Court approved the Settlement for  
5 purposes of Rule 23(e). *See* ECF No. 1278, at 3. The Rule 23(e) process ensures  
6 that a class settlement is “fair, reasonable, and adequate” for the class. Fed. R. Civ.  
7 P. 23(e)(2). It says nothing about whether the terms of the class settlement are part  
8 of the Court’s order. Not all class-action settlements are court orders or judgments.  
9 For example, in the bankruptcy context, the Ninth Circuit has rejected the argument  
10 that a court’s approval of a settlement agreement makes the agreement part of the  
11 court’s order. *See In re Valdez Fisheries Dev. Ass’n, Inc.*, 439 F.3d 545, 549 (9th  
12 Cir. 2006); *In re Sawtelle Partners, LLC*, No. 2:16-BK-21234-BR, 2019 WL  
13 2855786, at \*6–7 (B.A.P. 9th Cir. July 1, 2019). Thus, the Court’s approval under  
14 Rule 23 does not make the Settlement part of a Court order.

15 The opinions that Plaintiffs cite do not establish that Rule 60(b) empowers the  
16 Court to alter the Settlement’s termination provision. Plaintiffs cite *Flores v. Lynch*,  
17 828 F.3d 898, 905 (9th Cir. 2016), to claim that the Settlement, like the FSA, is a  
18 consent decree, ECF No. 1526-1, at 11, but the fact that the Ninth Circuit has  
19 previously considered a motion to modify the FSA does not mean that this  
20 Settlement is a modifiable court order. Plaintiffs’ reliance upon *Kelly v. Wengler*,  
21 822 F.3d 1085 (9th Cir. 2016), is inapposite. *See* ECF No. 1526-1, at 11–12. In  
22 *Kelly*, “[t]he district court’s order *explicitly incorporated* the parties’ stipulation for  
23 dismissal.” 822 F.3d at 1094–95 (emphasis added). In turn, the parties’ stipulation  
24 of dismissal “*explicitly incorporated* the parties’ settlement agreement and attached  
25 the agreement as an exhibit.” *Id.* (emphasis added). Thus, the Ninth Circuit held  
26 that “the parties’ settlement agreement is incorporated into the court’s dismissal  
27 order.” *Id.* at 1095. The district court’s “extension of the settlement agreement was  
28 therefore a modification of a court order.” *Id.* at 1097–98. In contrast, the Court

1 here did not explicitly incorporate the Settlement into its order, nor did the parties  
2 incorporate the Settlement into a stipulation of dismissal.

3 Rule 60(b) does not grant the Court authority to extend the life of a contract  
4 that is not part of a Court order. Therefore, the Court should deny Plaintiffs' motion  
5 and recognize that the Settlement terminates on January 29, 2025.

6 **B. In the alternative, and assuming, *arguendo*, that the Settlement is**  
7 **an order or judgment, Plaintiffs have not met their burden under**  
8 **Rule 60(b) to justify modification.**

9 Assuming, *arguendo*, that the Settlement is subject to modification under Rule  
10 60(b), Plaintiffs have not established that any of the reasons in Rule 60(b) would  
11 warrant modification.<sup>5</sup> To justify the modification of a consent decree, Plaintiffs  
12 must prove that four conditions are met. *Lab./Cmty. Strategy Ctr. v. Los Angeles*  
13 *Cnty. Metro. Transp. Auth.*, 564 F.3d 1115, 1120 (9th Cir. 2009). First, Plaintiffs  
14 must show that a “significant change either in factual conditions or in the law”  
15 happened after the parties executed the Settlement. *Id.* (quoting *United States v.*  
16 *Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005)). Second, Plaintiffs must prove that  
17 they did not anticipate the alleged change when they entered into the Settlement. *Id.*  
18 Third, Plaintiffs must demonstrate “that the changed factual circumstance makes  
19 ‘compliance with the consent decree more onerous, unworkable, or detrimental to  
20 the public interest.’” *Id.* (quoting *Asarco Inc.*, 430 F.3d at 979). Finally, Plaintiffs  
21 must establish that their proposed extension of the Settlement is “suitably tailored to  
22 resolve the problems created by the changed . . . conditions.” *Id.* (quoting *Asarco*  
23 *Inc.*, 430 F.3d at 979). Plaintiffs fail to meet any of these four conditions.

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27 <sup>5</sup> Defendants do not concede that the Settlement is a consent decree or otherwise  
28 an order or judgment subject to modification pursuant to Rule 60(b).

1           **1. Plaintiffs have not shown a significant change in**  
2           **circumstances extraordinary enough to warrant extension.**

3           Plaintiffs bear the burden of demonstrating that a significant, unanticipated  
4 change in circumstances warrants extending the Settlement.<sup>6</sup> *See Lab./Cmtly.*  
5 *Strategy Ctr.*, 564 F.3d at 1120. Plaintiffs posit that this factor may be satisfied if  
6 they can show that CBP did not substantially comply with the Settlement. ECF No.  
7 1526-1, at 11–12. While the FSA itself includes a substantial-compliance-  
8 termination provision (FSA §§ 31, 35), the Settlement has only a date of termination,  
9 making it inappropriate for the Court to condition the termination of the Settlement  
10 upon a finding of substantial compliance. Cases where courts considered an  
11 extension under Rule 60(b) involved different or more extreme circumstances. *See*  
12 *Lab./Cmtly. Strategy Ctr.*, 564 F.3d at 1120 (considering substantial compliance only  
13 when the decree itself allowed for its extension); *Thompson v. U.S. Dep’t of Hous.*  
14 *& Urb. Dev.*, 404 F.3d 821, 827 (4th Cir. 2005) (unanticipated change of  
15 circumstances existed when there was a “nearly complete failure to comply with  
16 their obligations”); *David C. v. Leavitt*, 242 F.3d 1206, 1212 (10th Cir. 2001) (court  
17 found defendant to be “20 percent in compliance and 80 percent in noncompliance”  
18 before extending); *Holland v. N.J. Dep’t of Corr.*, 246 F.3d 267, 283 (3d Cir. 2001)  
19 (“conditions have changed so that the ‘basic purpose of the original consent decree’  
20 has been ‘thwart[ed]’”); *see also Kelly*, 822 F.3d at 1097–98 (affirming the district  
21 court’s extension of a decree as a contempt sanction). “[I]n cases in which courts  
22 concluded that extensions of the consent decrees were warranted,” the courts had  
23 found “near total noncompliance.” *Lab./Cmtly. Strategy Ctr.*, 564 F.3d at 1123.  
24 Even if a substantial-compliance standard were applied, Plaintiffs would not meet it

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26 <sup>6</sup> Defendants do not have the burden to show that substantial compliance merits  
27 termination because they are not the ones seeking a modification, unlike *Rouser v.*  
28 *White*, 825 F.3d 1076, 1080 (9th Cir. 2016), and *Jeff D. v. Otter*, 643 F.3d 278, 280–  
81 (9th Cir. 2011).

1 because CBP has substantially complied with its obligations under the Settlement.  
2 *Id.* at 1121. Substantial compliance “cannot be satisfied by reference to one  
3 particular figure, while ignoring alternative information.” *Id.* at 1122. Rather, the  
4 Court must use a “holistic view of all the available information” to determine  
5 whether compliance is substantial. *Id.* In *Labor/Community Strategy Center*, the  
6 Ninth Circuit held that the district court did not abuse its discretion by declining to  
7 extend the term of a consent decree where the defendants failed to comply with “just  
8 one” of the decree’s three “essential” requirements, the metrics used to evaluate  
9 compliance were misleading, and the plaintiffs seeking extension of the consent  
10 decree “ignore[d] the many ways” in which the defendants had met or exceeded their  
11 obligations. *Id.* at 1121–22.

12 Here, Plaintiffs fail to show that extending the Settlement is warranted  
13 because they ignore Defendants’ general compliance with the vast majority of the  
14 Settlement provisions. In addition, most of Plaintiffs’ allegations of noncompliance  
15 overstate the noncompliance or rest on misinterpretations of the Settlement.

#### 16 **a. Guidance**

17 The Settlement requires CBP to issue guidance consistent with the Settlement  
18 and distribute it to all employees in the RGV and El Paso Sectors. ECF No. 1254-  
19 1, § II.6. CBP has complied with this provision, and the guidance is still in place.  
20 *See* Caanen Decl. ¶ 3; Stamper Decl. ¶ 3. Plaintiffs do not allege otherwise.

#### 21 **b. Facility Designation and Nutrition**

22 In Section VII.1 of the Settlement, the parties agreed that CBP will  
23 expeditiously transfer most class members to juvenile-priority facilities and make  
24 all reasonable efforts to hold class members in these facilities while in CBP custody.  
25 ECF No. 1254-1, § VII.1. CBP also agreed to ensure the safety and security of class  
26 members and to maintain an adequate supply of necessary items. *Id.* Section VII.4  
27 further requires CBP to provide age-appropriate meals, drinks, and snacks that meet  
28 class members’ daily caloric needs. *Id.* § VII.4. CBP has substantially complied

1 with these requirements. *See* Caanen Decl. ¶¶ 5–6, 16; Stamper Decl. ¶¶ 5, 11. The  
2 JCM commends CBP’s age-appropriate menus, provision of snacks, and food  
3 variety. ECF No. 1522, at 8–9. Plaintiffs do not allege otherwise.

4 **c. Enhanced Medical Support**

5 Next, three pages of the Settlement outline the procedures for Enhanced  
6 Medical Support. *See* ECF No. 1254-1, § VII.3. This subsection is the largest  
7 subsection of the Settlement, as it details the procedures to ensure the health and  
8 welfare of minors. *Id.* CBP’s medical support was also one of the focal points of  
9 the litigation leading up to the Settlement. *See* ECF No. 1254, at 3 (noting that the  
10 2019 TRO Motion “primarily” sought relief related to the medical needs of children  
11 and a remediation plan to make facilities safe and sanitary). Plaintiffs do not allege  
12 that CBP has failed to substantially comply with this subsection. Indeed, according  
13 to the recent JCM Report, CBP is generally complying with this section and is  
14 constantly making improvements. *See* ECF No. 1522, at 13–21. CBP continues to  
15 implement the requirements for Enhanced Medical Support and continues to  
16 improve its procedures. *See* Campos Decl. ¶¶ 5–23. CBP has substantially complied  
17 with the requirements for enhanced-medical support.

18 **d. Temperature and Warmth**

19 The parties agreed that CBP will maintain an ambient temperature of 69 to 83  
20 degrees Fahrenheit in Juvenile Priority Facilities, keep a stock of clothing, laundry  
21 soiled and wet clothing, and provide additional blankets upon a class member’s (or  
22 their parent’s) request. ECF No. 1254-1, § VII.5. As the JCM noted, the RGV and  
23 El Paso facilities “continue to be in general compliance with the temperature  
24 requirements of the Settlement.” ECF No. 1522, at 9; *see* Caanen Decl. ¶ 14;  
25 Stamper Decl. ¶ 12. Moreover, CBP instructs caregivers to advise children that they  
26 may ask for additional clothing or blankets, and there are posters in the facilities  
27  
28

1 advising children of the same.<sup>7</sup> Campos Decl. ¶ 19; Caanen Decl. ¶¶ 10, 14, 19;  
2 Stamper Decl. ¶¶ 14, 18. The JCM does not report that CBP has failed to “maintain  
3 a stock” of warm clothing, provide additional blankets or clothing upon request, or  
4 launder soiled clothing, which is what the Settlement explicitly requires. ECF No.  
5 1254-1, § VII.5.

6 Plaintiffs argue that class members do not regularly receive new outer  
7 garments. ECF No. 1526-1, at 19. However, Plaintiffs refer to a temporary,  
8 unintentional situation that CBP has since remedied. *See* Stamper Decl. ¶¶ 12–13  
9 (“This temporary issue has been rectified, such that clean clothes are provided” at  
10 every shower, if class members’ clothes are dirty, or upon request).

