

July 10, 2019

ATTORNEY GENERAL RAOUL FILES AMICUS BRIEF TO DEFEND HUMAN RIGHTS OF IMMIGRANT CHILDREN IN CIVIL DETENTION

Raoul, 19 Attorneys General Fight Inhumane Conditions in Detention Facilities

Chicago — Attorney General Kwame Raoul, as part of a coalition of 20 attorneys general, filed an amicus brief to defend the human rights of children in civil immigration detention in the United States.

In the [brief filed Tuesday](#) with the U.S. District Court for the Central District of California, Raoul and the coalition urge the court to grant immediate relief to remedy the imminent threat to the health and welfare of immigrant children detained by U.S. Customs and Border Protection (CBP). The *Flores* settlement agreement reached in 1997 states that children have the right to safe and sanitary conditions while in detention, as well as prompt release or placement at a state-licensed facility.

Currently, immigrant children are currently being held for weeks in inhumane conditions without access to basic necessities like soap, clean water, toothbrushes, showers, or a place to sleep. The Flores plaintiffs have asked the court for a temporary restraining order to directly address these conditions. The brief filed by Raoul and the coalition strongly supports that motion.

“As a father, as the son of immigrants, and as Attorney General, I am absolutely appalled at the inhumane conditions in which our federal government is housing children. These children were brought to the United States for better, safer lives – instead they will be forever traumatized by the cruelty they experienced on U.S. soil,” Raoul said. “Every American should be outraged by our government’s treatment of migrant children at the border, and I am proud to stand with my counterparts to fight for their health and welfare.”

For more than two decades, the Flores settlement has required the federal government to meet minimum safety and sanitary standards in the facilities in which immigrant children are confined. Children must be provided with access to toilets and sinks, drinking water and food, medical assistance, and adequate supervision. However, CBP is failing to comply with its obligations under the court-monitored agreement by denying children access to safe and sanitary conditions, clean drinking water, and medication. Earlier this week, Michelle Bachelet, the United Nations High Commissioner for Human Rights, expressed shock over reports of children being forced to sleep on the floor and being denied basic necessities in overcrowded facilities with poor sanitary conditions.

In addition to depriving children of adequate health care and sanitary conditions, CBP dangerously and irresponsibly tasks children in custody with the care of toddlers and infants who are also in detention. The coalition argues that such treatment inflicts irreparable harm on children under CBP custody, where hospitalizations continue to occur. Raoul and the coalition also argue that the federal government’s blatant disregard of its obligations under the Flores settlement agreement conflicts with federal statutory requirements that immigration authorities consider “the best interest of the child” when taking action with respect to unaccompanied migrant children.

Joining Raoul in submitting the brief are the attorneys general of California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia.

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
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14 JENNY LISETTE FLORES, et al.,
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16 Plaintiffs,
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18 v.
19 WILLIAM P. BARR, Attorney General
of the United States, et al.,
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21 Defendants.
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Case No. 2:85-cv-4544-DMG
[PROPOSED] BRIEF OF THE STATES OF CALIFORNIA, MASSACHUSETTS, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, HAWAII, ILLINOIS, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

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INTRODUCTION

Amici curiae the States of California, Massachusetts, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington (Amici States) respectfully submit this proposed brief in support of Plaintiffs’ Application for a Temporary Restraining Order (TRO Application). The TRO Application and countless media reports detail the deplorable and inhumane conditions in which the federal government is currently holding vulnerable immigrant children who are in Customs and Border Protection (CBP) custody in the El Paso and Rio Grande Valley Border Patrol Sectors at, or near, the border. Children are being held in extremely cold facilities, denied access to basic needs such as adequate and sufficient food, drinking water, emergency medical care, soap, showers, toothbrushes and clean clothing, deprived of sleep, and tasked to care for other very young children. The Court’s immediate intervention is necessary to prevent further harm to these children by compelling the federal government to comply with its legal obligations to hold children in safe and sanitary conditions.

For more than two decades, the federal government has been required to meet minimum standards for the facilities in which immigrant children may be confined. These minimum standards, established in the *Flores* Settlement Agreement, require, among other things, that the federal government place children in border facilities that are safe and sanitary and make every effort to release children or otherwise promptly transfer children to state-licensed facilities.

The federal government must be immediately compelled to comply with its legal obligations to immigrant children under the *Flores* Settlement Agreement and principles of substantive due process. The harm caused to these children will have long-lasting effects well beyond the time of their release from CBP facilities.

