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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 WESTERN DIVISION

22 JENNY LISETTE FLORES, *et al.*,

23 Plaintiffs,

24 v.

25 TODD BLANCHE, Acting Attorney
26 General of the United States, *et al.*,

27 Defendants.

No. CV 85-4544-DMG-AGR

**DEFENDANTS' REPLY TO
PLAINTIFFS' RESPONSE TO 2026
CBP JUVENILE COORDINATOR
ANNUAL REPORT**

Honorable Dolly M. Gee
Chief United States District Judge

I. INTRODUCTION

In Plaintiffs’ Response to the 2026 CBP Juvenile Coordinator Annual Report [Doc. # 1814] (“Response”), Plaintiffs do not contest that the Juvenile Coordinator Division (“JCD”) in U.S. Customs and Border Protection (“CBP”) provides extensive oversight of CBP operations and detailed reporting to this Court. While Plaintiffs are free to advocate for their desired policy outcomes and their view of best practices for CBP, this Court must assess CBP’s compliance according to the actual requirements in the *Flores* Settlement Agreement (“FSA”). The 2026 CBP Juvenile Coordinator Annual Report [Doc. # 1801-1] (“CBP Annual Report”) shows that CBP has been substantially compliant with the FSA across the country over the last year.

On time in custody, Plaintiffs ignore the FSA’s influx provision and reality, while advocating for their preferred catch-and-release policy. Plaintiffs remarkably suggest that CBP was doing a better job in December 2023 when 123,501 members of family units chose to make the hazardous journey to the United States border and spent time in CBP custody. Now, far fewer children spend *any* time in government custody. But Plaintiffs would have this Court tell Defendants how to enforce the country’s immigration laws in ways that far exceed the boundaries of the FSA.

As to conditions of custody, Plaintiffs do little more than nitpick and ask this Court to speculate that issues may exist without solid evidence. Plaintiffs also base many of their critiques on what they wish the FSA required, instead of what it actually says. And as to the Juvenile Coordinator’s thorough monitoring, Plaintiffs largely ignore the realities of JCD’s monitoring and reporting. Plaintiffs instead complain that JCD focuses its resources on the places where most children are held, and that Defendants have involved lawyers and made legal arguments in Plaintiffs’ ongoing lawsuit. Neither complaint is valid.

II. DISCUSSION

A. CBP appropriately monitors time in custody.

CBP monitors times in custody, and it reports times in custody to Plaintiffs and to the Court when required. In fact, while the FSA only requires reporting every six months, Defendants have long been required to provide monthly reporting that goes well beyond what the parties ever agreed to. Plaintiffs identify no deficiencies in CBP's *monitoring* of time in custody. Response 5–8.¹ Instead, Plaintiffs take issue with CBP's operational decisions to process some families for release through removal. *See id.* at 5–6, 8. But Plaintiffs do not dispute that repatriation is a form of release from government custody. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020). The FSA does not set a hard 72-hour limit for transfer or release when more than 130 minors are in government immigration custody. FSA ¶¶ 12.A.3, 12.B. The applicable FSA standard is “as expeditiously as possible.” Defendants may fulfill their obligations by expeditiously processing minors and releasing by removing. Plaintiffs also do not dispute that family unity is a legitimate goal, and that CBP rightly works to keep families together during the removal process rather than separately releasing children whose parents would remain subject to detention and removal. Finally, Plaintiffs do not provide substantial evidence to support their assertion that CBP could be more quickly transferring families out of CBP custody. Response 8.

To support their argument that CBP is not expeditiously releasing minors, Plaintiffs bizarrely suggest that the situation in December 2023 and the months following was preferable. *See* Response 7. Because the prior administration incentivized illegal migration through its catch-and-release policies, CBP encountered 123,501 members of family units in December 2023. July 1, 2024 CBP Juvenile Coordinator Annual Report at 5 [Doc. # 1449-2] The average time in custody for the family units in December 2023 was 52.80

¹ In citations to docket items, all page references are to page numbers inserted by the CM/ECF system.