11 **e. Sleep**

12 The Settlement further outlines procedures for sleeping, generally requiring  
13 CBP to provide class members with “sufficient space, as well as a mat and blanket,”  
14 during sleep hours. ECF No. 1254-1, § VII.6. Like the previous section, the parties  
15 agreed that CBP will provide additional clothing and blankets to class members  
16 when class members request them or express discomfort from cold, or when CBP  
17 observes class members “shivering or huddling for warmth.” *Id.* CBP also agreed  
18 to dim the lights if it is safe to do so, make reasonable efforts to minimize noise and  
19 disruptions, and place clocks in the rooms. *Id.*

20 Plaintiffs do not allege that CBP is not substantially complying with the sleep  
21 provisions, nor would the evidence support such an allegation. Nothing in the recent  
22 JCM reports indicate that CBP is not meeting its commitments regarding lighting,  
23 noise, space, mats, blankets, or clocks. Regarding warmth, as noted above, CBP

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24  
25 <sup>7</sup> Plaintiffs want CBP to affirmatively issue extra clothing more often.  
26 However, RGV and El Paso Sectors do not “affirmatively issue extra clothing to  
27 families and children, as such could result in items not being used, and due to limited  
28 storage capacity in holding areas, the clothing may become unclean, unserviceable,  
lost, or taken without permission.” Stamper Decl. ¶ 12; Caanen Decl. ¶ 14.



1 maintains an adequate stock of warm clothing and blankets, and caregivers are  
2 instructed to advise children that they may ask for clothing or blankets. Caanen  
3 Decl. ¶¶ 6, 14, 19; Stamper Decl. ¶¶ 5, 12, 18; Campos Decl. ¶ 19. Overall, CBP  
4 has substantially complied with the provisions regarding sleep.

5 **f. Hygiene and Sanitation**

6 CBP must provide hygiene and sanitation items to class members. ECF No.  
7 1254-1, § VII.7. Like medical care, this is an “essential” provision that formed the  
8 basis for the litigation leading to the Settlement. *See* ECF No. 1254, at 3.  
9 Specifically, the parties agreed that CBP will provide “hygiene kits” when showers  
10 are offered and upon request, and provide showers “as soon as possible” after arrival  
11 and at 48-hour intervals thereafter. No. 1254-1, § VII.7. Toothbrushes and  
12 toothpaste are provided daily and upon request, and caregivers must assist with  
13 hygiene routines, as needed. *Id.* CBP must also launder soiled clothing “to the  
14 extent operationally practicable” and replace soiled clothing. *Id.* Facilities must  
15 maintain infant-changing stations, functioning toilets and sinks, toilet paper,  
16 feminine-hygiene products, and hand soap. *Id.*

17 CBP has met its commitments in this subsection. *See* Caanen Decl. ¶¶ 6, 14,  
18 17, 19; Stamper Decl. ¶¶ 5, 12, 15, 18. The JCM reports “have documented CBP’s  
19 general compliance with the conditions and amenity requirements” related to  
20 hygiene and sanitation. ECF No. 1522, at 25. Other than concerns related to clean  
21 clothing, which CBP remedied (*see* Section III.B.1.d., *supra*), Plaintiffs do not allege  
22 that CBP has failed to comply with the hygiene-and-sanitation provisions.  
23 Accordingly, Plaintiffs have not demonstrated that CBP has failed to substantially  
24 comply with Section VII.7 of the Settlement—one of the essential provisions.

25 **g. Child-Appropriate Environment**

26 In the Settlement, the parties agreed that CBP will maintain a child-  
27 appropriate environment, which includes family-unity provisions and other “Special  
28 Considerations.” ECF No. 1254-1, § VII.8.

1 *i. Family Unity*

2 The parties agreed that CBP will maintain family unity by keeping family  
3 members in the same pods, absent an “articulable operational reason.” *Id.*  
4 § VII.8.B.1. The parties envisioned that each facility may hold family members in  
5 a different manner based on the facility’s demographics and capabilities, and notes  
6 that a facility may need to “house all teenage boys together, regardless of whether  
7 they entered with a family member.” *Id.* § VII.8.B.5. The parties agreed that, when  
8 housing family members in the same pods is not operationally feasible, CBP will  
9 record the reasons for holding them apart and make “all reasonable efforts” to ensure  
10 that the family members have the opportunity to interact. *Id.* § VII.8.B.3. CBP  
11 agreed to inform class members that they can request to interact with family  
12 members housed in separate pods. *Id.*

13 The evidence indicates that CBP has substantially complied with the  
14 provisions regarding a Child-Appropriate Environment. Caanen Decl. ¶¶ 7–10;  
15 Stamper Decl. ¶¶ 6–7. Plaintiffs’ assertion that CBP has “never complied” with the  
16 family-unity provisions of the Settlement lacks support. Plaintiffs cite JCM reports  
17 stating that minors are sometimes held in different pods than their adult relatives and  
18 that sometimes CBP could not provide a particular reason for holding the family  
19 members separately. ECF No. 1526-1, at 14. However, holding family members in  
20 different pods is not a breach of the Settlement; the Settlement envisions that family  
21 members may not always be held in the same pod for operational reasons. The RGV  
22 and El Paso Juvenile Priority Facilities each face unique and different operational  
23 challenges. *See* Caanen Decl. ¶ 7 (noting that the Donna Processing Facility has 6  
24 pods in use); Stamper Decl. ¶ 5 (noting that the El Paso Hardened Facility has 160  
25 pods). For example, the Settlement cites to the possibility that a facility may need  
26 to “house *all* teenage boys together.” ECF No. 1254-1, VII.8.B.5 (emphasis added).  
27 Thus, even if CBP sometimes houses certain groups of children together, rather than  
28 with their parent or legal guardians—such as teenage boys or teenage girls—this



1 decision, by itself, is not a breach of the Settlement. Moreover, in the Settlement,  
2 the parties acknowledge that situations may arise when CBP cannot fully comply  
3 with the Settlement’s standards. *See* ECF No. 1254-1, §§ IV.1, V.1, VI.1.

4 Plaintiffs’ evidence is insufficient to demonstrate that CBP does not provide  
5 an “articulable operational reason” for how it holds members of family units. ECF  
6 No. 1526-1, at 14–15 (citing 2023 JCM Reports and the December 2024 JCM  
7 Report). The December 2024 JCM Report—which is the most recent and therefore  
8 the most relevant report (*Criswell*, 2022 WL 3646049, at \*8)—only notes that during  
9 a September 2024 visit, CBP personnel “at the Donna facility” were “unclear” about  
10 the protocol to determine where to house an accompanied minor.<sup>8</sup> ECF No. 1522,  
11 at 7.

12 Next, Plaintiffs’ argument that CBP has failed to provide opportunities for  
13 family visitation ignores evidence of general compliance and recent improvements.  
14 Plaintiffs cite the December 2024 JCM report, in which the JCM notes that some  
15 “trusted adults”—*i.e.*, not parents—were transferred from Donna to the Ursula  
16 facility and class members could not visit with these adults. ECF No. 1522, at 7–8.  
17 CBP acknowledges that, because the Donna Facility generally houses families and  
18 unaccompanied children, such trusted adults may be held at the Ursula facility.  
19 Caanen Decl. ¶ 5. In such cases, visitation may not be logistically and operationally  
20 feasible. *Id.* ¶ 10. In addition, in November 2024, the JCM observed “regular  
21 visitation for families” at Donna. ECF No. 1522, at 7–8. The JCM stated that CBP  
22 was scheduling and logging visits, and that Donna “scheduled a new visitation  
23

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24 <sup>8</sup> The JCM does not state who the “personnel” were—whether they were  
25 caregivers, or other contractors (who do not determine where a minor is placed), or  
26 agents. Accordingly, this evidence should be given little, if any, weight because the  
27 individuals who made the statement are unknown and the Court cannot determine  
28 whether they would know the decision-making behind holding members of family  
units in separate pods.

1 program in the afternoon” in which families congregated in recreational areas. *Id.*  
2 Overall, the JCM noted that the “regular visits and documentation at Donna” in  
3 November was “encouraging.” *Id.* Likewise, in El Paso, the JCM noted that the  
4 “availability and regularity of visitation for children and families continues to  
5 improve,” and did not note any compliance issues. *Id.*

6 While Plaintiffs cite the September 2024 declarations by minors held in RGV  
7 as evidence that some minors did not visit with family members for “days at a time,”  
8 this is not necessarily evidence of a breach of the Settlement. ECF No. 1526-1, at  
9 16–17. The parties agreed that CBP will make “all reasonable efforts” to ensure  
10 visitation between family members. ECF No. 1254-1, § VII.8.B.3. The declarants  
11 report that minors in Donna did visit with family members in Donna, even if it was  
12 not every day or immediately after they requested visits,<sup>9</sup> and, as noted, for minors  
13 held in a different facility from non-parent or legal guardian relatives, such visitation  
14 is not operationally or logistically feasible. Caanen Decl. ¶ 10. Plaintiffs therefore  
15 have not shown that CBP did not make “all reasonable efforts” to ensure visitation  
16 between family members.

17 Next, Plaintiffs imply that CBP is not informing class members about their  
18 right to request visitation because class members “did not appear to know that they  
19 could request visitation.” ECF No. 1526-1, at 17. But the parties agreed that CBP  
20 will inform minors, orally and via a poster, of their right to request visitation with  
21 family members. ECF No. 1254-1, § VII.8.B.3. CBP routinely complies with this  
22 obligation. Caanen Decl. ¶ 10; Stamper Decl. ¶ 7; Campos Decl. ¶ 19.

---

23  
24  
25 <sup>9</sup> Notably, the minors held in El Paso who state that they did not receive regular  
26 visitation with family members were held with at least one parent. *See, e.g.*,  
27 B.M.M.C. Decl. (Nov. 20, 2024), ECF No. 1526-12, ¶¶ 4-6 (three-year-old was  
28 housed with mother, but father was in a separate pod); W.O.R.P. Decl. (Nov. 20,  
2024), ECF No. 1526-13, ¶¶ 5, 13 (child was housed with father, but the child’s aunt  
and uncle were housed in another pod).

1 Plaintiffs argue that because CBP has not consistently complied with the  
2 visitation provision, CBP has not complied with the Settlement “as a whole.” ECF  
3 No. 1526-1, at 17–18. Even if Plaintiffs could meet their burden of showing that  
4 CBP has not met its commitments in the Settlement’s family-unity provisions, this  
5 alone would not mandate that CBP failed to substantially comply with other critical  
6 provisions of the Settlement such that the Court should alter the parties’ agreed-to  
7 termination date. *See Lab./Cmt. Strategy Ctr.*, 564 F.3d at 1122.

8 *ii. Special Considerations*

9 The parties agreed that CBP will make reasonable efforts to include  
10 televisions in holding rooms and make “efforts” to include age-appropriate toys,  
11 activities, and furniture. ECF No. 1254-1, § VII.8.C. CBP has substantially  
12 complied with the “Special Considerations” provisions. CBP provides televisions  
13 in Juvenile Priority Facilities for entertainment. Caanen Decl. ¶ 18; Stamper Decl.  
14 ¶ 17. The Sectors have also made efforts to provide age-appropriate toys, including  
15 coloring books, building blocks, cards, puzzles, and reading books, as well as  
16 incorporated daily-recreation time. Caanen Decl. ¶¶ 10, 18; Stamper Decl. ¶¶ 7, 17.

17 Plaintiffs argue that CBP has failed to substantially comply with this provision  
18 and has not implemented a “trauma-informed approach.” ECF No. 1526-1, 21–23.  
19 But Plaintiffs read too much into these provisions that have an “aspirational tone”  
20 and leave the details of implementation to CBP’s discretion. *See Ashker v. Newsom*,  
21 968 F.3d 939, 945 (9th Cir. 2020). For example, Plaintiffs allege that CBP falls  
22 short because CBP does not provide enough recreation time or a variety of toys.  
23 ECF No. 1526-1, at 21–22. The Settlement, however, does not specify how many  
24 toys or hours of activity CBP must provide. Instead, it requires that CBP “*make an*  
25 *effort* to have available age-appropriate toys/activities,” as long as they do not pose  
26 a safety risk. ECF No. 1254-1, § VII.8.C.2 (emphasis added). As the JCM notes in  
27 the most recent report, caregivers at Donna “have been consistently observed to be  
28 actively involved with the [unaccompanied] children and supervise play with a

1 variety of child-friendly toys and activities.” ECF No. 1522, at 11. The Sectors also  
2 report that they have incorporated a variety of safe, age-appropriate toys and  
3 activities for all minors. Caanen Decl. ¶ 10, 18; Stamper Decl. ¶ 7, 17. CBP has  
4 therefore met its commitment to “make an effort to have available age-appropriate”  
5 toys.

