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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

MERRICK GARLAND, Attorney General
the United States, *et al.*,

Defendants.

No. CV 85-4544-DMG-AGR_x

MEMORANDUM IN SUPPORT OF
MOTION TO ENFORCE SETTLEMENT
RE EMERGENCY INTAKE SITES

Hearing: September 10, 2021

Time: 9:30 a.m.

Hon. Dolly M. Gee

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1 **I. INTRODUCTION**

2 Since March 2021, the Department of Health and Human Services’ Office of
3 Refugee Resettlement (“ORR”) has detained thousands of unaccompanied children
4 in unlicensed detention facilities dubbed “emergency intake sites” (“EIS”).

5 ORR’s use of EISs is unprecedented: During past unexpected “influxes,”
6 ORR detained children it could not accommodate in licensed facilities in “influx
7 care facilities,” which, although not licensed to care for dependent children, were
8 at least nominally required to meet minimum child welfare standards.¹

9 Importantly, ORR policy provided—and still provides—that particularly
10 vulnerable children—*i.e.*, children under 13 years of age, pregnant or parenting
11 teens, and children who do not speak English or Spanish as their “preferred
12 language,” among others—should not be detained in influx facilities but should
13 rather be placed in licensed dependent care facilities. *Id.* at § 7.2.1.² ORR’s influx
14 facility standards implicitly recognize that the conditions and treatment children
15 experience during federal custody must at least meet *some* binding standards when
16 there is no space for them in a properly licensed, dependent care facility.

17 EISs, in contrast, need not meet even those minimum standards ORR has
18 determined necessary during prior influxes.³ Rather, the agency has issued
19 “guidance” positing EIS standards that are in crucial regards merely aspirational.
20

21 ¹ See Office of Refugee Resettlement, *ORR Guide: Children Entering the United*
22 *States Unaccompanied*, § 7 (“ORR Policy Guide”),
23 [https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-](https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-7)
[unaccompanied-section-7](https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-7).

24 ² When ORR becomes aware that a child detained in an influx facility should not
25 be, its policy provides that it “will transfer the UAC to the least restrictive setting
26 appropriate for the child’s needs as expeditiously as possible.” *Id.* at § 7.2.1.

27 ³ See ORR Field Guidance #13, Emergency Intake Sites (EIS) Instructions and
28 Standards at 1, April 30, 2021 (“ORR Field Guidance #13”),
<https://acf.hhs.gov/orr/policy-guidance/uc-program-field-guidance> (“EIS are not
designed or intended to provide the full range of services available at traditional
ORR care provider facilities or even Influx Care Facilities.”).

1 See, e.g., *id.* at 3–4 (“[T]o the extent practicable, EIS should seek to provide the
2 following services: Case management services for safe and timely release; A
3 reasonable access to privacy, . . . Educational services; and Daily
4 Recreational/Leisure time . . .” (emphasis added)); *id.* at 4 (“EIS facilities provide
5 access to emergency health care. Additional health services are *site specific* and
6 *may* include a limited initial medical exam” (emphasis added)).

7 Predictably, several EISs, most notably the Fort Bliss and Pecos EISs, have
8 become notorious for failing to provide vulnerable children even minimum safety,
9 care, and conditions:

- 10 • On July 28, 2021, the Government Accountability Project filed a complaint
11 on behalf of career federal civil servants detailed to the Fort Bliss EIS with
12 first-hand knowledge of the conditions and treatment children experience
13 there.⁴ According to the complaint, “Filth was commonplace. According to
14 one contractor: ‘I’ve been into one [tent], one time, and I was like, yeah, I’m
15 not going back there. They’re filthy. They’re dirty. There’s food on the
16 floor. There’s wet spots all over the place. The beds are dirty.” *Id.* at 9.
17 “The Fort Bliss children did not and *could not trust that they were safe*, that
18 their basic needs would be met, or that their sponsorship/placement cases
19 were being timely processed. . . . COVID was widespread among children
20 and eventually spread to many employees. *Hundreds of children contracted*
21 *COVID in the overcrowded conditions*. Adequate masks were not
22 consistently provided to children, nor was their use consistently enforced.
23 Every effort was made to downplay the degree of COVID infection at the
24 site, and the size of the outbreak was *deliberately kept under wraps*. . . .

25
26 ⁴ See Government Accountability Project, *Second Protected Whistleblower*
27 *Disclosures of Gross Mismanagement by the Department of Health and Human*
28 *Services at Fort Bliss, Texas Causing Specific Dangers to Public Health and Safety*,
July 28, 2021, <https://whistleblower.org/wp-content/uploads/2021/07/072821-2nd-Fort-Bliss-Whistleblower-Disclosure-FINAL.pdf>.

1 Major depression and depressive episodes were commonplace among the
2 children.” *Id.* at 7 (emphasis added).

3 • On August 4, 2021, 33 members of Congress wrote “to express our immense
4 concern and horror at the whistleblower allegations that surfaced over the
5 weekend of sexual misconduct at the Fort Bliss Emergency Intake Site (EIS)
6 in El Paso, Texas. Audio provided by whistleblowers appears to confirm
7 that adult staff at Ft. Bliss had been caught in sexually inappropriate
8 situations with minors in their care at least as recently as May 2021.”⁵

9 “After numerous attempts calling for change over several months, the [Fort
10 Bliss] EIS remains *dangerously mismanaged.*” *Id.* (emphasis added).

11 • On August 6, 2021, the Refugee and Immigrant Center for Education and
12 Legal Services (“RAICES”), the ORR-contracted legal services provider for
13 children detained at the Pecos EIS, reported this about conditions children
14 are now experiencing at Pecos: “The legal teams at RAICES have served
15 tens of thousands of children in ORR care since 2012, but the reports we
16 have received from both attorneys and clients on the conditions at Pecos are
17 the worst we’ve ever observed. . . . Pecos holds almost 1500 unaccompanied
18 migrant children between the ages of thirteen and seventeen *and the facility*
19 *is expected to receive an influx of children as young as six years old* in the
20 upcoming days. . . . [O]ur legal team has witnessed disturbing conditions
21 that put the health and welfare of these children in harm’s way including
22 food-related abdominal pain from *undercooked and spoiled food*, and
23 children being *kept in cage-like rooms* for most of the day. In addition, we
24 have had clients who *have not received proper medical attention* after
25 breaking bones, and know of children who have *waited weeks in detention*
26

27 ⁵ Members of Congress Letter to HHS Secretary Becerra and Inspector General
28 Grimm, August 4, 2021,
https://escobar.house.gov/uploadedfiles/8.4.21_letter_to_hhs_oig_ftbliss_eis.pdf.

1 *before they were able to speak to their attorney and sponsors.”⁶*

2 Sadly, during interviews with Plaintiffs’ counsel, children corroborated the
3 foregoing accounts of deplorable conditions and treatment at the Pecos and Fort
4 Bliss EISs. Yet ORR has continued to detain children at Fort Bliss and Pecos
5 despite having hundreds of beds available at licensed facilities, the Carrizo Springs
6 influx facility, and even at far better EISs, including the Pomona EIS.

