

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Carlos R. Holguín (Cal. Bar No. 90754)
Sarah E. Kahn (Cal. Bar No. 341901)
256 South Occidental Boulevard
Los Angeles, CA 90057
Telephone: (213) 388-8693
Email: crholguin@centerforhumanrights.org

Attorneys for Plaintiffs

Additional counsel listed on following page

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

MERRICK GARLAND, Attorney General
the United States, *et al.*,

Defendants.

No. CV 85-4544-DMG-AGR_x

NOTICE OF MOTION AND MOTION
TO ENFORCE SETTLEMENT RE
PARAGRAPH 28A DATA

Hearing: November 15, 2024
Time: 9:30 a.m.
Hon. Dolly M. Gee

1 NATIONAL CENTER FOR YOUTH LAW

2 Mishan Wroe (Cal. Bar No. 299296)

3 Diane de Gramont (Cal. Bar No. 324360)

4 1212 Broadway, Suite 600

5 Oakland, CA 94612

6 Telephone: (510) 835-8098

7 Email: mwroe@youthlaw.org

8 NATIONAL CENTER FOR YOUTH LAW

9 Rebecca Wolozin (admitted *pro hac vice*)

10 818 Connecticut Ave. NW, Suite 425

11 Washington, DC 20006

12 Telephone: (202) 868-4792

13 Email: bwolozin@youthlaw.org

14 CHILDREN'S RIGHTS

15 Leecia Welch (Cal. Bar No. 208741)

16 2021 Fillmore Street

17 San Francisco, CA 94115

18 Telephone: (415) 602-5202

19 Email: lwelch@childrensrights.org

20 CHILDREN'S RIGHTS

21 Eleanor Roberts (admitted *pro hac vice*)

22 88 Pine Street, Suite 800

23 New York, NY 10005

24 Telephone: (212) 683-2210

25 Email: eroberts@childrensrights.org

1 To Defendants and their attorneys of record:

2 Please take notice that on November 15, 2024, at 9:30 a.m., or as soon
3 thereafter as counsel may be heard, Plaintiffs will and do hereby move the Court
4 for a class-wide order requiring Defendants to cure breaches of the settlement
5 approved by this Court on January 28, 1997 (“Settlement”) and violations of
6 subsequent court orders, as described in the accompanying memorandum of law.

7 This motion is based upon the memorandum of law filed concurrently
8 herewith, and all other matters of record; it is brought following a meeting of
9 counsel pursuant to Local Rule 7-3 and Paragraph 37 of the Settlement on
10 September 5, 2024, as well as subsequent email communication between the
11 Parties that did not result in an agreement.

12
13
14 Dated: October 16, 2024

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23
24 /s/ Diane de Gramont

Diane de Gramont

25 *One of the Attorneys for Plaintiffs*
26
27
28

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MEMORANDUM IN SUPPORT OF
MOTION TO ENFORCE SETTLEMENT
RE PARAGRAPH 28A DATA

Hearing: November 15, 2024

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I. INTRODUCTION

Defendants have long been required to “provide Class Counsel on a monthly basis statistical information collected pursuant to Paragraph 28A of the [*Flores*] Agreement.” Order re Response to Order to Show Cause, August 21, 2015 [Doc. # 189] (“August 2015 Order”). Although Paragraph 28A of the *Flores* Settlement remains intact, Defendants are failing to comply with their data reporting obligations as to children in the custody of the Department of Health and Human Services (“HHS”).

In its order partially terminating the *Flores* Settlement as to HHS, the Court explicitly preserved Plaintiffs’ access to information regarding children held in Office of Refugee Resettlement (“ORR”) facilities under Paragraphs 28A, 32, and 33 of the Settlement. *See* Order re Motion to Terminate *Flores* Settlement Agreement as to Defendant HHS at 17, 20-21, June 28, 2024 [Doc. # 1447] (“Partial Termination Order”). The Court also preserved the Settlement as to children placed in secure, heightened supervision, and out-of-network facilities. *Id.* at 20-21. Yet Defendants now refuse to provide Plaintiffs’ counsel with *any* monthly statistical data regarding children in ORR custody, including any data regarding children held in restrictive and out-of-network facilities.

Defendants maintain that such data is no longer required because the Court terminated Paragraph 29 of the Settlement as to HHS. But Defendants fail to acknowledge that Paragraph 28A is the source of the monthly data reporting requirements, *not* Paragraph 29. Plaintiffs therefore move for an order requiring Defendants to promptly resume providing monthly data collected under Paragraph 28A for all children in Defendants’ custody, including those in ORR custody, as well as produce reports for all months during which this monthly data was withheld.