6 As far as recreation time, Plaintiffs ignore the JCM’s December 2024 report  
7 that, at Donna, CBP implemented a schedule for “daily outdoor activity” in early  
8 November 2024. ECF No. 1522, at 11. The El Paso Sector provides similar  
9 recreation time. *See* Stamper Decl. ¶¶ 7, 17. Plaintiffs’ assertion that “staff actively  
10 prevent children from entertaining themselves and playing” is exaggerated and fails  
11 to consider that CBP’s priority is safety. *See, e.g.*, ECF No. 1522, at 13 (“That UCs  
12 and families feel safe in CBP custody is a fundamental precondition for trauma-  
13 informed care.”). Children are not restricted from engaging in any activities in the  
14 pods. *See* Stamper Decl. ¶ 17. However, to maintain the safety of all, there may be  
15 situations where a child was prohibited from engaging in activity that may be  
16 dangerous. *Id.*

17 Plaintiffs next complain that caregivers and CBP personnel do not provide  
18 minors with information. ECF No. 1526-1, at 23. Although Plaintiffs do not specify  
19 what information they refer to, Plaintiffs appear to challenge CBP’s failure to inform  
20 class members about their immigration proceedings. *See id.* at 23 (citing W.O.C.M.  
21 Decl. (Nov 20, 2024), ECF No. 1526-25, ¶ 6 (parent declarant reports that “[t]hey  
22 have not told me why I am still here”); R.E.Z. Decl. (Sept. 18, 2024), ECF No. 1526-  
23 16, ¶ 6 (“No one has explained to me why I have been here for 10 days or anything  
24 about what is happening with my immigration case.”)). The Settlement does not  
25 require CBP to regularly update class members about the status of their immigration  
26 cases, and Plaintiffs should not stretch the “trauma-informed approach” to include  
27 such a requirement. *See Ashker*, 968 F.3d at 945. Plaintiffs do not acknowledge that  
28

1 CBP staff often cannot predict how long a class member will be at a facility and may  
2 not be able to immediately look up the minor's case status.

3 In sum, Plaintiffs fail to show a lack of substantial compliance with the  
4 requirements in Section VII.8 of the Settlement.

5 **h. Caregivers**

6 The Settlement contains provisions related to the hiring, availability, and  
7 responsibility of caregivers. ECF No. 1254-1, § VII.9. Caregivers must pass  
8 background checks, be available on a 24/7 basis, and have a supervisor available at  
9 all times. *Id.* § VII.9.A. CBP must also provide caregivers an orientation. *Id.*  
10 § VII.9.B. The parties agreed that caregivers will: (1) support general care to infants  
11 and tender-age children; (2) collect laundry; (3) issue and collect shower/hygiene  
12 supplies; (4) monitor class members going into and out of showers; (5) assist in  
13 bathing class members, as appropriate; (6) store clothing and issue it as needed; (7)  
14 maintain a safe environment; and (8) maintain inventory of items. *Id.* § VII.9.C. In  
15 addition, the parties agreed that CBP will “make best efforts” to provide additional  
16 support for class members via caregivers, including: (1) assisting in communicating  
17 and interacting with family members; (2) assisting with the care of class members,  
18 such as toileting; and (3) supervising and supporting class members during  
19 recreational activities. *Id.* § VII.9.D.

20 Plaintiffs cite JCM reports to argue that CBP has not substantially complied  
21 with its caregiver program. *See* ECF No. 1526-1, at 23–24. But the JCM has found  
22 that CBP meets the requirements in Section VII.9. *See* ECF No. 1372, at 42 (“CBP  
23 is meeting the Settlement’s requirements regarding the caregiver program.”); ECF  
24 No. 1522, at 11 (“[CBP] is meeting the Settlement’s requirements regarding the  
25 number and deployment of Caregivers.”); *id.* at 10 (“Caregivers responded to  
26 families expressing the needs of their children and supervised child-focused  
27 activities.”); *see also* Campos Decl. ¶¶ 18–21 (describing the caregiver program);  
28 Caanen Decl. ¶ 19 (caregivers in the RGV Sector); Stamper Decl. ¶ 18 (caregivers

1 in the El Paso Sector). The JCM suggested improvements for CBP to meet the  
2 aspirational caregiver provisions—that CBP make its “best efforts” to assist with  
3 family interactions and recreational activities—and CBP is striving continually to  
4 improve the caregiver program, in accordance with the JCM’s suggestions. *See*  
5 Campos Decl. ¶¶ 20–21. But Plaintiffs have not shown that CBP is in breach of any  
6 obligations.

7 **i. Notice Requirements**

8 In Section XI of the Settlement, the parties agreed that CBP will post  
9 Settlement Exhibit 1, ECF No. 1254-1, at 31, in all facilities where class members  
10 can see and read it. *Id.* § XI. CBP must also inform class members and, in some  
11 cases, their adult family members, of their rights under the Settlement orally and by  
12 video. *Id.* This advisal is contained in Settlement Exhibit 3. *Id.* at 35. CBP must  
13 also provide class members a Form I-770. *Id.* § XI. Lastly, this section requires  
14 CBP to provide a copy of a list of free legal services to all class members. *Id.*

15 CBP routinely complies with these notice requirements. *See* Caanen Decl.  
16 ¶¶ 11–13, 19; Stamper Decl. ¶¶ 8–9, 14, 18. Plaintiffs, however, allege that class  
17 members frequently report not receiving a list of legal providers. ECF No. at 1254-  
18 1, at 18. But according to CBP, the list of legal providers is provided to every class  
19 member during processing. Caanen Decl. ¶¶ 11–12; Stamper Decl. ¶¶ 8–9. When  
20 a family is released from custody with a Notice to Appear, the family is provided the  
21 list again as part of their packet when they leave the Border Patrol facility. Caanen  
22 Decl. ¶ 11; Stamper Decl. ¶ 8. Unaccompanied children also receive the list upon  
23 their transfer to the Office of Refugee Resettlement. Caanen Decl. ¶ 11; Stamper  
24 Decl. ¶ 8. Because Plaintiffs have not shown that CBP has failed to advise class  
25 members in accordance with Section XI, Plaintiffs have not met their burden of  
26 proving that CBP failed to substantially comply with the notice requirement.

27 Plaintiffs next allege that CBP “denies” class members’ requests to call  
28 counsel. ECF No. 1526-1, at 18. But this allegation lacks support. Rather,



1 Plaintiffs’ declarants state that class members were not *advised* of their right to call  
2 legal counsel—not that CBP “denied” their request to call counsel. *See, e.g.*,  
3 C.N.T.F. Decl. (Sept. 18, 2024), ECF No. 1526-5, ¶¶ 19-20 (“No one has told me  
4 that I can call a lawyer or given me a list of free lawyers. No one told my mom she  
5 could call a lawyer.”); G.N.P.C. Decl. (Sept. 19, 2024), ECF No. 1526-19, ¶ 23 (“My  
6 son and I have not been given a list of free legal services or told we can speak a  
7 lawyer.”).<sup>10</sup> CBP’s advisal of their rights according to the Settlement, as well as  
8 CBP’s providing the list of legal counsel before class members depart, satisfies the  
9 plain language of the Settlement.

10 **j. Monitoring**

11 Only one portion of the Settlement was separately embodied in a Court  
12 order—the JCM provisions. *See* ECF Nos. 1280, 1381, 1426, 1470. In the  
13 September 11, 2024 Order, the Court adopted the parties’ stipulation to extend the  
14 JCM’s term to December 27, 2024. ECF No. 1470, at 5–6. That term has expired.  
15 Plaintiffs ask the Court to modify the September 11, 2024 Order to extend the JCM’s  
16 term to July 27, 2025, pursuant to Rule 60(b). ECF No. 1526-2, at 3–5. However,  
17 neither the Settlement nor the September 11, 2024 Order permits more extensions.  
18 *See* ECF No. 1254-1, § IX.10; ECF No. 1526-2, at 3–5. Plaintiffs have not  
19 established that CBP failed to substantially comply with the Settlement. Indeed,  
20 CBP has developed a robust monitoring system. Campos Decl. ¶¶ 9, 14–17, 22;  
21 Caanen Decl. ¶ 21; Stamper Decl. ¶ 20. CBP acknowledges that the JCM  
22 recommended certain improvements and welcomes her recommendations. But the  
23 JCM did not conclude that CBP’s monitoring system is inadequate overall, leaving  
24 Plaintiffs short of proving a failure to substantially comply with provisions of the

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25  
26 <sup>10</sup> Plaintiffs also cite a declaration from M.A.C.M. (Nov. 20, 2024), ECF No.  
27 1526-20, ¶ 9 (“We were told that a lawyer cannot help us in here.”). It is unclear  
28 who the hearsay declarant is. It is possible that another person in custody told the  
individual that a lawyer could not help him.

1 Settlement. To the extent the Court concludes otherwise and that additional  
2 monitoring is appropriate, it should be limited to the issues the JCM identified and  
3 for a limited duration. *See* Campos Decl. ¶ 23 (CBP is “working to review and  
4 implement these recommendations. OCMO anticipates that such a review will be  
5 largely complete within the next six months.”).

6 **2. The Court should not order a modification because the**  
7 **parties anticipated the allegedly changed circumstances.**

8 Plaintiffs also fail to satisfy the second condition for modifying a consent  
9 decree under Rule 60(b). Ordinarily, “modification should not be granted where a  
10 party relies upon events that actually were anticipated at the time it entered into a  
11 decree.” *Rufo*, 502 U.S. at 385. “[A] court must first interpret the terms and  
12 provisions of the decree as it would a contract to determine if the moving party  
13 anticipated a significant change in factual conditions, thereby making modification  
14 improper.” *Asarco Inc.*, 430 F.3d at 976. Here, the parties anticipated that, at times  
15 during the settlement period, CBP “may be able to only partially comply with certain  
16 provisions of the Agreement.” ECF No. 1254-1, § VI.1; *see also id.* § V.1 (“The  
17 Parties are aware that there are situations that . . . may nevertheless impact CBP’s  
18 ability to maintain full compliance with this Agreement.”). The parties also planned  
19 for the possibility that disputes may arise about whether CBP was complying with  
20 the Settlement. *Id.* § XIII. Nevertheless, Plaintiffs agreed to the termination  
21 provision. *Id.* § II.8. Plaintiffs have, at most, alleged partial noncompliance with  
22 the Settlement. Plaintiffs have not shown a “nearly complete failure to comply” that  
23 could not be anticipated. *Thompson*, 404 F.3d at 827. Because Plaintiffs anticipated  
24 possible limited noncompliance when they agreed to the termination provision, the  
25 Court should not modify the termination date based on a showing, at most, of limited  
26 noncompliance. *See Asarco Inc.*, 430 F.3d at 982–83.



1                   **3. The allegedly changed circumstances do not make**  
2                   **compliance with the termination provision more onerous,**  
3                   **unworkable, or detrimental to the public interest.**

4           Next, Plaintiffs do not prove that compliance with the Settlement’s  
5   termination provision has become “more onerous, unworkable, or detrimental to the  
6   public interest.” *Lab./Cmt. Strategy Ctr.*, 564 F.3d at 1120 (quoting *Asarco Inc.*,  
7   430 F.3d at 979). Plaintiffs contend that the Settlement’s termination on January 29,  
8   2025, would be detrimental to the public’s interest in the welfare of children. ECF  
9   No. 1526-1, at 27. But to the extent Plaintiffs believe that CBP is not providing  
10   “safe and sanitary” conditions, *id.*, Plaintiffs remain able to seek enforcement of the  
11   FSA. FSA ¶ 12.A. Further, CBP has incorporated the Settlement provisions in its  
12   guidance, which remains in effect. *See* Caanen Decl. ¶ 3; Stamper Decl. ¶ 3.  
13   Therefore, Plaintiffs’ allegations of noncompliance do not demonstrate that  
14   compliance with the Settlement’s termination provision is detrimental to the public  
15   interest.