7 Plaintiffs appreciate that the current number of children in ORR custody
8 may require the use of EISs for some months more given Defendants’ myopic
9 focus on building up the EIS system to the detriment of the licensed shelter system.
10 Plaintiffs do not, at this time, ask that the Court order the immediate closure of
11 EISs in light of the absence of adequate alternatives to care for the thousands of
12 children currently placed in them. But that does not excuse the agency’s placing
13 particularly vulnerable children at its worst EISs while licensed beds, influx beds,
14 and even beds at better EISs, remain available. There are many vulnerable
15 children at Fort Bliss and Pecos the Court can and should protect now, and
16 Defendants must be held accountable for ensuring that EISs do not, by default,
17 supplant the Settlement’s fundamental requirement that children be placed as
18 expeditiously as possible in licensed dependent care programs. *See Exs. in*
19 *Support of Motion to Enforce Settlement, February 3, 2015 [Doc. # 101], Ex. 1*
20 *(“FSA”), ¶¶ 1, 10.*

21 Defendants have repeatedly sought to excuse their placement of particularly
22 vulnerable children at Fort Bliss and Pecos EIS as resulting from staff shortages, a
23 need for unfettered “flexibility” in placements and transfers, and, paradoxically, a
24 desire to reserve licensed beds for particularly vulnerable children. Yet as the
25 Court is aware, even under influx conditions, the Settlement obliges ORR to place
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27 ⁶ RAICES, *RAICES demands HHS Secretary Xavier Becerra, Democrats Shut*
28 *Down Pecos*, August 6, 2021, <https://www.raicestexas.org/2021/08/06/shut-down-pecos/> (emphasis added).

1 class members in state-licensed dependent care facilities “as expeditiously as
2 possible... .” FSA ¶ 12.A.3. “Reserving” licensed beds for especially vulnerable
3 children while consigning such children—some as young as six—to notoriously
4 mismanaged EISs is both nonsensical and a clear violation of Settlement ¶ 12.A.3.

5 Settlement ¶ 12 requires ORR to “hold minors in facilities that are safe and
6 sanitary and that are consistent with [its] concern for the particular vulnerability of
7 minors.” But the Pecos and Fort Bliss EISs have not met even this standard and,
8 given Defendants’ refusal to prescribe mandatory standards for EISs, they are
9 unlikely to do so without Court intervention. The Court should accordingly issue
10 an order requiring Defendants to issue mandatory EIS standards without further
11 delay.

12 II. STATEMENT OF FACTS

13 A. The Fort Bliss and Pecos EISs Are Inherently Unsafe and 14 Inappropriate Placements for Children.

15 Since March 2021, in response to an insufficient number of licensed
16 placements and an increased number of children seeking refuge in the United
17 States, ORR has opened 14 EISs and currently operates four EISs.⁷ As of July 21,
18 2021, 4,578 children were detained in unlicensed EISs.⁸ Minimal standards and
19 inadequate oversight at EISs has exposed thousands of children to unacceptable
20 conditions that threaten their safety and well-being. In particular, the Fort Bliss
21 and Pecos EISs have exposed children to shockingly deplorable conditions. *See,*
22 *e.g.*, Ex. D, Declaration of Jonathan D. Ryan, ¶¶ 18–19, July 30, 2021 (“Ryan
23 Dec.”); Ex. H, Declaration of Hannah P. Flamm, ¶ 11, August 3, 2021 (“Flamm

24 ⁷ ORR Juvenile Coordinator Report at 3, July 23, 2021 [Doc. # 1148-1] (“July
25 Juvenile Coordinator Report”). Plaintiffs understand that the Long Beach EIS is
26 now closed. *See Long Beach Shelter For Migrant Children Closes After Reuniting*
27 *1,500 Children With Family Members, Sponsors*, CBS LOS ANGELES (July 23,
28 2021), <https://losangeles.cbslocal.com/2021/07/23/long-beach-shelter-for-migrant-children-closes-after-reuniting-1500-children-with-family-members-sponsors/>.

⁸ July Juvenile Coordinator Report at 3.

1 Dec.”).

2 As noted above, ORR’s Field Guidance pertaining to EISs contains little
3 more than aspirational standards, which are routinely disregarded at Fort Bliss and
4 Pecos regardless. The guidance does not include any mechanism for independent
5 oversight of EISs. This lack of mandatory standards combined with the lack of
6 oversight places children at grave risk. Multiple volunteers at the Fort Bliss EIS,
7 for example, witnessed alarming and harmful conditions created by lax oversight
8 of inexperienced contractor and volunteer staff. *See, e.g.*, Ex. E, Declaration of
9 Arthur Pearlstein, ¶¶ 5, 10–16, August 4, 2021 (“Pearlstein Dec.”); Ex. F,
10 Declaration of Lauren E. Reinhold, ¶¶ 5, 10–17, August 4, 2021 (“Reinhold
11 Dec.”); Ex. G, Declaration of Laurie Elkin, ¶¶ 5, 10, August 4, 2021 (“Elkin
12 Dec.”).⁹ One volunteer—who was assigned to provide clinical assessments and
13 counseling to children despite having no relevant experience or training—reports
14 that he “was actively discouraged by management at Fort Bliss from reporting [his]
15 concerns” and that he “reported concerns to management on multiple occasions
16 and was either ignored or admonished each time.” Pearlstein Dec. ¶¶ 4–7; *see also*
17 Reinhold Dec. ¶¶ 6–7; Elkin Dec. ¶¶ 6–7. Legal services providers also report a
18 lack of oversight and adherence to ORR standards at EIS facilities. *See* Ryan Dec.
19 ¶ 33 (regarding Pecos EIS); Flamm Dec. ¶¶ 12, 29–33 (regarding Fort Bliss EIS).

20 1. Children at the Fort Bliss and Pecos EISs Receive Wholly
21 Inadequate Recreation and Education.

22 In the absence of mandatory standards to the contrary, children at Fort Bliss

23
24 ⁹ *See also* Julia Ainsley, *Whistleblowers allege poor care for migrant kids by*
25 *contractor specializing in disaster cleanup*, NBC NEWS (July 7, 2021),
26 [https://www.nbcnews.com/politics/immigration/whistleblowers-allege-poor-care-](https://www.nbcnews.com/politics/immigration/whistleblowers-allege-poor-care-migrant-kids-contractor-specializing-disaster-cleanup-n1273124)
27 [migrant-kids-contractor-specializing-disaster-cleanup-n1273124](https://www.nbcnews.com/politics/immigration/whistleblowers-allege-poor-care-migrant-kids-contractor-specializing-disaster-cleanup-n1273124); Camilo Montoya-
28 Galvez, *Migrant children in U.S. tent camp faced depression and filthy conditions,*
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[https://www.cbsnews.com/news/immigration-fort-bliss-migrant-children-](https://www.cbsnews.com/news/immigration-fort-bliss-migrant-children-whistleblower-complaint/)
[whistleblower-complaint/](https://www.cbsnews.com/news/immigration-fort-bliss-migrant-children-whistleblower-complaint/).

1 and Pecos spend most of the day on their cots or beds with little to no structured
2 activity or recreation. Ex. T, Declaration of J.F.A.A., ¶ 25, July 29, 2021
3 (“J.F.A.A. Dec.”) (I felt anguished and hopeless . . . You spend the day in bed,
4 surrounded by thousands of kids, with thousands of thoughts racing through your
5 head.”); Declaration of K.L.M., ¶ 16, June 4, 2021 [Doc. # 1136-5] (“K.L.M.
6 Dec.”) (“I spend most of my time here laying down in my bunk, and sometimes
7 crying.”); *see also* Ex. I, Declaration of O.V.P.C., ¶¶ 15, 18, July 30, 2021
8 (“O.V.P.C. Dec.”); Ex. J, Declaration of K.M.A., ¶¶ 13–14, July 27, 2021
9 (“K.M.A. Dec.”); Declaration of K.M.T., ¶ 25, April 28, 2021 [Doc. # 1136-11]
10 (“K.M.T. Dec.”); Ex. K, Declaration of B.U.A., ¶ 17, July 27, 2021 (“B.U.A.
11 Dec.”); Ex. L, Declaration of K.A.C.G., ¶¶ 20, 22, August 3, 2021 (“K.A.C.G.
12 Dec.”).

