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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mark Brnovich, in his official capacity as
Attorney General of Arizona; *et al.*,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States; *et al.*,

Defendants.

No. 2:21-cv-01568-MTL

**PLAINTIFFS' NOTICE OF
ADDITIONAL FACTUAL
DEVELOPMENT**

NOTICE

Plaintiffs (“Arizona”) provide notice that Defendant ICE recently filed in another case, *Flores v. Garland*, 85-cv-04544, ECF 1240-1 (C.D. Cal. Apr. 8, 2022), a report that bears directly on the State’s harms that could occur during the pendency of the stay sought by Federal Defendants. The defendants in the *Flores* have substantial overlap with the Defendants in this case. A copy of that report is attached.

In that report Deane Dougherty, ICE’s Juvenile Coordinator and a Deputy Assistant Director with DHS, addresses the effects of the impending cancellation of the government’s Title 42 policy (through which, because of the ongoing COVID-19 pandemic, Defendants have been refusing entry into the United States of large numbers of unauthorized aliens). In short, the projected increase in border crossings—which are set to begin on May 23, 2022—are unprecedented and enormous. Dougherty explained that the Title 42 revocation was “forecasted to triple current arrivals” and that ICE is expecting the arrival of an additional “population of up to 600,000 [unauthorized aliens] by the end of the fiscal year [on September 30, 2022].” Report at 2-3. If Defendants’ unlawful policies of granting parole to ineligible aliens are applied even to just a small portion of that large number, the State’s harms will be substantial. That is particularly true as Defendants’ policies unlawfully grant parole when Defendants’ detention capacity is exceeded, and there is not the slightest indication that the impending termination of Title 42 would fail to overwhelm DHS’s detention capacity many times over.

This report is thus directly relevant to the issues before this Court in this case because it shows the significant imminent harm faced by Arizona and the prejudice that would obtain if this Court were to stay this action pending the Supreme Court’s MPP decision.

1 RESPECTFULLY SUBMITTED this 19th day of April, 2022.

2
3 **MARK BRNOVICH**
4 **ATTORNEY GENERAL**

5 By: /s/ James K. Rogers

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Arizona using the CM/ECF filing system. Counsel for all Defendants who have appeared are registered CM/ECF users and will be served by the CM/ECF system pursuant to the notice of electronic filing.

/s/ James K. Rogers

Attorney for Plaintiffs Mark Brnovich, in his official capacity as Attorney General of Arizona; and the State of Arizona

APRIL 8, 2022
ICE JUVENILE
COORDINATOR REPORT

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JENNY LISETTE FLORES, <i>et. al.</i> ,)	Case No.: CV 85-4544-DMG
)	
Plaintiffs,)	
)	
v.)	
)	
MERRICK GARLAND,)	
Attorney General of the United States, <i>et al.</i> ,)	
)	
)	
Defendants.)	
)	

**APRIL 2022 INTERIM REPORT
OF JUVENILE COORDINATOR DEANE DOUGHERTY
SUBMITTED BY IMMIGRATION AND CUSTOMS ENFORCEMENT**

As required by the Court in its order issued on February 7, 2022, U.S. Immigration and Customs Enforcement (ICE) Juvenile Coordinator Deane Dougherty is submitting the following interim report. The information in this report is current and accurate as of the time of signature, or for the reported data, as of the date or time noted in conjunction with the information provided.

I. Class Members at ICE Facilities¹

While ICE continues to monitor and consider options to address the dynamic needs of the southwest border, the agency's goal is to continue assisting U.S. Customs and Border Protection with decompression. To this end, ICE is focusing more resources on increasing the use and effectiveness of alternative to detention programs for noncitizens. With any complex endeavor for which necessary efforts cannot be precisely predicted, constant reevaluation and redirection of

¹ There were until recently three types of ICE facilities that can house Class Members: Family Staging Centers (FSCs), Emergency Family Staging Centers (EFSCs, which are the hotels associated with the Endeavors or MVM hoteling operations), and secure juvenile detention facilities.

resources must occur. Toward the end of calendar year 2021, ICE chose to shift its usage of the family facilities to focus on single adults, consistent with the administration's goals of addressing irregular migration while supporting a system of border management that is orderly, safe, and humane. There are no official memorandums or announcements for this transition; however, at least one of the three FSCs, Berks, has already been converted through a contractual modification. The other two facilities were converted without an official modification. Consequently, ICE no longer maintains facilities that house Class Members, and there are no plans to re-implement any of these facilities in the future. ICE's appropriations committee has made it clear that funding for family facilities will be reallocated for ICE alternative to detention programs. In very limited situations, ICE will only utilize facilities that house Class Members under paragraph 21 of the Flores Settlement Agreement. To summarize, as of the date of this report, none of the ICE Family Staging Centers are housing Class Members, *and* none of the EFSCs utilized to temporarily house and process families are operational, as the contracts with Endeavors and MVM were terminated.