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STATEMENT OF INTEREST

Amici States have a substantial interest in protecting immigrant children who reside or will come to reside within our borders and ensuring that they are treated humanely and in accordance with the principles embodied in the *Flores* Settlement Agreement and the U.S. Constitution. Every year, thousands of immigrant children are released from immigration detention and reunified with family members or other adult sponsors who are residents of the Amici States.¹ These children become members of our communities, attend our schools, and, in some cases, grow into adults raising their own families in Amici States.

For decades, the *Flores* Settlement Agreement has set minimum standards for the facilities in which immigrant children may be confined, including requirements that these children be placed in safe and sanitary facilities while in CBP custody. The federal government is clearly failing to meet its legal obligations and in doing so is causing long-lasting physical and mental harm to vulnerable children, which will in turn make it more difficult for the Amici States to provide for the health, education, and well-being of children who come to reside in our communities.

Therefore, Amici States vigorously object to the federal government’s despicable and inhumane treatment of immigrant children at border holding facilities. For the following reasons, Amici States urge the Court to grant Plaintiffs’ application for a temporary restraining order.

¹ For example, the Office of Refugee Resettlement (ORR) released 4,655 children to family members and other sponsors in California in Fiscal Year 2018. See U.S. Dep’t of Health & Human Services, Office of Refugee Resettlement, *Unaccompanied Alien Children Released to Sponsors by State* (last visited July 9, 2019), <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>.

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ARGUMENT

I. THE FEDERAL GOVERNMENT’S ACTIONS VIOLATE THE FLORES SETTLEMENT AGREEMENT BY RE-ESTABLISHING THE INTOLERABLE PRE-FLORES CONDITIONS.

A. The Flores Settlement Agreement’s Requirements Are Designed to Ensure Humane Treatment of Children in Immigration Custody.

The *Flores* Settlement Agreement (Settlement Agreement) is the guiding document applicable to all immigrant children in federal government custody. In accordance with its “general policy favoring release,” the Settlement Agreement requires that detained children be placed “in the least restrictive setting appropriate to the minor’s age and special needs” and be released “without unnecessary delay” to a parent, guardian, adult relative, adult designated by the parent, a licensed program, or another adult deemed appropriate, so long as continued detention is not necessary to secure the child’s timely appearance at their immigration hearing or to ensure the child’s safety or the safety of others. Settlement Agreement at ¶¶ 11, 14. Children who cannot be immediately released to a family member or other sponsor must be placed in non-secure, state-licensed facilities. *Id.* at ¶¶ 6, 12, 19.

To ensure that the federal government treats all children in its custody with “dignity, respect and special concern for their particular vulnerability as minors,” the Settlement Agreement sets forth minimum standards for the detention, release, and treatment of children in federal custody, including children being held temporarily in CBP facilities. Among other requirements, the Settlement Agreement requires that CBP facilities holding children must be “safe and sanitary” and “consistent with the [federal government’s] concern for the particular vulnerability of minors.” *Id.* at ¶12. Facilities must provide children access to toilets and sinks, drinking water and food, medical assistance if the child is in need of emergency services, adequate temperature control and ventilation, adequate supervision, and contact with family members who were detained with the child. *Id.* Unaccompanied children must be held separately from unrelated adults, unless

1 segregation is not immediately possible, but under no circumstances may these
2 children be detained for more than 24 hours with an unrelated adult. *Id.*

3 The Settlement Agreement's core purpose is to ensure that all children in
4 federal custody are treated with dignity and respect and housed in safe and sanitary
5 facilities. In fact, the minimum standards set forth in the Settlement Agreement,
6 which the federal government expressly agreed to, were a direct response to the
7 federal government's previous systemic failure to provide safe and appropriate
8 facilities and services for children in its care. Prior to the approval of the
9 Settlement Agreement, immigrant children held in federal custody were subjected
10 to deplorable conditions of confinement. Children were placed in detention centers
11 with barbed-wire fences; deprived of education, recreation, and visitation; subjected
12 to arbitrary strip searches; and comingled with unrelated adults. *Reno v. Flores*,
13 507 U.S. 292, 327-328 (1993) (Stevens, J., dissenting). The federal government's
14 continued failure to hold children in facilities that are safe and sanitary thus violates
15 the Settlement Agreement by once again depriving children in federal custody of
16 basic necessities and reverting back to systematic conditions similar to, or arguably
17 worse than, those that gave rise to the *Flores* litigation.