13 In the Pecos EIS, children have no religious services, few daily activities,
14 and what little outdoor recreation they do have takes place in unshaded areas where
15 temperatures sometimes reach over 110 degrees. *See* Ryan Dec. ¶¶ 12, 26–30;
16 K.M.A. Dec. ¶ 14. RAICES, the ORR-contracted legal services provider at Pecos,
17 reports that “the conditions at Pecos [are] among the harshest and most restrictive
18 of any ORR or ICE facility that I have visited in my career.” Ryan Dec. ¶ 35.

19 Additionally, children at multiple EISs, including the Fort Bliss and Pecos
20 EISs, routinely describe either limited access to education or no education services
21 at all. Ryan Dec. ¶ 26; K.M.A. Dec. ¶ 13; Ex. M, Declaration of W.V.V., ¶¶ 8, 17,
22 July 28, 2021 (“W.V.V. Dec.”); Declaration of F.P.P., ¶ 14, June 9, 2021 [Doc. #
23 1136-4] (“F.P.P. Dec.”); B.U.A. Dec. ¶ 16; *see also* Ex. O, Declaration of
24 M.S.R.L., ¶ 13, July 9, 2021 (“M.S.R.L. Dec.”) (child held at the Pomona EIS).
25 Dr. Ryan Matlow, a Stanford University child clinical psychologist who visited
26 Fort Bliss with Plaintiffs, explains that without adequate activities and recreational
27 opportunities, “many children experience extreme boredom, lethargy, low
28 motivation, hopelessness, and helplessness, all of which are symptoms and

1 contributors to depression and psychological stress.” Ex. C, Declaration of Dr.
2 Ryan Matlow, at 4, July 12, 2021 (“Matlow Dec.”). “Without developmentally-
3 appropriate, goal-directed, and values-oriented activities to guide children’s
4 activities and daily functioning, they began to languish in a state of increasing
5 sadness, inactivity, agitation, anxiety, and adjustment difficulty.” *Id.* at 5.¹⁰

6 Under ORR’s current EIS standards, children are not even guaranteed
7 regular access to fresh air.¹¹

8 2. Children at the Fort Bliss and Pecos EISs Live in Unsanitary
9 Conditions and Lack Privacy.

10 The lack of standards and oversight at EISs also results in children living in
11 unsafe and unsanitary conditions. Children held at the Fort Bliss EIS describe
12 sleeping in large areas with hundreds of other children where they have utterly no
13 privacy. *See e.g.*, J.F.A.A. Dec. ¶¶ 21, 25; W.V.V. Dec. ¶ 7; Declaration of
14 E.A.M.R., ¶¶ 9–10, June 4, 2021 [Doc. #1136-6] (“E.A.M.R. Dec.”); K.L.M. Dec.
15 ¶¶ 9, 12; O.V.P.C. Dec. ¶ 21. Children at the Pecos EIS report being required to
16 clean their own living spaces while not being provided with cleaning supplies. *See*
17 Ryan Dec. ¶ 17; W.V.V. Dec. ¶ 21; Ex. N, Declaration of A.H.C., ¶ 10, July 27,

18 ¹⁰ Predictably, given ORR’s lack of binding EIS standards, children detained in
19 other, now-shuttered EISs, including the Dallas and Houston EISs, were denied
20 outdoor recreation no matter how long they were detained at these facilities. *See*
21 Declaration of D.L.M.E., ¶¶ 9, 11, 23, May 3, 2021 [Doc. # 1136-9] (“D.L.M.E.
22 Dec.”) (“I was very happy to leave Houston because it had been 16 days since I had
23 seen outside – 16 days since I had seen the sky or the sun.”); Declaration of
24 Y.A.A.V., ¶ 21, March 29, 2021 [Doc. # 1136-17] (“Y.A.A.V. Dec.”). Hundreds of
25 children spent 50 days or more confined in the Dallas EIS without access to the
26 outdoors. *See* Declaration of Melissa Adamson in Support of Plaintiffs’ Response
27 to ORR Juvenile Coordinator’s June 4, 2021 Interim Report, June 11, 2021, Ex. 1 at
28 1 n.5 [Doc. # 1136-3]; Declaration of Leecia Welch ¶ 38, April 9, 2021 [Doc.
#1109-1].

¹¹ Under ORR standards, EISs “*should* seek to provide” “to the extent practicable”
“one hour of large muscle activity and one hour of structured leisure time
activities,” but this is not a requirement and does not have to include access to the
outdoors. *See* ORR Field Guidance #13 at 3-4 (emphasis added).

1 2021 (“A.H.C. Dec.”). Children at the Fort Bliss and Pecos EISs also report
2 lacking access to sufficient clean clothes and underwear. Ryan Dec. ¶¶ 19–20;
3 Reinhold Dec. ¶ 15; W.V.V. Dec. ¶ 20; Ex. P, Excerpt of casefile of K.L.M. at
4 NCYL_KL_0019 (“K.L.M. Excerpt”) (child at Fort Bliss expresses needing
5 clothes and shoes).¹²

6 3. Children’s Health Has Been Jeopardized at the Fort Bliss and
7 Pecos EISs Due to Undercooked, Insufficient, and Inedible
8 Food.

9 Children at the Fort Bliss and Pecos EIS facilities also report experiencing
10 hunger and being served raw chicken and other inedible food. Ryan Dec. ¶¶ 17–
11 18; W.V.V. Dec. ¶ 15; Ex. Q, Declaration of A.F.H., ¶ 12, July 27, 2021 (“A.F.H.
12 Dec.”); B.U.A. Dec. ¶ 19; O.V.P.C. Dec. ¶ 20; E.A.M.R. Dec. ¶ 22; K.M.T. Dec. ¶
13 16; Declaration of E.Y.O.G., ¶ 17, April 29, 2021, [Doc. # 1136-8] (“E.Y.O.G.
14 Dec.”). At the Pecos EIS, children have inadequate access to medical care for
15 food-related illness and other ailments. *See* Ryan Dec. ¶ 17; A.F.H. Dec. ¶ 13;
16 W.V.V. Dec. ¶ 18.

17 4. Staff at Some EISs, Including Fort Bliss and Pecos, Lack
18 Necessary Qualifications and Provide Inadequate Care.

19 Defendants have entrusted the care of vulnerable children to staff at EISs
20 who lack experience caring for children and in some cases cannot even
21 communicate with the children they are supervising. Plaintiffs know of no ORR
22 requirement that direct care staff at EISs have experience in caring for children or
23 speak Spanish. *See* ORR Field Guidance #13; Ryan Dec. ¶¶ 21-22; Declaration of
24 Y.F.A.G.G., ¶ 12, May 12, 2021 [Doc. # 1136-20] (“Y.F.A.G.G. Dec.”) (tender
25 age child at Starr Commonwealth EIS describes lack of Spanish-speaking staff).
26 Federal detailees at Fort Bliss report that a contractor charged with direct care of

27 ¹² At the Houston EIS, teenage girls were prevented from using the bathroom,
28 unable to shower on a regular basis, and not provided with clean clothes or
underwear. *See* D.L.M.E. Dec. ¶¶ 15–16; K.M.T. Dec. ¶¶ 14–15; Declaration of
E.M.E.O., ¶¶ 12-14, May 3, 2021 [Doc. # 1136-10].