16                   **4. Extending the Settlement’s termination date would not be**  
17                   **suitably tailored to resolve the problems created by the**  
18                   **allegedly changed conditions.**

19           Finally, Plaintiffs have not shown that changing the termination date would  
20   be “suitably tailored to resolve the problems created by the [alleged] changed . . .  
21   condition.” *Lab./Cmt. Strategy Ctr.*, 564 F.3d at 1120 (quoting *Asarco Inc.*, 430  
22   F.3d at 979). This Settlement arose from litigation about the interpretation of the  
23   FSA and sought to “clarify[ ] the Parties’ understanding of the meaning of  
24   [Paragraphs 11 and 12A] of the [FSA], as they apply to conditions of CBP detention  
25   in the RGV and El Paso Sectors.” ECF No. 1254-1, at 3. The FSA obligations  
26   continue to apply, and the Settlement has not reduced disputes. Further, while the  
27   extension sought by Plaintiffs is unsupported and should be denied, Defendants are  
28   willing to engage with Plaintiffs on a reasonable path forward in a way suitably

1 tailored to address the concerns raised by the JCM in her most recent report and to  
2 ensure ongoing compliance with the FSA.

3 And doubling the duration of the Settlement is under no circumstances  
4 suitably tailored. As the government has explained, the Court does not have  
5 authority to extend the Settlement, and Plaintiffs have not shown the Rule 60(b)  
6 factors. But should this Court determine that it has authority to impose ongoing  
7 obligations on the government, it must first consider a much more targeted and time-  
8 limited remedy than Plaintiffs propose.

9 In doing so, the Court must limit court-imposed relief both in scope and time,  
10 such as a short extension of the JCM's term. By extending only the JCM's term for  
11 a short period, the Court would be targeting relief to enforce the relevant provisions  
12 of the FSA rather than imposing new relief without required enforcement  
13 proceedings. Indeed, OCMO has explained that it "welcomes the[]  
14 recommendations from the JCM, and is working to review and implement [them],"  
15 including those

16 in her December 2024 final report, [where] the JCM made several  
17 recommendations for continued monitoring of various aspects of CBP's  
18 medical processes. These included, for example, a continued  
19 assessment of the processes and procedures for the transmission of  
20 medical information between MSC personnel and CBP personnel, and  
21 from CBP personnel to local healthcare systems; an assessment of the  
use of isolation rooms; and a continued assessment and oversight of  
MSC consultation with pediatric advisors.

22 Campos Decl. ¶ 23. OCMO "anticipates that such a review will be largely complete  
23 within the next six months." *Id.* Thus, an extension of the JCM term beyond six  
24 months is not warranted.

25 Imposing the Settlement beyond those specific terms where Plaintiffs have  
26 made the requisite showing is also not warranted. As explained above, it is  
27 undisputed that CBP has achieved substantial compliance in most areas, and  
28

1 Plaintiffs have failed to establish any unanticipated change in circumstances. There  
2 is no justification for imposing the full Settlement for an additional 2.5 years.

3 While Plaintiffs use sweeping language to describe CBP's alleged  
4 noncompliance with the Settlement, Plaintiffs identify at best a limited number of  
5 purported areas of breach. *See* ECF No. 1526-1, at 8–20. Plaintiffs suggest that the  
6 Court should “doubt CBP’s compliance” as to other provisions. ECF No. 1526-1,  
7 at 27. But it is Plaintiffs’ burden to *prove* noncompliance that warrants modification.  
8 *See Lab./Cmt. Strategy Ctr.*, 564 F.3d at 1121. Moreover, CBP undisputably has  
9 complied with many Settlement provisions. *See* Section III.B.1, *supra*. Plaintiffs  
10 make no effort to prove noncompliance as to the specific, measurable requirements  
11 in sections VII.1 (facility designation); VII.2 (contract quality assurance); VII.3  
12 (enhanced medical support); VII.4 (nutrition); VII.5.A (temperature); VII.6.1 and  
13 6.3–6.5 (sleep); and VII.7.1–7.5 and 7.7–7.10 (hygiene and sanitation). Extending  
14 the duration of provisions with which Plaintiffs fail to prove a lack of substantial  
15 compliance would be unnecessary. In sum, if this Court concludes that Rule 60(b)  
16 applies and authorizes it to impose the Settlement beyond the clear termination date,  
17 suitably tailored relief would be limited to extending the term of the JCM or those  
18 specific provisions where Plaintiffs made the requisite showing, and an extension  
19 beyond six months is not justified.

#### 20 **IV. CONCLUSION**

21 For all the foregoing reasons, the Court should deny the relief requested in  
22 Plaintiffs’ Motion to Modify the 2022 CBP Settlement.  
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24  
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26  
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28

1 DATED: January 7, 2025

Respectfully submitted,

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28

1                                   **CERTIFICATE OF SERVICE**

2           I certify that I served a copy of the foregoing document on all counsel of  
3 record by means of the District Court's CM/ECF system.

4  
5 Dated: January 7, 2025

/s/ Joshua C. McCroskey  
JOSHUA C. MCCROSKEY  
Trial Attorney  
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8                                   **CERTIFICATE OF COMPLIANCE**

9  
10          The undersigned, counsel of record for Defendants, certifies that this brief  
11 contains 7,634 words, which complies with the word limit set by Court order dated  
12 January 2, 2025, ECF No. 1532.

13 Dated: January 7, 2025

/s/ Joshua C. McCroskey  
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# EXHIBIT

## A

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3 Jenny Lisette Flores, *et al.*,  
4 Plaintiffs,  
5 v.

Case No. 2:85-cv-04544-DMG

District Judge Dolly M. Gee

6 Merrick Garland, Attorney General of  
7 the United States, *et al.*,  
8 Defendants.  
9

10 DECLARATION OF GERARDUS CAANEN

11 I, Gerardus Caanen, pursuant to 28 U.S.C. § 1746, and based upon my personal  
12 knowledge and information made known to me from official records and reasonably  
13 relied upon in the course of my employment, relating to the above-captioned matter,  
14 hereby declare as follows:

15 1. I currently serve as the Division Chief, Centralized Processing Center  
16 (CPC), Rio Grande Valley (RGV) Sector, U.S. Border Patrol (USBP), U.S. Customs  
17 and Border Protection (CBP), U.S. Department of Homeland Security (DHS). Prior to  
18 this, I was the Patrol Agent in Charge (PAIC) of the Kingsville Border Patrol Station.

19 2. As the Division Chief of the CPC, I have command and oversight of the  
20 immigration processing and detention of noncitizens apprehended by Border Patrol  
21 agents within the RGV Sector. This includes juveniles who are apprehended by and  
22 processed by Border Patrol agents within RGV Sector.

23 3. I am familiar with the *Flores* Settlement Agreement, which provides  
24 custodial standards for all children in CBP custody. I am also familiar with the 2022  
25 Settlement Agreement binding RGV and El Paso Sectors, which provides more  
26 detailed standards for children in custody in those Sectors. Among other things, the  
27 2022 Settlement Agreement requires that children generally be held in an environment  
28 that respects and acknowledges their particular vulnerability, including an

1 environment focused on trauma-informed care and that provides sufficient child-  
2 appropriate activities; that children generally be held together with parents or legal  
3 guardians, absent an articulable operational need to be held apart; that children receive  
4 information about legal service providers and notices of rights; that children have  
5 access to warm clothing and blankets if needed; that children who are held in custody  
6 for more than five days receive appropriate follow up medical assessments; and that  
7 USBP provide caregivers in Juvenile Priority Facilities (which are the facilities  
8 identified as the primary facilities for holding children in custody). RGV Sector  
9 received guidance from USBP HQ on approximately August 15, 2022, notifying the  
10 sector of the Settlement and its requirements. This guidance remains in effect.

11 4. I make this declaration to describe RGV Sector's compliance with the  
12 2022 Settlement Agreement, including efforts to monitor compliance.

13 5. In the RGV Sector, the Donna Processing Facility is the identified  
14 Juvenile Priority Facility. This facility houses exclusively family units and  
15 unaccompanied children. In situations in which an unaccompanied child is traveling  
16 with an adult relative, such as a grandparent, that non-parent adult relative may, in  
17 some cases, also be held at Donna until the child is transferred to U.S. Department of  
18 Health and Human Services (HHS) Office of Refugee Resettlement (ORR). In other  
19 cases, the adult relative will be held at the Centralized Processing Center- Ursula, with  
20 other single adults. This is done because the Donna Processing Facility primarily  
21 houses family units and unaccompanied children. Placement for non-parent or non-  
22 legal guardians is determined on a case-by-case basis and depends on, among other  
23 factors, space and capacity limitations, the gender of the accompanying adult, as well  
24 as the age of the unaccompanied child, with relatives of tender- age (under age 12)  
25 children more likely to remain with the child.

26 6. Children apprehended in RGV Sector who are not able to be immediately  
27 returned to their country of origin are transferred to the Donna Processing Facility as  
28 expeditiously as possible, generally within 24 hours of arrival at a non-priority facility



(e.g., a USBP station). Children are generally held at the Donna Processing Facility for the duration of their time in the Sector's custody. Children are able to move freely about their pod, and the facility does not have any fencing and enclosures that are not needed for security reasons. The pods where the families and children reside while in our custody are made up of plywood walls with plexiglass fronts. The doors to each sub-pod remain unlocked at all times so that children can move freely in and out of their assigned pods which allows them to congregate in the center common area with the child caregivers. Donna also maintains an adequate supply of items including mats, blankets, clothing and undergarments, diapers and wipes, bottled water, snacks, hygiene products, bottles, formula, and age-appropriate food.

7. The Donna Processing Facility currently has a capacity of 750 people and is divided into six pods. Two of these pods are dedicated primarily to holding unaccompanied children, with one pod designated for male minors and one for female minors. The remaining four pods are used to house other family units and family groups, including male heads of household with minor children, female heads of household with minor children, and, as applicable, non-parent or non-legal guardians accompanying unaccompanied children. While the facility currently operates with six pods, it has the capacity to expand to eight pods, accommodating up to 1,000 individuals, in the event of an influx. The Donna Processing Facility generally holds adults and children of differing genders apart from each other (depending on age of the children) for safety and security purposes, and to ensure that there are no issues complying with the requirements of the Prison Rape Elimination Act (PREA). Although RGV Sector acknowledges that PREA does not strictly require holding each gender separately from each other, RGV Sector endeavors to do this whenever possible to maintain safety and security, particularly to ensure that all individuals, regardless of gender, are comfortable and safe, and to ensure that there are no incidents of cross-gender viewing of restroom use or cross-gender sexual assault. RGV Sector encounters families of a wide variety of demographics, including, but not limited to,

1 children accompanied by their mother, children accompanied by their father, children  
2 accompanied by both parents, and children accompanied by a grandparent or other  
3 relative. In addition, like all families, the gender and ages of children vary. For  
4 example, it is not uncommon to encounter a family consisting of a mother with a  
5 tender-age or toddler girl and a teenage boy, or a father and mother with a tender-age  
6 or toddler boy and a teenage girl.