II. PROCEDURAL BACKGROUND

Over nine years ago, on August 21, 2015, the Court granted Plaintiffs’ Motion to Enforce and ordered six remedies, including that Defendants “shall monitor compliance with the Agreement and this Order and shall provide Class Counsel on a monthly basis statistical information collected pursuant to Paragraph 28A of the Agreement.” August 2015 Order at 15. The Court issued the August 2015 order after giving Defendants an opportunity to respond to the Court’s proposed remedies, including the new monthly reporting requirement. *Id.* at 2; *see also* Order re Pls.’ Motion to Enforce Settlement at 24-25, July 24, 2015 [Doc. # 177]. Defendants did not specifically object to the monthly reporting requirement in their response to the Court’s Order to Show Cause or in their brief on appeal. *See* Defs.’ Response to the Court’s Order to Show Cause, August 6, 2015 [Doc. # 184] (“Defs.’ Response to OSC”); Appellants’ Opening Brief, Case No. 15-56434, ECF 10-3 (9th Cir. Jan. 15, 2016).¹

Since the Court’s 2015 order, Defendants have produced monthly statistical data on children in the custody of HHS and the Department of Homeland Security (“DHS”). The Parties have met and conferred numerous times over the years regarding the accuracy and completeness of the statistical data provided pursuant to Paragraph 28A. *See, e.g.*, Joint Status Report at 1, June 15, 2020 [Doc. # 820].

On June 28, 2024, the Court partially terminated the Settlement as to HHS, “except Paragraphs 28A, 32, and 33 of the FSA, and those FSA provisions governing secure, heightened supervision, and out-of-network facilities” Partial Termination Order at 21. The Court explained that it was not terminating Paragraphs 28A, 32, and 33 because:

¹ The Ninth Circuit noted the Court had ordered Defendants to “provide class counsel with monthly statistical information” but did not substantively address this part of the Court’s order as it was not raised on appeal. *See Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016).

1 It is not clear from the Rule who will have access to the data being
2 collected under sections 1303, 1500, and 1501 of the Rule (Paragraph
3 28A of the FSA), or how they are meant to access that information. At
4 least while the FSA remains partially in effect as to HHS, Plaintiffs'
5 counsel's access to ORR facilities and to information about the
6 children held at those facilities should be no different than it has been
7 for the last 27 years under Paragraphs 32 and 33 of the FSA.

8 *Id.* at 17.

9 On July 19, 2024, Defendants provided June 2024 monthly data reports for
10 HHS and DHS. On August 22, 2024, Defendants provided July 2024 monthly data
11 reports for DHS only. When Plaintiffs inquired as to the status of the HHS monthly
12 data report for July 2024, Defendants informed Plaintiffs they would no longer
13 provide any data related to children in HHS custody. The Parties' subsequent meet
14 and confer efforts were unsuccessful in resolving this dispute.

15 **III. ARGUMENT**

16 Defendants' monthly data reporting obligation is tied to Paragraph 28A of
17 the Settlement and therefore remains intact as to both HHS and DHS. When the
18 Court ordered monthly data reporting in 2015, it referenced only Paragraph 28A.
19 *See* August 2015 Order at 15; *see also* Defs.' Response to OSC at 3-4 (reflecting
20 Defendants' understanding at the time that the Court was proposing ordering
21 Defendants to "provide monthly statistical information *under Paragraph 28A* of
22 the Agreement.") (emphasis added).

23 Subsequent orders confirmed that the monthly data reports are required
24 under Paragraph 28A. In 2020, for example, the Court repeatedly ordered the
25 Parties to "meet and confer regarding . . . the quality of the data that Defendants
26 provide to Class Counsel *pursuant to Paragraph 28A* of the FSA." *See* Order
27 Extending TRO at 6, April 10, 2020 [Doc. # 768] (emphasis added); *see also* Order
28 re Pls.' Motion to Enforce at 21, April 24, 2020 [Doc. # 784]; Order re Updated

1 Juvenile Coordinator Reports at 6, June 26, 2020 [Doc. # 833]; Order re August 7,
2 2020 Status Conference at 4, August 7, 2020 [Doc. # 912].

3 In the Partial Termination Order, the Court's plain purpose in preserving
4 Paragraph 28A as to HHS was to ensure Plaintiffs' continued access to that data.
5 The Court acknowledged that sections 1303, 1500, and 1501 of the ORR
6 Foundational Rule require data collection similar to Paragraph 28A but explained
7 that "[i]t is not clear from the Rule who will have access to the data being
8 collected" and that Plaintiffs' counsel should continue to have access to
9 information about children in ORR facilities. *See* Partial Termination Order at 17.
10 Monthly data reports are critical to protecting the rights of Plaintiffs in custody by
11 enabling, for example, Plaintiffs' counsel to plan visits to children in ORR custody
12 under Paragraphs 32 and 33, track children transferred in and out of restrictive and
13 out-of-network placements, and investigate whether ORR facilities are accurately
14 classified as secure, medium-secure, or non-secure.