1 children in the tents is a fire and water damage repair company with no known
2 experience or training in childcare. *See e.g.*, Pearlstein Dec. ¶ 10; Reinhold Dec.
3 ¶¶ 10–11; Elkin Dec. ¶ 10.

4 Unqualified EIS staff have proven unable to protect children from bullying
5 or physical assault. *See e.g.*, Ex. R, Declaration of A.R.R., ¶¶ 16–18, April 28,
6 2021 (“A.R.R. Dec.”); Exhibit S, Declaration of A.G.L., ¶ 6, May 12, 2021
7 (“A.G.L. Dec.”); Declaration of G.M.Z.S., ¶¶ 17–21, April 20, 2021 [Doc. # 1136-
8 12] (“G.M.Z.S. Dec.”); Flamm Dec. ¶¶ 12, 23–24. Girls at the Houston EIS felt
9 unsafe because of reports of an attempted kidnapping and suffered other threats to
10 their health and physical safety. *See* D.L.M.E. Dec. ¶¶ 19–21; K.M.T. Dec. ¶¶ 18–
11 20.

12 5. EIS Standards Are Inadequate to Protect Children’s Mental
13 Health.

14 Despite detaining children with serious mental health challenges, including
15 suicidal ideation, EISs lack the standards and oversight necessary to meet
16 children’s mental health needs and keep them safe. *See e.g.*, Matlow Dec. at 6–7
17 (noting that children at Fort Bliss “either have to proactively refer themselves, or
18 else decompensate to the point of severe stress and risk in order to receive
19 supports”); Flamm Dec. ¶¶ 12, 14; Ryan Dec. ¶¶ 16, 23; Reinhold Dec. ¶ 14;
20 A.G.L. Dec. ¶ 8 (“Sometimes I cry at night. I don’t have anyone I can talk to.”)
21 (child held at Starr Commonwealth EIS); E.A.M.R. Dec. ¶¶ 13–17. EISs are not
22 required to provide regular counseling and instead are told they “should” have one
23 mental health clinician per 50 children and are only required to provide
24 “emergency clinical services”.¹³ ORR has assigned volunteers without relevant
25 training or professional experience to provide mental health services to children in
26 extreme distress, including children experiencing suicidal thoughts. *See* Pearlstein
27 Dec. ¶¶ 4, 12–13.

28 ¹³ ORR Field Guidance #13 at 3, 5.

1 The prolonged periods of time children spend detained at EISs, particularly
2 at the Fort Bliss and Pecos EISs, with no guidance as to when they will be
3 released, little to no individual attention from adults, and insufficient structured
4 activities and recreation causes many children to suffer significant mental distress.
5 *See* A.F.H. Dec. ¶ 14 (“I have had about 3 or 4 anxiety attacks since I have been
6 here.”); *see also* K.L.M. Dec. ¶¶ 8, 14, 16, 27–29; O.V.P.C. Dec. ¶¶ 26–27;
7 J.F.A.A. Dec. ¶ 25; E.A.M.R. Dec. ¶¶ 13–14; Flamm Dec. ¶¶ 11–14, 16–22;
8 Pearlstein Dec. ¶ 13; Reinhold Dec. ¶¶ 14, 19.

9 **B. Especially Vulnerable Children Are Inappropriately Placed at**
10 **EISs.**

11 Despite the vast sums of money ORR has been spending on EISs over many
12 months, it has not required any EIS to transition to meet even the basic standards
13 required of unlicensed influx care facilities.¹⁴ Under ORR policy, influx care
14 facilities must provide children with an individualized needs assessment,
15 educational services in a structured classroom setting Monday through Friday,
16 daily outdoor activity, structured leisure time activities, regular individual and
17 group counseling, and a reasonable right to privacy.¹⁵ EISs, by contrast, are
18 merely encouraged to “seek to provide” some of these services “to the extent
19 practicable.”¹⁶ Notably, EISs are generally not required to provide children with
20 an Individual Service Plan (ISP) because “many of the individual services
21 generally contemplated under an ISP may be unavailable to UC staying in EIS . . .
22 .”¹⁷

23 ¹⁴ *See* ORR Field Guidance #13; *see also* Office of Refugee Resettlement,
24 Unaccompanied Children’s Program Field Guidance (FG) Documents (“Compiled
25 ORR Field Guidance Documents”) [https://acf.hhs.gov/orr/policy-guidance/uc-
program-field-guidance](https://acf.hhs.gov/orr/policy-guidance/uc-program-field-guidance).

26 ¹⁵ *See* ORR Policy Guide § 7.5.1.

27 ¹⁶ ORR Field Guidance #13 at 2-4.

28 ¹⁷ ORR Field Guidance #16, Clarification That the Individual Service Plan (ISP)
and the UC Case Review Are Generally Not Required for Unaccompanied Children

1 ORR regularly consigns tender age children, pregnant teens, children with
2 heightened medical and mental health needs,¹⁸ and children who do not speak
3 English or Spanish as their preferred language to EISs, despite recognizing that
4 even influx care facilities are inappropriate for these children. *See e.g.*, Declaration
5 of Melissa Adamson, ¶ 16, April 9, 2021, [Doc #1109-2]; Flamm Dec. ¶ 14;
6 Declaration of K.E.V.V., ¶¶ 6–9, May 26, 2021 [Doc # 1136-21] (“K.E.V.V.
7 Dec.”) (pregnant teen); M.S.R.L. Dec. ¶¶ 2, 5 (tender age child); Y.F.A.G.G. Dec.
8 ¶¶ 3, 5, 8–9 (tender age child); E.A.M.R. Dec. ¶¶ 13–17 (children at Fort Bliss on
9 suicide watch); Ex. U, Excerpt of casefile of A.P.A. at NCYL_APA_0011
10 (“A.P.A. Excerpt”) (child who primarily speaks Akateko with a length of stay
11 (LOS) at the Fort Bliss EIS of 66 days). In the month of June 2021, 554 tender age
12 children were placed at EISs from Customs and Border Protection. Ex. A,
13 Declaration of Melissa Adamson, Ex. 1 Emergency Intake Site Data Summary at 5,
14 August 6, 2021 (“Data Summary”). As of July 12, 2021, a total of 191 tender age
15 children were held at five EISs. *Id.* at 4.

16 EISs housing tender age children are merely encouraged to “[m]ake
17 concerted efforts to ramp up services to meet minimum standards of an influx care
18
19

20 (UC) Placed at Emergency Intake Sites (EIS) at 1, May 18, 2021 (“ORR Field
21 Guidance #16”), [https://acf.hhs.gov/orr/policy-guidance/uc-program-field-
22 guidance](https://acf.hhs.gov/orr/policy-guidance/uc-program-field-guidance).

23 ¹⁸ While ORR’s Field Guidance states that medically fragile children “are not
24 eligible for EIS placement”, Plaintiffs’ counsel met with medically fragile children,
25 some of whom have been detained at an EIS, hospitalized for medical treatment,
26 and then returned to an EIS rather than to licensed placement. *See e.g.*, Ex. V,
27 Declaration of S.C.R., ¶¶ 6, 9-11, July 9, 2021 (“S.C.R. Dec.”) (child held for
28 nearly 30 days despite having spent 3 days in the hospital related to her diabetes;
this child is Category 1 and awaiting release to her father); A.R.R. Dec. ¶¶ 2, 10,
12, 14, 16-19 (13-year old child placed at Fort Bliss despite reporting medical
issues in Border Patrol custody, hospitalized with kidney stones, and then returned
to Fort Bliss EIS, where he experienced bullying).