18 **B. CBP is Holding Children in Terrible Conditions in Violation of**
19 **the *Flores* Settlement Agreement.**

20 The dire and cruel conditions in the CBP facilities in the El Paso and Rio
21 Grande Valley Border Patrol Sectors are a clear violation of the federal
22 government's legal obligations under the Settlement Agreement. The TRO
23 Application and numerous news reports have described the inhumane and unsafe
24 conditions under which the federal government is holding immigrant children in
25 CBP custody. According to these reports, attorneys who recently visited the CBP
26 facility in Clint, Texas, in the El Paso sector, found at least 250 infants, children
27 and teens being held at the facility, some for nearly a month.² Some of the children

28 ² Cedar Attanasio et al., *Lawyers: 250 children held in bad conditions at*

1 had not showered or bathed or been given a clean change of clothes since arriving
2 at the facility, and they had inadequate access to soap and toothbrushes.³ Children
3 were filthy and wearing clothes covered in bodily fluids, including urine.⁴ They
4 were being given insufficient food, and were forced to sleep on cold concrete
5 floors.⁵ At least 15 children at the facility had the flu, and 10 more were being held
6 in medical quarantine.⁶ Children as young as seven or eight years old were being
7 asked to care for toddlers they just met.⁷ And some children who arrived with a
8 parent or non-parent relative have been separated from their adult caregiver. TRO
9 Application, ECF No. 569-2, Ex. 3 at ¶ 3.⁸ Similar conditions have been found at
10 other CBP facilities in the El Paso and Rio Grande Valley Border Patrol Sectors.⁹

11 *Texas border*, AP News (June 20, 2019),
12 <https://www.apnews.com/a074f375e643408cb9b8d1a5fc5acf6a>.

13 ³ Lizzie O’Leary, ‘*Children Were Dirty, They Were Scared, and They Were*
14 *Hungry*’, The Atlantic (June 25, 2019),
15 <https://www.theatlantic.com/family/archive/2019/06/child-detention-centers-immigration-attorney-interview/592540/>; Isaac Chotiner, *Inside a Texas Building Where The Government Is Holding Immigrant Children*, The New Yorker (June 22, 2019), <https://www.newyorker.com/news/q-and-a/inside-a-texas-building-where-the-government-is-holding-immigrant-children>.

16 ⁴ Lizzie O’Leary, ‘*Children Were Dirty, They Were Scared, and They Were*
17 *Hungry*’, *supra* note 3.

18 ⁵ Isaac Chotiner, *Inside a Texas Building Where The Government Is Holding Immigrant Children*, *supra* note 3.

19 ⁶ Cedar Attanasio et al., *Attorneys: Texas border facility is neglecting migrant kids*, AP News (June 21, 2019),
20 <https://www.apnews.com/46da2dbe04f54adbb875cfbc06bbc615>.

21 ⁷ Lizzie O’Leary, ‘*Children Were Dirty, They Were Scared, and They Were*
Hungry’, *supra* note 3.

22 ⁸ Cedar Attanasio et al., *supra* note 6.

23 ⁹ A physician who was granted access to the Ursula facility in McAllen,
24 Texas, the largest CBP detention center in the country, found similarly disturbing
25 conditions at the facility, including “extreme cold temperatures, lights on 24 hours a
26 day, no adequate access to medical care, basic sanitation, water, or adequate food.”
27 Teen mothers in custody were not able to wash their children’s bottles, and children
28 older than 6 months were not provided age-appropriate food. A flu outbreak at the
facility led to five infants being hospitalized. Serena Marshal, et al., *Doctor compares conditions for unaccompanied children at immigrant holding centers to ‘torture facilities’*, ABC News (June 23, 2019),
<https://abcnews.go.com/Politics/doctor-compares-conditions-immigrant-holding-centers-torture-facilities/story?id=63879031>.

