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11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13	JENNY LISETTE FLORES, <i>et al.</i> ,)	Case No. CV 85-4544-RJK(Px)
14	Plaintiffs,)	PLAINTIFFS' RESPONSE TO AMICI BRIEFS
15	- vs -)	
16	WILLIAM BARR, Attorney General of)	Hearing: September 4, 2020
17	the United States, <i>et al.</i> ,)	Time: 11:00 A.M.
18	Defendants.)	Judge: Hon. Dolly Gee
19	_____)	

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1 To the extent they may be useful to the Court, Plaintiffs provide these brief
2 comments in response to the two recently filed *amici* briefs.

3 The Brief of Amici Curiae Amnesty International USA and Human Rights
4 Watch in Support of Plaintiffs' Motion to Enforce the FSA ("AI/HRW Brief") [Doc. #
5 948-1], was filed "in support of Plaintiffs' motion to enforce the *Flores* Settlement
6 Agreement." *Id.* at 1. The AI/HRW Brief proposes additional measures "to ensure that
7 the best interests of the child are protected as part of any 'Know Your Rights' ...
8 advisal and release procedure that may be ordered by the Court." *Id.*

9 First, the AI/HRW *amici* propose that "the government [be required to] explain
10 why it refuses to exercise its discretion to release parents with their children from
11 custody." *Id.* at 2. *See also Id.* at 9 ("the government should document on individual
12 parole worksheets all efforts to release parents with their children ... [I]t is critical that
13 the government explain why it refuses to exercise its discretion to release parents with
14 their children from custody during the ongoing COVID-19 pandemic.")¹

15 Plaintiffs agree with the *amici* parties. Indeed, Class Counsel recently submitted
16 to Defendants a FOIA request seeking copies of instructions issued to ICE officers
17 regarding the release of parents, as well as the parole worksheets and documents relied
18 upon to make release decisions for all Class Members and parents detained since
19 January 1, 2020. *See Exhibit A.* The *amici* parties joined that request. *Id.*

20 Nevertheless, it would be far more effective to achieve FSA compliance and lead
21 to a more prompt response if this Court ordered Defendants to provide this
22 information, possibly via reports of the ICE Juvenile Coordinator.

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24 ¹ The Amicus Brief filed by ALDEA, *et al.* ("ALDEA Brief") (Doc.# 951) similarly
25 proposes that ICE be required to provide "a detailed, reasoned, written explanation for
26 why, in its discretion, after considering all relevant information, it has concluded that a
27 Class Member cannot be released from ICE custody *with their accompanying parent.*"
Id. at 6 (emphasis added).

1 Second, the AI/HRW *amici* agree with Plaintiffs that “[a] robust KYR [know
2 your rights] advisal should be put in place to correct [Defendants’] abusive practices
3 and provide families with a sufficient understanding of their rights.” AI/HRW Brief at
4 12. They propose that dissemination efforts should extend beyond mere written notice.
5 *Id.* The Court should order the government to provide guaranteed and regular access
6 for detained Class Members to attend KYR presentations. *Id.* Those presentations
7 should be conducted by legal service providers, other service providers, or NGOs with
8 expertise in the issues, who can explain Class Members’ rights in the KYR advisal “by
9 live video or in-person, in a language that parents can understand, and with an
10 opportunity for Q&A.” *Id.* Amici propose that the Court should also order the parties
11 to develop posters summarizing the KYR advisals that “should [be] prominently
12 display[ed] ... in all facilities where Class Members are detained, thereby
13 disseminating knowledge of these rights to Class Members, and also to facility staff
14 and ICE officers.” *Id.* at 12.

15 Plaintiffs agree with these proposals and believe they involve reasonable
16 interpretations of the FSA or, alternatively, are justified by Defendants’ history of non-
17 compliance.

18 Finally, the AI/HRW *amici* propose that “any release procedure include an
19 independent evaluation of the best interests of each child conducted by a third-party
20 expert.” *Id.* at 12. Plaintiffs have made a similar proposal by including in the proposed
21 advisal of rights the following language: “You may also ask your Case Manager or
22 your attorney to assist you setting up a call or meeting with a social worker you or your
23 attorney identify.” Proposed Order, Exhibit 1 at 2. [Doc. # 921-1.]

24 Plaintiffs continue to believe that a parent is in the strongest position to assess
25 the best interests of his or her child. Nevertheless, Plaintiffs support either an advisal
26 that parents may consult with a social worker or child welfare expert (to be permitted
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1 by ICE if a parent wishes to so consult), or a more formal role for an independent
2 evaluation of the best interests of each child as proposed by the AI/HRW *amici*.