While the Endeavors and MVM hoteling programs have ceased, ICE may need to utilize other hotels on an *ad hoc* basis, consistent with the court's September 4 and September 21, 2020 orders. Such *ad hoc* hotel stays that exceed 72 hours will continue to appear on ICE's monthly paragraph 28A reporting and be provided to Plaintiffs' counsel and the Independent Monitor as set forth in the September 4 and September 21, 2020 orders. Given the very limited nature of operations at this time, ICE will not assign additional personnel and resources to monitor conditions of its facilities housing Class Members. ICE is preparing to utilize its limited resources to respond to an historic border surge, with projections forecasted to triple current arrivals. With border enrollments already ranging from 1,000-1,200 arrivals per day, non-detained and alternative to detention resources would be needed for more than 3,000 arrivals per day. Given

these forecasts and the recently announced decision to end Title 42 next month, ICE must shift its focus and prepare to manage its resources for a population of up to 600,000 by the end of the fiscal year.

The wind down of family detention is evident as on April 1, 2022, there were no Class Members in the FSCs or EFSC, and no Class Members in secure juvenile detention. The chart below represents the census of Class Members in ICE facilities on April 1, 2022, as well as the average length of stay (ALOS) for Class Members in ICE facilities during this reporting period.²

Minors in ICE Facilities on 04/01/2022			
Facilities	Census	Average Length of Stay (Days) Minors in ICE Facilities	Average Length of Stay (Days) Minors Released Between 01/14/22 - 04/01/22
Berks Family Staging Center	-	-	-
Karnes County Family Staging Center	-	-	-
South Texas Family Staging Center	-	-	-
Hotels (Endeavors and MVM)	-	-	4
Secure Juvenile Detention Facilities	-	-	-
Total	-	-	4

II. COVID-19

As stated above, ICE transitioned its three FSCs to adult-only facilities and has terminated its hoteling program such that there are no Class Members in FSCs or EFSCs. The ICE ERO Pandemic Response Requirements (PRR), last updated October 19, 2021, continues to apply to ICE detention operations generally.

² ALOS (calculated in days) for minors in ICE facilities is determined by a subtraction between the date the minor is in an ICE facility and their book-in date to the ICE facility. ALOS (calculated in days) for minors released between January 14, 2022, and April 1, 2022, is determined by subtracting the released minor's final book-out date from an ICE facility and their book-in date to the ICE facility.

As of April 1, 2022, there were no Class Members in ICE facilities currently testing positive for COVID-19. The following charts describe the cumulative number of COVID-19 cases in ICE facilities that housed Class Members during this reporting period.

Cumulative COVID-19 Positive Cases of FAMU Individuals in ICE Facilities as of 04/01/2022				
Facilities	Minor	Adult	Staff	Total
Hotels (Endeavors and MVM)	1,314	1,660	90	3,064
Secure Juvenile Detention Facilities	-	-	6	6
Total	1,314	1,660	96	3,070

Cumulative COVID-19 Positive Cases of FAMU Individuals in ICE Facilities as of 04/01/2022			
Facilities	Prior to Intake	After Intake	Total
Hotels (Endeavors and MVM)	2,370	604	2,974
Secure Juvenile Detention Facilities	-	-	-
Total	2,370	604	2,974

Cumulative COVID-19 Positive Cases of FAMU Individuals Hospitalized as of 04/01/2022	
Facilities	Hospitalized
Hotels (Endeavors and MVM)	11
Secure Juvenile Detention Facilities	-
Total	11

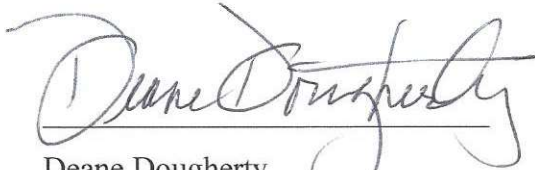
III. Title 42 Compliance

Section 2(b) of the Court's February 7, 2022 Order, and section 6 of the Court's September 4, 2020 Order, orders that the government maintain records and statistical information on minors held in Title 42 custody, including an update regarding the number of minors held in Title 42 custody, and to monitor compliance with the FSA with respect to minors held in Title 42 custody. Between January 11, 2022, and April 1, 2022, ICE did not house any Class Members pending expulsion under Title 42 processes at any ICE facility. As a reminder, no Class Members have been housed by ICE pending expulsion pursuant to Title 42 authorities since those reported in my

March 5, 2021 Report (for the January 9 – February 22, 2021 reporting period). *See* ECF 1084-1 at 6-7.

Furthermore, on April 1, 2022, the CDC issued a Public Health Determination and Order Regarding the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists (April 2022 Order).³ The April 2022 Order terminates the Public Health Reassessment and Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists (August 2021 Order), and all related prior orders, and the termination will be implemented on May 23, 2022.

Signed on this 8th day of April 2022.



Deane Dougherty
ICE Juvenile Coordinator

³ Media Statement, *CDC Public Health Determination and Termination of Title 42 Order* (Apr. 1, 2022), <https://www.cdc.gov/media/releases/2022/s0401-title-42.html>.