

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

256 S. OCCIDENTAL BOULEVARD
LOS ANGELES, CA 90057
Telephone: (213) 388-8693 Facsimile: (213) 386-9484
www.centerforhumanrights.org

October 15, 2014

Sarah B. Fabian
Trial Attorney
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044

Michael Johnson (or successor in office)
Assistant United States Attorney
300 N. Los Angeles St., Rm. 7516
Los Angeles, CA 90012

Allen Hausman (or successor in office)
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

Via first class mail (and email to Ms. Fabian).

Re: *Flores, et al., v. Holder, et al.*, No. CV 85-4544 (C.D. Cal.).

Dear Madam/Sirs:

Pursuant to ¶ 37 of the settlement approved in the above referenced action on January 25, 1997 (Settlement), plaintiffs hereby give notice of claims that defendants are violating the Settlement in the particulars stated below.

In accordance with ¶ 37 and Rule 7-3 of the Rules of the United States District Court for the Central District of California, plaintiffs request that defendants Attorney General and Department of Homeland Security (DHS) (“defendants”) meet with plaintiffs telephonically within the next seven days, or in person in the Central District of California within the next fourteen days, to discuss defendants’ compliance with the Settlement. Plaintiffs reserve the right to address with defendants during the meet and

¹ Paragraph 37 provides in pertinent part as follows: “This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement.”

confer additional issues relating to compliance with the Settlement not identified below that may come to light as the result of plaintiffs' ongoing investigation of the treatment and conditions class members are experiencing.

1. Violations of ¶¶ 14 and 18.

Paragraph 14 of the Settlement provides: "Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to: A. a parent; ..."

Paragraph 18 of the Settlement provides: "Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody."

We are informed and believe that defendants are now pursuing a blanket policy and practice to detain class members apprehended with their mothers in lieu of releasing them on bond, recognizance, or parole, pending a determination of their right to remain in the United States: that is, without regard to class members' age, reasons for coming to the United States, prior immigration violations, family ties in the United States, potential eligibility for lawful status or for relief under the memoranda issued June 17, 2011, by Immigration and Customs Enforcement Director John Morton, likelihood to abscond, or the minors' safety or safety of others.

We are informed and believe that defendants do not make or record prompt and continuous efforts toward the release of class members apprehended with their mothers.

We are informed and believe that defendants are now pursuing a blanket policy and practice to detain the mothers of class members, when mother and child are apprehended together, in lieu of releasing such mothers on bond, recognizance, or parole, pending a determination of their right to remain in the United States: that is, without regard to class members' mothers' reasons for coming to the United States, prior immigration violations, family ties in the United States, potential eligibility for lawful status or for relief under the memoranda issued June 17, 2011, by Immigration and Customs Enforcement Director John Morton, likelihood to abscond, potential to endanger themselves or others, or whether their release is in the best interests of class members.

Defendants are thereby in violation of ¶¶ 14 and 18 of the Settlement.

2. Violations of ¶ 24A.

Paragraph 24A of the Settlement provides: “A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.”

We are informed and believe that defendants are not regularly providing class members apprehended with adult mothers a bond redetermination hearing before an immigration judge in every case except where the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

Defendants are thereby in violation of ¶ 24A of the Settlement.

3. Violations of ¶¶ 11, 19 and 24C.

Paragraph 11 of the Settlement provides in pertinent part: “The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others.”

Paragraph 19 provides, “Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program² until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier.”

Paragraph 24C provides: “In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility.”

We are informed and believe that defendants' policy and practice are to detain class members apprehended with their mothers in secure facilities that are not licensed by an appropriate state agency to provide residential, group or foster care services for dependent children, and that are not the least restrictive setting appropriate to class members' age and special needs.

² Definition 6 of the Settlement provides in pertinent part, “The term ‘licensed program’ shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors... All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; ...”

We are informed and believe that defendants are pursuing a policy and practice of failing to provide minors apprehended with their mothers notice of the reasons for housing them in a secure or medium security facility.

We are informed and believe that defendants have no written standards, or else no effective monitoring thereof, for monitoring and treating —

- (a) weight loss,
- (b) the mental health,
- (c) respiratory illnesses, or
- (d) fevers

in detained minors apprehended with their mothers.

Defendants are thereby in violation of ¶¶ 11, 19 and 24C of the Settlement.

4. Violations of ¶ 12.

Paragraph 12 of the Settlement provides in pertinent part: “Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS’s concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor.”

We are informed and believe that defendants have no written standards for Border Patrol facilities, or else no effective monitoring thereof, specifying —

- (a) minimum standards required to ensure that facilities in which class members are detained are safe and sanitary;
- (b) the minimum and maximum temperatures for rooms in which class members are held;
- (c) the provision of mattresses and blankets to class members;
- (d) the retention, removal, or destruction of minors’ jackets, sweaters, identity documents and other personal property;
- (e) the maximum capacity of rooms in which class members are held following arrest;
- (f) class members’ regular access to toilets and sinks; and
- (g) the quality and quantity of food and drink class members are to be provided.

As a result of the foregoing, class members are regularly detained at Border Patrol facilities under conditions that are not safe, sanitary, or consistent with a good faith concern for their particular vulnerability.

Defendants are thereby in violation of ¶ 12 of the Settlement.

5. Violation of ¶ 7.

Paragraph 7 of the Settlement provides in pertinent part that “[t]he INS shall assess minors to determine if they have special needs ...” A minor may have special needs “due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse.”

We are informed and believe that defendants fail to assess whether class members have special needs and fail to place minors in facilities which provide services and treatment of such special needs, including unlicensed facilities when class members are apprehended with their mothers.

Defendants are thereby in violation of ¶ 7 of the Settlement.

6. Violation of 12A.

Paragraph 12A of the Settlement provides that “[w]henver the INS takes a minor into custody, it shall ... provide the minor with a notice of [his or her] rights ...”

We are informed and believe that when defendants take class members into custody, defendants do not routinely advise such class members about their right to apply for relief under the memoranda issued June 17, 2011, by Immigration and Customs Enforcement Director John Morton, or of their right to apply for Special Immigrant Juvenile status if they have been abused abandoned or neglected, or of their right to seek legalization of status if they have certain close relatives who are lawful permanent residents or U.S. citizens.

Defendants are thereby in violation of ¶ 12A of the Settlement.

7. Violation of Paragraph 28A.

Paragraph 28A provides in pertinent part as follows: “An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations.

We have requested information from defendants regarding compliance with ¶ 28A and will be in a position to assess defendants' compliance with ¶ 28A upon receipt of defendants responses to our letter of October 2, 2014.

8. Violations of ¶ 12C.

Paragraph 12C provides: "In preparation for an 'emergency' or 'influx,' as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible...The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing."

We are informed and believe that defendants have no written plan regarding preparation for an "emergency" or "influx" as described in ¶ 12B, and have not provided plaintiffs' counsel with quarterly updates of the listing of additional beds, that describes the reasonable efforts defendants will take or have taken to place all minors as expeditiously as possible in licensed facilities.

Should defendants wish any clarification regarding the foregoing, I may be reached at the above address and telephone number. When communicating by email, please forward communications to me at crholguin@centerforhumanrights.org, Peter Schey at pschey@centerforhumanrights.org, and Alice Bussiere at abussiere@ylc.org.

Please inform us of proposed dates and times you will be available to meet telephonically within the next week, or in person in the Central District of California within the next 14 days.

Thank you,



Carlos Holguín
One of the attorneys for plaintiffs

ccs: Peter A. Schey, Center for Human Rights & Constitutional Law
Alice Bussiere, Youth Law Center