1 facility, *either in part or in whole, whenever practicable.*¹⁹ Disturbingly, ORR
2 reportedly plans to house hundreds of tender age children as young as 6 years old
3 at the Pecos EIS despite the harsh conditions at that remote facility. *See* Ryan Dec.
4 ¶¶ 11, 16–18, 26–28, 35; *see also* B.U.A. Dec. ¶ 14 (“I was told they are moving us
5 around because they are making room for younger kids to arrive here.”). Pecos
6 already houses children with special needs—including possible Autism Spectrum
7 Disorder—and children who primarily or exclusively speak indigenous languages
8 and the facility is unable to meet these children’s needs. *See* Ryan Dec. ¶¶ 21–25.

9 There is nothing to suggest the Pecos EIS could safely hold tender age
10 children. *Id.* at ¶¶ 12–35; *see also* B.U.A. Dec. ¶ 19; W.V.V. Dec. ¶¶ 18–21.
11 Particularly concerning is that “the great distance between Pecos and any major
12 Texas city . . . contributes to delays of a week or longer in the release of children
13 after their approval for reunification with family” and has “presented significant
14 barriers to the provision . . . [of] legal services . . . [and] efforts to protect children
15 from potential mistreatment, exploitation and trafficking.” Ryan Dec. ¶¶ 31–34.
16 “Pecos offers so few local resources to sustain the detention center’s operations
17 and is so difficult to reach that its remote location appears to be its most
18 distinguishing characteristic.” *Id.* at ¶ 34.

19 As Dr. Matlow explains, large congregate care facilities “are entirely
20 inappropriate” for “children with moderate to severe mental health difficulties,
21 children with disabilities, children with significant family stress, tender age
22 children, children who primarily speak indigenous languages, and children who are
23 pregnant or parenting.” Matlow Dec. at 11; *see also id.* at 9 n.3 (“[Y]ounger
24

25 ¹⁹ ORR Field Guidance #13 at 2 (emphasis added). And although the Pomona and
26 Starr Commonwealth EISs do offer children substantially better living conditions
27 than the Fort Bliss or Pecos EISs, ORR has made no apparent effort to elevate
28 either EIS to influx care standards. *See, e.g.,* M.S.R.L. Dec. ¶¶ 13, 15 (child at
Pomona EIS reports having just one hour of class three times a week and lacking
access to regular mental health services).

1 children are likely to be more profoundly impacted by the lack of developmentally
2 appropriate activities and living environments, and are more susceptible to
3 perceived threats (e.g., from older youth) in the absence of other protective
4 supports.”); Y.F.A.G.G. Dec. ¶¶ 3, 5, 8–9 (describing bullying of 5-year old
5 brother at EIS).²⁰

6 **C. EISs Lack Sufficient Case Management to Promptly Release**
7 **Children or Identify Children for Transfer to Licensed Facilities.**

8 Throughout the past five months and continuing to the present, children at
9 EISs have received inconsistent and often chaotic case management. This virtually
10 guarantees that children will “fall through the cracks” and be detained for extended
11 periods in makeshift facilities even as other children are promptly released.

12 Children report having spent weeks in limbo before being assigned a case
13 manager.²¹ See Declaration of A.S.B.A., ¶¶ 6–7, June 8, 2021 [Doc. #1136-14]
14 (“A.S.B.A. Dec.”) (waited approximately one month to meet with case manager
15 about release to her mother); F.P.P. Dec. ¶ 7–8 (“I have not spoken to a case
16 manager the entire time that I have been here. ... I have been here for a long time –
17 it’s been 62 days now.”); Ex. X, Excerpt of casefile of M.E.B.C. at
18 NCYL_MEBC_0008 (“M.E.B.C. Excerpt”) (“[T]here does not appear to have
19 been any contact with sponsor even though she has been here over a month”);
20

21 ²⁰ Notably, these categories of children are generally ineligible for placement in
22 unlicensed influx care facilities despite the higher standards in those facilities.
23 Compare ORR Field Guidance #13, with ORR Policy Guide § 7.2.1. ORR states
24 that it “endeavors to follow placement criteria required of Influx Care Facilities”
25 “[t]o the extent feasible,” but does not commit to doing so. See ORR Field
26 Guidance #13 at 1-2.

27 ²¹ Case management services are not required when an EIS opens, or by any time
28 certain after an EIS has received children. Instead, ORR advises that case
management services “*should*” be provided “as soon as possible and to the extent
practicable.” ORR Field Guidance #13 at 3. Should a new EIS open in the future,
there is no requirement it provide case management services by any date certain and
no guarantee children will actually be assigned a case manager in a timely fashion.

1 A.P.A. Excerpt at NCYL_APA_0011 (child admitted to Fort Bliss EIS on 4/1/21
2 and did not have initial intake interview until over a month later on 5/4/21); Ex. W,
3 Excerpt of casefile of W.P.L. at NCYL_WPL_0021, NCYL_WPL_0027 (“W.P.L.
4 Excerpt”) (child admitted to EIS on 4/12/21 and not assigned a case manager to
5 begin reunification process until a month later, on 5/12/21).

6 Children, particularly those held at Fort Bliss and Pecos EISs, continue to
7 report long delays in case management, frequent case manager turnover, and a lack
8 of clear or timely information about when or if they will be reunified with family.
9 *See* Ryan Dec. ¶¶ 13–14, 32; A.H.C. Dec. ¶¶ 3, 5–8 (15-year old child detained at
10 Pecos EIS for 65 days did not meet with a case manager for the first month he was
11 detained and has not met with his case manager in the last month); A.F.H. Dec. ¶¶
12 4, 7 (child detained at Pecos EIS for nearly 50 days still awaiting reunification after
13 switching case managers three times); E.A.M.R. Dec. ¶¶ 8, 28 (four different
14 people in charge of her case management over nearly 60 days of detention); *see*
15 *also* Ex. Y, Declaration of O.A.R.H., ¶¶ 12, 15, June 17, 2021 (“O.A.R.H. Dec.”)
16 (child held at Delphi EIS reported having three different case managers during the
17 73 days he was detained).

18 Case management services at the Fort Bliss and Pecos EISs appear
19 especially inconsistent, with children at the same facility reporting vastly different
20 case management experiences. *See e.g.*, Ryan Dec. ¶ 15; B.U.A. Dec. ¶¶ 4, 12;
21 F.P.P. Dec. ¶¶ 6–9; K.M.A. Dec. ¶¶ 7–9. A federal detailee at the Fort Bliss EIS
22 reports that “it was routine for children to get lost in the case management system”
23 and children had no means to contact case managers to ensure progress on their
24 cases. Pearlstein Dec. ¶ 14; *see also* Reinhold Dec. ¶¶ 18–21; Elkin Dec. ¶¶ 11–
25 12. Some children were even told they were going home only to be pulled off
26 airplanes before being informed that a mistake had been made, they would not be
27 released, and they had to return to the EIS. Pearlstein Dec. ¶ 16.