1 hours. *Id.* at 6. Multiplying the number of family unit encounters in December 2023 by
2 the average time in custody reveals a total of 6,520,852.80 hours collectively spent in CBP
3 custody. And, of course, the Court knows that overcrowding creates tremendous risks by
4 straining safety measures and the provision of all amenities.

5 In contrast, in May 2026, a mere 328 members of family units were encountered by
6 the U.S. Border Patrol, with an additional 1,011 encountered by the Office of Field
7 Operations. CBP Annual Report 5. The average time in custody in May 2026 was higher:
8 81.35 hours. *Id.* at 7. But when the total number of encounters is multiplied by the average
9 time, the product is 108,927.65 hours. That is about 1.7% of the collective time in custody
10 that families experienced in December 2023. And the lower numbers of encounters mean
11 that class members experience far less overcrowding. CBP’s current policies and practices
12 are disincentivizing traffickers from sending children on the hazardous journey into the
13 United States. And the results are clear. Far fewer children are spending *any time at all* in
14 government immigration custody.

15 When more than 130 minors are in immigration custody (which has been true at all
16 relevant times), the FSA gives Defendants flexibility in how it expeditiously processes
17 minors. Yes, Defendants could choose to “expeditiously process” minors by using the
18 prior administration’s catch-and-release policy. But the FSA does not require Defendants
19 to choose that option. The FSA also allows Defendants to expeditiously release minors
20 through removal. While Plaintiffs are free to advocate for some other policy outcome, and
21 to pad their rhetoric with “[e]very outlier is a child,” Doc. # 1813 at 26, Plaintiffs do not
22 have to grapple with the difficult operational judgments that are required to manage illegal
23 migration while complying with the FSA. And this Court lacks the institutional
24 competence to second-guess Defendants’ judgments about what operational decisions are
25 best. *See Trump v. Hawaii*, 585 U.S. 667, 702 (2018); *Reno v. Flores*, 507 U.S. 292, 305
26 (1993); *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

27 Plaintiffs also suggest that CBP could more quickly transfer class members out of
28 CBP facilities. Response 8. Plaintiffs do not allege any delays in transferring

1 unaccompanied alien children to the U.S. Department of Health and Human Services.
2 Elsewhere, Plaintiffs argue that CBP could transfer family units to U.S. Immigration and
3 Customs Enforcement (“ICE”) faster for placement at the family residential center in
4 Dilley, Texas, because the facility has 2,400 beds. Doc. # 1813 at 20. But the mere
5 existence of beds does not mean that it is feasible for DHS to place more families there.
6 And the fact that Plaintiffs may prefer custody in ICE unlicensed facilities over CBP
7 facilities does not establish that such transfer is required by any provision of the FSA, and
8 Plaintiffs point to nothing in the FSA that mandates such transfer.

9 Plaintiffs do not show any violations of the FSA as to the substantive requirements
10 for expeditious processing and do not show any failure to monitor time in custody.

11 **B. CBP complies with the FSA’s requirements as to custodial conditions.**

12 In their discussion of custodial conditions, Plaintiffs consistently seek to expand the
13 FSA beyond its actual requirements. Plaintiffs also seek to apply the 2022 CBP Settlement
14 nationwide, but the parties specifically agreed that it would apply only in the Rio Grande
15 Valley (“RGV”) and El Paso Sectors of U.S. Border Patrol, and it has expired as of the
16 date of this filing. Doc. # 1254-1 at 10. Plaintiffs also ask the Court to assume that certain
17 conditions or problems exist based on no evidence or on extremely thin evidence.

18 In addition, Plaintiffs reveal their misunderstanding of the purpose and function of
19 monitoring under the FSA. When CBP’s Juvenile Coordinator identifies an instance of
20 non-compliance, that is not evidence of a failure in monitoring. In reality, the detection
21 and transparent reporting of non-compliance demonstrates the effectiveness of CBP’s
22 layered and integrated monitoring system. An effective monitoring program is not one that
23 finds no issues, but one that uncovers and addresses them, ensuring ongoing compliance.
24 Penalizing CBP for honest reporting creates a perverse incentive, discouraging thorough
25 oversight and forthright disclosure, and ultimately undermines the goals of the monitoring
26 process. Moreover, Plaintiffs’ approach makes clear that they are not interested in
27
28

1 substantial compliance, but are asking this Court to hold the government to a standard of
2 perfect compliance.