15 Defendants contend they are no longer required to share monthly statistical
16 data as to children in ORR custody because the Court terminated Paragraph 29 of
17 the Settlement as to HHS. Paragraph 29 provides for data reporting "[o]n a semi-
18 annual basis, until two years after the court determines, pursuant to Paragraph 31,
19 that the INS has achieved substantial compliance with the terms of this
20 Agreement." This paragraph does not require monthly data reporting and is not
21 mentioned in the Court's August 2015 order requiring monthly reporting. *See*
22 August 2015 Order at 15. Thus, terminating Paragraph 29 does not terminate
23 Defendants' monthly reporting obligation.²

24
25 ² To the extent the Court believes Paragraphs 28A and 29 work together and should
26 both be left in effect to enable monthly data reporting, Plaintiffs request the Court
27 reinstate Paragraph 29 to effectuate the Court's intent that Plaintiffs' counsel have
28 access to information about children in ORR custody "[a]t least while the FSA

1 Further, the Settlement unambiguously still applies to children in secure,
2 heightened supervision, and out-of-network facilities. *See* Partial Termination
3 Order at 20-21. Defendants’ withholding data reports regarding these children is
4 therefore a particularly blatant violation of the Court’s orders.

5
6 **IV. CONCLUSION**

7 Plaintiffs respectfully request the Court grant this motion and order
8 Defendants to provide Plaintiffs’ counsel with monthly data regarding children in
9 HHS custody pursuant to Paragraph 28A of the Settlement, including curing all
10 previously withheld data reports beginning with July 2024.

11
12
13 Dated: October 16, 2024

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15 Sarah Kahn

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21 Leecia Welch
22 Eleanor Roberts

23 /s/ Diane de Gramont

Diane de Gramont

24 *One of the Attorneys for Plaintiffs*

25
26 _____
27 remains partially in effect as to HHS.” *See* Partial Termination Order at 17; *see*
28 *also id.* at 20-21 (ordering *conditional* termination of certain provisions of the
Settlement as to HHS).

1 **CERTIFICATE OF COMPLIANCE**

2 I, the undersigned counsel of record for Plaintiffs, certify that this brief
3 contains 1,362 words, which complies with the word limit of Local Rule 11-6.1.
4

5 Dated: October 16, 2024

6 /s/ Diane de Gramont
7 Diane de Gramont

8 **CERTIFICATE OF SERVICE**

9
10 I hereby certify that on October 16, 2024, I caused a copy of Plaintiffs'
11 Motion to Enforce Settlement Regarding Paragraph 28A Data to be served to all
12 counsel through the Court's CM/ECF system.
13

14 Dated: October 16, 2024

15 /s/ Diane de Gramont
16 Diane de Gramont
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8
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13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
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Plaintiffs,

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MERRICK GARLAND, Attorney General
of the United States, *et al.*,

Defendants.

No. CV 85-4544-DMG-AGRx

[PROPOSED] ORDER GRANTING
MOTION TO ENFORCE
SETTLEMENT RE PARAGRAPH 28A
DATA

Hearing: November 15, 2024

Time: 9:30 a.m.

Hon. Dolly M. Gee

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1 Plaintiffs' Motion to Enforce Settlement Regarding Paragraph 28A Data,
2 which seeks a class-wide order requiring Defendants to comply with the settlement
3 approved by this Court on January 28, 1997 ("Settlement") and subsequent court
4 orders, came on regularly for hearing on November 15, 2024.

5 The Court, having read and considered the parties' respective memoranda of
6 law in support of and in opposition to Plaintiffs' motion, and having heard oral
7 argument from counsel, now GRANTS Plaintiffs' motion.

8 IT IS HEREBY ORDERED as follows:

- 9 1. As previously ordered on August 21, 2015, Defendants shall provide Class
10 Counsel on a monthly basis statistical information collected pursuant to Paragraph
11 28A of the Agreement.
- 12 2. Defendants shall, within seven (7) days of this order, cure prior breaches of the
13 Court's orders and provide Class Counsel all previously withheld monthly
14 statistical reports, beginning with July 2024.

15
16 Dated: October 16, 2024

17
18
19 _____
DOLLY M. GEE
20 UNITED STATES DISTRICT JUDGE

21 Presented by:

22
23 /s/ Diane de Gramont
Diane de Gramont
24 *One of the Attorneys for Plaintiffs*
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26
27
28