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JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
Civil Division

AUGUST E. FLENTJE
Special Counsel to the Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director, District Court Section
Office of Immigration Litigation

WILLIAM C. SILVIS
Assistant Director, District Court Section
Office of Immigration Litigation

SARAH B. FABIAN

NICOLE N. MURLEY
Senior Litigation Counsel
Tel: (202) 532-4824
Fax: (202) 305-7000
Email: Sarah.B.Fabian@usdoj.gov

Attorneys for Defendants

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

JENNY LISETTE FLORES; *et al.*,

Plaintiffs,

v.

WILLIAM P. BARR, Attorney
General of the United States; *et al.*,

Defendants.

Case No. CV 85-4544-DMG

**DEFENDANTS' OBJECTIONS TO
NOVEMBER 23, 2020 RESPONSES
TO JUVENILE COORDINATOR
REPORTS, ECF Nos. 1039, 1040.**

1 The *Flores* Settlement Agreement requires Defendants’ Juvenile
2 Coordinators to file annual reports “regarding compliance with the terms of [the]
3 Agreement.” Agreement ¶ 30. Since April 24, 2020, this Court also has further
4 ordered that the ICE and ORR Juvenile Coordinators must file additional, monthly
5 interim reports, not otherwise required by the *Flores* Agreement’s terms. *See* ECF
6 No. 784, ¶ 4. The Court stated that these interim reports are necessary because of
7 the “exigencies of the current pandemic[.]” *Id.* On October 26, 2020, the Court
8 ordered the ICE and ORR Juvenile Coordinators to file interim reports on
9 November 16, 2020, and detailed the topics to be covered in these interim reports.
10 ECF No. 1014, ¶ 3. The Court ordered Amici and Plaintiffs to file responses to the
11 Juvenile Coordinator reports by November 23, 2020, only “after first meeting and
12 conferring regarding areas of dispute and attempting to achieve resolution.” *Id.* ¶
13 3.c.

14
15 Defendants object to the responses to the Juvenile Coordinator reports filed
16 by both Amici and Plaintiffs on November 23, 2020, ECF Nos. 1039 and 1040,
17 because both Amici and Plaintiffs blatantly disregarded this Court’s order and, with
18 regard to Plaintiffs’ response, seek to circumvent appropriate procedures for raising
19 issues before this Court.

20 As an initial matter, Defendants object to—and ask the Court to disregard—
21 the Response Brief of Amici Curiae to the November 2020 Interim Report of the
22 Immigration and Customs Enforcement Juvenile Coordinator, ECF No. 1040.
23 Despite this Court’s clear order that a response brief should be filed only after
24 meeting and conferring and attempting to resolve areas of dispute, ECF No. 1014,
25 ¶ 3.c, Amici made no effort to meet and confer or to reach out to Defendants in any
26 way regarding the issues raised in their response prior to its filing. Defendants were
27 not made aware of Amici’s response or the attached declarations—or the issues
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1 contained therein—at any time prior to Amici’s filing on November 23, 2020.
2 Because Amici have, once again, disregarded this Court’s order to meet and confer,
3 and are asking this Court to take action on evidence to which Defendants have had
4 no opportunity to respond, this Court should disregard their filing and require that
5 Amici follow the Court-ordered procedures for presenting issues and evidence to
6 the Court.

7 Defendants also object to Plaintiffs’ Response to Juvenile Coordinators’
8 Interim Reports, ECF No. 1039. Plaintiffs did not present the declarations or
9 allegations included with their Response to Defendants prior to their filing, and
10 thus the Court should decline to consider Plaintiffs’ filing because it fails to comply
11 with the Court’s order. *See* ECF No. 1014, 3.c. *See also* ECF No. 833, 5 (“[I]f the
12 Court determines that relevant facts are being presented to the Court for the first
13 time without having been shared in advance with the opposing side in an effort to
14 achieve resolution, the Court will not address the issue to which those facts
15 pertain”); ECF No. 912, 9.c. (same). The Court should not consider the factual
16 allegations contained in Plaintiffs’ declarations—none of which were presented to
17 Defendants before being filed with this Court—unless and until Defendants have a
18 full and fair opportunity to consider and respond to those factual allegations.¹
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22 ¹ As an example, with respect to ORR, Plaintiffs raise for the first time in their
23 filing the issue in Exhibit G of immigration counsel, or non-counsel legal service
24 providers who do not represent individual children, having access to private
25 medical COVID-19 information without consent or parental consent. Plaintiffs do
26 not explain why the settlement requires the provision of such information. *See* ECF
27 No. 1039-6 at 13. Plaintiffs’ complaint is unfounded in any event because legal
28 service providers such as Ms. Flamm have user names and access to the portion of
the “UAC Portal” listing all COVID-19 general information provided to care

