

# EXHIBIT C

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Jenny Lisette Flores, <i>et al.</i> ,	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	2:85-cv-04544-DMG-AGR
	)	
William P. Barr, <i>et al.</i> ,	)	
<u><i>Defendants.</i></u>	)	

**DECLARATION OF RAUL L. ORTIZ**

I, Raul L. Ortiz, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records, and reasonably relied upon in the course of my employment, hereby declare as follows relating to the above-captioned matter.

1. I am currently the Deputy Chief, U.S. Border Patrol (USBP), U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have been in this position since March 2, 2020. In this role, I am responsible for executing the mission of the U.S. Border Patrol to protect the border between ports of entry, which includes patrolling the approximately 6,000 miles of Mexican and Canadian international land borders and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico. I oversee more than 20,000 Border Patrol Agents and other employees across the country.
2. I have been a Border Patrol agent since May 13, 1991, when I entered into service in San Diego Sector. I have held various leadership positions in the Del Rio Sector, such as Assistant Patrol Agent in Charge, Patrol Agent in Charge and Assistant Chief Patrol Agent. From 2009 to 2012, I served as the Director of Border Management Task Force, Senior Advisor to DHS' envoy to Afghanistan and Pakistan, and as the DHS Attaché in Kabul. In 2012, I was promoted to Deputy Chief, Law Enforcement

Operational Programs in Border Patrol Headquarters. In 2013, I became the Deputy Chief Patrol Agent of Border Patrol's Rio Grande Valley Sector. In 2019, I became Chief Patrol Agent of the Del Rio Sector.

3. I understand the court recently issued an order requiring DHS to discontinue its practice of holding those alien minors processed under 42 U.S.C. § 265 (Title 42) in hotels pending their return to their home country, absent extraordinary circumstances. I make this declaration to explain the likely operational impact of that order on USBP.
4. On March 20, 2020, the U.S. Centers for Disease Control and Prevention (CDC) issued an Order that temporarily suspended the introduction of certain persons traveling from Canada and Mexico, based on its finding that the introduction of such persons posed a serious danger of further introduction of COVID-19 into the United States. In accordance with this Order, subject to certain exceptions, aliens who travel from Canada or Mexico and who would otherwise be introduced into a congregate setting in USBP facilities at or near the United States borders with Canada and Mexico for processing are instead expeditiously expelled from the United States, unless an USBP agent, with supervisory approval, determines that it is appropriate to except an individual from the Title 42 process. USBP works to immediately return those individuals processed under Title 42 to their country of last transit whenever possible. In the event a person cannot be returned to the country of last transit, CBP works with U.S. Immigration and Customs Enforcement (ICE) and other partners to expel the individual to his or her country of origin as expeditiously as possible.
5. The purpose of the CDC Order is to prevent the introduction of COVID-19 into the United States. Therefore, USBP's goal is to process and expel those individuals subject to the Order as quickly as possible, and to limit the time that individuals spend

in USBP facilities pending their expulsion. This is particularly important given the nature of USBP's facilities, which are generally designed for short-term holding, and are not equipped for social distancing or quarantining a large number of people. There is often not sufficient space, for instance, to maintain six feet of distance between individuals, and USBP is not equipped to be able to isolate or quarantine large numbers of individuals. Therefore, a single case of COVID-19 in a facility will reduce the capacity of that facility, as it will be necessary to take steps to decontaminate the entire facility. Additionally, while USBP works to ensure that all individuals in its custody receive appropriate medical care, USBP facilities are not equipped to provide long-term or critical care, as may be required for individuals infected with COVID-19.

6. Between March 20 and September 9, 2020, USBP has expelled more than 159,000 individuals along the southwest border under Title 42. Of these, approximately 8,800 were single minors (e.g., minors apprehended without any accompanying adult family member) and approximately 7,600 were members of family units or family groups. While USBP was able to immediately expel almost 7,000 families and more than 6,500 single minors to Mexico, USBP transferred more than 600 family units/family groups and more than 2,200 single minors to ICE custody to be repatriated directly to their home countries. I understand that ICE often held family units, family groups, and single minors in hotels pending available return flights to their home country, in order to limit the spread of COVID-19 in ICE family residential centers and Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) shelters.
7. I understand that the court's order prohibits ICE from holding any minor processed

under the CDC Order in hotels pending their return. I understand that, under the order, if a minor is not able to be expelled to Mexico or expelled to their country of origin within a few days, that the minor must be transferred to a “licensed facility” pending their expulsion consistent with normal *Flores* requirements. It is my understanding that, for those single minors who are not able to be expelled within a few days, they must be transferred to the custody of HHS ORR. It is my understanding that, for those minors who are part of family units and family groups who are not able to be expelled to Mexico or expelled to their country of origin within a few days, this will require ICE to hold these individuals in its family residential centers.

8. This order is likely to cause three significant problems. First, the order is likely to lead to crowding and an increased risk of COVID-19 exposure in USBP facilities, both for individuals in CBP custody and USBP agents. Second, the order is likely to cause an increased risk of COVID-19 exposure in HHS and ICE facilities. Third, the order is likely to strain an already overburdened system.
9. First, and based on historical practice, while USBP may be able to expel some population of single minors immediately to Mexico or their home countries within a few days of their apprehension, USBP must transfer those minors who cannot be returned in this manner to ICE or HHS custody. Specifically, USBP anticipates that it may need to refer approximately 60-140 additional single minors to HHS per week as a result of the order. Without the ability to hold those minors in hotels pending return, ICE and HHS must hold those minors in their facilities. I understand that both ICE and HHS have implemented significant public health measures in their facilities in response to COVID-19 including, for instance, steps to ensure appropriate social

distancing and quarantine, when appropriate. Such steps, by their very nature, limit the number of people that can be housed in any particular facility. Therefore, there are fewer available beds at both ICE and HHS facilities, which limits the number of individuals that ICE and HHS are able to accept from USBP. Thus, ICE and HHS are likely to be limited in their ability to accept even a small increase in the number of minors transferred to their custody.