7 8. USBP must therefore keep the family pods safe and secure for all  
8 demographics, including the adult members of families. In particular, consistent with  
9 PREA considerations, RGV segregates adult detainees by gender, such that males and  
10 females are held separately. USBP must also ensure that pods are safe and sanitary  
11 for all individuals in custody, which includes ensuring that pods do not get  
12 overcrowded. In order to meet all of these requirements, therefore, it is often necessary  
13 to hold some children apart from their accompanying family members. For example,  
14 RGV Sector generally holds fathers and mothers in separate pods, as the Sector would  
15 not hold an adult male in a pod with adult females. Thus, if a family consists of two  
16 parents, it is often necessary to hold the father and mother in separate pods. The age  
17 and gender of the children may then dictate where the children are held. For example,  
18 a tender-age child, of either gender, may be held with his/her mother or father.  
19 However, a teenage child, of either gender, would generally not be held with adults of  
20 the opposite gender, for safety purposes and due to the PREA concerns outlined above.  
21 Thus, while a teenage girl traveling with her mother may be held in the same pod as  
22 her mother, that same child, traveling with her father, may be held in a separate pod.  
23 If operationally feasible, a teenager may be held with their parent in the same pod.  
24 Factors such as the teenager's age and gender, as well as facility capacity, any medical  
25 issues or suspicions about the validity of the familial relationship, and the safety and  
26 comfort of all individuals in custody, determine the operational feasibility of this  
27 arrangement.

28 9. In cases where it is appropriate to hold a teenager separately from their

1 accompanying adult relative, the child would generally be held in a pod with  
2 unaccompanied children of the same gender and similar age. This may also be  
3 necessary if, for instance, a pod consisting of mothers and children is becoming  
4 overcrowded. For example, each pod has a capacity of 125. If RGV Sector receives  
5 a large number of female head-of-household families, which all are held together, that  
6 pod may quickly reach capacity. Conversely, there may only be a small number of  
7 unaccompanied teenage girls. In such situations, the Sector may move some of the  
8 teenage girls into the pod with other teenage girls, to alleviate overcrowding in the  
9 family pod. USBP has also found that, in many cases, the teenagers actually appreciate  
10 being held with girls their own age. This operational decision to place a minor in a  
11 separate pod from their parent(s), as well as the reason for that decision, is recorded in  
12 the e3 system of records. The available options for justifying the temporary placement  
13 of a minor in a separate pod from their parent include family relationship in question,  
14 medical or other concerns, security concern, or operationally infeasible. Typically, for  
15 reasons outlined above, “operationally infeasible” is selected as the reason for  
16 separation.

17 10. RGV Sector must constantly assess the demographics and numbers in  
18 custody and adjust appropriately to move children and adults around, as needed. In  
19 all cases where a child is held separately from their parent or legal guardian at the  
20 Donna Processing Facility, or where an unaccompanied child and their accompanying  
21 adult relative is also held at Donna, the family is provided daily visitation time for at  
22 least an hour each day, with additional time accommodated upon request if  
23 operationally feasible. However, when a child is traveling with an accompanying adult  
24 relative who is held at the Ursula facility, the situation differs. In such situations, daily  
25 visitations are not feasible due to logistical and operational constraints. Family  
26 visitation time occurs when families are able to go either outside or to a designated  
27 area for recreation, where they can visit with each other in a safe and secure  
28 environment. The recreation area at Donna is a 14,800-square-foot outdoor, covered

1 space designed to provide both recreation and family visitation opportunities.  
2 Enclosed on the sides with netting for ventilation and safety, it features turf flooring  
3 for various activities and large fans to provide relief during South Texas's hot weather.  
4 Since extreme cold is uncommon in the region, the area remains functional year-round,  
5 and in rare cases of cold weather, adjustments are made to ensure family visitation  
6 takes place indoors elsewhere within the Donna facility. Recreation time is scheduled  
7 during the morning hours, between 8:00 AM and 12:00 PM, allowing children to  
8 participate in physical activities, while family visitation occurs each evening around  
9 7:00 PM, offering a dedicated time for families to reconnect. The RGV Sector also  
10 strives to facilitate contact and visitation upon request, and these efforts are  
11 documented in the e3 system of records when they occur. Families are informed about  
12 the availability of visitation through posters displayed throughout the facility and  
13 inside the pods, which provide details about the various amenities migrants can  
14 request, including family visitation, ensuring they are aware of their options and can  
15 utilize visitation opportunities as needed.

16 11. USBP also provides all children, both accompanied and unaccompanied,  
17 with a list of free and low-cost legal service providers during processing. While  
18 individuals do not keep this list on their person during their time in CBP custody, they  
19 are able to review the list during processing, and it is explained to them. Families who  
20 are being released from custody with a Notice to Appear are provided the list as part  
21 of their transfer packet when they leave the USBP facility, so that they can contact the  
22 legal service provider after they leave custody. Unaccompanied children are also  
23 provided the list upon their transfer to HHS. USBP does not generally permit  
24 individuals to keep paper on their person during their time in custody, as such paper  
25 often ends up getting lost or damaged during the time in the pods. USBP has found it  
26 more effective to provide the list at the time of processing and then again upon transfer.

27 12. For those families being processed for expedited removal, in addition to  
28 the list of free legal service providers, they also have access to a list of pro bono legal

1 service providers who can provide representation during the credible fear interview  
2 process, if appropriate. These lists are posted in private, sound-proof phone booths in  
3 the facility, which all families going through expedited removal/credible fear have an  
4 opportunity to use. All individuals going through the expedited removal/ credible fear  
5 process in USBP facilities, including families, have a four-hour period in which they  
6 are able to consult with a lawyer or someone else of their choice.

7 13. Individuals in USBP custody are informed of their rights, including the  
8 right to a credible fear process and the consultation process, as appropriate, through  
9 the following means: **Legal Rights Information:** At the time of processing, migrants  
10 receive verbal and written notifications about their rights, including the credible fear  
11 process, as appropriate. Documents are provided in the migrant's native language  
12 whenever possible, and translation services are provided if needed. **Posters and**  
13 **Notices:** RGV Sector prominently displays posters and notices in multiple languages  
14 that outline the credible fear process and the right to consult with an attorney or  
15 representative. **Orientation via Video:** During intake or processing, individuals  
16 processed for expedited removal are shown a video that provides information about  
17 the process and their rights.

18 14. The Donna Facility maintains an ambient temperature in all pods between  
19 69 and 83 degrees Fahrenheit. The facility contract personnel monitor the temperature  
20 every 8 hours; remotely and in person by checking sensors in each of the pods and  
21 processing areas. Temperature can also be adjusted at a moment's notice by contract  
22 personnel. In addition, all families and children processed at the Donna Processing  
23 Facility are provided with mylar blankets and a sleeping mat. They are also provided  
24 with clean clothes while their own are being laundered. All clothing is washed at the  
25 initial shower process. While their clothes are being washed, individuals in custody  
26 are provided government-purchased clothing. Upon the conclusion of the laundry  
27 cycle, the original clothing is returned. If an individual's clothing is unusable, they  
28 are allowed to keep the provided government clothing. RGV Sector does not

1 affirmative issue extra clothing to families and children, as such could result in items  
2 not being used, and due to limited storage capacity in holding areas, the clothing may  
3 become unclean, unserviceable, lost, or taken without permission. However, families  
4 and children are shown a video (at intake) that provides information about the facility  
5 and available amenities, which informs families and children that they can always ask  
6 for more blankets, additional clothes, water, snacks, and medical care. CBP-approved  
7 posters are also located in all the pods informing families and children of the  
8 availability of blankets, clothing and other items. To maintain sufficient inventory of  
9 both blankets, clothing and other detainee necessities, USBP makes frequent purchases  
10 for the Donna Processing Facility (to include infant-appropriate swaddling blankets  
11 and beanies). This ensures that there is sufficient supply available for those needing  
12 additional items.

13 15. In addition to the provision of a sleeping mat and blanket, the Donna  
14 Processing Facility makes all reasonable efforts to provide children with sufficient  
15 space to sleep, particularly during the hours of 2200 to 0600. During this time, the  
16 facility generally dims the lights, if it is operationally safe to do so, and makes efforts  
17 to minimize noise and disruptions. There are also clocks in all pods, which are visible  
18 to children.

19 16. The Donna Processing Facility provides meals to children in custody,  
20 including tender-age children, via a contractor, who must comply with all applicable  
21 sanitation and food-preparation requirements. The menus, which include a menu  
22 specific for children ages 2-5, as well as food appropriate for older children, were  
23 reviewed by a nutritionist. The facility provides access bottled water at all times to all  
24 children. The water is located in open access areas anywhere children are held within  
25 the facility. All children are offered a snack upon arrival at the facility. Meals are  
26 served at 6:00 AM, 12:00 PM, and 5:00 PM. Meals served at these times are hot.  
27 Beyond meals, children have unlimited access to snacks, water, milk, and juice, and  
28 will always be directed to the open access area where the aforementioned items are



1 located. Sector records the availability of snacks and drinking water, as well as the  
2 provision of meals, for children in custody in the e3 system of records. Children  
3 identified with a potential nutrition-related concern receive an evaluation by onsite  
4 medical support personnel or referral to the local health system.

5 17. The Donna Processing Facility provides hygiene kits, which include  
6 shampoo, body wash, a toothbrush/toothpaste, and towels for showering, upon request  
7 and whenever showers are offered. All children are provided with a shower as soon as  
8 possible after arrival, as well as every 48 hours thereafter. Children receive a  
9 toothbrush/toothpaste every day. Sector ensures that all pods have functioning toilets  
10 and sinks, which are inspected daily and cleaned at least twice a day. It also ensures  
11 that all pods have an adequate supply of toilet paper, soap and/or hand sanitizer, and  
12 feminine hygiene products at all times. Both contractors on site and government staff  
13 on site monitor the supply of these items

14 18. All children in custody are provided with recreation time and child-  
15 appropriate activities including coloring books, television, and balls for use during  
16 recreation. Additionally, RGV Sector has building blocks, cards, plastic musical toys,  
17 play kitchens, toy cars/trucks, and stuffed animals available. Contracted caregivers,  
18 among other things, interact with the children and read, play, watch movies, and  
19 otherwise engage with the children in custody. These activities listed in the previous  
20 three sentences are the same for unaccompanied and accompanied children. In  
21 addition, acknowledging that time in custody can be difficult for children, staff at the  
22 Donna Processing Facility provide children with appropriate items and advisals to  
23 provide comfort. This includes, consistent with CBP's *Directive for U.S. Customs and*  
24 *Border Protection Approach to Trauma-Informed Care for Persons in Custody* policy,  
25 daily messaging for children about where they are located and the process they are  
26 going through, as well as clocks displaying the date and time.

27 19. Caregivers are present at the Donna Processing Facility at every shift.  
28 Approximately 60 caregivers at any one time provide assistance to children and

1 families in custody, as well as supervise recreation and other activities for children, to  
2 include assisting with daily showers. They also are a critical part of USBP's efforts to  
3 provide trauma-informed care and practices for children in custody, including among  
4 other things, providing daily reassuring messaging to children about their location, as  
5 well as the date/time. Caregivers also provide, on a daily basis, messages notifying  
6 children and families of the resources available at the Donna Processing Facility, such  
7 as the ability to ask for additional blankets, clothes, snacks, hygiene items, access to a  
8 phone, and medical care. Caregivers can assist parents with watching their children,  
9 as needed. Caregivers also serve as shower monitors, facilitate outdoor recreation  
10 time, watch over children in medical isolation and care for children/infants while  
11 parents are at the hospital. Unaccompanied children who stay in custody for several  
12 days often form bonds with the caregivers. Recently, caregivers participated in the  
13 annual holiday festival at the Donna Processing Facility where the children celebrated  
14 the holidays alongside foreign consulates and non-governmental organizations.  
15 Caregivers receive PREA, CBP National Standards on Transport, Escort, Detention,  
16 and Search (TEDS) and *Flores* training from RGV CPC USBP personnel as a refresher  
17 to their original on-the-job Training. This training is designed to help identify and  
18 report any potential incidents where policies are violated.

19       20. Families going through the expedited removal/credible fear process may  
20 remain in CBP custody for longer periods of time, due to the need to schedule a  
21 credible fear interview; ensure sufficient time for consultation; provide an opportunity  
22 for an immigration judge (IJ) to review of the result of the interview, if appropriate;  
23 and then to arrange for appropriate release or removal, if appropriate. For families  
24 subject to removal, it may take several days to secure an appropriate seat on a removal  
25 flight. For children in such families, they are provided an additional medical encounter  
26 every five days or as needed or requested, depending on their medical needs. Parents  
27 of such children are also provided medical assistance as needed. It is important to note  
28 that extended custody times can be due to IJ/Executive Office for Immigration Review



1 (EOIR) decisions/rescheduling, Asylum Officer interview delays and other factors that  
2 are out of CBP control. While individuals are delayed in the process, they continue to  
3 have access to all amenities, medical resources, and caregivers while at the Donna  
4 Processing Facility.