3 **Hygiene:** Plaintiffs first allege that the Annual Report reveals deficiencies in
4 hygiene because 15 locations “did not have soap or hand sanitizer in the hold rooms.”
5 Response 9. In *each location*, however, soap or hand sanitizer was available upon request.
6 CBP Annual Report 20. Where required by the 2022 CBP Settlement, locations also had
7 posters listing the availability of hand sanitizer, caregivers told children it was available,
8 and the Exhibit 3 notice was provided. *See* Decl. of Colin Lane ¶¶ 16, 23–24, 29 [Doc.
9 # 1803-1] (“Lane Decl.”).

10 Plaintiffs also disparage the “paper showers” available at two Border Patrol
11 Stations. Response 9. However, the CBP Annual Report explains that a paper shower is
12 provided and then children are transferred, typically within hours, to a location with a
13 shower. CBP Annual Report 13, 14 n.19, 36. Plaintiffs do not show that any child was
14 denied a shower while in CBP custody, let alone any child with a longer time in custody.

15 Last, Plaintiffs devote an entire paragraph to the cold-water button in one cell of the
16 Santa Teresa Station, which is a small station in the El Paso Sector (and is not the juvenile
17 priority facility). Response 9. Plaintiffs do not allege that any children were held in that
18 particular cell while the cold water button was not working. Moreover, the CBP Annual
19 Report makes clear that the hot water side of the sink was still functioning and children
20 had access to another sink. CBP Annual Report 35. Thus, the sink had water available for
21 hand washing and performed its function.

22 **Drinking Water:** Plaintiffs note that the Movement Coordination Area in the San
23 Diego Sector switched to providing bottled water after JCD raised concerns about the use
24 of a hose and five-gallon water coolers. Response 10. CBP’s internal monitoring identified
25 and resolved the issue before any plaintiff or court involvement. This episode
26 demonstrates the effectiveness of CBP’s monitoring system. In addition, the Juvenile
27 Coordinator’s inspections reveal broad compliance with the requirement to provide clean
28 drinking water. CBP Annual Report 20–21.

1 **Age-appropriate Food:** CBP provides edible food to all children in its custody.
2 Decl. of John Modlin ¶¶ 26, 45 [Doc. # 1567-2] (“Modlin Decl.”). For all contracted meals
3 in RGV and El Paso Sectors, the contractor certifies that they meet USDA nutritional
4 standards and that the food is age-appropriate. Lane Decl. ¶¶ 18, 25. As to age-appropriate
5 food, Plaintiffs exaggerate the limited deficiencies that the Juvenile Coordinator
6 identified. Response 11. In the CBP Annual Report, the Juvenile Coordinator noted that,
7 during 11 inspections, tender-age meals were not readily available. CBP Annual Report
8 19. By “tender-age meals,” the Juvenile Coordinator was referring specifically to meals
9 that were bite-sized or pre-portioned for toddlers. *Id.* The Juvenile Coordinator reported
10 that, in locations with caregivers, caregivers were responsible for ensuring that any
11 toddlers could eat their meals. *Id.* The Report further notes that for facilities without
12 caregivers, CBP personnel did not report any instances of children being unable to eat the
13 meals provided. *Id.* Plaintiffs present no evidence that any child could not eat the food
14 CBP provided. CBP meets its food obligations and the Juvenile Coordinator advises on
15 best practices to mitigate any risks going forward.