28 Children at the Fort Bliss and Pecos EISs often describe feeling desperate

1 because they do not know why they are at an EIS and are not given information
2 about when they can leave or what the process is to ensure release. *See* Matlow
3 Dec. at 5–6, 8; *see also* Ryan Dec. ¶ 16; Pearlstein Dec. ¶¶ 13–15; A.H.C. Dec. ¶
4 14 (“Every day, I wake up and feel very sad. I am frustrated because I see other
5 kids leave before me.”); F.P.P. Dec. ¶¶ 8–9; K.L.M. Dec. ¶ 8; K.L.M. Excerpt at
6 NCYL_KL_0017–19 (child at Fort Bliss for 71 days, admitted on 4/6/21, did not
7 receive intake interview until 5/5/21, and reported stress, sadness, and panic
8 attacks). This desperation and sense of hopelessness about their cases has led
9 some children to engage in self-harm or attempt to run away from EISs. *See e.g.*,
10 Matlow Dec. at 6; Flamm Dec. ¶¶ 11-14, 16–22; O.V.P.C. Dec. ¶¶ 26–27 (“All I
11 could think about was getting to my aunt, when they would give me a worker.
12 They called other people giving them a worker but they never called my name.
13 Then I got more desperate.”); J.F.A.A. Dec. ¶¶ 13, 25, 28 (“I felt anguished and
14 hopeless. I was held hostage and I couldn’t do anything about it.”).

15 In addition to delaying release, a lack of consistent case management means
16 case managers cannot timely identify whether a child is likely to have an extended
17 length of stay (e.g., require a home study) and should therefore be prioritized for
18 transfer to a licensed facility. *See e.g.*, W.V.V. Dec. ¶¶ 10–14 (child has been
19 detained at EISs for nearly 3 months and is only now being considered for licensed
20 placement); A.S.B.A. Dec. ¶¶ 4, 7 (child detained at Pecos EIS for two months, did
21 not speak to a case manager for one month, and, only after that meeting, was told a
22 home study would be needed); O.A.R.H. Dec. ¶¶ 12, 16 (children detained at
23 Delphi EIS for over 70 days recently informed of need for home study and unable
24 to talk to anyone about their case); Ex. Z, Declaration of M.E.D.C.L., ¶¶ 5, 7, June
25 24, 2021 (“M.E.D.C.L. Dec.”) (child detained at San Diego EIS for 50 days and
26 may be transferred because “they still need to do a home study of the
27 apartment...”); Ex. AA, Excerpt of casefile of M.E.L.A. at NCYL_MELA_0014,
28 NCYL_MELA_0017–18 (“M.E.L.A. Excerpt”) (child detained at Pecos EIS for 84

1 days, admitted 4/8/21 but Category 3 sponsor did not receive fingerprinting
2 appointment until 6/4/21 and was then required to undergo additional vetting).

3 **D. ORR is Detaining Hundreds of Children for Extended Periods in**
4 **Unlicensed and Unregulated EISs Designed for Short-Term Use.**

5 ORR guidance makes clear that “EIS are short-term, stop-gap facilities, and
6 not designed for the long-term care of children”²² EIS facilities were
7 supposed to remain open “for a limited period of time (generally under 6 months),”
8 and were not “intended to provide the full range of services available at traditional
9 ORR care provider facilities or even Influx Care Facilities.”²³ ORR’s minimal EIS
10 standards and services assume children will remain in EISs briefly and the
11 facilities themselves will be temporary.

12 Yet ORR has now been operating EISs for nearly five months—with no end
13 in sight—and thousands of children have been subjected to prolonged detention in
14 these unregulated facilities.²⁴ As of July 21, 2021, 717 children were detained in
15 EIS facilities for over 20 days, including 63 children with a length of stay over 40
16 days.²⁵ At Pecos EIS, as of July 23, 2021, 380 children had been held for 20 days
17 or more, including 65 children who had been held for 40 or more days and 10
18 children who had been held 60 days or longer. Data Summary at 3.

19 ORR nowhere limits the length of time a child can be detained at an EIS or
20 provides any specific instructions on when a child must be transferred from an EIS
21 to a licensed facility.²⁶ As a result, some children languish in EISs for weeks or
22 months on end when they can and should be in a licensed placement. Despite

23 _____
24 ²² ORR Field Guidance #16 at 2.

25 ²³ ORR Field Guidance #13 at 1; *see also* ORR Field Guidance #16 at 1.

26 ²⁴ *See, e.g.*, ORR Juvenile Coordinator Report, at 7, June 4, 2021 [Doc. # 1124-2]
27 (“June Juvenile Coordinator Report”).

28 ²⁵ July Juvenile Coordinator Report at 8.

²⁶ *See* ORR Field Guidance #13; *see also* Compiled ORR Field Guidance Documents. ORR’s Field Guidance also expressly allows children to be transferred between EISs. *See* ORR Field Guidance #13 at 1.

1 months of discussions and multiple requests to Defendants, Plaintiffs are aware of
2 no additional ORR policies explaining which children are transferred from EISs to
3 licensed placements or when such transfers occur.²⁷ Nor does ORR appear to have
4 any policy or early screening procedure to prevent EIS placement for children
5 likely to have extended release processes because of their sponsor category.²⁸

6 **E. ORR is Not Fully Utilizing its Licensed Bed Capacity.**

7 As of July 21, 2021, ORR had over 1,400 unoccupied shelter and transitional
8 foster care placements, including 933 shelter beds and 488 transitional foster care
9 beds.²⁹ A full 31 percent of transitional foster care beds and 43 percent of long
10 term foster care beds are empty.³⁰ Although ORR states that some of these foster
11 care beds are reserved for specific demographics such as parenting teens, tender
12 age children, or children with special needs, *children in these same demographics*
13

14 ²⁷ See e.g., Ex. B, Meet and Confer correspondence between the parties. Although
15 ORR guidance states that it endeavors to follow influx care placement standards
16 when feasible, ORR Field Guidance #13 at 1, in practice ORR places and maintains
17 particularly vulnerable children in EISs. See *supra* Section II.B.

18 ²⁸ ORR's lack of policy in this area is particularly concerning given that children
19 who have Category 2B or 3 sponsors and children who are Category 4 (meaning no
20 sponsor has been identified) have much longer average lengths of stay at EISs than
21 children with Category 1 or 2A sponsors. See ORR Policy Guide § 2.2.1
22 (describing sponsor categories), [https://www.acf.hhs.gov/orr/policy-](https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-2#2.2.1)
23 [guidance/children-entering-united-states-unaccompanied-section-2#2.2.1](https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-2#2.2.1). For
24 example, of the children released from the Pecos EIS to sponsors, Category 1
25 children were released, on average, in less than 20 days and Category 2A children
26 were released in an average of 22.9 days, while Category 2B children spent an
27 average of 33 days at the Pecos EIS, Category 3 children spent an average of 39.4
28 days at the Pecos EIS, and Category 4 children spent an average of 44 days at the
Pecos EIS. Data Summary at 3. These longer lengths of stay are predictable
because Category 2B and 3 sponsors are required to undergo fingerprinting and
Category 4 children have no identified sponsor. See ORR Policy Guide §§ 2.2.1,
2.5.1. Despite knowing this, ORR still has no policy to avoid EIS placement for
Category 2B, 3 or 4 children.

²⁹ July Juvenile Coordinator Report at 3.

³⁰ *Id.*

1 are currently languishing in EISs, some for longer than 20 days.³¹ See e.g., Data
2 Summary at 4; Y.F.A.G.G. Dec. ¶¶ 3, 5, 8–9; M.S.R.L. Dec. ¶¶ 2, 5. Pregnant
3 teenagers have also been placed at EISs for prolonged periods despite nominally
4 having priority for transitional foster care placements under ORR Policy.³² See
5 K.E.V.V. Dec. ¶¶ 6–9. ORR has yet to offer any coherent explanation for under-
6 utilizing licensed beds.³³

7 **III. PROLONGED DETENTION OF CHILDREN AT EMERGENCY INTAKE SITES**
8 **VIOLATES THE SETTLEMENT.**

9 Defendants’ current practices related to EIS facilities violate the
10 Settlement’s requirements that children be placed in licensed facilities “as
11 expeditiously as possible,” FSA ¶ 12.A, that Defendants “make and record the
12 prompt and continuous efforts” to release class members “without unnecessary
13 delay,” FSA ¶¶ 18, 14, and that Defendants “place each detained minor in the least
14 restrictive setting appropriate to the minor’s age and special needs . . . in facilities
15 that are safe and sanitary and that are consistent with [Defendants’] concern for the
16 *particular vulnerability of minors.*” FSA ¶¶ 11–12.A (emphasis added).

