



3. The Residential Center serves as a processing center where ICE can provide residents with medical health screenings and immunizations, conduct background checks, and allow asylum officers to assess residents for eligibility to receive humanitarian immigration protection, such as asylum. During the course of these assessments, all residents, including children from newborn age to seventeen years, receive adequate and appropriate food; clothing; medical, dental, and psychiatric care; heated and air-conditioned housing; and regular schooling, five days per week, using traditional and web-based forms of education. Seven days per week, residents are free to utilize various facilities within the Residential Center, including the gym, library, chapel, general store, barber/beauty grooming areas, dining hall, and various recreational areas.

4. Within these recreational spaces, Residential Center staff members orchestrate daily events, such as soccer tournaments, bingo games, arts and crafts, flag football games, and dancing. The Residential Center also conducts on-site and off-site field trips for children to extend their learning beyond the classroom. Every Friday night is Movie Night; and every Saturday night is Karaoke Night. The Residential Center also coordinates monthly and seasonal events such as its Valentines Party, a Festival of Flags (in lieu of the Fourth of July), the House of Superheroes (for Halloween), a Mother's Day event, and a winter festival. All of these programs and activities are designed to ensure the residents' comfort and sense of normalcy while they await consideration for asylum in the United States.

5. Consistent with a court order issued by the United States Central District of California, Western Division, in the matter of *Flores v. Lynch*, No. 85-cv-04544, CCA has, without conceding that the *Flores* order applies, diligently and urgently sought an appropriate license from the State of Texas for the Residential Center. In November 2014, at the suggestion

of the Texas Department of Family and Protective Services (“DFPS”), CCA applied for a certificate to operate as a Licensed Temporary Shelter. On May 22, 2015, DFPS issued to CCA a Certificate to Operate as a Temporary Shelter Program, No. 1557082. CCA has continued to operate the Monitored Child Care portion of the Residential Center under this Temporary Shelter Program certificate.

6. In September 2015, recognizing the possible implications of the *Flores* suit on family residential centers operating in Texas, DFPS promulgated by emergency rulemaking a new regulatory definition for “Family Residential Centers” that would subject facilities like the Residential Center to the comprehensive framework of state regulations for General Residential Operations, codified within Title 40, Chapter 748 of the Texas Administrative Code (the “Emergency Rules”).

7. DFPS carved out the “Family Residential Centers” subset of General Residential Operations because a singular characteristic of these operations is that all children reside in the primary care of their mother, adult family members, and/or larger family unit. While being considered for asylum, it is in the best interests of those children to remain with their family unit. In order to regulate operations like the Residential Center without, from the outset, holding them in violation of those standards that are inconsistent with keeping the family unit together—such as limits on the number of room occupants—DFPS carved out the Family Residential Center subset to excuse such operations from the standards that conflict with DFPS’s legislative mandate to establish standards as necessary to ensure the well-being of children residing in state-licensed facilities. *See* TEX. HUM. RES. CODE § 42.001. Under the new rule, the Residential Center remains subject to the hundreds of DFPS standards within Title 40, Chapter 748 of the Texas Administrative Code.

8. Pursuant to the Emergency Rules, CCA submitted to the Child Care Licensing Division of the DFPS an application for a Residential Child Care License to invoke DFPS oversight of the Residential Center. As part of the application requirements, CCA assembled and submitted all of the requisite Department forms, Performance Work Statements, and personnel background checks and fingerprints. CCA participated in multiple facility inspections with DFPS inspectors and conducted a public hearing in Dilley, Texas to take public comment on the application.

9. In response to the Emergency Rules, on September 30, 2015, Plaintiff Grassroots Leadership, Inc. (“Grassroots”) originally brought this suit against the DFPS to invalidate the Emergency Rules as an alleged improper invocation of the agency’s emergency rulemaking authority. On November 13, 2015, this Court issued an order temporarily enjoining DFPS from implementing the Emergency Rules.