16 **Family-member Contact:** Plaintiffs allege that the CBP Annual Report shows
17 noncompliance with the requirement that CBP ensure “contact with family members who
18 were arrested with the minor.” Response 11 (quoting FSA ¶ 12.A). That is incorrect. The
19 Juvenile Coordinator did not find any failure to comply with the substantive FSA
20 requirement of family contact. Rather, the Juvenile Coordinator identified occasional
21 deficiencies in the *documentation* of contact with family. Plaintiffs once again exaggerate
22 or misconstrue what the Juvenile Coordinator reported and ask this Court to assume
23 widespread noncompliance without evidence.

24 **Legal Services:** Plaintiffs assume that CBP did not monitor provision of the I-770
25 and the list of legal service providers because the CBP Annual Report did not specifically
26 mention it. Response 12. That is incorrect. And in any event, Plaintiffs provide no evidence
27 that CBP is not complying with the requirement to provide these forms.
28

1 The FSA does not provide a specific right to phone calls. Form I-770 and the 2022
2 CBP Settlement applicable to RGV and El Paso provide unaccompanied alien children
3 opportunities to call family members, but Plaintiffs do not allege any deficiency in
4 unaccompanied alien children's access to a phone. Class members detained in family units
5 have no FSA right to phone calls with non-arrested family members, and the FSA provides
6 no right to a phone call for detained parents.

7 **Temperature:** Plaintiffs incorrectly assert that "JCD considers current conditions
8 adequate simply because CBP provides mylar blankets, despite many families and
9 children reporting feeling cold." Response 13. JCD found the temperature conditions to
10 be adequate because, in RGV and El Paso Sectors, the objective standards in the 2022
11 CBP Agreement were satisfied. CBP Annual Report 20. For non RGV/EPT Sectors, the
12 temperature meets objective internal CBP policy standards. *Id.*; see Modlin Decl. ¶¶ 29,
13 44. CBP must follow objective temperature readings because individuals vary, and one
14 person's perception of cold will differ from another's. In addition, JCD noted that CBP
15 provides warm clothes along with mylar blankets. CBP Annual Report 10, 28. The Report
16 also explains that in many locations, amenities posters tell class members that they may
17 receive warm clothes. CBP Annual Report 11–12, 14, 19. Plaintiffs' few largely outdated
18 and scattered declarations, based on subjective perceptions rather than objective
19 measurements, are not sufficient to show any current noncompliance as to temperature.
20 *See Flores v. Sessions*, 394 F. Supp. 3d 1041, 1053 (C.D. Cal. 2017).

21 **Outdoor Access:** Plaintiffs assert that access to outdoor recreation is required by
22 the FSA and the Constitution. Response 14–15. That is incorrect. Paragraph 12 of the FSA
23 specifically identifies the requirements for facilities where the government holds minors
24 upon apprehension. Access to outdoor recreation is not listed. The FSA does not list that
25 requirement even though the parties recognized that the government may hold individuals
26 in the initial holding facilities longer than 72 hours during times of an influx of minors
27 (which has continuously existed for several years). Plaintiffs are simply advocating for
28 something new. The FSA does not require it.

1 Nor does the Constitution require CBP to provide outdoor recreation during class
2 members' temporary custody. Under the Constitution, the "unique purpose" of CBP
3 custody justifies temporary conditions that would be unacceptable in a long-term detention
4 facility. *Doe v. Kelly*, 878 F.3d 710, 721–22 (9th Cir. 2017). Temporary CBP custody for
5 a matter of days while CBP processes a minor is a far cry from incarceration for a "period
6 of years." *Spain v. Procunier*, 600 F.2d 189, 199–200 (9th Cir. 1979). CBP provides
7 children with indoor recreation because some facilities do not have outdoor spaces that
8 provide a safe location to play. CBP's actions are thus not only permissible under the FSA
9 and the Constitution but also demonstrate a responsible assessment of each facility.

10 Plaintiffs' Response does not show violations of the FSA in CBP facilities. The
11 Response reflects Plaintiffs' unending push for new expanded requirements that the parties
12 never agreed to in the FSA.

13 **C. CBP's self-monitoring is effective.**

14 CBP's layered and integrated monitoring approach is thorough and effective.
15 Plaintiffs' critiques are unpersuasive.