10. Such a decrease in both ICE and HHS capacity will lead to an increased risk of COVID-19 in USBP facilities, as increased numbers of minors are likely to spend longer time in USBP facilities. As described above, USBP facilities are not designed nor equipped for social distancing or quarantining large numbers of people. USBP facilities generally have holding cells or pods, where individuals remain in relatively close proximity to each other pending processing and transfer to another facility. If there are more than a few people in a particular holding cell or pod, it is not possible to remain more than six feet apart. While it is possible to isolate an individual in a particular hold room, all other individuals in custody then have comparatively less space. For instance, if a facility has five hold rooms and 40 individuals in custody, isolating one person means that the other 39 individuals must be held in the remaining four hold rooms. If two individuals require isolation, this further limits the space available to the remaining 38 individuals. Additionally, USBP facilities do not, in general, have isolation rooms with negative pressure, separate HVAC systems, or other measures that may be required to contain the spread of COVID-19. Therefore, an increased number of individuals in custody, in a finite amount of space, dramatically increases the risk that individual in custody will become infected with COVID-19.

11. Additionally, while some USBP facilities have medical providers on-site, the medical providers generally provide treatment for acute conditions, and do not provide long-term or critical care such that would likely be required for individuals infected with COVID-19. Therefore, USBP relies heavily on the local medical system, and USBP must transport individuals in custody who become infected with COVID-19 to local hospitals. Therefore, an increased number of infections in USBP custody also increases the risk of exposure in local communities, placing a further strain on their local healthcare systems. It is important to note that many USBP facilities on the southern border are in areas, such as the Rio Grande Valley in Texas and Tucson, Arizona, already facing a high number of COVID-19 cases in their local population.
12. Lastly, the increase in exposure to COVID-19 in USBP facilities will significantly increase the risk that USBP agents will be exposed and will become infected. USBP – and CBP more broadly – has already seen a significant number of its employees impacted by COVID-19. As of September 7, 2020, 2,018 CBP employees had tested positive for COVID-19, a 12% increase compared to the 1,806 who tested positive on August 7, 2020. Also as of September 7, 2020, 12 employees and one CBP contractor have died from COVID-19. Additionally, when USBP employees test positive or are exposed, they must self-quarantine for 14 days until they recover and are no longer contagious. USBP has a finite number of agents who can take over for those agents, which severely impacts USBP’s ability to perform its mission. For instance, in the Laredo Sector, which saw a significant number of its personnel test positive for COVID-19 over the summer, Border Patrol has had to increase the number of shifts that agents must work at its checkpoints, reassign personnel to those checkpoints, and suspend certain law enforcement trainings. These strains on USBP’s personnel and

corresponding resource reassignments put the safety and security of the border at risk.


13. Additionally, it is likely that, as the number of minors that both ICE and HHS are required to hold in their facilities increases due to a prohibition on the use of hotels, the number of COVID-19 infections in these facilities are likely to increase. This increased exposure places the health and safety of those in custody at risk, as well as ICE and HHS personnel. Such exposure is likely to require ICE and HHS to take additional measures to limit the spread of COVID-19 in their facilities, which will further limit the number of available beds and may also lead to further restrictions on the ability to accept individuals from USBP.
14. Even putting aside concerns about the public health implications of the order, the requirements of the order will strain the capacity of an already-burdened system. Even without a pandemic, ICE and HHS have facility restrictions, often based on gender, demographics, and particular medical needs that often limit or impact who USBP can transfer to ICE and HHS custody. For instance, HHS has limited facilities that can accept unaccompanied alien children with particular medical needs. The further restrictions required by COVID-19 already placing a further strain on the capacity of the system. Thus, while USBP has excepted from the CDC Order and processed for immigration proceedings under Title 8 more than 1,600 family units and 1,500 unaccompanied alien children, there is already limited HHS and ICE capacity to hold these individuals.
15. The restrictions required by the order will further strain this capacity, as it will require both HHS and ICE to hold those minors and families that were previously held in hotels in their facilities. As outlined above, this increased population is likely to further exacerbate the risks of COVID-19 infection in those facilities, which will



further limit the ability of HHS and ICE to accept custody of minors and families.

16. Even in the absence of a pandemic, capacity constraints at ICE and HHS mean that individuals will remain in USBP custody for longer periods of time, and make it more likely that USBP facilities become overcrowded. Such conditions pose a health and safety risk to individuals in USBP custody and to Border Patrol agents even in the absence of a pandemic. For instance, in order to ensure that USBP provides safe conditions for all individuals, particularly minors, USBP generally takes steps to ensure that, for instance, unaccompanied minors are not held in the same area as unrelated adults, and single males are not held with female head-of-household families. As the number of individuals in custody increases, it becomes more difficult for USBP to meet these requirements and keep minors safe. Additionally, even putting aside concerns about COVID-19, overcrowded conditions are more likely to lead to the spread of other communicable diseases such as scabies, chicken pox, and flu.
17. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 11 day of September, 2020.

  
Raul L. Ortiz  
Deputy Chief, U.S. Border Patrol  
U.S. Customs and Border Protection