17 A “motion to enforce [a] settlement agreement essentially is an action to

18 _____
19 ³¹ July Juvenile Coordinator Report at 3-4.

20 ³² ORR Policy Guide § 1.2.2 (describing placement priority for children with
21 special needs), [https://www.acf.hhs.gov/orr/policy-guidance/children-entering-
22 united-states-unaccompanied-section-1#1.2.2](https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-1#1.2.2).

23 ³³ Remarkably, the Juvenile Coordinator reports that ORR’s own policies are
24 contributing to staffing shortages at licensed facilities because “staff are viewing
25 positions at EIS facilities more favorably due to higher wage incentives” The
26 obvious answer—increasing wages or offering time-limited bonuses at licensed
27 facilities—would open more licensed beds for vulnerable children, reduce the
28 number of such children at EISs, and, a fortiori, the number of staff required at such
facilities, and vastly improve the conditions and treatment such children experience
during immigration-related detention. To the extent that ORR feels it must reserve
some licensed beds for priority transfers, it is unclear why over 900 shelter beds
must remain open for such occurrences, especially given that EISs are currently
housing especially vulnerable children who should be receiving priority for licensed
placement. July Juvenile Coordinator Report at 3.

1 specifically enforce a contract.” *Adams v. Johns-Manville Corp.*, 876 F.2d 702,
2 709 (9th Cir. 1989). This Court has repeatedly affirmed its jurisdiction to enforce
3 the Settlement and set out the principles for doing so. *See, e.g., Flores v. Johnson*,
4 212 F. Supp. 3d 864, 869–70 (C.D. Cal. 2015) (citing FSA ¶ 37; *Kokkonen v.*
5 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380–81 (1994); *Dacanay v. Mendoza*,
6 573 F.2d 1075, 1078 (9th Cir. 1978)).

7 **A. ORR Fails to Place Children in Non-Secure, Licensed Facilities**
8 **“as Expeditiously as Possible”.**

9 The Settlement requires that a child be placed in “a ‘licensed program’
10 within three days of their arrest—or, in the case of an ‘emergency or influx,’ ‘as
11 expeditiously as possible.’” Order re Pls.’ Mot. To Enforce Settlement as to “Title
12 42” Class Members at 12, Sept. 4, 2020 [Doc. # 976]) (“Sept. 4, 2020 Order”)
13 (citing FSA at ¶¶ 12, 19).³⁴ The “Court has previously relaxed the three-day
14 transfer requirement when Defendants acted ‘in good faith and in the exercise of
15 due diligence’ to expeditiously transfer minors to licensed programs.” *Id.*
16 (quoting *Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015)); *see Flores v.*
17 *Lynch*, 212 F. Supp. 3d at 914 (noting that 20 days “may fall within the parameters
18 of Paragraph 12A” if it “is as fast as Defendants, in good faith and in the exercise
19 of due diligence, can possibly go in screening family members . . .”).

20 Here, Defendants are not making diligent and good faith efforts to
21 expeditiously transfer particularly vulnerable children, at the very least, from EISs
22 to licensed programs.³⁵ Defendants have failed to issue any policy or guidance to

23 ³⁴ Defendants are also required to “have a written plan that describes the reasonable
24 efforts that [they] will take to place all minors as expeditiously as possible” in the
25 event of an emergency or influx. FSA ¶ 12C.

26 ³⁵ As for class members generally, it seems almost random which children are
27 afforded licensed placement, and which are placed in EISs. “The *Flores*
28 Agreement does not sanction such arbitrary discrimination between its Class
Members.” Order re. Defs.’ *Ex Parte* Application to Stay at 4, Sept. 21, 2020 [Doc.
990] (“Sept. 21, 2020 Order”). Moreover, while Defendants have made some

1 require licensed placement for particularly vulnerable children or for those children
2 who will, because of the category of their sponsor, necessarily have longer lengths
3 of stay in ORR custody. Additionally, there is no maximum length of stay in an
4 EIS³⁶ and Defendants appear to lack *any* specific policy to prevent children from
5 languishing in EISs for prolonged periods.

6 Notably, particularly vulnerable children are spending weeks at EISs even
7 though licensed placements are available within ORR’s network. As of July 21,
8 2021, ORR had over 1400 available but unused transitional foster care and shelter
9 beds.³⁷ The 933 empty shelter beds alone could accommodate the approximately
10 700 children detained in EISs for over 20 days as well as the 75 tender age children
11 detained in EISs, as of July 21, 2021, even with a small reserve of beds for
12 emergency transfers.³⁸ *See* Sept. 4, 2020 Order at 13 (noting that ORR had
13 sufficient licensed bed capacity to accommodate children detained in hotels). To
14 the extent there are medical obstacles to filling these beds, Plaintiffs are aware of
15 no coherent process to medically clear children in EISs so that they can be
16 expeditiously placed in licensed facilities.

17 Rather than serving “as a temporary stopgap in the process of cautiously
18 sending children to licensed facilities with all deliberate speed”, EISs have “*fully*
19 *replaced* licensed programs for” thousands of children in Defendants’ custody in
20 violation of the Settlement. *See* Sept. 4, 2020 Order at 12. “The purpose of the
21 [Settlement’s] licensing provision is to provide class members the essential
22 protection of regular and comprehensive oversight by an independent child welfare

23 _____
24 progress in reducing the average length of stay for children released from EISs,
some children continue to have extremely long lengths of stay.

25 ³⁶ As of July 23, 2021, there was one child who had been held at Pecos EIS for 78
26 days. Data Summary at 3. Children have been held for over 80 days. *See id.* at 2
27 (child held at Pecos EIS for 86 days); M.E.L.A. Excerpt at NCYL_MELA_0014
(length of stay at Pecos EIS of 84 days).

28 ³⁷ July Juvenile Coordinator Report at 3.

³⁸ July Juvenile Coordinator Report at 3, 5.

1 agency.” Order re Pls.’ Mot to Enforce Settlement of Class Action and Defs.’ Mot.
2 to Amend Settlement Agreement at 14, July 24, 2015 [Doc. # 177] (“July 24, 2015
3 Order”). The longer children, especially those who are particularly vulnerable,
4 spend in unlicensed, unregulated facilities without independent oversight or
5 guarantees of suitable living conditions and appropriate recreation, education,
6 mental health services, and other basic protections, the greater the risk of harm.
7 *See* Matlow Dec. at 6; Ryan Dec. ¶ 16; Pearlstein Dec. ¶¶ 13–15; Reinhold Dec. ¶¶
8 14–20; *see also* FSA Exhibit 1 (listing minimum standards for licensed programs).