1 In fact, a report by the Office of the Inspector General for the Department of
2 Homeland Security (DHS) published on July 2, 2019, urged DHS “to take
3 *immediate steps* to alleviate dangerous overcrowding and prolonged detention of
4 children and adults in the Rio Grande Valley.”¹⁰ The report specifically found that
5 32% of children in this sector had been held for longer than the 72 hours allowed by
6 the Settlement Agreement, that many children had not been provided access to
7 showers, clean clothes, or hot meals, and that some children were being held in
8 closed cells.¹¹

9 This Court has already twice found that conditions such as those at the CBP
10 facilities in the El Paso and Rio Grande Valley Border Patrol Sectors violate the
11 Settlement Agreement’s “safe and sanitary” standard. The Court’s July 24, 2015
12 order held that “the widespread and deplorable conditions” in CBP facilities—
13 including extremely cold holding cells with only mylar blankets for warmth,
14 overcrowded holding rooms with 100 or more unrelated adults and children who
15 were forced to sleep standing up or not at all, and inadequate nutrition and
16 hygiene—were a material breach of the Settlement Agreement’s requirement that
17 the federal government provide “safe and sanitary” holding cells for children while
18 they are in temporary custody. *In Chambers – Order re Pls.’ Mot. to Enforce*
19 *Settlement of Class Action and Defs.’ Mot. to Amend Settlement Agreement*, No.
20 2:85-cv-4544-DMG-AGR (C.D. Cal. July 24, 2015), ECF No. 177. On June 27,
21 2017, the Court again found that the unsafe and unsanitary conditions at CBP
22 facilities in the Rio Grande Valley Border Patrol Sector—cold temperatures;
23 inadequate food, sleeping conditions, and hygiene products (no soap, no change of
24 clothes, no pillows or blankets, and no toothbrushes); and a lack of access to clean
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26 ¹⁰ U.S. Dep’t of Homeland Security, Office of the Inspector General,
27 *Management Alert – DHS Needs to Address Dangerous Overcrowding and*
Prolonged Detention of Children and Adults in the Rio Grande Valley, OIG-19-51,
at 1 (July 2, 2019) (emphasis added).

28 ¹¹ *Id.* at 3, 6.

1 drinking water—were a violation of the Settlement Agreement. *In Chambers –*
2 *Order re Pls.’ Mot. To Enforce and Appoint a Special Monitor*, No. 2:85-cv-4544-
3 DMG-AGR (C.D. Cal. June 27, 2017), ECF No. 363. The Court specifically found
4 that hygiene products such as soap, towels, showers, dry clothing, and toothbrushes
5 fell within the rubric of the Settlement Agreement’s safe and sanitary standard. *Id.*
6 at 13. Yet, despite the Court’s *repeated* findings that these conditions are unsafe
7 and unsanitary in violation of the Settlement Agreement, the federal government
8 continues to hold vulnerable children under these same inhumane conditions in
9 complete disregard for the children’s health, safety, and well-being.

10 **II. THE FEDERAL GOVERNMENT’S CONTRAVENTION OF THE**
11 ***FLORES* SETTLEMENT AGREEMENT IMPLICATES**
12 **FUNDAMENTAL DUE PROCESS CONCERNS.**

13 Enforcement of the Settlement Agreement in this instance is all the more
14 critical because of the vital constitutional interests at stake. The basic safeguards
15 that this Court put into place to protect the well-being of children in federal custody
16 also protect these children’s fundamental liberty interests, as enshrined in the Fifth
17 Amendment’s Due Process Clause. “[W]hen the State . . . so restrains an
18 individual’s liberty that it renders him unable to care for himself, and at the same
19 time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter,
20 medical care, and reasonable safety—it [violates] . . . the Due Process Clause.”
21 *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989). This
22 is as true for children as it is for adults. *See, e.g., In re Gault*, 387 U.S. 1, 13 (1967)
23 (“[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone.”);
24 *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954) (finding deprivation of a Fifth
25 Amendment liberty interest when children were segregated in Washington, D.C.
26 schools). By enforcing the Settlement Agreement in this instance, the Court would
27 also protect the constitutional rights of vulnerable migrant children whose health,
28 safety, and well-being are being actively and acutely compromised by the federal
government’s practices and policies.