10. As a result of this Court’s November 2015 order, DFPS ceased efforts to consider or process CCA’s application for a Residential Child Care License.

11. In light of this Court’s November 2015 order, DFPS proceeded to conduct traditional rulemaking consistent with the Texas Administrative Procedure Act, Tex. Gov’t Code §§ 2001.001 *et seq.*, as well as DFPS authority. Accordingly, DFPS made available for public review the proposed Family Residential Center rule by publishing the rule proposal in the November 13, 2015 edition of the *Texas Register*. *See* 40 Tex. Reg. 8009. After a thirty-day period of public comment and after conducting a public meeting on the rule, DFPS ultimately adopted the Family Residential Center rule with changes reflective of public comment and DFPS reasoning. DFPS published the final rule along with DFPS’s reasoned justification in the February 26, 2016 edition of the *Texas Register* (the “Family Residential Center Rule”). *See* 41

Tex. Reg. 1493. The Family Residential Center definition is now codified as a subset of General Residential Operations at Title 40, Texas Administrative Code Section 748.7.

12. On March 11, 2016, pursuant to DFPS's adoption of the Family Residential Center Rule, CCA submitted a new application to obtain a Residential Child Care License from DFPS. This included new application fees, additional personnel background checks and fingerprinting, and new application materials required under the new rule. CCA also participated in multiple on-site inspections by DFPS inspectors and conducted a second public hearing in Dilley, Texas to take comment on the application.

13. On May 4, 2016, this Court granted Plaintiffs' application for a Temporary Restraining Order, thereby enjoining DFPS "from implementing 40 Tex. Admin Code § 748.7 to issue any license to the owner or operator of the South Texas Family Residential Center in Dilley, Texas." As a result, CCA's pending application for a Residential Child Care License is now on hold.

14. Plaintiffs have amended their pleadings in this suit to now assert that DFPS lacks the statutory authority to promulgate changes to its own regulatory standards. Plaintiffs seek a temporary and permanent injunction prohibiting any implementation of the Family Residential Center Rule, including issuance of any Residential Child Care License; declaratory judgment that the rule is invalid; costs; and attorneys' fees. CCA has interests in this proceeding such that intervention pursuant to Rule 60 is appropriate.

## **II. CCA'S INTEREST IN THIS ACTION**

15. Any party may intervene by filing a pleading. TEX. R. CIV. P. 60. Under Rule 60, any party may intervene when its "interests will be affected by the litigation." *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 70 (Tex. App.—Fort Worth 2003, no pet.)

16. CCA's interest in the Residential Center, its state license, and its continued operation plainly qualify it for intervention in this lawsuit under Rule 60. If this Court grants Plaintiffs the relief they seek, CCA's ability to operate the Residential Center will, at a minimum, be substantially impaired. Further, the relief Plaintiffs seek would likely prevent CCA from obtaining a Residential Child Care License for the Residential Center, which would threaten the Residential Center's continued operation in its present form. Therefore, CCA has a justiciable interest in this proceeding and would be adversely affected by the relief sought by Plaintiffs. Further, CCA's interest in this proceeding cannot be fully protected by any other party.

17. Further, Plaintiff Grassroots publicly states on its own website that its mission is "to end for-profit incarceration."<sup>1</sup> As CCA is a private, for-profit corrections company, Plaintiffs' petition appears to be part of Grassroots' broader mission to terminate CCA's existence.

18. This Plea is timely as it is filed before judgment is rendered. *See State v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015). Further, this plea in intervention is being filed in the week following Plaintiffs' filing of Plaintiffs' Second Amended Petition.

### **III. PRAYER**

For these reasons, CCA respectfully requests that the Court render judgment that Plaintiffs take nothing in this lawsuit and that the Court grant CCA such other and further relief, both at law and in equity, to which it may be entitled.

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<sup>1</sup> <http://grassrootsleadership.org/mission.html>