5 21. RGV Sector takes a number of steps to monitor the time that families and  
6 unaccompanied children spend in custody. Specifically, RGV Sector has automatic  
7 reports generated that assist with identifying priority cases such as individuals with  
8 medical needs and those with a high time in custody (TIC), which are monitored by  
9 Donna Processing Facility shift management for resolution. Such resolution may  
10 involve moving an individual or family to the front of the queue regardless of when  
11 the individuals came into our custody (i.e., family with medical issues that recently  
12 came into our custody will be sent to the front of the queue for immediate processing  
13 and case disposition). Specifically, Donna Processing Facility managers are constantly  
14 running detention TIC logs, prioritizing medical issues and subjects with high  
15 TICs. Additionally, shift-to-shift pass downs provide the oncoming shift with cases  
16 that require prioritization as well as at risk detainees for monitoring. If a family unit  
17 going through the expedited removal/credible fear process has been in custody for an  
18 extended period of time, RGV Sector may, in some cases, reprocess the family with a  
19 Notice to Appear and release the family, in order to mitigate the time they spend in  
20 custody.

21 22. I declare, under penalty of perjury, that the foregoing is true and correct  
22 to the best of my knowledge, information, and belief.

23  
24 Executed on this 7<sup>th</sup> day of January, 2025.

25 GERARDUS J CAANEN Digitally signed by GERARDUS J CAANEN  
Date: 2025.01.07 12:09:29 -06'00'

26 Gerardus Caanen  
27 Division Chief, RGV Sector  
28 U.S. Border Patrol  
U.S. Customs and Border Protection  
U.S. Department of Homeland Security

# EXHIBIT B

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3

4 Jenny Lisette Flores, *et al.*,  
5 Plaintiffs,

6 v.

7 Merrick Garland, Attorney General of  
8 the United States, *et al.*,  
9 Defendants.  
10

Case No. 2:85-cv-04544-DMG

District Judge Dolly M. Gee

11  
12 **DECLARATION OF DERRICK STAMPER**

13 I, Derrick Stamper, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and  
14 information made known to me from official records and reasonably relied upon in the course of my  
15 employment, relating to the above-captioned matter, hereby declare as follows:

16 1. I currently serve as the Division Chief, Central Processing, El Paso Sector, U.S.  
17 Border Patrol (USBP), U.S. Customs and Border Protection (CBP), U.S. Department of Homeland  
18 Security (DHS). I have been in this position since June 30, 2024.

19 2. I oversee the safety, well-being, and fair treatment of all of those in El Paso Sector  
20 Central Processing Center's custody. I coordinate the care, custody, and detention of non-citizens  
21 apprehended in El Paso Sector and who are subjected to intake, holding, processing, and/or removal  
22 in coordination with other governmental agencies. As part of my responsibilities, I oversee the El  
23 Paso Hardened Facility (EHF).

24 3. I am familiar with the *Flores* Settlement Agreement, which provides custodial  
25 standards for all children in CBP custody. I am also familiar with the 2022 Settlement Agreement  
26 binding RGV and El Paso Sectors, which provides more detailed standards for children in custody  
27 in those Sectors. Among other things, the 2022 Settlement requires that children generally be held  
28 in an environment that respects and acknowledges their particular vulnerability, including an

1 environment focused on trauma-informed care and that provides sufficient child-appropriate  
2 activities; that children generally be held together with parents or legal guardians, absent an  
3 articulable operational need to be held apart; that children receive information about legal service  
4 providers and notices of rights; that children have access to warm clothing and blankets if needed;  
5 that children who are held in custody for more than five days receive appropriate follow up medical  
6 assessments; and that USBP provide caregivers in Juvenile Priority Facilities (which are the facilities  
7 identified as the primary facilities for holding children in custody). El Paso Sector received guidance  
8 from USBP Headquarters on approximately Aug. 15, 2022, notifying the sector of the Settlement  
9 and its requirements. This guidance remains in effect.

10 4. I make this declaration to describe El Paso Sector's compliance with the 2022  
11 Settlement, including efforts to monitor compliance.

12 5. In El Paso Sector, the EHF is the identified Juvenile Priority Facility. This facility  
13 currently has a capacity of 2500, made up of 160 pods, each with an approximate average capacity  
14 of 16 people. 128 of the 160 pods are currently in use. El Paso Sector transfers all children who are  
15 not immediately returned voluntarily to their country of origin to juvenile priority facilities as  
16 expeditiously as possible within 48 hours of arrival at a non-priority facility and, generally, within  
17 24 hours of arrival at a non-priority facility (e.g., a USBP station). El Paso Sector generally holds  
18 children in the EHF for the duration of their time in the Sector's custody. Children held in each pod  
19 are able to move freely about that pod. The EHF does not have fencing or enclosures other than those  
20 needed for security reasons. The EHF also maintains an adequate supply of items, including mats,  
21 blankets, clothing and undergarments, diapers and wipes, potable water, drinking cups, snacks,  
22 hygiene products, bottles, formula, and age-appropriate food. I am aware that in December, the  
23 Juvenile Care Monitor reported that beanies were not available at the EHF. The EHF currently has  
24 818 beanies in stock at the facility, and over 6,400 beanies as reserve to ensure there is adequate  
25 stock.

26 6. In general, due to the makeup of the facility and the demographics in custody, El Paso  
27 Sector is generally able to hold children who are known to be accompanied by a parent or other adult  
28 relative in the same pod with that parent or adult relative at the EHF. On occasion, family members

1 may be housed apart due to the need to quarantine or seek medical attention in response to a serious  
2 illness. For two-parent families, on occasion due to limited pod availability and operational needs,  
3 the father may be held in a separate pod generally near to the family.

4 7. To the extent that it is operationally necessary to hold a child separately from their  
5 known accompanying adult relative – be that a parent, grandparent, aunt, uncle, or other relative –  
6 the family is provided daily visitation time, for two hours each day. This generally occurs when the  
7 families are able to go to a designated area for recreation, weather permitting, and during pod  
8 cleaning at which point the family is able to visit with each other. There is a designated recreation  
9 area, which consist of a 40,000 square-foot uncovered outdoor area and a 13,700 square-foot covered  
10 outdoor area. The area has soccer goals, basketball nets, and other outdoor recreation items such as  
11 large connect four games. Inclement weather may, in very rare cases, limit access to the recreation  
12 area. This visitation time is documented in the e3 system of records. El Paso Sector also strives to  
13 facilitate contact and visitation when requested. Announcements are made twice a day informing  
14 individuals they may make these requests.

15 8. El Paso Sector provides all children, both those in families and unaccompanied  
16 children, with a list of free and low-cost legal service providers during processing. While individuals  
17 do not keep this list on their person during their time in CBP custody, they are able to review the list  
18 during processing, and it is explained to them. Families who are being released from custody with a  
19 Notice to Appear are provided the list as part of their transfer packet when they leave the USBP  
20 facility, so that they can contact the legal service provider after they leave custody. Unaccompanied  
21 children (UCs) are also provided the list upon their transfer to HHS. USBP does not generally permit  
22 individuals to keep paper on their person during their time in custody, as such paper often ends up  
23 getting lost or damaged during the time in the pods. USBP has found it more effective to provide  
24 the list at the time of processing and then again upon transfer.

25 9. For those families being processed for enhanced expedited removal, in addition to the  
26 list of free legal service providers, they also have access to a list of pro bono legal service providers  
27 who can provide representation during the credible fear interview process, if appropriate. These lists  
28 are posted in private, sound-proof phone booths in the facility, which all families going through

enhanced expedited removal/credible fear process have an opportunity to use. Within twenty-four hours of manifesting fear and commencing the process, families are advised of the enhanced expedited removal procedures and are advised they will be given time to seek and consult with legal representation or another individual of their choosing. Families going through expedited removal/credible fear have a four-hour period in which they are able to consult with a lawyer or someone else of their choice.

10. El Paso Sector also provides each pod at the EHF with daily access to a phone, so that individuals in custody can call family, a lawyer, or anyone else of their choosing. Because all pods are provided access to the phone as operations permit, the time that an individual may get to use the phone each day varies. At times, this access to a phone may overlap with daily access to showers and recreation time.

11. With regards to meals, El Paso has a menu for minors in its custody that includes meals specifically appropriate for children ages 2-5. This menu, like the existing menus, was reviewed by a nutritionist. El Paso Sector provides access to potable drinking water at all times to all minors. Bottled water is located throughout the facility, including in the pods, processing areas, recreation area and other common areas. El Paso Sector offers a snack to all minors upon arrival. Meals are served beginning at 0700, 1200 and 1700. Meals served at 0700 and 1200 are hot. Beyond meals, class members have regular access to snacks, milk, and juice, and class members will always be given a snack upon request. El Paso utilizes a contractor to prepare the food, and the contractor complies with sanitation requirements. Sector records the availability of snacks and drinking water, as well as the provision of meals, for class members in custody in e3DM. Children identified with a potential nutrition-related concern receive an evaluation by onsite medical support personnel or referral to the local health system.

12. The EHF maintains an ambient temperature in all pods between 69 and 83 degrees Fahrenheit. Sector monitors the temperature through sensors located throughout the facility that are monitored by contractors. The contractors provide daily reports, and any issues are brought to the attention of El Paso Sector management by the contractor. All families and children processed at the EHF are provided with mylar blankets, a sleeping mat, and clean clothes at the time of their arrival

1 to the facility. They are also provided with clean clothes every time they receive a shower; if theirs  
2 are soiled or dirty; or upon request. El Paso Sector does not affirmatively issue extra clothing to  
3 families and children, as such could result in items not being used, and due to limited storage capacity  
4 in holding areas, the clothing may become unclean, unserviceable, lost, or taken without permission.

5 13. In November, El Paso Sector was made aware that children and families were only  
6 being provided clean undergarments at the time of showering and clean clothes upon request. This  
7 temporary issue has been rectified, such that clean clothes are provided in the manner outlined above.

8 14. In addition, families and children are shown a video upon intake that provides  
9 information about the facility and available amenities. This video informs families and children that  
10 they can always ask for more blankets, additional clothes, water, snacks, and medical care. This  
11 video also informs families that, if they are afraid to return to their home country, they should inform  
12 an agent. There are also posters in all of the pods informing families and children of the availability  
13 of blankets, clothes, and hygiene items. In order to maintain sufficient inventory of both blankets  
14 and clothes, Sector does not affirmatively provide extra clothing or extra blankets to individuals in  
15 custody. This ensures that there is sufficient supply available for those seeking additional items.

16 15. With regards to hygiene products, the EHF provides hygiene kits, which include  
17 shampoo, body wash, a toothbrush/toothpaste, and towels for showering, upon request and whenever  
18 showers are offered. The EHF provides all children a shower as soon as possible after arrival, as well  
19 as every 48 hours thereafter. Children receive a toothbrush/toothpaste every day. The EHF ensures  
20 that all pods have functioning toilets and sinks which contractors check twice daily during cleaning.  
21 It also ensures that all pods have an adequate supply of toilet paper, soap and/or hand sanitizer, and  
22 feminine hygiene products at all times, and monitor the supply when cleaning or entering the pods.

23 16. EHF also makes all reasonable efforts to provide children with sufficient space to  
24 sleep, particularly between the hours of 2200 and 0600. During this time, the EHF generally turns  
25 off banks of lights, to the extent it is operationally safe to do so, and endeavors to minimize noise  
26 and disruptions.