1 Plaintiffs have carefully documented that children are being detained by the
2 federal government in deplorable conditions that are comparable to “torture
3 facilities.” TRO Application at 3, 4-14, 17. In such circumstances, fundamental
4 due process concerns are paramount. In the context of adults in a CBP detention
5 center, an Arizona district court recently addressed the constitutionality of similarly
6 unsafe and unsanitary conditions, including “deprivation of sleep, of hygienic and
7 sanitary conditions, of adequate medical screening and care, of adequate food and
8 water, and of warmth.” *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-
9 DCB, 2016 WL 8188563, at *1 (D. Ariz. Nov. 18, 2016), *aff’d sub nom. Doe v.*
10 *Kelly*, 878 F.3d 710 (9th Cir. 2017). Recognizing that such conditions likely
11 violated due process requirements, the court issued a preliminary injunction that
12 required CBP to ensure availability of hygienic items and bedding materials,
13 provide adequate medical care, and monitor the facility’s temperature and
14 cleanliness. *See id.* at *15-16. The TRO Application presents an almost identical
15 list of deprivations. The only difference is that the affected class consists of
16 vulnerable and defenseless children, which renders the deprivations even more
17 shocking and inhumane.

18 Notably, the deprivations at issue here would likely not pass constitutional
19 muster even if they were applied to adults convicted of crimes. Under the Eighth
20 Amendment, “[prisons] must provide humane conditions of
21 confinement[, including] . . . adequate food, clothing, shelter, and medical care . . .
22 .” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).¹² The inadequate hygienic
23 supplies, medicine, sanitation, water, food, temperatures, sleeping conditions, and
24

25 ¹² The Due Process Clause provides protections “at least as great” as those
26 the Eighth Amendment guarantees to convicted prisoners. *City of Revere v. Mass.*
27 *Gen. Hosp.*, 463 U.S. 239, 244 (1983); *see also Youngberg v. Romeo*, 457 U.S. 307,
28 315-16 (1982) (“If it is cruel and unusual punishment to hold convicted criminals in
unsafe conditions, it must be unconstitutional [under the Due Process Clause] to
confine the involuntarily committed—who may not be punished at all—in unsafe
conditions.”).

1 medical care documented by Plaintiffs would raise serious constitutional questions
2 under that standard. *See, e.g., Foster v. Runnels*, 554 F.3d 807, 812-15 (9th Cir.
3 2009) (inadequate food violates Eighth Amendment); *Hoptowitz v. Spellman*, 753
4 F.2d 779, 783-84 (9th Cir. 1985) (inadequate plumbing and cleaning supplies both
5 produce unhygienic conditions that violate Eighth Amendment); *Martino v. Carey*,
6 563 F. Supp. 984, 999-1002 (D. Or. 1983) (overcrowding and inadequate clothing,
7 sanitation, and heating violate Eighth Amendment). In other words, the federal
8 government is civilly detaining innocent children in conditions like those that
9 courts have declared unconstitutionally cruel and unusual for adults imprisoned for
10 committing crimes. Swift and strict enforcement of the Settlement Agreement is
11 necessary to address this constitutionally repugnant situation.

12 Additional constitutional concerns are raised by the forcible separation of
13 children from their parents or relative caretakers and the indefinite detention of
14 these children apart from these caretakers. The integrity of the family unit is
15 protected by fundamental due process principles. *Stanley v. Illinois*, 405 U.S. 645,
16 651 (1972). Indeed, “the right of family members to live together[] is part of the
17 fundamental right of privacy.” *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1311 (9th
18 Cir. 1982). Familial liberty interests may extend beyond parent-child relationships
19 to non-parent relatives, especially when such relatives take on a primary caretaking
20 role. *See Moore v. City of East Cleveland*, 431 U.S. 494, 505 (1977) (“Decisions
21 concerning childrearing, which . . . other cases have recognized as entitled to
22 constitutional protection, long have been shared by grandparents or other relatives
23 who occupy the same household—indeed who may take on major responsibility for
24 the rearing of the children.”). Thus, the practice of forcibly separating children
25 from their parents or relative caretakers in civil detention facilities without any
26 finding of parental unfitness or danger to a child likely violates due process
27 principles. *Ms. L. v. ICE*, 302 F. Supp. 3d 1149, 1167 (S.D. Cal. 2018).

28 In a substantive due process claim challenging executive action, “the

1 threshold question is whether the behavior of the governmental officer is so
2 egregious, so outrageous, that it may fairly be said to shock the contemporary
3 conscience.” *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998). It is
4 difficult to imagine a circumstance more shocking to the contemporary conscience
5 than children as young as infants being needlessly deprived of warmth, basic
6 hygiene, medical attention, food, sleep, and the comfort of their loved ones.
7 Indeed, the public outcry over the conditions faced by migrant children in recent
8 weeks demonstrates widespread alarm and dismay—across the political spectrum
9 and from all walks of life—at the *Flores* violations documented by Plaintiffs here.¹³
10 Enforcement to remedy these circumstances is necessary to bring these facilities
11 into compliance with not only the Settlement Agreement, but also basic principles
12 of due process and human decency.