16 Plaintiffs first assert that the JCD's monitoring is inadequate because it "appears to
17 be limited to the Southwest Border sectors." Response 15–16. JCD has historically
18 focused on the Southwest Border because that is where 87% of family units and
19 unaccompanied alien children were in FY 2025 and where 54% of the population of family
20 units and unaccompanied alien children are held in CBP custody in FY 2026 to date. *See*
21 U.S. Customs and Border Protection, *FY23 - FY26 (FYTD) Nationwide Encounters by*
22 *Area of Responsibility – June*, [https://www.cbp.gov/document/stats/nationwide-](https://www.cbp.gov/document/stats/nationwide-encounters)
23 [encounters](https://www.cbp.gov/document/stats/nationwide-encounters) (accessed July 29, 2026). As stated in prior reports, if the population starts
24 shifting, JCD would evaluate the need to visit other locations. *See* 2025 CBP Juvenile
25 Coordinator Annual Report at 6 [Doc. # 1599-1]. JCD just provided six sessions of the
26 *Flores* Implementation Training ("FIT") in Vermont and New York in July 2026.
27 Additionally, for FY 2027, JCD has scheduled FIT sessions in Miami, Chicago, Seattle
28

1 Area, and Buffalo, NY with additional inspections scheduled in FY 2027 to Vermont,
2 Miami, and Seattle areas. JCD has focused its resources on the areas where most children
3 are held. That is simply logical. In their Response, Plaintiffs present no evidence of FSA
4 violations along the Northern Border or at airport hold rooms.

5 Plaintiffs next critique the JCD's method of conducting interviews during site visits.
6 Response 16. Of course, JCD's interviews look different from class counsel's confidential
7 attorney-client interviews. JCD's interviews are nonetheless one of many valid tools that
8 together demonstrate CBP's sustained improvement and current compliance.

9 In addition, Plaintiffs contend that, "[w]ithout being able to communicate freely
10 with Plaintiffs' counsel, the JCD misses information that could be integral to effective
11 monitoring and is unable to respond in real time to violations." Response 16. But Plaintiffs
12 provide no basis to believe that JCD is not aware of the information and allegations that
13 class counsel send Defendants. Of course, Defendants insist that Plaintiffs' lawyers
14 communicate with CBP personnel through Defendants' lawyers. In any event, nowhere in
15 the FSA did the parties agree that Plaintiffs' counsel would have unfettered access to the
16 Juvenile Coordinator to offer complaints and suggestions.

17 Last, Plaintiffs assert that "Defendants are actively trying to limit the JCD's
18 provision of essential information to the Court and to Plaintiffs' counsel." Response 16.
19 In support, Plaintiffs cite one filing from August of last year in which Defendants made a
20 legal argument that the Court was requiring information beyond what the FSA requires
21 and that the Court was extending the Juvenile Coordinator's role beyond what the parties
22 agreed to in the FSA. The Court overruled Defendants' objection. And the Juvenile
23 Coordinator has provided every piece of information that the Court has required.
24 Defendants are in no way obstructing the flow of required information. By asserting their
25 legal right to be bound only by what they agreed to in the FSA, Defendants are in no way
26 violating that same agreement.

27 Far from being "structurally insufficient," Response 17, the layered and integrated
28 monitoring approach taken by CBP—which includes the Juvenile Coordinator Division,

1 the Office of the Chief Medical Officer, and operational leadership at both the
2 headquarters and field level—is precisely constructed to carry out its compliance review
3 functions.

4 **III. CONCLUSION**

5 This Court should conclude that CBP substantially complied with the FSA during
6 the reporting period and that CBP appropriately self-monitors.

7
8 Dated: July 29, 2026

Respectfully submitted,

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L.R. 11-6.2 Certification

The undersigned counsel of record for the United States certifies that this memorandum contains 3,121 words, which complies with the word limit of L.R. 11-6.1.

Dated: July 29, 2026

/s/ Joshua C. McCroskey

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Trial Attorney