9 **B. ORR Fails to Make “Prompt and Continuous” Efforts Toward the**
10 **Release of Class Members “Without Unnecessary Delay”.**

11 To the extent Defendants are attempting to transfer children to licensed
12 facilities when they cannot be promptly released from an EIS, inadequate case
13 management poses an obstacle to timely identifying which children should be
14 transferred. As soon as a child enters their custody, Defendants must “make and
15 record the prompt and continuous efforts on [their] part toward family reunification
16 and the release of the minor.” FSA ¶ 18. Defendants must also release minors
17 “without unnecessary delay.” FSA ¶ 14. The lack of prompt and continuous
18 efforts toward family reunification in EISs, including some children not being
19 assigned a case manager for weeks after entry into an EIS, and other children
20 experiencing long interruptions in case management and inadequate documentation
21 of reunification efforts, have led to substantial delays in release, in violation of
22 Paragraphs 14 and 18 of the Settlement. *See supra* Section II.C. These delays are
23 not justified by a need to ensure the child’s safety or that of others, as no sponsor
24 vetting occurred during these gaps in case management. *See, e.g.,* A.H.C. Dec. ¶¶
25 6–8; A.S.B.A. Dec. ¶¶ 6–7; F.P.P. Dec. ¶ 7; W.P.L. Excerpt at NCYL_WPL_0021,
26 0027; M.E.B.C. Excerpt at NCYL_MEBC_0008.

1 **C. EISs are Inconsistent with the Settlement’s Requirement that**
2 **Children be Held in Facilities that are Appropriate to their Age,**
3 **Special Needs, and Particular Vulnerability.**

4 Even when licensed placements are unavailable, the Settlement requires
5 Defendants to “hold minors in facilities that are safe and sanitary and that are
6 consistent with [Defendant’s] concern for the particular vulnerability of minors.”
7 FSA ¶ 12A; *see also* FSA ¶ 11; Sept. 21, 2020 Order at 2 (facilities must be
8 “appropriate to minors’ ages and special needs, and concerned for their particular
9 vulnerability as minors.”); Sept. 4, 2020 Order at 14 n.9 (“While the words ‘system
10 of care’ do not appear in the Flores Agreement, the phrase has similar connotations
11 to concepts that are in the Agreement, such as ‘setting appropriate to the minor’s
12 age and special needs,’ ‘special concern for their particular vulnerability as
13 minors,’ and ‘safe.’ FSA at ¶¶ 11–12.A.”).

14 ORR’s own guidance makes clear that EISs are designed for short-term use
15 only and cannot meet children’s individualized needs.³⁹ *See supra* Section II.D.
16 EISs also lack the mandatory standards and oversight required to keep children
17 safe. *See supra* Section II; *see also* FSA ¶ 12.A (requiring Defendants provide
18 “adequate supervision to protect minors from others”); Sept. 4, 2020 Order at 14
19 (noting concerns with a “lack of qualified, specialized supervision, especially for
20 younger, unaccompanied children” and explaining that a “list of amenities is not a
21 system of care for children of different ages and developmental stages.”);
22 Pearlstein Dec. ¶¶ 4–9. As children’s length of stay stretches into weeks,
23 Defendants cannot “ensure that the safety and well-being of the minors detained in
24 these facilities are satisfactorily provided for by the staff.” FSA ¶ 12.A.

25 EISs are not suitable facilities for any child but are particularly inappropriate
26 for children with special vulnerabilities, even for short stays. *See* Matlow Dec. at
27 11. Tender age children, for example, require a higher level of care and
28

³⁹ ORR Field Guidance #13 at 1; ORR Field Guidance #16 at 1.

1 individualized attention. *See* Matlow Declaration at 9 n.3, 11; *see also* Sept. 4,
2 2020 Order at 14 (noting “the significant developmental differences and ‘particular
3 vulnerability’ of younger children.”). The HHS Administration for Children and
4 Families has explained that “[f]or young children, particularly those age 12 and
5 under, it is particularly important for their developmental needs to be met in
6 family-like settings.”⁴⁰ Recognizing this reality, ORR policy prioritizes tender age
7 children for transitional foster care placement and generally limits placement in
8 unlicensed influx care facilities to children over 12.⁴¹ Nonetheless, in violation of
9 the Settlement, ORR continues to place tender age children and other particularly
10 vulnerable children in EIS facilities that are not “appropriate to the minor’s age and
11 special needs.” FSA ¶ 11; *see supra* Section II.B; *see also* K.E.V.V. Dec. ¶¶ 6–9;
12 M.S.R.L. Dec. ¶¶ 2, 5; Y.F.A.G.G. Dec. ¶¶ 3, 5, 8–9; E.A.M.R. Dec. ¶¶ 13–17;
13 Ryan Dec. ¶¶ 11, 21–25; Flamm Dec. ¶ 14. It is especially alarming that hundreds
14 of tender age children may soon be placed at the Pecos EIS, given the remoteness
15 and serious deficiencies plaguing that facility. *See* Ryan Dec. ¶¶ 11–13, 35.

16 **D. Prolonged Detention at the Fort Bliss and Pecos EISs Causes**
17 **Irreparable Harm to Children.**

18 Holding particularly vulnerable children for weeks or months in facilities
19 that ORR itself acknowledges are unsuitable for them, while far better beds remain
20 empty, places such children in danger of serious harm.⁴² After interviewing
21 children at the Fort Bliss EIS, Dr. Matlow concluded that “large-scale congregate
22 care facilities such as Fort Bliss are inappropriate for housing unaccompanied
23 immigrant children for extended periods of time (i.e., beyond a few days or 1-2
24 weeks), due to the risk of causing clinically significant psychological harm.”

25 ⁴⁰ U.S. Dept. of Health & Human Servs., Admin. for Children & Families,
26 Children’s Bureau, *A National Look at the Use of Congregate Care in Child*
27 *Welfare*, at III (May 13, 2015),
https://www.courts.ca.gov/documents/BTB_23_4N_4.pdf.

28 ⁴¹ ORR Policy Guide §§ 1.2.2, 7.2.1.

⁴² *See, e.g.*, ORR Field Guidance #13 at 1; ORR Field Guidance #16 at 1.

1 Matlow Dec. at 11; *see also id.* at 6 (“As children spend more time in the
2 restrictive environment at Fort Bliss (in which they have limited freedom of
3 movement, limited access to resources, and limited opportunities for recreation and
4 agency, among other restrictions), they are likely to become increasingly hopeless,
5 helpless, and despondent.”); Ryan Dec. ¶ 16 (“By my direct observation, children
6 who have remained at [the Pecos EIS] for more than a few days, including those
7 whom I represent, demonstrate increasing frustration, confusion and a worsening
8 appearance of wellness that deteriorates over time.”); K.L.M. Dec. ¶ 34 (“I used to
9 be able to cope with my anxiety and breathe through it, but now I feel like I’ve
10 given up. I feel like I’ll never get out of here.”); J.F.A.A. Dec. ¶ 25 (“I knew this
11 detention would happen, but I never imagined it would be like this. It was terrible.
12 I felt anguished and hopeless.”); A.H.C. Dec. ¶ 14 (“Every day, I wake up and feel
13 very sad”); F.P.P. Dec. ¶ 9 (“Every day, I want to cry . . . There are some
14 other kids who have been here for about the same time as me, and there is just a lot
15 of sadness among us.”).

16 **IV. CONCLUSION**

17 The Settlement requires Defendants, even in times of “influx,” to place children
18 in licensed facilities “as expeditiously as possible,” to release children without
19 unnecessary delay, and to, at all times, place children in facilities that are safe and
20 sanitary, appropriate for their age and special needs, and concerned with their
21 particular vulnerability.

22 For the foregoing reasons, Plaintiffs respectfully request the Court grant this
23 motion and issue Plaintiffs’ proposed order.

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