13 **III. IMMEDIATE INJUNCTIVE RELIEF IS NECESSARY TO**
14 **PREVENT FURTHER HARM TO CHILDREN.**

15 **A. The Federal Government’s Actions are Causing Long-Term**
16 **Harm to Vulnerable Children.**

17 Experts have repeatedly warned the federal government that “[c]onditions in
18 U.S. detention facilities,” like those described in the TRO Application, “which
19 include forcing children to sleep on cement floors, open toilets, constant light
20 exposure, insufficient food and water, no bathing facilities, and extremely cold

21
22 ¹³ Media reports clearly attest to this public outcry. *See, e.g., Cedar*
23 *Attanasio et al, Lawmakers Decry Perilous Federal Lockups for Migrant Kids*, AP
24 *News* (June 21, 2019),
25 <https://www.apnews.com/7a411d9df0c1453e966287e6fe727616>; Editorial,
26 *America Should Be Horrified by This*, *Wash. Post* (June 24, 2019),
27 https://www.washingtonpost.com/opinions/america-should-be-horrified-at-this/2019/06/24/489e1866-96be-11e9-830a-21b9b36b64ad_story.html?noredirect=on&utm_term=.3ee7d7d59777; Editorial,
28 *Border Policy Is Debatable. Soap for Migrant Children Shouldn’t Be*, *Hous. Chron.*
(June 25, 2019),
<https://www.houstonchronicle.com/opinion/editorials/article/Border-policy-is-debatable-Soap-for-migrant-14049027.php>.

1 temperatures, are traumatizing for children.”¹⁴ In fact, the pediatrician who
2 evaluated 39 children at CBP facilities reported that children she examined
3 “showed symptoms of trauma.” TRO Application, ECF No. 569-2, Ex. 13 at ¶ 13.

4 Due to the harm caused to children held in these facilities, the American
5 Academy of Pediatrics issued a Policy Statement on the Detention of Immigrant
6 Children, which states “that detention or the separation of families for purposes of
7 immigration enforcement or management are *never* in the best interest of
8 children.”¹⁵ Detention puts children “at risk of exploitation and abuse, denies them
9 access to meaningful health care, and harms their ability to play and learn.
10 Detained children experience acute mental trauma that will have long-term health
11 consequences.”¹⁶ Furthermore, the TRO Application evidences how the federal
12 government’s improper separation of children from family members is causing
13 additional harm. TRO Application at 12, ECF. No. 569-2, Ex. 2 at ¶¶ 3-4; Ex. 3 at
14 ¶¶ 3, 5-6; Ex. 8 at ¶ 5; Ex. 9 at ¶ 6. ““Children are at risk of suffering great
15 emotional harm when they are removed from their loved ones.”” *Ms. L. v. ICE*, 310
16 F. Supp. 3d 1133, 1147 (S.D. Cal. 2018) (citing expert evidence).

17 The harm caused by the deplorable and inhumane conditions at CBP
18 facilities and lack of adequate medical care is evidenced by the multiple child
19 deaths in CBP custody since December 2018. In December 2018, a 7-year-old girl
20 and an 8-year-old boy, both from Guatemala, died in CBP custody in the El Paso
21 Sector.¹⁷ In May 2019, a 16-year-old Guatemalan child died while in CBP custody

22 ¹⁴ Colleen Kraft, *American Association of Pediatrics Statement Opposing the*
23 *Border Security and Immigration Reform Act*, Am. Ass’n. of Pediatrics (June 15,
24 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPStatementOpposingBorderSecurityandImmigrationReformAct.aspx>.

25 ¹⁵ Linton, et al., Council on Community Pediatrics, *Detention of Immigrant*
26 *Children*, 139 Am. Acad. of Pediatrics 1, 6 (2017) (emphasis added),
<https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf>.

27 ¹⁶ Marion Hart, *Why Detaining Children is Harmful*, Unicef USA (June 21,
2018), <https://www.unicefusa.org/stories/why-detaining-children-harmful/34488>.