1 To the extent Plaintiffs partially raised a limited number of the issues
2 discussed in their response brief to Defendants prior to their filing, Defendants
3 nonetheless object to the manner in which Plaintiffs have now brought these issues
4 before the Court. In seeking to meet and confer, Plaintiffs made no mention of the
5 Juvenile Coordinator reports, but rather asked Defendants to meet and confer
6 because Plaintiffs wished to raise allegations of breach “Pursuant to Settlement ¶
7 37.” *See* ECF No. 1039-6 as 12. That paragraph requires Plaintiffs to meet and
8 confer with Defendants before filing an enforcement action with the Court. *See*
9 Agreement ¶ 37. Having made clear that their intent in raising these issues with the
10 Court is to seek enforcement of the Agreement related to new allegations of breach,
11 Plaintiffs should not be permitted to avoid the requirements of the Agreement, the
12 Monitoring Order, the Federal Rules of Civil Procedure, and the Local Rules of the
13 Central District of California, by asking for enforcement of the agreement through
14 a purported “Response” filing to which existing procedures provide Defendants no
15 opportunity to respond.
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17 The impropriety of Plaintiffs’ approach is evident from their strained
18 attempts to tie their allegations of breach to issues in the Juvenile Coordinator
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21 providers. Additionally, Plaintiffs did raise to Defendants the issue of data provided
22 on the “out-of-network” tab, ECF No. 1039-6 at 14-15, and were told by
23 Defendants’ counsel that “ORR is looking into these cases to see if they should
24 have been reported, and if so, why they were not reported. If there was an error in
25 the reporting then ORR will supplement.” It is thus unclear why Plaintiffs’ counsel
26 would seek judicial intervention on this issue which Defendants have already
27 committed to resolve. None of the other substantive issues with respect to
28 placement of children at one out-of-network facility raised in Plaintiffs’ filing
(Exhibits H, I, and J) was presented to Defendants prior to Plaintiffs’ filing. Nor
do Plaintiffs explain how such events relate to the Court’s March 28, April 24, May
22, June 26, August 24, September 4, or October 26, 2020 Orders.

1 reports. But in fact, Plaintiffs are raising issues that are not part of the ICE and
2 ORR Juvenile Coordinator interim reports, and are even seeking enforcement and
3 remedies related to allegations concerning conditions in CBP custody, despite the
4 fact that the ORR and ICE Juvenile Coordinator reports did not—and could not
5 have—address those issues. Moreover, Plaintiffs are asking this Court to order
6 relief based on factual allegations that were never presented to Defendants prior to
7 the filing of Plaintiffs’ brief, by raising these allegations in a “Response” filing to
8 which Defendants have no opportunity to respond. Plaintiffs’ approach does not
9 constitute a good faith effort to address and resolve Plaintiffs’ allegations, but
10 rather seeks to avoid the basic rules of procedure and evidence to ask this Court to
11 rule on issues without ever providing Defendants an opportunity to address the
12 evidence or file a response. Defendants therefore object to Plaintiffs’ approach, and
13 ask that if this court considers these newly-raised issues, it should require Plaintiffs
14 to follow the applicable rules of procedure and evidence, and provide Defendants
15 with a full and fair opportunity to respond.
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1 DATED: November 30, 2020 Respectfully submitted,

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3 JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

4
5 AUGUST E. FLENTJE
Special Counsel to the Assistant Attorney
6 General

7
8 WILLIAM C. PEACHEY
Director, District Court Section
9 Office of Immigration Litigation

10
11 WILLIAM C. SILVIS
Assistant Director, District Court Section
12 Office of Immigration Litigation

13 /s/ Sarah B. Fabian

14 SARAH B. FABIAN

15 NICOLE N. MURLEY

16 Senior Litigation Counsel

17 Office of Immigration Litigation

18 District Court Section

19 P.O. Box 868, Ben Franklin Station

20 Washington, D.C. 20044

21 Tel: (202) 532-4824

22 Fax: (202) 305-7000

23 Email: sarah.b.fabian@usdoj.gov

24
25 *Attorneys for Defendants*
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2020, I served the foregoing pleading and attachments on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Sarah B. Fabian
SARAH B. FABIAN
U.S. Department of Justice
District Court Section
Office of Immigration Litigation

Attorney for Defendants

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