27 17. All children in custody are provided with recreation time and, as operationally  
28 feasible, child-appropriate activities including coloring books, crayons, playing cards, puzzles, and



1 television. These activities are the same for unaccompanied and accompanied children. Children are  
2 not limited or restricted from any activities in the pods, although USBP does need to maintain the  
3 safety of all individuals within the facility. In light of that, there may be situations where a child  
4 may be prohibited from engaging in activity that may be potentially dangerous to themselves or to  
5 others. In addition, acknowledging that time in custody can be difficult for children, Sector  
6 endeavors to provide children with appropriate items and advisals to provide comfort. This includes,  
7 consistent with CBP's *Directive for U.S. Customs and Border Protection Approach to Trauma-*  
8 *Informed Care for Persons in Custody* policy, daily messaging for children about where they are  
9 located and the process they are going through, as well as clocks displaying the date and time and a  
10 large "Welcome to El Paso, TX and Bienvenidos a El Paso, TX" sign readily visible as all walk  
11 through the facility.

12 18. The EHF has forty caregivers present at every shift. These individuals provide  
13 assistance to children and families in custody, as well as supervise recreation and other activities for  
14 children. They also are a critical part of USBP's efforts to provide trauma-informed care and  
15 practices for children in custody, providing daily reassuring messaging to children about their  
16 location, the date/time, etc. Caregivers also provide, twice daily, messages notifying children and  
17 families of their rights, including their right to ask for additional blankets, clothes, snacks, and  
18 hygiene items; their right to have access to a phone; and their right to ask for medical care. Caregivers  
19 are present with families and unaccompanied children around the clock and are constantly checking  
20 if individuals are in need of any amenities or medical services. They frequently enter the holding  
21 pods to inspect the condition of the pods and to address any issues family members may have.  
22 Caregivers are advised to look for signs of health issues or distress. If medical issues are identified,  
23 caregivers are instructed to immediately provide notification to USBP personnel at the onset of any  
24 symptoms to facilitate prompt medical care. To the extent that a parent is receiving medical  
25 treatment, caregivers act to soothe and comfort children.

26 19. Families going through the expedited removal/credible fear process may remain in  
27 CBP custody for longer periods of time, due to the need to schedule a credible fear interview; ensure  
28 sufficient time for consultation; provide an opportunity for IJ review of the result of the interview, if

1 appropriate; and then to arrange for appropriate release or removal, as appropriate. For families  
2 subject to removal, it may take several days to secure an appropriate seat on a removal flight. For  
3 children in such families, they are provided an additional medical encounter every five days.

4 20. El Paso Sector takes a number of steps to monitor the time that families and UCs  
5 spend in custody. Specifically, families and children are identified when first arriving to the facility  
6 and are prioritized for processing. El Paso Sector has teams dedicated to overseeing the processing  
7 and movement of families and children. These teams track the daily progress of all families and  
8 children, assist in expediting their processing, and provide daily reports to Sector leadership and  
9 USBP headquarters regarding time in custody. Any issues that arise are handled expeditiously to  
10 effectuate a quick resolution.

11 21. If a family unit going through the expedited removal/credible fear process has been  
12 in custody for an extended period of time, El Paso Sector may, in some cases, reprocess the family  
13 with a Notice to Appear and release the family, in order to mitigate the time they spend in custody.

14 22. I declare, under penalty of perjury, that the foregoing is true and correct to the best of  
15 my knowledge, information, and belief.

16  
17 Executed on this 7<sup>th</sup> day of January, 2025.

18  
19 

20 \_\_\_\_\_  
21 Derrick Stamper  
22 Division Chief, El Paso Sector  
23 U.S. Border Patrol  
24 U.S. Customs and Border Protection  
25 U.S. Department of Homeland Security  
26  
27  
28

# EXHIBIT C

1 **UNITED STATES DISTRICT COURT**  
2 **CENTRAL DISTRICT OF CALIFORNIA**

3  
4 Jenny Lisette Flores, *et al.*,  
5 Plaintiffs,

6 v.

7 Merrick Garland, Attorney General of  
8 the United States, *et al.*,  
9 Defendants.

Case No. 2:85-cv-04544-DMG

District Judge Dolly M. Gee

10  
11 **DECLARATION OF GRETA CAMPOS**

12 I, Greta Campos, pursuant to 28 U.S.C. § 1746, and based upon my personal  
13 knowledge and information made known to me from official records and reasonably  
14 relied upon in the course of my employment, relating to the above-captioned matter,  
15 hereby declare as follows:

16 1. I currently serve as the Senior Manager responsible for the Office of the  
17 Chief Medical Officer (OCMO), U.S. Customs and Border Protection (CBP), U.S.  
18 Department of Homeland Security (DHS). I previously served as the Acting Deputy  
19 for OCMO since February 2024. Prior to that, I was Deputy Executive Director for  
20 Operations in the Office of Field Operations for CBP.

21 2. In my role as the Senior Manager, I am responsible for the overall  
22 management of OCMO and oversee, direct, and administer medical services,  
23 operational medicine, health security and child welfare support within CBP. I  
24 provide oversight and direction to all medical services, operational medical support,  
25 health security, and child welfare programs and activities. This includes providing  
26 program management, contract management, and quality assurance functions  
27 associated with contracted medical services and CBP-wide medical programs. I also  
28 oversee the development of requirements, standards, and compliance indicators for

1 all medical services, operational medical support, health security, and child welfare  
2 programs and activities.

3 3. I am familiar with the *Flores* Settlement Agreement, which provides  
4 custodial standards for all children in CBP custody. I am also familiar with the 2022  
5 Settlement Agreement binding the Rio Grande Valley (RGV) and El Paso Sectors,  
6 which provides more detailed standards for children in CBP custody in those Sectors,  
7 specific requirements governing the medical care of children in custody in those  
8 Sectors, and requirements related to the provision of caregivers to assist children in  
9 custody in those Sectors. The 2022 Settlement Agreement also provides that CBP  
10 undertake and implement a system of monitoring compliance with these  
11 requirements, and provides that CBP work closely with the Juvenile Care Monitor  
12 (JCM) with regards to such monitoring.

13 4. I make this declaration to explain the medical care CBP provides to  
14 children in custody, OCMO's current oversight and monitoring responsibilities, and  
15 efforts underway to further enhance and improve both medical care and oversight  
16 and monitoring efforts.

17 5. OCMO, within CBP's Operations Support component at CBP  
18 headquarters, is responsible for, among other things, safeguarding the health of  
19 persons in CBP custody entrusted to our care, and countering health security threats  
20 at our nation's borders. OCMO serves as the principal health and medical advisory  
21 office for CBP, and employs a core staff of medical professionals to provide  
22 consistent, safe, and effective medical support to CBP operations and individuals in  
23 CBP's custody. OCMO provides enterprise-wide direction, oversight, and  
24 management of CBP health/medical activities, programs, and provides medical  
25 support to operations. OCMO is also CBP's health and medical representative to  
26 DHS and other Federal, state, and local organizations, and coordinates and  
27 collaborates with all CBP components, including senior leadership, regarding  
28 medical-related initiatives and programs. OCMO encompasses several divisions and  
uses contracts to provide medical screening and child caregiver support to CBP.

1           6.     The OCMO Border Health System (BHS) Division is the program  
2 office responsible for the medical services and the child caregivers operational  
3 requirements on the contracts. These two contracts include over 2,300 contract  
4 personnel involved in the medical operations in CBP Medical Priority Facilities  
5 (MPF) and caregiver operations in CBP Juvenile Priority Facilities (JPF) across the  
6 Southwest border. The BHS Division also manages technology and information  
7 systems utilized to capture all electronic patient medical records, and integration of  
8 medical and property into CBP enforcement systems of record.

9           7.     OCMO s Operational Medicine Division supports the more than 2,200  
10 component Emergency Medical Services (EMS) personnel providing emergency  
11 medicine in the field. Support includes training, disaster preparedness and response,  
12 incident management, and medical transportation.

13           8.     OCMO initiated a robust Acquisition Management Division in 2024 to  
14 oversee acquisitions and fill contractual requirements in support of the overall  
15 OCMO mission. The division has 2 Senior-Certified Acquisition Program Managers  
16 (APM) to manage all the OCMO acquisition program strategies, processes, and  
17 acquisition lifecycle oversight coordination with DHS/CBP offices; and has 6  
18 certified Level II-III Contracting Officer Representatives (CORs) appointed with  
19 specific contracts authorities by the CBP Contracting Officer (CO) to guide,  
20 coordinate, maintain, safeguard, and administer contracts/procurements, background  
21 checks, and required clearances; monitor for cost efficiencies; and oversee  
22 contractual performance requirements of OCMO medical and support services,  
23 supplies/equipment, and specialized capabilities for medical systems. The division is  
24 hiring 1 new APM to unify training and processes to oversee 7 new CORs being  
25 hired as dedicated, COR-certified OCMO Field Task Order Monitors (TOMs) to  
26 replace current collateral duty TOMs in the field. TOMs administer day-to-day  
27 technical surveillance, inspection, monitoring, and contract administration oversight  
28 activities to over 2,300 contractors in the field supporting the CBP Medical Priority  
Facilities and providing caregiver services.

1           9.     The Quality Division works closely with other OCMO divisions to  
2 ensure medical quality, patient safety, and compliance with health professional  
3 licensing and credentialing. The Quality Division closely collaborates on patient  
4 safety with the Border Health System Division and the Medical Services Contractor,  
5 identifying clinical issues, establishing recommendations to improve policies,  
6 training, oversight, and medical care for persons in custody.

7           10.    It is the policy of CBP that all individuals in custody receive appropriate  
8 medical support in accordance with applicable authorities, regulations, standards,  
9 and policies. CBP provides enhanced medical support efforts for individuals in  
10 custody along the southwest border. CBP s enhanced medical support approach  
11 includes the identification of MPFs using an operational risk management  
12 methodology. An MPF is a CBP facility that has been identified to have a need for  
13 on-site medical support due to the number of persons in custody at those locations.  
14 CBP considers essential elements of volume (number of persons apprehended/in  
15 custody), demographics (priority emphasis on juveniles), duration of time in custody,  
16 and remoteness/availability of local medical care in an operational risk management  
17 methodology for designating an MPF. There are currently 9 USBP MPFs in the El  
18 Paso Sector to include the Juvenile Priority Facility, the El Paso Hardened Facility.  
19 There also 9 MPFs in the RGV Sector to include the Donna Soft Sided Facility  
20 which is designated as a Juvenile Priority Facility. For any location identified by  
21 CBP as a MPF, CBP provides medical care through a Medical Services Contract  
22 (MSC) provider, which is currently Loyal Source Government Services (LSGS). At  
23 MPFs, the MSC provides frontline medical staff, which includes advanced practice  
24 providers (APPs), such as nurse practitioners and physician assistants, and medical  
25 support staff, such as emergency medical technicians, who provide medical care to  
26 persons in custody. The MSC frontline medical staff are supported by supervising  
27 physicians, pediatric advisors and Patient Safety Risk Managers (PSRMs). The  
28 physician support provides APPs with virtual consultation capabilities for complex  
medical conditions and concurrence with treatment for higher risk patients. PSRMs



1 conduct regular site visits to monitor patient safety standards, protocols, training and  
2 medical supply inventory. The MSC is present in 80 CBP facilities, including 77  
3 along the SWB, and 9 in RGV and 9 in El Paso Sector.

4 11. As contractors, MSC employees are not directly supervised by CBP  
5 employees on a day-to-day basis. CBP employees do not direct the day-to-day  
6 operations of the MSC, nor do they have control over the contractor s medical  
7 decisions. However, CBP OCMO is responsible for oversight of the contract itself,  
8 including through setting substantive standards and requirements, and for monitoring  
9 compliance with those standards. CBP OCMO undertakes this oversight primarily  
10 through setting policies for the implementation of CBP medical care, such as through  
11 development of the Elevated in Custody Medical Risk policy and the Medical  
12 Process Guidance. CBP also monitors the contract through the TOMS in the field, as  
13 described above.