28 ¹⁷ Chris Boyette, et al., *Guatemalan boy died of flu and a bacterial infection*

1 in the Rio Grande Valley Sector.¹⁸ The federal government’s failings must be
2 immediately addressed to prevent further harm.

3 To prevent irreversible harms to children, the federal government is required
4 to release children from custody “without unnecessary delay” and, for children who
5 cannot be immediately released to a family member or other sponsor, to place them
6 in non-secure, state-licensed facilities. Settlement Agreement at ¶¶ 6, 19. The
7 requirement that children be placed in state-licensed facilities ensures that these
8 children will be housed in humane conditions because the states monitor and
9 regulate these facilities. California and other Amici States currently license and
10 oversee children’s residential placement facilities that contract with the federal
11 government to house immigrant children. State laws require these facilities to
12 provide safe and sanitary conditions to children. For example, in California
13 residential placements for children must provide “a safe, healthy, and comfortable
14 home where he or she is treated with respect.” Cal. Welf. & Inst. Code
15 § 16001.9(a)(1). Children in these facilities “shall [...] receive adequate and
16 healthy food, adequate clothing,” “medical, dental, vision, and mental health
17 services,” plus “[t]oiletries and personal hygiene products,” among many other
18 required services. Cal. Welf. & Inst. Code § 16001.9(a)(3)-(4); Cal. Code Regs. tit.
19 22, § 84072(d)(6).

20 The protections afforded to children by the Settlement Agreement and due
21 process principles are designed to protect children from the very harms that the
22 federal government is causing. Unless immediately stopped, the federal

23 *while in US custody, autopsy shows*, CNN (Apr. 2, 2019),
24 [https://www.cnn.com/2019/04/02/us/guatemala-felipe-gomez-alonzo-](https://www.cnn.com/2019/04/02/us/guatemala-felipe-gomez-alonzo-autopsy/index.html)
25 *autopsy/index.html*; Amir Vera, *Autopsy determines 7-year-old Guatemalan girl*
26 *died from sepsis while in US custody*, CNN (Mar. 30, 2019),
27 [https://www.cnn.com/2019/03/29/us/guatemala-jakelin-caal-maquin-](https://www.cnn.com/2019/03/29/us/guatemala-jakelin-caal-maquin-autopsy/index.html)
28 *autopsy/index.html*. CBP Sectors are found at: [https://www.cbp.gov/border-](https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors)
security/along-us-borders/border-patrol-sectors.

27 ¹⁸ Nomaan Merchant, *5th migrant child dies after detention by US border*
28 *agents*, Associated Press (May 20, 2019),
<https://www.apnews.com/5a49d65213b54043825acc282830b139>.

1 government will continue causing long-lasting harm to children held in CBP
2 facilities.

3 **B. Amici States Must Address the Harm these Children Experience**
4 **in Federal Custody Upon Their Release to our Communities.**

5 Every year, thousands of immigrant children are welcomed into Amici States
6 upon their release from federal immigration custody. Amici States have a strong
7 interest in the well-being of immigrant children held in immigration custody,
8 including CBP facilities, because many of them will eventually join our
9 communities. For example, from October 2018 through May 2019, over 51
10 percent of all unaccompanied immigrant children, or 23,874 children, released from
11 federal immigration custody were released to adult sponsors residing in Amici
12 States.¹⁹

13 Amici States provide education and an array of services, including medical
14 and mental health care services, to foster the development and safeguard the well-
15 being of these vulnerable children and their families as they integrate themselves
16 into their new communities. The long-term physical and mental health harms
17 caused by the federal government's actions, as detailed in the TRO Application,
18 will require more extensive services to the children and their families, requiring
19 Amici States to expend additional funds and redirect resources from other critically
20 needed services. Children who have suffered these harms will also require
21 additional supports and services in state-funded school systems. Amici States
22 request the Court's intervention to limit the damage being done by the federal
23 government to children currently in CBP facilities and, going forward, to prevent
24 these kinds of long-lasting harms to children and their families from occurring in
25 the first instance.

26 _____
27 ¹⁹ See U.S. Dep't of Health & Human Services, Office of Refugee
28 Resettlement, *Unaccompanied Alien Children Released to Sponsors by State* (last
visited July 9, 2019), <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>.

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CONCLUSION

For the foregoing reasons, Plaintiffs’ *ex parte* application for temporary restraining order should be granted.

Dated: July 9, 2019

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