3 The ALDEA *amici* propose that the Court order ICE to “ensure that all Class
4 Members in custody are detained in FSA-compliant [licensed and non-secure] facilities
5 by or before September 11, 2020.” ALDEA Brief at 9. The Plaintiffs’ proposed advisal
6 includes the following language: “Unless they are an escape risk or a danger to
7 themselves or others, your children also have the right to be held in a non-secure
8 facility that is licensed by a state to care of dependent children.” Proposed Order,
9 Exhibit 1 at 2. [Doc. # 921-1.] The FOIA Plaintiffs’ counsel have submitted to ICE
10 seeks all records relating to the contracts for operation of the FRCs (which should
11 disclose their secure versus non-secure status), as well as their licensing status. *See*
12 Exhibit A at 4-5.

13 The Court may consider ordering (1) the ICE Juvenile Coordinator to
14 reasonably promptly report on the status of the secure versus non-secure and licensing
15 status of Defendants’ three FRCs, and/or (2) the parties to meet and confer on this
16 issue and report back to the Court by a date certain.

17 The ALDEA *amici* also propose that the Court “should order the Government to
18 establish a toll-free hotline where Class Members, their accompanying parents,
19 attorneys, and facility staff may report alleged violations of the Agreement.” ALDEA
20 Brief at 15. Plaintiffs have similarly proposed that the advisal of rights include text
21 reading: “If you have any questions about your children’s rights under the *Flores* case,
22 you may also telephone without charge the attorneys for children in the *Flores* case at
23 800-xxx-xxxx,” with a toll-free phone number to be provided by Class Counsel.
24 Proposed Order, Exhibit 1 at 2. [Doc. # 921-1.]

25 Next, the ALDEA *amici* argue that Plaintiffs’ proposed waiver is “incompatible
26 with the Government’s obligations under the preliminary injunction in the *Ms. L.*
27 litigation,” and that by permitting a Class Member to remain detained with a parent
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1 who declines to identify sponsors to whom they would like their child released,
2 amounts to a waiver of the child's release rights by the parent's "silence." ALDEA
3 Brief at 24-25.

4 The Ms. L case dealt with the Government *involuntarily* separating children
5 from their parents, and under those circumstances required a knowing and intelligent
6 waiver by the parent of the right to remain together with their child. The advisal and
7 protocol proposed by Plaintiffs seek to ensure that if a child is released without a
8 parent, this is accomplished only *after* the parent has been made aware of their child's
9 FSA release rights, and has voluntarily decided they wish to have their child released,
10 certainly not forcibly or involuntarily.

11 The issue of a waiver by "silence" is a more difficult question. Plaintiffs'
12 proposed advisal and protocol seek to avoid a parent being forced to make a prompt
13 decision about their child's custody status. Plaintiffs recognize parents may require
14 time to consider what they believe is in the best interest of their children, and may also
15 change their minds after making a decision and sharing it with ICE. To address these
16 concerns, Plaintiffs have proposed that a parent is *not* required to make a decision to
17 exercise or waive their child's release rights within any set time period. As a practical
18 matter, if a parent or their attorney of record has not identified one or more sponsors to
19 whom the parent wishes to have their child released, ICE cannot proceed to make and
20 record efforts aimed at the release of the child to unidentified sponsors. The ALDEA
21 *amici* offer no clear solution to the need of parents to have sufficient time to decide
22 whether they wish to identify sponsors to whom they want their children released.

23 Finally, the ALDEA *amici* propose an advisal that while using different words
24 than the advisal proposed by Plaintiffs, provides much the same information for
25 parents but in far less detail. While the ALDEA *amici's* proposed advisal informs
26 parents that their child may "[b]e released without unnecessary delay (unless required
27 to protect the safety of the child or others or to make sure the child appears in
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1 immigration court) to (in order of preference) [to] [a] parent ... [etc.],” it nowhere
2 explains what a parent should do to exercise or waive their child’s right to release. Nor
3 do the ALDEA *amici* propose any steps ICE must take if a parent decides it’s in their
4 child’s best interest to be released to a sponsor.²

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6 Dated: September 1, 2020.

Respectfully submitted,

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Peter Schey
Attorneys for plaintiffs

2 While repeatedly—with justification—excoriating the Defendants for their
“substantial and harmful past and ongoing failure to comply with Paragraphs 12, 14,
and 18 of the FSA,” ALDEA Brief at 28, the ALDEA *amici* do not address Plaintiffs’
proposed protocol that outlines steps ICE should take to promptly implement and
record a parent’s wishes regarding their child’s release.

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2020, I served the foregoing pleading on all counsel of record by means of the District Clerk’s CM/ECF electronic filing system.

/s/ Peter Schey

Peter A. Schey
CENTER FOR HUMAN RIGHTS &
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Class Counsel for Plaintiffs