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14 IN THE UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

17	LUIS JAVIER PEREZ-OLANO, <i>et</i>)	Case No. 2:05-cv-03604-DDP-RZ
	<i>al.</i> ,)	
18	Plaintiffs,)	RESPONSE TO NOTICE OF
)	SUPPLEMENTAL AUTHORITY
19)	
20	vs.)	
)	
21	JEFFERSON B. SESSIONS III,)	
22	Attorney General, <i>et al.</i> , ¹)	
)	
23	Defendants.)	
24	_____)	

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¹ Under Federal Rule of Civil Procedure 25(d), Attorney General Jefferson B. Sessions III is automatically substituted for his predecessor as a party.

1 Defendants respectfully submit this response to Plaintiffs' July 13, 2017,
2 Notice of Supplemental Authority, which cites an order from *Flores v. Sessions*,
3 No. CV 85-4544 DMG (C.D. Cal. June 27, 2017). The *Flores* order is not relevant
4 here because it interprets the terms of a completely different settlement agreement
5 and is based on that agreement's provisions governing detention.
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8 A ruling related to a different settlement, with different terms, addressing
9 different issues, plainly has no bearing on the terms of the *Perez-Olano* settlement.
10 Moreover, in *Flores* the Court addressed an issue, detention, which can apply to
11 individuals in removal proceedings or expedited removal, and considered whether
12 settlement terms governing detention apply to both groups. Although the Court
13 acknowledged that expedited removal has a distinct purpose and statutory basis,
14 because the relevant terms in the *Flores* agreement simply dealt with detention, the
15 Court found no reason in this specific context to distinguish individuals detained
16 for removal proceedings from those detained for expedited removal. *See Flores*
17 Order at 21-23.
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22 In contrast, motions to reopen, the settlement term at issue here, are
23 available by regulation only to individuals in removal proceedings before an
24 immigration judge. There is no such mechanism for Plaintiffs' expedited removal
25 orders because expedited removal is a separate, abbreviated process created by
26 Congress that specifically does not include the immigration court process. The
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1 *Perez-Olano* agreement expressly cites the regulations that provide for motions to
2 reopen removal proceedings in immigration court and explain when and why a
3 joint motion might be necessary in this context. *See* 8 C.F.R. § 1003.23(b)(4)(iv)
4 (“Jointly filed motions”). There is no similar regulation for expedited removal that
5 provides jurisdiction to either an immigration judge or the Board of Immigration
6 Appeals to consider a motion to reopen. *See* 8 C.F.R. §§ 235.3, 1003.42, 1208.30.
7 Thus Plaintiffs’ argument that *Flores* supports extending Paragraph 29’s terms to
8 expedited removal (which is nowhere mentioned in the *Perez-Olano* agreement)
9 would require an absurd result; even if Defendants joined a motion to reopen, there
10 is no place to file such a motion as neither an immigration judge nor the Board of
11 Immigration Appeals can reopen expedited removal orders.²

12 Expedited removal is distinct from regular removal proceedings, and applies
13 only to individuals such as Plaintiffs who arrive at the border without a visa or
14 other basis to enter the country, and who lack a credible basis to apply for asylum
15 or other relief from removal. 8 U.S.C. § 1225. To the extent Plaintiffs rely on
16 *Flores* to argue there is no reason to treat expedited removal differently than
17 regular removal proceedings, courts have already considered and rejected this

18 ² As explained in Defendants’ Opposition, a motion to reopen is also unnecessary
19 for these Plaintiffs and inconsistent with Paragraph 29’s purpose because expedited
20 removal orders are not issued in removal proceedings before an immigration judge
21 so they do not prevent USCIS from adjudicating Plaintiffs’ applications to adjust
22 status. *See* Defs.’ Opp’n, ECF No. 212, at 15-18; 8 C.F.R. § 245.2(a)(1).
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1 claim in other earlier litigation brought by these same Plaintiffs. *See* Ex. A., *Castro*
2 *v. Dep't of Homeland Sec.*, 835 F.3d 422 (3d Cir. 2016) (explaining why
3 individuals in expedited removal are treated differently by statute and for
4 constitutional purposes); *Osorio-Martinez v. Sessions*, No. 5:17-cv-01747-PD
5 (E.D. Pa. May 23, 2017) (rejecting challenges to expedited removal regime, and
6 finding special immigrant juvenile classification has no effect on Plaintiffs'
7 expedited removal orders and that they are not presently eligible to adjust status
8 anyway because there are currently no visas available).
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12 Accordingly, the *Flores* order does not support Plaintiffs' argument.
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1 Dated: July 20, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July 2017, a true and correct copy of the foregoing document was served through the district court's ECF system upon all Counsel of Record.

/s/ Brian C. Ward
BRIAN C. Ward
Trial Attorney
United States Department of Justice

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