14 12. As required by the CBP Medical Process Guidance, all children in CBP  
15 custody receive a Health Interview upon their intake into a holding facility. The  
16 Health Interview is a tool for CBP personnel and/or the MSC to record the  
17 observation and identification of potential medical issues for persons in custody.  
18 The Health Interview is documented on a CBP Form 2500. Children under the age  
19 of 12, and those who are identified as having a potential medical issue, then receive a  
20 Medical Assessment. The Medical Assessment is a tool used by medically trained  
21 personnel to assess and confirm potential medical issues of individuals in CBP  
22 custody. Additionally, while CBP is not equipped to provide comprehensive mental  
23 health care, children are asked basic mental health questions during their health  
24 interview, to identify acute or emergent mental health issues. Children with complex  
25 or urgent medical issues are transferred to the local health system.

26 13. The MSC conducts medical risk reduction for individuals they identify  
27 as having a medical risk. When the MSC assesses a person to have an elevated in-  
28 custody medical risk (ECMR), the category of risk is selected based upon diagnosis.  
ECMR levels range from green (no known/indicated medical issues) to yellow (low

1 risk) to orange (moderate risk) to red (high risk). For any children identified as high  
2 risk, the MSC must contact a pediatric advisor, or if a pediatric advisor is not  
3 available, a supervising physician, within 20 minutes of initial evaluation to  
4 determine a treatment plan, including the potential need for immediate medical  
5 transport for outside care. Any child identified as high risk is placed in the Enhanced  
6 Medical Monitoring protocol and monitored in custody every 4 hours at a minimum,  
7 considered for placement into medical isolation, considered for expedited processing,  
8 and a red wristband is placed on the left wrist.

9 14. OCMO BHS is building a Compliance Analysis Process (CAP) that will  
10 monitor compliance with these requirements in a number of ways, including a  
11 layered approach of random patient chart reviews, unannounced site visits, and real-  
12 time juvenile patient monitoring dashboards. The CAP is being built in phases.  
13 Phase I includes random, unannounced site visits and is already in place. During  
14 these site visits, BHS personnel observe medical staffing contract requirements and  
15 conduct interviews with providers and medical support personnel, patients, and  
16 facility leadership. Additionally, BHS conducts inspection of the medication  
17 administration process, patient white boards, at-risk alerts, and general patient  
18 process flows. Random and unannounced site visits of MPFs allow BHS personnel to  
19 observe the process and generate a report of findings for corrective action. A  
20 standardized site visit checklist provides continuity in the analysis of the medical  
21 process. In Fiscal Year (FY) 2024, OCMO conducted 158 qualitative site visits to  
22 field locations to assess care. An addition to Phase I of the CAP will be to generate a  
23 report card that assigns a score to each required element of the medical process.  
24 This report card will be given to the MPF and MSC leadership.

25 15. Phase II of the CAP involves the real-time monitoring of juvenile  
26 dashboards with patient level information, which allows BHS staff to identify all  
27 juveniles in custody for more than 12 hours without a medical assessment, all  
28 juveniles in custody for 5 or more days without a repeat assessment, all juveniles  
with an ECMR high risk diagnosis and all juveniles who have been referred to the

1 hospital. This dashboard monitoring by BHS personnel assists with ensuring that no  
2 juvenile gets missed in the medical process and allows action while the patient is still  
3 in custody. Any identified deficiencies are addressed by corrective action reports  
4 that the MPF and/or the MSC are required to provide within 30 days. Phase II has  
5 been initially implemented but is expected to be completed during the 2<sup>nd</sup> quarter of  
6 F 2025 as additional new staff enter on duty.

7 16. Phase III of the CAP is expected by the end of the 3<sup>rd</sup> quarter of F  
8 2025 and consists of random chart reviews. These reviews will include selecting no  
9 less than 10 sample juvenile patients charts and tracking those for the patient s  
10 entire time in CBP custody, from apprehension to release, assessing for medical  
11 process compliance, to determine whether there are any gaps within the CBP and the  
12 MSC operation. This chart review will also generate a report card that will be  
13 provided to the MPF and MSC leadership and is used for accountability of the  
14 contractor in their performance rating. If any deficiencies are identified, a corrective  
15 action will be required within 30 days and the same sample will be used for a  
16 Medical Quality Management (MQM) review. An MQM review looks at the clinical  
17 medical care rendered by the contracted medical staff to ensure it is appropriate and  
18 compliant with industry standard and CBP medical protocols. Phase III will also  
19 involve automating tools for Medical Protocol monitoring to flag areas in real  
20 time, specifically for medical notifications; enhanced medical monitoring;  
21 medication reviews; medical quality management; medical documentation,  
22 communication, and continuity of care; and medical monitoring and compliance.

23 17. Phase IV of the CAP will be a deficiency tracking program so that all  
24 deficiencies are tracked by BHS and evaluated for process improvement, training  
25 needs, or medical protocol guidance. While current deficiencies identified are shared  
26 across the OCMO divisions by email, the future state of Phase IV will share the  
27 results in an automated system with the other OCMO divisions who participate in  
28 corrective action recommendations that are governed by that division, such as  
isolation, medical quality and training, and contract staffing deficiencies. This

1 tracking program will also include recommendations made by auditing agencies such  
2 as Office of Immigration Detention Ombudsmen (OIDO), Office of Inspector  
3 General (OIG), and the DHS Office of Civil Rights and Civil Liberties (CRCL),

4 18. OCMO also oversees the contracted child caregivers that are present in  
5 the Juvenile Priority Facilities in RGV and El Paso Sectors (as well as other Sectors).  
6 The caregivers role is to provide assistance to children and families in custody,  
7 including supervising and providing activities for children; assisting with distribution  
8 of meals and hygiene products, as appropriate; advising families and children of their  
9 rights and serving as a reassuring presence to answer questions; and generally  
10 maintaining awareness of the welfare of individuals in custody. Caregivers are a  
11 critical component of CBP s efforts to provide a safe and secure environment for all  
12 individuals in custody, particularly children.

13 19. Specifically, caregivers are instructed to, among other duties, reassure  
14 children of their safety and orient them to the current date, time, and location; let  
15 children and families know that they can ask questions of facility staff; inform  
16 children and families of their rights (including the right to seek medical assistance,  
17 visit their families members in custody, and/or use a telephone) twice daily; notify  
18 CBP personnel if UCs or families have requested an opportunity to visit with their  
19 child(ren)/family member, use the telephone, or go for medical advice; operate and  
20 supervise the provision of showers; assist in providing children with showers,  
21 including assisting parents, as needed; and maintain and issue clothing to families  
22 and children. Caregivers are provided with pocket cards that detail their duties, so  
23 that they can refer to those cards throughout their shift, as appropriate and as needed.  
24 Caregivers also have pocket cards providing information about the requirements of  
25 the Prison Rape Elimination Act (PREA), so that they have quick reference to their  
26 obligations and duties under the Act. Caregivers also receive training on, and are  
27 expected to comply with, the requirements of the 2022 Settlement Agreement; PREA  
28 obligations; and CBP policies such as CBP s *ational Standards on Transport,*  
*scort, Detention, and Search.* Caregivers are also provided information about how

1 to conduct monitoring in CBP facilities; their role in observing and reporting, among  
2 other things, juvenile health conditions; and how to recognize and refer juveniles  
3 displaying emotional and mental distress. Caregivers are not law enforcement  
4 officers.

5 20. OCMO constantly assesses and analyzes the nature of the caregivers  
6 work, based on feedback from TOMS and other CBP employees in the field, external  
7 entities, including the JCM and CBP's Juvenile Care Division, and its own visits to  
8 facilities and observations from those visits. In particular, the JCM has consistently  
9 provided feedback and recommendations improvements and changes to the caregiver  
10 program, which OCMO has taken steps to implement. This includes clarifying that  
11 caregivers can and should enter pods with children and families in order to ensure  
12 that they are fully engaging with individuals in custody; providing the pocket cards  
13 to the caregiver contractors to ensure their staff understand their roles, and meeting  
14 regularly with the caregiver contractor leadership to ensure the requirements of the  
15 contract are being met. In addition, contract supervisors currently complete weekly  
16 spot checks of their employees. These spot checks occur by asking a contracted  
17 caregiver 46 questions that assess the caregiver's knowledge and understanding of  
18 their duties. A report card is generated following this spot check to assess where  
19 additional training may be needed. In addition, in the near future, the caregivers will  
20 begin wearing vests over their uniform at the first of the year. The vest will have the  
21 word "Caregiver" on them in both English and in Spanish. This will make caregivers  
22 easily recognizable, making it easier for UCs and families to know who to ask for  
23 help.

24 21. Caregivers are also critical in the implementation of the provisions of  
25 CBP's April 2022 *Directive for U.S. Customs and Border Protection Approach to*  
26 *Trauma-Informed Care for Persons in Custody*, which endeavors to provide  
27 individuals in custody particularly children with a degree of reassurance about  
28 their time in custody. In particular, the directive acknowledges that the children may  
have suffered trauma on their journey to the United States, and that time in custody

1 can be disorienting and uncertain for children, particularly unaccompanied children.  
2 Thus, the directive lays out trauma-informed holding processes including providing a  
3 sense of safety and security, providing a reassuring adult presence for  
4 unaccompanied children in the form of caregivers, providing regular reassuring  
5 messages, and providing activities to distract and entertain children in custody. CBP  
6 also endeavors to provide a child-appropriate environment for unaccompanied  
7 children, including child-friendly decorations, activities and positive signage for  
8 children that are intended to ensure a sense of safety and security. This may include  
9 maps showing their location, and toys and decorations typically found in a daycare  
10 or school environment. As part of CBP s commitment to continual improvement,  
11 and based upon the JCM feedback, CBP will be working with the contractor,  
12 pediatric advisors, and operators to identify an approved list of activities and toys for  
13 children of various ages at JPFs. CBP s medical support operations are also  
14 informed by the principles of limiting trauma for individuals in custody, including  
15 the recognition of mental and behavioral health issues. OCMO plays a critical role  
16 in implementing this directive, including reviewing the policy and advising on its  
17 implementation, and making adjustments as needed.

18 22. In addition, CBP OCMO takes a proactive approach to monitoring and  
19 maintaining oversight of the implementation of all of CBP s medical policies,  
20 including through regular and frequent visits to the field, engagement with  
21 stakeholders, and feedback from CBP employees. Specifically, BHS personnel  
22 conduct unannounced site visits but also accompany stakeholders to the field to  
23 assist in medical unit assessments. These stakeholders include the CBP Juvenile  
24 Coordinator s Division (JCD), Government Accountability Office (GAO), the  
25 Department of Health and Human Services (HHS) Office of Refugee Resettlement  
26 (ORR) and the JCM. Additionally, for unaccompanied children, OCMO BHS has  
27 enhanced communication with HHS ORR by deploying a conversation tool . The  
28 tool transmits real time medical information from the CBP Electronic Medical  
Record to ORR via the UC placement portal upon intake of unaccompanied children.



1 As the medical process evolves, the tool ensures the placement needs of these  
2 children are better fitted with any special medical or daily activity needs.

3 23. OCMO is constantly working to enhance and improve its processes and  
4 procedures, including in response to recommendations from the JCM. To this point,  
5 OCMO has worked particularly closely with the JCM, including to address specific  
6 issues and concerns raised by the monitors. I am aware that, in her December 2024  
7 final report, the JCM made several recommendations for continued monitoring of  
8 various aspects of CBP s medical processes. These included, for example, a  
9 continued assessment of the processes and procedures for the transmission of  
10 medical information between MSC personnel and CBP personnel, and from CBP  
11 personnel to local healthcare systems; an assessment of the use of isolation rooms;  
12 and a continued assessment and oversight of MSC consultation with pediatric  
13 advisors. OCMO welcomes these recommendations from the JCM and is working to  
14 review and implement these recommendations. OCMO anticipates that such a  
15 review will be largely complete within the next six months.

16 24. I declare, under penalty of perjury, that the foregoing is true to the best  
17 of my knowledge, information, and belief.  
18  
19

20 Executed on this 7<sup>th</sup> day of January, 2025.

21 GRETA R CAMPOS

Digitally signed by GRETA R  
CAMPOS  
Date: 2025.01.07 13:08:47 -05'00'

22 Greta Campos  
23 Office of the Chief Medical Officer  
24 U.S. Customs and Border Protection  
25 U.S. Department of Homeland Security  
26  
27  
28